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# Validity and Effect of Legislation Impairing Corporate Rights and Franchises

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T H E S I S

Validity and Effect of Legislation  
Impairing Corporate Rights and Franchises.

-by-

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1898.

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A history of corporations would be a history of the industrial progress of the last century. Created by the people for their own purposes their chronicle is but a chronicle of the times. To us they are prime necessities. They have grown up, under our customs and economics; they have been moulded by our constitutional and statutory laws, our judicial decisions and our public sentiment, and they have filled, from time to time, just such places in our social, educational, and business lives, as our progress has made desirable.

In the discussion of their relations to the government, I am not unconcious of the embarrassments under which I labor. These embarrassments are inherent in the very nature of the subject. The unsettled condition of the law of corporations, the complications of business enterprise, the con-

servatism of courts in attempting to apply old and inelastic rules to the new and ever varying situations which the fertile ingenuity of American business men are constantly devising, the activity of legislatures in molding statutes for their regulation, and the utterly hopeless condition of text writers, all tend to render a discussion of any branch of the law of corporations an arduous task.

Private corporations had been a part of the common law of England long before the settlement of this continent. No doubt the theory was carried over with the body of the civil law by the Roman legions at the conquest of Britain. Blackstone attributes the origin of corporations to the Romans. Plutrarch mentions that Numa Pompilius divided the Romans and Sabines into different corporations in order to suppress the turbulence of contending tribes. It is probable though, that what Plutrarch termed "corporations" were what we call "societies". The Pandects favor the idea that the Romans were indebted to the Greeks for the

idea of corporations.

A few great corporations had been formed before we were a nation; such as the Russian Company in the reign of Edward IV.; the East Land Company in 1579; the East India Company in 1600; and the Hudson's Bay Company in 1670. On the continent peculiar privileges to individuals have always been grudgingly granted. In England, while they were freely granted to royal favorites, still, corporations for purposes of trade have not been accorded the unqualified privileges and rights which have been bestowed in this country. In no other age or country have corporations played so important a part in social and industrial development as with us.

Many things tended to retard the immediate growth of corporations among the early settlers of this country. They were poor, the Indian wars harassed and impeded them, and the policy of the mother country was to dwarf the commerce and manufactures of the colonies. The character of the

settlers who had come here either for plunder or refuge, was unsuited to build up commercial enterprises. All this prepares us for that remarkable fact that, during the whole colonial period, not one body politic of the nature of which we speak was created. (Paper read by Andrew Allison, before American Bar Association, 1884.) During the Revolution and up to the adoption of the constitution the country was too unsettled for corporate life. In the Constitutional Convention it was a debatable question whether the state or the national government should have the granting of franchises. The action of the convention created afterward great embarrassment in the courts, especially in contests over the United States Bank. The growth of corporations from this time was marvelous. They were chartered with great liberality and in a short time were occupying a considerable field in manufacturing and business enterprises. Even at this early day people began to look upon corporate encroachments with apprehension. In the case of *Ellis v.*

Marshall, in 1807 (2 Mass., 268) we find the Attorney General using the following remarkable language - "The increase of corporations for almost every purpose is seriously alarming. A spirit is growing in the country which will be productive of the most mischievous effects. Interested and corrupt motives are growing daily more prevalent from this source. The independence and integrity of every branch of our government are attempted and it is time that a check be put to this spirit. And to an independent and enlightened judiciary alone can we look for its application."

The war of 1812, soon followed and for the time stopped the growth of corporations, but the naval victories of that war aroused the pride of the country in our merchant marine, and its result was to greatly increase commercial activity ~~in~~ *and* business enterprise. The country was fast recovering from the war and regaining its commercial importance when in 1819 the Supreme Court made one of the most remarkable decisions in history. It is



not too much to say that it came with surprise to the court, the bar, and the country. Of course I refer to the Dartmouth College case. To state the facts upon which the case arose would be a mere repetition of a common learning in the law and is therefore omitted as well as the circumstances of the trial for which reference is made to the work of Mr. Shirley on the history of the case"(The Dartmouth Causes and the Supreme Court of the United States; St. Louis, 1879.)" A strict statement of the decision is, that the charters of private corporations are contracts between the legislature and the corporation, having for their consideration the duties which the corporations assume by accepting them, and the grant of the franchise can no more be resumed by the legislature, or its benefits diminished or impaired, without the consent of the grantees, than any other grant of property or other valuable thing unless the right to do so is reserved in the charter itself.

