

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

sons, corporate and individual alike, to the legislative power of the state has been fortified, is the doctrine that certain of the state's powers are inalienable, and that any attempt by a state to alienate them, upon any consideration whatsoever, is *ipso facto* void and hence incapable of producing a "contract" within the meaning of Article I, § 10. One of the earliest cases to assert this principle was decided in New York in 1826. The corporation of the City of New York, having conveyed certain lands for the purposes of a church and cemetery together with a covenant for quiet enjoyment, later passed a by-law forbidding their use as a cemetery. In denying an action against the city for breach of covenant, the state court said the defendants "had no power as a party, [to the covenant] to make a contract which should control or embarrass their legislative powers and duties."²⁰⁴⁹

The Supreme Court first applied similar doctrine in 1848 in a case involving a grant of exclusive right to construct a bridge at a specified locality. Sustaining the right of the State of Vermont to make a new grant to a competing company, the Court held that the obligation of the earlier exclusive grant was sufficiently recognized in making just compensation for it; and that corporate franchises, like all other forms of property, are subject to the overruling power of eminent domain.²⁰⁵⁰ This reasoning was reinforced by an appeal to the theory of state sovereignty, which was held to involve the corollary of the inalienability of all the principal powers of a state.

The subordination of all charter rights and privileges to the power of eminent domain has been maintained by the Court ever since; not even an explicit agreement by the state to forego the exercise of the power will avail against it.²⁰⁵¹ Conversely, the state may revoke an improvident grant of public property without recourse to the power of eminent domain, such a grant being inherently beyond the power of the state to make. Thus, when the legislature of Illinois in 1869 devised to the Illinois Central Railroad Company, its successors and assigns, the state's right and title to nearly a thousand acres of submerged land under Lake Michigan along the harbor front of Chicago, and four years later sought to repeal the grant, the Court, a four-to-three decision, sustained an action by the state to recover the lands in question. Justice Field wrote for the majority: "Such abdication is not consistent with the exercise of that trust which requires the government of the State to pre-

²⁰⁴⁹ *Brick Presbyterian Church v. New York*, 5 Cow. (N.Y.) 538, 540 (1826).

²⁰⁵⁰ *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507 (1848). *See also* *Backus v. Lebanon*, 11 N.H. 19 (1840); *White River Turnpike Co. v. Vermont Cent. R. Co.*, 21 Vt. 590 (1849); and *Bonaparte v. Camden & A.R. Co.*, 3 Fed. Cas. 821 (No. 1617) (C.C.D.N.J. 1830).

²⁰⁵¹ *Pennsylvania Hospital v. City of Philadelphia*, 245 U.S. 20 (1917).