KENTUCKY UNIVERSITY.

11

SUBSTANCE OF THE ARGUMENT

OF

COL. W. C. P. BRECKINRIDGE,

BEFORE THE

JOINT COMMITTEES ON THE JUDICIARY OF THE LEGISLATURE OF KENTUCKY, ON THE PROPOSED AMENDMENTS TO THE CHARTER OF KENTUCKY UNIVERSITY, DELIVERED IN THE SENATE CHAMBER, JANUARY 16, 1874.

GENTLEMEN OF THE JOINT COMMITTEES:

I represent Kentucky University, and, as her counsel, I desire to submit to you such considerations of law and fact as seem to me important in your deliberations upon the petitions referred to you.

As I am informed, there are no affidavits, depositions, or other legal testimony offered to you; there are no proofs as to the preparation, inception, or cause of these petitions; no specific charges presented by responsible parties, over their own signatures, of malfeasance in office, non-performance of duty, or violation of law; no allegation of misappropriation of funds or official misconduct. Whenever such charges are made, we are prepared to meet them; until made, I present the names of the Curators as ample refutation of insinuations, inuendoes, and misrepresentations.

Petitions professing to be the expression of desire from certain congregations, calling themselves Christian Churches, have been presented, asking this Legislature to so amend the charter of Kentucky University as to oust from office the present Board of Curators, and vest in "The Christian Church in Kentucky" the power of electing periodically the Curators of said University; and this demand is based on the claim that that Church is in its aggregate unity the owner of the University, and entitled to its control and management. Before this demand can be granted, the Legislature must decide that the Christian Church is the owner of the property of Kentucky University; that the Legislature has the power to pass the act desired, and that the change is a proper one to be made.

I deny all three of these propositions. Historically, the Christian Church in Kentucky, as such, never contributed to the funds of the University, and never had a voice in its management. As a matter of fact, it never held any legal or equitable interest in it. As a question of law, it was never partner, stockholder, owner, or *cestui que trust;* and, according to its Church organization, government, and polity, it could not possibly be title-holder of the property, or control the affairs of the University.

To the judicial department of the government has the Constitution committed the decisions of questions affecting title to property. If these Churches are the owners of this institution; if they have just cause of complaint; the courts are open to them. Let them go where legal proof can be taken; the facts ascertained judicially, and the legal rights adjudicated. Where there is a right there is a legal remedy. Let them seek it in the courts. Surely it cannot be that numbers are an element in such a decision; and clamor potential; and therefore the remedy sought here!

Can you afford to hear every complaint that may be made as to the management of all corporations? Will you open the door to every stockholder who may think himself aggrieved; and, turning the legislative committees into quasi courts, render judgments and report amendatory acts? Let the law be administered in the courts of justice, where passion finds no utterance, and justice dominates over policy?

But we are here to answer, if required. My learned friend (Governor Porter) agrees that this is a private corporation. We agree that the principles laid down in the Dartmouth College case would have applied to this case, but for the power reserved to alter, amend, or repeal charters. He contends that that reservation of the power of amendment is practically unlimited; and that while under the charter the legal title is in the Curators, the equitable title is in the Christian Church. In other words, he holds that the Curators are in law but trustees for the true owner—The Christian Church; and therefore, if it desire the change, the Legislature ought to grant it.

I have been struck with the truth and candor of Governor Porter's statement, that he was not well acquainted with the steps of growth of Kentucky University. There are five parties interested in the institution: 1. Bacon College, founded by Thornton F. Johnson and certain others; 2. Transylvania University, older even that Bacon College, and whose antiquity every child of hers reveres; 3. Kentucky University as established in Harrodsburg prior to its removal and consolidation with Transylvania University, the present institution; 4. The State, through the Agricultural College; 5. The citizens of Fayette and other counties who have so generously given of their means to establish the institution in their midst. The only party who does not have and never did have any part in it, is the one that now makes the air full of clamors. The history of the enterprise shows that the Christian Church of Kentucky, as such, never had part or lot in it. To Transylvania it gave nothing. She was the cherished child of the Old Dominion, and to her, her history or her funds, the Christian Church has in no way contributed. The original funds of the Agricultural and Mechanical College came from grants of the Federal Government, and the later funds came from the citizens of Fayette and other counties, irrespective of sect or party, religious or political, and the claim never has been made, nor is it even now made, that the Christian Church, as such, gave anything to it.

Transylvania, whose corner-stone was laid in 1780, when our beautiful Blue-grass country was a wilderness, has not been destroyed—has not been merged into Kentucky University. Her corporate powers are suspended; but her corporate existence

remains. The two corporations known as Transylvania University and Kentucky University were consolidated into a new corporation, under the name of the Kentucky University. They were consolidated, not by an act of the Legislature of Kentucky, but *by their own consent*, under the permission of the law. The contract of consolidation was the then existing charter of Kentucky University, the acts of February 22, 1865, and February 28, 1865, and the charters of Transylvania. The consolidation was based on common consent. The funds and property of Transylvania were expressly excepted from the provisions of the act of 1858 (section 3 of act of February 28, 1865).

Now by what right can this Legislature make a new contract between Transylvania and Kentucky Universities? Is it not possible that the legal effect of these amendments—if they become a law—will be the dissolution of that consolidation?

Again, as to Bacon College. There is not the shadow of a claim that the Christian Church established this as a sectarian college. Georgetown College was under the control of members of the Baptist Church, and there were intestine troubles, which resulted in the resignation of Thornton F. Johnson, one of the professors. He determined to establish a college of his own, on a broad non-sectarian basis. I hold his first circular in my hand. John T. Johnson, whose memory is revered even as his person was beloved, seconded the movement; and I hold his first publication in my hand.

He called on all the friends of the enterprise to assist them, and, strange to say, basing his appeal upon the very same philanthropic basis that Mr. Bowman put his efforts in after years, namely: Universal education on universal principles. In his circular letter he calls upon all men of philanthropic views, and of whatever faith, to unite in his effort. Even so does Mr. Bowman, whose great heart is filled with a desire to have universal and unsectional education *for the people*. A charter was obtained under the name of Bacon College. In that charter not one word is said about the Christian Church. After years of unsuccessful struggles, Bacon College became a wreck, and her halls were closed. All efforts to resuscitate failed. In debt, without funds, doors closed—the fate of Bacon College seemed sealed. But at this moment John B. Bowman, a plain farmer of

Mercer county, an alumnus of Bacon College, a quite young man, conceived the idea of building a great University on the ruins of a small College. This is the conception of no ordinary mind, and the desire of no selfish heart. Moved by no personal ambition, at his own risk and expense, he starts out upon his self-appointed mission, devoting the prime of his manhood to the great work he had undertaken. He headed the list with the names of himself and brothers, and unaided and alone raised the endowment fund.

