

they are not alleged to be using the invention. It could only be a suit at law against the trustees or the stockholders of the old corporation for infringement by it while it existed. The theory of the bill is that there is a perfect defense to such a suit. In such a case a court of equity, certainly a circuit court of the United States, will not interfere to enjoin even a pending suit at law, much less the bringing of one in the future. *Grand Chute v. Winegar*, 15 Wall. 373; 1 High, Inj. §§ 89-93, and cases there cited.

Decree affirmed.

(119 U. S. 265)

CITY OF NEW ORLEANS and others *v.* HOUSTON, State Tax Collector, and another.

(December 6, 1886.)

1. LOTTERIES—CONSTITUTION—CONSTRUCTION—STATUTE—REVIVAL—REPEAL—LOUISIANA STATE LOTTERY COMPANY—ACTS LA. 1868, No. 25; ACTS LA. 1879, No. 44; CONST. LA. 1879, ART. 179.

No. 25 of Acts Louisiana 1868 established the Louisiana State Lottery Company as a corporation, declaring that it should pay the state \$40,000 per annum, and be exempt from all other taxes and licenses from the state, parish, or municipal authorities, and that it should have the sole and exclusive privilege of establishing and authorizing a lottery, selling tickets, and disposing of property by lottery. This was repealed by No. 44, Acts Louisiana 1879, which took effect March 31, 1879. Article 167, Const. Louisiana 1879, which went into operation in December, 1879, assuming that the charter of 1868 was still in force, gave the general assembly authority to grant lottery charters and privileges, and declared that "the charter of said company is recognized as a contract binding on the state, \* \* \* except its monopoly clause, which is hereby abrogated." *Held*, that the constitution repealed the act of 1879, so far as that act repealed the act of 1868, and revived the act of 1868, except the monopoly abrogated.

2. SAME—"MONOPOLY ABROGATED."

*Held, also*, that the monopoly abrogated was the exclusive lottery franchise only, and not the exemption from taxation, even if that exemption from taxation might be practically operative as a monopoly, since the monopoly, by reason of the exemption, is not one derived from any clause of the charter as granted in the year 1868, but is one created by the constitution itself, and that, too, merely by way of inference.

3. SAME—LOUISIANA ACT NO. 77, 1880, UNCONSTITUTIONAL SO FAR AS IT AUTHORIZES THE TAXING OF LOUISIANA STATE LOTTERY COMPANY.

It being sought to tax the company under Louisiana Act No. 77, 1880, a general tax law, which act was argued not to be unconstitutional as violating the obligation of the contract because its subject-matter was within the scope of the police power of the state, *held*, that the argument was irrelevant; the grant to the company being contained in the constitution, the legislature acting under it cannot contravene it, and, so far as the act authorizes the taxing of the company, it is void.

4. SAME—TAXATION—STATUTES—CONSTRUCTION—SECTION 48, LOUISIANA ACT NO. 77, 1880.

Section 48, Louisiana act No. 77, 1880, purporting to tax, not the capital stock, but the shares of shareholders, of a corporation by assessing the tax against them, really taxes the corporation for its capital stock, since it requires the corporation to pay the tax, and authorizes a deduction from the amount of taxes assessed to each share of its proportion of the direct property tax paid by the corporation, as such, under other sections of the act.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

W. H. Rogers and J. Ward Gurley, Jr., for appellants, City of New Orleans and others. J. A. Campbell, for appellees, Houston, State Tax Collector, and another.

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\*MATTHEWS, J. On the twenty-seventh of January, 1881, the Louisiana State Lottery Company, alleging itself to be a corporation under the laws of the state of Louisiana, filed its bill in chancery against the city of New Orleans and the tax assessors for the parish of Orleans, the object and prayer of which were to obtain a perpetual injunction restraining the defendants from

the assessment and collection of certain taxes about to be enforced against the complainant by the seizure and sale of its property. On final hearing there was a decree in conformity with the prayer of the bill, from which the defendants below prosecute the present appeal.

