



**Trustees of Dartmouth College,
v.
Woodward.**

**United States Supreme Court
17 U.S. 4 Wheat. 518 (1819)**

Syllabus

The charter granted by the British Crown to the trustees of Dartmouth College, in New Hampshire, in the year 1769, is a contract within the meaning of that clause of the Constitution of the United States, art. 1, s. 10, which declares that no state shall make any law impairing the obligation of contracts. The charter was not dissolved by the Revolution.

An act of the State Legislature of New Hampshire altering the charter without the consent of the corporation in a material respect, is an act impairing the obligation of the charter, and is unconstitutional and void.

Under its charter, Dartmouth College was a private, and not a public, corporation. That a corporation is established for purposes of general charity, or for education generally does not, *per se*, make it a public corporation, liable to the control of the legislature.

The case was argued at February Term, 1811, and was decided at February Term, 1812. The defendant had died after February Term, 1811. The judgment was entered *nunc pro tunc*.

This was an action of trover, brought in the State court, in which the plaintiffs in error declared for

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two books of records, purporting to contain the records of all the doings and proceedings of the trustees of Dartmouth College from the establishment of the corporation until the 7th day of October, 1816; the original charter or letters-patent, constituting the college; the common seal; and four volumes or books of account, purporting to contain the charges and accounts in favor of the college. The defendant pleaded the general issue, and at the trial, the following special verdict was found:

"The said jurors, upon their oath, say, that his Majesty George III., King of Great Britain, &c., issued his letters-patent, under the public seal of the province, now State, of New Hampshire, bearing the 13th day of December, in the 10th year of his reign, and in the year of our Lord 1769, in the words following:"

" George the Third, by the grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth, To all to whom these presents shall come, greeting:"

" Whereas, it hath been represented to our trusty and well-beloved John Wentworth, Esq., governor and commander-in-chief, in and over our province of New Hampshire, in New England, in America, that the Reverend Eleazar Wheelock, of Lebanon, in the colony of Connecticut, in New England, aforesaid, now doctor in divinity, did, on or about the year of our Lord 1754,

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at his own expense, on his own estate and plantation, set on foot an Indian charity school, and for several years, through the assistance of well-disposed persons in America, clothed, maintained and educated a number of the children of the Indian natives, with a view to their carrying the Gospel, in their own language, and spreading the knowledge of the great Redeemer, among their savage tribes, and hath actually employed a number of them as missionaries and schoolmasters in the wilderness for that purpose; and by the blessing of God upon the endeavors of said Wheelock, the design became reputable among the Indians, insomuch that a large number desired the education of their children in said school, and were also disposed to receive missionaries and schoolmasters, in the wilderness, more than could be supported by the charitable contributions in these American colonies. Whereupon, the said Eleazar Wheelock thought it expedient, that endeavors should be used to raise contributions from well disposed persons in England for the carrying on and extending said undertaking; and for that purpose the said Eleazar Wheelock requested the Rev. Nathaniel Whitaker, now doctor in divinity, to go over to England for that purpose, and sent over with him the Rev. Samson Occom, an Indian minister, who had been educated by the said Wheelock. And to enable the said Whitaker to the more successful performance of said work, on which he was sent, said Wheelock gave him a full power of attorney, by which said Whitaker solicited those worthy and generous contributors to the charity, *viz.*,

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The Right Honorable William, Earl of Dartmouth, the Honorable Sir Sidney Stafford Smythe, Knight, one of the barons of his Majesty's Court of Exchequer, John Thornton, of Clapham, in the County of Surrey, Esquire, Samuel Roffey, of Lincoln's Inn Fields, in the County of Middlesex, Esquire, Charles Hardy, of the parish of Saint Mary-le-bonne, in said county, Esquire, Daniel West, of Christ's Church, Spitalfields, in the county aforesaid, Esquire, Samuel Savage, of the same place, gentleman, Josiah

Roberts, of the Parish of St. Edmund the King, Lombard Street, London, gentleman, and Robert Keen, of the Parish of Saint Botolph, Aldgate, London, gentleman, to receive the several sums of money which should be contributed, and to be trustees for the contributors to such charity, which they cheerfully agreed to. Whereupon, the said Whitaker did, by virtue of said power of attorney, constitute and appoint the said Earl of Dartmouth, Sir Sidney Stafford Smythe, John Thornton, Samuel Roffey, Charles Hardy and Daniel West, Esquires, and Samuel Savage, Josiah Roberts and Robert Keen, gentlemen, to be trustees of the money which had then been contributed, and which should, by his means, be contributed for said purpose, which trust they have accepted, as by their engrossed declaration of the same, under their hands and seals, well executed, fully appears, and the same has also been ratified, by a deed of trust, well executed by the said Wheelock."