When he was thus engaged he visited the only State meeting of any kind that the Christian Churches have, viz: a voluntary Missionary Society, and asked to be heard on this great matter that filled his heart, and was *refused*, because his enterprise was foreign to their objects; and for the Church to take any part in such an enterprise would be to ignore its own fundamental tenets. And the refusal was in strict accord with the teachings of their leaders and their polity of Church government. There is no such ecclesiastical body as "The Christian Church of Kentucky." Their own Church polity forbids this. They must tear down the superstructure of their faith to get such a body. Their tenets are, that that which is called the Christian Church is composed of separate and individual Churches, acknowledging no common head and no common arbiter but their God. They have no Conference, Synod, Convocation, or other body. Each congregation is an independent unit, sovereign in its own limits—powerless beyond. There is no delegate—no representative feature. Any body of Christians can organize a Church of God; establish itself.

I commend to my Christian brethren around me the teachings of Alexander Campbell in the Campbell-Rice debate; and in the Harbinger for 1841-1844. Brush the dust off of these ancient volumes, and renew your elementary studies; and then tell us what is this new ecclesiastical organism—"The Christian Church in Kentucky." "The Christian Churches in Kentucky" I understand as I do "The Churches in Gallacia." I freely recognize that, in a very high sense, there is a noble company of men and women, bought with the blood of the Son of God, who are Christians in Kentucky. Thank God for it. I will not quarrel with them for claiming a somewhat exclusive

use of the name. In every sense—narrow and broad—thousands of them are Christians. But there is no organic Church—no ecclesiastical body—known or possible as "The Christian Church in Kentucky"—unless they repudiate their present form of government.

Moreover, they held—do now hold—that the work of the Church of Christ is to preach Christ, baptising into the name of the Father, Son, and Holy Ghost all who confess that Christ is the Son of God. To teach Latin, Greek, and Mathematics was not the work of the Church. To own and manage secular institutions was to open the door to ecclesiastical government, and to pave the way to the destruction of congregational independence. The Missionary Society refused, therefore, to so much as hear Bowman.

William Morton, a saintly man, and others, founded an Education Society—obtaining for it a close corporation with a self-perpetuating Board of Trustees—for the purpose of assisting needy candidates for the ministry; and they desired to control Bacon College for this end, and an act was passed in 1856 authorizing that Society to elect Trustees for Bacon College, provided her Trustees would consent. The Trustees refused their consent, because it was too sectarian.

Bowman raised $150,000 in subscriptions. After this splendid and gratifying success, whom did he call together to unite in the establishment of the University? The Churches or their delegates? No—the donors. I hold in my hand a copy of their proceedings; and there is nothing about the Churches in it. The donors appointed a committee to prepare a charter; the donors met to hear and approve the proposed charter; the donors petitioned the Legislature to grant it; the donors and Trustees of Bacon College accepted it.

The number of Trustees of Bacon College was sixteen. The donors thought the number should be larger, "in the election of which the present Board can so distribute the additional members as fairly to represent the *several sections of the State having a large interest* in the funds of the institution." (Page 9 of printed minutes of donors and friends of Bacon College, May 6, 1857). Not one word about the Church being interested or represented.

The charter was granted and accepted, and the new Board met, organized, and put forth a carefully prepared address, stating the

principles on which the new University was founded, and the objects to be accomplished by it. So important did they consider it, that all the Curators signed it, instead of the President and Secretary. That paper is addressed, not to the Christian Church in Kentucky, but "To the Friends of Education in the West and South." In it they say, as if foreseeing this strife:

"We desire to say, that while we are endeavoring to build up an institution which will meet the actual and pressing wants of our State and the Church, and while we have strong moral and pecuniary influences of a local character to foster and support it, *yet we distinctly avow, that no sectional or sectarian element shall ever be a constituent of its organization.*" (Page 38 of address of 1858.)

Of those who signed that address, I find seven who sign the remonstrance against all amendments giving a flat contradiction to that solemn avowal; and three who are understood to favor this Legislature doing what then they solemnly avowed they would never do. The others are not members of the Board—many of them having gone to their reward.

In 1866 the then Board published a financial history of the University, in which, referring to the meeting at which the address from which I have quoted was adopted, they said:

"This meeting was important as having recognized the contemplated University as the property of the people at large who had subscribed the money. They divested it of all local character, and suggested such provisions of the charter as would give *the donors a proper representation in the Board of Curators.*"

And in section 19 of the charter provision is made whereby representation of donors, according to county—not Church—lines, can be had. In 1860 or 1861, an effort was made to remove the University to Lexington. It was resisted, and the donors, not the Churches, consulted. When the removal was made, the Churches were not consulted, though provision was made to secure the rights of donors.

In the face of these historic facts, it requires some hardihood, or some passion, to claim that the University is the property of the Christian Church. It gave nothing as a Church. It had no voice in its inception—no part in its establishment—no hand in its management. But the University was given to the Church as a Church—is the claim? By whom, when, and where is the deed of gift? Transylvania, with her grounds, buildings, libraries, funds, and apparatus, was not given to any Church or denomination. There is no power to do this. The agricultural fund has not been given by the State to any sect or Church. The many thousands given by the good people of Fayette,

Bourbon, and adjoining counties, were not so given. Far from it. They were given for a non-sectarian University on a broad, liberal foundation. But the charter, they say, is their deed of gift? If so, why amend it? If your rights and title be thus secured, and any one is violating them, the courts are open. Suppose a stockholder in some bank should come here and say the bank directors are not doing right, and demand they be turned out; how long would the Legislature hear him? Would it waste its time to listen to him? or would it say, "The courts are open; go to them?" The remedy for these gentlemen is in the courts. But they say: "We will take a short cut." Yes, and just the same principle is that which, by trampling on the law, causes our lamp-posts to serve as gallows. I am surprised that these gentlemen should come here expecting the Legislature to turn itself into a drum-head court-martial.

But if the Legislature is going to resolve itself into a court, we demand that it shall give us a hearing; that witnesses shall be introduced, and the evidence obtained upon sworn testimony, under cross-examination. Let us have no *ex parte* trial, upon *ex parte* statements, sent out by a central establishment with all necessary passionate appeals, but a free, fair, and full investigation. This is our right, and this we demand.

But let us examine the charter:

"WHEREAS, An institution of learning, known and called by the name of Bacon College, was founded by certain members of the body of the 'Disciples of Christ,' denominated Christians, and was chartered by the Legislature of Kentucky in 1836; and whereas, in view of the educational wants of said body of Christians in Kentucky, and of their wishes for the permanent success of said institution, known and expressed at various times, a plan for its permanent endowment and organization has been presented and prosecuted by J. B. Bowman, which has resulted thus far in raising $150,000 of endowment fund; and whereas, it is desired to establish a first-class University upon a more modern, American, and Christian basis; and to carry out such design, it is necessary to amend and extend the provisions of the charter of said institution; therefore,

"§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That said institution, known and called by the name of Bacon College, and located at Harrodsburg, in the county of Mercer and State of Kentucky, shall be, from and after the passage of this act, known and called by the name of Kentucky University."

