

## Sec. 10—Powers Denied to the States

## Cl. 1—Treaties, Coining Money, Etc.

contracts and those which are mere revocable licenses, although on account of the doctrine of presumed consideration mentioned earlier, this has not always been easy to do. In pursuance of the precedent set in *New Jersey v. Wilson*,<sup>1992</sup> the legislature of a state “may exempt particular parcels of property or the property of particular persons or corporations from taxation, either for a specified period or perpetually, or may limit the amount or rate of taxation, to which such property shall be subjected,” and such an exemption is frequently a contract within the sense of the Constitution. Indeed this is always so when the immunity is conferred upon a corporation by the clear terms of its charter.<sup>1993</sup> When, on the other hand, an immunity of this sort springs from general law, its precise nature is more open to doubt, as a comparison of decisions will serve to illustrate.

In *State Bank of Ohio v. Knoop*,<sup>1994</sup> a closely divided Court held that a general banking law of Ohio, which provided that companies complying therewith and their stockholders should be exempt from all but certain taxes, was, as to a bank organized under it and its stockholders, a contract within the meaning of Article I, § 10. The provision was not, the Court said, “a legislative command nor a rule of taxation until changed, but a contract stipulating against any change, from the nature of the language used and the circumstances under which it was adopted.”<sup>1995</sup> When, however, the State of Michigan pledged itself, by a general legislative act, not to tax any corporation, company, or individual undertaking to manufacture salt in the state from water there obtained by boring on property used for this purpose and, furthermore, to pay a bounty on the salt so manufactured, it was held not to have engaged itself within the constitutional sense. “General encouragements,” the Court wrote, “held out to all persons indiscriminately, to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks, or other advantage, are always under the legislative control, and may be discontinued at any time.”<sup>1996</sup> So far as exemption from taxation is concerned the differ-

<sup>1992</sup> 11 U.S. (7 Cr.) 164 (1812).

<sup>1993</sup> *The Delaware Railroad Tax*, 85 U.S. (18 Wall.) 206, 225 (1874); *Pacific R.R. v. Maguire*, 87 U.S. (20 Wall.) 36, 43 (1874); *Humphrey v. Pegues*, 83 U.S. (16 Wall.) 244, 249 (1873); *Home of the Friendless v. Rouse*, 75 U.S. (8 Wall.) 430, 438 (1869).

<sup>1994</sup> 57 U.S. (16 How.) 369 (1854).

<sup>1995</sup> 57 U.S. at 383.

<sup>1996</sup> *Salt Company v. East Saginaw*, 80 U.S. (13 Wall.) 373, 379 (1872). See also *Welch v. Cook*, 97 U.S. 541 (1879); *Grand Lodge v. New Orleans*, 166 U.S. 143 (1897); *Wisconsin & Michigan Ry. v. Powers*, 191 U.S. 379 (1903). Cf. *Ettor v. Tacoma*, 228 U.S. 148 (1913), in which it was held that the repeal of a statute providing for consequential damages caused by changes of grades of streets could not constitutionally affect an already accrued right to compensation.