In the Supreme Court of the United States.

THE STATE OF LOUISIANA EX REL. ATTORNEY GENERAL.

versus

THE LIVE STOCK DEALERS' AND BUTCHERS' ASSOCIATION OF NEW ORLEANS, ET ALS.

The plaintiffs in error in the several cases submitted to the court aver that they, and each of them, were prior to the first of June, 1869, engaged in the lawful and necessary avocation of procuring and bringing to the parishes of Orleans, Jefferson, and St. Bernard, animals suitable for human food and of preparing and dressing such food for sale in market. That for the purpose of carrying on and conducting their employment they had acquired skill, and had erected and established buildings, slaughter houses, and other conveniences upon which much capital had been expended. They allege that the business interests of the population in all of those parishes, and nearly one thousand persons are directly concerned in its daily operations. They complain of an Act of the General Assembly (No. 118,) approved 8th March, 1869, that it required all slaughter houses to be closed on the 1st day of June thereafter, and prohibits the "landing, keeping, or slaughtering of any cattle, beeves, sheep, swine, or other animals, and the having, keeping, making, or establishing any stock landings, yards, pens, slaughter houses, or abattoirs within the city of New Orleans or parishes of Orleans, Jefferson, and St. Bernard, to all persons, *except* that the Crescent City Live Stock Landing and Slaughter House Company, were empowered to erect such on either side of the Mississippi River in said parishes, below points mentioned in the Act.

This favored Corporation is composed of *seventeen* persons, designated by name in the Act, who are endowed with the powers usually conferred on Corporations in the second section of the Act in addition to their special and exclusive privileges.

To the Corporation thus created to establish within the parish of St. Bernard and City of New Orleans below U. S. barracks on the East side and the Railroad Depot at Algiers on the West side of the River, wharves, stables, sheds, yards, buildings necessary to land, stable, yard, preserve, and protect all kinds of horses, mules, cattle, and animals suitable for food, was granted the *sole* and *exclusive privilege* of carrying on and conducting the live stock landing and slaughter-house business, was granted the exclusive privelege of *having* all animals destined for sale or slaughter in those parishes landed at their wharves and kept at their yards.

Besides this the statute enacts that all meat sold in the city and parishes must be prepared for market at the houses of this Company. A tariff of charges is established for its remuneration in the Act, and an important portion of the animal must be left as a part of the contribution for the emolument of this Corporation. For any violation of any privilege conferred, the Corporation is authorized to sue for a fine of $250. The privileges are to endure for twenty-five years.

The complaint of the plaintiffs is that what it had been lawful for any citizen of the State or member of the community to do prior to the first day of June, 1869, from that day it (under this Act) became unlawful to any except this Company. That a business in which they and others to the number of a thousand men doing, profitable to themselves and beneficially to the country, that a lawful and necessary business for which they were competent, and had qualified themselves to conduct and carry on, by this Act of legislative caprice, partiality, ignorance or corruption has been converted into a *Monopoly* for the benefit of *Seventeen selected* persons. That to enrich these *Seventeen*, the daily avocation and employment, the means by which, perhaps, a thousand persons have earned their daily bread have been jeoparded and impaired. That their investment of capital, their locations for

trade, their hopes and calculations in business have been frustrated to promote the wealth and profit of a class of adventurers in violation of the Constitution of the State and of the United States.

Within a year before this enactment, the Constitution of Louisiana had been "reconstructed". The declaration of 1776 "that all men are created free and equal; that they are endowed by their creator with certain unalienable rights; that among them, are life, liberty, and the pursuit of happiness," became a part of the Constitution of the State. There is an assertion and concession of the title of all the members of the State to the same civil, political and public rights and privileges, and a prohibition of slavery, and of any law fixing the price of manual labor, and equal rights and privileges upon railroads, in hotels and licensed places of amusement or business are prescribed as the right of each. The convention which made the Constitution, as their first act according to the law under which they were convened, accepted the 14th amendment to the Constitution of the United States, these the plaintiffs in this court supposed would have protected them from this act, even in the Supreme Court of that State. Three of the district courts in Louisiana agreed that the Act No. 118 was not valid. One of the Judges decided differently Three of the Judges of the Supreme Court against one dissenting determined this act to be valid.

We regard the question to be one of very great importance to the plaintiffs in error, and of still greater importance to the cour try at large. None more so has been presented to the Court.— The Constitution of the United States has included slaves under the description of " Persons held to service or labor in a state under the laws thereof." Such persons, if escaping to another state, were not discharged from servitude, but were to be delivered up, upon the claim of the party to whom such service or la bor was due."

This description of a slave is exact if the person be unconditionally held to labor, and to labor without a definition of quality or quantity of service. If this obligation to labor for another be an imposition of law upon one of competent age, even though the labor be defined it is involuntary servitude; slavery

and involuntary servitude are prohibited in the Constitution of the United States and in the Constitution of the State of Louisiana. We have never supposed that these Constitutional Enactments had any particular or limited reference to negro slavery. The words employed do not describe that form of slavery and that only. They are absolute, universal.

The history of this clause forbids a restrictive interpretation. It came into existence when the statesmen of the revolution were determining the frame of the institutions for the Western Territories. They were laying the foundations for government where there had never been a responsible government or a civilized people. The terms employed in the amendment to the Constitution, appear in the legislative journal of the country; first as the proposition of a single person, afterwards they became an article of a fundamental law for a vast and unsettled territory. They were copied into the Constitutions of States, and finally made a part of the constitution of a union whose accomplished destiny embraces a large portion of a continent. The words were familiar before they appear in the ordinance of 1787 to govern the Northwest Territory. In that ordinance they are associated with enactments affording comprehensive protection for life, liberty and property; for the spread of religion, morality and knowledge; for maintaining the inviolability of contracts, the freedom of navigation upon the public rivers, and the unrestrained conveyance of property by contract and devise, and for equality of children in the inheritance of patrimonial estates. It became a law after the most popular government in Europe had been expelled from that Territory because of "injuries and usurpations, having in direct object the establishment of an absolute tyranny over the States." Feudalism at that time prevailed in nearly all the kingdoms of Europe, and serfdom and servitude and feudal service depressed their peoples to the level of slaves. The prohibition of slavery and involuntary servitude in every form and degree, except as a sentence upon a conviction for crime, comprises much more than the abolition or prohibition of African slavery. Slavery in the annals of the world had been the ulti-

mate solution of controversies between the creditor and debtor; the conqueror and his captive; the father and his child; the State and an offender against its laws. A man might sell his own liberty or that of his wife and posterity to relieve him from misery, and at one time slavery was sought as a relief from public office. The laws might enslave a man to the soil. The whole of Europe in 1787 was crowded with persons who were held as vassals to their landlords and serfs on his dominions.

Frederick the Great in 1766 said, in reference to the organization of society in his own kingdom: "Certainly a state of things in which the peasantry belong to the land, and in bondage to the nobles, is the most unfortunate of all—that against which the sentiment of humanity revolts with the greatest force." The American constitution for the Northwest Territory was framed to abolish slavery and involuntary servitude in all forms, and in all degrees in which they have existed among men, except in the single excepted case. Slavery, like the penalty of death, may be inflicted as a punishment for crime after a legal conviction and in the fulfillment of a law previously made and promulgated, and not otherwise. The state of freedom and the state of slavery are contraries, and cannot coexist in the same person. In a community where slavery and involuntary servitude are absolutely prohibited, the members must all be free, whether black or white, and whether in relations to a master or in connection with a domain.

What constitutes a freeman under this constitution of the United States, and what are the privileges and immunities to which he is entitled? The constitution provides that a person shall not be held to service or labor under a law of the State and against his will for another. He is subject to no *expost facto* law, or law to impair the obligation of contracts, and is entitled to protection in life, liberty and property. Being free and under no servitude, he has—1st. An immunity from compulsory work at the will, or for the profit of another. 2d. No kind of occupation, employment or trade can be imposed upon him, or prohibited to him, so as to avoid all choice or election on his part. 3d. He may engage in any lawful pursuit for which he may have the

requisite capacity, skill, material or capital. 4th. He is entitled to the full enjoyment of the fruit of his labor or industry without coercion or constraint,subject only to legal taxation or contribution. 5th. He is entitled to appropriate the proceeds of his undivided industry, and to make a similar appropriation when he has been assisted in his work after deducting the cost of that assistance.—These rights not only inhere in the state and condition of a freeman under the amendments to the constitution, but the common law had maintained them as existing because of the advantage society would receive from their employment. They did not allow a man to diminish his freedom by improvident contracts. It asserted that every person has a right as between him and his fellow-citizen to full freedom in disposing of his labor or capital according to his own will, and that every other person is subject to the corelative duty of allowing the fullest exercise of this right, which is compatible with the exercise of the same rights by others. Contracts which placed unreasonable restraints on this right were invalidated. Hilton *vs.* Eckersly 6. Ell. & B. 47. 4 B & S. 376 Taylor *vs.* Blanchard. 13 Allen Mass. R 370.

