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Society, &c.
v.
New-Haven.

[Constitutional Law. Charitable Use.]

The Society for the Propagation of the Gospel in Foreign Parts
v.
The Town of New-Haven, and William Wheeler.

A corporation for religious and charitable purposes, which is endowed solely by private benefactions, is a private eleemosynary corporation, although it is created by a charter from the government.

The capacity of private individuals, (British subjects,) or of corporations, created by the crown, in this country, or in Great Britain, to hold lands or other property in this country, was not affected by the Revolution.

The proper Courts in this country will interfere to prevent an abuse of the trusts confided to British corporations holding lands here to charitable uses, and will aid in enforcing the due execution of the trusts; but neither those Courts, nor the local legislature where the lands lie, can adjudge a forfeiture of the franchises of the foreign corporation, or of its property.

The property of British corporations, in this country, is protected by the 6th article of the treaty of peace of 1783, in the same manner as those of natural persons; and their title, thus protected, is confirmed by the 9th article of the treaty of 1794, so that it could not be forfeited by any intermediate legislative act, or other proceeding, for the defect of alienage.

The termination of a treaty, by war, does not devest rights of property already vested under it.

Nor do treaties, in general, become extinguished, *ipso facto*, by war between the two governments. Those stipulating for a permanent arrangement of territorial, and other national rights, are, at most, suspended during the war, and revive at the peace, unless they are waived by the parties, or new and repugnant stipulations are made.

The act of the legislature of Vermont, of the 30th of October, 1794, granting the lands in that State, belonging to "The Society for Propagating the Gospel in Foreign Parts," to the respective towns in which the lands lie, is void, and conveys no title under it.

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THIS case came before the Court upon a certificate of a division in opinion of the Judges of the Circuit Court for the District of Vermont. It was an action of ejectment, brought by the plaintiffs against the defendants, in that Court. The material facts, upon which the question of law arose, were stated in a special verdict, and are as follow:

By a charter granted by William III., in the thirteenth year of his reign, a number of persons, subjects of England, and there residing, were incorporated by the name of "The Society for the Propagation of the Gospel in Foreign Parts," in order that a better provision might be made for the preaching of the gospel, and the maintenance of an orthodox clergy in the colonies of Great Britain. The usual corporate powers were bestowed upon this society, and, amongst others, it was authorized to purchase estates of inheritance to the value of 2000 pounds per annum, and estates for lives or years, and goods and chattels, of any value. This charter of incorporation was duly accepted by the persons therein named; and the corporation has ever since existed, and now exists, as an organized body politic and corporate, in England, all the members thereof being subjects of the king of Great Britain.

On the 2d of November, 1761, a grant was made by the governor of the province of New-Hampshire, in the name of the king, by which a certain tract of land, in that province, was granted to the inhabitants of the said province, and of the king's other governments, and to their heirs and

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assigns, whose names were entered on the grant. The tract so granted, was to be incorporated into a town, by the name of New-Haven, and to be divided into sixty-eight shares, one of which was granted to "The Society for the Propagation of the Gospel in Foreign Parts." The tract of land, thus granted, was divided among the grantees by sundry votes and proceedings of a majority of them; which, by the law and usage of Vermont, render such partition legal. The premises demanded by the plaintiffs, in this ejectment, were set off to them in the above partition, but they had no agency in the division, nor was it necessary, by the law and usage of Vermont, in order to render the same valid.

On the 30th of October, 1794, the Legislature of Vermont passed an act, declaring, that the rights to land in that State, granted under the authority of the British government, previous to the revolution, to "The Society for the Propagation of the Gospel in Foreign Parts," were thereby granted severally to the respective towns in which such lands lay, and to their use for ever. The act then proceeds to authorize the selectmen of each town, to sue for and recover such lands, if necessary, and to lease them out, reserving an annual rent, to be appropriated to the support of schools. Under this law, the selectmen of the town of New-Haven executed a perpetual lease of a part of the demanded premises, to the defendant, William Wheeler, on the 10th of February, 1800, reserving an annual rent of 5 dollars and 50 cents; immediately after which, the said Wheeler entered

upon the land so leased, and has ever since held the possession thereof. Similar donations were made, about the same time with the above grant, to the plaintiffs, of lands lying within the limits of Vermont, by the governor of New-Hampshire, in the name of the king; but the plaintiffs never entered upon such lands, nor upon the demanded premises, nor in any manner asserted a claim or title thereto, until the commencement of this suit.

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The verdict found a number of acts of the State of Vermont respecting improvements or settlements, and also the limitation of actions; but as the discussions at the bar did not involve any questions connected with those acts, those parts of the special verdict need not be more particularly noticed.

Upon this special verdict, the Judges of the Court below were divided in opinion upon the question, whether judgment should be rendered for the plaintiffs or defendants, and the question was thereupon certified to this Court.

The cause was argued at the last term by Mr. *Hopkinson*, for the plaintiffs, and by Mr. *Webster*, for the defendants, and continued to the present term for advisement.