" And the said Wheelock further represents, that he has, by power of attorney, for many weighty reasons,

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given full power to the said trustees to fix upon and determine the place for said school, most subservient to the great end in view; and to enable them understandingly to give the preference, the said Wheelock has laid before the said trustees, the several offers which have been generously made in the several governments in America to encourage and invite the settlement of said school among them, for their own private emolument and the increase of learning in their respective places, as well as for the furtherance of the general design in view. And whereas a large number of the proprietors of lands in the western part of this our province of New Hampshire, animated and excited thereto by the generous example of his excellency, their Governor, and by the liberal contributions of many noblemen and gentlemen in England, and especially by the consideration that such a situation would be as convenient as any for carrying on the great design among the Indians; and also, considering, that without the least impediment to the said design, the same school may be enlarged and improved to promote learning among the English, and be a means to supply a great number of churches and congregations which are likely soon to be formed in that new country, with a learned and orthodox ministry; they, the said proprietors, have promised large tracts of land, for the uses aforesaid, provided the school shall be settled in the western part of our said province. And they, the said right honorable, honorable and worthy trustees before mentioned, having maturely considered the reasons and arguments in favor of the several places

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proposed, have given the preference to the western part of our said province, lying on Connecticut river, as a situation most convenient for said school."

" And the said Wheelock has further represented a necessity of a legal incorporation in order to the safety and wellbeing of said seminary, and its being capable of the tenure and disposal of lands and bequests for the use of the same. And the said Wheelock has also represented that, for many weighty reasons, it will be expedient, at least in the infancy of said institution or till it can be accommodated in that new country and he and his friends be able to remove and settle by and round about it, that the gentlemen whom he has already nominated in his last will (which he has transmitted to the aforesaid gentlemen of the trust in England) to be trustees in America should be of the corporation now proposed. And also, as there are already large collections for said school in the hands of the aforesaid gentlemen of the trust in England, and all reasons to believe, from their singular wisdom, piety and zeal to promote the Redeemer's cause (which has already procured for them the utmost confidence of the Kingdom), we may expect they will appoint successors in time to come who will be men of the same spirit, whereby great good may and will accrue many ways to the institution, and much be done, by their example and influence, to encourage and facilitate the whole design in view; for which reason, said Wheelock desires that the trustees aforesaid may be vested with all that power therein which can consist with their distance from the same. "

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" KNOW YE, THEREFORE that We, considering the premises and being willing to encourage the laudable and charitable design of spreading Christian knowledge among the savages of our American wilderness, and also that the best means of education be established in our province of New Hampshire, for the benefit of said province, do, of our special grace, certain knowledge and mere motion, by and with the advice of our counsel for said province, by these presents, will, ordain, grant and constitute that there be a college erected in our said province of New Hampshire by the name of Dartmouth College, for the education and instruction of youth of the Indian tribes in this land in reading, writing, and all parts of learning which shall appear necessary and expedient for civilizing and christianizing children of pagans, as well as in all liberal arts and sciences, and also of English youth and any others. And the trustees of said college may and shall be one body corporate and politic, in deed, action and name, and shall be called, named and distinguished by the name of the Trustees of Dartmouth College."

" And further, we have willed, given, granted, constituted and ordained, and by this our present charter, of our special grace, certain knowledge and mere motion, with the advice aforesaid, do, for us, our heirs and successors forever, will, give, grant, constitute and ordain that there shall be in the said Dartmouth College, from henceforth and forever, a body politic consisting of trustees of said Dartmouth College. And for the more full and perfect erection of said corporation

and body politic, consisting of trustees of Dartmouth College, we, of our special grace, certain

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knowledge and mere motion, do, by these presents, for us, our heirs and successors, make, ordain, constitute and appoint our trusty and well beloved John Wentworth, Esq., Governor of our said province, and the Governor of our said province of New Hampshire for the time being, and our trusty and well beloved Theodore Atkinson, Esq., now president of our Council of our said province, George Jaffrey and Daniel Peirce, Esq's, both of our said Council, and Peter Gilman, Esq., now speaker of our house of representatives in said province, and William Pitkin, Esq., one of the assistants of our colony of Connecticut, and our said trusty and well beloved Eleazar Wheelock, of Lebanon, doctor in divinity, Benjamin Pomroy, of Hebroe, James Lockwood, of Weathersfield, Timothy Pitkin and John Smalley, of Farmington, and William Patten, of Hartford, all of our said colony of Connecticut, ministers of the gospel (the whole number of said trustees consisting, and hereafter for ever to consist, of twelve and no more) to be trustees of said Dartmouth College, in this our province of New Hampshire."

" And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, will, give, grant and appoint that the said trustees and their successors shall forever hereafter be, in deed, act and name, a body corporate and politic, and that they, the said body corporate and politic, shall be known and distinguished, in all deeds, grants, bargains, sales, writings, evidences or otherwise howsoever, and in all courts forever hereafter, plea and be impleaded by the name of the Trustees of Dartmouth College; and that the said corporation,