1 Duvall Ky. R 143.

The general principle of the law is that every person has individually, and the public have collectively, a right to require that the course of trade should be free from unreasonable obstruction. There is not a grant of this right, nor a prohibition of its violation in direct terms in the English law, but cases have been cited to show that it is assumed as a principle that exists there, and others will be cited to show that it has been maintained under conditions of great solemnity. The Prussian government commenced this social revolution in 1807, with an edict that announces this principle. "Equity demands, and the principle of all good governments require, that each individual should be able to attain, without hindrance, to the highest degree of prosperity to which his character, his talents, or his fortune can conduct him,"—as a corallory to this declaration it was enacted that from and after Martenmas, 1810 * * * * there shall only be freemen, and by a series of measures they proceeded to free the land from the personal servitudes that existed in favor of the proprietor and binding the occupant to service.

There were one million three hundred and three thousand nine hundred and ninety-two persons freed under those measures from services of manual labor and team work which existed as a consequence of their tenures.

De Tocqueville, in describing the condition of the French peasant of the 18th century under this vassalage, says: "The peasant could not cross a river without paying to some nobleman a toll. He could not take his produce to market till he had bought leave to do it; and, when, on his return home, he wants to consume in his own family the surplus of his produce sown by his hands and grown under his eyes, he finds he must first send his grain to their mills to be ground, and to their ovens to be baked." Buckle, in his history of civilization, refers to the same social evils. "The prying eye of the government," he says, "followed the *butcher* to the shambles and the *baker* to the oven. By its paternal hand meat is examined lest it should be bad, and bread is weighed lest it should be light. In short, without multiplying instances with which most readers must be familiar, it is enough to say that in France, as in every other country where the protective principle is active, the government has established a *monopoly* of the worst kind; a *monopoly* which comes home to the business and bosoms of men, follows them in their daily *avocations*, troubles them with its petty meddling spirit, and what is worst of all, diminishes their responsibility to themselves."

Some of these odious claims to interfere and charge with burdens the industry and enjoyment of the people were ranged under the term "banalites." Dalloz thus enumerates them, and expresses the sentiment of the nineteenth century in regard to them. Les banalites furent l'abus le plus terrible du pouvoir des seighneurs justiciers. Ces actes odieux du pouvoir seigneural consistaient essentiellment dans la violation du droit de propriete. Defense au possesseur de chasser sur ses terres, de pecher dans ses eaux, de moudre a sou moulin, de cuire a son four, de fouler draps a son usine, a acquiser ses outils a sa meule de faire son vin, son huile son cidre a son pressoir, de vendre ses denrees au marche public, d'avoir etalon pour son troupeau pigions dens sa fue, ou lapins

daus sou clapier; par suite, *droit exclusif pour le seigneur a tout ces jouissances et necessite pour l'homme coutoumier d'en accroitre les profits pour son usage.*"

Sir Walter Scott describing Hob Miller's visit to Glendearg, in the "Monastery," says: "But in truth, he came to have an eye upon the contents of each stack, and to obtain such information respecting the extent of the crop reaped and gathered in by each feuar, as might prevent the possibility of abstracted multures. All the world knows that the cultivators of each barony or regality. (temporal or spiritual,) in Scotland, are obliged to bring their corn to be grinded at the mill of the Territory, for which they pay a heavy charge called intoun multures. I could speak to the thirlage of invecta et illata too. Those of Sucken or enthralled ground were liable in penalties if deviating from this thirlage (or thraldom) they carried their grain to another mill. Now such another mill, erected on the lands of a lay borough, lay within a tempting and convenient distance of Glendeary, and the miller was so obliging, that it required Hob Miller's utmost vigilance to prevent evasions of his right of monopoly." Bell, in his commentaries, (2d vol., 866,) calls this an astriction of land and their inhabitants to a particular mill for the grinding of grain, with the burden of paying such duties and services as are expressed or implied in the constitution of the right. As a servitude consists in patiendo merely, it cannot be called a servitude, nor is it a restraint upon the absolute right of property; but being devised originally as an expedient for idemnifying the builder of a mill for extraordinary outlay in a rude age, it has degenerated in times of more improved manufacture into a burdensome and inexpedient tax on produce and land, and is now in a state of gradual extinction. The territory is called the thirl or Sucken. Multures are a proportion of grain paid to a miller for grinding of the rest. Insucken multures may be called the monopoly price for grinding." Fitz N. B. 285 a. note.

The act No. 118 has made of three parishes of Louisiana "*enthralled ground.*" The "*Seventeen*" have *astricted* not only the the inhabitants of those parishes, but of all other portions of the earth, who may have cattle or animals for sale or for food, to land them at the wharves of that company, if brought to that terri-

tory, to keep them in their pens, yards or stables, and to prepare them for market in their abattoir or slaughter-house..

Lest some competitor may present more tempting or convenient arrangements, the act directs that all of these shall be closed on a particular day, and prohibits any one from having, keeping or establishing any other,and a peremptory command is given that all animals shall be sheltered, preserved and protected by this corporation and by none other, under heavy penalties.. The intown muleteers are fixed in the act at an enormously extravagant rate. It cannot be pretended that this thraldom was made necessary by any necessity or to provide for any extraordinary outlay. The cases show that the trade is an ancient trade, that there were men who made it the business of their lives, and that they are thrown out of employment of the entire business of the live-stock landing and slaughter-house, and that the preparations for the market must be made in the houses and yards of this corporation, The owner of the property must place it in the charge of the company, and the butcher must perform his work under the superintendance of this company.

A vessel bringing cattle to market must land at the wharves and the owner must transfer the care of his property to this corporation. The act says, "Any person or persons or corporation or company carrying on any business, or doing any act in contravention of this act, or landing, slaughtering or keeping any animal or animals in violation of this act, shall be liable to a fine of $250 for each and every violation." This monopoly is granted for 25 years. What is its operations upon the privileges of persons to labor in these vocations and the dominion over their property? The act prohibits *all persons*, natural or juridical, from having any wharves, stables, sheds, yards or buildings necessary to land, shelter, protect and preserve all kinds of horses, mules, cattle and other animals, for the purpose of carrying on the live-stock landing and slaughter-house business.

The cases of the State of Louisiana vs. Cavaroc and of the Butchers' Association answer this inquiry and display the claims of this Corporation in all of its enormous and atrocious injustice. Cavaroc has a parcel of land on the east bank of the Mississippi,

below the United States Barracks, which he and others suppose to be suitable for a slaughter-house and for the landing of cattle. When a suspicion that a bargain was going on for the purpose of employing it in that way, the Attorney General steps forth to have specific execution of the law in favor of this corporation, and asserts in the name of the State their sole and exclusive privilege to conduct and carry on an important business in which hundreds had been engaged. Cavaroc might sell to this company his land for that purpose, but to none beside. That corporation might purchase the land for that purpose but none other is allowed to do so. All men are bound to land cattle at the wharves, to keep them in the yards, to slaughter them in the slaughter-house of that company, and the mere offer to purchase property which might be appropriated by this corporation to any of those purposes, has been arrested at a suit in the name of the state, to protect their sole and exclusive privilege. Does this abridge any right of the defendants as citizens? Burke describes the charter of the East India Company by contrast with "Magna Charta." "Magna Charta," he says, is a charter to restrain power and destroy monopoly. The East India Charter is a charter to establish monopoly, and to create power. Political power and commercial monopoly are not the rights of men, and the rights of them derived from charters, it is fallacious to call the chartered rights of men. These chartered rights, (to speak of such charters and their effects with the greatest possible moderation,) do at least suspend the natural rights of mankind at large, and in their very frame and constitution are liable to fall in direct collision with them." In the present case, the liberty of every person, save of this corporation, to use any property in three parishes for the conduct or prosecution of a lucrative business is impaired for 25 years, and for the benefit of the property of this corporation has this liberty been suspended. The butcher is compelled to abandon his trade, or to prosecute it upon terms as to which he has had no voice, at the places fixed upon by this company.

