

his property, even on a just compensation being made, but for some public purpose. It is the public good alone which can sanction such a compulsory alienation of the property of a citizen. The point of this objection is, therefore, that the taking of this private property for the construction of the proposed rail road is an application of it to a private and not to a public use.

But the exercise of this power of the government of the state is not confined to those cases only in which the private property taken is to be applied immediately, directly, and exclusively to some public use, as to the making of an open highway or the like; for, it is enough, if it clearly appears, that the application of such private property to the proposed new use will be attended by a material public benefit which would not otherwise be so immediately and effectually produced. And, therefore, if it be shewn, that such a public good must necessarily be the result of such an application of the private property, it is of no consequence whether the condemnation or compulsory alienation places it in the hands of the state, of a corporation, or even of an individual. In all such cases the General Assembly may justly authorize a condemnation of any private property for such a public benefit, by such proceedings as are proposed to be prosecuted by these defendants. (g)

It may, in some cases, be difficult, in this respect, to distinguish between a public and a private use, and to determine how far this exercise of the government's power of *eminent domain* may be carried. But in this case I deem it sufficiently clear, that the construction of a rail road, as proposed by the defendants, must result in such a general advantage to the people as to warrant the court in pronouncing it such a public use as affords an ample justification of the proceeding by which the plaintiffs may be compelled to part with their land on receiving for it a just compensation. Hence there is no foundation for this objection of the plaintiffs.

The plaintiffs, after taking a comparative view of the *fifteenth*, *sixteenth*, *seventeenth* and *nineteenth* sections of the act by which the defendants have been incorporated, contended that the defendants' authority to acquire a title to land for the use of their rail road must be confined altogether to such land as is held by individual citizens, by mere natural persons.

But a fictitious body of citizens, formed by charter, is as a mere citizen, as natural bodies in a state of subjection to the government

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(g) Pressly's Case, ante 390, note.