Now, let's hear the gentleman's argument upon this: "Certain Disciples did a certain thing, *ergo* the work is *not theirs*, but that of the Church to which they happen to belong!"

Again, I read the eighth section, upon which the gentleman lays peculiar stress:

"§ 8. For the ownership and control of said University, at least two thirds of the Board of Curators shall always be members of the Christian Church in Kentucky."

Now, this implies about as much ownership as saying that two thirds shall always be red-headed men! But suppose the section read "two thirds shall always be citizens of Fayette county." Does that make Fayette county own the University? Not at all. The term is one of eligibility, not of ownership; a qualification of certain of the members of the Board, not a vesting of rights of property.

Let me submit a parallel case:

"WHEREAS, An institution of learning, known and called by the name of Fayette Academy, was founded by certain citizens of Fayette county, and was chartered by the Legislature of Kentucky in the year 1836; and whereas, said institution, after a series of unsuccessful efforts for its permanent endowment and establishment, suspended its regular collegiate operations; and whereas, in view of the educational wants of the said county of Fayette, and of the wishes of its citizens for the permanent success of said institution, known and expressed at various times, a plan for its full endowment and reorganization has been presented and prosecuted by John B. Bowman, of Fayette county, which has resulted thus far in the raising of $100,000 of endowment fund; and whereas, it is desired to establish a first-class University, upon a modern basis, in said county; and to carry out said design, it is necessary to amend and extend the provisions of the charter of said institution; therefore,

"§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That said institution, known and called by the name of Fayette Academy, and located in Fayette county, shall be known and called Kentucky University.

"§ 2. That John B. Bowman, M. C. Johnson, George B. Kinkead, and twenty-seven others (all citizens of Fayette county), shall be, and they and their successors in office are hereby, constituted a body-politic and corporate, to be known by the name of the Curators of Kentucky University; and by that name shall have perpetual succession and existence; and a common seal, which seal they may change and alter at pleasure; and by the aforesaid name, and in their corporate capacity, may sue and be sued, plead and be impleaded, contract and be contracted with, answer and be answered, in all courts of law and equity; and the same, in their corporate name, are hereby invested with the legal right to all the property and estate, real and personal, as well as all the rights and claims heretofore vested in the Trustees of the said Fayette Academy; and may, in said corporate name, sue for and recover the same in as full and ample manner as the said Trustees of Fayette Academy could have done prior to this act.

"§ 3. For the ownership and control of said University, at least two thirds of the Board of Curators shall always be citizens of Fayette county."

Now, under an act similar in all respects to the present charter of Kentucky University, except with the above preamble and sections in lieu of its preamble and sections 1, 2, and 8, a petition is filed before your body from the good people of Fayette praying an amendment expelling the Curators, and providing hereafter that the Curators shall be elected by the qualified voters of Fayette county, or by all residents of the county over a fixed age, without regard to sex or color, and proof offered that every dollar was given by citizens of Fayette, would any lawyer dare argue that the petition could be granted? Would it strengthen the case if any number of publications and ad-

dresses by the Board to the people of Fayette were filed, in which they spoke of the University as "your institution," "it is your University," &c.? Yet this is the whole argument of the learned counsel for petitioners. Title to property and control of corporate institutions cannot be thus obtained.

Corporate institutions do not stand on so unstable a foundation; and well might donors refuse to give if their solemn charters can be thus destroyed.

The gentleman confounds a general interest with a legal interest—a benefit with an equitable title. It is to the interest of Lexington that her Orphan Asylum, to which she and the county of Fayette give annually $500, be sustained. It is called The Lexington Orphan Asylum. It is in a true sense a Lexington institution. Lexington was honored by the residence of the noble women who founded and maintain it. But has this Legislature power to wrest it from them and turn it over to the City Council or popular vote?

This University was desired by its founders to be a benefit to that Church; to be pervaded by Christian influences, not controlled by ecclesiastical bodies. To secure the one and avoid the other the eighth clause was inserted. Bowman was a member of that Church; was proud of it, and is to-night. It is the Church of his heart, and he was and is glad to have the institution under its auspices; but he never intended that it should be other than "a great, free University for the people."

The institution has been thus controlled. Two thirds of its Curators are members of that Church; every professor in its College of Arts is a member thereof. The President's house and dormitory of Transylvania, and rooms in Morrison College, and three Professors, are given to the Bible College of it; although only $5,000 was subscribed for that purpose. How much more could have been done?

If the Christian Church in Kentucky does not own the University, can the Legislature of Kentucky give it to that Church? This is the legal question involved. It would seem that the question answered itself. But the power of the Legislature is claimed with such earnestness by the able counsel that I submit to your committees the following principles and authorities.

A charter is a contract between the State and the corporation, and amendments thereto cannot be made without consent, because of violation of the Constitution of the United States. (*Dartmouth College case*, 4 *Wheaton.*)

But a clause in the charter reserving the power to alter, amend, or repeal, or a general statute previously enacted to the same effect, becomes a part of the contract. That part must be construed according to its language, and, therefore, every such statute must be separately construed. If the clause be "at the pleasure of the Legislature," it is, of course, of wider import than if it be that "privileges and franchises" alone may be altered or destroyed.

The Kentucky statute is limited expressly, "that while privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair *other rights* previously vested." Whatever, therefore, are "other rights," as contradistinguished from "privileges and franchises," are beyond the power of the Legislature.

"A privilege is an exemption from some duty, burden, or attendance, &c." (*Bacon's Abridgment*, "*Privileges.*")

"Franchise is a royal prerogative subsisting in a subject by a grant from the crown." (*Greenleaf's Cruize, title* 27, *Franchise, section* 1, being side page 260 of volume 3, or top page 55 of same volume.)

Whatever does not come under these definitions cannot be touched. The statutes of other States differ widely from this Kentucky statute; especially different are the statutes of Massachusetts and New York.

While the charter is a contract between the State and the corporation, it is not necessarily between them only. It may also be a contract between the stockholders; or between the stockholders and the corporation; or between the corporation and third persons; or between the stockholders and third persons. It is only the contract between the State and the corporation that the Legislature can alter under a reserving clause. This is true under every such clause in any American State, and must be so long as the Constitution of the United States prohibits the obligation of a contract from being impaired. The State can reserve power to alter *her* contract—she cannot reserve power

to impair any other, or anybody else's contract. The Kentucky statute recognizes this, and limits amendments to "privileges and franchises."

The general principle is thus stated by a Judge of the Court of Appeals of New York in "*The State vs. Miller:*"

"In New York the Constitution has deprived the Legislature of the power to grant irrepealable charters, and there is now no power to make a grant of this description which shall operate as an irrevocable contract on the part of the State. But this reservation is for the benefit of the State alone, and affects only the relations between it and the corporation. The exercise of this reserved power may undoubtedly indirectly affect private rights and interests which are dependent upon the powers and franchises of the corporation itself, but no others. The individual rights and interests of the members of the corporation, or of persons dealing with it, cannot be acted upon directly by the Legislature, even under the form of an amendment of a charter. A contract between individuals, or between a corporation and individuals, is not subjected to the action of the Legislature by the mere fact that it is embraced in a charter, or an amendment to a charter, or results from a dealing had with reference to such an enactment. The State has power to revoke its own contracts where it has in making them reserved such right. But it has no power to impair the lawful contracts of its citizens, or even of corporations created by it."