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by the name aforesaid, shall be able, and in law capable, for the use of said Dartmouth College, to have, get, acquire, purchase, receive, hold, possess and enjoy, tenements, hereditaments, jurisdictions and franchises, for themselves and their successors, in fee-simple, or otherwise howsoever, and to purchase, receive or build any house or houses, or any other buildings, as they shall think needful and convenient, for the use of said Dartmouth College, and in such town in the western part of our said province of New Hampshire, as shall, by said trustees, or the major part of them, be agreed on, their said agreement to be evidenced by an instrument in writing, under their hands, ascertaining the same; and also to receive and dispose of any lands, goods, chattels and other things, of what nature soever, for the use aforesaid; and also to have, accept and receive any rents, profits, annuities, gifts, legacies, donations or bequests of any kind whatsoever, for the use aforesaid; so, nevertheless that the yearly value of the premises do not exceed the sum of £6000 sterling; and therewith, or otherwise, to support and pay, as the said trustees, or the major part of such of them as are regularly convened for the

purpose, shall agree, the president, tutors and other officers and ministers of said Dartmouth College; and also to pay all such missionaries and schoolmasters as shall be authorized, appointed and employed by them, for civilizing and christianizing, and instructing the Indian natives of this land, their several allowances; and also their respective annual salaries or allowances, and all such necessary and

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contingent charges as from time to time shall arise and accrue relating to the said Dartmouth College; and also, to bargain, sell, let or assign, lands, tenements or hereditaments, goods or chattels, and all other things whatsoever, by the name aforesaid in as full and ample a manner, to all intents and purposes, as a natural person, or other body politic or corporate, is able to do, by the laws or our realm of Great Britain, or of said province of New Hampshire."

" And further, of our special grace, certain knowledge and mere motion, to the intent that our said corporation and body politic may answer the end of their erection and constitution, and may have perpetual succession and continuance forever, we do, for us, our heirs and successors, will, give and grant unto the Trustees of Dartmouth College, and to their successors forever that there shall be, once a year, and every year, a meeting of said trustees, held at said Dartmouth College, at such time as by said trustees, or the major part of them, at any legal meeting of said trustees, shall be agreed on; the first meeting to be called by the said Eleazar Wheelock, as soon as conveniently may be, within one year next after the enrollment of these our letters-patent, at such time and place as he shall judge proper. And the said trustees, or the major part of any seven or more of them, shall then determine on the time for holding the annual meeting aforesaid, which may be altered as they shall hereafter find most convenient. And we further order and direct that the said Eleazar Wheelock shall notify the time for holding said first meeting, to be called as aforesaid, by sending a letter

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to each of said trustees, and causing an advertisement thereof to be printed in the New Hampshire Gazette, and in some public newspaper printed in the colony of Connecticut. But in case of the death or incapacity of the said Wheelock, then such meeting to be notified in manner aforesaid, by the Governor or commander-in-chief of our said province for the time being. And we do also, for us, our heirs and successors, hereby will, give and grant unto the said Trustees of Dartmouth College, aforesaid, and to their successors forever that when any seven or more of the said trustees, or their successors, are convened and met together, for the service of said Dartmouth College, at any time or times, such seven or more shall be capable to act as fully and amply, to all intents and purposes, as if all the trustees of said college were personally present -- and all affairs and actions

whatsoever, under the care of said trustees, shall be determined by the majority or greater number of those seven or more trustees so convened and met together."

And we do further will, ordain and direct that the president, trustees, professors, tutors and all such officers as shall be appointed for the public instruction and government of said college shall, before they undertake the execution of their offices or trusts, or within one year after, take the oaths and subscribe the declaration provided by an act of parliament made in the first year of King George the First, entitled "an act for the further security of his majesty's person and government, and the succession of the Crown in the heirs of the late Princess Sophia, being

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Protestants, and for the extinguishing the hopes of the pretended Prince of Wales, and his open and secret abettors;" that is to say, the president, before the Governor of our said province for the time being, or by one by him empowered to that service, or by the president of our said Council, and the trustees, professors, tutors and other officers, before the president of said college for the time being, who is hereby empowered to administer the same; an entry of all which shall be made in the records of said college.

And we do, for us, our heirs, and successors, hereby will, give and grant full power and authority to the president hereafter by us named, and to his successors, or, in case of his failure, to any three or more of the said trustees, to appoint other occasional meetings, from time to time, of the said seven trustees, or any greater number of them, to transact any matter or thing necessary to be done before the next annual meeting, and to order notice to the said seven, or any greater number of them, of the times and places of meeting for the service aforesaid, by a letter under his or their hands, of the same, one month before said meeting: provided always that no standing rule or order be made or altered, for the regulation of said college, nor any president or professor be chosen or displaced, nor any other matter or thing transacted or done, which shall continue in force after the then next annual meeting of the said trustees, as aforesaid.

" And further, we do, by these presents, for us, our heirs and successors, create, make, constitute, nominate and appoint our trusty and well beloved Eleazar Wheelock, doctor in divinity, the founder of said

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college, to be President of said Dartmouth College, and to have the immediate care of the education and government of such students as shall be admitted into said Dartmouth College for instruction and education; and do will, give and grant to him, in said office, full power, authority and right, to nominate, appoint, constitute and ordain, by his last will,

such suitable and meet person or persons as he shall choose to succeed him in the presidency of said Dartmouth College; and the person so appointed, by his last will, to continue in office, vested with all the powers, privileges, jurisdiction and authority of a president of said Dartmouth College; that is to say, so long and until such appointment by said last will shall be disapproved by the trustees of said Dartmouth College."

