

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced.”⁸²²

Counsel had suggested that if the vessel was in commerce because it was part of a stream of commerce, then all transportation within a state was commerce. Turning to this point, the Court added: “We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States, when the agency extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce, when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of a State, and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter.”⁸²³ In short, it was admitted, inferentially, that the principle of the decision would apply to land transportation, but the actual demonstration of the fact still awaited some years.⁸²⁴

Water Flow.—As a consequence, in part, of its power to forbid or remove obstructions to navigation in the navigable waters of the

⁸²² 77 U.S. at 565.

⁸²³ 77 U.S. at 566. “The regulation of commerce implies as much control, as far-reaching power, over an artificial as over a natural highway.” Justice Brewer for the Court in *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 342 (1893).

⁸²⁴ Congress had the right to confer upon the Interstate Commerce Commission the power to regulate interstate ferry rates, *N.Y. Central R.R. v. Hudson County*, 227 U.S. 248 (1913), and to authorize the commission to govern the towing of vessels between points in the same state but partly through waters of an adjoining state. *Cornell Steamboat Co. v. United States*, 321 U.S. 634 (1944). Congress’ power over navigation extends to persons furnishing wharfage, dock, warehouse, and other terminal facilities to a common carrier by water. Hence an order of the United States Maritime Commission banning certain allegedly “unreasonable practices” by terminals in the Port of San Francisco, and prescribing schedules of maximum free time periods and of minimum charges was constitutional. *California v. United States*, 320 U.S. 577 (1944). The same power also comprises regulation of the registry enrollment, license, and nationality of ships and vessels, the method of recording bills of sale and mortgages thereon, the rights and duties of seamen, the limitations of the responsibility of shipowners for the negligence and misconduct of their captains and crews, and many other things of a character truly maritime. See *The Lottawanna*, 88 U.S. (21 Wall.) 558, 577 (1875); *Providence & N.Y. S.S. Co. v. Hill Mfg. Co.*, 109 U.S. 578, 589 (1883); *The Hamilton*, 207 U.S. 398 (1907); *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36 (1943).