Mr. *Hopkinson*, for the plaintiffs, stated, that the act of the legislature of Vermont, of the 30th of October, 1794, could have no effect upon the title of the corporation, unless the principle upon which it purports to have been enacted, is sound and legal. Two reasons are assigned in the pre-

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amble to the act: (1.) That, by the custom and usages of nations, no aliens can, or of right ought, to hold real estate in a country to whose jurisdiction they cannot be made amenable. (2.) That the plaintiffs being a corporation erected by, and existing within a foreign jurisdiction, to which they alone are amenable, *by reason whereof*, at the time of the late revolution of this State, and of the United States, from the jurisdiction of Great Britain, all lands in the State, granted to the plaintiffs, became vested in the State, and have since that time remained unappropriated, &c. If these positions were true, then the plaintiffs cannot recover, independently of this act, which has no other effect than to vest the land, or the title thus accrued, in the State, or their grantees, the town schools. If, on the other hand, the position was untrue, the right of the plaintiffs remains unimpaired, and they are entitled to recover possession of the lands in the present action.

Against these positions, he would contend, (1.) That the general position, that no alien can hold real property in this country, is contradicted, at least as to all titles vested *in British subjects*, prior to the 4th of July, 1776, by the uniform and settled decision of this and other Courts; both upon the general principle, that the division of an empire makes no change in private rights of property, and under the operation of the treaties between the United States and Great Britain. (2.) That, independently of these treaty provisions, the title of an alien is not devested from him, nor vested in the State, until *office found*.

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1. There is no general law or custom of nations, preventing aliens from holding lands in the different states of the world. It depends upon the municipal law of each particular nation, and, in this country, upon that of the several States in the Union. There are various regulations on the subject, in the different States; and *non constat*, by the special verdict, but what aliens, in general, may hold lands in Vermont. Be this as it may, the treaties of 1783 and 1794, form a paramount law in that State, and in all the States. In the case of the *Society, &c.* v. *Wheeler*,[a] this same corporation was sought to be defeated in its right to recover its lands in New-Hampshire, not merely as *aliens*, but as *alien enemies*. But the Court held, that a license from the government to sue might be presumed, there being no evidence to the contrary; and as to the general principle of the right of an alien to bring an action for real property, Mr. Justice Story said, that there was "no pretence for holding that the mere alienage of the demandants would form a valid bar to the recovery in this case, supposing the two countries were at peace; for, however it might be true, in general, that an alien cannot maintain a real action, it is very clear, that either upon the ground of the 9th article of the treaty of 1794, or upon the more general ground, that the division of an empire works no forfeiture of rights previously acquired, for any thing that appears on the pre-

a 2 *Gallis. Rep.* 127.

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sent record, the present action might well be maintained."

The treaty of 1783 forbids all forfeitures on either side. That of 1794 provides, that the citizens and subjects of both nations, *holding lands,* (thereby strongly implying that there were no forfeitures by the revolution,) shall continue to hold, according to the tenure of their estates; that they may sell and devise them; and shall not, so far as respects these lands, and the legal remedies to obtain them, be considered as aliens. In the case of *Kelly* v. *Harrison,*[a] which was that of an alien widow of a citizen of the United States, the Supreme Court of New-York held, that the plaintiff was entitled to recover dower of lands, of which her husband was seised, prior to the 4th of July, 1776, but not of lands subsequently acquired. The British treaties were not considered by the Court as bearing on the case. It was, therefore, the naked question, of the effect of the revolution, even upon *a contingent right* to real property, acquired antecedent to the revolution. In the same case, Mr. Chief Justice Kent says, "I admit the doctrine to be sound, (*Calvin's Case,* 7 *Co.* 27 *b. Kirby's Rep.* 413.) that the division of an empire works no forfeiture of a right previously acquired. The revolution left the demandant where she was before."[b] The case of *Jackson* v. *Lunn,*[c] gives the same principle, and-

a 2 *Johns. Cas.* 29.
b *Id.* 32.
c 3 *Johns. Cas.* 109.

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also recognises the treaty of 1794, as confirming the title of persons holding lands.

In *Harden* v. *Fisher*,[a] which was also under the treaty of 1794, this Court held, that it was not necessary for the party to show a seisin in fact, or actual possession of the land, but only that the title was in him, or his ancestors, at the time the treaty was made. The treaty applies to his title, as existing at that epoch, and gives it the same legal validity as if he were a citizen. In a subsequent case, *Jackson* v. *Clark*,[b] where the point was, whether an alien enemy could make a will of lands in New-York, or convey his estate in any manner, the Court would not hear an argument, it being settled by former decisions.[c] In *Orr* v. *Hodgson*,[d] the Court confirmed the same doctrine, and also determined, that the 6th article of the treaty of 1783, was not meant to be confined to confiscations *jure belli*; but completely protected the titles of British subjects from forfeiture by escheat for the defect of alienage. But the great leading case on this subject, is that of *Fairfax* v. *Hunter*,[e] where the operation of the treaty of 1794 was determined as confirming the titles of British subjects, even where there had been a previous cause of forfeiture, but no office found, or other proceeding to assert the right of the State. And in *Terett* v. *Taylor*,[f] which was

a 1 *Wheat. Rep.* 300.
b 3 *Wheat. Rep.* 1.
c *Id.* 12. Note c, and the authorities there collected.
d 4 *Wheat. Rep.* 453.
e 7 *Cranch's Rep.* 603. S. C. 1 *Wheat. Rep.* 304.
f 9 *Cranch's Rep.* 43.