" And we do also, for us, our heirs and successors, will, give and grant to the said trustees of said Dartmouth College, and to their successors forever, or any seven or more of them, convened as aforesaid that in the case of the ceasing or failure of a president, by any means whatsoever that the said trustees do elect, nominate and appoint such qualified person as they, or the major part of any seven or more of them, convened for that purpose as above directed, shall think fit, to be president of said Dartmouth College, and to have the care of the education and government of the students as aforesaid; and in case of the ceasing of a president as aforesaid, the senior professor or tutor, being one of the trustees, shall exercise the office of a president until the trustees shall make choice of and appoint, a president as aforesaid;

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and such professor or tutor, or any three or more of the trustees, shall immediately appoint a meeting of the body of the trustees for the purpose aforesaid. And also we do will, give and grant to the said trustees, convened as aforesaid that they elect, nominate and appoint so many tutors and professors to assist the president in the education and government of the students belonging thereto as they the said trustees shall, from time to time, think needful and serviceable to the interests of said Dartmouth College. And also that the said trustees or their successors, or the major part of any seven or more of them, convened for that purpose as above directed, shall, at any time, displace and discharge from the service of said Dartmouth College, any or all such officers, and elect others in their room and stead, as before directed. And also that the said trustees, or their successors, or the major part of any seven of them which shall convene for that purpose, as above directed, do, from time to time, as occasion shall require, elect, constitute and appoint a treasurer, a clerk, an usher and a steward for the said Dartmouth College, and appoint to them, and each of them, their respective businesses and trust; and displace and discharge from the service of said college, such treasurer, clerk, usher or steward, and to elect others in their room and stead; which officers so elected, as before directed, we do for us, our heirs and successors, by these presents, constitute and establish in their respective offices, and do give to each and every of them full power and authority to exercise the same in said Dartmouth College, according to the

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directions, and during the pleasure of said trustees, as fully and freely as "

brk:

any like officers in any of our universities, colleges or seminaries of learning in our realm of Great Britain, lawfully may or ought to do. And also that the said trustees and their successors, or the major part of any seven or more of them, which shall convene for that purpose, as is above directed, as often as one or more of said trustees shall die, or by removal or otherwise shall, according to their judgment, become unfit or incapable to serve the interests of said college, do, as soon as may be after the death, removal or such unfitness or incapacity of such trustee or trustees, elect and appoint such trustee or trustees as shall supply the place of him or them so dying, or becoming incapable to serve the interests of said college; and every trustee so elected and appointed shall, by virtue of these presents, and such election and appointment, be vested with all the powers and privileges which any of the other trustees of said college are hereby vested with. And we do further will, ordain and direct that from and after the expiration of two years from the enrollment of these presents, such vacancy or vacancies as may or shall happen, by death or otherwise, in the aforesaid number of trustees, shall be filled up by election as aforesaid, so that when such vacancies shall be filled up unto the complete number of twelve trustees, eight of the aforesaid whole number of the body of trustees shall be resident, and respectable freeholders of our said province of New Hampshire, and seven of said whole number shall be laymen.

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" And we do further, of our special grace, certain knowledge and mere motion, will, give and grant unto the said trustees of Dartmouth College that they, and their successors, or the major part of any seven of them, which shall convene for that purpose, as is above directed, may make, and they are hereby fully empowered, from time to time, fully and lawfully to make and establish such ordinances, orders and laws, as may tend to the good and wholesome government of the said college, and all the students and the several officers and ministers thereof, and to the public benefit of the same, not repugnant to the laws and statutes of our realm of Great Britain, or of this our province of New Hampshire, and not excluding any person of any religious denomination whatsoever, from free and equal liberty and advantage of education, or from any of the liberties and privileges or immunities of the said college, on account of his or their speculative sentiments in religion, and of his or their being of a religious profession different from the said trustees of the said Dartmouth College. And such ordinances, orders and laws, which shall as aforesaid be made, we do, for us, our heirs and successors, by these presents, ratify, allow of, and confirm, as good and effectual to oblige and bind all the students, and the several officers and ministers of the said

college. And we do hereby authorize and empower the said trustees of Dartmouth College, and the president, tutors and professors by them elected and appointed as aforesaid, to put such ordinances, orders and laws in execution, to all proper intents and purposes. "

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" And we do further, of our special grace, certain knowledge and mere motion, will, give, and grant unto the said trustees of said Dartmouth College, for the encouragement of learning, and animating the students of said college to diligence and industry, and a laudable progress in literature that they, and their successors, or the major part of any seven or more of them, convened for that purpose, as above directed, do, by the president of said college, for the time being, or any other deputed by them, give and grant any such degree or degrees to any of the students of the said college, or any others by them thought worthy thereof, as are usually granted in either of the universities, or any other college in our realm of Great Britain; and that they sign and seal diplomas or certificates of such graduations, to be kept by the graduates as perpetual memorials and testimonials thereof."

