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LIMITATIONS IMPOSED BY THE CONSTITUTION OF
THE UNITED STATES ON THE TAXING POWERS
OF THE STATES.¹

I. *Impairing the Obligation of Contracts.*—The provision prohibiting the states from passing “any law impairing the obligation of contracts,” is found in the same paragraph with the prohibition against passing any bills of attainder, ex post facto laws, and laws granting titles of nobility: Const. U. S., art. 1, § 10, par. 1. The questions affecting the taxing power of the states, arising under this provision, relate almost exclusively to the charters of corporations which contain clauses exempting them from taxation, and the effect of subsequent laws repealing these clauses and imposing taxes upon them. Whether the charter of a private corporation, or of a corporation not municipal, is a contract within the meaning of the Constitution, was first settled by the Supreme Court of the United States in the celebrated *Dartmouth College Case: Trustees of Dartmouth College v. Wood-*

¹ From a forthcoming treatise on Taxation, by Hon. W. H. BURROUGHS, of Norfolk, Va. It may be proper to state that some specific restrictions on taxation, such as Import and Tonnage Duties, Regulation of Commerce, &c., are discussed in a separate chapter—ED. A. L. R.

ward, 4 Wheat. 519 (Cond. U. S. 463), February 1819. The court had previously decided that a grant of lands by the legislature of a state was a contract; that the acts of a subsequent legislature could not divest rights acquired under the grant, and a repeal by such legislature was void: *Fletcher v. Peck*, 6 Cranch 164 (Cond. U. S. 328), February 1810. And shortly after they applied the principle to a case of exemption from taxation. The legislature of New Jersey, in order to acquire title to an extensive tract of land held by the Indians, in consideration of a release of that title, agreed to purchase for them certain lands, which should not thereafter be subject to any tax. Subsequently these lands so purchased for the Indians were sold by them under a law passed for that purpose. The legislature then repealed that section of the act exempting the lands from taxation. The court held the first act a contract between the Indians and the state, and that the vendees of the Indians could not be divested of the right granted to the Indians, to be exempt as to this land from taxation without impairing the obligation of the contract: *New Jersey v. Wilson*, 7 Cranch 164 (Cond. U. S. 498), February 1812. The doctrine of the *Dartmouth College Case* has been followed from that time, not only in the courts of the United States, but in all the state courts. Recently, the correctness of that decision has been seriously questioned, and it would seem to be clear from the history of the adoption of this provision of the Constitution, that it was only intended to apply to contracts between private individuals, to give the same protection to civil contracts against retrospective legislation as is given in the same paragraph to retrospective legislation as to crimes; that the provision against ex post facto laws and laws impairing the obligation of contracts, each refer to individual citizens of the states, and not to the states. This decision has been so long and universally acquiesced in that it comes within the principle of *stare decisis*, and will no doubt be adhered to even by those courts that are convinced that it is erroneous.

(a) *Alienation of the Taxing Power.*—The application of the principle of the *Dartmouth College Case* in connection with the taxing power of the state, while it has received the assent of the majority of the judges in the Supreme Court of the United States, has been resisted most vigorously by the dissenting judges, and in many of the state courts it has been entirely repudiated. These cases hold that a charter of incorporation is a contract between the

state and the incorporators, and that if these charters contain a clause either exempting them entirely from taxation or for a definite period, a subsequent legislature cannot repeal those clauses of exemption; an attempt to do so impairs the obligation of the contract contained in the charter and is void; that a state legislature may make a contract with corporations as to the revenue of the state, and that such a contract is equally within the protection of the Federal Constitution, as contracts with reference to property: *State Bank of Ohio v. Knoop*, 16 How. 369 (Cond. U. S. 190); *Home of the Friendless v. Rowse*, 8 Wall. 430; *Washington University v. Rowse*, Id. 439; *Washington Railroad v. Reid*, 13 Id. 264; *Humphrey v. Peques*, 16 Id. 244; *Jefferson Branch Bank v. Skelly*, 1 Black 436, involving the construction of the same statute of Ohio as in 16 How. *supra*; *McGee v. Mathias*, 4 Wall. 143. Many of the state courts have followed these decisions; others have steadily opposed them. The interests involved in this question are so great, the power of wealthy corporations who claim the benefit of this principle is so extensive, and the tendency of eminent legal critics to question the soundness of the views of the majority of the Supreme Court of the United States so plain (8 American Law Review 189; Sedgwick's Const. & Stat. Law, 2d ed. 587, n.), that it is appropriate to give, in some detail, the views of the dissenting judges and the dissenting state courts.

