

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

although some state courts have applied tests of this nature to the disallowance of legislation, the U.S. Supreme Court has apparently never done so.²⁰²¹

It is quite different with respect to the distinction that some cases point out between, on the one hand, the franchises and privileges that a corporation derives from its charter, and, on the other hand, the rights of property and contract that accrue to it in the course of its existence. Even the outright repeal of the former does not wipe out the latter or cause them to escheat to the state. The primary heirs of the defunct organization are its creditors, but whatever of value remains after their valid claims are met goes to the former shareholders.²⁰²² By the earlier weight of authority, however, persons who contract with companies whose charters are subject to legislative amendment or repeal do so at their own risk; any “such contracts made between individuals and the corporation do not vary or in any manner change or modify the relation between the State and the corporation in respect to the right of the State to alter, modify, or amend such a charter”²⁰²³ But later holdings becloud this rule.²⁰²⁴

Corporation Subject to the Law and Police Power.—But suppose that the state neglects to reserve the right to amend, alter, or repeal. Is it, then, without power to control its corporate creatures? By no means. Private corporations, like other private persons, are always presumed to be subject to the legislative power of the state, from which it follows that immunities conferred by charter are to be treated as exceptions to an otherwise controlling rule. This principle was recognized by Chief Justice Marshall in *Providence Bank v. Billings*,²⁰²⁵ which held that, in the absence of express stipulation or reasonable implication to the contrary in its charter, the bank was subject to the state’s taxing power, notwithstanding that the power to tax is the power to destroy.

And of course the same principle is equally applicable to the exercise by the state of its police powers. Thus, in what was perhaps the leading case before the Civil War, the Supreme Court of

²⁰²¹ See in this connection the cases cited by Justice Sutherland in his opinion for the Court in *Phillips Petroleum Co. v. Jenkins*, 297 U.S. 629 (1936).

²⁰²² *Curran v. Arkansas*, 56 U.S. (15 How.) 304 (1853); *Shields v. Ohio*, 95 U.S. 319 (1877); *Greenwood v. Freight Co.*, 105 U.S. 13 (1882); *Adirondack Ry. v. New York*, 176 U.S. 335 (1900); *Stearns v. Minnesota*, 179 U.S. 223 (1900); *Chicago, M. & St. P. R.R. v. Wisconsin*, 238 U.S. 491 (1915); *Coombes v. Getz*, 285 U.S. 434 (1932).

²⁰²³ *Pennsylvania College Cases*, 80 U.S. (13 Wall.) 190, 218 (1872). See also *Calder v. Michigan*, 218 U.S. 591 (1910).

²⁰²⁴ *Lake Shore & Mich. So. Ry. v. Smith*, 173 U.S. 684, 690 (1899); *Coombes v. Getz*, 285 U.S. 434 (1932). Both these decisions cite *Greenwood v. Freight Co.*, 105 U.S. 13, 17 (1882), but without apparent justification.

²⁰²⁵ 29 U.S. (4 Pet.) 514 (1830).