POWER OF LEGISLATURE TO REPEAL OR ALTER

A CORPORATE FRANCHISE.

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A CORPORATE FRANCHISE.

Although three-quarters of a century has passed since this question came before the courts, and although the most learned lawyers, and distinguished judges, have given it their "anxious consideration," it still remains unsettled.

It is a question peculiar to the American courts. Although there may be English authority which will help to throw light upon the subject, no English cases in point have ever come before the courts. There is nothing in the unwritten constitution of England, which in any way prevents Parliament from repealing one day any statute, charter or contract, that it enacted the preceding day. There may be a political remedy, but there is absolutely no remedy in the courts.

The question arises in this country, under Article I Section 10, of the United States
Constitution, which says; "No State shall pass any law impairing the obligation of contracts." Under this section, has arisen a vast amount of litigation, which cannot be said to have gone very far, toward a settlement of the controversy. The first time it came before the courts was in 1806, in the obscure case in Mass. There the legislature had granted a charter to a corporation, permitting it to turnpike a certain road, and for compensation to maintain certain toll gates thereon. The defendant refused to pay toll; and had broken down and carried away the gate. On the corporation bringing an action in trespass, the court said on this particular point—"We are satisfied that the right legally vested in this or any corporation, cannot be controlled or destroyed by any subsequent statute, unless a power for that purpose be reserved to the legislature, in the act of incorporation." But the case was decided on another point and this was only mere dictum. Wals v. Stetson, 2 Mass. 143.). This case however is practically unknown from the fact that the leading authority was decided some twelve or fourteen years afterwards, in the famous case known as the Dartmouth College Case. It first came before the
New Hampshire courts, and was finally decided in the United States Supreme Court.

A brief statement of the facts of that case at this point is necessary. Sometime prior to 1769 the Rev. Dr. Wheelock was a missionary among the Indians, in the vicinity of New Hampshire. He had established a school there for the education of the Indian youth, and this in time out grew the resources at his command. He sent agents to England to solicit subscriptions, for the maintenance of the school. They were successful in obtaining considerable subscription, and in receiving a charter from George Third, bearing the date Dec. 13, 1769. By this charter Dr. Wheelock was made president with the power of naming his successor. The trustees were to consist of twelve men who were named at the suggestion of Dr. Wheelock, seven of whom were to form a quorum, and they had the power of filling vacancies, that might happen from time to time.

The object of the college was; "for the education and instruction of the youth of the Indian tribes, for civilized and christianizing children of pagans, as well as in all liberal arts,"
and sciences, and also of English youth, and others."

The college was named by its charter "Dartmouth College", after the Earl of Dartmouth, one of its benefactors. It proceeded under this charter until June 27th, 1916, when the legislature of New Hampshire passed an act, revising the charter. This act changed the name from Dartmouth College, to Dartmouth University. It changed the number of trustees from twelve to twenty-one, a majority of whom were to form a quorum. The Executive was to appoint the extra number of trustees, and fill any vacancies, that might occur from time to time. It also gave the executive power to appoint twenty-five overseers, who were to inspect and pass upon the acts of the trustees.

The old board refused to recognize this as law, and would not act with the new trustees. The new board with one Woodward as treasurer, got possession of the seal, books and other articles of the college, and the old board brought an action in trover for the repossession of the same. The case was carried up to the court of last resort, in New Hampshire, and decided there in favor of the new board. Dartmouth Col. v Woodward. (1 N.H. 111.).
Richardson C.J. wrote the opinion. He treats the corporation as being, a public institution and the trustees as officers of the public only, having no more private rights in the college funds than a governor of the state, or a member of the legislature has in the trust, which is given to his care. He claims, that the trustees will not be heard to say, that their power must not be interfered with. "They are servants of the public, and the servant is not to resist the will of his master." He drew the distinction between public and private corporations, and decided that the Dartmouth College was a public corporation. If it were a public corporation, as he contended it was, the corporation did not depend, for its identity, upon the number or personae of its trustees. It did not follow, that because the number of trustees were changed, that the corporation was thereby dissolved. No rights were taken away from the old trustees, they enjoyed the same rights as they did before, the only difference was that an increased number were on the same board.

This legislative act neither dissolved the old corporation, nor created a new one. It left the legal title of the corporate property in the
trustees, for the benefit of the public; and that was just where it was before.