The allegations of the bill are, in substance, that by an act of the legislature of the state of Louisiana passed in 1868, being act No. 25 of that year, the Louisiana State Lottery Company was established and organized as a corporation; that, among other immunities and franchises granted by said act, it was provided in article 5 that the company "shall pay the state of Louisiana the sum of forty thousand dollars per annum, which sum shall be payable quarterly, in advance, from and after the first day of January, 1869, to the state auditor, who shall deposit the same in the treasury of the state, and which shall be credited to the educational fund; and said corporation shall be exempt from all other taxes and licenses of any kind whatever from the state, parish, or municipal authorities;" that in the year 1871 legal proceedings were instituted by the city of New Orleans against the said company, in the superior district court for the parish of Orleans, for the purpose of enforcing, on behalf of said city, certain taxes alleged to have been assessed against it, notwithstanding said exemption contained in its charter, the city of New Orleans claiming therein that said exemption was void; that such proceedings were had thereon that, on final hearing in the supreme court of Louisiana, a judgment was rendered in favor of the lottery company, declaring said exemption to be valid, and the said taxes illegal; that the said company claims that the provision in its said charter, exempting it from taxes as aforesaid beyond the sum of \$40,000, payable annually, is a contract between the state of Louisiana and itself, and has been expressly confirmed and recognized as such by the present constitution of the state of Louisiana, adopted in 1879, in article 167, all the provisions of which, it is alleged in the bill, the complainants have complied with.

The bill further alleges that, notwithstanding the provisions of the said charter, and in defiance of the judgment of the supreme court of Louisiana, and contrary to the constitution of the state, the defendants "are about to levy and assess a tax upon the capital stock and other property of your orator, and the other defendants hereinbefore named have threatened and are about to take proceedings against your orator for the collection of said illegal tax, which is illegal because prohibited by the constitution of the United States as violative of the said contract between your orator and the state of Louisiana;" that the said officers of the state pretend to justify their action under the provisions of act No. 77 of the legislature of Louisiana of 1880, which the complainant avers to be null and void and of no effect, so far as it may be construed to authorize the proceedings of the defendants. The bill alleges that the complainant has always promptly paid the amount called for by its charter to the state treasurer, and in advance, and owes nothing to the state on that account; and accordingly prays for an injunction to restrain the defendants from further attempts to enforce the collection of the tax complained of.

To this bill a joint and several answer was filed by all of the defendants. That answer admits the incorporation of the Louisiana State Lottery Company as alleged in the bill, and that its charter constitutes a valid contract between the state of Louisiana and the company. It admits that the defendants are about to levy a tax upon the capital stock and upon other property of the complainant, but denies that such proceedings are illegal; and claims that act No. 77 of the year 1880, passed by the Louisiana legislature, is in no respect null and void.

On final hearing a decree was passed wherein "the court decrees and declares that the act of the legislature, (No. 77, Acts 1880,) so far as it imposes a tax upon the capital stock of the complainant, or upon the shares of the stock held by the shareholders of the complainant, is in conflict with article 5, s

tion 1, of complainant's charter, found in act No. 25 of the acts of 1868, and therefore impairs the obligation of a contract, and is void. The court further decrees and declares that, under the provisions of said charter as adopted as a contract by the constitution of 1879, the capital of the complainant, both in the aggregate and as held by its shareholders, is exempted from all taxation of every kind, excepting the annual payment of forty thousand dollars. The court further decrees that the defendants herein be enjoined and restrained in manner and form and to the extent prayed for in the bill of complaint herein."

It is objected to this decree in the first place, on behalf of the city of New Orleans, that that municipality was not properly in court by due service of process; but the objection does not seem to be well founded in fact. There was service of process upon the mayor, which is conceded to be the statutory method of serving process in such cases, and the city actually appeared by attorney, and answered.

The principal question, however, arises upon the terms of article 167 of the constitution of the state of 1879. That clause is as follows: "The general assembly shall have authority to grant lottery charters or privileges: provided, each charter or privilege shall pay not less than forty thousand dollars per annum in money into the treasury of the state: and provided, further, that all charters shall cease and expire on the first of January, 1895, after which no lottery shall be drawn within the state of Louisiana. The forty thousand dollars per annum now provided by law to be paid by the Louisiana State Lottery Company, according to the provisions of its charter granted in the year 1868, shall belong to the Charity Hospital of New Orleans, and the charter of said company is recognized as a contract binding on the state for the period therein specified, except its monopoly clause, which is hereby abrogated; and all laws contrary to the provisions of this article are hereby declared null and void: provided, said company shall file a written renunciation of all its monopoly features in the office of the secretary of state within sixty days after the ratification of this constitution."