(b) *Dissenting Views*.—Those who dissent generally admit the doctrine that a state is bound by its contracts, and a legislature of a state, as to all matters within the purview of legislative power, may make contracts which are protected by this provision of the Federal Constitution. But it is claimed that the power of taxation is one of the sovereign powers of the state, necessary to its continued existence, and that it was never contemplated, when the people through their constitutions delegated to their representatives in the legislature assembled the power to make laws for the good of the people of the state, that this grant of legislative power carried with it the right to barter away with private corporations one of the essential prerogatives of the government, the very life-blood of the state: *State Bank of Ohio v. Knoop*, 16 How. 406 (Cond. U. S. 219), the able dissenting opinion of CAMPBELL, J. This case was really the first authoritative decision on this subject; the case of *New Jersey v. Wilson* did not discuss the important principle that taxation was one of the powers of sovereignty that

could not be alienated: 7 Cranch 164 (Cond. U. S. 498). The case from Ohio was decided at the December Term 1853; of the nine judges on the bench, three, CATRON, DANIEL, and CAMPBELL, dissented, and TANEY, C. J., while concurring in the judgment rendered, did not assent to the principles or reasoning contained in the opinion of the court as delivered by MCLEAN, J.: 16 How. 393 (Cond. U. S. 207). At the same term of the court a case was decided from the same state, in which the court held that the legislation of the state did not amount to a contract, and in that case Judge TANEY gave his views upon the principle under discussion thus: "The powers of sovereignty confided to the legislative body of a state are undoubtedly a trust committed to them to be executed to the best of their judgment for the public good; and no one legislature can, by its own act, disarm its successors of any of the powers or rights of sovereignty confided by the people to the legislative body, *unless they are authorized to do so by the constitution under which they are elected*. They cannot, therefore, by contract deprive a future legislature of the power of imposing any tax it may deem necessary for the public service; or of exercising any other act of sovereignty confided to the legislative body, unless the power to make such a contract is *conferred upon them by the constitution of the state*. And in every controversy on this subject, the question must depend on the constitution of the state, and the extent of power thereby conferred on the legislative body." He then examines the constitution of Ohio, and arrives at the conclusion that under the constitution of 1802, and the decisions of the courts of that state, such power was given to the legislature of Ohio: *Ohio Life Insurance & Trust Co. v. Debolt*, 16 How. 431 (Cond. U. S. 234). In the first case Judge TANEY refers to his opinion in the latter case for the reasons of his concurrence in the opinion of the majority of the court. Judge GRIER concurred entirely in these views of Judge TANEY. From this examination of the views of Judge TANEY, it is evident that he did not yield his assent to the proposition that a general grant of legislative power authorized one legislature to alien the power of taxation so as to bind a subsequent legislature. He only claimed that the people, in their sovereign capacity, speaking through their organic law, could delegate to the legislature such power. The subject was before the court in 1861, the case involving the construction of the same