He repudiated the contract ideas all together, and claimed, that the legislature had the "unquestionable right," to compel individuals to become members of public corporations, such as towns and villages, and if of towns or villages, then why not of the Dartmouth College? From this he draws the conclusion, that the charter is no contract, or at least do not necessarily enter into the charter relations on their own consent. The charter rights are only rights under a statute, and the legislature is at liberty to repeal a statute at any time.

He then reviewed the question under the bill of rights, which declares that, "no person shall be deprived of his property, without due process of law." Under this he quotes Blackstone for the proposition, that Parliament can dissolve a corporation by statute; also the analogous cases, where private lands have been taken for public highways, or where legislatures have authorized the pulling down of buildings, to prevent the spreading of fire. Acts have been passed annexing two or more towns, and their validity has not been questioned. This clause was
inserted in the bill of rights to protect the rights of private individuals, and never was intended to apply to legislatures in their control of public officers and public corporations. In the management of public affairs, legislatures must not be interfered with under this head.

The learned Chief Justice then took up the marriage contract, and argued that although this was a contract, yet the state was allowed to interfere and set the contract aside under the divorce laws, and no person was ever heard to say that this was within the prohibition, of that part of the constitution under consideration. If the court could interfere with the marriage contract, why could the legislature revise a charter? But he maintained that even if it were a contract, neither the King nor the Legislature had any power to make such a contract, binding on their successors; they had no power to lay down any contract, that would prevent any subsequent legislature from dealing with such public questions, as they might deem proper, or in other words they could not pass an irrepealable statute.

The opinion then winds up with the statement, that courts must distinguish between grants
to individuals and grants to the public at large. If this charter is a contract at all, it is a contract with a public concern and may be revised, to the extent at least of changing the number of trustees.

By this decision the new board received the full control of the affairs of the college. This case attracted intense interest, not only in legal circles but also in political. When the above opinion came out it received, it may be said, almost universal approval. When Chancellor Kent read it he expressed himself as entirely satisfied with the holding, and gave it his hearty approval. Even Webster, who was the counsel for the plaintiff, was forced to admit that it was a very ingenious decision.

It must be said here, however, that the above brief statement of the ruling of the New Hampshire court, gives much more attention to the contract theory in proportion, than was given in the opinion, for the reason that the contract theory is the essential part of this article. As a matter of fact neither the counsel nor the court seemed to place much stress upon this. This must be noted here for it will be seen in the next opinion that it was practically the keynote of
the whole case.

After the decision was given it was decided by the cold board of trustees, to carry the case up to the Supreme Court of the United States. In order to do this, the only point that it could be there on, was on the question, whether the acts of the legislature impaired the obligation of contracts. Webster was anxious to have other points on which it might be repealed, and for that reason advised that suits on other points of law should be prosecuted in the circuit court, in order that they might be brought before the supreme court at the same time, in this however he was unsuccessful.

The case in the Supreme court is reported in 4 Wheaten 519. The opinions were written by Marshall, C.J., Story, J., and Washington, J. Here the case was decided squarely on the contract theory. The arguments of the decision can be divided into these two heads; - First, Was the charter of the Dartmouth College a contract? Second, Did the acts of the Legislature impair the obligations of that contract?

As to whether the charter was a contract or not depended on whether the Dartmouth College was a public or private institution, and the court decided
that it was a private institution.

The opinion of the Supreme court argued that Dr. Wheelock, a private individual, was the founder of the college. He or his agents for him had solicited subscriptions for this college. The benefactors had given their aid to the college with the understanding, that a corporation should be formed, and that the institution should be carried on, on the principles that Dr. Wheelock had laid down. The benefactors were all private individuals; they gave to Dr. Wheelock or to the corporation which he was to form, and not to the government or king. So far then everything that had been done, was done by private individuals. Of course it might be said, that the work was of a public nature, and it certainly was a charity that was for the general public; but it did not make the founders public men, simply because they were contributing to a public charity. If Dr. Wheelock had continued to carry on the work alone, he could not have been called a public man on that account, or from that have lost the power to regulate the college according to his own methods. If then the college was private up to the time of incorporation; did the
fact that the king had incorporated it, make it a public institution? The court held that it did not. It merely gave this body of men the power of succession by which they could, by filling any vacancies that might occur from time to time, continue forever. They are as much a private institution now as they were before incorporation, and the college is as much a private college now as it was before.