Says Chancellor Kent (1 Kent's Comm., 419)

"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 decision 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 grant of government, to give solidity and inviolability to the literary, charitable, religious, and commercial institutions of our country."

Another learned commentator, Mr. Justice Cooley, writing nearly fifty years later, adds to a statement of the doctrine established in that case the following;-"It is under the protection of the decision in the Dartmouth College Case that the most enormous and threatening powers in our country have been created, some of the more wealthy corporations having more influence in the country at large 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 inviolable by the constitution, the government is frequently found stripped of its authority in very 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."

These contrasted statements of the effects of this decision present a most interesting inquiry, which, however, the scope of this article compels me to briefly dispose of.

First let us look at the application of the rule.

1. All grants of property by the legislature to corporations have been held to carry an absolute title which cannot afterward be resumed by or controlled by the legislature any more than an absolute grant made to individuals. Upon this no authority need be given. It is settled by innumerable cases.

2. The same principle has, by repeated adjudications, been held to apply to grants of franchises to corporations. This is the chief advantage accruing to corporations from the decision. By the bestowal of such franchises there are conferred upon corporate and associated capital powers which individuals cannot have. Powers for good certainly, but also powers for evil, which have been exercised to such public detriment that the people have been stirred to their depths by the urgent necessity of finding a remedy, some effectual means of restraint upon corporate abuses.

3. The decision has also been of great value to corporations in the protection of special privileges granted to corporations in the use and enjoyment of their franchises. Corporations thereby become possessed of the power to determine, without restriction or legislative control, the compensation they shall receive for their services. The authorities to this effect were uniform until the comparatively recent cases in the Supreme Court

as to the regulation of corporate business which will be considered later. (Penn. R.R. v. Sly, 65 Pa. St., 205; P.W & B.R.R.Co., v. Bowers, 4 Houst., 506; Hamilton v. Keith, 5 Bush., (Ky) 458.)

4. The exemption of a private corporation from taxation altogether, and taxation at special and favorable rates under charter provisions has been of such advantage to them that, more than any other of their privileges, perhaps, these have encountered the disapproval and opposition of the people and the bar. The principle that the legislature cannot impair a grant of exemption from taxation does not rest its origin upon the Dartmouth College Case. It found its earliest assertion in the case of New Jersey v. Wilson, in 1812, (7 Cranch, 164.) and the succeeding cases which affirm the rule profess to rest upon that case. (Murray v. Charleston, 96 U.S., 432) The decision was, that under the constitution ~~of~~ total or partial exemption from taxation was a contract which could not be repealed. Whether or not this case was properly decided,

it was by virtue of the Dartmouth College Case that the rule was extended to apply to private corporations. It is, however, the present tendency of the court to hold that the taxing power is an attribute of sovereignty which cannot be granted away by the state. At any rate it is the settled rule in the United States and New York courts that exemptions from taxation must be expressed in the clearest and unambiguous language, and <sup>not</sup> not to be left to implication or inference. (R.R.Co. v. Dennis, 116 U.S., 665; People v. Davenport, 91 N.Y. 574; People v. Cook, 14 Sp. Ct. Rep. 649.) Exemptions from taxation will be discussed further on.

Here then are the established results of this decision,--complete protection of corporate rights and franchises, the title and use of corporate property, immunities and exemptions from taxation, and all these safe from any alteration or impairment of the rights and proprietary conditions secured by their charters."

The doctrine has, however, several impor-

tant limitations..

1. It has been laid down in innumerable cases that all legislative grants will be strictly construed against the corporation. Charters convey nothing by implication. (Charles River Bridge Company, v. Warren Bridge Co., 11 Peters 420)

2. The legislature has no authority to bind the people by any contract which affects their health or morals. So a grant of a privilege to conduct a lottery was held to be revocable. (Phalen v. Virginia, 8How.,163; 101 U.S.,314) So also an exclusive grant in incorporating a company to maintain a slaughter house at a certain point may be repealed or altered. (Butchers Union Co. v. Crecent City Co., 111 U.S.,746; Putnam v. Ruch, 54 Fed.,216.)

3. The legislature may exercise the power of eminent domain to authorise the taking of the property of corporations, including their franchises, on payment of compensation. The basis of the inviolability of grants to corporations being the same as in grants to individuals, of course corpor-

ations obtain no greater rights than individuals have. (New Orleans Gas Co. v. Louisiana Light Co., 115 U.S., 650; Greenwood v. The Freight Co., 105 U.S., 22.)

