

employer played any part at all in the injury or death.” Similar issues have arisen under such statutes as the Jones Act⁷⁸ and the Safety Appliance Act.⁷⁹

“Judges are to fix their sights primarily to make that appraisal and, if that test is met, are bound to find that a case for the jury is made out whether or not the evidence allows the jury a choice of other probabilities.”⁸⁰ A persistent dissent in the line of cases expressed the fear that in FELA cases “anything that a jury says goes, with the consequences that all meaningful judicial supervision over jury verdicts in such cases has been put at an end. . . . If so, . . . the time has come when the Court should frankly say so. If not, then the Court should at least give expression to the standards by which the lower courts are to be guided in these cases.”⁸¹

Appeals From State Courts to the Supreme Court

The clause of the Amendment prohibiting the re-examination of any fact found by a jury is not restricted in its application to suits at common law tried before juries in courts of the United States. It applies equally to cases tried before a jury in a state court and brought to the Supreme Court on appeal.⁸² The Court has indicated frequently, however, that, in cases involving a claim of a denial of constitutional rights, it is free to examine and review the evidence upon which the lower court based its conclusions, a position that under some circumstances could conflict with the principle of jury autonomy.⁸³

⁷⁸ *Schulz v. Pennsylvania R.R.*, 350 U.S. 523 (1956); *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521 (1957); *Michalic v. Cleveland Tankers*, 364 U.S. 325 (1960). *See also* *Senko v. La Crosse Dredging Corp.*, 352 U.S. 370 (1957); *A. & G. Stevedores v. Ellerman Lines*, 369 U.S. 355 (1962).

⁷⁹ *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 525 n.2 (1957) (Justice Frankfurter dissenting).

⁸⁰ *Rogers v. Missouri Pacific R.R.*, 352 U.S. at 507. The cases are collected at 510 n.26. The cases are tabulated and categorized in *Wilkerson v. McCarthy*, 336 U.S. 53, 68–73 (1949) (Justice Douglas concurring), and *Harris v. Pennsylvania R.R.*, 361 U.S. 15, 16–25 (1959). *See also* *Harrison v. Missouri Pac. R.R.*, 372 U.S. 248 (1963); *Basham v. Pennsylvania R.R.*, 372 U.S. 699 (1963).

⁸¹ *Harris v. Pennsylvania R.R.*, 361 U.S. 15, 27–28 (1959) (Justice Harlan dissenting). *See also* *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 524 (1957) (Justice Frankfurter dissenting); *Dick v. New York Life Ins. Co.*, 359 U.S. 437, 447 (1959) (Justice Frankfurter dissenting).

⁸² *The Justices v. Murray*, 76 U.S. (9 Wall.) 274, 278 (1870); *Chicago, B. & Q. R.R. v. City of Chicago*, 166 U.S. 226, 242–46 (1897).

⁸³ *See* *Time, Inc. v. Pape*, 401 U.S. 279, 284–92 (1971), and cases cited therein.