Louisiana State Lottery Co. v. Fitzpatrick, 15 F. Cas. 970 (C.C. La., 1879)

In 1868, the Louisiana State Lottery Company was incorporated by the Louisiana state legislature for a twenty-five-year period. At the time, lotteries were a popular way of raising money. Times changed. Eleven years later, the Louisiana state legislature, concerned with gambling and corruption, repealed that corporate charter. The Louisiana State Lottery Company filed a lawsuit claiming that the repeal violated the contracts clause of the Constitution of the United States.

The federal district court ruled that the repeal was unconstitutional. Judge Billings declared that legislatures could not deprive corporations of vested rights, even when the state concluded that the original corporate charter authorized the company to engage in what popular majorities now regarded as immoral activities. Why did Billings reach this conclusion? What could the good citizens of Louisiana do after 1879 to regulate lotteries? Shortly after Louisiana State Lottery Co., *the Supreme Court of the United States in* Stone v. Mississippi *(1880) unanimously held that states could not by contract bargain away the police power, the right to regulate in the public interest. On this basis, the justices ruled that a state ban on lotteries could be enforced against a corporation authorized to run lotteries. Compare the two cases. Did any constitutional basis justify the different rulings? If not, why was the Supreme Court more supportive of legislative power than the federal district court in this case? Which ruling better reflects the dominant trends of late-nineteenth-century jurisprudence?*

BILLINGS, District Judge.

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. . . . The settled doctrine of the United States is that the charter of a private corporation is a contract the obligation of which cannot be impaired without an infraction of the constitution of the United States; that a grant of franchises is, in point of principle, identical with a grant of other property; whether the consideration be large or small is not essential; for the motives or inducements which caused the legislature to pass the act cannot be examined to offset the validity of the act. Of the sufficiency of the consideration the legislature is the only competent judge. Every valuable privilege given by the charter, and which conduced to make it acceptable, and to promote an organization under it, is placed beyond the power of the legislature, unless the power be reserved at the time when the charter is granted. *Dartmouth College v. Woodward* (1819). The court is asked by the attorney-general of the state to hold that the contract, if such it be, which has been made by the state on the one part, and the incorporators of the complainants' corporation on the other part, was of no binding force, and could be set aside by the legislature of the state on account of its subject matter, to wit, for the reason that the franchise was for the drawing of lotteries. I have examined with great care the view that has been taken both in the federal and the state courts of the United States as to the binding force of contracts made by the legislature upon the subject matter of drawing lotteries. The authorities are overwhelmingly against the position taken by the attorney-general and his associate, and while lotteries are reprobated as having an immoral tendency by the courts, and they have not cast about to strain inferences to uphold grants with reference to them, nevertheless, where the grant of the right to draw lotteries has taken the form of an absolute contract, the courts have treated the responsibility of its creation as resting entirely with the legislature, and have dealt with it as carrying the obligation which its terms import.

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. . . . Where rights had become vested even under a license to individuals to draw lotteries, according to the settled law of the United States, those rights cannot be disturbed by a mere repealing act of the legislature. But it is not alone with reference to lotteries and contracts with reference to lotteries that the immorality of the consideration has been invoked. Very many of the states of the Union which had been engaged in the insurrection, after the reconstruction, upon the ground of the immoral and pernicious character of the consideration of such contracts, by provisions inserted in their constitutions, declared all contracts wherein slaves, or the currency of the so-called Confederate States was the consideration, should be treated as absolutely void. Those cases went to the supreme court of the United States, and that court, looking simply at the declared policy of the state as to the alleged immoral and pernicious consideration at the time the contracts were made, held that the contracts, when made, had the sanction of competent authority, and that the courts must, therefore, enforce them.

Where rights have become vested, I know of no distinction which would allow states to recede from contracts, or avoid contracts which they have made, more than can individuals. States at all times can and should make advances to higher and still higher ground, with the view of protecting public and private morals. But they owe a duty, not only founded in natural justice but happily enforced by the supreme power of the constitution of the United States, in all their advances to recognize and protect rights which have become vested and obligations to which they have lent their own sanction. But the objection against the claim of the learned solicitors for the defendants is even more insuperable, which springs from the fact that the repealing law whose validity their line of argument requires them to sustain, strikes, so to speak, at the functional privileges or faculties of a corporation. . . . [W]here a corporation has been called into existence by the legislature of a state for a definite object, explicitly declared in the act creating it, and has powers and faculties given to it which are in their nature and operation pertinent to its sole object, and indeed necessary to its very existence; to maintain that the privileges of such a corporation, where there had been no judicial inquiry, and indeed where there was no allegation of ground of forfeiture, could be swept away by a repealing act of the legislature of the state that created it, is to assail well nigh every case decided in the courts of the United States, and of the states which compose them in which the sacredness of charters and of the contracts embodied in them have been adjudicated upon.

It must be borne in mind, that when the thirteen united colonies declared their independence, in their justification of that step, which they put into the form of what is called the Declaration of Independence, among other reasons which they assigned for their action in thus separating themselves from the king of Great Britain was, "that he had taken away their charters." The sacredness of the charters which emanated from the sovereign was intimately associated in the colonial mind with the administration of a government in which rights should be properly respected and the obligation of contracts justly observed. And when the colonies became states, and the states set up their systems of jurisprudence, the idea of the inviolability of the rights of corporations, which were set forth in their charters, whether those charters came from the king or from the legislature, was well nigh immediately and unanimously announced, and has been with equal unanimity adhered to. Chancellor Kent, in his *Commentaries* says: . . . 'A private corporation, whether civil or eleemosynary, is a contract between the government and the corporators, and the legislature cannot repeal, impair or alter the rights and privileges conferred by the charter, against the consent, and without the default of the corporation judicially ascertained and declared.' . . .

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The act of 1868 constitutes a corporation to continue in being for a prescribed term and then to be dissolved and liquidated. There is a grant of sole and exclusive privileges of an unusual character for the whole term and the precise object is expressed to make of the business a source of revenue for the state, and the corporation is required to pay quarterly, in advance, a sum of money to the auditor. The corporation must collect capital and may issue shares of stock, and is controlled by directors to be chosen under the charter. These are qualities and attributes which do not belong to a corporate body holding by a legislative contract. A grant having these characteristics cannot be repealed by the legislature. . . .

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The bill of the plaintiffs in this suit shows the undisguised purpose of the general assembly of the state to denude the corporation not only of franchise, right and privilege, but of corporate existence, and that, too, contrary to the precise and definite language of the act of incorporation. This was attempted to be done by the mere flat of the general assembly without any regard to the forms or processes of law. The general assembly did not seem to have called to mind that there were constitutional limitations, both state and federal, upon their omnipotence. Besides this they engrafted upon the act, so as to carry out their purpose of destruction and to give effect to the sections which breathe extermination, penal enactments. All of the acts, agencies and instruments for conducting the business which the corporation was formed to conduct under the legislative guarantees and sanctions are made criminal and stigmatized as misdemeanors if maintained or done. The general assembly did not appear to have heard the voice of the constitution of the state under which they were convened, which commanded that no law impairing the obligation of a contract should be passed; nor the more commanding tones of the people of the United States forming the American Union, that no state shall pass such a law, nor deprive any person of life, liberty or property, without due process of law. The supreme court of the United States have said: "There is no more important provision of this constitution than the one which prohibits states from passing laws impairing the obligations of contracts. And it is one of the highest duties of the federal tribunals to take care that the prohibition shall be neither evaded nor frittered away. Complete effect must be given to it in all its spirit."