" And we do further, of our special grace, certain knowledge and mere motion, by these presents, for us, our heirs and successors, give and grant unto the trustees of said Dartmouth College, and to their successors that they and their successors shall have a common seal, under which they may pass all diplomas or certificates of degrees, and all other affairs and business of, and concerning the said college; which shall be engraven in such a form and with such an inscription as shall be devised by the said trustees, for the time being, or by the major part of any seven or more of them, convened for the service of the said college, as is above directed. "

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" And we do further, for us, our heirs and successors, give and grant unto the said trustees of the said Dartmouth College, and their successors, or to the major part of any seven or more of them, convened for the service of the said college, full power and authority, from time to time, to nominate and appoint all other officers and ministers, which they shall think convenient and necessary for the service of the said college, not herein particularly named or mentioned; which officers and ministers we do hereby empower to execute their offices and trusts, as fully and freely as any of the officers and ministers in our universities or colleges in our realm of Great Britain lawfully may or ought to do."

" And further that the generous contributors to the support of this design of spreading the knowledge of the only true God and Saviour among the American savages, may, from time to time, be satisfied that their liberalities are faithfully disposed of, in the best manner, for that purpose, and that others may, in future time, be encouraged in the exercise of

the like liberality, for promoting the same pious design, it shall be the duty of the president of said Dartmouth College, and of his successors, annually, or as often as he shall be thereunto desired or required, to transmit to the right honorable, honorable, and worthy gentlemen of the trust, in England, before mentioned, a faithful account of the improvements and disbursements of the several sums he shall receive from the donations and bequests made in England, through the hands of said trustees, and also advise them of the general plans laid, and prospects exhibited, as well as a faithful

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account of all remarkable occurrences, in order, if they shall think expedient that they may be published. And this to continue so long as they shall perpetuate their board of trust, and there shall be any of the Indian natives remaining to be proper objects of that charity. And lastly, our express will and pleasure is, and we do, by these presents, for us, our heirs and successors, give and grant unto the said trustees of Dartmouth College, and to their successors forever that these our letters-patent, on the enrollment thereof in the secretary's office of our province of New Hampshire aforesaid, shall be good and effectual in the law, to all intents and purposes, against us, our heirs and successors, without any other license, grant or confirmation from us, our heirs and successors, hereafter by the said trustees to be had and obtained, notwithstanding the not writing or misrecital, not naming or misnaming the aforesaid offices, franchises, privileges, immunities or other the premises, or any of them, and notwithstanding a writ of *ad quod damnum* hath not issued forth to inquire of the premises, or any of them, before the ensembling hereof, any statute, act, ordinance, or provision, or any other matter or thing, to the contrary notwithstanding. To have and to hold, all and singular the privileges, advantages, liberties, immunities, and all other the premises herein and hereby granted, or which are meant, mentioned or intended to be herein and hereby given and granted, unto them, the said trustees of Dartmouth College, and to their successors forever. In testimony whereof, we have caused these our letters to be made patent, and the public seal of

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our said province of New Hampshire to be hereunto affixed. Witness our trusty and well beloved John Wentworth, Esquire, Governor and commander-in-chief in and over our said province, &c., this thirteenth day of December, in the tenth year of our reign, and in the year of our Lord 1769."

" *N.B.* The words 'and such professor or tutor, or any three or more of the trustees, shall immediately appoint a meeting of the body of the trustees, for the purpose aforesaid,' between the first and second lines, also the words 'or more,' between the 27th and 28th lines, also the words 'or more,' between the 28th and 29th lines, and also the words 'to all intents and purposes,' between the 37th and 38th lines of

this sheet, were respectively interlined, before signing and sealing."

"And the said jurors, upon their oath, further say that, afterwards, upon the 18th day of the same December, the said letters-patent were duly enrolled and recorded in the secretary's office of said province, now State, of New Hampshire, and afterwards, and within one year from the issuing of the same letters-patent, all the persons named as trustees in the same accepted the said letters-patent, and assented thereunto, and the corporation therein, and thereby created and erected was duly organized, and has, until the passing of the act of the Legislature of the State of New Hampshire, of the 27th of June, A.D. 1816, and ever since (unless prevented by said act and the

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doings under the same) continued to be a corporation."

"And the said jurors, upon their oath, further say that, immediately after its erection and organization as aforesaid, the said corporation had, took, acquired and received, by gift, donation, devise and otherwise, lands, goods, chattels and moneys of great value; and from time to time since, have had, taken, received and acquired, in manner aforesaid, and otherwise, lands, goods, chattels and moneys of great value; and on the same 27th day of June, A.D. 1816, the said corporation, erected and organized as aforesaid, had, held and enjoyed, and ever since have had, held and enjoyed, divers lands, tenements, hereditaments, goods, chattels and moneys, acquired in manner aforesaid, the yearly income of the same, not exceeding the sum of \$26,666, for the use of said Dartmouth College, as specified in said letters-patent. And the said jurors, upon their oath, further say that part of the said lands, so acquired and holden by the said trustees as aforesaid, were granted by (and are situate in) the State of Vermont, A.D. 1785, and are of great value; and other part of said lands, so acquired and holden as aforesaid, were granted by (and are situate in) the State of New Hampshire, in the years 1789 and 1807, and are of great value. And the said jurors, upon their oath, further say that the said trustees of Dartmouth College, so constituted as aforesaid, on the same 27th day of June, A.D. 1816, were possessed of the goods and chattels in the declaration of the said trustees specified,

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and at the place therein mentioned, as of their own proper goods and chattels, and continued so possessed until, and at the time of the demand and refusal of the same, as hereinafter mentioned, unless divested thereof, and their title thereto defeated and rendered invalid, by the provisions of the act of the State of New Hampshire, made and passed on the same 27th day of June, A.D. 1816, and the doings under the same, as hereinafter mentioned and recited."