Now comes the question; was the act of incorporation a contract? This the court answered in the affirmative. The trustees of the college had agreed, that if they were incorporated and given certain privileges, they would in return give a certain sum, and carry on the college in a certain manner. This was a contract and irrevocable by the government. The government had given thousands of grants of land throughout the country, but no one was ever heard to say, that it could repeal these grants and turn the land over to other parties. The same doctrine would apply to charters. By this charter the king had granted certain privileges, and the legislature would not now be heard to say, that it had the power to repeal that charter and turn those privileges over
to strangers in direct opposition to the stipulation made by the donor. The argument that there was no consideration, does not change the situation. If the king made a gift of land to his subjects, and their right under that gift had become vested, he could not repeal that gift and turn it over to some other man. But this charter was not in the form of a gift, there was a consideration. Dr. Wheelock gave up his own interest in the college, and the donors paid in their money in consideration of the charter.

The next question to be answered was the contract obligation, under the charter, impaired? This question the court also answered in the affirmative. When the benefactors paid their money to the institution they paid it with the understanding, and in consideration, that the college should be under the control of the incorporated trustees. They did not consider, that the king or the legislature had anything whatever to do with the college. In fact New Hampshire was never in the minds of any of the founders, any more than this; that somewhere within its borders there happened to be a favorable place for such a college, but it would not have made a particle
of difference to the charter, if the college had been located in New York, Georgia or any other state of the union. They paid their, then, on the consideration that the college should be run as provided by the charter, not as the legislature or as the king proposed to run it. But the legislature of New Hampshire had stepped in and said, that this college must be managed in a different manner and had taken upon themselves the responsibility of saying how it should be managed. This, the court declared, was indirect opposition to the contract obligation of the charter.

The court also took up the argument under the marriage contract law, which had been used by the New Hampshire court. This court said, that the law did not impair the obligation of the marriage, by granting a divorce, but only relieved the innocent party when the other party had broken his or her contract. The courts merely declared that the contract had already been broken and set it aside.

Other minor arguments were taken up and disposed of, but enough has been given to indicate the stand, that the court took on this question and their reasons for so ruling.
Then, after all the learning and labor, that has been bestowed upon this question, it becomes a settled question that a charter is a contract. There is probably no case in the history of all the American courts, that is more famous or more celebrated than this one. If the case was not correctly decided, it cannot be said that it was on account of the lack of legal talent. There is probably no period in the history of the United States, that could have produced more learned counsel or judges, than those who took part in these two cases.

We said that the New Hampshire opinion met with general approval throughout the country, and it would seem from that, that the supreme court decision must have met with general disapproval. But strange to say, that was not the case. Kent was completely won over, by Webster's powerful argument, and declared that the New Hampshire court was wrong.

In fact the two courts, although arriving at directly opposite results, did not differ so very much, upon principles of law. About the only difference in the argument of the two courts was, that the New Hampshire courts considered the Dartmouth College
a public institution, and the Supreme court considered it a private college.

It is a fact worth mentioning here, but our limited space will not allow us to enter into details, that the interest in this case was not by any means limited to legal circles. It became a political question between the two political parties, the Federalists, and Democrats, and the question was hotly contested, outside of the court. Political parties were not slow to make use of it, and the people were naturally excited over the result of the trial.

Marshall was a staunch Federalist, and Webster was not backward in using this weapon to its utmost capacity. After having presented the legal side of his case, he boldly but delicately took up the sentimental, and even the political, view of the situation, and with his powerful eloquence held the court spellbound. That this had a mighty influence on Marshall, there can be no doubt; some believe that this part of Webster's speech won him the case.

That the decision gained general approval there can be little doubt. As was said before Kent
heartily approved of it. He said of this case afterward
"It contains one of the most full and elaborate
expositions of the constitutional sanctity of contracts,
to be met with in any of the reports. The decisions
in that case did more than any other single act,
proceeding from the authority of the United States,
to throw an impregnable barrier around all rights, and
franchises, derived from the grants of the government,
and to give solidity, and inviolability to the literary,
charitable, religious, and commercial institutions, of
our country."

As the country advanced in commercial
enterprise and power, this opinion decreased in favor,
instead of increasing. At that time corporations
were looked upon as a boon to the country. Rail-
roads were to be built and with them came banking,
steamship, telegraph and scores of other corporations,
which were absolutely essential to develop this great
country. Corporations were practically the only
institutions by which these enterprises could be carried
out. The governments of the several states, were not
only willing to give them charters, but also to give
them almost any immunity they might ask for. The
result was that before long they out grew the wildest
expectations of their friends, and the states soon woke up to the fact, that they had created creatures, that were soon to rival them in their sovereignty. Then, and not till then, legal authorities began to complain of this decision. Then, they began to believe that the Supreme court had erred, and then all sorts of criticism began to appear.