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the case of an ecclesiastical corporation, it was held, that the dissolution of the regal government no more destroyed the right to possess and enjoy the property, than it did of any other corporation or individual, the division of an empire creating no forfeiture of vested rights of property.

2. At all events, the alien lost no right, and the State acquired none, *until office found.*

It is firmly settled by the uniform decisions of this Court, and of the most respectable State Courts, that an alien may take an interest in lands, and hold the same against all the world, except the government, and even against it, until office found.[a]

If, then, the plaintiffs are to be considered as aliens, and labour under no other disability, it is clear, that their title to the lands in question remains unimpaired, and as it existed previous to the 4th of July, 1776; and this upon three grounds: (1.) Of the general law on the division of an empire. (2.) Of the operation of the treaties of 1783 and 1794. (3.) On the ground, that the title of the State acquired by forfeiture, if any, had not been asserted by, nor that of the plaintiffs devested by, an inquest of office. And, consequently, that the first position assumed by the Legislature of Vermont to justify its act, is unfounded in law.

The second ground taken by the Legislature is,

a Fairfax v. Hunter, 7 *Cranch's Rep.* 603. 1 *Wheat. Rep.* 304. Craig v. Leslie, 3 *Wheat. Rep.* 563. Jackson v. Beach, 1 *Johns. Cas.* 399. Jackson v. Lunn, 3 *Johns. Cas.* 109.

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that the plaintiffs having become a foreign corporation by the revolution, could not continue to hold lands in this country after that event.

This presents the single question, whether an alien *corporation* is in a different situation, in this respect, from an alien *individual?* On the part of the plaintiffs, we contend, that all the legal principles and rules which go to protect the title of an individual, will equally avail to protect that of a corporation; and that, whether the security of the former is founded upon the general law as to the division of an empire, or upon the peculiar stipulations of the treaties of 1783 and 1794, or the defect of an inquest of office.

In this case, although the *trust* is in aliens, the *use* is to citizens of our own country; and the forfeiture would, therefore, only affect those in whom the beneficial interest is vested. On what ground can it be insisted, that a British corporation, holding lands in this country, in trust for British subjects prior to the declaration of independence, forfeited the lands at that epoch, and that they became *ipso facto* vested in the State where they lie, without office found, or other equivalent legal ceremony? If there be no such principle of law, and if, where the whole interest is British, it is protected, why should it not be equally protected where the real beneficial interest is American, and the trusteeship only is British? It is obvious, that the revolution has nothing to do with the question. The position assumed by the Legislature of Vermont, must stand or fall, independent of that circumstance, and its introduction only

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tends to confuse the inquiry. The broad position is, that at no time, nor under any circumstances, can a foreign corporation, or trustee, hold lands in this country for any use whatever. And why is it thought indispensably necessary, that the corporation, which in this case is the trustee, should be locally within our jurisdiction? The answer will be, undoubtedly, in order to prevent neglect, or abuse of the trust. But that is properly a matter between the trustee and the *cestuis que trust;* and it is a strange remedy to take the property from both, least the former should impose upon the latter. If abuses should be found to exist, an appropriate legal remedy may easily be found. In England, alienage is no plea in abatement in the case of a corporation. By the old law, an abbot or prior alien, could have an action real, personal, or mixed, for any thing concerning the possessions or goods of the monastery, because they sue in their corporate capacity, and not in their own right to carry the effects out of the kingdom.[a] The circumstance, that the execution of the trust is in England, is here regarded. A corporation can have no local habitation. The disability must result from the character of the individual members. Thus, it is held, that a body corporate, as such, cannot be a citizen of any particular State of the Union; and its right to sue, or not to sue, in the federal Courts, depends solely upon the character of the individual members.[b]

a *Co. Litt.* 129 *a.*

b Hope Ins. Co. v. Boardman, 5 *Cranch's Rep.* 57. Bank of the U. S. v. Deveaux, 5 *Cranch's Rep.* 61.

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Whatever danger there may be from a foreign corporation holding lands in this country, it can only be a reason for restraint and regulation, but not for confiscation and forfeiture. If the execution of the trust can be regulated otherwise than according to the charter, it must be from the necessity of the case only; and the legislative interference must not go beyond providing an adequate remedy by some appropriate judicial proceeding. To say, that the corporation, so far as respects these lands, is dissolved by the revolution, is to say, that the lands are forfeited by the revolution. The trust remains, the corporate body remains, the land remains; but all connexion between them (that is, the right of the corporation to hold in trust for the same purposes) is dissolved by the separation of the empire. It is only necessary to state this proposition, to show its inconsistency with the well established principles of law.

Mr. *Webster*, contra, contended, 1. That the capacity of the plaintiffs, as a corporation, to hold lands in Vermont, ceased by, and as a consequence of, the revolution.

