

Pennsylvania College Cases

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Pennsylvania College Cases - 80 U.S. 190 (1871)

U.S. Supreme Court Pennsylvania College Cases, 80 U.S. 13 Wall. 190 190 (1871)

Pennsylvania College Cases

80 U.S. (13 Wall.) 190

ERROR TO THE SUPREME

COURT OF PENNSYLVANIA

SYLLABUS

The Legislature of Pennsylvania chartered a college "at Canonsburg," by the name of the Jefferson College, "in Canonsburg," giving to it a constitution and declaring that the same should "be and remain the inviolable constitution of the said college forever," and should not be "altered or alterable by any ordinance or

law of the said trustees or in any other manner than by an act of the Legislature" of Pennsylvania. The college, becoming in need of funds, put into operation a plan of endowment whereby, in virtue of different specific sums named, different sorts of scholarships were created -- one, *ex. gr.*, by which on paying \$400, a subscriber became entitled to a perpetual scholarship, capable of being sold or bequeathed, and another by which, on payment of \$1,200, he became entitled to a perpetual scholarship entitling a student to tuition, room rent, and boarding, this sort of scholarship being capable, by the terms of the subscription, of being disposed of as other property. But nothing was specified in this plan as to where this education, under the scholarships, was to be. On payment of the different subscriptions, certificates were issued by the college certifying that A. B. had paid \$____, which entitled him "to a scholarship as specified in the plan of endowment adopted by the trustees of Jefferson College, Canonsburg," &c.; An act of legislature in 1865, by consent of the trustees of the college at Canonsburg and of the trustees of another college at Washington, Pennsylvania, seven miles from Canonsburg, created a new corporation, consolidating the two corporations, vesting the funds of each in the new one, and in their separate form making them to cease, but providing that all the several liabilities of each, including the scholarships, should be assumed and discharged without diminution or abatement by the new corporation. Notwithstanding the act of assembly, the collegiate buildings, &c., of Jefferson College were left at Canonsburg, and certain parts of the collegiate course were still pursued there, the residue being pursued at Washington College, Washington. Subsequently, in 1869, the then existing Constitution of Pennsylvania (one adopted in 1857, allowing the legislature of the state "to alter, revoke, or annul any charter of incorporation thereafter granted, whenever in their opinion it may be injurious to the citizens, . . . in such

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manner, however, that no injustice shall be done to the *corporators* ") being in force, a supplement to this act of 1865 was passed, "closely uniting" the several departments of the new college created by the act of 1865 and authorizing the trustees of it to locate them either at Canonsburg, Washington, or some other

suitable place within the Commonwealth, they giving to whichever of the two towns named, had the college taken away from it, or to both if it was taken away from both, an academy, normal school, or other institution of a grade lower than a college, with some property of the college for its use. *Held* that the Legislature of Pennsylvania, by its act of 1869, had not passed any law violating the obligation of a contract.

On the 15th of January, 1802, the Legislature of Pennsylvania incorporated a college in the western part of Pennsylvania known as Jefferson College. The title of the act was, "An act for the establishment of a college at Canonsburg, in the County of Washington, in the Commonwealth of Pennsylvania."

The preamble set forth that "the establishment of a college *at Canonsburg,* " &c.,, "for the instruction of youth in the learned languages, in the arts and sciences, and in useful literature, would tend to diffuse information and promote the public good."

The statute in its enacting part proceeded:

"SECTION 1. That there be erected and hereby is erected and *established in Canonsburg* &c.,, a college &c.,, under the management, direction, and government of a number of trustees, not exceeding twenty-one,"

&c.;

"SECTION 2. The said trustees and their successors shall *forever hereafter* be one body politic and corporate, with *perpetual succession* in deed and in law, to all intents and purposes whatever, by the name, style, and title of 'The Trustees of Jefferson College, *in Canonsburg,* in the County of Washington.'"

There was given to the trustees the usual corporate powers, with all other powers &c.,, usual in other colleges in the United States.

Section 3d provided for meetings of the trustees, " *at the*

Town of Canonsburg, " for making bylaws and ordinances for the government of the college &c.;, principal and professors &c.;

Section 5th provided for the succession in the trustees, how misnomers in gifts or grants by deeds, or in devises or bequests, should be treated, adding,

"And the Constitution of the said college herein and hereby declared and established, *shall be and remain the inviolable Constitution of the said college forever*, and the same shall not be altered or alterable by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of this Commonwealth."

In pursuance of this act, the Jefferson College was established. Several buildings for a college were erected. The state made donations to the institution from time to time, and from these or other sources a library, as also a chemical and astronomical apparatus, was brought together.

