For the Christian Observer.

OUR CHARTERS AGAIN.

BY REV. E. T. BAIRD, D.D.

Messrs. Editors—It is with reluctance that I again ask the use of your columns, especially after your request that the discussion of our church charters should come to an end. But, Col. Sam. W. Williams, of Little Rock, Ark., has honored me with two articles in your paper—the first purporting to be an answer to my speech before the General Assembly : the second, a reply to my recent communication—which seem to require some notice at my hands. Although his first article was mainly occupied with a reply to a legal position, which he charged me with taking in my speech, but which I never took, so great is my aversion to controversy, and especially when it is tinged with personality, that I abstained from any notice of it. Since the appearance of his second article, in which he perpetuates the wrongful charge,* it would seem that respect for Col. Williams,
and justice to myself and the interests in part entrusted to me by the Church, demand that I should vindicate myself and the committee.

[*It is due to Col. Williams, to state that his second article was written before Mr. Leake's denial that Dr. Baird had taken these positions, was published.—EDS.]

Rights of Incorporations.

1. Mr. Williams, in his first article, makes the following charge against me :

> The Doctor then proceeded to assert, by way of a clincher the, to me, astounding doctrine that a corporation of one State could not sue as a citizen in the Federal Courts held in another. He read a decision of the Supreme Court of the United States, which broadly and unequivocally sustained him. I have furnished that and all the leading cases in which that court decided that way, to-wit: The Hope Insurance Co. vs. Boardman et al., 5 Cranch 57 ; Bank of United States vs. Deveau, 5 Cranch 61; Bank of Vicksburg vs. Slocum et al., 14 Peters 60. But, unfortunately for the Doctor, the same court, in the case of the Cincinnati, Louisville and Charleston R. R. Co. vs. Lottson, 2 Howard's Reports, overruled the case he read and all others like it. That court has followed this ruling undeviatingly ever since 1844, when it was made. So, Dr. B read a case that had been overruled twenty-nine years.

And then, toward the close of his article, after he had, to his own satisfaction, demolished this position which he assigned me, he proceeds to say :

> You may imagine what were my feelings on the night Dr. Baird made his speech and asserted this doctrine in the General Assembly. It was evident that the incorrect assertion, and the apparent authority of the Supreme Court of the United States sustaining it, that our Trustees could not be recognized even in the Federal Courts in Virginia, and, therefore, our contracts and property there were without the pale of the law, have forced the Assembly to consent, against what seemed to be the will of a majority of it, to the incorporation of the Board.

In his recent article, moreover, he challenges me to have a case got up, involving the question in connection with a question of commercial law, and to carry it up from our courts to the Supreme Court of the United States, where he proposes to argue it against our Virginia lawyers.

Well, Messrs. Editors, it is very dear, from reading his two articles, that the Colonel was very much astounded at some thing; but, at what I cannot imagine. W. J. Leake, Esq., in his clear and conclusive argument, on the part of this subject which he discussed, has already informed your readers, from his personal knowledge, and from examining the printed speech which was published in full, that I did not advance any such legal doctrine as Col. Williams charges on me;

and, of course, I did not mislead the Assembly in the manner he asserts. As three-fourths of all Col. Williams has written bears on this point, I wish to be explicit. My whole answer is, that Col. Williams is utterly mistaken. Not only is it true that I did not advance the doctrine which he charges me with asserting ; but I did not, either directly or indirectly, allude to the jurisdiction or the United States Courts, he says that I read a positive decision, affirming that view of the case ; but, unfortunately for me, it had been overruled twenty-nine years before. He does not say which of the three cases, mentioned by him, I quoted from. Well, not only is it certain that I did not quote from any of them ; but I had never examined any of them, and did not know what had been decided by them. That is not all. I actually never knew, or, if I did, I had forgotten it, that the doctrine he charges on me had ever been held by the United States Courts, until I learned it from Col. W.'s article ; and that is all I know about it now. The law books I referred to in the General Assembly were, the "Virginia Code of 1860, 13 vol. "Peters' Reports," and "Sedgwick's Constitutional Law ;" from the last, obtaining the language I quoted from Judge Story. From each of these books I read just three lines, and that without comment.

