

# American Legal History – Russell

## **Street, *The Council of Revision of the State of New York (1785)***

City of New York, *March 8, 1785.* Present--Governor Clinton; Livingston, Chancellor; Morris, Chief Justice; Hobart, Justice.

A bill entitled "*An act incorporating the several tradesmen and mechanics of the city and county of New York,*" was before the Council, which adopted the following objections, reported by Justice Hobart, viz.:

1. Because, so far as charity is the object of the bill, it is totally unnecessary, many charitable societies subsisting as well in this city as elsewhere without incorporation; nor can anything justify such incorporation but some peculiarity in the situation of the persons applying, which render the ordinary provision for other distressed citizens inadequate to their relief.
2. Because the contributions necessary to support the charity, the loss of time in the various meetings of the corporation making by-laws, in directing the funds, and managing the alms-house, &c., must all operate as so many taxes on the members, and either induce them to use means to keep up the price of labor, or find themselves underwrought by other mechanics who are willing to rely on the State for the support to which, in case of distress, they are by law entitled, without involving themselves in present difficulties to avoid distant evils.
3. Because all incorporations imply a privilege given to one order of citizens which others do not enjoy, and are so far destructive of that principle of equal liberty which should subsist in every community; and though respect for ancient rights may have induced the framers of the Constitution to tolerate those that then existed, nothing but the most evident public utility can justify a further extension of them.
4. Because, by the sixth enacting clause, the by-laws of the corporation are made to depend in some measure upon the will of the mayor, aldermen and commonalty of the city and county of New York. A connection and union of views being thereby rendered necessary, either the mechanics will influence the magistrates, and the extensive powers of the corporation of the city and county of New York be made at

some future day instruments of monopoly and oppression; or, which is more probable, the corporation of the city and county of New York will obtain a controlling power over the corporation of mechanics, and thus add to the extensive influence which that rich and powerful corporation already enjoy, thereby rendering it extremely dangerous to the citizens and to the political freedom of the people: an evil much more to be apprehended under the present than under the former Constitution, for the Governor and Senators being now elected either by the State at large, or extensive districts in which there will on many occasions be a variety of sentiments, it must be obvious that a comparatively small body of citizens uniting in one general object may, by their weight, make the lightest scale preponderate.

5. Because the reason assigned in the preamble of this bill may equally operate for the incorporation not only of the mechanics, but of every other order of men in every county, whereby the State, instead of being a community of free citizens pursuing the public interest, may become a community of corporations influenced by partial views, and perhaps in a little time (under the direction of artful men) composing an aristocracy destructive to the Constitution and independence of the State.
6. Because, though the title of the bill professes to incorporate the tradesmen and mechanics of the city and county of New York, it does not, in fact, incorporate any but the forty-three persons named in the bill, and invests them with a discretionary power either to incorporate or not incorporate the mechanics of the city and county of New York; a power by no means to be entrusted to any but the representative body of the people. And by a singular solecism in politics, instead of directing that the mechanics at large choose their trustees, they direct that the trustees or members of the corporation shall renew themselves out of the community at large, thus providing only for the extent and perpetuity of their own power; the twelfth clause direction "that they elect and choose, in such manner and form, and upon such terms and conditions, as shall be ordained for that purpose by any of the said by-laws or ordinances of the said corporation, such and so many persons to be members of the said corporation as they shall think beneficial to the laudable designs of the said corporation." By this clause, the forty-three persons named in the bill may at pleasure confine the corporation to its present number or increase or diminish it from twenty-five members to twenty-five thousand; nor are they by any part of the bill confined to choose out of the mechanics of the city and county of New York, but may extend their incorporation to all the mechanics in this or any other State.

By this clause too, they are unrestrained in the imposition of the terms upon which other mechanics are to be admitted. If the law will be attended with inconveniences to the mechanics that compose the corporation, it should be rejected on that ground, nor should so useful a body of men be permitted to injure themselves. If, on the contrary, it holds out advantages to them, their admission into the corporation should not depend on the will of forth-three mechanics, but should extend without restriction to all other mechanics that now do or hereafter may exercise their trades within the city and county; and the Legislature should prescribe the terms of their admission without leaving a door open for the richer and more powerful to oppress or govern those who are less opulent.

7. Because the forty-three persons named in the bill, and their successors, are not only empowered to elect members for the said corporation, but to make by-laws, and judging upon those laws to expel their members for the infraction thereof; so that, by an improper use of two powers, that should never be united--the legislative and judicial--they may acquire and establish an unbounded control over the other mechanics of the city and county.

8. Because, by the seventh clause, they are not only empowered to make by-laws for certain definite purposes, but "for regulating all other their affairs and business as they or the major part of them, so met, shall judge best for the *general good* of the said corporation and for the more effectual promoting the beneficial designs of the institution, and the same to alter, amend and repeal from time to time as they shall conceive most conducive to the interests of the said corporation and the promoting the public good, &c., so as the same by-laws be reasonable in themselves and not repugnant to the Constitution or law of this State, or of the laws and ordinances of the mayor, aldermen, &c. The first of these restrictions is too vague to amount to anything. Many measures may be reasonable that under particular circumstances are highly inexpedient; so that the objects of the by-laws of this corporation are entirely indefinite, and as it would seem, extend to the *promotion of the public good*, an extent which includes all the powers of legislation, provided they do not contravene the laws and Constitution of the State, and of the mayor, aldermen, &c. And this construction is more fully justified by the last clause of the law, which restrains them from limiting the price of labor; whereby evincing that the Legislature conceived that without such restraint, the by-laws of the corporation would have extended to that object, and of course does in its present form extend to an infinity of others which may be equally injurious to the community.

9. Because the interests of the State require that every encouragement should be given to industrious emigrants; no stranger who may choose to reside among us should, therefore, besides the unnecessary and useless expense of taking up his freedom, be compelled to struggle against a combination vested with corporate powers and interested in keeping him unemployed.

10. Because the bill authorizes the corporation to hold estate to an unlimited amount, confining them (if that can be called confining) to one thousand five hundred pounds a year *beyond outgoings and reprisals*.

11. Because no provision is made to direct the purposes to which this unbounded income is to be applied; to prevent the fraudulent or improper uses of it, and to render the corporation accountable for the expenditure, or subject to any inspection which has hitherto been customary in every eleemosynary corporation; either the founder or ordinary having the right of visitation, whereas no ordinary exists under the present Constitution.

12. Because experience having hitherto pointed out no inconvenience in having the mechanics on the same footing with the other members of the community, the bill holds forth no object sufficiently important to induce the change of a system under which they have happily prospered for a series of years, in favor of one that presents many apparent inconveniences, and which in its operation may be more extremely mischievous than human prudence can at present foresee.

The Assembly refused to pass the bill; consequently it did not become a law.

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