The Injunction sued out by the State and this corporation have for their object to restrain trade, except under the conditions of this act, and for the establishment of this monopoly.—The butchers are not required to labor at the works of this cor-

poration day by day, to be sure, nor have they been arbitrarily commanded to desist from laboring at all at their trade. But they are told if they violate any prohibition of this act, or land, keep or slaughter animals elsewhere than in the company's houses, a fine will follow.

Sir G. C. Lewis says, "that liberty in its proper and primary sense signifies a power of action without being restrained, or a power of forbearing without being forced, and that in its secondary and derivative sense, it signifies a power of doing or forbearing certain acts without apprehending an infliction of him by means of restraint or force as a punishment for these acts or forbearances. Political liberty is merely an exemption from political duties, aud is purely a negative term. But inas much as this exemption from duties would be unavailing unless it were accompa nied with the possession of legal rights, the term is often used as a compendious expression to denote the negative and positive facts. The exemption from legal duty, and the rights which guarantee that exemption, and make it effectual. It is in this sense that we speak of the "liberties of Englishmen."

LEWIS'S METHODS OF OBSERVATION AND REASONING IN POLITICS.

Chapter 23, *Section* 10.

The right claimed by the corporation created in the Act No. 118, is not a right to engage in the live stock landing or slaughter house business, nor to land, keep or slaughter cattle, or to have, keep or establish wharves, pens or abattoirs—all these privileges they had and no one could have disturbed them. The great and particular right they claim consists in the Act which imposes upon all persons the duty of abstaining from the performance of any act that would thwart or obstruct their *sole* and *exclusive* privilege to conduct and carry on a business that was common public and open to all men before the Act. These common and public rights have been abridged and limited by this enactment. These common, public and necessary rights the amendments to the constitution were designed to preserve, not to mutilate or destroy. The constitution before this had recognized rights and privileges as beyond the legislation of Congress. Re-

ligion and speech and publication could not be subjects of legislation for Congress. Congress could not pass bills of attainder or *expost facto* laws, or violate the rights of person or property by unreasonable searches or seizures, nor deprive any of life, liberty or property, without due process of law. But the amendments to the constitution go further and declare the native population shall be citizens of the United States—that they shall be free—that their immunities and privileges shall never be abridged by *State laws*, nor shall the *State* deny them equal protection.

We do not contend that the plaintiffs in this court have been placed in handcuffs and carried to the houses, pens and yards of this corporation, with violence, to labor for this corporation of seventeen as African slaves might have been; nor have they been imprisoned or confined to compel them to labor with these parties. But all of them have been prohibited from doing their usual or customary work, except upon the property and for the compensation and profit of these parties. They have been compelled to close up the houses and other conveniences of business to enable this corporation to construct and use profitably theirs. All men in all places are commanded to forbear doing the acts that would infringe the privileges granted to this corporation. Any obstruction to the enjoyment of these privileges is removed by the strong arm of the State. The common rights of men have been taken away, and have become the *sole and exclusive privilege* of a single corporation. Can a State Legislature say that religion, speech, publication and invention shall be carried on and employed in designated limits, under the superintendence of the seventeen persons, and in their houses, yards or pens? The same law that protects them protects the personal right to labor. The constitution declares that none of these privileges can be abridged by State laws.

The laboring classes have at times been the victims of intentional tyranny, and other times have been subject to a blind and blundering ignorance, which could not properly regulate the social interests committed to the hands of the legislative authorities. During the reigns of Edward III, Richard II, and their successors, the price of labor was fixed by law, and every able-bodied man

and woman not being a merchant, or exercising any craft, or having estate or land, *should be bounden* to serve whenever required so to do, at the wages accustomed to be given in the twentieth year of the King, and in five or six average years next before. The act compelled the laborer to remain in service under pain of imprisonment. The statute applies the same articles to smiths, masons, carpenters, and other artificers. To prevent the rural laborer from seeking the towns, he was forbidden to leave his own village. An eminent writer refers to these statutes as an early legislative recognition of that terrible scourge of vagrancy, which became in after time a source of danger and anxiety to the commonwealth; and we trace the origin of the nuisance by the admission of the law makers themselves, to that false policy which, depriving the laborer of his just right to dispose as he best might of his own industry, goaded him into rebellion against the government, and converted those who might have been industrious subjects into desperate evil-doers. What has been the motive for the thirteenth, fourteenth and fifteenth amendment to the Constitution of the United States? The declared motive is that as man has a right to labor for himself, and not at the will, or under the constraint of another, and that he should have the profit of his own industry. Slavery as it had existed, denied civil rights to the slave, and assimilated him to the dead. *Servile caput nullum jus habet: servile morti adsimilatur.* He could neither make nor receive an obligation, nor acquire property for himself. *Nec servus quicquam debere potest; nic servo potest debere. Sive autem domino, sive sibi, sive conservo, sive impersonaliter, servus domino stipuletur domino acquirit.* In prohibiting slavery forever, the constitution must have prohibited something actually continuing and pernicious, and ordained in its place something having the same characteristics of reality and duration. The freeman cannot be assimilated to the dead, but is inspired with a perennial hope of improvement, and with the right to labor for that improvement. In prohibiting slavery forever, the fundamental rights of men are declared to be the aim and end of the national existence. Therefore, the first section of the fourteenth amendment is a corallary to the thirteenth as was the Civil Rights Act that preceded it, an echo of it. That amend-

ment and that act instituted and organized freedom in laws, and guaranteed its protection against sordid interests, selfish aims and ambitious usurpations, or greedy appetites. These amendments to the constitution placed the freedom of every American citizen under the protection of a common law. They have established a national government, which is sovereign not merely in the exter nal affairs of the nation, but in regard to life, liberty, property, privilege, immunity, and the right to an equal protection from State governments; and to secure these, it comes in contact with every citizen, and makes itself felt in his dearest and most intimate relations. So closely is the right to work with freedom so closely associated with all other rights, that a political contest affecting that right has created a necessity for a change of the whole constitution of the government in its relations to personal rights and State connections with them.

A Virginia statesman, more than half a century ago, said: "Man by nature had two rights: to his conscience, and to his labor; and it was the design of civil society to secure these rights. * * * * * By supplying the distinctions between occupations, and covering all by the inclusive term labor, we at once discern the natural equality of right. The occupations of men are the men themselves."

Taylor's Construction Construed, 203.

The constitutional definition of slavery we have quoted assumes the same as the fact. One held to service for another under a law is distinguishable from all classes of the population by that mark.

The abolition of that condition of persons implied in the words "*held to service or labor*," has had the effect to set at liberty three millions of persons, to remodel the Constitution of the United States, to establish theoretically a law of equality in civil and political rights, and to repress arbitrary, tyrannical, unjust laws for the abridgement of the natural power and liberty of men to provide for themselves freely, and without tribute to the cupidity or avarice of monopolists, or suborners of depraved legislatures and profligate governors. The question before us is, does it accomplish this end? The act under consideration prohibits

industry within three parishes in an important and extensive business to hundreds of persons, unless they will labor at the houses and yards of a single corporation—the laborer to pay at fixed rates for the privilege, and with an inhibition of the erection or the use of any others.

The Republican Constitution of France in 1848, employs the words: "The constitution guarantees to citizens the freedom of labor and industry." Lieber says of "Monopolies, freedom of trading, freedom of home production, freedom of exchange, possession of property, each have a history full of error and government interference, running through many centuries, and even a thousand years."

Civil liberty and self-government, Ch. X, p. 126.

The constitution of 1791, and the decree of the Assembly, relieved industry from its bonds, enabled each to follow the trade of his choice, and that all claims upon him should arise from contract, and prohibited the sale of freedom- The banalites of the oven, the mill, the wine *press*, the SLAUGHTER HOUSE, the *forge*, the *bull*, the *boar*, with all others of a similar description, with their services and accessories, were abolished without indemnity. The very form of monopoly, and of oppressive servitude, which the Act No. 118, creates, was then overturned with acclamation, and has never been restored since in the kingdom, empire or republic of France. The example was followed in all of the western part of Europe. The preeminence of caste and rank have disappeared from the religion, and almost from the institutions of mankind. Labor, which in some periods of the world's history has been regarded as a necessity, a doom, or a burden, has become successively a privilege, right, duty, enjoyment, or source of honor, distinction and rank in society. All men are now held to exert the faculties of mind or body for the support of himself and family, or for the improvement and development of society.