Mr. Cooley writing nearly fifty years after this says: "It is under the protection of the decision of the Dartmouth College Case, that the most enormous and threatening powers in our country have been created, some of the great and wealthy corporations, have a greater influence in the country at large, and upon the legislation of the country, than the states to which they owe their corporate existence. Every privilege granted or right conferred, no matter by what means or on what pretense, being made violable by the constitution, the government is frequently found stripped of its authority in every important particulars, by unwise, careless or corrupt legislation, and a clause in the federal constitution whose purpose was to preclude the repudiation of debts and just contracts protects and perpetuates the evil."
Chancellor Kent and Mr. Cooley are two of the very best authorities that can be cited on this or even on any subject, and their expression on the case ought to be excellent indication of the conclusion to be drawn from the case, as it was seen in their respective periods. As has been pointed out by James A. Garfield, Chief Justice Marshall wrote his opinion "the year before the steam railway was born", and it is certain that he, the Chief Justice, had not the slightest idea into what depths the doctrine, he then laid down, was afterwards to lead the states. Garfield together with many other critics, seems to think that if the Dartmouth College Case had come up fifty years later, that it would have been decided differently.

(5 Legal Gazette, 408.)

That this case was an immense boon to private corporations, there can be no doubt. In the earlier days of this country, legislatures regarded corporations, as an absolute essential to the opening up of this young and extensive country, and in this they were undoubtedly correct. They did every thing in their power to encourage corporations, never thinking that
the day would come, when they would rue their rash liberally. Railroads were given large tracts of land, which were to be free from taxation. They were by their charters, allowed to fix their own rates of compensation and in many cases they were assured that no competition should be allowed. All these and many more immunities were showered upon corporations, which were afterwards looked upon as monsters, by those who had brought them into existence. As they began to grow wealthy, and increase in power, then the reaction set in. As the west became settled, railroad land increased in value, and as the corporations increased in wealth, so they increased in influence with the legislatures. They were able to induce legislatures either legitimately, or by means of bribery to grant them still greater favors. When people woke up to the danger before them, they naturally looked to the legislatures for redress, but redress was made impossible, by the principle that was laid down in this leading case. Then, and not till then, did the people come to the conclusion, that the Dartmouth College case was wrongly decided. Critics seem to think, that if Marshall had foreseen the strides that corporations were to make and had known the mighty influence
that they were to wield, he would have decided differently. How that would have been of course it is impossible to say.

That this theory of the law, has led to serious complications, is no argument that it was a wrong theory. If the decision was correct when it was written, it is still correct, notwithstanding the fact that it has led to serious difficulties. The court did not attempt any more than any court attempts or attempt to decide not only for that particular case but for all cases that might arise for centuries to come. It decided the case then before it on the principles of law, as they appeared at that time; if the decision was right then it is right now. If the customs of the times have changed the business of the country, that is not the fault of the Dartmouth College case. There was a time, when the law demanded the greatest diligence from common carriers, it held them responsible for all loss, except the act of God and the public enemies. Now this liability has been reduced to ordinary diligence, but no one would say the old theory in these cases was all wrong, and the new laws all right. Both laws are correct in their own day and generation. This would seem to be the view under the
Dartmouth College Case. Circumstances have changed and these changes in commercial life of course demand changes in the law. But if the Supreme Court had foreseen the danger that was to arise, and had given their decision the other way; would the country be better off today? It seems that that would be very doubtful. The great corporations that are raising the trouble today are the railways. Now these roads, all must admit, were the primary agents to open up the vast regions of the western country. Had there been no railways, it is doubtful if there would be today any Chicago, St. Paul or hundreds of other cities, that dot the western states. These railroads were built at the expense of millions of dollars. All were undertaken at immense risks, without any forecast of how they would turn out. If added to these natural risks, corporations were compelled to proceed with these enterprises, with not the lightest assurance that the charter would continue even a single week, can it be said that these men would have undertaken such risks under such precarious circumstances? No country understands better than America today, what crisis it may be brought to by changes or uncertainty in her tariff policy. People or Capitalists may believe that
a new administration will give them a better tariff policy, than the previous one, but the feeling of uncertainty forbids them investing their money in expensive enterprises, until they have some assurance of the ground they are standing on.

