

of that country. The creation was anciently claimed and exercised of the royal prerogative.

uniform opinion, in England... has effected improvements, no less than ought to be encouraged by us. For a moment suppose that these not exist in the several states?

that it does not belong to commerce does not reside in the states, it is, and is wholly extinguished. Leaving the states in a condition of contemptible imbecility. The

in itself, and may be most easily effected for the encouragement of well and judiciously exerted, to the condition of society, by turning the country with useful improvements. This ground is clear

of the validity of the statute. And permit me here to ask the power has been wisely

instance before us, to the creation now in controversy. Under experiment of navigating boats

made, and crowned with triumph. Every lover of the arts, every improvement, every friend to

nor, has beheld this success with admiration. From this single improvement is progressively the navigable waters of the

it promises to become a great giving astonishing facility, not only to travelling, but

commerce of this country. It is even the known results of without feeling a sentiment of

tude towards the individuals have been procured, and who their experiment with patient

expense, under repeated disapproval while constantly exposed to dreaming projectors, to the

of time. So far from charging the grant with being rash and from wishing to curtail the liberal recompense, I think

dearly earned and fairly

won, and that the statutes bear the stamp of an enlightened and munificent spirit.

I am accordingly of opinion... that an injunction be awarded.

Note: The Mix of Economics, Politics, and Law

Besides the constitutional issues, *Livingston v. Van Ingen* raised questions about how the economy ought to be organized. Supporters of exclusive franchises argued that technological change was expensive and risky, and that grants such as the steamboat monopoly encouraged entrepreneurs to take risks and make investments that would benefit the entire society. Opponents argued that the franchise was a special privilege, granted to those with money and power.

This case also had political overtones. Lansing had been a leading Antifederalist in 1787, while Livingston had been one of New York's most vocal Federalists. Both Livingston and Lansing later allied themselves with Jefferson, but relations between the two were strained. James Kent, however, was an unabashed Federalist who disagreed with Lansing on almost all political and economic issues.

Article I, Section 8, of the Constitution gave Congress power to regulate commerce among the states, with foreign nations, and with Indians. In *The Federalist*, Number 42, James Madison argued that this clause would prevent "unceasing animosities" over commerce that would "terminate in serious interruptions of the public tranquility." *Gibbons v. Ogden* illustrates the interstate rivalries and hostility that Madison feared.

Gibbons v. Ogden 9 Wheat. (22 U.S.) 1 (1824)

In 1815 Aaron Ogden, a former governor of New Jersey, purchased from the owners of the Livingston-Fulton franchise the right to operate a steamboat from New York City to Elizabethtown, New Jersey. In 1819 Ogden sued his former partner, Thomas Gibbons, for infringing on his franchise rights by independently operating a steamboat service between New York and New Jersey. This case raised a critical federal issue. Gibbons argued that his federal coasting license entitled him to operate his boats anywhere in the United States. In upholding the right of New York to grant a steamboat monopoly, Chancellor Kent rejected this argument. In *Gibbons v. Ogden*, 17 Johns. (N.Y.) 488 (1820), New York's highest court affirmed Kent's ruling. Gibbons appealed to the United States Supreme Court. By this time, New Jersey and Connecticut had adopted laws retaliating against New York ships. Although docketed in 1820, the case was not finally decided until 1824, when Chief Justice Marshall rejected the New York monopoly with his crucial interpretation of the commerce clause.

Mr. Chief Justice Marshall...

The appellant contends that this decree [the injunction against Gibbons] is erroneous, because the laws which purport to give the exclusive privilege it sustains, are repugnant to the constitution and laws of the United States.

They are said to be repugnant—

1st. To that clause in the constitution which authorizes Congress to regulate commerce.

The words are, "Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."