It appears that by an act of the legislature of Louisiana which took effect on the thirty-first of March, 1879, act No. 25 of the year 1868, which incorporated and established the Louisiana State Lottery Company, and all other laws on the same subject-matter, were repealed, and the Louisiana State Lottery Company was thereby abolished and prohibited from drawing any and all lotteries, or selling lottery tickets, either in its corporate capacity, or through its officers, members, stockholders, or agents, either directly or indirectly. That act also made it a penal offense to draw any lottery, or have any connection or interest in or with the drawing of any lottery, in the state, or to sell, or offer to sell, any lottery tickets, or to set up or promote any lottery in the state. This statute took effect before the adoption of the constitution of 1879, and was in force when the latter went into operation in December, 1879.

It is now contended, on the part of the appellants, that article 167 of the constitution of the state does not have the effect to revive the original charter of the Louisiana State Lottery Company as though it had never been repealed, but revives it only so far as under that clause the general assembly was authorized to grant lottery charters or privileges in the future; that this constitutional authority to grant new lottery charters or privileges does not warrant the legislature in stipulating, by way of contract, that the minimum license tax of \$40,000 per annum shall be in lieu of all other taxes upon the property, and operate to exempt the company, so far as taxation is concerned, from the effect of other clauses of the constitution; that by other provisions of the constitution, particularly article 207, no property can be exempt from taxation except public property, places of religious worship or burial, charitable institutions, buildings and property used exclusively for colleges and other school purposes, real and personal estate of public libraries, household property to the value of \$500, and, for the period of ten years from the adop-

tion of the constitution, the capital, machinery, and other property employed in certain enumerated manufactories, wherein not less than five hands are employed in any one factory.

It is argued that the whole proper effect to be given to the provisions of article 167 of the constitution is to secure to the Louisiana State Lottery Company such a charter as the general assembly was authorized thereby to grant to any other lottery company, and to modify it as though it had been actually granted by the general assembly under that clause. This intent is inferred from the language of the constitution, which specifically forbids the future existence of the "monopoly clause" of the charter of the company, and requires it to file a written renunciation of this feature with the secretary of state within 60 days after the ratification of the constitution; the object in view being, as it is contended, obviously, to place the Louisiana State Lottery Company, under its charter as granted in the year 1868, but subject to and modified by the provisions of the constitution of 1879, on an equal footing merely with other and new lottery companies to which, by the terms of the constitution, the general assembly was authorized to grant charters; and the conclusion deduced is that, as under that constitution the general assembly had no authority to grant a charter for a lottery company which should contain the exemption relied upon as the ground of relief in the present suit, the exemption so relied on was repealed by the constitution. The argument seems to be that if the Louisiana State Lottery Company is exempt from taxation beyond the annual sum of \$40,000, and other companies to be chartered under the constitution of 1879 are not and cannot be, the monopoly secured to the former by its original charter is perpetuated, and not abrogated, as it was the express purpose of the constitution to accomplish, for the reason that such a discrimination effectually, and in advance, prevents all possible competition.

The charter of the Louisiana State Lottery Company, being act No. 25 of the year 1868, establishes a corporation for the purpose of carrying on the business of a lottery, with a capital stock of \$1,000,000. By the fourth section of the eighth article it was provided that the corporation should continue during the term of 25 years from January 1, 1869; for which time, it was added, it "shall have the sole and exclusive privilege of establishing and authorizing a lottery, or series of lotteries, and selling and disposing of lottery tickets, policy combination devices, and certificates, and fractional parts thereof." And by section 5 of the same article it was provided "that the said corporation shall also have the sole right and privilege, during the whole term of its existence as hereinbefore provided for, to dispose of by lottery, or series of lotteries, any lands, improved or unimproved, which said corporation may become possessed of, by purchase or otherwise."