4. It may now be taken as settled, though after a long and bitter controversy, and with very able dissenting opinions, that the state may, in the exercise of its police power, interfere and control the conduct and business practices~~es~~, including charges, of certain quasi-public corporations. The leading cases upon this are, (a) The Warehouse Cases which held valid a law fixing the maximum of charges for the storage of grain in warehouses and requiring persons doing business as warehousemen to take out licenses for such business. (Munn v. Ill., 94 U.S., 113) (b) The Granger Cases which held ~~that~~ the legislature may in the absence of charter contracts to the contrary, fix the maximum rates of fare and freight of railroad companies within the state.<sup>(c)</sup> The Railroad Commission Cases (116 U.S., 307) affirm the Granger Cases and hold that the creation



of a state board to regulate the rates of transportation and supervise the conduct of railroads does not violate the charter right of a corporation to manage its own affairs through its own directors, that statutes regulating rates of charges do not deprive corporations of property without due process of law. The power of regulation is declared to be one which cannot be bargained away without express grant.

These cases have aroused great criticism in the legal profession. Much has been said and written upon them and it cannot be doubted that as a matter of sound law and judicial precedence based upon the Dartmouth College Case, they were wrongly decided. They represent the strong reaction against corporations produced by an earlier over-indulgence. It is but the swing of the pendulum. However great the integrity of the court, it is plain that it felt the influence of the strong public sentiment which prevailed at the time. And as a matter of sound public policy the decisions were probably good

unless they shall be so construed as to place the property rights of individuals wholly within the legislative control and thus impair individual liberty. The present attitude of the courts upon the question assures us that there is no danger of that.

The basis of these decision is the nature of the business; while the courts have declared that they are not inconsistent with the Dartmouth College Case, it cannot be doubted that they represent great and sweeping limitations upon it. They practically exempt from its operation all that large class of corporations whose business is or may be deemed to be affected with <sup>a</sup>the public use. Among those who criticise <sup>the</sup>College decision, these rulings are hailed as presaging its being finally overruled. But grave and clearseeing people maintain, and with good reason, that the doctrine has become too firmly fixed to be eradicated, even if it were desirable, and that upon its facts the case must stand as an established rule of law never to be questioned.

5. The Supreme Court has upheld and asserted the legislative authority over corporations in all cases where their charters, or general laws, or the provision of state constitutions reserve to the state legislatures the power of amendment and repeal. It was no doubt with a view to suggest a method by which state legislatures could retain in a large measure this important power without violating the provisions of the federal constitution, that Mr. Justice Story in the Dartmouth College Case, suggested that a reservation to amend or repeal would have that effect. It would seem that the states were not slow to avail themselves of this suggestion. In many states it soon became the custom to reserve a right of alteration and repeal in the charter, which at that early day were usually granted by a special act of the legislature, and it was uniformly that, the reservation being a part of the contract, the charter might be repealed or altered in accordance with it without impairing the obligation of the contract. In New York the

provision was incorporated into the general laws in 1830, and the example was rapidly followed by several states. Constitutional provisions to the effect that all general laws for the creation of corporations may be amended or repealed have been enacted in twenty states. Also in twelve states a constitution provides that all charters or special acts may be repealed or altered. In Texas "all privileges and franchises are subject to control." But in Arizona "no corporation can be dissolved or its rights impaired except by judicial proceedings." And in Iowa laws creating corporations can be altered or repealed only upon a two-thirds vote of each house of the legislature than present. In Michigan they cannot be altered or amended without a vote of two-thirds of each house elected. In several states the constitution also provides that the charter of a corporation cannot be so altered or repealed as "to destroy vested rights," or "in such manner as to work injustice to the corporators or corporation creditors." It has been repeatedly held

that such legislative or constitutional provisions are to be read into each charter granted and that they are a part of the contract.

In New York, owing to the late revision of the corporation laws, a curious and interesting question has arisen. After the decision in 1819, it became customary, in granting charters to corporations by special act, to make the reservation to amend and repeal, a part of the charter contract. When the first revision of the general laws took place this clause was inserted into the general corporation laws, and became operative from that time. (1 R.S., 800 sec., 8)(1830) "The charter of every corporation that shall hereafter be granted shall be subject to alteration, amendment, and repeal in the discussion of the legislature." The constitution of 1847, contains this provision (Article VIII. Sec., 1.) "Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes and in cases, where, in the judgment of the legislature, its

objects cannot be obtained under general laws.

