

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

The Court shortly afterward applied the same reasoning in a case challenging the right of Louisiana to invade the exclusive privilege of a corporation engaged in the slaughter of cattle in New Orleans by granting another company the right to engage in the same business. Although the state did not offer to compensate the older company for the lost monopoly, its action was sustained on the ground that it had been taken in the interest of the public health.²⁰⁵⁷ When, however, the City of New Orleans, in reliance on this precedent, sought to repeal an exclusive franchise which it had granted a company for fifty years to supply gas to its inhabitants, the Court interposed its veto, explaining that in this instance neither the public health, the public morals, nor the public safety was involved.²⁰⁵⁸

Later decisions, nonetheless, apply the principle of inalienability broadly. To quote from one: "It is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power to the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and all contract and property rights are held subject to its fair exercise."²⁰⁵⁹

It would scarcely suffice today for a company to rely upon its charter privileges or upon special concessions from a state in resisting the application to it of measures alleged to have been enacted under the police power thereof; if this claim is sustained, the obligation of the contract clause will not avail, and if it is not, the due process of law clause of the Fourteenth Amendment will furnish a sufficient reliance. That is to say, the discrepancy that once existed between the Court's theory of an overriding police power in these two adjoining fields of constitutional law is today apparently at an end. Indeed, there is usually no sound reason why rights based on public grant should be regarded as more sacrosanct than rights that involve the same subject matter but are of different provenance.

Private Contracts.—The term "private contract" is, naturally, not all-inclusive. A judgment, though granted in favor of a creditor,

²⁰⁵⁷ *Butchers' Union Slaughter-House and Live-Stock Landing Co. v. Crescent City Live-Stock Landing and Slaughter-House Co.*, 111 U.S. 746 (1884).

²⁰⁵⁸ *New Orleans Gas Co. v. Louisiana Light Co.*, 115 U.S. 650 (1885).

²⁰⁵⁹ *Atlantic Coast Line R.R. v. City of Goldsboro*, 232 U.S. 548, 558 (1914). *See also* *Chicago & Alton R.R. v. Tranbarger*, 238 U.S. 67 (1915); *Pennsylvania Hospital v. Philadelphia*, 245 U.S. 20 (1917); where the police power and eminent domain are treated on the same basis in respect of inalienability; *Wabash R.R. v. Defiance*, 167 U.S. 88, 97 (1897); *Home Tel. & Tel. Co. v. City of Los Angeles*, 211 U.S. 265 (1908).