"And the said jurors, upon their oath, further say that, on the 27th day of June, A.D. 1816, the legislature of said State of New Hampshire made and passed a certain act, entitled, 'An Act to amend the charter, and enlarge and improve the corporation of Dartmouth College,' in the words following:"

" An Act to amend the charter, and enlarge and improve the corporation of Dartmouth College."

" Whereas, knowledge and learning generally diffused through a community, are essential to the preservation of a free government, and extending the opportunities and advantages of education is highly conducive to promote this end, and by the constitution it is made the duty of the legislators and magistrates to cherish the interests of literature, and the sciences, and all seminaries established for their advancement; and as the college of the State may, in the opinion of the legislature, be rendered more extensively useful: therefore --"

" 1. Be it enacted, &c. that the

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corporation, heretofore called and known by the name of the Trustees of Dartmouth College shall ever hereafter be called and known by the name of the Trustees of Dartmouth University; and the whole number of said trustees shall be twenty-one, a majority of whom shall form a quorum for the transaction of business; and they and their successors in that capacity, as hereby constituted, shall respectively forever have, hold, use, exercise and enjoy all the powers, authorities, rights, property, liberties, privileges and immunities which have hitherto been possessed, enjoyed and used by the Trustees of Dartmouth College, except so far as the same may be varied or limited by the provisions of this act. And they shall have power to determine the times and places of their meetings, and manner of notifying the same; to organize colleges in the university; to establish an institute, and elect fellows and members thereof: to appoint such officers as they may deem proper, and determine their duties and compensation, and also to displace them; to delegate the power of supplying vacancies in any of the offices of the university, for any term of time not extending beyond their next meeting: to pass ordinances for the government of the students, with reasonable penalties, not inconsistent with the constitution and laws of this State; to prescribe the course of education, and confer degrees; and to arrange, invest and employ the funds of the university."

" 2. And be it further enacted that there shall be a Board of Overseers, who shall have perpetual succession, and whose number shall be twenty-five,

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fifteen of whom shall constitute a quorum for the transaction of business. The President of the Senate, and the Speaker of the House of Representatives of New Hampshire, the

Governor and Lieutenant Governor of Vermont, for the time being, shall be members of said board, *ex officio*. The Board of Overseers shall have power to determine the times and places of their meetings, and manner of notifying the same; to inspect and confirm, or disapprove and negative, such votes and proceedings of the Board of Trustees as shall relate to the appointment and removal of President, professors and other permanent officers of the university, and determine their salaries; to the establishment of colleges and professorships, and the erection of new college buildings: provided always that the said negative shall be expressed within sixty days from the time of said Overseers' being furnished with copies of such acts: provided also that all votes and proceedings of the Board of Trustees shall be valid and effectual, to all intents and purposes, until such negative of the Board of Overseers be expressed, according to the provisions of this act."

" 3. Be it further enacted that there shall be a treasurer of said corporation, who shall be duly sworn, and who, before he enters upon the duties of his office, shall give bonds, with sureties, to the satisfaction of the corporation, for the faithful performance thereof; and also a secretary to each of the Boards of Trustees and Overseers, to be elected by the said Boards, respectively, who shall keep a just and true record of the proceedings of the Board for

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which he was chosen. And it shall furthermore be the duty of the secretary of the Board of Trustees to furnish, as soon as may be, to the said Board of Overseers, copies of the records of such votes and proceedings, as by the provisions of this act are made subject to their revision and control."

" 4. Be it further enacted that the President of Dartmouth University, and his successors in office, shall have the superintendence of the government and instruction of the students, and may preside at all meetings of the trustees, and do and execute all the duties devolving by usage on the president of a university. He shall render annually to the Governor of this State an account of the number of students, and of the State of the funds of the University, and likewise copies of all important votes and proceedings of the corporation and Overseers, which shall be made out by the secretaries of the respective Boards."

" 5. Be it further enacted that the President and professors of the University shall be nominated by the Trustees, and approved by the Overseers, and shall be liable to be suspended or removed from office in manner as before provided. And each of the two Boards of Trustees and Overseers shall have power to suspend and remove any member of their respective Boards."

" 6. Be it further enacted that the Governor and counsel are hereby authorized to fill all vacancies in the Board of Overseers, whether the same be original vacancies or are

occasioned by the death, resignation or removal of any member. And

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the Governor and counsel in like manner shall, by appointments, as soon as may be, complete the present Board of Trustees to the number of twenty-one, as provided for by this act, and shall have power also to fill all vacancies that may occur previous to, or during the first meeting of the said Board of Trustees. But the President of said University for the time being, shall, nevertheless, be a member of said Board of Trustees *ex officio*. And the Governor and Council shall have power to inspect the doings and proceedings of the corporation, and of all the officers of the University, whenever they deem it expedient; and they are hereby required to make such inspection, and report the same to the legislature of this State, as often as once in every five years. And the Governor is hereby authorized and requested to summon the first meeting of the said Trustees and Overseers, to be held at Hanover, on the 26th day of August next."