In the year 1806, the same legislature incorporated another college, establishing it at the Town of Washington, just seven miles from Canonsburg, where the former college had been established. Thus, although in the faculties of both colleges there have been from time to time professors of eminent ability and learning, and though from both colleges have come men who have done honor to the institutions in which they were reared, it yet came to pass -- with the multiplicity of colleges throughout the state -- that these two, so near to each other, slenderly endowed and in a part of Pennsylvania until quite late times neither rich nor populous, never thrived; on the contrary, rather labored with existence. Accordingly, in 1853, the trustees of Jefferson College put into operation a plan of endowment whereby on the payment of \$25, the subscriber to the plan became entitled to a single scholarship; on the payment of \$50, to a family scholarship; on the payment of \$100, to tuition for thirty years; on the payment of \$400, to a perpetual scholarship, to be designated by whatever name the subscriber might select, it being provided that such a scholarship might be disposed of by sale or devised by will as any other

property; by the payment of \$1,200, to a scholarship in full, entitling the holder to the tuition, room rent, and boarding of one student in perpetuity, it being provided that such a scholarship might be disposed of as any other property. But in this "Plan of Endowment," as the paper proposing it was called, nothing was said of education at Canonsburg specifically, though it was declared that when \$60,000 were subscribed, "the trustees of the college should issue certificates guaranteeing to the subscribers the privileges above enumerated." Of these various scholarships upwards of 1,500 were sold. To each of the subscribers to this plan of endowment a certificate in this form was issued under the seal of the corporation:

" *Endowment Fund of Jefferson College, Pennsylvania* "

"This certifies that A. B. has paid _____ dollars, which entitles him to the privileges of a _____ scholarship, as specified in the Plan of Endowment adopted by the trustees of Jefferson College, in Canonsburg, in the County of Washington, transferable only on the books of the college, personally or by attorney, on presentation of this certificate."

"Witness the seal of said corporation and the signatures of the president and secretary thereof, *at Canonsburg*, the ____ day of _____, A.D. 185."

"[CORPORATE SEAL]"

"WILLIAM JEFFREY, President"

"JAMES Mc CULLOUGH, Secretary"

But this scheme did not prove an entirely wise one, for though it procured a certain amount of money for an endowment fund, it brought upon the college a large body of students to be educated at rates entirely too low, and the college was deprived of its former resources of tuition fees -- always very small, but still much greater than the interest on the sum which now entitled a student, and even a whole family of students, to be educated without paying anything. Thus it was with the Jefferson

College, at Canonsburg. The other college, at Washington, adopted apparently some similar

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scheme and flourished no more than the Jefferson. Both colleges during the rebellion fell into a condition of debility undesirable for seats of learning. [[Footnote 1](#)]

In this state of things, there having been a proposition to make a union of the colleges, a convention of the alumni of both was held at Pittsburg, September 27, 1864, and the members of this convention having "discussed in a candid and fraternal spirit the proposed union of the colleges," passed a series of resolutions, of which this was the first:

"That we see the hand of Providence pointing to the union of the two ancient colleges, whose sons we are, and fixing the present as the time for the happy consummation by such evident facts as these: the great and constantly increasing number of literary institutions in the land; the urgent need in Western Pennsylvania of an eminently influential and richly endowed college; the desire for a union of Jefferson and Washington, so generally entertained, and so frequently and earnestly expressed; the proximity of the said colleges, soon to be made more apparently by the completion of a connecting railway; the very unsatisfactory condition of their antiquated buildings; the reduced number of students, partly the result of our national troubles; the inadequacy of the old salaries to meet the demands of the times and afford the professors a competent support; the difficulty of obtaining aid for either institution in its separate existence; the several offers made by liberal and reliable men to furnish large amounts of funds in case a union is effected, and depending also upon that event; the probable donation by our legislature of a valuable grant of lands given by Congress to the state for the advancement of agricultural knowledge."

The convention then went on and recommended a plan of

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union for the two colleges and the procuring of appropriate legislation to effect the consolidation.

The matter in its general aspect was assented to by the boards of trustees of the respective colleges, and in the following year, March 4th, 1865, an act was passed by the Legislature of Pennsylvania to carry out a union.

The title of the act was, "An act to unite the colleges of Jefferson and Washington, in the county of Washington, and to erect the same into one corporation, under the name of Washington and Jefferson College."

Its *preamble* recites that

"the trustees of those colleges (Jefferson and Washington) *have agreed upon a union* thereof, and have besought this General assembly to *give thereto* the sanction and aid of a legislative enactment."

Section 1 united the two colleges into one corporation by the name aforesaid.

Section 2 vested all the property and funds of each in the new corporation,

"and all the several liabilities of said two colleges or corporations, by either of them suffered or created, *including the scholarships heretofore granted by and now obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement.* "

Section 3 declared the objects of the corporation and provided how the trustees were to be selected and continued, and prescribed their powers and duties.

Section 10 directed that there should be four periods or classes of study, denominated the freshman, sophomore, junior, and senior classes.

Section 11 created two additional departments of study, the scientific and preparatory; the first to qualify students for business avocations, the second for admission to the first, or to the freshman class of the college.

Section 12 provided prospectively for an agricultural department.