Now, Messrs. Editors, what becomes of Col. Williams' charge, that I astounded him and mislead the Assembly, by quoting from decisions which, up this hour, I have never even looked at? Certainly, there is no room for a lawsuit here. Instead of it being true that I said or held that the United States Courts had no jurisdiction of questions, involving foreign corporations ; it was just because they had jurisdiction, that I resorted to the decisions of the Supreme Court of the United States to ascertain what the law is, as the surest source of information. For, whether that court decides right or wrong, it is all the same ; the interpretation of the law, by the court of last resort, is the law.

The Decisions.

2. Col. Williams draws conclusions, adverse to me, from the fact that the United States Courts have jurisdiction over question involving foreign corporations, which I do not find sustained by the most recent decisions on the points involved which are accessible to me. I have no idea of using guilty of the indecorum of discussing law with a lawyer ; but, as I am on the defensive, I do not suppose it will be deemed indecorous for me to quote the decisions of

the highest courts of law in opposition to the views of a lawyer. Col. Williams says :

> Whenever the Supreme Court of the United States held that a corporation was a citizen of the State which created it, the conclusion was inevitable, that it possessed all the rights, privileges and immunities of a citizen of the State where created.

And the Colonel even proposes to give corporations the benefit of the Fourteenth Amendment. Now, let us turn to 48 "Illinois Reports," 172, and examine the case of Ducat vs. the City of Chicago, which involved the decision of this very principle. In delivering the opinion of the Supreme Court of that State in 1868, Chief Justice Breese, says:

> Appellant's proposition is, that corporations, created by the laws of New York, are, to the intents and purposes for which they are created, citizens of New York, and, as such, entitled to all the benefits of the section above cited, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States." We have examined all the authorities cited on both sides of this proportion, and cannot find it has ever been decided by any
> court, that corporations are citizens within the sense and meaning of this clause.
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> The case of the Louisville, Cincinnati and Charleston R. R. Co. vs. Lettson, (Col. Williams' case,) and Covington Draw-bridge Co. vs. Shepherd, do not establish the proposition in plaintiff's favor. In both cases, the

question was one of jurisdiction, and no reference is made in either case to this clause of the constitution, and, therefore, are not decisive of the point. In the last named case, Chief Justice Taney, in delivering the opinion of the court, said that, "in the case of the Lafayette Insurance Company vs. French et al., 18 Howard 404, the declaration stated that the corporation itself was a citizen of Indiana. Now, no one, we presume, ever supposed that the artificial being, created by an act of incorporation, could be a citizen of a State in the sense in which that word is used in the Constitution of the United States, and the averment was rejected, because the matter averred was simply impossible."

By referring to the case, 18 Howard 404, it appears the opinion of the majority of the court was delivered by Mr. Justice Curtis, and in it he says: "The averment, that the company is a citizen of Indiana, can have no sensible meaning attached to it. This court does not hold that either a voluntary association of persons, or an association into a body politic, created by law, is a citizen of a State, within the meaning of the constitution."

The case in 2 Howard (that is, the Lettson case) decides nothing more than that, for all the purposes of suing and being sued, a corporation created by, and doing business in, a particular State, is substantially a citizen of the State which created it, within the meaning of the constitution and the law of Congress, conferring jurisdiction on the Courts of the United States, in cases between citizens of different States. Having this right conceded to it, a corporation may properly be considered a citizen of the State of its creation, for the purpose of bringing suit; but, we think, (that is, the Supreme Court of Illinois thinks,) the concession was an unfortunate one.

Now, let Col. Williams observe that it is not I who says that no one believes his doctrine : that the idea is "impossible ; that "no sensible meaning" can be attached to it; but, these are the declarations of Justices Taney and Curtis, speaking for the Supreme Court of the United States ; and, Chief Justice Breese, speaking for the Supreme Court of Illinois, adopts their language. Again, in 1871, the Supreme Court of Virginia, in Manhattan Life Insurance Co. vs. Warwick, says:

The plaintiff in error (is) a corporation of the State of New York. It was created by a law of that State, and cannot exist outside of its limits. It has no power to make contracts, or to do business in Virginia, but by permission of Virginia.

The court, then, makes the same quotation from Paul vs. Virginia which I made in my previous communication, in support of this position ; thus setting aside the right of plaintiff in error to a claim of citizenship. Now, be it observed, that all the cases above referred to are subsequent,
many years, to the Lettson case.