All general laws and special acts passed pursuant to this section may be altered from time to time or repealed." The Railroad law of 1850 as amended in 1867 also contains the clause. By the revision of 1890 the old corporation laws were repealed and the clause was not inserted in the new corporation law of that year, the revisers thinking that the clause in the constitution took care of the matter. It will be seen however, that the clause in the constitution is limited by the words "pursuant to this section" so that it does not apply to corporations formed prior to 1847. Now the law under which those corporations were formed having been amended, and the reservation to repeal, which, prior to 1890, was read into their charter contract, having been wiped out, are those corporations still subject to the legislative control in accordance with their original contract, or have their charters become absolute and inviolable contracts within the Dartmouth College Case? It would seem that they have .

How can a provision of a general law be read into a charter when it no longer exists? The only ground on which an argument in favor of the state can be based is to maintain that the corporations are bound by their original contract and that the state may act in accordance therewith. To this comes, as it seems to me, the unanswerable argument that their original contract was not an absolute one. Not only did the state reserve the right to repeal but also to amend. The revisers have been careful to so enact the laws that they stand upon the statute books as amendments to the old laws, although substantially and different. The revision is therefore an amendment in accordance with the reserved option and the legislature having so "amended" the original contract has made it absolute. In the very exercise of the reserved right the state has lost it and it cannot be heard to say that it revokes its <sup>i</sup>w<sup>i</sup>ayer, for the <sup>i</sup>w<sup>i</sup>ayer was not upon condition, and is therefore absolute. There may however be standing room for argument upon the

other side. The question is debatable and will not be settled until the courts have passed upon it. I desire merely to point out the question and indicate the argument. The effect of this slip in legislation remains to be seen. The period between 1830 and 1847 was a time of great advancement and commercial activity, and during that period many corporations were formed. It is to be noted however, that many corporations were even then created by special act, and in the great majority of such cases the clause was put in the charter. The question will be most likely to arise if the state repeals some exemptions from taxation granted to corporations during that time. In such case it is to be doubted if the courts would hold strictly to the rule in the Dartmouth College Case and whether they would not hold that the taxing power is an attribute of sovereignty which cannot be absolutely and irretrievably granted away, and thereby sustain the legislation. Space will not permit of a fuller discussion of the matter and here we are obliged to leave it.



## Scope of the Reserved Right of Alteration and Repeal.

Amendment.- Whenever the power is reserved it may be exercised to almost any extent to carry into effect the original purposes of the corporate organization and secure the administration of its affairs. But corporations cannot be deprived of their rights or property acquired by the use of their franchises. The rights of creditors and share-holders are protected. The amendment must be made in good faith; under its guise oppression must not be worked. The power has its limits and cannot be used to take property already acquired under the operation of the charter or to deprive the corporation of the fruits of contracts lawfully made and actually reduced to possession. A case of great hardship under the rule is that of Spring Valley Water Works Co. v. Schlotter, (110 U.S., 348).

That corporation had expended vast sums of money to collect water artificially in the mountains and conveyed to San Francisco a supply of pure water for the city and its inhabitants. The charter provided that the water rates should be fixed by a board of disinterested appraisers. Under the reserved power of amendment, the people of California by a constitutional amendment changed the mode of valuation, leaving the entire matter to the city officials, the city itself being the largest consumer of water. The court held that the amendment was clearly authorized under the reservation stated. To this decision however, there are strong dissenting opinions by some of the most able judges of the court. They maintain that the right to alter or repeal extends only to franchises and immunities derived directly from the state and that rights and interests acquired by the corporation not constituting a part of the original contract are inviolable and cannot be taken without due process of law.

"The object of a reservation of this kind

in acts of incorporation is to insure to the government, control over corporate franchises, rights, and privileges, which in its sovereign or legislative capacity it may call into existence; not to interfere with contracts which the corporation created by it may make." (Sinking Fund Cases, 99 U.S. 700.)

Repeal.- It has been decided upon innumerable occasions and is now generally conceded that where the legislature has reserved to itself the unlimited and unconditional power to repeal corporate charters, it may exercise such power untrammelled by judicial interference. There are a few cases to the contrary and the text-writers are somewhat at sea upon the question, but the cases cited in support of a contrary doctrine will usually be found to be cases where the reservation was a conditional one. With <sup>the</sup> sufficiency or justice of the reasons which actuated the legislature, under such circumstances, in making such repeals, the judiciary have no concern. It is purely a question of expediency which it is beyond the power of the

courts to inquire into. Where however, the legislature in its repealing act assumes to dispose of its corporate property, the act is unconstitutional as depriving the stock-holders and creditors of property without due process of law.

