

to them in that capacity, and nothing more. The General Assembly did not; and, it may be affirmed, could not enact, or covenant with the plaintiffs, that the land held by them should be considered as an estate more favoured and sacred than that of any individual citizen of the Republic; for, as it has been said, even the parliament of England, with all its unlimited sovereignty, cannot legally make any partial distinctions among the subjects of the realm. (*f*) All or any of the property of a citizen may be taken, upon a just compensation being made, and applied to the use of the public; and all property belonging, in like manner, to a corporation, must also be held liable to the same *eminent domain*, or peculiar power of the government.

The only plausible ground upon which any portion of the territory of the Republic could be exempted from a liability to the exercise of this power of the government of the state would be, that it had been previously applied to some greater or equally beneficial public use, with which the proposed new application was incompatible. But there is no pretext for claiming an exemption, upon that or any other principle, in favour of the land held by these plaintiffs; because it cannot, in any sense whatever, be considered as having been appropriated to any public use; it is merely held as private property, for the peculiar emolument of its incorporated owners, and which they may dispose of at their pleasure. The tenure by which they hold it forms no part of that which is of the essence of their act of incorporation, or the alleged contract between them and the state. There is therefore nothing in the acts incorporating the plaintiffs, even considered as a contract, which can be so construed as to prevent the condemnation of their land to a public use in the manner proposed by the defendants.

The plaintiffs have urged, that the application of their land to the purposes of the rail road proposed to be made by the defendants, is not such a public use as can justify the taking of it without their consent; although it should be agreed, on all hands, that the private property of corporations as well as of individuals, might be taken for any public purpose on a just compensation being made for it.

Under our government the property of one man cannot be taken without his consent, and given to another by any form of proceeding; and, consequently, no citizen can be compelled to part with