Is it not too much to say that the position of laboring men in the State, and the interests of laboring men in society, at this moment, create a more profound interest than all other questions that come before cabinets, councils or legislative assemblies.—The only interest that the civil war that has profoundly affected

this country will permanently excite, is what solution did it make of the questions that arise and have arisen on this snbject? The amendments to the Constitution, and the laws under them, express the predominant opinion of those who conquered in the struggle. To those who were gravely interested in the struggle, these amendments have a profound signification. To those who were but little concerned either in its chances or changes, and who were much interested in the financial opportunities it afforded, and were safe from its perils, these amendments are regarded very much as a party platform, whose value is exhausted at an election—as clouds without rain—trees without fruit—great swelling words to bring men into admiration for advantage.

In this very cause we have been charged with making a mock of those who made the amendment for their lax and reckless action, because we presnme to assign a meaning, and to ground a claim for protection nnder the amendment. We do assign to this article of the amendment, and the thirteenth, of which it is the sequel and complement, a great and a weighty significance. We do not say that they make a radical change in the government of the United States, but they go very far to determine that the Constitution of the United States creates a national government and is not a federal compact.

The article determines who is a citizen of the United States' and that this person may become a citizen of any State by his own act—that condition being secondary and derivative from that constitution. It determines that the privileges and immunities of this citizen of all of the States—united, shall not be abridged by any one of them—nor shall any one of them deprive him of life, liberty or property, without due process of law; nor deny to him the equal protection of the laws.

Before these vested rights might be divested, slavery and involuntary servitude existed under State constitutions; and the laws for the protection of life, liberty and property, were only, to a limited extent, subject to the revision of the judicial, or other departments of the United States. The fourteenth amendment to the constitution institutes a control over State sovereignity in the matter of life, liberty, property, privilege, immunity and equality

under the law, over the sovereignity that had existed over persons and things within the State, to an extent that is important, but whose importance cannot be now estimated. The most important of the sections of the Magna Charter form only a clause of this article. The first article of the French Charters of 1814 and 1830—the most efficient of all—is added, and does not exhaust it. The entire body of the personal rights of men that State governments ought not to destroy or impair, have been placed under the guardianship of the government of the United States. The guardianship came opportunely, for this enactment (and it does not stand alone) affords conclusive evidence that in some States the State authorities are not competent to perform their duty.

It may have been forseen that disorder would follow from the disintegration of ideas, the changes in the conditions of populations, and the introduction of a more relaxed system of social life and manners, and that a firmer hand was required to maintain order. It was to have been expected that there would be more corruption in the state governments, and that the rights of individuals would be insecure. It was to have been expected that in the existing state of society, that monopolies would be asked for and easily obtained. Leiber speaks of monopolies as one of the first of the abuses that an improving people resisted, and that it was one of those which constantly reappears. One of the earliest of the battles for civil liberty in England was made against this public enemy. Macaulay in his first volume describes the first of the attacks. He says, "it was in the parliament of 1601, that the opposition which had, during forty years, been silently gathering and husbanding strength, fought its first great battle and won its first victory. The ground was well chosen. The English sovereigns had always been entrusted with the supreme direction of commercial police. It was their undoubted prerogative to regulate coins, weights, measures, and to appoint fairs, markets and ports. The line which bounded their authority over trade, had, as usual, been but loosely drawn. They therefore, as usual, encroached on the province which rightfully belonged to the legislature. The encroachment was, as usual, patiently borne, till it

became serious. But at length the Queen took upon herself to grant patents of monopoly by scores. There was scarcely a family in the realm that did not feel itself aggrieved by the oppression and extortion which the abuse naturally caused. Iron, oil, vinegar, coal, lead, starch, yarn, leather, glass, could be bought only at exorbitant prices.

The House of Commons met in an angry and determined mood. It was in vain that a courtly minority blamed the speaker for suffering the acts of the Queen's highness to be called in question.—The language of the discontented party was high and menacing, and was echoed by the voice of the whole nation. The coach of the chief minister of the crown was surrounded by an indignant populace, who cursed *monopolies*, and exclaimed that the prerogative should not be allowed to touch the old liberties of England."

He proceeds to say that the Queen's reign was in danger of a shameful and disgraceful end, but that she, with admirable judgement, declined the contest and redressed the grievance, and in touching language thanked the Commons for their tender care of the common weal. 1 vol., p. 58.

Hallam, in his constitutional history, is more particular. He testifies to the enormity of the abuse. How that monopolies were sold or granted without benefit to the revenue and to the burden of the subject.

That when the list was read over, "a member exclaimed, 'is not bread among the number?' The House was amazed, "nay," said he, "if no remedy is found for these, bread will be there before the next parliament." Every tongue seemed now unloosed, each as if emulously descanting on the injuries of the place he represented. * * * * After four days of eager debate, and more heat than had ever been witnessed, this ferment was appeased by one of those well timed concessions by which skillful princes spare themselves the mortification of being overcome. Elizabeth sent down word that she would revoke all grants that should be found injurious.

But more important than these discussions in parliament; more important than the proceedings for the punishment of one of the beneficiaries of these grants, is the discussion that took place in

the courts of Great Britian. The great and leading case is that reported by Lord Coke, on the case of monopolies. Co. R., XI., p. 85. The patent was granted to Darcy to buy beyond the sea all such playing cards as he thought good, and to utter and sell them within the kingdom, and that he and his agents and deputies should have the whole trade, traffic, and merchandise of playing cards, and that another person and none other shonld have the making of playing cards within the realm.

A suit was brought against a citizen of London for selling playing cards, and he pleaded that being a citizen free of the city he had a right to do so.

The following extracts from the judgment of the Court, will display the weighty reasons for the judgment:

"And resolved by Popham, Chief Justice, *per totam curiam*, that the said grant of the plaintiff of the sole making of cards within the realm, was utterly void, and for two reasons: 1. That it is a monopoly and against the common law. 2. That it is against divers acts of parliament. Against the common law for four reasons. 1. All trades, as well mechanical as others, which prevent idleness, (the bane of the commonwealth,) and exercise men and youth in labor, for the maintenance of themselves and their families, and for the increase of their substance, to serve the Queen when occasion shall require, are profitable for the commonwealth, and therefore the grant to the plaintiff to have the sole making of them is against the common law, and the benefit and liberty of the subject, and therewith agrees Fortescue in *Laudibus legum Angliæ*, *cap.* 26. And a case was adjudged in this court in an action of trespass *inter* Davenant and Hurdis, Trin. 41 Eliz. Rot. 92, where the case was, that the company of merchant tailors in London having power by charter to make ordinances for the better rule and government of the company, so that they are consonant to law and reason, made an ordinance that every brother of the same society who put should put on any cloth to be dressed by any clothworker, not being a brother of the same society, shall put one-half of his clothes to some brother of the same society who exercised the art of a clothworker, upon pain of forfeiting ten

shillings, etc., and to distrain for it, etc., and it was adjudged that the ordinance, although it had the countenance of a charter, was against the common law, because it was against the liberty of the subject; for every subject, by the law, has freedom and liberty to put his cloth to be dressed by what clothworker he pleases, and cannot be restrained to certain persons; for that, in effect, would be a monopoly; and therefore such ordinance by color of a charter, or any grant by charter to such effect, would be void. 2. The sole trade of any mechanical artifice, or any other monopoly, is not only a damage and prejudice to those who exercise the same trade, but also to all other subjects, for the end of all these monopolies is for the private gain of patentees; and although provisions and cautions are added to moderate them, yet *res profecto stulta nequitia modus*, it is mere folly to think that there is any measure in mischief or wickedness; and therefore there are three inseparable incidents to every monopoly against the commonwealth. 1. That the price of the same commodity will be raised, for he who has the sole selling of any commodity, may and will make the price as he pleases; and this word *Monopolium dicitur, (apo tou monea ke poleo,) quod est, cum unus solus, aliquod genus mercaturae universum, emit, pretium ad suum libitum statuens.* And the poet saith: *omnia Castor emit, sic sit ut omnia vendant;* and it appears by the writ of *ad quod damnum*, F. N. B. 222 a. d., that every gift or grant from the king has this condition, either expressly or tacitly annexed to it. *Ita quod patria per donationem illam magnis solido non oneretur sed gravetur*, and therefore every grant made in grievance or prejudice of the subject is void; and 13 H. 4, 14 b., the king's grant, which tends to the charge and prejudice of the subject is void. The second incident to a monopoly is that after the monopoly granted the commodity is not so good and merchantable as it was before; for the patentee having the sole trade, regards only his private benefit and not the commonwealth. 3. It tends to the impoverishment of divers artificers and others, who before, by the labor of their hands in their art or trade, had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary."