2. That the Society for Propagating the Gospel, being in its politic capacity a foreign corporation, is incapable of holding lands in Vermont, on the ground of alienage; and that its rights are not protected by the treaties of 1783 and 1794.

3. That if those rights were so protected, the effect of the late war between the United States and Great Britain, was such, as to put an end to those treaties, and, consequently, to rights derived

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under them, unless they had been revived by the treaty of peace at Ghent, which was not done.

He argued on the first and second points, that the dismemberment of the British empire dissolved this corporation, so far as respects its capacity to hold lands in this country, not merely because they are aliens, but from the peculiar circumstances of the case. The society is such a corporation as cannot hold lands in England, under the statutes of mortmain, without a license from the crown, which they have in their charter. But this license does not extend to authorize them to hold lands in the colonies. The statutes of mortmain do not extend to the colonies.[a] In the interpretation of treaties, the probable intention of the framers is to be taken as the guide, and the sense of the terms they use is to be limited and restrained by the circumstances of the case.[b] The British treaties are to be construed, not only as to

a Attorney General v. Stewart, 2 *Meriv. Rep.* 143.

b *Vattel, Droit des Gens*, l. 2. c. 17. s. 270. Entrons maintenant dans le détail des regles sur lesquelles l'interprétation doit se diriger, pour être juste et droite. 1. Puisque l'interprétation legitime d'un acte ne doit tendre qu'a découvrir la pensée de l'auteur, ou des auteurs de cet acte, *dès qu'on y rencontre quelque obscurité, il faut chercher quelle a été vraisemblablement la pensée de ceux qui l'ont dressé, et l'interpréter en conséquence.* C'est la regle générale de toute interprétation. Elle sert particuliérement à fixer le sens de certaines expressions, dont la signification n'est pas suffisament déterminée. En vertu de cette regle, il faut prendre ces expressions dans le sens le plus étendu, quand il est vraisemblable que celui qui parle a eu en vue tout ce qu'elles désignent dans ce sens étendu: et au contraire, on doit en resserer la signification, s'il paroît que l'auteur a borné sa pensée à ce qui est compris dans le sens le plus resserré."

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the sort of *title* meant to be protected, but also the sort of *persons and property* meant to be protected. The mere personal disability of British subjects to hold lands, is taken away. They are protected against escheat. But corporations, such as this, ought to be considered as impliedly excepted from this provision. This might well be contended, even as to those who have a beneficial proprietary interest, and *a fortiori*, as to such as are mere *trustees*. In the present case, the revolution has violently separated the trustees from the property, and from the *cestuis que trust*. The former are in a foreign country, the latter are here. Can it be imagined, that the treaties meant to take from the Courts of equity of this country the ordinary power of enforcing the trust, or of changing the trustee in case of abuse or inability to perform his trust, independent of the statute of Elizabeth? But if the Legislature cannot change the trustee, neither can the Courts. Reciprocity lies at the foundation of all treaties between nations. But the English Court of Chancery has determined, that it cannot enforce a trust connected with a charity in this country. Thus, Lord Thurlow took the administration of a charity, under an appointment by the trustees, and a plan confirmed by a decree of the Court, out of the hands of William and Mary College, in Virginia, because the trustees had become foreign subjects by the separation of the two countries; and even denied costs to the college, because its existence as a corporation had not been, and could not be

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proved since the revolution.[a] So, also, where the State of Maryland claimed certain bank stock, which had been vested in the hands of trustees in England, by the colony of Maryland, before the revolution, the claim was rejected by Lord Rosslyn, upon the ground, that the colonial government, which existed under the king's charter, was dissolved by the revolution, and though Great Britain had acknowledged the State of Maryland, yet the property which belonged to a corporation, which had thus become a foreign corporation, or been dissolved, could not be transferred to a body which did not exist under the authority of the British government. The new State could take only such rights of the old as were within their jurisdiction, and the fund, no object of the trust existing, must be considered as *bona vacantia* at the disposal of the crown.[b]

In the case now before this Court, either the corporation is dissolved, or it has become a foreign corporation. If it still exists, for any purpose, it may forfeit its franchises for non-user or misuser. If its franchises are forfeited, a forfeiture of its property follows as a matter of course. But how is a *quo warranto*, or any other process, to go against it from our Courts? And if the proceeding is in the English Courts, to whom is the property to revert? It is plain, that it can revert to

a The Attorney General v. City of London, 1 *Vesey*, jr. 243. 3 *Bro. Ch. Cas.* 171.

b Barclay v. Russel, 3 *Ves.* jr. 424. Dolder v. The Bank of England, 10 *Ves.* 354.

no other than the grantor, i. e. the State of Vermont representing the crown.