Where however, the legislature has not reserved to itself the unlimited and uncontrolled power to repeal a corporate charter, either by an express provision in the charter, or by a general law, and a grant of corporate privileges has been made, subject to the conditional right of the legislature to repeal the same upon the happening of some event, such as the failure of the corporation to go into existence, or the abuse of its privileges, a different and more difficult question is presented upon which the authorities are in direct conflict. It is urged upon the one hand that the investigation and determination of the question, whether the occasion has arrived upon which the reserved power of the legislature can act, is one of judicial and not of legislative cognizance and that

any action of the legislature prior to such judicial determination would be in excess of its powers, and an encroachment upon the authority of the judiciary. (Flint ect. Plank Road Co. v. Woodhull, 25 Mich., 99; State v. Noyes, 47 Me., 189; Regents v. Williams, 9 Gill & J., 122.) On the other hand it is said that the conditional reservation of the charter becomes binding upon the corporation as soon as the same is accepted and that the corporation is estopped to question the power of the legislature to determine the happening of the contingency although such question is judicial in its nature. (Crease v. Babcock, 23 Pick., 334; Lothrop v. Stedman 42 Conn., 584)

I am reluctant to enter upon this field of enquiry, for I am satisfied that no rule can be laid down which does not contain a germ of mischief, no hard and fast rule can be made which will decide all cases without injustice. It seems though, that the justice and reason of the question are with those courts holding that the legislature has

no power to declare that the event upon which its action was conditioned has happened. In such cases there are necessarily adverse parties, the questions which arise are essentially judicial, and the determination as to whether one party to a contract has performed his duties under it ought not to be placed in the hands of the other party to the contract. It requires the action of those tribunals which must hear before they condemn and proceed upon inquiry. The violation of a charter or the happening of an event upon which corporate life is conditioned, cannot be made to appear except upon trial in a tribunal whose course of proceeding is devised for the determination of questions of this nature. On the other hand it has been said that the courts are compelled to presume, on account of the courtesy and confidence which is due from one department of the government to another, that the contingency has happened upon which alone the legislature could act. (DeCamp v. Eveland, 19 Barb.) The question only arises in a very few states at the

present time and they<sup>almost</sup> unanimously hold that the legislature cannot perform judicial acts.

#### Distribution of Assets upon Repeal.

Upon the dissolution of a corporation by whatever manner the corporate assets of every kind after the payment of corporate debts belong to the shareholders and are to be distributed among them proportionally according to the number of their shares. .At common law upon the dissolution of a corporation, its debts were extinguished, its real estate reverted to the grantor, and its personalty escheated to the sovereign. This rule arose when private corporations for business purposes were comparatively unknown, and it had its origin in the disposition to limit the accumulation in the hands of the church. Notwithstanding some statements by text writers to the contrary it is to be doubted if this rule was ever held to apply to private business corporations except in one or two isolated cases. One of these cases is to be found in the

first volume of Ill. Reports. But in the ~~x~~ early case of Bacon v. Robertscn,(18 How.,480) the Supreme Court refused to apply the rule. The sentence of forfeiture whether pronounced by court or legislature does not forfeit the rights of property in the stockholders. In many states the rule is however, expressly abrogated by statute. In New York it was abrogated by the Revised Laws of 1813. (1 Rev.Laws, 248.) was made a part of the Revised Statutes of 1830 and stands upon the statute books to-day. It provides that upon the dissolution of a corporation its directors, unless other persons shall be appointed by the legislature or by some court of competent jurisdiction, shall be the trustees for the creditors, stockholders or members to settle up the affairs of the corporation collect and pay outstanding debts and to distribute its ~~assettis~~ assets, after payment of the debts among the persons entitled thereto.(General Corp. Law,1892,sec.30.) Under this, debts due to and from the corporation may be collected.