The Queen was deceived in her grant, for the Queen, as by the

preamble appears, intended it to be for the weal public, and it will be employed for the private gain of the patentee, and for the prejudice of the public; moreover, the Queen meant that the abuse should be taken away, which shall never be by this patent, but *potius* the abuse will be created for the private benefit of the patentee, and therefore, as it is said in 21 E. 3, 47 in the Earl of Kent's case, this grant is void *jure regio*. 4. This grant is *primae impressionis*, for no such was ever seen to pass by letters patent under the great seal before these days, and therefore it is a dangerous innovation, as well without any precedent or example, as without authority of law or reason. And it was observed that this grant to the plaintiff was for twelve years, so that his executors, administrators, wife or children, or others inexpert in the art and trade, will have this monopoly. And it cannot be intended that Edwin Darcy, an Esquire, and a groom of the Queen's Privy Chamber, has any skill in this mechanical trade of making cards; and then it was said that the patent made to him was void, for to forbid others to make cards who have the art and skill, and to give him the sole making of them who has no skill to make them, will make the patent utterly void. *Vide* 9 E. 4, 5, b. And although the grant extends to his deputies, and it may be said he may appoint deputies who are expert, yet if the grantee himself is not expert, and the grant is void as to him, he cannot make any deputy to supply his place, *quia quod per me non possum, nec per alium.*

Also such Charter of a monopoly, against the freedom of trade and traffic, is against divers acts of parliament, sc. 9 E. 3 c. 1. and 2, which, for the advancement of the freedom of trade and traffic, extends to all things vendible, notwithstanding any charter or franchise granted to the contrary, or usage or custom, or judgment given upon such charters, which charters are adjudged by the same parliament to be of no force or effect, and made to the derogation of the Prelates, Earls, Barons and grandees of the realm, and to the oppression of the commons.

And *nota* reader, and well observe the glorious preamble and pretence of this odious monopoly. And it is true *quod privilegia qua re vera sunt in prejudicium republica, magis tamen speciosa habent frontispicia, boni publici praetextum, quam bonae*

legales concessiones, sed praetexu, liciti non debat admitti il licitum. And our lord the king that now is, in a book, which he, in zeal to the law and justice, commanded to be printed *anno* 1610, intituled "A Declaration of his Majesty Pleasure, etc." p. 13, has published that monopolies are things against the laws of this realm; and therefore expressly commands that no suitor presume to move him to graut of any of them, etc."

There is not a statement of common law or statute in this great judgment but what its correspondent may be found in the constitution we have quoted. If the argumeut be that monopoly is against common right and encroaches upou the liberty of the subject to follow such avocation as he pleases, we refer to the constitutioual amendments, which declare men to be free and equal, and have the same claim to life, liberty and the pursuit of happiness. If the argument be that a monopoly is injurious to the trader and the artisan, we refer to hundreds of suitors in these cases, exclaiming against this injustice. If the argument be that it is contrary to the freedom of trade and industry, we point to the exclusiveness of this grant, and the constitutional title to equal civil rights. We cite the clauses that compel the closing of all the avenues, edifices, conveniences that have been made in the last thirty years by the complainants that this corporation may profitably open their buildings of a few weeks old.

If the pretenses of this act are quoted, we refer to the glorious pretence and preamble of the monopoly in the case cited. The Queen of Great Britiau had a power over trade far greater than the Constitution allows to the General Assembly.

The sovereignity of the State government is reduced—and wisely reduced by the Constitution—to a very limited extent. Life, liberty, property, privilege, immunity, civil, political and public rights have been placed upon a foundation that the General Assembly cannot subvert or destroy. Their superstruction of law must be made on this foundation, or it will fall of itself.

This contest of the people with monopolists derives its importance from the fact that it was the first of their great battles for constiutional liberty, upon the ground of their common and just rights. The contemporary history shows that its importance was not exaggerated, and that it made a permanent impression upon

the mind of all classes. Bacon, in giving counsel to Villiers as to the conduct of his administration, advises, "That especial care must be taken, that monopolies, which are cankers of all trading, be not admitted under specious pretenses of public good." Massinger suspended Mompesson (by the name of Overreach) the heartless and hardened monopolist, on high, for the observation and execration of all generations of Englishmen, as the type of of his class. In 1633 all the lawyers of the four inns of Court performed a splendid masque before the King and Queen after Christmas. Its cost was £21,000, and was under the superintendence of Finch, Herbert, Hyde and Whitelocke, all of whom after held the Great Seal, and two others not less distinguished, John Selden and Noy. Among the variety of persons in the masque was "A Fellow upon a little horse, with a great bit in his mouth, and upon the man's head was a bit with headstall and reins fastened, and signified a projector, who begged a patent, that none in the kingdom might ride their horses but with such bits as they should buy of him."

"Then came another fellow with a bunch of carrots upon his head and a capon upon his fist, describing a projector who begged a monopoly as the inventor of the art to feed capons fat with carrots, etc."—6 Foss' Lives of Judges, 240.

The bench and the bar of England combined to overwhelm the monstrous injustice of monopolies.

To overpower this enormous abuse by expostulation, remonstrance, argument, judicial opinion or ridicule, or other means, was not unworthy of the great patriots who performed so important a part in placing upon a solid foundation the liberties of England. The principle of monopoly was rendered hateful to all who valued constitutional and civil liberty by their efforts.

A monopoly is an institution or an allowance by authority to any person or corporation of or for the sole buying, selling, making, working, or using of anything whereby any person or persons, or body politic or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawful trade.—9 Co. Inst., 181.

Rolle. ab. 113, 364. 3 Mod. 221.

1 P. W. 181. 2 Atk. 484. Grant corp. 83.

The statute enacted by Parliament in 21 James I decided that all monopolies, commissions, grants, licenses, charters and letters patent, granted, or to be granted, to any particular persons, bodies corporate, of or for the sole buying, selling, making, working, or using of any thing within this realm, and all proclamations, inhibitions, warrants of assistance, and all other matters and things tending to the instituting, exacting, strengthening, furthering or countenancing the same contrary to the laws of this realm, are and shall be utterly void and of none effect.

At a later period a charter was granted to the East India Company of a monopoly of the East India trade; and the the privileges granted to merchant adventurers of trade to Holland, and prohibiting all others not free of that company, came before the court of King's bench. The East India Company's claim was maintained by Jeffries in a prolix and specious argument; but modern authorities on the case are decided against the judgment, and in his opinion, he admitted that the monopoly could not be granted within the realm, and was allowable, because it concerned a foreign trade with infidel nations.

E. I. Co. *vs* Sandys' 10 How. st. tr.

The institutions and great statutes of Great Britian were brought to the colonies by immigrants before the revolution. In the formation of the federal and State constitutions continued reference is had to these, and all the conquests that were made in their constitutional struggles have been incorporated in the bill of rights. The trial by jury; the privilege of habeas corpus; the right to counsel and compulsory process for witnesses; the freedom of the press and of speech; religious liberty; exemption from vexatious searches, seizures and arrests, which are provided for in the constitutions, have a history that connect them with these struggles.

The statesmen and publicists of succeeding ages connect themselves with the principles and history we have disclosed.—Burke, writing of the affairs of Ireland, affirms that in the ordinary way of viewing things, "in a country of monopoly there can be no patriotism; there may be a party spirit, but of public spirit there could be none."

Jefferson, in his inaugural address, describes as the crowning

virtue, "a wise and frugal government which shall restrain men from injuring one another; shall leave them free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of industry the bread that it has earned. Political economy became a science when it laid its foundations in individual right. It at once recognized that the grants of sole and exclusive privileges to conduct and carry on work or industry in commerce or manufactures—that is the grant of monoplies—had been an appendage of power and a fruitful source of revenue, at the expense of the interests and rights of the public, and had depressed industry and public prosperity."

Mill P. E. b. V. Ch. 10, Sec. 4.

Dalloz jur. Gen. t. 27, tit Industrie and Com. 208.

The accumulated wrongs suffered by the people, and the errors committed by the governing classes, were important causes of the revolution in France in 1789. There was asserted the right of the laborer to follow any avocation, and to labor freely in it, and to regulate his work by contracts made by himself. It was not denied to the municipal authorities to make regulations in the interests of salubrity, convenience, but these were subordinate to the right to labor freely, and the tribunals said that exclusive privileges should be banished from municipal organization, as it had been from the bosom of the nation.