These are Real Decisions.

3. Col. Williams attempts to escape from the weight of Judge Taney's opinion, as quoted by me, by leaving the reader to believe that it was an *obiter dictum* of the Chief Justice, and hence has no binding authority; and almost immediately after, he adds, "that *dictum* was overruled, practically."

Now, I think I can show that those principles of Judge Taney's opinion in Bank of Augusta vs. Earle, which have been relied on by me, are not *dicta*, and that they have not been overruled.

What I quoted from Judge Taney and from Judge Story, as given by Sedgwick, was the mere statement of the rule of comity, which Judge Field accepts and reaffirms in his opinion in Paul vs. Virginia, as quoted by myself in my previous article, and also by Mr. Leake. Now, how does Justice Field introduce his quotations from Judge Taney? Let the reader refer to my former article and verify what I state. In the first instance the language employed by Justice Field is this : "As said by *this court* in Bank of Augusta vs. Earle;" and in the second instance the language is this: "to repeat the language of *this court* in Bank of Augusta vs. Earle." Judge Taney is not

named or alluded to, but "*this court*" is the phrase. Now, Col. Williams is too good a lawyer to say that a court ever employs such phraseology as that when quoting mere *dicta* of a Judge.

But Col. Williams says Justice Field made "unguarded quotations" from Judge Taney; that is, quoted what was mere *dicta*, or what had been recommend. Well, if that be so, he is not alone in that unhappy condition. Other courts and Judges have made the same mistake.

The Colonel refers more than once to the Slaughter-house case. It was decided in 1872, six years after Paul vs. Virginia; but even yet, the court had not found out its mistake, for Justice Miller, in delivering the opinion of the court, bases his conclusions, in large part, on that case. Not only so, but Justice Field, in delivering his dissenting opinion, gives a summary of what was decided by the court in Paul vs. Virginia, and among other points, brings in all the principles quoted by him in that case, from Judge Taney, including the rule or law of comity as read by me to the Assembly.

Again, the case of Ducat vs. the City of Chicago, already alluded to, was a case very similar to Paul vs. Virginia, and involved the very same principles. Chief Justice Breese, delivering the opinion of the court (1808,) states that what was decided in the Lettson case (so much relied on by Colonel Williams, was "that a corporation was *quoad hoc* a citizen for the purpose of suing and being sued," and then proceeds:

> It seems to us (the court) there is much more sound sense, and a more just appreciation of this subject to be found in the view expressed by Chief Justice Taney in the case of the Bank of Augusta vs. Earle, cited with so much deserved approbation by appellant's counsel, &c., &c.

The Chief Justice then goes on to state from Judge Taney, the rule as to comity which I quoted.

Again, the same general questions were decided by the Supreme Court of Kentucky in 1866, in the case of the Insurance Companies vs. the Commonwealth ; and in delivering the opinion of the court, Chief Justice Williams said:

> In the case of the Bank of Augusta vs. Earle, Chief Justice Taney, in delivering the opinion of the court, with great power and logic, demonstrated, &c.

Judge Williams then proceeds to sum up the points decided—a little different summary, however, from that of Col. Williams—until he reaches the question of comity, when he makes a long quotation, including of course, what I read to the Assembly, and the principles taken from this case by Judge Field, and then adds:

> Although the distinguished Chief Justice (Taney,) who rendered this decision, rendered some of the later decisions as to the rule of citizenship to be applied to corporations in ascertaining the jurisdiction of the Federal Courts, yet he nor any other Justice rendering said decisions, ever attempted to modify or overrule the principles adjudicated in this case. The reason is palpable. In this Bank of Augusta case, the court was expounding the first paragraph of Sec. 1. Art. IV. of United States Constitution ; in the other cases (the Judge particularly comments on the Lettson case,) they were expounding Sec 2, Art. III. of the same constitution. The one being delivered for the protection of the rights of the citizen; the other to define the judicial power and jurisdiction of the Federal Courts—two subjects wholly unlike and distinct. To transport the principles governing the one to the control of the other, is to produce the singular anomaly and inconsistency, &c, &c.