The exclusive right conferred by these provisions became the subject of judicial consideration by the supreme court of Louisiana in the case of *Louisiana State Lottery Co. v. Richoux*, decided in November, 1871, and reported in 23 La. Ann. 743. By the decision in that case the exclusive right claimed by the Louisiana State Lottery Company to establish lotteries, and to sell lottery tickets, in the state, was adjudged in its favor by an injunction restraining the defendants from vending lottery tickets of other companies, in violation of the exclusive right claimed by the plaintiffs. The validity of the exemption of the lottery company from taxation in excess of the annual sum of \$40,000, as stipulated in article 5, § 1, of its charter, was upheld by a decision of the same court in the case of *Louisiana State Lottery Co. v. City of New Orleans*, 24 La. Ann. 86. The exemption was attacked in that case on the ground that it was in violation of the state constitution then in force, because it infringed the principle of equality and uniformity in the matter of imposing taxes, the legislature being prohibited from exempting from taxation any species of property except such as was actually used for charitable,

educational, or religious purposes; and for the additional reason that it granted certain rights to the plaintiff which were denied to other citizens of the state. In reference to these objections the supreme court of Louisiana said: "It may be said that the power of a state legislature to impose what is known as a commutation tax is a well-recognized power, not only in our own jurisprudence, but generally. [*City of New Orleans v. Mascaro*] 11 La. Ann. 733; [*Chicago v. Sheldon*] 9 Wall. 50; [*Illinois Cent. R. Co. v. County of McLean*] 17 Ill. 291; [*Hunsaker v. Wright*] 30 Ill. 146. In the act under consideration the legislature has deemed it advisable to grant to the lottery company an exemption from all other taxation, except of paying \$40,000 per annum to the state for public education. On the commutation principle, we think, the act is not violative of the constitution. It is not clear that the city has any grounds to object to this exemption by the state of the company it claims the right to require the payment of licenses from, the city being a municipal corporation, and deriving its right to levy licenses from the state, and in this instance the right is withheld." The city of New Orleans was accordingly enjoined from further attempts to collect from the lottery company any municipal taxes or licenses.

It was in view of these decisions of the supreme court of the state that the present constitution was framed and adopted. Article 167 of that instrument expressly recognizes the charter of the Louisiana State Lottery Company, as granted in the year 1868, as existing with the force both of law and of contract, with the exceptions mentioned. It specifies that "the \$40,000 per annum now provided by law to be paid by the Louisiana State Lottery Company, according to the provisions of its charter granted in the year 1868, shall belong to the Charity Hospital of New Orleans;" but the only law which provided for the payment of \$40,000 per annum was the charter of the company, and this clause diverts it from the educational fund, to which it had been appropriated by the terms of the charter, to the uses of the Charity Hospital of New Orleans. The article of the constitution then proceeds to say: "And the charter of said company is recognized as a contract binding on the state for the period therein specified, except its monopoly clause, which is hereby abrogated." The monopoly clause hereby excepted and abrogated can be no other than that already referred to as contained in sections 4 and 5 of article 8, by which was conferred upon the corporation the sole and exclusive privilege of establishing and authorizing a lottery or series of lotteries, and selling and disposing of lottery tickets, etc. These are the only clauses in the charter granting any exclusive rights, and therefore the only ones which can be properly styled "monopoly clauses."

The constitutional article then proceeds to say that "all laws contrary to the provisions of this article are hereby declared null and void." This clause operates as a repeal of so much of act No. 44, approved March 27, 1879, as repeals the charter of the Louisiana State Lottery Company, and prohibits it from drawing lotteries and selling lottery tickets. That it did operate to that extent, but no further, was the express decision of the supreme court of Louisiana in the case of *Carcass v. Judge of First District Court*, 32 La. Ann. 719. It was held in that case that those portions of act No. 44 which define the offenses of drawing lotteries and selling lottery tickets, and providing punishment therefor, by all persons other than the Louisiana State Lottery Company, were not affected by the constitution of 1879. The court in its opinion says: "Construing the act of 1879 and the article of the constitution together, so as to give full effect to each and all the parts of both, and blending them together, we consider that the law of Louisiana on the subject of the vending of lottery tickets simply is: The sale of lottery tickets in this state is absolutely prohibited unless by organizations, chartered by the state, which, before dealing in that kind of speculation, shall have paid an annual license of not less than forty thousand dollars to the state. There

shall exist no monopoly for the sale of such tickets or doing such business. Individuals violating the law by selling lottery tickets, or dealing in the lottery business, *without having previously obtained a charter, and paid the required license in the manner provided by law, shall be prosecuted and punished by fine and imprisonment.* The Louisiana State Lottery Company, previously in existence, shall continue its operations on abdicating all its professions to a monopoly, and on complying with the requirements touching the payment of the license."