Dalloz above cited notes.

61 Dalloz 326, Nos. 18, 19, 20.

The common law of the United States is in the most important particulars in harmony with that of Great Britain on the subject. The Constitution of the United States preserves the only exemption in the English statute of monopolies, the privilege for inventors and authors. Many of the State Constitutions have denounced monopolies and exclusive privileges by name. The public sentiment of the people is that industry is necessary in every condition and station, in every calling and way of life, and for the right discharge of public and private obligations. The laws that permitted the enslavement of a race, supposed to be inferior and degraded, have been overturned in a general uprising of the majority of the nation. The monopolist, the jobber in special grants,

exclusive privilege or governmental favors have been, and still are, an offence to the people. The increased facility for obtaining these have only increased the popular aversion. A citation from a case reported in the 25 Conn Reports, p 38, will fully support our arguement on this question.

It is the duty as well as the prerogative of the government to provide necessary aud convenient roads and bridges, and, to enable it to accomplish this object, it has everywhere what is called "the right of eminent domain;" the right over individual estates to resume them for this and other public purposes. Such a prerogative connected with a corresponding duty, with the power to execute it by the exercise of the right of eminent domain, necessarily implies that it belongs to the government to determine what improvements are of sufficient importance to justify the exercise of the right, and when and how they shall be exercised; and if a particular bridge, or ferry, is considered sufficient for a particular locality, it may stipulate, that within such reasonable limits, the particular bridge or ferry tolls shall not be diminished by any other improvement of the sort. But it is no part of the duty of the government to provide the community with lights in their dwellings, no more than it is their duty to provide them with the dwellings themselves, or any of the necessaries or luxuries which may deemed important to the comfort or convenience of the community. And if it be assumed that there would be no impropriety in the lighting of the streets under the control and direction of the sovereign power, this would be merely as a regulation of the police, or an incident to the duty to provide safe and convenient ways. And in this case, the power to provide for lighting the streets is of no importance, because nothing was done to secure the object, unless the plaintiffs chose to assume it; and whether they would do so, would probably depend upon whether it could be made profitable. As, then, no consideration whatever, either of a public or private character, was reserved for the grant; and as the business of manufacturing and selling gas is an ordinary business, like the manufacture of leather, or any other articles of trade, in respect to which the government has no exclusive prerogative, we think, that so far as the restric-

tion of other persons than the plaintiffs from using the streets for the purpose of distributing gas by means of pipes, can fairly be viewed as intended to operate as a restriction upon its free manufacture and sale, it comes directly within the definition and description of a monopoly; and although we have no direct constitutional provision against a monopoly, yet the whole theory of a free government is opposed to such grants, and does not require even the aid which may be derived from the Bill of rights, the first section of which declares "that no man or set of men, are entitled to exclusive public emoluments, or privilegs from the community," to render them void. The statute of 21 James I., C. 3, which declares such monopolies to be contrary to law and void, except as patents for a limited time, and printing, the regulation of which was at that time considered as belonging to the king's prerogative, and except also, certain warlike materials and manufactures, the regulation of which for obvious reasons may fairly be said to belong to the king, has always been as merely declaratory of the common law. 4 Bacon's Abr., p. 763, Tit. Monopoly, 4 Blk. Com. 160, Hindmarch on Patents, chap. 2, p. 7, *et seq.* A monopoly, in the sense which this grant may be said to be such, is defined by Bouvier as an institution or allowance by a grant from the sovereign power of the state, by commission, letters patent, or otherwise, to any person or corporation by which the exclusive right of buying, selling, making, working, or using of anything is given."

The case of the city of Chicago vs. Rumpff 45, Illinois R. 90, is similar to the case before the court in many particulars. The frame of the contract or ordinance discussed in that case is so much like the legislative act before the court, that it is difficult to believe that the former did not form the model of the latter; the latter is bolder, more audacious and more indifferent to censure, but to create a sordid monopoly of some kind is the object of both.

We quote from the case the following extract.

"The powers which they are authorized to exercise are delegated to them to afford more ample protection to the community in their rights and privileges. Such bodies are never created to en-

able them to confer pecuniary benefits, or to grant monopolies to any portion of the community, or to individual members thereof."

The court interpets the clause of the charter which authorizes the city to license and regulate such establishments. They say: "when that body have made the necessary regulations required for the health and comfort of the inhabitants, all persons inclined to pursue such an occupation should have the opportunity of conforming to such regulations, otherwise the ordinance would be unreasonable and tend to oppression, or if they should regard it for the interest of the city that such establishments should be licensed, the ordinance should be so framed that all persons desiring it, might obtain licenses by conforming to the prescribed terms and regulations for the government of such business. *We regard it neither as a regulatien, nor a liccnse of the business to confine it to one building, or to give it to one individval; such action is oppression, and creates a monopoly that never could have been contemplated by the general assembly. It impairs the rights of persons and cuts them off from a share, not only of a legal but a necessary business. Whether we consider this as an ordinance or a contract, it is equally unauthorized as being opposed to the rules governing the adoption of municipal by laws.* THE PRINCIPLE OF EQUALITY OF RIGHTS TO THE CORPORATORS IS VIOLATED BY THIS CONTRACT."

We admit that the court will treat a legislative act with more consideration than a municipal ordinance But the Legislature is no more entitled to violate rights that are "inviolable," that is to participate in the prosecution of a necessary business: nor to destroy the equality of rights, nor to fetter the industry of a city or parish, than the municipality of those districts have. Those rights, are constitutional, and protected from all subordinate authorities. The ordinance created a banalite in favor of a single firm. The legislative act creates a banalite of a more onerous character for seventeen persons made into a corporation. The banalite of a slaughter house is not more defensible than one of vegetables, groceries, dry goods, or of a bull, boar, forge or grindstone, or a bazaar, machine shop, or manufactory. The power that can impose the one on a community can impose the others.

The whole character of American constitutions is opposed to the introduction of those agents of feudal despotism and oppression. We have alluded to the statutes concerning laborers in the reigns of Edward III and his successors, of his own family and the Tudors. This was a period when work was a necessity, and in some instances was imposed as a burden. Those who had not a competent support, were *bounden to serve* at wages determined by law. They were punished for failing to serve, and for leaving the service of their masters or employers.

The rural codes of Touissant L'ouverture and Boyer, in Hayti, had similar provisions. The agricultural classes were remanded to plantations for field work. They were not permitted to follow any other pursuit. Their wages and allowances were fixed by law, and their continuous residence on the plantations compelled. They could not cultivate a plantation on their own account. For the reasons we have already assigned, these laws would not be allowed in the United States under the amendments to the Constitution of the United States. That constitution adopted once for all that UNION and LIBERTY, in no ideal, fanciful, rhetorical, sense, should be ONE and INSEPARABLE, if plain, direct, unequivocal, constitutional law could combine and hold them together. But we are not able to discover that the obsolete statutes and the abandoned code we have cited, violate the law of freedom more than the Act No. 118. The American citizen holds his capacity to labor as a privilege, a right, an obligation due primarily to himself, but by its free and perfect enjoyment, to maintain, advance and promote those related to him, and the country in whose coustitution he has an honorable place assigned. The Act of No. 118 would carry nullity on its face had it been assigned as its cause that it was "To subdue the refractory spirit of the villeins." This enactment prohibits within less than three months after all of that business which concerns the collection within three parishes, and the preservation, protection and preparation there of all the supply of animal food for the population mentioned in the act, and compels the surrender for that business of all the buildings and property suitable for the carrying of it on by those concerned in it.

After the first day of June, 1869, the act prescribes there should be THICK DARKNESS among all the dwelling places of the body of citizens, BUT the SEVENTEEN who on that day became a corporation, should from that day have LIGHT in their dwellings for twenty-five years. For twenty-five years this monopoly is to continue. A single corporate body to be organized by the *seventeen* for that long period, may exclude all persons from landing, keeping, slaughtering any cattle, beeves, sheep, swine, or other animals, in the three parishes, unless in a direct connection with this company, or having or holding property for the purpose.

Cooley, in his work on Constitutional Limitations, says: "If a legislation should undertake to provide that persons following some specified lawful trade or employment, should not have the capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make use of their property as was permissable to others, it can scarcely be doubted that the act would transcend the bounds of legislative power, even if it did conflict with express constitutional provisions. The man, or the class forbidden the acquisition or enjoyment of property, in the manner permitted to the community at large, would be deprived of liberty in particulars of primary importance to their pursuit of happiness."