And yet, Col. Williams, as it seems to me, in the quotation already made from him, has fallen into this precise error, and has confounded "two subjects wholly unlike and distinct." At all events, I think I have made it manifest that other Judges and courts besides Judge Field and the Judges of the Supreme Court of the United States, who concurred with him, are fully as much in the dark as I was; that they did not know any more than I did that those sayings of Judge Taney were mere *dicta*, and overruled at that.

The Right of Jurisdiction.

4. The original mistake of Col. Williams as to my speech has led him into another error in the understanding of my former communication. As I did not so much as once think of the question of jurisdiction as being in dispute or disputable, while writing that article, I was utterly confounded at Col. W's. second communication which still dwells on that subject and charges me with absurdities about it. Having reached that point in the progress of this letter, I would make another effort to find out what was in the Colonel's mind. When lo, and behold, I found he was interpreting the third position of my previous communication as a re-assertion of the absurdity he charged me with advancing in the General Assembly. Col. W. has had the impression somehow—I cannot tell how—deeply stamped on his mind that I hold that the United States Courts have no jurisdiction over questions affecting corporations of other States ; and he has read all I have written under that prejudice. In this I have not a shadow of doubt, he is sincere and earnest ; for he challenges me to get up a lawsuit on the question, that he may have a chance to argue it with our Virginia lawyers. But it is a mystery to me how he fell into the error. Now, in writing my previous article, as I did not think of that question at all, in quoting from Judge Field, I did not see that his language, standing by itself, was susceptible of the use which the Colonel thought I was making of it. On carefully reading the first extract which I made from Judge Field over again, I see that it might be tortured to mean that the matter of the rights of foreign corporations belonged wholly to the State Courts. I used the extract, however, for no such purpose ; but to show the control the State of Virginia had a right to exercise by her legislation, as to the privileges she would extend to foreign corporations. Until a few minutes ago, I had no idea what Col. W. meant in this part of his communication ; and now having ascertained his second mistake, I am happy to concur with him in saying that "when we take the entire opinions of Judge Taney and of Judge Field, we find them both free from such absurdity"—an absurdity, however, not of my devising. Indeed, in reading Col. Williams' account of my speech and my article, I have been nearly as much puzzled to identify myself as the countryman was, who, having become intoxicated, fell asleep in his cart, and on awaking from his wine, finding his horse gone, soliloquized thus : "Is this me, or is it not me ? If it is me, I have lost a horse ; if it is not me, I have found a cart."

Points of Agreement.

5. Having ascertained the Colonel's mistake in interpreting my previous article, the remaining differences between us begin to dwindle.

(1.) I perfectly agree with him that a corporation of another State has a right as an aggregate citizen, as a citizen *quoad hoc*, to appear in the United States Courts and have its rights adjudicated; that while the States have a right to regulate by law the extent of the comity to be extended to foreign corporations, the judicial questions arising under those laws may be determined by the United States Courts.

(2.) I again agree that whether by comity, or under the Constitution of the United States, it matters not, foreign corporations can do any business, and perform any act, from which they are not restrained by adverse legislation) or which is not repugnant to the policy of the State.

(3.) I am disposed, moreover, to agree with Col. W. in what he says about commercial transactions, without the necessity of going to law on the subject. I suppose a foreign corporation under the law Merchant, as well as under the commercial laws and regulations of the United States, would be able to do any business of a strictly commercial kind, such as was done

by foreign banks in Arkansas, under her old Constitution. Certainly bills of exchange would be collectable, and ordinary debts also, if the contracts

were made outside of the State, or in the State to be executed outside of it.