The same is true of corporations. If one administration believed that a certain railroad would open up a new country and gave a charter to a railroad company for that purpose; would any judicious capitalist invest thousands or millions of dollars in that enterprise, with no assurance that the next administration, which would in all probability come into power in a year or two, would not have a different railroad policy and repeal their charter?

Enterprise is the great essential to progress, but there can be no enterprise, where there is no stability of policy. In a democratic country of this kind nothing is more uncertain than public opinion, today the people may demand a certain trade policy, and within a year be clamoring for some other policy. It may be unAmerican to say so, but recent events in the political history of this country, leads one to doubt if the masses are always the best
judges of their own wants. But however this may be it seems plain, that no corporation will launch out on a great enterprise with no assurance that they may not be cut off in a single night.
But although the main principle can be approved in the Dartmouth College Case, it must be taken with several important limitations; and the first of these is police power. Because a charter is given to a corporation, it is not to be deemed that it has any greater liberties than individuals, unless they are expressly stated in the charter. And it ought to be mentioned here that the mere fact that there is a charter, does not imply that there must be a contract. There must be an expressed contract in the charter or none will be implied from the mere fact that there is a charter. Stone v. Miss. (101 U.S. 316).

"There is no peculiar sanctity attaching to this artificial being, or to its property, that does not also attach to natural persons." (Peach on Corporations, Sc. 28)

It has been many times held, both, in the several state courts, and in the United States Supreme Court, that the fact that a corporation has a charter, does not in any way discharge that corporation from the police power of the state. Their charter makes them artificial beings, but gives them no immunity whatever from the laws that are made for the general
public. There is no trouble on this point in the case; the only question is, what is within the police power?

This question comes up in Massachusetts, as to whether the legislature could prevent a corporation from manufacturing and selling malt liquors. The court said: "the company under its charter has no greater right to manufacture or sell malt liquors than individuals possess, nor is it exempt from any legislative control therein to which they are subject. All rights are held subject to the police power of the state." Beer Co. v Mass. (97 U.S. 32,).

The state of Mississippi passed an act abolishing all lottery and gambling institutions. A lottery company had previously received a charter to carry on a lottery business in that state, on the passing of this act, this company set up their charter as a defence. The court said: "No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants."

Stone v Miss. (101 U.S. 314,).

Several other such cases have come up that give comparatively little trouble. For instance, it has been held that telegraph and telephone companies, whose
Wires and posts have become a nuisance in the streets of cities, are subject to police powers.


But there is a certain line of cases known as "The Granger Cases", which have not been so easily settled. One of these was Munn v Ill. Munn constructed his warehouse in 1862. In 1870 Ill. drew up a new constitution which among other things declared that all elevators situated in any city having over one hundred thousand inhabitants should be considered as public buildings, and subject to the control of the state legislature. In 1871, the legislature passed an act requiring all elevators in the cities of over one hundred thousand to secure, before continuing business, a license from the Circuit Court. It also regulated the prices to be charged by these elevators, and laid down other minor details. The prevailing opinion decided that elevators become in a sense public property, and as such, become subject to public control.

It held, that "the legislature had the power to regulate and to provide rules and regulations." To this decision there was however a strong dissenting opinions by Justice Field, and Justice Strong. They held
that, because private buildings are deemed by the constitution to be public buildings, it does not follow that they are public. Because a warehouse is used for storing grain, does not make it a public building any more than renting a tenement house makes it a public building. They claimed that the warehouses in question were private property, and as such the legislature had no right to interfere, they would be depriving the company of property without due process of law.

This case did not involve corporations, but several cases followed immediately after which were decided on the same grounds, and they were so immediately connected, as to be almost analogous. The first of these cases was Chicago R.R. Co v. Iowa (94 U.S. 155),

The state of Iowa passed an act regulating the transportation rates of freight and passengers of railroads within the state. The company complained that this interfered with its private rights, and that it was contrary to the constitution, and brought suit to enjoin the Attorney General from prosecuting them for violating that statute.

