THE AMERICAN BAR ASSOCIATION. THE DARTMOUTH COLLEGE CASE AND PRIVATE CORPORATIONS. NINTH ANNUAL MEATING, AUGUST 19, 1886

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The American Bar Association. The Dartmouth College Case and Private Corporations. Ninth annual meating, August 19, 1886 by William P. Wells

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WILLIAM P. WELLS

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THE

AMERICAN BAR ASSOCIATION.

THE DARTMOUTH COLLEGE CASE AND PRIVATE CORPORATIONS.

A PAPER PRESENTED BY

WILLIAM P. WELLS,
OF DETROIT,

AT THE

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PAPER

READ BY

WILLIAM P. WELLS.

The Dartmouth College Case and Private Corporations.

Chancellor Kent, writing in 1826, thus expressed himself concerning the Dartmouth College case:* "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 and 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 his 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 great and wealthy corporations having 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 pretence, being made inviolable by the constitution, the government is

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*1 Kent's Comm. 419.

† Cooley's Const. Lim., 279–80, n.

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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."

During the period which has elapsed since Chancellor Kent wrote, the great development of private corporations has taken place in this country, their wealth and strength have immensely increased, and they have become possessed, unquestionably, of vast and dangerous powers. And these contrasted statements of the effects of this decision present a most interesting inquiry. The first represents an opinion which prevailed in the profession and in the courts long after the decision was made, and which still receives strong support from the bar and from the decisions of the highest tribunals. But it must be acknowledged that the second of the foregoing statements is only a moderate expression of professional and public opinion upon this important subject. While, on the one hand, it is maintained that the original adjudication was not only right in itself, but has been rightly affirmed and applied in succeeding cases and should not be disturbed; that the court which originally pronounced it should not and will not take any backward steps in respect to the doctrine established; on the other hand, not only has the correctness of the decision been repeatedly challenged, but a swelling chorus of denunciation, proceeding from lawyers and the press and the people, assails it as *fons et origo* of monstrous wrong and pernicious consequences, and predictions manifold are not wanting that it must sooner or later be reviewed and reversed. It cannot, therefore, be inappropriate for an association of the bar of the country to consider whether the effect of this great judgment has been beneficent or evil; whether alleged abuses of corporate powers and alleged corporate encroachments upon public rights, which are at present engaging the solicitude of lawyers, legislators and the people alike, are chiefly attributable to or find support in the decision; whether corporations

find in the courts under it an "impregnable barrier" behind which they may do mischief, or only a just shelter for their clear rights; whether the judicial tribunals have only justly applied a clause of the federal constitution, or have pressed the decision too far, with evil consequences to the people. Such consideration, in other words, involves an inquiry into the connection, real or supposed, between the Dartmouth Collage case and the pressing questions of corporate power, responsibility and restraint which are now the subjects of great public anxiety. But the appropriate limits of the discussion only allow a suggestive rather than a thorough treatment of the topic.

The inquiry first requires a brief consideration of the doctrine established and its applications. But it is unnecessary to examine at any length the cases in the federal and state courts in which the principle of the leading case has been applied, for this would be only a repetition of familiar learning. It will be sufficient to notice the well-known rules flowing from the original decision, which have been administered for the protection of private business corporations. It will appear that the decisions, during a period of sixty-five years, have affirmed a body of legal rules, as applications of the doctrine of the leading case, which, to say the least, constitute a strong and valuable support of corporate privileges.

A strict statement of the decision in the principal case,* in 1819, is, that the charters of private corporations are contracts between the legislature and the corporations, having for their consideration the liabilities and 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 valuable thing, unless the right to do so is reserved in the charter itself.

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* The Dartmouth College Case, 4 Wheaton, 518.

This principle, in subsequent cases, was held to embrace all contracts, executed and executory, between the state and private corporations;* and it was also settled that the inalidity of legislation impairing the contract does not depend upon the extent of the impairment.†

I. Let us consider, at the outset, the beneficial results to corporations of the Dartmouth College case. It was inevitable, when such a decision had been announced by the supreme tribunal of the federal government, that corporations would at once perceive its value to them, and be swift to seize upon the advantages it conferred upon them. A mere glance at the familiar classes of cases in which the principle has been applied, shows their variety and importance, and that business corporations have never failed to invoke its protection whenever their chartered rights have been drawn into controversy.