statute of Ohio just considered, and the ruling was the same. At the December Term 1869, it was again under consideration, the majority adhering to the ruling in 16 Howard, Judges MILLER and FIELD and C. J. CHASE dissenting. MILLER, J., says, "We do not believe that any legislative body, sitting under a state constitution of the usual character, has a right to sell, to give, or to bargain away for ever the taxing power of the state. This is a power which, in modern political societies, is absolutely necessary to the continued existence of every such society: While under such forms of government, the ancient chiefs or heads of the government might carry it on by revenues owned by them personally, and by the exaction of personal service from their subjects; no civilized government has ever existed that did not depend upon taxation in some form for the continuance of that existence. To hold, then, that any one of the annual legislatures can, by contract, deprive the state for ever of the power of taxation, is to hold that they can destroy the government they are appointed to serve, and that their action in that regard is strictly lawful. The result of such a principle, under the growing tendency to special and partial legislation, would be to exempt the rich from taxation, and cast all the burden of the support of government, and the payment of its debts, on those who are too poor or too honest to purchase such immunity." *Washington University v. Rowse*, 8 Wall. 443-4. At the December Term 1871, the subject was again before the court, and the question was treated as *res adjudicata*: *Wilmington Railroad v. Reid*, 13 Wall. 264. And so again at the December Term 1872, it was treated in the same manner: *Humphreys v. Peques*, 16 Wall. 244. This examination shows that the principle claimed to be decided, and which has governed the later cases, has really never received the assent of this tribunal. In *New Jersey v. Wilson* it was not even discussed; in *State Bank of Ohio v. Knoop*, three of the nine judges dissented entirely from the opinion of the court, and two others, TANEY and GRIER (a host within themselves), dissented from the reasoning of the court, and based their opinions of concurrence in the result of the opinion, upon a different principle, and fully agreed with the dissenting judges as to the principle that a general grant of legislative power did not authorize one legislature to alien the taxing power so as to bind subsequent legislatures. In their opinion such a power might be

granted by the constitution of the state and was granted by the constitution of Ohio.

(c) *Dissenting Views of State Courts.*—A number of cases were decided at the January Term 1853 of the Supreme Court of Ohio, arising upon the 60th section of the Banking Act of 1852, in which the view is taken and argued with great force, that a charter of incorporation is not a contract. The view of Burke as to the charter of the East India Company, that it was a “charter to establish monopoly and create power,” and not entitled to the protection of the various charters of English liberty, is approved; and the charters of incorporation granted by the state, were thought in a similar manner not to be entitled to the protection of the provision of the Constitution prohibiting the impairing the obligation of contracts: *Knoup v. The Piqua Bank*, 1 Ohio N. S. 603; *Toledo Bank v. Bond*, Id. 697; *Debolt v. Ohio Life Ins. & Trust Co.*, Id. 563. These cases were reversed by the Supreme Court of the United States in 16 How. The question was before the Supreme Court of Ohio in *Sandusky Bank v. Wilbor*, 7 Ohio N. S. 481, when they adhered to their former opinion, claiming that, although precedent was against them, the cases did not convince their judgment and ought not to be followed. The courts of Maryland, Michigan, New Jersey, New Hampshire, Vermont, Pennsylvania, Connecticut, and North Carolina have taken similar views to the courts of Ohio: *Mayor of Baltimore v. Balt. & Ohio Railroad Co.*, 8 Gill 289; *East Saginaw Manf. Co. v. City of East Saginaw*, 19 Mich. 259; *State ex rel. &c. v. Mayor of Jersey City*, 31 N. J. L. (2 Vroom) 575; *Brewster v. Hough*, 10 N. H. 143; *Thorpe v. R. & B. Railroad Co.*, 27 Vt. 140; *Mott v. Penna. Railroad Co.*, 30 Penn. St. 9; *Brainard v. Colechester*, 31 Conn. 410; *Raleigh Railroad Co. v. Reil*, 64 N. C. 155. BEASLEY, C. J., in commenting on the proposition that a charter of incorporation is a contract, says “the entire contract on the part of the state, implied in such cases, is the supposed legislative agreement not to alter or recall the privilege granted. No other stipulation on the part of the state was ever suggested to exist, and it was the imagined existence of such stipulation alone which converted what else, in all its essential qualities, as well as in its form, was an act of legislation, into a contract on the part of the community with the incorporators. Without some such stipulation, having an obligatory force, I am wholly unable to conceive the ground of difference

