

## Sec. 10—Powers Denied to the States

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

serve such waters for the use of public. The trust devolving upon the State for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property. . . . Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time.”<sup>2052</sup>

On the other hand, repeated endeavors to subject tax exemptions to the doctrine of inalienability, though at times supported by powerful minorities on the Bench, have failed.<sup>2053</sup> As recently as January 1952, the Court ruled that the Georgia Railway Company was entitled to seek an injunction in the federal courts against an attempt by Georgia’s Revenue Commission to compel it to pay ad valorem taxes contrary to the terms of its special charter issued in 1833. In answer to the argument that this was a suit contrary to the Eleventh Amendment, the Court declared that the immunity from federal jurisdiction created by the Amendment “does not extend to individuals who act as officers without constitutional authority.”<sup>2054</sup>

The leading case involving the police power is *Stone v. Mississippi*.<sup>2055</sup> In 1867, the legislature of Mississippi chartered a company to which it expressly granted the power to conduct a lottery. Two years later, the state adopted a new Constitution which contained a provision forbidding lotteries, and a year later the legislature passed an act to put this provision into effect. In upholding this act and the constitutional provision on which it was based, the Court said: “The power of governing is a trust committed by the people to the government, no part of which can be granted away. The people, in their sovereign capacity, have established their agencies for the preservation of the public health and the public morals, and the protection of public and private rights,” and these agencies can neither give away nor sell their discretion. All that one can get by a charter permitting the business of conducting a lottery “is suspension of certain governmental rights in his favor, subject to withdrawal at will.”<sup>2056</sup>

<sup>2052</sup> Illinois Cent. R.R. v. Illinois, 146 U.S. 387, 453, 455 (1892).

<sup>2053</sup> See especially *Home of the Friendless v. Rouse*, 75 U.S. (8 Wall.) 430 (1869), and *The Washington University v. Rouse*, 75 U.S. (8 Wall.) 439 (1869).

<sup>2054</sup> *Georgia R.R. & Banking Co. v. Redwine*, 342 U.S. 299, 305–06 (1952). The Court distinguished *In re Ayers*, 123 U.S. 443 (1887) on the ground that the action there was barred “as one in substance directed at the State merely to obtain specific performance of a contract with the State.” 342 U.S. at 305.

<sup>2055</sup> 101 U.S. 814 (1880).

<sup>2056</sup> 101 U.S. at 820–21.