The greater enormity of the act under consideration and the cases put in the paragraph we have cited, is that the land in three parishes has become "enthralled ground," for the sole and exclusive emolument of this corporation of *seventeen*. Over a large segment of those parishes the corporation may erect, construct or destroy what they may erect, and whoever belongs to those parishes must carry to their buildings, at the places they may select, important personal property for preservation and protection, if designed for sale or slaughter, and the members of a large and important avocation must labor at the places fixed upon this corporation as the site of their buildings, or abandon their vocation altogether. One of the cases before the court shows the vast range of this act. Cavaroc is enjoined from the sale of his land. The association of butchers are enjoined from working in their own buildings, at their own trade, because it infringes this mo-

nopoly. The Sheriff has this property of this plaintiff to insure the execution of this act. In another case a licensed vessel, bringing a cargo of cattle to New Orleans, has been compelled to land it at the privileged wharf at the fee imposed in the act.

We can, without difficulty, perceive that their is enormous profit to the corporation contained in the provisions of the act.—That it imposes a tax upon an entire community for the benefit of the adventurers named in the act. It is equally apparent that independence, self respect, forethought are undermined by laws of this description, and that the moral corruption of it is a more potent objection to it, than the oppressive, unjust and extravagant conditions it imposes.

Two questions remain for consideration. "The immorality, oppression, extravagance, and injustice are not to be regarded," it is said; for that the legislature are sovereign over all matters of public law, and that this is a public law.

The preamble says that it is "to protect the health of the city of New Orleans, and to locate the stock landings," besides granting a monopoly to a new corporation.

In the case decided by the Supreme Court of the State brought by the Attorney General, there was no question of the health of the city or the location of the landings for stock. The land of Cavaroc, and the proposed site of the abattoir on that land was below the city, and within the limits designated for the construction of the seventeen corporators. Nor does this act impose a single sanitary exaction or requisition upon them. In so far as the rights and privileges of the corporation are concerned, they rest exclusively in two words, "sole and exclusive." Their consent was only wanting to do whatever they are permitted to do in the act. They could have become a voluntary corporation.—Erected all the builings, provided for and done all the work contemplated. The significance of the act is contained only and entirely in the words of exclusiveness and monopoly it contains. It was quite competent to the seventeen under a law of the State to form a company for carrying on all of the business described in Act No. 118 for the term of twenty-five years. They might have made their own terms of association, and provided for the amount

and payment of their capital stock, and the mode of management. This has all been done by a portion of the plaintiffs.

But this simple process would have put no corporation or person under a disability. There would have been no *exclusion* of *every corporation* and *individual*, EXCEPT this corporation of Seventeen persons from any share or participation in a large and lucrative employment in the parishes named in the act. There would have been no expulsion of a thousand persons from their habitations, nor a requirement that they should transfer their property to the custody and keeping of this corporation, and their labor to its buildings.

There would have been no shares of stock for gratuitous distribution for official favor; nor room for stock jobbing *pendente lite.* A just respect for the rights of all would have been shown by the other arrangement, and therefore the seventeen and their allies had no desire for a charter of the kind. We find no consideration for the public health in any act or fact with which this corporation (defendants) is in any way concerned.

The waters of the river Mississippi are never mentioned in any connection with, nor is there any obligation upon them to spare the waters of that muddy and nasty stream from further pollution. The nucleus of the act about which every other element concentrates, are the clauses confirming a *monopoly.* If the act had not contained this clause, it would not have been accepted. There would have been no wharves, shed, pens, yards, abattiors, or other arrangement for this business by these men. The demand for the removal of the stock landing would never have been made.

All these clauses of the act were designed to promote the monopoly. The stock landings were above the city; this company had none. It was quite as convenient to go below as to continue the landings above. But the removal of the stock landings would have accomplished nothing for the monopoly, unless the prohibition upon all the world, except the company, to have any other within the three parishes, had been introduced into the act. The introduction of this prohibition exposes the baldness of the pretence that the removal of the stock landings were designed as

a sanitary measure, or that any public benefit was within the range of legislative or executive contemplation when it became a law. They gave to their compeers a power over the supply of animal food for New Orleans for twenty five years, so that the stock of that company might be vendible. "It is unquestionably the truth, and one most seriously to be thought on, that under whatever delusive names any of the sections of the great modern conspiracy against free institutions disguise themselves, they have all this in common; that with words of liberalism on their lips, they each and all seek, practically, to fetter down the energies, actions, voluntary agency, responsibility, and very thoughts of men. The means they all seek, and which they are wherever and whenever either of them act, directly or indirectly, are the same. Those means are making the name and form of representation a disguise and cover for irresponsible delegated legislation. —Smith on Local Self-government, 166. If there had been a nuisance from the stocklandings or slaughter houses of the plaintiffs, there were ample means provided for its abatement in the judicial power of the State. In the municipal power of the city of New Orleans there are public and responsible agencies. But no such agencies were desirable or have been used. Seventeen men have been used to make a corporation; this corporation is to last for twenty-five years. Its members are changeable. Under a bill entitled a bill to protect the health of the city of New Orleans, this corporation is to have the *sole and exclusive privilege* of conducting and carrying on the live stock landing and slaughter house business, and animals destined for sale or slaughter within the city of New Orleans and its environs, shall be landed at the landings of said company, and be yarded, sheltered and protected by said company and corporation.

We do not find that this bill was examined and its merits exposed in any report of a committee.

We do not find that witnesses were examined to show the merits of the *Seventeen*, or the demerits of the corporators and individuals who were engaged in the preparation of animals for sale or slaughter in New Orleans. We do not find any material inquiry regarding the water supply of New Orleans, nor how the

the Mississippi waters could be made pure. The current opinion of the natives seems to be that in its habitual state it is the best water in the world. If there were any motives of public utility that dictated this measure, there would not have been words of exclusion and proscription. No reason has been assigned, no reason worthy of consideration can be assigned for the selection of the seventeen persons named in the act as the persons to be endowed as they have been. They are known to the community in no connection that gives to them the slightest claim upon its bounty, nor as to their fitness for any public work. How comes this miscellaneous body of strangers to the community to be associated with such grave concerns to the community at large?

It is fair to suppose that they and their abettors met, conferred, combined, procured an attorney's aid to draw their act, and the pretenses that would captivate or mislead the inquiring eye were presented to view.

Sir G. C. Lewis, in the work before cited, (Chapter V, Section 13,) says: "The chief cause of erroneous observation, and the chief obstacle to correct observation, in politics, is INTEREST leading to deceit and bad faith with respect to facts, to the suppression and alteration of truth, and to the fabrication of falsehood. * * * * * To this source of error, the practical business of government is peculiarly exposed. Both the Legislature and executive are perpetually liable to be misled by false facts which interested persons fabricate for the purpose of procuriug an exercise of the sovereign power in their favor. Falsehoods of this kind are analogous to the various forms of fraud and forgery, or the *crimen falsi*, which are practised between private persons.

The cases we have cited from Coke and Atkyns, and the observation in this country of the devices and arts of those who manage legislative assemblies from the lobby, show that they usually conceal grievous and oppressive monopolies and grants of partialities, and exclusive privileges under pompous recitals of concern for the general welfare, delusive and deceitful promises of public good, or under some expression of an unusual but overflowing benevolence for the domestic comfort, or the sanitary

care of a neglected community. The reconstructed States furnish a broad field of labor for a class of philanthropic adventurers, who desire to do them good and grow rich by administering the affairs of the poor. The number of those who would infuse a new life into the society, by infusing a "fresh blood," is legion. State, county and city improvements; the education of the young; the care of the poor; the purification of air and water; the building of roads, canals, railroads; sewerage, drainage, streets, pavements, gas, levees, lotteries, gambling houses, slaughter houses have severally attracted their benignant observation, and moved their patriotic as well as benevolent souls. Give to any one of them a sufficient fulcrum of State or city bonds, or of sole and exclusive privilege, and they will undertake to move the city to a very extraordinary elevation. The misfortune is that the issue of the bonds, and the shares in the companies, find their way in large parcels among those whose official duty it is to protect the public honor and credit. Many of these abuses of legislation are without a remedy from the judicial tribunals of the United States. But appeals have been and will be made for relief whenever a case arises. Hence it is that the questions we submit are not idle or unmeaning questions. We ask what are those privileges and immunities that no State shall pass or enforce any law to abridge? What is that protection which is rightfully due to all, and cannot be denied to any? What are those rights to life, liberty or property that can only be withdrawn after legal inquiry and judicial process, and not by arbitrary legislation? Our case is that of a whole community of persons, who were conducting and carrying on an occupation useful, necessary and common in every city and town in this land. This community of persons have long resided in the city of New Orleans, and quietly pursued their trade. By a legislative act a portion of that business has become *sole* and *exclusive* in a corporation of seventeen persons—all of the business by whomsoever pursued, in any of its ramifications, is tributary to this new corporation. Have we a right to complain to this court? Let us ask whether the United States have accumulated wealth, and do they flourish in grandeur and prosperity? Their favorable situ-

ation is to be imputed to labor, to the labor of those who have maintained the public order, and of those of the people who follow useful and profitable occupations. To every condition and station, for every profession, pursuit and relation, labor is needful; no man without it being able to deport himself well in any position, to manage any business, or perform any duty. Nothing therefore, in the constitution of man or society, is more deserving a place in public law than the relations of labor and the rights of laboring men.