In Zabriskie vs. Hackensack and New York Railroad Company (18 *New Jersey Equity Reports*, 175), it was held that the reservation in a charter that the State may at any time alter, amend, or repeal it, is a reservation by the State for its own benefit, and is not intended, and cannot be used, to affect the rights of corporators as between themselves. It is wholly confined to the powers and franchises granted to the corporation by its charter.

In *Oldtown & Lincoln Railroad Company vs. Veazie* (39 *Maine*, 571), it was held, that the reserved power to amend the charter did not authorize a change in the liability of the stockholders as between themselves. See also *Hawthorn vs. Calef*, 2 *Wallace*, 10, and cases there cited and approved; and in *Commonwealth vs. Essex Company* (13 *Gray*, 239) it was held, that, under a power to amend, no amendment of the charter could take away rights and property which had become vested under the legitimate exercise of the powers granted. (See *State, &c., vs. Adams, &c.*, 44 *Missouri*, 570.)

Now let us apply these principles to the case here. In those Curators and their successors, legally chosen by them, has been vested the title—legal and equitable—to all the property, assets, and funds of Kentucky University. Contracts have been made with various donors that these men shall do certain things. With them Transylvania University has made a contract. You can repeal the charter; you can take away all privileges and

franchises; but how can you divest them of title, or release them from their contracts? Your repeal would simply require an unincorporated association to hold the title and perform the contracts. There is no power in this government, in any of its branches, to take any property and give it to another; to compel me to accept partners I desire not to associate with. You cannot take the whole, or a part. You can incorporate a new Kentucky University. You can tear down the one created by years of sacrifice, labor, and devotion. But you cannot, by amendment to a charter, confiscate more than a half a million of dollars, and by a legislative enactment vest it in any one or number of people or Churches, no matter how potent, compact, and clamorous.

Our own court has uttered no uncertain sound on this subject. In *Sage, &c., vs. Dillard, &c.*, it decides expressly that a reservation by the Legislature in a charter to alter, repeal, or amend, does not imply the power to alter or change the vested rights acquired by the corporators under the charter, and to add new parties and managers without the consent of the corporators. I commend the able briefs of the learned counsel for the appellants, and the entire opinion of the court, to your careful consideration. The facts in that case and in this are curiously similar. There it was a Baptist institution, founded by donors under a charter, with power of self-perpetuation. The Legislature attempted to outvote the Curators—here to expel them; there to leave them in, but add to their number—here to replace them. The court says:

"Then, did the Legislature which granted the charter, or the Trustees who were incorporated, and to whom the grant was made, contemplate that any future Legislature would have the power, under the right reserved, to assume to themselves the right of creating additional corporators, or adding new parties to the contract without the consent of those with whom the original contract was made? Does the right to 'alter, amend, or destroy' a contract include the right to add other parties, and invest them with the SAME privileges and franchises conferred upon the original parties? The power to alter or amend a contract, in our conception, is to change it as between the original parties, and such others only, as have been permitted, by their mutual consent, to come into its benefits and privileges; not to compel one of the parties to act in conjunction with others, and share with them the benefits and privileges of the contract. When such a power is attempted to be exercised by one of the parties over the other, has not the party upon whom the attempt is made a right to say: 'Alter or amend, or even destroy the contract subsisting between US, but do not, under a semblance of an alteration or amendment, force us to co-operate with men (it may be) between whom and ourselves there cannot be peace, harmony, and concert of action.' It is easily seen that the great enterprise in which the corporators embarked, that of educating the Baptist Ministry in the Valley of the Mississippi, might thus be thwarted, and the whole scheme weakened and crippled in its

energies. Surely no such alteration or amendment as that made in 1848 was contemplated by the parties to this charter or contract, under the reservation contained in the original act. Can it, indeed, be properly denominated an amendment at all? Is it not rather a new contract? Duncan, Justice, in the case of St. Mary's Church (*7th S. & R.*, 562), used this language: 'My opinion is, that the proper amendment, striking out an integral part of the corporation, and substituting another class of men in their stead, is not a lawful amendment—IS NOT AN AMENDMENT AT ALL—but the grant of a new corporation and a new charter.'

"Again he says, on page 564: 'The charter is a contract between the State, the founder, and the objects of the charity, all of whom are bound by its terms. The contract on the part of the government is, that the property, with which the charity is endowed, shall be vested in a certain number of persons, and their successors, designated by the founder to subserve the purpose of the founder, and to be managed in a particular way. But, if the alteration changes the character of the Trustees, then they are not the same persons the grantors intended should be the managers. The same identical franchise that has been before granted to ONE, cannot be bestowed on ANOTHER, for this would prejudice the former grant.' In this case it appears that the original founders or endowers of the Institute were willing to intrust their charity to the care and management of the original Trustees, and such others, of course, as might be necessary, in their opinion, to effectuate the objects of the charity.

"To Trustees of their own selection they confided the bounty which they bestowed to a great, a praiseworthy, and a noble purpose. In the hands of these men, and others of THEIR choice, they intrusted the management of an institution which, by their munificence, was brought into being, and into which their beneficence has infused energy and usefulness. This charity has grown into a valuable estate, and sustains an institution which was designed to promote education in the Christian Scriptures, and qualify a Baptist ministry to disseminate religious knowledge in the West. The object is a laudable one; and can it be that the Legislature, in retaining the right to 'alter' or 'amend' the charter, retained the right to take the supervision and control of the opulent charity out of the hands of those to whose care and oversight the founders confided it, and place it in hands of strangers who never breathed, perhaps, a single breath of vitality into this institution, either to impart to it life or growth? We think not. The new Trustees are, no doubt, honorable and worthy and high-minded gentlemen; the Legislature would not have conferred trusts so momentous and important on any other description of men. But, however honorable and worthy they may be, they are not the men selected by the founders, nor by those who were incorporated at their instance, to carry out the great purposes they had in view, in the establishment of the Institute." (*Sage, &c., vs. Dillard, &c.*, 15 *B. Monroe*, 359.)

The learned gentleman, to break the force of *Sage, &c., vs. Dillard, &c.*, made the statement that the charter was enacted and the decision rendered prior to the passage of the act of 1856. As I know the gentleman is incapable of want of candor, I presume he failed to see that in that charter there was an express reservation of power to alter, amend, or repeal; and therefore the decision is exactly in point.

Here the founders were the donors. The Legislature cannot, under the reserving clause, take property from one set of Trustees, designated by the founders, and confer it on other persons. The power to alter and amend must be construed as limited in its operations to the persons with whom the contract is made. (*See Allen vs. McKean*, 1 *Sumner*, 277; *Trustees of Aberdeen Acad-*

emy vs. Mayor and Aldermen of Aberdeen, 3 *Smeades and Marshall*, 347).