Section 13 declared

"that the studies of the senior, junior, and sophomore classes shall be pursued at or near *Canonsburg*, in the County of Washington, and those of the freshman

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class and of the preparatory, scientific, and agricultural departments at or near Washington, in said county,"

and provided how the income of endowment funds should be apportioned &c.;

Section 14 committed the instruction and government of the three higher classes named, to the president and professors of those classes, and the instruction and government of the freshman class and the departments, to the vice-president and professors, or instructors of their appropriate studies &c.;

Section 18 enacted:

"That from and after the organization of the corporation hereby created, as herein provided, *the Colleges of Jefferson and Washington*, named in the first section of the act, *shall be dissolved*, except so far as may be found necessary to enable them to close up their business affairs and to perfect the transfer of their property and rights to the corporation by this act created."

When this new act was passed (A.D. 1865), the then existing or amended Constitution of Pennsylvania, [[Footnote 2](#)] adopted in 1857, was in force. That constitution provided that:

"The legislature shall have power to *alter, revoke, or annul any charter of incorporation hereafter conferred by or under any special or general law*, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the *corporators*. "

Under the act of assembly of 1865, a new state of things as prescribed by it was set in operation. But the good effects anticipated from a union on this plan did not come. The new college did not thrive. And in 1868, another convention of alumni was held in which various resolutions were passed, among them one expressing

"the conviction of the convention that a *complete consolidation* of the two departments should be immediately effected, so as to have them occupy buildings situated in the *same place*. "

And in consequence of this the board of trustees of the college,

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through a series of committees, took the matter into consideration, the result of the whole being the recommendation of further legislation, in the direction pointed out by the convention of the alumni.

"A supplement" to the Act of March 4, 1865, was then, February 26, 1869, passed. Section 1 enacted

"that as soon as the necessary preliminary arrangements could be made and suitable buildings provided, *several departments* of Washington and Jefferson College should be closely united, and located either at Canonsburg, Washington, or some *other* suitable place *within this commonwealth*, to be fixed by the vote of not less than two-thirds of the trustees,"

&c.;

Section 5 provided for an "academy, normal school, or other institution of lower grade than a college," to be given by the trustees to the unsuccessful one of the two places named, or to both, if the college is taken "elsewhere," with some real or personal property of the college for the use of such academy &c.;

Section 6 made it

"lawful for *any* incorporated college or institution of learning, within this commonwealth, to unite with Washington and Jefferson College, and consolidate their property and funds for educational purposes, on such terms and conditions as may be agreed upon."

With the exception that this act obliged the college to be fixed somewhere in the state of Pennsylvania, it followed the exact language of a draft which had been prepared by the committee of the board of trustees of the college, and reported to it as advisable. This draft had been approved without dissent by the board, twenty-five members out of thirty-one composing it being present at the meeting; and a committee had been appointed by it to visit Harrisburg and procure its enactment.

After the supplement was obtained, it was accepted by the board, and the whole college fixed at Washington, with more effective means of education, including an endowment of \$50,000, made by people of that place on condition that the whole college should be so fixed.

In this state of things, six persons (with whom afterwards

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one hundred and eight others asked to become, and were admitted, co-plaintiffs), holders of the scholarship certificates, issued as already mentioned by the trustees of Jefferson College, in 1853, filed a bill in equity, in the Supreme Court of Pennsylvania, against *the two corporations*, wherein they set forth the incorporation of Jefferson College at Canonsburg, the buildings it had erected, and the gifts and endowments which it had received and possessed; that in 1853, the trustees of the college devised and put in operation the plan of endowment already mentioned, and evidenced by certificates of scholarship, issued by them, under the corporate seal &c.; whereby, tuition &c., in said college, was granted to the holders, they paying into the corporate Treasury therefor various sums of money, according to the grade or quantity of the scholarship, specifying it all as already stated on page [80 U. S. 192](#) ; that one thousand five hundred of these certificates were issued, of which one thousand two hundred were yet outstanding; that the

complainants,

"residents of Canonsburg and its vicinity, relying upon the good faith of the said trustees, and the perpetuity of said college at Canonsburg, bought and still held such certificates of scholarships, believing that thereby they could have their sons or descendants educated at said college, in Canonsburg, without the expense and risk of sending them from home;"

that on March 4, 1865, the Legislature of Pennsylvania passed the act already mentioned as of that date (reciting it), and on the 26th of February, 1869, "a supplement" to the said act of 1865 (reciting the supplement); that the trustees of Jefferson College in Canonsburg &c., had accepted the said act of 1865, and had joined in uniting said two colleges, and had removed the freshmen class and the preparatory and scientific departments from Canonsburg to Washington, seven miles distant; and that the trustees of the college called "Washington and Jefferson College," formed under the act of 1865, were about to remove the college library, apparatus, classes, and professors from Canonsburg to Washington, and to dispose of the college buildings &c., at Canonsburg, so as to deprive the plaintiffs of the tuition &c., agreed to be

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there given to them; and that the defendants justified the proposed action, under the supplement of 1869; that the said scholarship certificates constituted subsisting contracts between the complainants and the trustees of Jefferson College, in Canonsburg &c., entitling them to have the granted tuition &c., at that place, in the college there; and that if said acts of 1865 and 1869 were to have effect, they would be irreparably injured, and the contracts impaired; that said acts of 1865 and 1869 were invalid and unconstitutional, because impairing the obligations of subsisting contracts; and therefore repugnant to the 10th section of the first article of the Constitution of the United States, which declares that no state shall pass any law "impairing the obligation of contracts."