between the charter of a corporation and any other act of legislation. If a statute lay no obligation on the state to do, or to refrain from doing, a particular thing, or one or more particular things, such enactment seems to me to be a pure act of legislation and in no sense a contract:" 31 N. J. L. (2 Vroom) 580. And COOLEY, J., in reviewing the cases in the Supreme Court of the United States, from *New Jersey v. Wilson*, 7 Cranch, to *McGee v. Mathias*, 4 Wall., says, "It is not very clear that the Supreme Court of the United States has ever, at any time, expressly declared the right of a state to grant away the sovereign power of taxation:" 19 Mich. 282, s. p. *Iron City Bank v. Pittsburgh*, 37 Penn. St. 304. The court in Pennsylvania say, "Revenue is essential to government as food to individuals; to sell it is to commit suicide:" 30 Penn. St. 9.

(d) *Limitations on the Doctrine, that exemption from taxation in a charter is a Contract.*—The courts which adhere to the doctrine have guarded it with many limitations. While, as a general rule, in the interpretation of a charter, the question is, what was the intention of the legislature, when applied to exemptions from taxation, it is said the intention must appear by clear, express and unequivocal words. The relinquishment of the power of taxation will never be presumed. Those who claim that it has been relinquished as to certain property or franchises, must show it by express grant, in explicit terms, not by implication, or doubtful intendment: *Phila. & Wilmington Railroad Co. v. Maryland*, 10 How. 393 (Cond. U. S. 427); *Jefferson Branch Bank v. Skelly*, 1 Black 447-8; *Gilman v. Sheboygan*, 2 Id. 513; *Pacific Railroad Co. v. Cass Co.*, 53 Mo. 17; *North Mo. Railroad et al. v. Maguire*, 49 Mo. 490; *Biscoe v. Coulter*, 18 Ark. 423. This rule of construction is universally received, and is applied so freely as sometimes almost to do away with the original doctrine. Where a bank was chartered and its charter was silent as to taxation, the power of the state to impose a tax on the bank after that time was sustained: *Providence Bank v. Billings*, 4 Pet. 514 (Cond. U. S. 171). A railroad was chartered to run through Pennsylvania and other states; it was to pay a bonus to the state of \$10,000 annually, and the stock of the company, equal to the cost of construction, to be subject to taxation as other property of the kind in the state. Subsequently a general tax was laid by the state on all transportation companies. It was held the railroad was not

exempt from the general tax : *Erie Railroad Co. v. Commonwealth*, 66 Penn. St. 84; s. p. *Bank of Easton v. Commonwealth*, 10 Penn. St. (10 Barr) 442; *Wanderer v. Lexington*, 15 B. Monroe 258. In the first case, SHARSWOOD, J., said: "It is not pretended that there is any express release of legislative power, but it is contended that, as the company have agreed to pay, and the state to accept, there seems, it is necessarily implied, that no more shall be exacted. So it might well be argued if any special taxation was imposed upon this company; for that would be to require an additional price beyond the terms of the contract. But the question, whether they shall be subject to a general tax upon all railroad and transportation companies in the Commonwealth, is an entirely different one." The principle is often illustrated by that of a person who buys land from the Commonwealth at a fixed price; it is implied that he shall not be called on to pay more, but not that his land shall not be subject to taxation. So of the corporation, it is implied that the bonus paid for the franchise shall not be increased; but there is no implication that the property of the artificial person created by the charter shall not be subject to taxation as other property of the same kind in the state. But where the legislature have exercised the taxing power in a specified manner by a special tax on all the property of a corporation, and have intimated no design to subject it to further burdens, its property will be exempt from taxes imposed by general laws : *N. Y. § Erie Railroad Co. v. Sabin*, 26 Penn. St. 242.