The original parties must be those to the altered contract. But it is claimed that the Christian Church is donee, or in some way such a beneficiary as made it a party to the contract. To the original contract of gift, there were as parties the donors and the donee. That donee was Kentucky University. To the charter there were two parties—grantor and grantee; the State was grantor—the corporation grantee. The Church was not donee or grantee. The beneficiaries of this institution are those who, from time to time, enjoy its instruction. It is in trust for them that the grant is made. To promote the cause of education in all its branches, and extend the sphere of science and Christian morality, the Curators were incorporated and authorized to establish and endow professorships and departments. The trust is to educate through Professors, and the proper libraries, apparatus, &c., the students who matriculate. The donors gave to the Curators, and their successors, chosen under the charter, the funds to carry out this trust. The State, through her courts, has visitorial powers to compel the execution of the trust. (*Chambers vs. Baptist Educational Society*, 1 *B. Mon.*, 220.) No one alleges any misappropriation of funds, or non-execution of the duty imposed.

The trust is being faithfully executed in strict accordance with the charter.

The Curators are the corporation created to execute this trust. Their interest is a duty. The corporation is the donee of the funds in trust for the beneficiaries, to-wit: the students; just as orphans are the beneficiaries of an orphan asylum, or lunatics of an insane asylum. (*Dartmouth College case*, 4 *Wheaton*, 643; *State, by &c., vs. Adams, &c.*, 44 *Missouri*, 582.)

I will be greatly obliged to the learned counsel to show exactly how the "Christian Church in Kentucky" is in any legal sense party to the contract between the Kentucky University and the State; or how it has, in the technical meaning of those words, any legal or equitable interest in the property, franchises, or rights of that corporation. If they cannot do this, their case is lost. That it is incapable of proof, I confidently believe.

But, if you have the power to grant the petitions, ought it to be done? Your act is a legislative condemnation of the present Board of Curators. It is tantamount to a solemn adjudication by the Legislature of their State that they have been and are unworthy of the trust committed to them. Surely this is not to be lightly done. As I run my eye down the list of farmers, merchants, preachers, lawyers, teachers, doctors, Congressmen, mechanics—I feel an involuntary thrill of pride that such men are my fellow-citizens and my friends; some my comrades in dangers and hardship. Such men cannot deserve rebuke and condemnation from the State they adorn. It will be *the* reward Kentucky bestows on the Regent of the University—the reward of sixteen years of toil, devotion, and fidelity. Hear what those who worked with him say—aye, what the men who are here to expel him from this great work with cursings—

"WHEREAS, Regent Bowman has, through the liberality and promptness of the donors of Kentucky University, made the last payment on Ashland and the Woodlands, and thus secured that magnificent estate in fee-simple to the institution:

"*Be it resolved*, That we hereby congratulate the friends of the University on the successful accomplishment of this important service in the cause of liberal education.

"*Be it resolved*, That we hereby extend to Regent Bowman the expression of our confidence in the ability, zeal, and fidelity with which he has executed the responsible trust committed to his hands, with the assurance of our earnest hope that he may be spared in Providence to complete the great work to which he has so long and successfully devoted his life."

This was unanimously passed, and time after time did his gratuitous labor and his eminent success deserve and receive such encomiums. Who in Kentucky has done so much for education? Surely serious must be charges, and conclusive the proof, that would cause the Legislature of his State to put its brand on his forehead? Perhaps, in the passion of the hour, the voice of justice silenced amid the cries of anger and the entreaties of ambition, it may be done. Who will have most cause to regret it—the injured or injurer?

The charter has been violated in that money has been paid without the order of the President of the Board! Where is the proof? Show me the deposition. Call your witness and let me cross-examine him, and see if he will sustain the charge. Not a dollar has been lost, squandered, misapplied, or concealed. Here is my authority for the statement:

"The undersigned, appointed a committee under the above resolution, having made a full and thorough examination of the original stock lists, account books, reports, and other documents exhibiting the financial history and condition of Kentucky

University, from its first organization to the present date, find that the same have been kept with accuracy and care, and furnish the data, fully and satisfactorily, for the report contemplated in the resolution, and which is submitted below. The committee beg leave to express their acknowledgments to Regent Bowman and Major Luxton for the assistance rendered in the examination of these documents and data, and for their readiness in supplying all needed information.

"The committee find the account books kept in excellent order, and exhibiting the financial condition of the University, in any given year, plainly and satisfactory.

"All of which is respectfully submitted.

"Z. F. SMITH, Chm'n,
"ANDREW STEELE,
"W. T. WITHERS,
"*Committee.*"

The Executive Committee is *ad interim* the Board; and it has audited every account. Its members are above reproach. Their names—Benjamin Gratz, Joseph Smith, Joseph Wasson, and J. S. Woolfolk—are guarantee of truth.

But Mr. Bowman is Regent and Treasurer. The record shows that Mr. Bowman, again and again, offered to resign the position of Treasurer, and the Board *unanimously* refused to accept his resignation, these very gentlemen so voting. The reason for this is plain. During the war, with all the financial and other troubles, Mr. Bowman preserved the funds of the institution, and at the end of the strife turned over the whole, principal and accrued interest, without the loss of a dollar. This is almost unparalleled, and the Board, recognizing the fact, ordered him to go on in his work. He has transacted the immense financial business of that great University for years; collected the subscriptions, invested the funds, made the disbursements, kept the books, and been responsible for the moneys, without one cent of salary or reward. From nothing he has gathered together $800,000 in money and property; and made it useful and available. Surely the Board might be pardoned for the offense of insisting upon a continuance of such labors; and he dealt with leniently for the sin of performing them. His enemies, perhaps, can truthfully say they were never guilty of such sins.

But the Regency is offensive. It was established after the consolidation and removal to Lexington, and the formal opening of four colleges. It is simply the chief executive and business officer. We call him Chancellor in our Central University. Every University has such an officer; and this charter authorizes it. Section 15 speaks of "President or other head of University," and section 4 says: "The Board shall have power to,

appoint any and all agents they may deem necessary." But I fear the object here is not to change the powers, but the title; not to change the privileges, but the persons.

An attempt is made to raise the hue and cry of Radicalism. Of the Professors mentioned as Radicals, Milligan, White, and Neville were elected in 1858; Peter nearly two-score years ago. The Curators number twenty-six Democrats. No one ever dared to charge that politics have been taught in the halls of this institution. But it is said Professer Shackleford made an obnoxious speech in Indianapolis, and Bowman is responsible. It was a protest against a certain scheme to educate negro preachers in Louisville, and a plea to educate them in the North. I have no defense to make for aught he uttered there or elsewhere. He is a native Kentuckian to the manor born; of an old and highly respectable family; a Christian gentleman and scholar; unobtrusive, gentle, and manly; performing with fidelity his professional duties, without one insinuation that he inculcates in the class-room his political tenets. His convictions are his own. His acceptance of a professorship has neither padlocked his mouth nor destroyed his manhood.

