

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

Court first struck down a state tax as violating the Commerce Clause—was the *State Freight Tax Case*.¹⁰⁵³ Before the Court was the validity of a Pennsylvania statute that required every company transporting freight within the state, with certain exceptions, to pay a tax at specified rates on each ton of freight carried by it. The Court's reasoning was forthright. Transportation of freight constitutes commerce.¹⁰⁵⁴ A tax upon freight transported from one state to another effects a regulation of interstate commerce.¹⁰⁵⁵ Under the *Cooley* doctrine, whenever the subject of a regulation of commerce is in its nature of national interest or admits of one uniform system or plan of regulation, that subject is within the exclusive regulating control of Congress.¹⁰⁵⁶ Transportation of passengers or merchandise through a state, or from one state to another, is of this nature.¹⁰⁵⁷ Hence a state law imposing a tax upon freight, taken up within the state and transported out of it or taken up outside the state and transported into it, violates the Commerce Clause.¹⁰⁵⁸

The principle thus asserted, that a state may not tax interstate commerce, confronted the principle that a state may tax all purely domestic business within its borders and all property "within its jurisdiction." Inasmuch as most large concerns engage in both an interstate and a domestic business, while the instrumentalities of interstate commerce and the pecuniary returns from such commerce are ordinarily property within the jurisdiction of some state or other, the task before the Court was to determine where to draw the line between the immunity claimed by interstate business, on the one hand, and the prerogatives claimed by local power on the other. In the *State Tax on Railway Gross Receipts Case*,¹⁰⁵⁹ decided the same day as the *State Freight Tax Case*, the issue was a tax upon gross receipts of all railroads chartered by the state, part of the receipts having been derived from interstate transportation of the same freight that had been held immune from tax in the first case. If the latter tax were regarded as a tax on interstate commerce, it too would fall. But to the Court, the tax on gross receipts of an interstate transportation company was not a tax on commerce. "[I]t is not everything that affects commerce that amounts to a regulation of it, within the meaning of the Constitution."¹⁰⁶⁰ A gross receipts tax upon a railroad company, which concededly af-

¹⁰⁵³ Reading R.R. v. Pennsylvania, 82 U.S. (15 Wall.) 232 (1873).

¹⁰⁵⁴ 82 U.S. at 275.

¹⁰⁵⁵ 82 U.S. at 275–76, 279.

¹⁰⁵⁶ 82 U.S. at 279–80.

¹⁰⁵⁷ 82 U.S. at 280.

¹⁰⁵⁸ 82 U.S. at 281–82.

¹⁰⁵⁹ Reading R.R. v. Pennsylvania, 82 U.S. (15 Wall.) 284 (1872).

¹⁰⁶⁰ 82 U.S. at 293.