

IV-7. THE COURT AND DEVELOPMENT OF THE COMMERCE POWER

Article II of the Constitution gives Congress the power “to regulate Commerce. . . among the several states.” But what does the term “commerce” mean? What can Congress regulate under the jurisdiction of its commerce power? Under what circumstances if any does Congress share this power with the states?

The Supreme Court’s first major decision defining the meaning of the commerce power involved a controversy over steamboats. In the early 1800s Robert Fulton developed the steamboat as a practical means of travel. Fulton’s smoke-belching vessel started a chain of events that led to the case of *Gibbons v. Ogden* (1824).

The Court’s decision in that case set a precedent reflected in many subsequent Supreme Court decisions. A **precedent** is an earlier judicial decision which judges look to for guidance in trying cases. Judges pay careful attention to precedents (earlier decisions in similar cases) when making decisions.

Judges often use a practice called **stare decisis** regarding precedent. **Stare decisis** means “let the decision stand.” Judges let the prior line of decisions on a point of law—the precedents—stand, unless they discover very good reasons to act otherwise.

Many court decisions in similar cases have relied on the precedent set by the Supreme Court decision in the *Gibbons* case. (See table 1 on page 222 .) These decisions have allowed Congress to expand greatly the powers of the national government.

Background of the Case

As it flows to the sea, the Hudson River separates the states of New York and New Jersey. In 1807 Robert Fulton’s steamboat, the *Clermont*, made its first successful trip up the Hudson. The next year the New York Legislature gave Fulton and a partner a monopoly to operate steamboats on the river. The partners subsequently sold Aaron Ogden a license to run a steamboat ferry between New York City and New Jersey.

Ogden’s business prospered. Then Thomas Gibbons set up a competing line. Gibbons ran his two boats under a license for coastal shipping Congress granted him through a 1789 law. In 1819, Ogden sued Gibbons in a New York state court and won. The court ordered Gibbons to stop operating his steamboat service because it interfered with Ogden’s monopoly. Gibbons promptly appealed to the United States Supreme Court.

From the start, public interest in the case ran high. By the 1820s, steamboats had become an important means of transportation on the lakes and rivers of the growing

nation. Other states besides New York had begun granting steamboat monopolies. As a result, states competed with one another. New Jersey and Ohio closed their waters to boats licensed by the New York monopoly. The navigational chaos that followed brought the states to what one contemporary lawyer called “almost . . . the eve of war.”

The Founding Fathers had sought to avoid such problems by giving Congress the constitutional power to “regulate commerce among the several states.” In appealing to the Supreme Court, Gibbons pointed out that his federal license should take precedence over Ogden’s state-granted license because the steamboats were engaged in interstate commerce.

In 1824 the case reached the Supreme Court. Thirty-five years after its establishment, the Supreme Court presided over a case to interpret the power of Congress to regulate interstate commerce. Some of the best lawyers in the country prepared to argue the issue before the Court.

Legal Issues

The case involved two key questions. **First**, what did “commerce” include? Did the commerce clause of the Constitution give Congress the power to regulate navigation? **Second**, did Congress possess exclusive power or did the states along with Congress have some rights to regulate interstate commerce?

Arguments

Daniel Webster presented Gibbon’s case. Webster claimed that navigation was indeed commerce. He argued “that the power of Congress to regulate commerce was complete and entire, and . . . necessarily exclusive.”

The attorneys for Ogden argued for a narrow definition of commerce. They contended that commerce meant only “the transportation and sale of commodities.” The states should regulate a matter like navigation.

The Court’s Decision

On March 2, 1824, the Court ruled in favor of Gibbons. Chief Justice John Marshall, speaking for the Court, rejected Ogden’s argument for a narrow definition of commerce. “Commerce undoubtedly is traffic,” Marshall said, “but it is something more.” Marshall concluded that “commerce” included all forms of trade, communication, and movement “between nations, and parts of nations.”

Further, Marshall explained that navigation was clearly a part of commerce. “All America understands,” he said, “the word ‘commerce’ to comprehend navigation.” Thus, Congress’ power over commerce included and includes navigation.