The *prayer* of the bill accordingly was:

1. That said acts of 1865 and 1869 be declared null and void, as repugnant to the said prohibitions, in that they undertook to change the location of the said college, its classes, buildings, and property, from Canonsburg to Washington, or elsewhere.

2. For injunction against making such change or removal.

The case came up on bill and answer. There was no dispute about facts. The question was the validity of the "supplemental" act of 1869; the question, namely, whether the contract of scholarships between the complainants and others and Jefferson College, did not interpose a constitutional barrier to any legislative grant of authority to the trustees of the college to surrender its former charter and accept a new one, by which the college was eventually removed from Canonsburg to Washington, in the same county.

At the same time was filed in the same court another bill; one by "the trustees of *Jefferson College in Canonsburg, in the County of Washington*" (the old corporation of 1802), against "*Washington and Jefferson College*" (the corporation of 1865), setting out their old charter of 1802, gifts and donations to carry it out, and specially \$5,000 given, bequeathed by benevolent persons to the complainants as a permanent fund, to be kept separate from other funds, for educating

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poor and pious young men; the scholarships &c.;, all much as in the preceding case.

There was also filed a third bill by five persons, "members of the boards of *trustees of Washington and Jefferson*. " Their complaint being more especially of the supplement of 1869, and of its impairing the obligation of the contracts raised by the act of 1865. All three bills originated apparently in one view, and had apparently one purpose, the different forms of effort being resorted to, the one in aid of the other; and so that if one form of proceeding was found open to fatal objection, one or both of the others might be resorted to with better prospect of

success.

The Supreme Court of Pennsylvania, after a full consideration of the case (Thompson, C.J., delivering its judgment), dismissed all the bills, holding in effect:

1st. That the legislation complained of did not, in point of fact, infringe the said contracts.

2d. That even if the contracts were so affected by the legislation, yet their obligation could not be said to be impaired in a legal sense, because the acceptance of the legislation by the trustees of Jefferson College concluded the complainants; and also, 3d, because the acts of assembly in question were passed by the Legislature of Pennsylvania, in the exercise of a power so to do, reserved (as to the act of 1865) in the original charter of Jefferson College and (as to the act of 1869) given by the amended Constitution of Pennsylvania.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Jefferson College was incorporated on the fifteenth of January, 1802, by the name of the Trustees of Jefferson College in Canonsburg in the County of Washington, for the education of youth in the learned languages and the arts, sciences, and useful literature. By the charter, it was declared that the trustees should be a body politic and corporate, with perpetual succession, in deed and in law, to all intents and purposes whatsoever, and that the constitution of the college

"shall not be altered or alterably by any ordinance or law of the said trustees, nor in any other manner than by an act of the legislature of the Commonwealth."

Washington College was incorporated on the twenty-eighth

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of March, 1806, by the name of The Trustees of Washington College for the education of youth in the learned and foreign languages, the useful arts, sciences,

and literature, and was located in the town of Washington, seven miles distant from Jefferson College, in the same county.

Experience showed in the progress of events that the interests of both institutions would be promoted in their union, and the friends of both united in a common effort to effect that object. Application was accordingly made to the legislature for that purpose, and on the fourth of March, 1865, the legislature passed the

"Act to unite the colleges of Jefferson and Washington, in the County of Washington, and to erect the same into one corporation under the name of Washington and Jefferson College."

Enough is stated in the preamble of the act to show that the application was made to promote the best interests of both institutions, and that the legislative act which is the subject of complaint was passed at their united request and to sanction the union which their respective trustees had previously agreed to establish. Inconveniences resulted from the provisions contained in the thirteenth section of the act, which impliedly forbid any change in the sites of the respective colleges, and also provided that the studies of certain classes of the students should be pursued at each of the two institutions, and to that end prescribed certain rules for appropriating to each certain portions of the income derived from the funds of the institution, and the manner in which the same should be expended and applied by the trustees. Such embarrassments increasing, the legislature passed a supplementary act, providing that the several departments of the two colleges should be closely united, and that the united institution should be located as therein prescribed. Measures were also prescribed in the same act for determining the location of the united institution, and it appears that those measures, when carried into effect, resulted in fixing the location at Washington, in the county of the same name. Certain parties are dissatisfied with the new arrangement, and

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it appears that on the twenty-fourth of August, 1869, three bills in equity were filed in the state court praying that the last-named act of the legislature may be

declared null and void as repugnant to the ninth article of the Constitution of the state and to the tenth section of the first article of the federal Constitution. Different parties complain in each of the several cases, but the subject matter of the complaint involves substantially the same considerations in all the cases. Those complaining in the first case are the trustees of Jefferson College. Complainants in the second case are certain members of the board of trustees of Washington and Jefferson College, who oppose the provisions of the act of the twenty-sixth of February, 1869, and deny that the board of trustees, even by a vote of two-thirds of the members, as therein required, can properly remove the college or dispose of the college buildings as therein contemplated. Objections are made by the complainants in the last case to both the before-mentioned acts of the legislature, and they claim the right to ask the interposition of the Court upon the ground that they are owners of certain scholarships in Jefferson College, as more fully set forth in the bill of complainant, and they pray that both of the said acts of assembly may be declared null and void for the same reasons as those set forth in the other two cases.

