THE DARTMOUTH COLLEGE CASE.

BY JUDGE W. F. BRANNAN.

William H. Woodward was the father of Judge William G. Woodward, and was, I am told, so highly esteemed by the community that at his untimely death a meeting of the citizens in commemoration of the public service he had rendered was held. He obtained historic fame by the firm attitude he maintained in the celebrated Dartmouth College case. He was made the sole defendant in that suit, but to understand how he happened to be so placed in that case it is necessary to set forth the facts that led to the controversy. The Rev. Dr. Eleazer Wheelock was the founder of that college under a royal charter granted by King George III. in December, 1769. The charter made the college a corporate body, and among other provisions it set forth the following: First, that it should be perpetual, and, secondly, that it should be governed by a board of trustees not to exceed twelve in number, and it named the institution, Dartmouth College. It may be added that it provided that any vacancy in the board of trustees should be supplied by the remaining trustees.

Doctor Wheelock had originally opened a school on his own premises and at his own expense for the education of Indian children. One of his pupils was a young Mohegan Indian named Samson Occom, who became a remarkable Christian preacher among his race. Some years after Mr. Wheelock concluded to take into his school white as well as Indian children. Success attended his efforts when this addition was made to the school. He finally concluded to enlarge his field of education by establishing a college for the education of both white and Indian children. Dr. Wheelock was a man of great energy and perseverance, and he dispatched Rev. Mr. Whitaker, with full power of attorney to London, who took with him the Indian, Occom, to solicit aid for the con-

templated college. They met with great success and ten thousand pounds were subscribed. The presence of Occom contributed not a little to the interest in promoting the purpose of their errand. He was at first an object of curiosity, but when he was found to be a young man of pleasant manners, well versed in the English language, and very intelligent, a high opinion was formed of his capacity.

The charter was the work of Mr. Wheelock and prepared by him with great care, and intended to be perpetual without change of any kind. The college was established from the aid furnished both at home and abroad, and was eventually put in a flourishing condition. Nearly fifty years had passed without a breath of discontentment at any provision in its charter. In 1816 the Legislature of New Hampshire commenced its work of altering the charter and passed several acts with that object in view. The changes that the Legislature undertook to make may be briefly summed up: First, it passed an act by which the number of trustees, which the charter had in express terms declared should never be more than twelve, was increased by adding nine new trustees, thus making the board of trustees to consist of twenty-one members. It next passed an act creating a board of twenty-five overseers, to act as a board of control, which could annul any proceeding undertaken by the board of trustees, thus making the trustees subject to the power of the overseers. It changed the name of the institution from Dartmouth College to Dartmouth University. These changes met with fierce resistance in the Legislature and were adopted by small majorities. The changes which the Legislature thus assumed to make were obnoxious to a very large portion of the leading citizens of the State.

There was no warrant in the charter for the creation of the board of overseers, nor does it appear that there had been any irregularities in the actions of the trustees, either of commission or omission.

William H. Woodward was a direct lineal descendant of Dr. Wheelock. He was secretary and treasurer of the college and the custodian of its records and papers. His blood rose to the boiling point at this legislation. He regarded it

as foul sacrilege to the memory of the great and good man, who had founded the college, and who, in the charter he had prepared, had so provided by restrictive measures that to go beyond would violate both its letter and spirit. He refused to recognize the authority assumed by the change made or surrender the trusts reposed in him.

The twelve trustees refused to co-operate with the nine new ones sought to be added to their number, or to yield obedience to, or respect for the supervisory powers, sought to be conferred on the board of overseers. The nine new trustees were appointed by the governor and council, and the board of overseers were also appointed by the same authority, except four, one of whom was the governor, and three others who held certain public offices, who were made members *ex officio*.

Public sentiment was so strong and so widely divided that it was resolved to settle the trouble by invoking judicial action. Suit was accordingly brought in the State Supreme Court, and the title given to it was as follows: "Trustees of Dartmouth College vs. William H. Woodward." This title apparently implied that Mr. Woodward was favorable to the legislative action which, as I have understood, was not the truth. He was holding certain offices under the college which have been mentioned and to hasten and simplify the suit it was agreed that Mr. Woodward should be made the defendant, free from the payment of costs, attorney's fees, and any other expenses. The record does not say this, but that was the agreement between the parties, as I have understood. The case was first tried in the State Court, the judges of the Supreme Court presiding, and a judgment returned holding that the legislation complained of was within the constitutional powers of the Legislature and valid. An appeal was taken to the Supreme Court of the United States.