A charter of a corporation contained a guaranty against repeal and alteration, but no grant against immunity from taxation. It claimed to be exempt from taxation, because it was not subject to taxation at the date of its charter, and a subsequent tax law was an alteration of their charter. It was held liable : *St. Louis v. Boatmen's Ins. & Trust Co.*, 47 Mo. 155, the court using this language: "A law which seeks to deprive the legislature of the power to tax must be so clear, explicit and determinate, that there can be neither doubt nor controversy about its terms or the consideration which renders it binding. Every presumption will be made against its surrender, as the power was committed by the people to the government to be exercised and not to be alienated." The charter of a bank provides that its capital stock or profits shall not be taxed by any municipal corporation, without authority first had from the legislature; afterwards the legislature authorized

the town of Chester, in which bank was, to tax "all stocks of every kind." Bank was not liable to be taxed by the town; statute must be so construed as not to tax twice: *Bank of Chester v. Chester*, 10 Richard. (Law) 104.

The legislature of Missouri declared that upon payment of certain fees, to go to the Insurance Department, by the insurance companies, the payment should be in lieu of all taxes, fees and licenses whatever, collected for the benefit of the state, but remain subject to existing laws, as to county and municipal purposes. The Life Association of America owned property worth \$294,000; it had paid fees under this law amounting to \$150. The company claimed to be exempt from any further tax to the state, and it was attempted to be brought within the principle of *Illinois Central Railroad v. McLean County*, 17 Ill. 29, 30 Fed. 140, where sums of money were paid and burdens assumed in lieu of all other taxes. But the court thought the claim was rather in the nature of an exemption, similar to *City of Zanesville v. Richards*, 5 Ohio 589, than a commutation. The intention to exempt the company not being clear, it was held liable for state taxes on its property: *Life Association of America v. Board of Assessors of St. Louis Co.*, 49 Mo. 520; as to surrender of taxing power not presumed, see also *Bank of St. Louis v. Manufacturers' Savings Bank*, 49 Mo. 575. WAGNER, J.: "It is incredible that the legislature intended that taxes on hundreds of thousands of dollars, which may come into the hands of wealthy corporations, should be commuted for the yearly payment of \$150 or \$200 in official fees."

(e) *No consideration for Exemption, it may be repealed.*—It would seem proper, if the charter of incorporation is a contract, that the principles that apply to other contracts should apply to that. And should it appear that there was no consideration for the contract, it would be binding only during the pleasure of the parties to the contract. Accordingly we find that when the legislature of Pennsylvania, in 1833, enacted "that the real property, including ground-rents, now belonging and payable to Christ Church Hospital, in the city of Philadelphia, so long as the same shall continue to belong to the said hospital, shall be and remain free from taxes," and in 1851 they enacted that all property belonging to corporations or associations should be taxed as other property, and repealed all laws exempting such property, it was held the repeal was valid; the first act was not a contract, it was a

spontaneous concession of the legislature, and no service or duty or other remunerative condition was imposed on the corporation. It is a privilege that from the nature of it exists *bene placitum* and may be revoked at the pleasure of the sovereign: *Rector of Christ Church, Phila.*, v. *County of Phila.*, 24 How. 300, CAMPBELL, J.; *Commonwealth v. Bird*, 12 Mass. 442; *Alexander v. Wellington*, 2 Russ. & My. 35; *People v. Com'r of Taxes*, 47 N. Y. 503-4.