I. Examination of these cases will be made in the order they appear on the calendar, commencing with the case in which the trustees of Jefferson College are the complainants. They bring their bill of complaint against the two colleges as united, under the first act of assembly passed for that purpose. Service was made and the respondents appeared and pleaded in bar that the complainants, as such trustees, duly accepted the act of assembly creating the union of the two institutions, and that having accepted the same they, as a corporation, became dissolved and ceased to exist, and have no authority to maintain their bill of complaint. Apart from the plea in bar, they also filed an answer, but as the whole issue is presented in the plea in bar, it will not be necessary to enter into those details. Opposed to that plea

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is the replication of the complainants, in which they deny the allegation that they, as a corporation, became dissolved or that they ceased to exist as alleged in the plea in bar, and renew their prayer for relief. Both parties were heard, and the

supreme court of the state entered a decree for the respondents, dismissing the bill of complaint. Decrees for the respondents were also entered in the other two cases, and the respective complainants such out writs of error under the twenty-fifth section of the Judiciary Act, and removed the respective causes into this Court for reexamination.

Whether the act of assembly in question in this case is or not repugnant to the Constitution of the state is conclusively settled against the complainants by the decision in this very case, and the question is not one open to reexamination in this Court, as it is not one of federal cognizance in a case brought here by a writ of error to a state court. Nothing therefore remains to be examined but the second question presented in the pleadings, which is whether the supplementary act of assembly uniting the two institutions and providing that there should be but one location of the same for any purpose impairs the obligation of the contract between the state and the corporation of Jefferson College, as created by the original charter, or in other words whether it is repugnant to the tenth section of the first article of the federal Constitution.

Corporate franchises granted to private corporations, if duly accepted by the corporators, partake of the nature of legal estates, as the grant under such circumstances becomes a contract within the protection of that clause of the Constitution which ordains that no state shall pass any law impairing the obligation of contracts. [[Footnote 3](#)] Charters of private corporations are regarded as executed contracts between the government and the corporators, and the rule is well settled that the legislature cannot repeal, impair, or alter such a

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charter against the consent or without the default of the corporation judicially ascertained and declared. [[Footnote 4](#)] Of course these remarks apply only to acts of incorporation which do not contain any reservations or provisions annexing conditions to the charter modifying and limiting the nature of the contract. Cases often arise where the legislature, in granting an act of incorporation for a private purpose, either make the duration of the charter conditional or reserve to the state

the power to alter, modify, or repeal the same at pleasure. Where such a provision is incorporated in the charter, it is clear that it qualifies the grant and that the subsequent exercise of that reserved power cannot be regarded as an act within the prohibition of the Constitution. Such a power also -- that is the power to alter, modify, or repeal an act of incorporation -- is frequently reserved to the state by a general law applicable to all acts of incorporation or to certain classes of the same, as the case may be, in which case it is equally clear that the power may be exercised whenever it appears that the act of incorporation is one which falls within the reservation and that the charter was granted subsequent to the passage of the general law, even though the charter contains no such condition nor any allusion to such a reservation. [[Footnote 5](#)] Reservations in such a charter, it is admitted, may be made, and it is also conceded that where they exist, the exercise of the power reserved by a subsequent legislature does not impair the obligation of the contract created by the original act of incorporation. Subsequent legislation altering or modifying the provisions of such a charter, where there is no such reservation, is certainly unauthorized if it is prejudicial to the rights of the corporators and was passed without their assent, but the converse of the proposition is also true -- that if the new provisions altering and modifying the charter were passed with the assent of the corporation and they were duly accepted

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by a corporate vote as amendments to the original charter they cannot be regarded as impairing the obligation of the contract created by the original charter. [[Footnote 6](#)] Private charters or such as are granted for the private benefit of the corporators are held to be contracts because they are based for their consideration on the liabilities and duties which the corporators assume by accepting the terms therein specified, and the grant of the franchise on that account can no more be resumed by the legislature or its benefits diminished or impaired without the assent of the corporators than any other grant of property or legal estate, unless the right to do so is reserved in the act of incorporation or in some general law of the state which was in operation at the time the charter was

granted. [[Footnote 7](#)]

Apply those principles to the case under consideration and it is quite clear that the decision of the state court was correct, as the fifth section of the charter, by necessary implication, reserves to the state the power to alter, modify, or amend the charter without any prescribed limitation. Provision is there made that the constitution of the college shall not be altered or alterable by any ordinance or law of the trustees, "nor in any other manner than by an act of the legislature of the commonwealth," which is in all respects equivalent to an express reservation to the state to make any alterations in the charter which the legislature in its wisdom may deem fit, just, and expedient to enact, and the donors of the institution are as much bound by that provision as the trustees. [[Footnote 8](#)]