Here, the State, instead of proceeding in a Court of equity to enforce a trust, or to present a new scheme for the administration of the charity, has proceeded to escheat the property for defect of alienage in those who claim the legal title. This it has done directly by a legislative act, and not through an inquest of office, or any analogous ceremony, which was unnecessary.[a]

Upon the third point, he argued, that even supposing the treaties of 1783 and 1794 protected the rights of property of the plaintiffs, whether beneficial or fiduciary, yet the late war abrogated such provisions of those treaties as were not revived by the peace of Ghent. The general rule certainly is, that whatever subsists by treaty, is lost by war.[b] Peace merely restores the two nations to their *natural* state.[c]

a Smith v. Maryland, 6 *Cranch's Rep.* 286. Fairfax v. Hunter, 7 *Cranch's Rep.* 622.

b *Marten's Law of Nations*, l. 2. c. 1. s. 8. *Vattel*, l. 3. c. 10. s. 175. "Les conventions, les traités faits avec une nation, sont rompus on annullés par la guerre qui s'éleve entre les contractans; soit parce qu'ils suppose tacitement l'etat de paix, soit parceque chacun pouvant dépouiller son ennemi de ce qu'il lui appartient, lui ôte les droits qu'il lui avoit donnés par des traités. Cependant il faut excepter les traités où on stipule certaines choses en cas de rupture; par exemple le temps qui sera donné aux sujets, de part et d'autre, pour se retirer; la neutralité assurée d'un commun consentement à une ville, ou à une province, &c. Puisque, par des traités de cette nature, on veut pourvoir à ce qui devra s'observer en cas de rupture, on renonce au droit de les annuller par la déclaration de guerre."

c *Vattel*, l. 4. c. 1. s. 8. "Les effets généraux et nécessaires de

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Foreigners cannot, independent of conventional stipulations, by the general usage of nations, or by the common law, hold lands in this country. This pre-existing law, therefore, revives; there being no recognition in the treaty of Ghent of the articles of the former treaties, excepting British subjects from the operation of the rule.

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Mr. Justice WASHINGTON delivered the opinion of the Court, and, after stating the case, proceeded as follows:

It has been contended by the counsel for the defendants,

1st. That the capacity of the plaintiffs, as a corporation, to hold lands in Vermont, ceased by, and as a consequence of, the revolution.

2dly. That the society being, in its politic capacity, a foreign corporation, it is incapable of holding land in Vermont, on the ground of alienage; and that its rights are not protected by the treaty of peace.

3dly. That if they were so protected, still the effect of the last war between the United States and Great Britain, was to put an end to that treaty, and, consequently, to rights derived under it, unless they had been revived by the treaty of peace, which was not done.

The society to be considered as a private eleemosynary corporation.

1. Before entering upon an examination of the first objection, it may be proper to premise, that this society is to be considered as a private elee-

la paix sont de reconcilier les ennemis et de fair cesser de part et d'autre toute hostilité. Elle remet les deux nations dans leur état naturel."

mosynary corporation, although it was created by a charter from the crown, for the administration of a public charity. The endowment of the corporation, was to be derived solely from the benefactions of those who might think proper to bestow them, and to this end the society was made capable to purchase and receive real estates, in fee, to a certain annual value, and also estates for life, and for years, and all manner of goods and chattels to any amount.

Its capacity to hold lands not affected by the revolution.

When the defendants' counsel contends, that the incapacity of this corporation to hold lands in Vermont, is a consequence of the revolution, he is not understood to mean, that the destruction of civil rights, existing at the close of the revolution, was, generally speaking, a consequence of the dismemberment of the empire. If that could ever have been made a serious question, it has long since been settled in this and other Courts of the United States. In the case of *Dawson's lessee* v. *Godfrey*, (4 *Cranch*, 323.) it was laid down by the Judge who delivered the opinion of the Court, that the effect of the revolution was not to deprive an individual of his civil rights; and in the case of *Terret* v. *Taylor*, (9 *Cranch*, 43.) and of *Dartmouth College* v. *Woodward*, (4 *Wheat. Rep.* 518.) the Court applied the same principle to private corporations existing within the United States at the period of the revolution. It is very obvious, from the course of reasoning adopted in the two last cases, that the Court was not impressed by any circumstance peculiar to such corporations, which distinguished them, in

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this respect, from natural persons; on the contrary, they were placed upon precisely the same ground. In *Terret* v. *Taylor*, it was stated, that the dissolution of the regal government, no more destroyed the rights of the church to possess and enjoy the property which belonged to it, than it did the right of any other corporation or individual, to his or its own property. In the latter case, the Chief Justice, in reference to the corporation of the college, observes, that it is too clear to require the support of argument, that all contracts and rights respecting property remained unchanged by the revolution; and the same sentiment was enforced, more at length, by the other Judge who noticed this point in the cause.

The counsel then intended, no doubt, to confine this objection to a corporation consisting of British subjects, and existing in its corporate capacity in England, which is the very case under consideration. But if it be true, that there is no difference between a corporation and a natural person, in respect to their capacity to hold real property; if the civil rights of both are the same, and are equally unaffected by the dismemberment of the empire, it is difficult to perceive upon what ground the civil rights of a British corporation should be lost, as a consequence of the revolution, when it is admitted, that those of an individual would remain unaffected by the same circumstance.