Let us turn the picture. Before me sits my friend and comrade, Professor J. D. Pickett, who, in this very town, delivered a funeral oration over four brave men, shot without trial during the late war. Could we listen with patience to a demand that Bowman should be expelled because he did not dismiss Pickett? Some seeking Bowman's removal then denounced Pickett; now they are thown into agonies of alarm for fear that Kentucky University may become Radicalized. Some of the most violent here are not known as Democrats at home; and have heretofore denounced Bowman because he was not Radical enough.

The Professors have not been selected on account of politics. It has not been thought essential that Greek should be taught according to a caucus pronunciation, or chemistry combined with free-trade. I feel saddened that the fate of a great charity—the noblest in our State—so full of promise for the future, so benign in its influence—may depend upon the past votes of its officers. The Regent was a Union man. If he is to be proscribed, why was it not done before? He has given his heart to the University, and has been weak enough to feel for eight years that

its prosperity, its interests, and its success, were dearer to him than the privilege of sharing in party caucus and party triumphs. Childless, he enshrined it in his heart; without political aspirations, he made it his party. Those who have been taught in its halls—the poor, who otherwise would have been hewers of wood and drawers of water—will forgive this weakness.

For one, I am tired of dragging everything into the arena of party politics. We have and do differ enough. Can we not find some enterprise in support of which all patriotic men can unite, and give to it the aid of every heart filled with love to a common race and common State? I thank God, that from this University has been excluded all that divides us, and that amidst the throes of civil war, the bitter animosities of returning peace, in its halls were the peaceful pursuit of learning and the earnest devotion to an unsectional and unsectarian education. If politics and ecclesiasticism must be united, will you place it under the Democratic Executive Committee, with a Christian advisory board, or under Main-street Church, with the committee as visitors? Will you teach the tenets of the Reformation according to the resolutions of 1798, or the Democratic platform modified by the Apostolic Times?

But it is said the University is going down—students are deserting it. The Academy has been discontinued, and ought not to be taken into the account. When the war closed this was the only fully manned institution in the Southwest. Its tuition was so low the poorest could enter; its curriculum so full the noblest could be enriched. The labor system gave to the earnest a means by which the strong muscle furnished the means of cultivating the brain. For four years no one in the South had gone to other school than that of the camp. Since then the Southern States have founded their own institutions, and the field of patronage has been greatly curtailed. Those who point to the decrease have helped to bring it about. Indifferent and silent when the foundations were laid and the superstructure erected, they will destroy unless the builder is turned out and they installed.

But in spite of all these causes and the money panic and the epidemics of last year, three hundred and fifty students to-day crowd its rooms, and new ones come daily. There are almost,

if not altogether, as many students there as in all the other colleges of the State united. There is the University to-day, with Ashland and Woodlands and Transylvania, with $800,000 of property and funds, museums, libraries, apparatus, professors, and students. There was Bacon—there Transylvania; wrecks, stranded monuments of failure. Who can exhibit such an evidence of sixteen years of labor?

Not a dollar lost; every dollar gathered, united, consolidated in one great institution. From private generosity, from city, State, and Federal benefactions, from the ruins of the past failures, this munificent charity has been obtained. Who dare charge that it has been misapplied, misappropriated? Sixteen hundred matriculates in the Agricultural College, thousands in the other departments, have received the blessings it diffuses. No one has ever been turned from its doors, no one excluded. From every portion of the State, from many States, from foreign lands, come the ingenuous youth, into whose hands our Government must soon fall, to qualify themselves for their life-work. A score of professors filled with satisfactory competency its chairs. Who knew of grievance? Who heard of wrong? What harm felt the State? What injury befell the Democratic party?

But numerous petitions have been sent here. I know not the exact number of Churches in Kentucky, nor how many petitions were sent from Lexington to be returned. But if the Churches were so earnest and so injured, how came it that they did not write to Lexington instead of waiting to be written to? We all know how *ex parte* petitions can be gotten up. How many of these Churches have heard both sides? How many gave one dollar? How many have sent a student there? In these petitions the vote of the minority is given; why is not the vote of the majority given? It is not possible that our good Christian brethren did this to convey the impression that all the other members voted; for that would be disingenuous and untrue. The silent, I am informed, largely outnumbered the voting in many Churches. In Dr. Hopson's Church at Louisville, out of 600 members, but 42 could be induced to vote for the petition after the most zealous and assiduous drumming. Afterward, by circulation, a few more names were obtained. In another

Church of 153 members, but 13 voted for the petition and 7 against. In one little Church of over 100 members, 7 were present on a certain rainy Sunday, and when the matter was brought up 3 voted for the petition, and 4 did not vote at all.

Where are petitions from the Church at Paris, which gave more than any other Church in Kentucky; the Church at Frankfort, Millersburg, and Covington; the Churches of Henry and other counties? Have you heard the "voice of the Church?" I hold in my hand the powerful protest of James Challen, the founder of Main Street Church, and one of the original Trustees of Bacon College. Everywhere earnest men, who love this Reformation, as they delight to call it, deplore this movement, and pray for its defeat.

I present the remonstrance of the Curators and the remonstance of hundreds of the citizens of Lexington and Fayette county. Look at the names. You cannot fail to recognize many of them. It has been somewhat rudely asked what is it their business—they are not Christians? Lexington has given many thousands of dollars to Transylvania—many more to Kentucky University. Many of these men gave largely. All are interested as citizens of the city, county, and State—all deeply interested in the preservation of their most munificent institution from ruin. Aye, gentlemen, every citizen of Kentucky is interested in this University. The State is partner therein. What shall become of this $800,000 is a question now ringing through the State; and he who believes that but a single class, or sect, or denomination, is interested therein, will find himself wofully deceived.

These citizens of Lexington protest—Transylvania University by her Trustees protest.

I have trespassed upon your patience much too long, and I leave unnoticed some points I desired to discuss.

I suggest, without elaboration, that all the great institutions of learning in America are thus governed—Harvard, Yale, Dartmouth, Princeton, Washington and Lee, and others. Governed by corporators carefully selected by those who are the governing board—free from ecclesiastical control, but pervaded by Christian influences. Sectarian colleges have not as yet become great. Danville, under Young and Green, never reached two

hundred students; Bethany, under Campbell, not so many. Kentucky University has to-day three hundred and fifty.

The Legislature has recognized in every previous act the necessity of consent. The amendment to the charter of Bacon College, passed in 1856, was made dependent on its acceptance by the Trustees; the act of 1858 was first consented to by her Trustees; the consolidating act of 1865, removing the University to Lexington, was dependent upon the consent of the Curators of Kentucky and of the Trustees of Transylvania Universities. The corporation known as Transylvania University is not dissolved—the exercise of its corporate powers is only suspended. Can the Legislature cause the amendments proposed to go into effect without the consent of Transylvania? Her Trustees protest, in her name, against this change.