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Suppose, however, the fact were otherwise, still the respondents much prevail, as it is admitted that the complainants accepted the act passed to unite the two colleges and to erect the same into one corporation, which supports to every intent the respondents' plea in bar and utterly disproves the allegations of the complainants' replication denying that the complainant corporation was dissolved before their bill of complaint was filed. Doubts have often been expressed whether a private corporation can be dissolved by the surrender of its corporate franchise into the hands of the government, but the question presented in this case is not of that character, as the act of the legislature uniting the two colleges did not contemplate that either college, as an institution of learning, should cease to exist or that the funds of either should be devoted to any other use than that described in the original charters. All that was contemplated by the act in question was that the two institutions should be united in one corporation, as requested by the friends and patrons of both, that they might secure greater patronage and be able to extend their usefulness and carry out more effectually the great end and aim of their creation. Authorized as the act of the legislature was by the reservation contained in the original charter, and sanctioned as the act was by having been adopted by the incorporators, it is clear to a demonstration that the act uniting the

two colleges was a valid act, and that the two original corporations became merged in the one corporation created by the amendatory and enabling act passed for that purpose, and that neither of the original corporations is competent to sue for any cause of action subsequent in date to their acceptance of the new act of incorporation. [[Footnote 9](#)]

II. Sufficient has already been remarked to show that the case of the dissenting trustees of the new corporation, which is the second case, is governed by the same principles as the preceding case. They admit that the act of the legislature

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uniting the two colleges in one corporation was duly accepted by the original corporators, and they also admit in effect that it is a valid law. Express provision was therein made that the two colleges should be united in one corporation by the name of Washington and Jefferson College, and that the new corporation should possess and enjoy all the capacities, powers, privileges, immunities, and franchises which were possessed and enjoyed by the original institutions and the trustees thereof, "with such enlargements and subject to such changes therein as are made by this act." Accepted as that act was by the trustees of the original institutions, they not only ratified the reservation contained in the fifth section of the charter of Jefferson College, but they in express terms adopted the changes made in the amended charter uniting the two institutions in one corporation.

Viewed in the light of these suggestions, the present case stands just as it would if the reservation contained in the original charter had been in terms incorporated into the new charter uniting the two institutions into one corporation, which the complainants in this case admit is a valid act of the legislature. Such an admission, however, is not necessary to establish that fact, as the act was passed by the assent of the two corporations and in pursuance of the reserved power to that effect contained in the original charter of the corporation to which the complaining corporators in the preceding case belonged. Grant that the power existed in the legislature to pass the act uniting the two institutions and it follows that the supplementary act which was passed to render the first act practically available is

also a rightful exercise of legislative authority, as it is clear that substantially the same reservation is contained in the act providing for the union of the two institutions as that contained in the original charter by virtue of which the act was passed uniting the two institutions in one corporation. [[Footnote 10](#)] Tested by these considerations, the Court here is of the opinion that

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the decision of the state court in the second case is also correct.

III. Plans of various kinds were devised by the trustees of Jefferson College and put in operation for the endowment of the institution, and among others was the plan of establishing what was called the scholarships, whereby a contributor on payment of twenty-five dollars became entitled to tuition for one person for a prescribed period, called a right to a single scholarship, or, on payment of fifty dollars, to a family scholarship, or, on payment of one hundred dollars, to tuition for thirty years, or, on payment of four hundred dollars, to a perpetual scholarship, to be designated by whatever name the contributor might select. Contracts of the kind were outstanding at the respective times when each of the two acts of the legislature in question was passed, and the complainants in the third case are owners of such scholarships, and they bring their bill of complaint, for themselves and such other persons owning such scholarships as may desire to unite in the bill for the relief therein prayed. They pray that both of the before-mentioned acts of the legislature may be declared null and void as repugnant both to the state and federal Constitution, but it will be sufficient to remark, without entering into any further explanations, that the second question is the only one which can be reexamined in this Court. What they claim is that the acts of the legislature in question impair the obligation of their contracts for scholarship as made with the trustees of Jefferson College before the two institutions were united in one corporation. Reference must be made to the charter creating the union as well as to the original charters in order to ascertain whether there is any foundation for the allegations of the bill of complaint.

By the first section of the act creating the union it is provided that the new corporation

"shall possess and enjoy all the capacities, powers, privileges, immunities and franchises which were conferred upon and held by said Colleges of Jefferson and Washington and the trustees thereof, with such enlargements and subject to such changes therein as are

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made by this act."

Section two also provides that all the real and personal property held and possessed by or in trust for the said colleges, with all endowment funds, choses in action, stocks, bequests, and devises and all other rights whatever to them belonging, are thereby transferred to and vested in the new corporation; and the further provision is that

"all the several liabilities of said two colleges or corporations, by either of them suffered or created, including the scholarships heretofore granted by and obligatory upon each of them, are hereby imposed upon and declared to be assumed by the corporation hereby created, which shall discharge and perform the same without diminution or abatement."