The charter was given subject "to such rules and regulations as the general assembly of Iowa might from time to time enact and provide." The court held that this was
a similar case to Munn v. Ill. and under that decision was subject to legislative control, as to rates of fare and freight, unless protected by its charters. The court agreed that the charter of the company was a contract subject only to any reservation in the charter itself, or in the general statutes of constitution before the charter was given. But the court maintained that under the reservation clause they were subject to the same control as private individuals and would not be allowed to charge more than a reasonable sum for carriage or freight. The court argued that this worked no injustice to the corporation because they took the charter with their eyes open, and if they did not want to risk the legislatures fixing their rates they ought not to have taken the charter. This opinion was written by Chief Justice Field and Strong.

Practically the same case arose in Pike etc. R.R. Co. (94 U.S. 165, ). The opinion of this case was written by Chief Justice Waite, and dissented from by the same two justices as the previous case. Another point was settled in this case, namely that "when property has been clothed with a public interest the legislature may fix a limit to that which shall in law be reasonable for its use. This limit binds the courts as well as the people."

Several other cases, that are almost
identical, follow in succession, the same Justice writing the prevailing opinions and the same two dissenting.

Chicago v Milwaukee etc. R.R. Co. v Ackley (94 U.S. 179);

Minona and St. Paul R.R. Co v Blake (94 U.S. 190);

Stone v Wisconsin (94 U.S. 191,7).

Dunbar v Meyers (94 U.S. 197).

These cases would seem to have gone almost as far as it was possible for a court to go, and not overrule the leading case. They certainly left very little of the original case standing, but they were not to stop here. The question next came up in the state of Mississippi. There the legislature passed an act creating a Railroad Commission, "charged with the general duty of preventing the exaction of unreasonable or discriminating rates, upon the transportation done within the limits of the State, and with the enforcement of reasonable police regulations, for the comfort, convenience and safety of travellers, and persons doing business, with the company within the State." Suit was brought to enjoin the commission from carrying out the provisions of the statute.

Railroad Commission Cases (116 U.S. 307,).

The court sustained the legislature, Chief Justice Waite writing the prevailing and Justices Harland and Field dissenting. The prevailing opinion took up very
little that had not been gone over before. The Chief Justice cited the Granger cases and claimed, that "the power of legislation (that is the power to regulate charges) is a power of government continuing in its nature, and if it can be bargained away at all it can only be by positive words of grant, or something which in law is equivalent." The charter of the railroad company granted the corporation the power, "from time to time to fix, regulate and receive the toll and charges, by them to be received for transportation etc." But the court maintained that this power was given with the stipulation that such regulation must be reasonable, and the legislature was the proper authority to say whether or not certain rates were reasonable. "The right to fix reasonable charges has been granted, but the power of declaring what shall be deemed reasonable has not been surrendered."

Mr. Justice Harland, in his dissenting opinion, vigorously upheld the corporations. He claimed, that the cases were not within the rule of the Granger Cases. The Granger charters were received with reasonable clauses, reserving the right of the legislature to repeal or alter the charters, but with the charters in question no such reservation was inserted. The charters expressly
declared, that the corporation should have power "to fix, regulate and receive the toll and charges." From this he argued, that the management of the road was taken from the corporation, and placed in the hands of the Railroad Commission. He maintained, that so doing the legislature had impaired the obligation of the contracts contained in the charter, and had violated the rights of the corporation.

These cases certainly are getting far away from the doctrine in the original case, but the Supreme Court maintained, that they were within the bounds of the principles there laid down.

That charters ought to be subject to police power, there can be no serious objection. But as to the "Granger Cases", and the "Commission cases", there is undoubtedly room for doubt, as to whether they are logical or not. Strange to say they are opposed by the same critics who oppose the Dartmouth College case. They say, that these cases are opposed to the settled law and interfere with private rights. They also say, that the court has been influenced by the strong public sentiment, that is felt against large corporations, more especially in the west, but to a great extent all over the
country. This does not seem to be a very serious charge. As was pointed out before; what was public policy or a public necessity fifty years ago, is not so now. Fifty years ago corporations, especially railroad corporations, were almost an absolute necessity and it was absolutely necessary that they should be encouraged, but now they have become strong enough to look out for themselves, indeed they have completely reversed their position, and are now, so far from being wards in the hands of the different states, they have risen to a position where they can even dictate to the sovereignty of the different states. I do not see why courts should be condemned if they do not reason in the same way with regard to corporations today, as their predecessors did forty or fifty years ago. No one would, with common sense maintain, that the same laws should be applied to the railroads of today, as was applied to the stage coach of the past. Courts should adapt themselves to the existing state of society and not give too strict an adherence to useless forms adapted to different circumstances. Walworth v Hoyt (4 L. ed. 635).