(1) In respect to the title to corporate property, derived from the state, other than franchises, it was soon established, by many decisions, that legislative grants to corporations vest an absolute title, which could not be afterwards resumed or controlled by the legislature, any more than an absolute grant to individuals. It having been previously decided that legislative grants are irrepealable,‡ the decision that a charter is a contract, brought all property granted by a charter within the protection given to grants to individuals. The value of such a principle to private business corporations is at once apparent. It is only necessary to refer to the history of state and federal legislation, which has conferred upon them profuse grants of property, to show how beneficial to corporations the administration of this rule of law has been. The disposition to

* Green vs. Biddle, 8 Wheat. 1; Bridge Proprietors vs. Hoboken, 1 Wall. 116.

† Planters' Bank vs. Sharp, 6 How. 327; Bronson vs. Kinzie, 1 How. 311.

‡ Fletcher vs. Peck, 6 Cranch, 87; Terrett vs. Taylor, 9 Cranch, 43; Town of Pawlet vs. Clark, *Ibid.* 292; Davis vs. Gray, 16 Wall. 203.

encourage corporate organization and effort, which was especially indulged in the early history of the country, has been wrought upon by corporations ever since with unflagging energy and persistence. The public funds, the public domain, seem to have been regarded as theirs by right, and state and federal legislatures, influenced by all manner of solicitation and importunity, and won by all the arts of conciliation and persuasion, have enriched corporations by abundant and overflowing donations, and thus established and strengthened the solid structure of their wealth and power.

(2) The same principle, by repeated adjudications, was held to apply to grants of the franchises of corporations. They were held to be property, and irrevocable by legislation, after acceptance by the corporations, on the terms of the charters. Great as have been the value and benefits of the large grants of property made to corporations, these are small compared with the worth of franchises which, once obtained, bestow special and ample powers for the acquisition of property, its consolidation in the hands of corporations, and afford to them the ability and present the strong temptation to act solely for their own aggrandizement, in disregard of the public interest. In the early history of corporations in this country all charters were special, each resting upon its own terms, and granting varied privileges, always specially valuable. The development of the country and its resources justified the liberal encouragement of corporate enterprises, and the grants and franchises conferred by charters were given upon sound considerations of public policy and benefit to the country. But all business corporations, by the subsequent application to them of the decision in the principal case, gained enormous power, and secured a firm foothold for action which inevitably resulted in aggressions upon the public.

If it be said, as must be conceded, that the inviolability of grants to corporations, other than franchises, confers upon them no rights beyond those given by grants to natural

persons, upon sufficient consideration, and rests upon principles of justice and morality applicable alike to natural and artificial persons, it may be replied that the chief advantage which has been derived by corporations from the Dartmouth College decision is the removal of their franchises from legislative control, the constant exercise of which is essential to the public welfare. 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 a sense of the immediate and urgent necessity of finding, under the law and through the judicial tribunals, or above and outside of them, some effectual means of restraint upon corporate abuses.

(3) In respect to the use and enjoyment of corporate property and franchises, it must be admitted that the principal decision has been the source of the same priceless advantages to corporations. The special charters which were granted under the influence of the sentiment favorable to corporations, which prevailed alike in legislatures and in courts, generally included special privileges in the use of corporate franchises and the carrying on of corporate business. When secured, these are irrevocable. Corporations thereby become possessed of the power to determine, without restriction and without legislative control, the compensation they shall receive for services, the profits from the use of their property, "its use and the fruits of that use." In innumerable cases, in the state and federal courts, the special provisions of charters to this end have been held to be beyond legislative interference under the principle of the Dartmouth College decision. The benefits thereby secured to corporations need no description. The advantages are obvious which they have derived from the principle that the right to regulate and fix their own compensation for services results from their general power to carry on