Undoubtedly the corporate franchises of the two institutions were contracts of the description protected by that clause of the Constitution which ordains that no state shall pass any law impairing the obligation of contracts, but the contract involved in such an act of incorporation is a contract between the state and the corporation, and as such the terms of the contract may, as a general rule, be altered, modified, or amended by the assent of the corporation, even though the charter contains no such reservation and there was none such existing in any general law of the state at the time the charter was granted. Persons making contracts with a private corporation know that the legislature, even without the assent of the corporation, may amend, alter, or modify their charters in all cases where the power to do so is reserved in the charter or in any antecedent general law in operation at the time

the charter was granted, and they also know that such amendments, alterations, and modifications may as a general rule be made by the legislature with the assent of the corporation, even in cases where the charter is unconditional in its terms and there is no general law of the state containing any such reservation. Such contracts made between individuals and the corporation do not vary or in any manner change or modify the relation between the state and the corporation in respect to the right of the state to alter, modify, or amend such a charter,

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as the power to pass such laws depends upon the assent of the corporation or upon some reservation made at the time, as evidenced by some preexisting general law or by an express provision incorporated into the charter. Cases arise undoubtedly where a court of equity will enjoin a corporation not to proceed under an amendment to their charter passed by their assent, as where the effect would be to enable the corporation to violate their contracts with third persons, but no such question is here presented for the decision of this Court, nor can it ever be under a writ of error to a state court. Questions of that kind are addressed very largely to the judicial discretion of the court and create the necessity for inquiry into the facts of the case and for an examination into all the surrounding circumstances. [[Footnote 11](#)] Beyond doubt, such a question may be presented in the circuit court in the exercise of its jurisdiction, concurrent with the state courts, but it is clear that such a question can never be brought here for reexamination by a writ of error to a state court, as such a writ only removes into this Court the questions, or some one of the questions, described in the twenty-fifth section of the Judiciary Act. [[Footnote 12](#)] Considerations of that kind must therefore be dismissed, as the only question presented for decision is whether the acts of the legislature mentioned in the bill of complaint impair the obligation of the contracts for scholarship made by the complainants with the trustees of Jefferson College.

Decided cases are referred to in which it is held that the trustees of such an institution, where the terms of the charter amount to a contract and the charter contains no reservation of a right to alter, modify, or amend it, cannot consent to

any change in the charter made by the legislature which contemplates a diversion of the funds of the institution to any other purpose than that described and declared in the original charter. All or nearly all of such decisions are based on a state of facts where an attempt was made to take

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the control of such an institution from one religious sect or denomination and to give the control of it to another and a different sect or denomination in violation of the intent and purpose of the original donors of the institution. [[Footnote 13](#)] Questions of that kind, however, are not involved in the present record, nor does the Court intend to express any opinion in respect to such a controversy. Charters of the kind may certainly be altered, modified, or amended in all cases where the power to pass such laws is reserved in the charter or in some antecedent general law, nor can it be doubted that the assent of the corporation is sufficient to render such legislation valid unless it appears that the new legislation will have the effect to change the control of the institution, or to divert the fund of the donors to some new use inconsistent with the intent and purpose for which the endowment was originally made. [[Footnote 14](#)] Consent of the corporation, it is conceded, is sufficient to warrant alteration, modification, and amendments in the charters of moneyed, business, and commercial corporations, and it is not perceived that the question presented in this record stands upon any different footing from such as arise out of legislation of that character, as the principal objection to the legislation in question is that the removal of Jefferson College to the newly selected location exposes the complainants, as owners of the scholarships, to increased expense and to additional inconvenience. [[Footnote 15](#)] They do not pretend that the effect of the new legislation will be to lessen the influence and usefulness of the college, or to divert the funds to a different purpose from that which was intended by the donors, nor that it will have the effect to change the character of the institution from the original purpose and design of its founders. Pretenses of the kind, if set up, could not be supported, as the whole record shows that the two acts of assembly were passed at the earnest solicitation of the patrons of the two institutions as well as at the request of the respective boards of trustees.

Even suppose that the consent of the corporation is no answer to the objections of the complainants, still the decree of the state court must be affirmed, as it is clear that the reservation in the charter fully warranted the legislature in passing both the acts which are the subject of complaint. [[Footnote 16](#)] Suggestion may be made that the reservation even in the original charter is not expressed in direct terms, but the terms are the same as those employed in the charter which was the subject of judicial examination in the case of *Commonwealth v. Bonsall*, [[Footnote 17](#)] which was decided more than thirty years ago by the supreme court of the state. Provision was made in the charter in that case that the constitution of a certain public school should not be altered or alterable by any law of the trustees or in any other manner than by an act of the legislature of this state. When incorporated, the charter of the school provided that the trustees should be chosen by such persons as had contributed or should contribute to the amount of forty shillings for the purposes of the corporation. Pursuant to the petition of the trustees, the legislature passed an act which repealed that clause of the charter and provided that all the citizens residing within the limits of the township should be entitled to vote at all such elections, and the supreme court of the state held unanimously that the act of assembly was a valid act even though it was not accepted by the corporation. Reference is made to that case to show that the clause in the charter of Jefferson College, called the reservation, furnished complete authority to alter, modify, or amend the charter, and certainly it must be conceded that that case is a decisive authority to that point. [[Footnote 18](#)]

Controlled by these reasons, the Court is of the opinion that the act uniting the two colleges in one corporation was a valid act even as against the complainants in the third case.