If at one time public policy demanded that railways should be fostered, and now society demands, that they should receive a different treatment, are the courts
wrong and to be condemned because they do not follow a strictly logical view and carry out the old theory?

EXTENT OF THE POWER TO ALTER.

When Justice Story wrote his concurring opinion in the Dartmouth College Case, he intimated that the legislature might reserve the right to repeal a charter. Dartmouth College v. Woodward (4 Wheaton 673).

This suggestion was soon acted upon by the different states, and now one is safe in saying that every state grants its charters subject to the right of legislature to amend, repeal or alter at any time that it may see proper. This right to repeal has been upheld by all the courts. If one party is willing to enter into a contract on the condition, that the other
party may repeal that contract at any time, the courts will not afterwards allow him to dispute the right to act on such condition. He goes into the contract with his eyes open and must abide by it.

This reservation may be made in the constitution of a state, in a general statute or in the charter itself. Whenever it is made, it is binding upon the parties. It is generally made in explicit language but some cases hold, that reservation may be implied from the language used.

Pennsylvania Coll. Cases (15 W. ell, 190).

No express words are necessary if it appears that the parties understand the contract they are entering into and of course it will make no difference whether the corporation actually knew or not, if there is a reservation clause in a general statute, or the constitution, for they will be presumed to know the law.

There is no doubt that under a reservation clause, the state has a right to repeal or alter a corporate franchise, but there is much confusion as to the extent that a corporation may interfere with corporation business. No well defined line can be drawn limiting legislative interference.

The cases uniformly hold that the
reservation of the right to appeal, enables a legislature to destroy the life of a corporation and forbid it continuing the corporate business.

Kimball v B. & A. R.R. Co. (70 N.Y. 569,).

It is also granted, that the state has the right to pass laws, controlling the domestic affairs of the corporation.

Munn v Ill. (94 U.S. 113,).

But this must be very near the limit of power. Legislatures cannot make void what the corporation has already done. It cannot declare contracts void which the corporation has entered into. It cannot take away property or rights, which have already become vested.

This question came up in the Michigan court in City of Detroit v Detroit & Faulkrod Co. (43 Mich. 140,). There the question arose whether or not the city had power to compel the corporation to remove toll gates from the city, which it had put there with the sanction of its charter. Judge Cooley maintained it had no such power, as that would be interfering with vested rights. He said: "It is immaterial in what way the property was lawfully acquired, whether by labor in the ordinary avocations of life, by gift or descent or by making a profitable use of a franchise granted by
the state, it is enough that it has become private property and is thus protected by the law of the land." Judge Miller seems to have laid down the law on this matter, when he said: "Personal and real property acquired by the corporations during its lawful existence rights of contract or choses in action, so acquired and which do not in their nature, depend upon the general power conferred by the charters, are not destroyed by such repeal," Greenwood v Freight Co. (165 U.S. 13,

The leading cases in New York on this subject may be said to have practically settled this question; it is People v O'Brien 111 N.Y. 1,

The Broadway Surface Railroad Co. was incorporated under the statutes of New York. It obtained authority from the city of New York, to lay tracks and run cars over Broadway. This it did and mortgaged its road to secure certain loans; then the legislature passed a law repealing the charter, and requiring that the Attorney General should bring a suit to have a receiver appointed and the business wound up. The court held such an act was unconstitutional and void. The city had given the company an unlimited franchise, to run its cars over its streets and such right became vested. It held that the tracks so laid and the
franchises to use them were inseparable and could not be taken from the corporation. Under a reservation clause in the constitution, the legislature had power to revoke the charter, and deprive the corporation of life, but had no right to appropriate its property. Its property by New York statute would go to the directors, as trustees for the creditors and stockholders, and the legislature had no power to take control of the property, any more than it has to take control of property of a deceased person. The franchise of the corporation was invested with the character of property and as such could not be taken away by legislatures or any other authority. The franchise and other property was a trust fund for the payment of creditors, and the court insisted that it ought to be used for that purpose.