(4.) I hope the Colonel will also agree with me that a foreign corporation cannot migrate to Virginia or establish an agency or a branch of the corporation to do what the Constitution of Virginia designed to forbid her own citizens. Col. Williams gives us a parallel case, for which I thank him, because it makes the whole matter as clear as the noon-day sun. In her old Constitution, Arkansas forbid the incorporation or establishment of banking institutions just as Virginia now forbids the incorporation of Churches or religious denominations. Yet, foreign banks did business in Arkansas, and I have no doubt could do any act which was not intended to be forbidden by the Constitution. Hence, I am ready, without examination, to accept of Col. Williams' legal opinion, and to adopt the parallel case just as far as he carries it. But I want to run the parallel a little further. Would a foreign bank have been allowed to establish a branch bank at Little Rock? Or to establish a banking agency there to do what the Constitution of Arkansas meant by "banking?" Well, can the Trustees of the General Assembly establish a branch office in Richmond and proceed to do the very things the Constitution of Virginia designed to prohibit by the provision alluded to? I think these questions are susceptible of but a single answer, and that in the negative. If that is so, it is all I have contended for from the beginning, viz. : That the Trustees incorporated in North Carolina cannot establish a branch corporation or a permanent agency in Virginia, purchase property and do regular business. As to the other points of law which have been introduced into this discussion, however interesting to a lawyer, they are comparatively unimportant, and are not decisive of the question at issue. A negative answer to the above questions is decisive. The reasons for thinking so, which I gave the Assembly and presented in a previous communication, I think will be agreed on all hands, I have fortified with able authority. No doubt, adverse opinions can be quoted against me

for what legal proposition is there that does not have two sides? If this were not so, the legal profession, if not the courts of law, would come to an end. My investigation of this subject was by special request of the committee. Though I have fallen under Col. W.'s censure, I have the gratification of knowing that all I have heretofore spoken or written on these legal subjects has met the unqualified approval and endorsement of our counsel, lawyers of eminent standing and wide reputation, at least equal to any in Virginia. So, if I am in error, I am in good company.

The Safety of the Property.

6. The real question, the important question, is the safety of our property under the charter of the committee. Col. Williams accuses me of "guarded silence" on that point. But he knew very well that my article was not written in reply to him ; for you, Messrs Editors, announced my communication as on hand, and ready for your next issue, in the very number in which Col. Williams' first article appeared.

No one had expressed any doubt on the subject in your columns ; no question had been asked by any one ; moreover, I was not examining the merits or the demerits of the charters, but simply explaining why the existing charter of the Trustees of the Assembly could not be made available. And now, what right has Col. William to charge me or the committee with attempting to fasten on the church a charter so doubtful in its safety that I dare not attempt to explain it. I defy Col. Williams and all the world to point to a single act of my life to justify any such accusation. He

wholly mistakes me. Personally, I care not which way these questions are decided. I am perfectly willing that the church should undo everything it has done on this whole subject, if her wise and discreet men, ministers and elders, come to the conclusion that what has been done, has not been done wisely. If our charter can be shown to be in the slightest respect unsafe, I am not only ready to give it up, but I would rather see my hand severed from my body than put it to the instrument that made it binding on the church to the peril of its interests.

Col. Williams calls it ‘ Dr. Baird’s charter.” This is the *argumentum ad invidiam* ; but once more he is mistaken. It did not originate with me, and I never thought of applying for one, until the subject was first brought to my attention, and afterwards to that of the committee, by our counsel. At their instance I transcribed, *mutatis mutandis*, from the statutes of the State, the charter of Union Theological Seminary, and put it into the hands of a distinguished Senator, who took charge of it for the committee, and obtained its passage. My connection with it was simply clerical. The charter of Union Seminary was chosen, because it had already been approved by our
General Assembly ; under it all the endowments and property of that seminary had been held in perfect safety for a number of years; its constitutionality had never been called into question, but it had been for years recognized by all branches of our state government the executive, the legislative and the judicial. With it not a whisper of dissatisfaction in any quarter had ever been heard of; and yet the property of that Seminary is worth at least four times as much as that of the committee. If the seminary property was safe, we felt that we would be safe also. And, now, let me answer Col. Williams’ question. The charter of our committee provides that vacancies in the Board of Trustees shall be filled by the board itself, by electing persons who are members of the Committee of Publication, chosen according to its constitution, which it derives from the General Assembly ; and when any one ceases to be a member of the Committee, he also ceases to be a Trustee, so soon as his successor is ready to enter on his duties. The effect of this arrangement is to make the same persons trustees who are members of the committee. Hence, the Assembly has absolute control over the trustees, because at any meeting it can cause the removal of every trustee, by simply refusing to re-elect them as members of the committee. The same is the rule in Union Theological Seminary. The Trustees fill vacancies from the Board of Directors elected by the Synods of Virginia and North Carolina, and cease to be trustees when they cease to be directors.

Washington and Lee University.