But, it is contended by the counsel, that the principle so firmly established, in relation to cor-

porations existing in the United States, at the period of the revolution, is inapplicable to this corporation, inasmuch as the Courts of Vermont can exercise no jurisdiction over it, to take away its franchises, in case of a forfeiture of them, by misuser or nonuser, or in any manner to change the trustees, however necessary such interference might be, for the due administration and management of the charity. If this be a sound reason for the alleged distinction, it would equally apply to other trusts, where the trustees happened to be British subjects, residing in England, and entitled to lands in Vermont, not as a corporate body, but as natural persons, claiming under a common grant. The question of amenability to the tribunals of Vermont, would be the same in both cases, as would be the consequent incapacity of both to hold the property to which they had an unquestionable legal title at the period of the revolution.

It is very true, as the counsel has insisted, that the Courts of Vermont might not have jurisdiction in the specified cases; and it is quite clear, that were they to exercise it, and decree a forfeiture of the franchises of the corporation, or the removal of the trustees, the plaintiffs would not be less a corporation, clothed with all its corporate rights and franchises.

Executions of the trusts confided to the society, how enforced.

But it is not perceived by the Court, how this exemption of the corporation from the jurisdiction of a foreign Court to forfeit its franchises, or to interfere in its management of the charity, can destroy, or in any manner affect its civil rights, or its capacity to hold and enjoy the property legally

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vested in it. It would surely be an extraordinary principle of law, which should visit such a corporation with the same consequences, on account of a want of jurisdiction in the Courts of the country where the property lies to inquire into its conduct, as would happen if, after such an inquiry, judicially made, the corporation should be found to have forfeited its franchises; in other words, that the possibility that the corporation might commit a forfeiture, which the law will not presume, or might require the interference of a Court of Chancery to enforce the due administration of the charter, which might never happen, should produce a forfeiture, or something equivalent to it, of the very funds which were, in whole, or in part, to feed and sustain the charity. This, nevertheless, seems to be the amount of the argument, and it is deemed by the Court too unreasonable to be maintained, unless it appeared to be warranted by judicial decisions. It would seem, that the State in which the property lies ought to be satisfied, that the Courts of the country in which the corporation exists, will not permit it to abuse the trusts confided to it, or to want their assistance, when it may be required to enable it to perform them in a proper way.

Were it even to be admitted, that the Legislature of Vermont was competent to pronounce a sentence of forfeiture of the property belonging to this corporation, upon the ground of its having abused, or not used its franchises, still, the act of 1794 does not profess to have proceeded upon that ground. The only reasons assigned in the

preamble of the act, for depriving the plaintiffs of this property, are, 1. That, by the custom and usages of nations, aliens cannot, and ought not to hold real estate in a country to whose jurisdiction they cannot be made amenable; and, 2. That this corporation, being created by, and existing within a foreign jurisdiction, all lands in the State, granted to the said society, became vested, by the revolution, in that State. For aught that appears to the contrary, the society was, at the moment when the act passed, fulfilling the trusts confided to it in the best manner for promoting the benevolent and laudable objects of its incorporation. It may further be remarked, that the effect of this act is not merely to deprive the corporation of its legal control over the charity, so far as respects the property in question, but to destroy the trusts altogether, by transferring the property to other persons, and for other uses, than those to which they were originally destined by the grant made to the society.

The case chiefly relied upon by the defendants' counsel, in support of his first point, was that of the *Attorney General* v. *The City of London*, (1 *Ves.* jr. 247. and 3 *Bro. Ch. Cas.* 171.) under the will of Mr. Boyle, which directed the residue of his estate to be laid out by his executors for charitable, and other pious uses, at their discretion. They purchased, under a decree of the Court of Chancery, the manor of Brafferton, which they conveyed to the city of London, upon trust, to lay out the rents and profits in the advancement of the Christian religion among infidels, as the Bishop

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of London, and one of the executors, should appoint, such appointment to be confirmed by a decree of the Court of Chancery. The trustees appointed a certain part of the rents and profits to be paid to an agent in London, for the college of William and Mary in Virginia, for the purpose of maintaining and educating in the Christian religion, as many Indian children as the fund would support; the president, &c. of the college to transmit accounts of their receipts and expenditures yearly to the Court of Chancery, and to be subject to certain rules then prescribed, and to such others as should thereafter be adopted with the approbation of the Court. This appointment was ratified by a decree of the Court of Chancery. The object of the information was to have the disposition of this charity taken from the college, and that the master should lay before the Court a new scheme for the future disposition of the charity. The new scheme was ordered by the Chancellor, upon the ground, that the college, belonging to an independent government, was no longer under the control of the Court.

The difference between that case and the present is, that in that, the president, &c. of the college were not the trustees appointed by the will of Mr. Boyle, or by his executors, to manage the charity, but were the mere agents of the trustees for that purpose, or rather the servants of the Court of Chancery, as they are styled by the counsel for the college, in the administration of the charity, subject to such orders and rules as might be prescribed by the trustees, and sanctioned by the

Chancellor. The college had a mere authority to dispose of the charity, but without any interest whatever in the fund. The trustees resided in England, and there too was the fund. The president, &c. of the college derived all their authority from the trustees, and from the Court of Chancery. To that Court they were accountable, and were necessarily removable by the Court, whenever it should appear to the Chancellor to be necessary for the due administration of the charity.