The same question came up in another form in New Jersey in the case of Zabiskie v. Hackensack (18 N.J. Eq. 130, ). In 1856, the Hackensack and N.Y.R. R. Co. was incorporated to build a railroad a specific distance. In 1861 it received a supplement to this charter, to have the road extended. The complainant was a stockholder, and brought this suit, to have the company restrained from extending its road, claiming
that he became a stockholder with the understanding that the road should be built as the charter stipulated. A majority of stockholders cannot change the nature of the business. The court held that a state, when such power has been reserved, may repeal a corporate charter, but it cannot interfere with the rights of third parties. It has no power to violate the contracts entered into by the corporation as one party and its corporators as the other. It held, therefore, that this supplementary charter was void.

The courts of New York and Mass. disagree with this case, and maintain that the legislature may extend a railroad or any other business, and not violate the contracts of third parties. They do not differ on the general principle however, that the legislature cannot interfere with private rights but maintain that extension, of a railway does not change the nature of the business. Both courts unite in saying, that legislatures shall not go so far, as to authorize enterprises and operations different in their nature, and kind from those comprehended in the original charter. "Durfee v Old Colony R.R. Co. (5 Allen 230.) White v Syracuse & Utica R.R. Co. (14 Barb. 560). The extent of legislative power came up in
California in Spring Valley #3. v San Francisco (61 Cal. 3, ). This company obtained a charter to supply the city of San Francisco with water. By the charter it was arranged that the company should appoint two commissioners, and the city should appoint two, and these four would arrange the water rates. Afterwards the legislature amended the charter and gave the supervision of the county and city power to fix the rates. The company complained that this was interfering with their rights, but the court maintained that the legislature had a perfect right to make this change.

There are numerous other cases on this subject that are important, as showing how far legislature is justified in interfering with corporate business, but enough has been given to show the extent of its power. But there are yet two cases without which this list would not be complete, namely, the Sinking Fund Cases (95 U.S. 750), and Home v. Washington University. (3 Wall. 426).

In 1862, the United States Government chartered the Union Pacific R.R. Co. and in 1864 amended its charter. Both charter and amendment reserved the right to appeal. This company was to construct a road through a certain territory, and was to render
services to the United States Government, when called upon to do so. In order to help the company along, the government issued bonds which were to be paid up in thirty years. In 1873, the road carried troops over its line for the government, and sent in its bill for compensation. The Government passed an act, declaring that part of this sum should apply to interest due on the bonds, and the other part be put into a sinking fund, to be applied to the payment of the bonds, when they fell due. The company maintained, that this was a violation of their contract, that they had no right to pay the bonds, until they fell due. But the court maintained, though not without strong dissenting opinions, that this came within the powers reserved. They held that this was not a payment of the debt, but merely a fund which the railroad ought, on their own account to institute in order to meet the debt, when it fell due.

In Washington University v. Rome (9 Wall. 430), a somewhat different view came up. The Legislature of Missouri incorporated the Washington University in 1853. There was a general statute, on the statute books, at the time, which reserved the right
to repeal, all all subsequent charters. The charter of the Washington University declared, that the property should be exempt from taxation, and expressly declared, that this charter should not be subject to the reservation clause, in the general statutes. In 1865, the legislature declared that this property should be taxed. The corporation set up the charter as a contract, and received a verdict. This far the case is not unusual, but Justice Miller wrote a dissenting opinion, which may be said to have received the approval, of a strong contingent, of the profession, and even of the courts, though the precedents are the other way were too strong and numerous, for any of the courts to follow out this theory. He maintained, that the legislature had no power to grant away the right of taxation. If they could exempt one piece of property, they could exempt another as well, and in that way "destroy the government which they were appointed to serve." He went on to show, that if the legislature could exempt property from taxation, they would be controlled by the rich, and in time taxes would be paid only, by the poor. He wound up his opinion by this strong language: "We think, that there may be questions touching the powers
of legislative bodies, which can never be closed by the decisions of the court, and that the one we have here considered, is of this character. We are strengthened in this view of the subject, by the fact that a series of dissents, from this doctrine, by some of our predecessors, show that it never has received the full assent of this court; and referring to those dissents for more elaborate defence of our views, we content ourselves with the reviewing the protest against a doctrine which we think must finally be abandoned."

These cases give some idea of the extent of powers that legislatures may reserve to themselves. Legislatures may deprive a corporation, of its corporate life, but it cannot deprive it of its real or personal property. It may change or alter its contract with the corporation; but it cannot impair the obligations between the corporation and third parties. It may place certain limitations and restrictions upon the business of the corporation, but it cannot change its nature of business for which, the charter was obtained. It cannot impose a new charter upon the corporation.