" 7. Be it further enacted that the President and professors of the University, before entering upon the duties of their offices, shall take the oath to support the Constitution of the United States and of this State; certificates of which shall be in the office of the secretary of this State, within sixty days from their entering on their offices respectively."

" 8. Be it further enacted that perfect freedom of religious opinion shall be enjoyed by all the officers and students of the University, and no officer or student shall be deprived of any honors, privileges or benefits of the institution on account of his religious creed or belief. The theological colleges which

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may be established in the University shall be founded on the same principles of religious freedom; and any man, or body of men, shall have a right to endow colleges or professorships of any sect of the Protestant Christian religion; and the Trustees shall be held and obliged to appoint professors of learning and piety of such sects, according to the will of the donors."

" Approved, June 27th, 1816."

"And the said jurors, upon their oath, further say that, at the annual meeting of the Trustees of Dartmouth College, constituted agreeably to the letters-patent aforesaid, and in no other way or manner, holden at said college, on the 28th day of August, A.D. 1816, the said Trustees voted and resolved, and caused the said vote and resolve to be entered on their records that they do not accept the provisions of the said act of the legislature of New Hampshire of the 27th of June 1816, above recited, but do, by the said vote and resolve, expressly refuse to accept or

act under the same. And the said jurors, upon their oath, further say that the said Trustees of Dartmouth College have never accepted, assented to, or acted under, the said Act of the 27th of June, A.D. 1816, or any act passed in addition thereto, or in amendment thereof, but have continued to act, and still claim the right of acting, under the said letters-patent."

"And the said jurors, upon their oath, further say that, on the 7th day of October, A.D. 1816, and before the commencement of this suit, the said Trustees of Dartmouth College demanded of the said

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William H. Woodward the property, goods and chattels in the said declaration specified, and requested the said William H. Woodward, who then had the same in his hands and possession, to deliver the same to them, which the said William H. Woodward then and there refused to do, and has ever since neglected and refused to do, but converted the same to his own use, if the said Trustees of Dartmouth College could, after the passing of the said act of the 27th day of June, lawfully demand the same, and if the said William H. Woodward was not, by law, authorized to retain the same in his possession after such demand."

"And the said jurors, upon their oath, further say that, on the 18th day of December, A.D. 1816, the Legislature of the said State of New Hampshire made and passed a certain other act, entitled"

" An act in addition to, and in amendment of, an act, entitled, an act to amend the charter, and enlarge and improve the corporation of Dartmouth College,"

"in the words following:"

" An act in addition to, and in amendment of, an act, entitled, 'an act to amend the charter, and enlarge and improve the Corporation of Dartmouth College.'"

" Whereas, the meetings of the Trustees and Overseers of Dartmouth University, which were summoned agreeably to the provisions of said act, failed of being duly holden, in consequence of a quorum of neither said Trustees nor Overseers attending at the

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time and place appointed, whereby the proceedings of said corporation have hitherto been, and still are delayed:"

" 1. Be it enacted, &c. that the Governor be, and he is hereby authorized and requested to summon a meeting of the Trustees of Dartmouth University, at such time and place as he may deem expedient. And the said Trustees, at such meeting, may do and transact any matter or thing, within the limits of their jurisdiction and power, as such Trustees, to

every intent and purpose, and as fully and completely as if the same were transacted at any annual or other meeting. And the Governor, with advice of Council, is authorized to fill all vacancies that have happened, or may happen in the Board of said Trustees, previous to their next annual meeting. And the Governor is hereby authorized to summon a meeting of the Overseers of said University, at such time and place as he may consider proper. And provided a less number than a quorum of said Board of Overseers convene at the time and place appointed for such meeting of their Board, they shall have power to adjourn, from time to time, until a quorum shall have convened."

" 2. And be it further enacted that so much of the act to which this is an addition as makes necessary any particular number of Trustees or Overseers of said University to constitute a quorum for the transaction of business be, and the same hereby is repealed; and that hereafter, nine of said Trustees, convened agreeably to the provisions of this act, or

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to those of that to which this is an addition, shall be a quorum for transacting business; and that in the Board of Trustees, six votes at least shall be necessary for the passage of any act or resolution. And provided also that any smaller number than nine of said Trustees, convened at the time and place appointed for any meeting of their Board, according to the provisions of this act, or that to which this is an addition, shall have power to adjourn from time to time, until a quorum shall have convened."

" 3. And be it further enacted that each member of said Board of Trustees, already appointed or chosen, or hereafter to be appointed or chosen, shall, before entering on the duties of his office, make and subscribe an oath for the faithful discharge of the duties aforesaid; which oath shall be returned to, and filed in the office of the secretary of State, previous to the next regular meeting of said Board, after said member enters on the duties of his office, as aforesaid."

" Approved, December 18th, 1816."

