

***PROVIDENCE BANK v. BILLINGS***

**Supreme Court of the United States  
29 U.S. 514 (1830); 1830 U.S. LEXIS 490**

[Background: In 1791 the Rhode Island legislature enacted a statute granting a charter of incorporation to a bank. (At this time American corporations were chartered individually by the state legislatures; there were no general incorporation laws.) The charter did not refer to taxation. In 1822 the Rhode Island legislature passed an act imposing a tax on banks. The Providence Bank refused to pay the tax. The bank contended that the tax violated the Contract Clause of the U.S. Constitution of the United States.]

Mr Chief Justice MARSHALL delivered the opinion of the Court.

In November 1791 the legislature of Rhode Island granted a charter of incorporation to certain individuals, who had associated themselves together for the purpose of forming a banking company. They are incorporated by the name of the "President, Directors, and Company of the Providence Bank;" and have [i.e., are granted by the charter] the ordinary powers which are supposed to be necessary for the usual objects of such associations.

In 1822 the legislature of Rhode Island passed "an act imposing a duty [i.e., a tax] on licensed persons and others, and bodies corporate within the state;" in which, among other things, it is enacted that there shall be paid, for the use of the state, by each and every bank within the state, except the Bank of the United States, the sum of fifty cents on each and every thousand dollars of the capital stock actually paid in."

The Providence Bank [contends] that the act is repugnant to the constitution of the United States, inasmuch as it impairs the obligation of the contract created by their charter of incorporation. [\*560] . . .

It has been settled [in *Fletcher v. Peck* (1810)] that a contract entered into between a state and an individual, is as fully protected by the tenth section of the first article of the constitution, as a contract between two individuals; and it is not denied that a charter incorporating a bank is a contract [as held by the Court in *Dartmouth College v. Woodward* (1819)]. Is this contract [i.e., the bank's charter] impaired by taxing the banks of the state?

This question is to be answered by the charter itself.

It contains no stipulation promising exemption from taxation. The state, then, has made no express contract which has been impaired by the act of which the plaintiffs [i.e., the Bank] complain. No words have been found in the charter, which, in themselves, would justify the opinion that the power of taxation was in the view of either of the parties [i.e., of either the legislature or the individuals who applied for the act of incorporation]; and that an exemption of it was intended, though not expressed.

...

The plaintiffs would give to this charter the same construction as if it contained a clause exempting the bank from taxation on its stock in trade. . . . They contend that it must be implied; because the power to tax may be so wielded as to defeat the purpose for which the charter was granted. [But] may not this be said with equal truth of other legislative powers? Does it not also apply with equal force to every incorporated company? . . . The time may come when a duty may be imposed on [\*562] manufactures. Would an incorporated company be exempted from this duty, as the mere consequence of its charter?

The great object of an incorporation [i.e., a statute creating a corporation] is to bestow the character and properties of individuality on a collective and changing body of men. This capacity is always given to such a body. Any privileges which may exempt it from the burthens common to individuals, do not flow necessarily from the charter, but must be expressed in it, or they do not exist.

If the power of taxation is inconsistent with the charter, because it may be so exercised as to destroy the object for which the charter is given; it is equally inconsistent with every other charter, because it is equally capable of working the destruction of the objects for which every other charter is given. If the grant of a power to trade in money to a given amount, implies an exemption of the stock in trade from taxation, because the tax may absorb all the profits; then the grant of any other thing implies the same exemption; for that thing may be taxed to an extent which will render it totally unprofitable to the grantee. Land, for example, has, in many, perhaps in all the states, been granted by government since the adoption of the constitution. This grant is a contract, the object of which is that the profits issuing from it shall enure to the benefit of the grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of the

contract? The idea is rejected by all; and the proposition appears so extravagant, that it is difficult to admit any resemblance in the cases. And yet if the proposition for which the plaintiffs contend be true, it carries us to this point. That proposition is, that a power which is in itself capable of being exerted to the total destruction of the grant, is inconsistent with the grant; and is therefore impliedly relinquished by the grantor, though the language of the instrument contains no allusion to the subject. If this be an abstract truth, it may be supposed universal. But it is not universal; and therefore its truth cannot be admitted, in these broad terms, in any case. We must look for the exemption in the language of the instrument; and if we do [\*563] not find it there, it would be going very far to insert it by construction.

The power of legislation, and consequently of taxation, operates on all the persons and property belonging to the body politic. This is an original principle, which has its foundation in society itself. It is granted by all, for the benefit of all. It resides in government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies. However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burthens; and that portion must be determined by the legislature. This vital power may be abused; but the constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents, furnish the only security, where there is no express contract, against unjust and excessive taxation; as well as against unwise legislation generally. . . .

We have reflected seriously on this case, and are of opinion that the act of the legislature of Rhode Island, passed in 1822, imposing a duty on licensed persons and others, and bodies corporate within the state, does not impair the obligation of the contract created by the charter . . . . It is therefore the opinion of this court, that there is no error in the judgment of the supreme judicial court for the state of Rhode Island, affirming the judgment of the circuit court in this case; and the same is affirmed; and the cause is remanded to the said supreme judicial court, that its judgment may be finally entered.