7. Col. Williams twits me about Washington and Lee University, and the charges made in the last Synod of Virginia, as to the perversion of the institution. I took no part in that discussion, and express no opinion in the matter. I wish to say, however : 1. The cases are not parallel ; for the University is a close corporation, with no constituents, and no limitation in the choice of Trustees. 2. The very provision which is contained in the charter of Union Seminary and that of this committee, or one securing the same result, viz, the control of the appointment of the trustees, is all the most earnest advocates of ecclesiastical control asked for the Synod over Hampden Sidney [sic] College, in order to make it secure to the church in all coming time.

State Rights.

8. Col. Williams again twits me about States’ rights ; and points to the lamentable condition of Arkansas, Louisiana, etc., under the present regime. Well, I sympathize even unto indignation, with our fellow-citizens, who suffer these enormous outrages under their present State Governments. But I think the illustration which Col. Williams gave was peculiarly

fortunate for me. It was the slaughter-house monopoly in New Orleans. I know nothing about it, except what he tells us ; but am ready to believe the case to be even more tyrannical than he represents it. But the question immediately occurred to me, how came this outrage to be perpetrated? By scalawags and carpetbaggers leading the negroes blindfolded, and sustained and backed by the glittering sword of our epauletted President, and by the ermined Justices of the Supreme Court of the United States. Louisiana left to herself would soon put every thing to rights, and so would all the other Southern States. But the Supreme Court fastened the slaughter-house monopoly on the people till the end of the contract ; and in all those States the troubles arise and are perpetrated by Federal intervention. The illustration has not converted me ; for I still am thankful that a foreign corporation can not invade the State of Virginia against her will ; and that, therefore, the slaughter-house corporation cannot, under the pretence of citizenship, immigrate to Virginia, and establish its headquarters here, or even a branch of the monopoly. I am still thankful that my doctrine advanced in the Assembly, as to the rights of the States over corporations is true and that Col. Williams' doctrine is not that of the courts of law.

Messrs. Editors : I shall trouble you no more on these subjects. I have done. And yet there are other writers who have done us all the damage they could in your columns. Their arguments are of a kind which others must answer, if answered at all.

The business of finding fault is very easy ; the responsibility which the church has devolved on us I know by the bearing of it is very weighty. While I am ready to work for the church to the full extent of my ability, I cannot be responsible for any more wisdom or strength than the Lord has given me. Called to their responsibilities by the voice of the church, I can say for the committee, they have done what they could, and are always glad to submit their labors to the careful scrutiny and candid judgment or their brethren, and especially to the assembled wisdom of the church in
our highest court, where all the facts can be seen, and known, and explained ; and then to the judgement of that court they submit with gladness.

Col. Williams' articles have done great harm, I am informed by a distinguished minister in Kentucky, who says he knows whereof he affirms ; not by his argument, not by what he says but by the tone of his articles, which has created distrust of the committee. Well, let any one read over the names of the members of that committee and see if they are men who ought to be distrusted : Moses D. Hoge, Charles H. Read, William Brown, Thomas L. Preston, Wm. A. Campbell, Charles Gennet, Wm. F. Taylor, Edward H. Fitzhugh, Beverly R. Wellford, Robert Ould, *nomina venerabilia et clara* are they every one ; men with whom I deem it one on the greatest privileges of my life to be associated. In this grand old commonwealth, whose historic names in Church and State are the glory and pride of the land, there could scarcely be gathered from pulpit, bench, bar, and merchants exchange a nobler or more weighty body of men of the same number. Let our brethren throughout the church, whose good opinion, whose confidence, whose prayers and whose support we covet, read over that list of names, synonymous with everything that is noble, and generous, and faithful, and consecrated to duty, and determine for themselves whether such men are likely to deceive them; whether, in view of their past labors for the church, such men outfit, on such grounds, to be mistrusted ; and I shall be content.

It is said again that this committee has too much influence, and it has even been charged that they have transcended their authority by exerting their influence on the Assembly. Well, how such men can be connected with any interest without wielding a large influence, I cannot tell. I am, Messrs. Editors, yours very faithfully,

E. THOMPSON BAIRD.

The Christian Observer—Literary and Miscellaneous, Vol. LIII, no. 12 (25 March 1874): 1-2.