The effect, therefore, of article 167 of the constitution of Louisiana is to revive the charter of the Louisiana State Lottery Company granted in the year 1868, notwithstanding its repeal by act No. 44 of the year 1879, except as to the clause which confers upon it the exclusive privilege of establishing a lottery, and dealing in lottery tickets, and to recognize the charter thus modified as a contract binding on the state for the period therein specified. This renews and establishes the obligation of the corporation under section 1, art. 5, of its charter, to pay to the state the annual sum of \$40,000, in consideration of which it is declared to be "exempt from all other taxes and licenses of any kind whatever, whether from state, parish, or municipal authorities."

In answer to the argument of counsel that this places the Louisiana State Lottery Company, under the constitution of 1879, on a better footing than any other lottery company chartered by the general assembly thereafter, for the reason that no such exemption can be granted to the latter, it is sufficient to say that, if this consequence be admitted, the monopoly which is supposed to be thus created in favor of the Louisiana State Lottery Company is not one derived under any clause of its charter as granted in the year 1868, but is one created by the constitution itself, although, merely by way of inference, by this mode of interpretation.

It is further contended, however, on the part of the appellants, that if the charter of the Louisiana State Lottery Company is recognized as a contract by article 167 of the constitution, it is not such a contract as is protected by the constitution of the United States against future legislation by the state impairing its obligation, for the reason that its subject-matter is embraced within the scope of the police power of the state, the exercise of which cannot be effectually bound by contract. And thus the case is thought to be brought within the principle established by this court in the case of *Stone v. Mississippi*, 101 U. S. 814. In its opinion in that case the court said: "The contracts which the constitution protects are those that relate to property rights, not governmental. It is not always easy to tell on which side of the line which separates governmental from property rights a particular case is to be put, but in respect to lotteries there can be no difficulty. They are not, in the legal acceptance of the term, *mala in se*, but, as we have just seen, may properly be made *mala prohibita*. \* \* \* Certainly the right to suppress them is governmental, to be exercised at all times by those in power, at their discretion. Any one, therefore, who accepts a lottery charter does so with the implied understanding that the people in their sovereign capacity, and through their properly constituted agencies, may resume it at any time when the public good shall require, whether it be paid for or not. All that one can get by such a charter is a suspension of certain governmental rights in his favor, subject to withdrawal at will. He has, in legal effect, nothing more than a license to enjoy the privilege, on the terms named, for the specified time, unless it be sooner abrogated by the sovereign power of the state. It is a permit, good as against existing laws, but subject to future legislative and constitutional control or withdrawal."

This language must be construed in reference to the circumstances of the case in respect to which it was used. That was a case of an act of the legislature of Mississippi granting a charter to a lottery company abrogated by a provision in the constitution of the state subsequently adopted. The converse

is the present case. The grant of the charter to the Louisiana State Lottery Company is contained in the constitution, and the question is whether the legislature, acting under that constitution, can contravene it. That is a question which needs no answer; its statement is sufficient. It is undoubtedly true that no rights of contract are or can be vested under this constitutional provision which a subsequent constitution might not destroy, without impairing the obligation of a contract, within the sense of the constitution of the United States, for the reason assigned in the case of *Stone v. Mississippi*. But an ordinary act of legislation cannot have that effect, because the constitutional provision has withdrawn from the scope of the police power of the state to be exercised by the general assembly the subject-matter of the granting of lottery charters, so far as the Louisiana State Lottery Company is concerned, and any act of the legislature contrary to this prohibition is, upon familiar principles, null and void. The subject is not within the jurisdiction of the police power of the state, as it is permitted to be exercised by the legislature under the constitution of the state.