In the present case, the plaintiffs were, at the period of the revolution, entitled to the legal estate in the land in question, under a valid and subsisting grant; and the only question is, whether the estate so vested in them, was devested by the revolution, and became the property of the State? We have endeavoured to show that it was not.

The case of *Barclay* v. *Russel*, (3 *Ves.* 424.) was also mentioned by the defendants' counsel, and ought, therefore, to be noticed by the Court. That was a claim on the part of the State of Maryland, of certain funds which had been vested in trustees in London, before the American revolution, by the old government of Maryland, in trust for certain specific purposes. The case is long, and rather obscurely reported; but in the case of *Dolben* v. *The Bank of England*, (10 *Ves.* 352.) the Lord Chancellor states the ground upon which the claim was rejected. His lordship observes, that "that was a case in which the old government existed under the king's charter, and a revolution took place, though the new government

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was acknowledged by this country. Yet, it was held, that the property, which belonged to a corporation existing under the king's charter, was not transferred to a body which did not exist under his authority, and, therefore, the fund in this country was considered to be *bona vacantia* belonging to the crown.

Another, and, perhaps, a more intelligible reason, is assigned in the case itself, namely, that the funds were vested by the old government in the hands of the trustees, by the act of 1733, for certain specific trusts, the execution of which was then rendered impossible. "There is no specific purpose," says the Chancellor, "that the will of the present government can point out, for which purpose, according to the originad creation of the trust, I can direct the trustee to transfer. It is, therefore, the common case of a trust, without any specific purpose to which it can be applied; the consequence of which is, that the right to dispose of this money is vested in the crown."

Now, it is quite clear, that if the premises upon which this case was decided were correct, the conclusion is so. The old government was treated as a corporation, which ceased to exist as such by the new form of government, deriving its name, its existence, and its constitution, from a totally different source from that under which the old corporation existed. The old corporation no longer existed, the consequence of which was precisely that which would take place in case of the dissolution of any private corporation; their

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legal rights would cease, and would not descend or pass to the new corporation. So, too, if the specific purpose for which the trust was created had ceased, the disposition of the fund clearly devolved upon the crown.

But, in this case, the plaintiffs exist, at this day, as a corporation, precisely as it did before the revolution; and the specific purposes to which the trust was to be applied, by the terms of the charter, still remain the same. The cases, therefore, are totally unlike each other.

2. The next question is, was this property protected against forfeiture, for the cause of alienage, or otherwise, by the treaty of peace? This question, as to real estates belonging to British subjects, was finally settled in this Court, in the case of *Orr* v. *Hodgson*, (4 *Wheat. Rep.* 453.) in which it was decided, that the 6th article of the treaty protected the titles of such persons, to lands in the United States, which would have been liable to forfeiture, by escheat, for the cause of alienage, or to confiscation, *jure belli*.

The property of the society protected by the treaty of peace.

The counsel for the defendants did not controvert this doctrine, so far as it applies to natural persons; but he contends, that the treaty does not, in its terms, embrace corporations existing in England, and that it ought not to be so construed. The words of the 6th article are, "there shall be no future confiscations made, nor any prosecutions commenced, against any person or persons, for or by reason of the part which he or they may have taken in the present war; and that no person shall, on that account, suffer any future

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loss or damage, either in his person, liberty, or property," &c.

The terms in which this article is expressed are general and unqualified, and we are aware of no rule of interpretation applicable to treaties, or to private contracts, which would authorize the Court to make exceptions by construction, where the parties to the contract have not thought proper to make them. Where the language of the parties is clear of all ambiguity, there is no room for construction. Now, the parties to this treaty have agreed, that there shall be no future confiscations in any case, for the cause stated. How can this Court say, that this is a case where, for the cause stated, or for some other, confiscation may lawfully be decreed? We can discover no sound reason why a corporation existing in England may not as well hold real property in the United States, as ordinary trustees for charitable, or other purposes, or as natural persons for their own use. We have seen, that the exemption of either, or all of those persons, from the jurisdiction of the Courts of the State where the property lies, affords no such reason.

It is said, that a corporation cannot hold lands, except by permission of the sovereign authority. But this corporation did hold the land in question, by permission of the sovereign authority, before, during, and subsequent to the revolution, up to the year 1794, when the Legislature of Vermont granted it to the town of New-Haven; and the only question is, whether this grant was not void

by force of the 6th article of the above treaty? We think it was.

Was it meant to be contended, that the plaintiffs are not within the protection of this article, because they are not *persons* who could take part in the war, or who can be considered by the Court as British subjects? If this were to be admitted, it would seem to follow, that a corporation cannot lose its title to real estate, upon the ground of alienage, since, in its civil capacity, it cannot be said to be born under the allegiance of any sovereign. But this would be to take a very incorrect view of the subject. In the case of *The Bank of the United States* v. *Deveaux*, (5 *Cranch's Rep.* 86.) it was stated by the Court, that a corporation, considered as a mere legal entity, is not a citizen, and, therefore, could not, as such, sue in the Courts of the United States, unless the rights of the members of it, in this respect, could be exercised in their corporate name. It was added, that the name of the corporation could not be an alien or a citizen; but the corporation may be the one or the other, and the controversy is, in fact, between those persons and the opposing party.