"And the said jurors, upon their oath, further say that, on the 26th day of December, A.D. 1816, the Legislature of said State of New Hampshire made and passed a certain other act, entitled, 'an act in addition to an act, entitled, an act in addition to, and in amendment of an act, entitled, an act to amend the charter and enlarge and improve the corporation of Dartmouth College,' in the words following: "

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" An act in addition to an act, entitled, 'an act in addition to, and in amendment of, an act, entitled, an act to amend the charter and enlarge and improve the corporation of Dartmouth College.'"

" Be it enacted &c. that if any person or persons shall assume the office of President, Trustee, professor, secretary, treasurer, librarian or other officer of Dartmouth University; or by any name, or under any pretext, shall, directly or indirectly, take upon himself or themselves the discharge of any of the duties of either of those offices, except it be pursuant to, and in conformity with, the provisions of an act, entitled, 'an act to amend the charter and enlarge and improve the corporation of Dartmouth College,' or, of the 'act, in addition to and in amendment of an act, entitled, an act to amend the charter and enlarge and improve the corporation of Dartmouth College,' or shall in any way, directly or indirectly, wilfully impede or hinder any such officer or officers already existing, or hereafter to be appointed agreeably to the provisions of the acts aforesaid, in the free and entire discharge of the duties of their respective offices, conformably to the provisions of said acts, the person or persons so offending shall, for each offence, forfeit and pay the sum of five hundred dollars, to be recovered by any person who shall sue therefor, one-half thereof to the use of the prosecutor, and the other half to the use of said University."

" And be it further enacted that the person or persons who sustained the offices of secretary and treasurer

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of the Trustees of Dartmouth College, next before the passage of the act, entitled, 'an act to amend the charter and enlarge and improve the corporation of Dartmouth College,' shall continue to hold and discharge the duties of those offices, as secretary and treasurer of the Trustees of Dartmouth University, until another person or persons be appointed, in his or their stead, by the Trustees of said University. And that the treasurer of said University, so existing, shall, in his office, have the care, management, direction and superintendence of the property of said corporation, whether real or personal, until a quorum of said Trustees shall have convened in a regular meeting."

" Approved, December 26th, 1816."

"And the said jurors, upon their oath, further say that the said William H. Woodward, before the said 27th day of June, had been duly appointed by the said Trustees of Dartmouth College, secretary and treasurer of the said corporation, and was duly qualified to exercise, and did exercise the said offices, and perform the duties of the same; and as such secretary and treasurer, rightfully had, while he so continued secretary and treasurer as aforesaid, the custody and keeping of the several goods, chattels and property, in said declaration specified."

"And the said jurors, upon their oath, further say that the said William H. Woodward was removed by said Trustees of Dartmouth College (if the said Trustees could, by law, do the said acts) from said office of secretary, on the 27th day of

August, A.D. 1816, and from said office of treasurer, on the 27th day of

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September, then next following, of which said removals he, the said William H. Woodward, had due notice on each of said days last mentioned."

"And the said jurors, upon their oath, further say that the corporation called the Trustees of Dartmouth University was duly organized on the 4th day of February, A.D. 1817, pursuant to, and under, the said recited acts of the 27th day of June, and of the 18th and 26th days of December, A.D. 1816; and the said William H. Woodward was, on the said 4th day of February, A.D. 1817, duly appointed by the said Trustees of Dartmouth University, secretary and treasurer of the said Trustees of Dartmouth University, and then and there accepted both said offices."

"And the said jurors, upon their oath, further say that this suit was commenced on the 8th day of February, A.D. 1817. But whether upon the whole matter aforesaid, by the jurors aforesaid, in manner and form aforesaid found, the said acts of the 27th of June, 18th and 26th of December, A.D. 1816, are valid in law, and binding on the said Trustees of Dartmouth College, without acceptance thereof and assent thereunto by them, so as to render the plaintiffs incapable of maintaining this action, or whether the same acts are repugnant to the Constitution of the United States, and so void, the said jurors are wholly ignorant, and pray the advice of the court upon the premises. And if, upon the said matter, it shall seem to the Court here that the said acts last mentioned are valid in law, and binding on said Trustees of Dartmouth College,

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without acceptance thereof and assent thereto by them, so as to render the plaintiffs incapable of maintaining this action, and are not repugnant to the Constitution of the United States, then the said jurors, upon their oath, say that the said William H. Woodward is not guilty of the premises above laid to his charge by the declaration aforesaid, as the said William H. Woodward hath above in pleading alleged. But if, upon the whole matter aforesaid, it shall seem to the Court here that the said acts last mentioned are not valid in law, and are not binding on the said Trustees of Dartmouth College without acceptance thereof and assent thereto by them, so as to render them incapable of maintaining this action, and that the said acts are repugnant to the Constitution of the United States and void, then the said jurors, upon their oath, say that the said William H. Woodward is guilty of the premises above laid to his charge, by the declaration aforesaid, and in that case, they assess the damages of them, the said Trustees of Dartmouth College, by occasion thereof, at \$20,000."

Judgment having been afterwards rendered upon the said special verdict, by the superior court of the State of New Hampshire, being the highest court of law or equity of said State, for the plaintiff below, the cause was brought before this court by writ of error.

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