The amendments proposed require twenty Curators to be selected by a delegate convention, composed of delegates from every Christian congregation in Kentucky. Will each congregation have one vote, or will the delegates be in proportion to numbers, or in proportion to contribution to the University? As there is not, and cannot be, any common arbiter, any authorized court to decide who are Christians, how are the Christian Churches to be legally ascertained, and by whom is admission into the convention to be decided? What shall be a quorum of that body?

It is claimed that there are some five hundred congregations. Can five hundred delegates, or one thousand, gathered from every neighborhood and color, wisely select the Curators to manage this great charity? Confusion worse confounded will end the disastrous experiment.

If the Christian Churches own the University, why permit the donors to elect any of the Curators? The Church either owns or it does not own it. There is no joint ownership with others. Let them elect all or none.

A University is the growth of years, and the result of labors, sacrifices, gifts, and martyrdoms. There are not two-score successful ones in the world. They are easy to kill—any weakling can accomplish that. We have the promise of one at Lexington. The foundation has been laid, and the superstructure commenced. The contemplated fabric is grand, and can be erected

only by toils like unto those which laid the foundation. Who have we among us to complete it? Who will dare undertake it if his reward be calumny, insult, and outrage?

The State is spending nearly a million a year for her common schools. Here is the cap-stone of her educational temple. Here at once the parent and the offspring. For here can be educated her teachers, who will return many a work of their labors to their Alma Mater.

It is impossible to estimate the benefits of an educational institution to a State. The great Universities of the world have perhaps shaped its destinies. In our own country political power and material wealth have been the heritage of those States who were blessed with successful colleges. Who can tell what Harvard, Yale, Amherst, and their sisters, have done for New England; or Princeton for the Middle States? The Universities of Virginia and South Carolina made their States leaders of Southern thought and power, and Transylvania and Centre have made Kentucky potent—their alumni in the van of every movement. You are legislating not for a Church, but the State; not for a sect, but the people; not for to-day only, but the future.

It is wise not to make narrow, but broad the foundations; not to restrict, but extend the field of influence and patronage. The day of contracted and narrow education is past. Everywhere new sciences demand teachers; new chairs are being founded; and more liberal is the curriculum. Thinkers recognize—great theologians agree—that truth need fear nothing from the broadest culture—that error can be best met by men with the highest attainments in every department of learning. Humanity and Christianity—if, indeed, in their noblest sense, the words are not interchangeable—alike demand opportunities for such culture. And I plead before the Legislature of my State—which I love with an almost passionate devotion—to beware how they lay hands on the only hope we have for such an institution. Be convinced there is no other alternative before you enter upon so dangerous an experiment. Our great tribunal—the Supreme Court—when Marshall and Story adorned it—said religion, science, and morality were, under our laws, proper legatees, and *cestuis que trust.* They unite in protest against this interference,

and they are beneficiaries of this great charity. The poor boys of all the future of our State protest against this change, by which the liberal provision of a people is made the feast of a sect.

Cautiously indeed should the disturbing hand be laid on this structure. The blind strength of the blunderer may ruin beyond repair. To you is committed its fate. From the body of the State you have been selected to settle this great matter. If you ruin this institution, will you ever cease to regret it? Can you hope that it will ever be forgotten? The present excitement will die; the passion will give place to reason; and in that day who will forgive him that, in the hour of peril, failed to rescue at every hazard this beneficent charity?

Where is the public grievance requiring so radical a remedy? Under the law you have not the power to grant the measures asked. Those asking have no claims. There is no cause for change. To him who, without fee or reward, gave sixteen years to this work, his reward surely will not be that the Legislature of his native State will, without a full investigation of all the facts, ignominiously expel him from this University, and give it to those who gave not to its erection and aided not in its upbuilding. You cannot give it to the Christian Church. You may, under cover of the Christian Church, give it to those who clamor at your doors and besiege your committee-rooms. They can destroy; what proof have they given that they can construct?

I have heard threats that I would be visited with the indignation of this great Church for this argument. I am not afraid of it; I do not believe it. Its members are among our best and purest; many are my friends, and when this passionate war is over, if these amendments are passed, they will crush with their just indignation those who led them into this great error, and destroyed the mighty institution which has and would have continued to bless the State and Church.

Senate Committee, by a vote of 5 to 1 (one absent) asked, Miss Morris to be discharged from further consideration of the Bill. Mist Killed 1313

TO THE JOINT COMMITTEE ON THE JUDICIARY.

Under the request of the Committee to furnish brief of authorities, I desire to submit the following memoranda:

A charter is a contract between the State and the corporation, and amendments thereto cannot be made without consent, because of violation of the Constitution of the United States. (*Dartmouth College case*, 4 *Wheaton.*)

2. But a clause in the charter reserving the power to alter, amend, or repeal, or a general statute previously enacted to the same effect, becomes a part of the contract. That part must be construed according to its language, and, therefore, every such statute must be separately construed. If the clause be "at the pleasure of the Legislature," it is, of course, of wider import than if it be that "privileges and franchises" alone may be altered or destroyed.

3. The Kentucky statute is limited expressly, "that while privileges and franchises so granted may be changed or repealed, no amendment or repeal shall impair *other rights* previously vested." Whatever, therefore, are "other rights," as contradistinguished from "privileges and franchises," are beyond the power of the Legislature.

"A privilege is an exemption from some duty, burden, or attendance, &c." (*Bacon's Abridgment*, "*Privileges.*")

"Franchise is a royal prerogative subsisting in a subject by a grant from the crown." (*Greenleaf's Cruize, title* 27, *Franchise, section* 1, being side page 260 of volume 3, or top page 55 of same volume.)

Whatever does not come under these definitions cannot be touched. The statutes of other States differ widely from this Kentucky statute; especially different are the statutes of Massachusetts and New York.

THE TRANSYLVANIA LIBRARY

4. The Committee will find numerous authorities sustaining various amendments to charters. Many of them turn solely upon the peculiar language of the statute; many upon whether the amendment affects a franchise or privilege, or a vested right.

Exemption from taxation is a privilege; it may be repealed. The exact representation of stock is a franchise; for instance, whether it be one vote, a share, or by a scaling; whether in person or proxy; whether when in arrears, &c.

It is impossible to analyze the cases or even refer to them, or perhaps to reconcile them. But the general principle is, that only the contract between the State and the corporation may be altered and amended, and that all franchises and privileges may be taken away or changed; but that the exercise of the power is not unlimited, and vested rights cannot be impaired. (See Miller vs. the State, 15 Wallace, 498, and authorities quoted by the Court, including Sage vs. Dillard, 15 B. Monroe, 357, and 18 New Jersey Equity, 678.) In that case, the Court decided that the right taken away *had not vested* (page 498). The amendment was equitable, and was the exact contract in the original charter, viz: that the directors should be in proportion to the stock. The amendment adjusted representation to the facts; the charter to the proposed facts. The case of Holyoke Company vs. Lyman, 15 Wallace, 500, is decided on another ground. (See page 507–512, and the last clause of opinion). Beside, the amendment changed only the contract with the State, and made the privilege granted depend upon the express condition, instead of the implied condition, that a fish-way be made.