The public state of the world, and of each of its subdivisions, owes to labor the frame of its orderly societies, wholesome laws, ancient ordinances and customs, systems of instruction, its science, art, its gorgeous structures, venerable temples, convenient houses, libraries, roads, ships, telegraphs, mechanism, agriculture, commerce and manufactures, and whatever beside that enobles, enlarges, enriches, refines, or sustains its mind, manners, intercourse, or modes of life and being of its population. Until the amendments to the Constitution of the United States, the sovereignty of the States over the most intimate and familiar of the concerns of individuals was scarcely impaired. The States prescribed the status and condition of their native population. Some were slaves, others freedmen, others freeborn citizens. The States might and did make large differences in the positions of men in the social and political system. Under the influence of a mighty revolution a change was made. The law of freedom became fundamental, and embraced all within the jurisdiction of the United States. About the same time, and with nearly the same breath, the law of citizenship became as broad as the law of freedom, and in that breath it went forth that citizenship was a word of large significance, and comprehended great endowments of privilege, immunity and of right, which the States must not pass nor enforce laws to abridge, or to deny; that life, liberty and property must not be disposed of arbitrarily, but only in the due course of legal proceedings. Certainly the Constitution in these particulars has not prohibited to the State the performance of any act that they were justified in doing, but it certainly provides an oversight—a censorship that did not previously exist.

We do not argue that the want of these amendments in time past was productive of evil, but they certainly have been made when they were needed. It belongs to the prospect before us to see an alien and immigrant population not nutured, in our political system, in command in some States and municipalities, and in others a feeble and flexible population, who are not habituated to law or liberty, in important posts in the government. Besides from this or other causes, the growth of corruption in the country has been luxuriant. "Weeds of evil feature" are not confined to Louisiana. These amendments to the constitution do provide for a juncture in the affairs of the United States and the several States. Before these amendments, the rights of conscience, of speech, of publication, of labor, of intercourse and liberty, and security, were scarcely protected by the Constitution of the United States from State legislation. The bill of rights appended to the constitution was limited to declaring a protection against federal legislation or aggression. The rights of an American citizen by the amendments have the safeguard of the entire power of the nation. Conscience, speech, publication, security, occupation, freedom, and whatever else is essential to the liberty, or is proper as an attribute of citizenship, are now held under the guarantee of the Constitution of the United States. We have found the bill of rights in the Constitution of Louisiana but a cobweb, through which the seventeen made an easy passage. Nor have we been greatly disappointed at this fact. The case shows that the expectation existed at the beginning that protection must be found in the tribunals of the United States under the amendments to the constitution. The purpose of this argument is to obtain from the court a review of the opinion of the Supreme Court of Louisiana upon the defences we have made under the Constitution of the United States against the enforcement of the Act No. 118 at the suit of the State and of the corporation created in the act, and the denial of the claims of the plaintiffs in error, to relieve from the operation of the act, as set forth in the cases in which they were suitors in the courts of original jurisdiction as plaintiffs.

The questions as they arise under that act may be stated as follows:

1. That the Act No. 118, passed 8th of March, 1869, and entitled "To protect the health of the city of New Orleans, to locate the stock landings and slaughter houses, and to incorporate the Crescent City Live Stock Landing and Slaughter House Company," Session Acts, p. 170, of Session of January, 1868, is null and void, as prohibited by the Constitution of the United States, wherein it grants to the corporation mentioned therein the *sole* and *exclusive right* or privilege to carry on the live stock landing and slaughter house business within the limits and privileges of the act aforesaid, but that the said business is free and open to all within the limits, and discharged from all the special privileges and powers granted to that company in that act.
2. That the act aforesaid is wholly inoperative in its prohibition to land, keep, or slaughter, any of the animals mentioned in or contemplated by it, or which prohibits any one to have, keep, or establish, any stock landing, yards, pens, slaughter houses or abattoirs, at any point or place in which it is by the said act disclosed to be lawful for the corporation mentioned in the act to have, keep or establish such structures, and that the sole and exclusive power to have, maintain or establish such structures is null and void as contrary to the Constitution of the United States.
3. That the clauses in the said act which require the owners of animals designed for sale or slaughter, as mentioned or contemplated in said act, to have them carried to the landings, yards, pens, abattoirs, slaughter-houses, for preservation, protection, slaughter or other purposes, and which settle the charges for such services as null and void, and that the owners of animals of every description are not subject to such impositions, and are free to act independently of the *sole* and *exclusive* privilege granted to the said corporation.
4. That the clauses of that act that require all vessels to load at the wharves of that corporation where cargoes consist of animals are unauthorized and void.

The legislative power of the States, like all others of their powers, is limited by the Constitution of the United States, and the restriction in their own State Constitutions.

The powers of the Union cannot be invaded, nor can the rights of a citizen or person protected by Federal or State Coustitution be affected by a legislative act.

Such subjects by the reservation cease to be subjects of legis_ lative power in any political sense. In the discussion of this case we have been constantly met with the assumption, that in matters of police there was no restraint on State power of legislation. But this is not so. The public power was invoked in the case of Gibbons vs Ogden. New York had grauted to eminent citizeus a monopoly of steamboat navigation in her waters as compensation for their euterprise and invention. They claimed that Gibbons should not have, keep, establish, or land with a steamboat to carry passengers and freight on the navigable waters of New York.

Undoubtedly, the State had a great jurisdiction over their waters for all purposes of police, but none to control navigation and intercourse between the United States and foreign nations, or among the States. Suppose the grant to Fulton & Livingston had been that all persons coming to the United States or from the States around, should land on one of their lots and pass through their gates, because of their services to the State. This would affect commerce, and this would abridge the rights secured in the 14th amendment of the compensation. The right to move with freedom, to choose his highway, and to be exempt from impositions belongs to the citizen. He must have this power to move freely to perform his duties as a citizen.

The passenger cases in 7 Howard, are replete with discussions on the police powers of the States. The arguments in that case appeal to the various titles, in which the freedom of State action has been supposed to be unlimited.

Immigrants it was said would bring pauperism, crime, idleness, increased expenditures, disorderly conduct--the acts were in the nature of health acts it was said. But the court said that the police power could not be invoked to justify a small tax. Much less the odious, oppressive and unjust monopoly found in the act under review. The cases we have cited from the Couuecticut and Illinois reports, and the passage from Cooley show that pre-

tenses of police do not justify invasions of personal right. What are those clauses of the Constitution that protect the freedom of speech, of press, of persons and houses from searches and seizures; that allow bail to criminals, and a fair trial and reasonable punishment for crime, but restraints on the police power. The cases cited in the opinion of the Supreme Court of Louisiana, hardly approach the questions under discussion. That there may be regulations to secure cleanliness, sobriety, salubrity, health, none deny; that places for the sale of certain decaying and deleterious animal and vegetable food, and for the inspection of food may be designated, is admitted. The question we make is with the disfranchisement of a large number of persons in the pursuit of a lawful trade for the profit of a small number of persons.

The subtraction from a large number of persons of a control of their property that it may be put under the control of a small number, under certain circumstances, for the profit of that small number we affirm to be unjust.

We claim in behalf of the community, that common right to prosecute a lawful avocation, without molestation from an act of a State legislature, and that grants of the sole and exclusive privilege to conduct and carry on such a business, shall not be allowed to impair or to destroy this common right.