Subsequent cases in the Supreme Court of the United States would seem to have overruled these authorities; the reasoning of the court certainly is in conflict with former cases. The legislature of Missouri, for the purpose of establishing a charitable institution, and enabling the parties engaged in it more fully and effectually to accomplish their laudable purpose, chartered the Home of the Friendless, and exempted its property from taxation. Subsequently a tax was imposed on its property. The tax was held void; the exemption in the charter was a contract: *Home of the Friendless v. Rowse*, 8 Wall. 430. The same principle was applied to a literary institution, chartered a few days after: *Washington University v. Rowse*, 8 Wall. 439. We are not disposed to question the authority of these cases; it may be that the benefit to accrue to the state, in having the unfortunate cared for by the corporation in the first case, and the benefit in the increased advantages of education secured to the people of the state, in the second case, are ample considerations to induce the legislature to grant to the incorporators who should invest their money in the enterprise, a charter with the privilege of having its property exempt from taxation, and this privilege would be one of the franchises of the corporation. And in this sense, the language of DAVIS, J., in the first case, "that there is no necessity of looking for the consideration for a legislative contract outside the objects for which the corporation was created" (8 Wall. 437), is correct. But, as to his language in a subsequent part of the same opinion, that it has been settled by repeated adjudications of that court that the legislature can grant away the power of taxation, "and that it is equally well settled that the exemption is presumed to be on sufficient consideration, and binds the state if the charter containing it is accepted" (8 Wall. 438), it is submitted is not only not supported by the authorities quoted by him, but was not required by the case under consideration, and is *mere obiter dicta*.

In *New Jersey v. Wilson*, 7 Cranch 164 (Cond. U. S. 498), the

consideration of an exemption was the cession of the Indian title to a valuable tract of land; the exemption was but a part of the purchase price of land ceded to the state. *Gordon v. Appeal Tax Court*, 3 Howard 133, was a bank charter, and the bonus paid the state was the consideration for granting a charter containing exemption from taxation. The cases in 16 How. and 18 How. (*Piqua Bank v. Knoop*, 16 How. 369; *Ohio Life & Trust Co.*, Id. 416; *Dodge v. Woolsey*, 18 Id. 331; *Mechanics' & Traders' Bank v. Thomas*, Id. 384; *Same v. Debolt*, Id. 380), were all cases under the Banking Act of Ohio, where a special tax was agreed to be paid by the incorporators for their charter, which contained an exemption from all further taxation. *McGee v. Mathias*, 4 Wall. 143, was a case where the state owned lands subject to overflow, and in order to promote the drainage and sale of the lands, passed a law exempting them from taxation for ten years, and issued scrip receivable in payment for their lands; the exemption here was a part of the purchase price. No case has come under our observation where there was no consideration for the exemption, and it was made in the discretion of the legislature as a part of the policy of the state, deemed proper at the time as to the matter under consideration, that it has been held, the exemption was not repealable at the pleasure of the legislature. Where the legislature of Ohio in 1804 vested certain lands, set apart by Congress for a university in Ohio, in a corporation created for the purpose, authorized the lands to be rented out for the benefit of the university, and exempted their part from the payment of state taxes; in 1826, the corporation was authorized to sell the lands; these lands were held not to be exempt in the hands of purchasers: *Armstrong v. The Treasurer of Athens Co.*, 16 Peters 281 (Cond. U. S. 299). The evident difference between this case and *New Jessey v. Wilson*, is that there was a consideration for the exemption in the latter case and none in the former. The cases just considered, with the exception of the last, are the cases relied upon by DAVIS, J., to sustain his *dicta*.

There are several cases in Connecticut, arising upon the Act of 1702, "That all such lands, tenements and hereditaments and other estates, that either formerly have been or hereafter shall be given and granted either by the General Assembly of this colony or by any town, village or particular person, for the maintenance of the ministry of the gospel in any part of this colony, &c., shall