And its title is confirmed by the treaty of 1794.

But even if it were admitted that the plaintiffs are not within the protection of the treaty, it would not follow, that their right to hold the land in question was devested by the act of 1794, and became vested in the town of New-Haven. At the time when this law was enacted, the plaintiffs, though aliens, had a complete, though defeasible, title to the land, of which they could not be de-

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prived for the cause of alienage, but by an inquest of office; and no grant of the State could, upon the principles of the common law, be valid, until the title of the State was so established. (*Fairfax's devisee* v. *Hunter's lessee*, 7 *Cranch's Rep.* 503.) Nor is it pretended by the counsel for the defendants, that this doctrine of the common law was changed by any statute law of the State of Vermont, at the time when this land was granted to the town of New-Haven. This case is altogether unlike that of *Smith* v. *The State of Maryland*, (6 *Cranch's Rep.* 286.) which turned upon an act of that State, passed in the year 1780, during the revolutionary war, which declared, that all property within the State, belonging to British subjects, should be seized, and was thereby confiscated to the use of the State; and that the commissioners of confiscated estates should be taken as being in the actual seisin and possession of the estates so confiscated, without any office found, entry, or other act to be done. The law in question passed long after the treaty of 1783, and without confiscating or forfeiting this land, (even if that could be legally done,) grants the same to the town of New-Haven.

Effect of the late war upon these treaties.

3. The last question respects the effect of the late war, between Great Britain and the United States, upon rights existing under the treaty of peace. Under this head, it is contended by the defendants' counsel, that although the plaintiffs were protected by the treaty of peace, still, the effect of the last war was to put an end to that treaty, and, consequently, to civil rights derived

under it, unless they had been revived and preserved by the treaty of Ghent.

If this argument were to be admitted in all its parts, it nevertheless would not follow, that the plaintiffs are not entitled to a judgment on this special verdict. The defendants claim title to the land in controversy solely under the act of 1794, stated in the verdict, and contend, that by force of that law, the title of the plaintiffs was devested. But if the Court has been correct in its opinion upon the two first points, it will follow, that the above act was utterly void, being passed in contravention of the treaty of peace, which, in this respect, is to be considered as the supreme law. Remove that law, then, out of the case, and the title of the plaintiffs, confirmed by the treaty of 1794, remains unaffected by the last war, it not appearing from the verdict, that the land was confiscated, or the plaintiffs' title in any way devested, during the war, or since, by office found, or even by any legislative act.

But there is a still more decisive answer to this objection, which is, that the termination of a treaty cannot devest rights of property already vested under it.

If real estate be purchased or secured under a treaty, it would be most mischievous to admit, that the extinguishment of the treaty extinguished the right to such estate. In truth, it no more affects such rights, than the repeal of a municipal law affects rights acquired under it. If, for example, a statute of descents be repealed, it has never been supposed, that rights of property

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already vested during its existence, were gone by such repeal. Such a construction would overturn the best established doctrines of law, and sap the very foundation on which property rests.

But we are not inclined to admit the doctrine urged at the bar, that treaties become extinguished, *ipso facto*, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. Whatever may be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms in relation to this subject, we are satisfied, that the doctrine contended for is not universally true. There may be treaties of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent arrangement of territorial, and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war. If such were the law, even the treaty of 1783, so far as it fixed our limits, and acknowledged our independence, would be gone, and we should have had again to struggle for both upon original revolutionary principles. Such a construction was never asserted, and would be so monstrous as to supersede all reasoning.

We think, therefore, that treaties stipulating for permanent rights, and general arrangements, and professing to aim at perpetuity, and to deal with the case of war as well as of peace, do not cease on the occurrence of war, but are, at most, only sus-

pended while it lasts; and unless they are waived by the parties, or new and repugnant stipulations are made, they revive in their operation at the return of peace.

A majority of the Court is of opinion, that judgment upon this special verdict ought to be given for the plaintiffs, which opinion is to be certified to the Circuit Court.

Certificate for the plaintiffs.

[Devise.]

Daly's Lessee v. James.

J. B. devises all his real estate to the testator's son, J. B., jun., and his heirs lawfully begotten; *and, in case of his death without such issue*, he orders A. Y., his executors and administrators, to sell the real estate *within two years after the son's death*; and he bequeaths the proceeds thereof to his *brothers and sisters*, by name, *and their heirs for ever, or such of them as shall be living at the death of the son, to be divided between them in equal proportions, share and share alike.* All the brothers and sisters die, leaving issue. Then A. Y. dies, and afterwards J. B., jun., the son, dies without issue. *Heirs* is a word of limitation; and none of the testator's brothers and sisters being alive at the death of J. B., jun., the devise to them failed to take effect.

Quære, Whether a sale by the executors, &c. under such circumstances, is to be considered as valid in a Court of law?

However this may be, a sale, thus made, after the lapse of two years from the death of J. B., jun., is without authority, and conveys no title.

Quære, Under what circumstances a Court of equity might relieve,