In Tomlinson vs. Jessup, 15 Wallace, 454, the privilege taken away was exemption from taxation; but the Court said: "The reservation affects the entire relation between the "State and the corporation, and places under legislative "control all rights [this is not so under the Kentucky stat-"ute], privileges, and immunities derived by its charter from

"the State. Rights acquired by third parties, and which "have become vested, under the charter, in the legitimate "exercise of its powers, stand upon a different footing, &c.," (459).

These are the cases submitted by petitioner's counsel. If he will submit his entire list, I believe I can show they are not applicable to the case before you.

The case of Sage vs. Dillard, 15 B. Monroe, 357, is exactly in point with the one at bar, and the authorities quoted in it are referred to. (See also 2 Wallace, 10.)

5. I desire to submit a parallel case:

WHEREAS, An institution of learning, known and called by the name of Fayette Academy, was founded by certain citizens of Fayette county, and was chartered by the Legislature of Kentucky in the year 1836; and whereas, said institution, after a series of unsuccessful efforts for its permanent endowment and establishment, suspended its regular collegiate operations; and whereas, in view of the educational wants of the said county of Fayette, and of the wishes of its citizens for the permanent success of said institution, known and expressed at various times, a plan for its full endowment and reorganization has been presented and prosecuted by John B. Bowman, of Fayette county, which has resulted thus far in the raising of $100,000 of endowment fund; and whereas, it is desired to establish a first-class university upon a modern basis in said county, and to carry out said design it is necessary to amend and extend the provisions of the charter of said institution; therefore,

§ 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That said institution, known and called by the name of Fayette Academy, and located in Fayette county, shall be known and called Kentucky University.

§ 2. That John B. Bowman, M. C. Johnson, George B. Kinkead, and twenty-seven others (all citizens of Fayette county), shall be, and they and their successors in office are hereby, constituted a body-politic and corporate, to be known by the name of the Curators of Kentucky University; and by that name shall have perpetual succession and existence; and a common seal, which seal they may change and alter at pleasure; and by the aforesaid name, and in their corporate capacity, may sue and be sued, plead and be impleaded, contract and be contracted with, answer and be answered, in all courts of law and equity; and the same, in their corporate name, are hereby invested with the legal right to all the property and estate, real and personal, as well as all the rights and claims heretofore vested in the Trustees of the said Fayette Academy; and may, in said corporate name, sue for and recover the same in as full and ample manner as the said Trustees of Fayette Academy could have done prior to this act.

§ 3. For the ownership and control of said university at least two thirds of the Board of Curators shall always be citizens of Fayette county.

Now, under an act similar in all respects to the present charter of Kentucky University, except with the above preamble and sections in lieu of its preamble and sections 1, 2, and 8, a petition is filed before your body from the good people of Fayette praying an amendment expelling the Curators, and providing hereafter that the Curators shall be elected by the qualified voters of Fayette county, or by all residents of the county over a fixed age, without regard to sex or color, and proof offered that every dollar was given by citizens of Fayette, would any lawyer dare argue that the petition could be granted? Would it strengthen the case if any number of publications and addresses by the Board to the people of Fayette were filed, in which they spoke of the University as "your Institution," "it is your University," &c.? Yet this is the whole argument of the learned counsel for petitioners. Title to property and control of corporate institutions cannot be thus obtained.

6. The beneficiaries of this Institution are those who, from time to time, enjoy its instruction. It is in trust for them that the grant is made. To promote the cause of education in all its branches, and extend the sphere of science and Christian morality, the Curators were incorporated and authorized to establish and endow professorships and departments. The trust is to educate through Professors, and the proper libraries, apparatus, &c., the students who matriculate. The donors gave to the Curators, and their successors, chosen under the charter, the funds to carry out this trust. The State, through her courts, has visitorial powers to compel the execution of the trust. (Chambers vs. Baptist Educational Society, 1 B. Mon., 220.) No one alleges any misappropriation of funds, or non-execution of the duty imposed.

The trust is being faithfully executed in strict accordance with the charter.

The Curators are the corporation created to execute this trust. Their interest is a duty. The corporation is the donee

of the funds in trust for the beneficiaries, to-wit: the students; just as orphans are the beneficiaries of an orphan asylum, or lunatics of an insane asylum. (Dartmouth College case, 4 Wheaton, 518; State, by &c., vs. Adams, &c., 44 Missouri, 582.)

All the great institutions of learning in America are thus governed—Harvard, Yale, Dartmouth, Princeton, Washington and Lee, and others. Governed by corporators carefully selected by those who are the governing board—free from ecclesiastical control, but pervaded by Christian influences. Sectarian colleges have not as yet become great. Danville, under Young and Green, never reached two hundred students; Bethany, under Campbell, not so many. Kentucky University has to-day three hundred and fifty.

7. The Legislature has recognized in every previous act the necessity of consent. The amendment to the charter of Bacon College, passed in 1856, was made dependent on its acceptance by the Trustees; the act of 1858 was first consented to by her Trustees; the consolidating act of 1865, removing the University to Lexington, was dependent upon the consent of the Curators of Kentucky and of the Trustees of Transylvania Universities. The corporation known as Transylvania University is not dissolved—the exercise of its corporate powers is only suspended. Can the Legislature cause the amendments proposed to go into effect without the consent of Transylvania? Her Trustees protest, in her name, against this change.

8. The amendments proposed require twenty Curators to be selected by a delegate convention, composed of delegates from every Christian congregation in Kentucky. Will each congregation have one vote, or will the delegates be in proportion to numbers, or in proportion to contribution to the University? As there is not, and cannot be, any common arbiter, any authorized court to decide who are Christians, how are the Christian Churches to be legally ascertained, and by whom is admission into the convention to be decided? What shall be a quorum of that body?

It is claimed that there are some five hundred congregations. Can five hundred delegates, or one thousand, gathered from every neighborhood and color, wisely select the Curators to manage this great charity? Confusion worse confounded will end the disastrous experiment.

The amendments allow the donors to elect ten Curators. How shall these ten be chosen when the donors are all dead? The plan is utterly impracticable.

9. I will not trespass upon your patience to submit any further argument upon the facts. I only call your attention to the fact that there is no *testimony* before you. The statements are unsworn, *ex parte*, and not subjected to the test of cross-examination. You cannot, therefore, grant any petition based on averments of fact.

Any amendment, therefore, must be passed without proof of grievance to any one; of wrong committed by any one; of mismanagement by the present Board, or violation of any right, real, vested, or fancied. It seems incredible that a Legislature can be asked to act thus.

I owe the joint committees my thanks for their courtesy, and submit the matters in controversy to them. A munificent charity—the noblest in the State—is placed in your hands. Preserve it from destruction!

WM. C. P. BRECKINRIDGE,
Counsel for Kentucky University.