They complain also of the supplementary act, but they hardly contend that the legislature, in passing the act to unite the two institutions, parted with any power

which was reserved in the original charter of Jefferson College to enact any proper law to alter, modify, or amend the act providing for that union. Extended argument upon that topic does not seem to be necessary, as there is not a word in the act which favors such a construction or which gives such a theory the slightest support. Proper care was taken by the legislature to protect the rights of these complainants by incorporating into the act uniting the two colleges a provision that the new corporation should discharge and perform those liabilities without diminution or abatement. Such contracts were made with the trustees, and not with the state, and it is a mistake to suppose that the existence of such a contract between the corporation and an individual would inhibit the legislature from altering, modifying, or amending the charter of the corporation by virtue of a right reserved to that effect, or with the assent of the corporation, if, in view of all the circumstances, the legislature should see fit to exercise that power.

Decree in each case affirmed.

[[Footnote 1](#)]

The net endowment of the institution in 1865, from all sources, was about \$56,100. The income of this fund, at 6 percent, equal to \$3,366, aided by contingent, matriculation, and diploma fees, amounting together to about \$1,111 per annum, composed the resources of Jefferson College, the scholarships issued by it having cut off the revenue from tuition. The annual expenditures of the institution were in excess of its income, although the cash salary of the president was only \$1,200 and the highest salary paid to a professor was \$800.

[[Footnote 2](#)]

2 Article 1, 26.

[[Footnote 3](#)]

[*Dartmouth College v. Woodward*](#), 4 Wheat. 700.

[[Footnote 4](#)]

[*Fletcher v. Peck*](#), 6 Cranch 136; [*Terrett v. Taylor*](#), 9 Cranch 51.

[[Footnote 5](#)]

[*Dartmouth College v. Woodward*](#), 4 Wheat. 708; *General Hospital v. Insurance Co.*, 4 Gray 227; *Suydam v. Moore*, 8 Barb. 358; Angel & Ames on Corporations (9th ed) 767, p. 787.

[[Footnote 6](#)]

[*Mumma v. Potomac Co.*](#), 8 Pet. 286; [*Dartmouth College v. Woodward*](#), 4 Wheat. 712; *Slee v. Bloom*, 19 Johnson 474; *Riddle v. Locks and Canals*, 7 Mass. 185; *McLaren v. Pennington*, 1 Paige's Chancery 107; *Lincoln v. Kennebec Bank*, 1 Greenleaf 79; *Navigation Co v. Coon*, 6 Pa.St. 379; *Com. v. Cullen*, 13 *id.* 133; *Sprague v. Railroad*, 19 *id.* 174; *Joy v. Jackson Co.*, 11 Mich., 155.

[[Footnote 7](#)]

Cooley on Constitutional Limitations 279; [*Binghamton Bridge Case*](#), 3 Wall. 51; [*Piqua Bank v. Knoop*](#), 16 How. 369; [*Vincennes University v. Indiana*](#), 14 How. 268; [*Planters' Bank v. Sharp*](#), 6 How. 301.

[[Footnote 8](#)]

Railroad v. Dudley, 14 N.Y. 354; *Plank Road v. Thatcher*, 1 Kernan 102.

[[Footnote 9](#)]

Revere v. Copper Co., 15 Pickering 351; *Attorney General v. Clergy Society*, 10 Richardson's Equity 604.

[[Footnote 10](#)]

Bailey v. Hollister, 26 N.Y. 112; [*Sherman v. Smith*](#), 1 Black 587.

[[Footnote 11](#)]

Hascall v. Madison University, 8 Barb. 174.

[[Footnote 12](#)]

Ward v. Society of Attorneys, 1 Collyer C.C. 377.

[[Footnote 13](#)]

State v. Adams, 44 Mo. 570.

[[Footnote 14](#)]

Railroad v. Canal Co., 21 Pa.St. 22.

[[Footnote 15](#)]

Allen v. McKeen, 1 Sumner 299.

[[Footnote 16](#)]

People v. Manhattan Co., 9 Wendell 351; *Roxbury v. Railroad Co.*, 6 Cushing 424; *White v. Railroad*, 14 Barb. 559.

[[Footnote 17](#)]

3 Wharton 566.

[[Footnote 18](#)]

State v. Miller, 2 Vroom 521; *Story v. Jersey City*, 1 C.E.Green, N.J., 13.