At common law actions by and against the corporation abated upon dissolution. This has been altered in many states by statute. In New York the dissolution of a corporation terminates an action then pending against it and all subsequent proceedings therein are void unless the action be continued by an order of a court. This can only be done in pursuance of a statute to that effect. Such a statute was enacted in New York in 1832, Chap. 295, which provided that upon a dissolution of a corporation suits pending in its favor should not be abated but should be continued by a receiver to be appointed, or by its legal trustees in the name of the corporation or in the names of such receivers or trustees substituted as plaintiffs. It also provided (sec. 4) for the continuance of any suit pending at the time of dissolution might be continued on the application of either party, and that the final judgment should be of the same effect as if the corporation had not been dissolved. This act was repealed by Chap. 245, Laws of 1880, part

of it being incorporated in the Civil Code. Sect. 4 was not reenacted and it would seem that the common law rule still holds ~~a~~ good. Creditors however, have their remedy against the receivers or trustees. Whether persons who have ~~been~~ choses in action for tort against the corporation are "creditors" within the statute is a question which I leave unsettled. It has not yet been passed upon by our Court of Appeals. For a full discussion of the subject I desire to refer to "The Death of Private Corporations Having Capital Stock," a graduating thesis by Geo. A. Nall, Class of '92, Cornell University School of Law. Citing (Grafton v. Union Ferry Co. 13 Sup., 878.- 16 Sup., 692.) After a careful study, notwithstanding that the only case in this state was decided against him, he arrives at this conclusion. " Persons having claims against corporations on grounds of tort are not creditors until their claims are in judgment, and the damages ascertained\_ decisions to the contrary notwithstanding." I am inclined to accept Nall's reasoning.

The old common law rule as to the reversion of real estate to the grantor, and the escheat of its personalty to the sovereign has been applied in some recent decisions relative to Railroad & Canal Companies, and eleemosynary corporations, with slight modifications. In Mott v. Danville Seminary, (129 Ill., 403) it was held that the real property owned by a theological seminary having no debts ~~recovered~~<sup>reverted</sup> on dissolution to its grantors. In New York, land taken for public park and canal purposes reverts to the state. (Rexford v. Knight, 11 N.Y., 284) And in the recent case of the Mormon Church (136 U.S., 1.) it was held upon its dissolution that its property would not revert to the donors for they could not be found but that it reverted to the state which ~~could~~ might by legislation interpose and direct its distribution to lawful charitable ends, coincident as far as may be with the objects originally proposed. This case represents the utmost stretch of legislative <sup>judicial</sup> power, and was decided by a divided court, (Fuller, Field and Lamar dissenting.

The conflict of opinion which has prevailed as to the effect of a forfeiture upon corporate franchises and property has been determined in a recent case in New York. (People v. O'Brien, 111 N.Y., 1) The points settled by the Court of Appeals are:

1. The Franchises of a corporation (other than the franchise to be a corporation and to act in the future) and its contracts made in the exercise thereof, survive the legislative or judicial forfeiture of its charter unless provisions for compensation be made; for the reserved power of repeal, which now applies to charters generally, is subject to the constitutional prohibitions against impairing the obligation of contracts and taking private property without compensation.

2. Neither an express limitation in the charter of the corporate life by a specific period, nor the constitutional or statutory power to repeal charters, constitutes any limitation on the permanent or absolute character of a grant to a corporation—such as a grant by a municipal corporation to a

street railroad company of the right to run and construct their road. Such a franchise is not merely a license but is property of a transferable nature and cannot be destroyed by a repeal or forfeiture of the charter of the corporation.

3. The franchises which are purely personal and incorporeal--such as continued corporate existence and the continued exercise of corporate powers, necessarily expire with the extinction of corporate life, unless special provision is otherwise made; but the right to property held, and the validity of contracts made in virtue of those franchises do not expire with the extinction of corporate life.

This case again affirms the adherence of the court to the Dartmouth College Case. It would seem that the rule laid down will be applied to all grants by the state unless the right of amendment or repeal is expressly reserved.

<sup>Here</sup>  
~~Have~~ then the courts leave us. There is yet much uncertainty and apprehension. The scepter

of 1819 has been broken by popular sentiment. No thoughtful person can contemplate the difficulties attending a correct solution of those problems yet unsolved without some apprehension. Yet it must be a source of gratification to every true lawyer to look back over our juridicial history, and see the opinion of the great chief justice survive the overthrow of parties, the varying policies of men, of the states, and of the nation, and the sharp attack of adverse criticism, affirmed times without number, through two generations of men, by his successors who have been drawn from every political faith. There is not an opinion from Wheaton down to date where contract rights under charters are involved, which does not declare that the rule of law announced is but the spirit of the original College decision. The principle has been so long imbedded in the jurisprudence of the country that it is to all intents and purposes a part of the Constitution.

*A. L. Christed*