It is next contended, on the part of the appellants, that the exemption contained in the charter of the Louisiana State Lottery Company, as confirmed by the constitution of the state, does not extend further than those taxes and licenses, in excess of the annual sum of \$40,000, which may be assessed upon the corporation itself; and it is said that the tax sought to be levied, and the assessment of which has been enjoined in the present case, is not a tax upon the corporation itself, but upon the shareholders, on account of their shares in its capital stock held by them as individuals. The facts in regard to the character of the tax, and the mode of its assessment, do not clearly appear from the pleadings. In the bill it is alleged that the defendants "are about to levy and assess a tax upon the capital stock and other property of your orator," and "are about to take proceedings against your orator for the collection of said alleged tax, \* \* \* by serving a notice to that effect, to seize and sell the property rights and credits of your orator," and that these acts are done under the pretended authority of "the provisions of act No. 77 of the legislature of Louisiana of 1880; which said law," it is averred, "is null and void and of no effect, so far as your orator is concerned, inasmuch as by authorizing the levy of a tax upon the property of your orator, other than that provided for in the charter of your orator as aforesaid, said act violates the contract between your orator and the state of Louisiana by requiring of your orator other taxes than those provided for in said charter, and is repugnant to paragraph 2, section 10, of article 1 of the constitution of the United States."

In the answer the defendants "admit that, at the time of the issuance of the preliminary injunction herein, the state assessors for the parish of Orleans were about to levy a tax upon the capital stock of the complainant, and upon other of complainant's property;" and the state tax collector admits that he had served notice upon the company that he was about "to seize and sell the property rights and credits of complainant, and to take the legal measures to enforce the collection of the tax complained of." It is also admitted, on the part of the city of New Orleans, that it intended to compel payment of the taxes assessed as aforesaid on its behalf, and act No. 77 of the legislature of Louisiana of 1880 is set up as a justification. Section 48 of that act is as follows: "That no assessment shall hereafter be made under that name, as heretofore, of the capital stock of any national bank, state bank, banking company, banking firm, or banking association, or of any corporation, company, firm, or association, whose capital stock is represented by shares, but the actual shares shall be assessed to the shareholders who appear as such upon the books, regardless of any transfer not registered or entered upon the books; and it shall be the duty of the president, or other proper officer, to furnish to the tax collector a complete list of those who are borne upon the

books as shareholders; and all the taxes so assessed shall be paid by the bank, company, firm, association, or corporation, which shall be entitled to collect the amounts from the shareholders or their transferees. All property owned by the bank, company, firm, association, or corporation, which is taxable under sections one and three of this act, shall be assessed directly to the bank, company, firm, association, or corporation, and the *pro rata* of such direct property taxes, and of all exempt property, proportioned to each share of capital stock, shall be deducted from the amount of taxes assessed to that share under this section. \* \* \* Such assessments shall be made where the bank," etc., "is located, and not elsewhere, whether the shareholders reside there or not. \* \* \*

It is well settled by the decisions of this court that the property of shareholders in their shares, and the property of the corporation in its capital stock, are distinct property interests, and, where that is the legislative intent clearly expressed, that both may be taxed. *Van Allen v. Assessors*, 3 Wall. 573; *In re Delaware R. Tax*, 18 Wall. 206; *Farrington v. Tennessee*, 95 U. S. 679.

In *Tennessee v. Whitworth*, 117 U. S. 129, 136, S. C. 6 Sup. Ct. Rep. 645, at page 647, the chief justice, delivering the opinion of the court, said: "In corporations four elements of taxable value are sometimes found: (1) Franchises; (2) capital stock in the hands of the corporation; (3) corporate property; and (4) shares of the capital stock in the hands of the individual stockholders. Each of these is, under some circumstances, an appropriate subject of taxation; and it is no doubt within the power of a state, when not restrained by constitutional limitations, to assess taxes upon them in a way to subject the corporation or the stockholders to double taxation. Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall, as far as is practicable, be laid equally on all; and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes fall on the same person. Sometimes tax laws have that effect; but, if they do, it is because the legislature has mistakenly so enacted. All presumptions are against such an imposition."