The Federal constitution contains this clause, adopted at the time the constitution was originally framed, viz.: "No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts." The contest in the case grew out of the portion which prohibits any State from passing any law impairing the obligations of contracts. It was claimed by those supporting the legislation in question

that the prohibition referred to was one that had a pecuniary basis, and could only apply and was intended to apply to transactions arising out of business dealings, and hence did not include charters of an eleemosynary character, or a charity, or the like. They further argued that the charter in question was a grant from a British king while New Hampshire was a British dominion and part of the British Empire, and when the United States secured its independence and became an independent nation, the State of New Hampshire acquired sovereignty over Dartmouth College. The constitution of that State manifested its desire to promote literature, learning and education, and it therefore had power to pass the amendments to the charter of Dartmouth College, which in no manner interfered with its educational objects and duties, or lessened its interest in promoting scholarship.

Daniel Webster and his colleague took the ground that the charter of Dartmouth College was in law a contract, and that the changes made by legislation impaired the obligations of the contract, and that such legislation violated the national constitution, and was consequently void and of no effect.

The case came up for argument in the Supreme Court of the United States on the 10th day of March, 1818. It was a new question and excited much interest in the eastern states. Mr. Webster and Mr. Hopkinson appeared for the appellant and Mr. Holmes and William Wirt, attorney-general for the United States, appeared for the other side. The attorneys were all able men and in the arguments all put forth their best efforts. The arguments lasted for more than a week, and at the conclusion, the court continued the case for advisement. At the second day of the February term, 1819, the judgment of the court was pronounced by Chief Justice Marshall, and was concurred in by all the judges, except Justice Duvall, who does not appear to have filed an opinion. He must simply have said, "Mr. Clerk, enter my name as dissenting."

I do not deem it necessary to go to any length in detailing the reasons Chief Justice Marshall assigned for the judgment he pronounced. It presented new questions that had never

been touched before this suit was brought. A legislative body composed, it must be assumed, of fair-minded men, after strong debate, had sanctioned by their votes the passage of the acts in question, the highest tribunal of the State, after argument before it, had declared their legislative acts to be in accord with the existing law. These circumstances, as the Chief Justice substantially said, all had their influence in requiring the whole court to give grave study and deep thought to the questions involved before reaching a conclusion. The opinion he prepared had all the marks of great care and anxious consideration, since every point in the case is shown to have been earnestly examined and critically weighed.

The opinion commences by a reference to the amendments made to the charter of the college by the Legislature of New Hampshire, and the refusal of the majority of the trustees to accept these amendments, which gave rise to the suit brought by and in the name of the college. It then says that it requires no arguments to prove that the circumstances of the case constituted a contract, and that in this transaction every ingredient of a legitimate and complete contract is to be found. It next says the points for consideration are:

1. Is this contract protected by the constitution of the United States?

2. Is it impaired by the acts under which the defendant holds?

The opinion answers both these questions in the affirmative, and held the legislation in dispute void and of no effect.

This decision has admonished State legislatures to keep within the bounds prescribed by the Federal constitution, and to tear down the veil behind which the obligations impairing the sanctity of contracts are sought to be hidden by crafty individuals.

Justices Bushrod Washington and Joseph Story both drew up separate opinions in the case, which were filed and read by them after the Chief Justice concluded. There was no conflict between them and the Chief Justice. Bushrod Washington was a nephew of George Washington, and had the clear mind and sound judgment that distinguished his revered uncle.

Timothy Farrar was one of the twelve trustees, and when the litigation had come to a final end, he published a book in which was narrated the proceedings in both the State and Federal courts, together with full arguments of counsel in both courts, and the full findings of the judges in both of the courts. The book met with a great sale, for the case had attracted much attention among the lawyers and the library of nearly every attorney, except those south of Virginia, had a copy of it.

Muscatine, Iowa.

MORMONS COMING: We are informed that a Mormon Elder has been in this city, and made arrangements with H. W. Love to have between 50 and 100 hand-carts made as soon as possible, to be used in crossing the plains the coming summer. Between three and four thousand of the faithful followers of Prince Brigham are expected here between the 1st and 10th of next month. They purchase their wagons in Chicago, but they are to come here and lay in a stock of provisions, and the necessary outfit for the trip. The Mormons are mostly English, Welsh and Danes, and will most probably go better prepared to endure the hardships of the journey than did those who went out in the summer of 1856.—*Iowa City Republican. From St. Charles City Intelligencer, May* 19, 1859.

THE NEW STEAMER, "Demoine City," arrived at Des Moines a few days since, with a full load of freight and several passengers. She was built at Pittsburg, expressly for the Des Moines river trade, and is the best boat we have yet seen on the river, although not quite equal in cabin capacity to the Flora Temple. Our citizens greeted with pleasure a boat that bears the name of their city, and large numbers visited her during her stay in port. Gov. Lowe and J. B. Stewart, Esq., were among her passengers down the river.—*Citizen.—From St. Charles City Intelligencer, May* 12, 1859.