also be exempted out of the general lists of estates and free from the payment of rates." This statute was re-enacted in 1821, leaving out the exemption clause. Lands had been given religious societies under the first act, and they had been leased to third parties, for a gross sum for 999 years, the benefit of the exemption was claimed by the lessees, the court held that the Act of 1702 was a contract between the state and the donors of the charity, which could not be repealed: *Atwater v. Woodbridge*, 6 Conn. 223; *Osborne v. Humphrey*, 7 Id. 385; *Landen v. Litchfield*, 11 Id. 251. In the latter case, the court was divided. In 1859 the legislature of this state passed a law in reference to these charitable donations, providing that when the society to whom they are given or may hereafter be given do not receive an annual income or rent from the real estate donated, or where the conveyance is intended to be a perpetual conveyance, the real estate so donated shall not be exempt from taxation. Land was devised to a religious society, it was leased for 999 years for a gross sum, no annual rent reserved. It was held the lease was in violation of Act of 1859 and void, and the case of *Landen v. Litchfield*, as to the unconstitutionality of Act of 1821 was disapproved: *Brainerd v. Colechester*, 31 Conn. 407. A religious society leased to a clergyman for 999 years in payment of his settlements, he devised to D. The exemption from taxation was claimed by D. The court reviewed all the former cases, overruled the cases in 6, 7, and 11 Conn., and approved the case in 31 Conn., holding that the Act of 1702 did not constitute a contract between the state and the donors or donees of such charitable gifts as are enumerated in the statute, that the property donated should be for ever exempt, and that the act making such property taxable was void: *Loud v. Town of Litchfield*, 36 Conn. 116. CARPENTER, J., in his opinion asserts that in order to make such a contract binding, there must be a consideration: *Ibid.* p. 126. In Missouri, the courts hold that there must be an express contract upon a consideration deemed to be a part of the value of the grant or charter: *State v. Dulle*, 48 Mo. 282, following *Lionberger v. Rowse*, 43 Id., and *Washington University v. Rowse*, 42 Id. 308; the last two are the cases overruled in 8 Wall.

The case of *Hardy v. Waltham*, 7 Pick. 108, seems to be in conflict with the view presented; by act of the colonial legislature of Massachusetts, all lands, tenements and revenues of Harvard Col-

lege not exceeding in value 500*l.* per annum, shall be thenceforth freed from all civil impositions, rates and taxes; it was held the lands acquired by the college before their income amounted to 500*l.* were exempt from taxation even in the hands of a lessee. In this case, there had been no attempt by the legislature to repeal the exemption, but the assessors, supposing the exemption only applied to the property while in the hands of the college itself, had listed it for taxation. It will be seen from an examination of the case that this exemption was secured to the college by the constitution of the state, so that it would not have been within the power of the legislature to repeal the act granting the exemption. The weight of authority is undoubtedly in favor of the position, that a clause of exemption from taxation in a charter, or otherwise, in order to be classed as a contract where obligation cannot be impaired by its repeal or material modification, must be based upon a consideration deemed valuable or beneficial to the state: *Cooley Const. Lim.*, 3d ed., p. 280, authorities in n. 3; *Sedgwick Const. & Stat. Law* 587, n.

In 1854, the state of New York passed a law exempting from taxation to the extent of \$500 property of persons who served in militia a period of seven years and had been honorably discharged. In 1865 the law was repealed. The repeal was held valid; the claim of exemption is not a right of property; the law passed by the legislature in relation to the militia of the state, granting the exemption claimed, was made in the exercise of the powers committed to the legislature to promote the interests of the state by such laws as seemed to them best calculated to obtain that end; from the very nature of it, a different policy might seem proper to a succeeding legislature, and the former law might be repealed: *People v. Roper*, 35 N. Y. 629. PORTER, J.: "It is also true that for an adequate consideration, and in the exercise of its general authority, it may invite investments in a particular description of property for the benefit of the state, by stipulating for its exemption, in the hands of the holders, from assessment as a subject of general taxation:" *People v. Roper*, 35 N. Y. 633, in which the cases in 16 Howard and 3 Howard, quoted by DAVIS, J., in 8 Wall. 438, are referred to.

Similar to this was a law offering to all persons and to corporations to be formed for the purpose, a bounty of ten cents for every bushel of salt manufactured in the state from water obtained by boring in the state, and an exemption from taxation of all pro-