But the question of legislative intent is always open upon the language of the exemption. In the present case the corporation is exempted by its charter from all other taxes and licenses of any kind whatever in excess of the sum of \$40,000 per annum, and yet by act No. 77, though the assessment is not to be made upon its capital stock, but upon the shares of shareholders appearing upon its books, nevertheless the tax so assessed is to be paid by the company, although it is entitled to collect the amount so paid from the shareholder on whose account it is payable; but this payment by the company is to be made irrespective of any dividends or profits payable to the shareholder out of which it might be repaid. That it is substantially a tax upon the corporation itself is unequivocally shown by the subsequent clause, which authorizes a deduction from the amount of taxes assessed to each share of its proportion of the direct property taxes paid by the company, as such, under sections 1 and 3, and of all exempt property belonging to the corporation. But as all the property of the Louisiana State Lottery Company is exempt from taxes after payment of the annual sum of \$40,000, nothing remains to be charged as a tax upon the shareholder as distinct from the corporation under the provisions of this section. Indeed, it is quite apparent from the language of the whole section that while nominally the taxes authorized are not to be assessed upon the capital stock of the corporation in the aggregate, and as its property, yet, in substance, that is its effect. The taxes are assessed upon the actual shares as registered in the names of individual shareholders, but are to be paid by the corporation; so that, while the form and mode of taxation is changed, its substance remains as though assessed against the corporation by name.



The case differs altogether from that of *U. S. v. Baltimore & O. R. Co.*, 17 Wall. 322, in which it was held that the tax provided for in the section 122 of the internal revenue act of 1864, as amended, requiring railroad and other corporations to pay a tax upon interest and dividends payable by them, with the right to deduct the same from the amounts otherwise due to creditors and stockholders, was a tax upon the latter, and not upon the corporation, because the corporation was made use of merely as a convenient means of collecting the tax; and it cannot be considered as ultimately a tax upon the shares, as the property of the shareholders, within the principle of the decision in *National Bank v. Com.*, 9 Wall. 353. There the act of congress expressly distinguished between the taxing of the bank and the taxing of its shareholders on account of their shares, and, as was held in that case, left it open to the state to collect the tax levied on the shares by imposing the duty of collecting it upon the corporation. That, we think, is prohibited in this case by the terms of the contract contained in the charter, which exempts the corporation from the payment of all taxes whatever in excess of the specified annual sum, whether levied on it, or to be paid by it, on any account whatever. A tax such as that sought to be imposed upon the company by the appellees is a tax upon the corporation within the meaning of the prohibition of its charter, because it is compelled to become surety for taxes nominally imposed upon its stockholders, and is made liable primarily for their payment,—a payment which, in the first instance, must be made out of the corporate property,\*without other recourse than an action against individual stockholders to recover the amounts advanced on their account.

The fair inference is that the taxation of the Louisiana State Lottery Company is not within the purview of section 48 of act No. 77 of the year 1880, and that it was not within the intention of the legislature, as expressed in that act, to impose upon the company any other taxes than those provided for in its own charter; but, if otherwise, act No. 77 is void as a law impairing the obligation of a contract.

We find no error in the decree of the circuit court, and it is therefore affirmed.

(119 U. S. 280)

HAMILTON v. VICKSBURG, S. & P. R. Co.

(December 6, 1886.)

1. WATERS AND WATER-COURSES—NAVIGABLE WATERS—OBSTRUCTIONS—BRIDGES—ACT OF CONGRESS OF FEBRUARY 20, 1811.

The act of congress of February 20, 1811, enabling the people of the territory of Orleans to form a state, declared that the Mississippi, and its navigable tributaries, be common highways, forever free. *Held* not to prohibit a state from authorizing a railroad to construct a draw-bridge over such a tributary, since the use of the stream was not thereby given to private parties to the exclusion of the public.

2. SAME—TEMPORARY OBSTRUCTION IN EXERCISE OF RIGHT NOT ACTIONABLE.

A railroad, empowered by its charter to bridge the navigable streams on its lines, in the course of repairing a draw-bridge, which had become unsafe, constructed, in order to prevent the stoppage of its trains, a temporary bridge adjoining the old one, making unusual efforts to expedite the work. Plaintiff's steamer could have carried freight above the bridge unusually early in the season but for the temporary bridge, and the supports used in the erection of the new bridge; and for the loss occasioned by the obstruction he sues. *Held*, that the temporary obstruction was not a ground for recovery, since wherever the exercise of a right conferred by law for the benefit of the public is attended with temporary inconvenience to private parties, in common with the public in general, they are not entitled to damages therefor.

In Error to the Supreme Court of the State of Louisiana.

*John T. Ludeling*, for plaintiff in error. *Geo. Hoadly, C. M. Johnson,* and *Edw. Colston*, for defendant in error.

FIELD, J. The authority vested by its act of incorporation in the Vicksburg, Shreveport & Texas Railroad Company, to construct a railroad from a