

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

gress' powers over commerce, and the same is true of the property of riparian owners that is damaged.⁸¹⁷ And while it was formerly held that lands adjoining nonnavigable streams were not subject to the above-mentioned servitude,⁸¹⁸ this rule has been impaired by recent decisions;⁸¹⁹ and at any rate it would not apply to a stream rendered navigable by improvements.⁸²⁰

In exercising its power to foster and protect navigation, Congress legislates primarily on things external to the act of navigation. But that act itself and the instrumentalities by which it is accomplished are also subject to Congress' power if and when they enter into or form a part of "commerce among the several States." When does this happen? Words quoted above from the Court's opinion in the *Gilman* case answered this question to some extent, but the decisive answer to it was returned five years later in the case of *The Daniel Ball*.⁸²¹ Here the question at issue was whether an act of Congress, passed in 1838 and amended in 1852, which required that steam vessels engaged in transporting passengers or merchandise upon the "bays, lakes, rivers, or other navigable waters of the United States," applied to the case of a vessel that navigated only the waters of the Grand River, a stream lying entirely in the State of Michigan.

In *The Daniel Ball*, the Court ruled: "In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River, goods destined and marked for other States than Michigan, and in receiving and transporting up the river goods brought within the State from without its limits; . . . So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has

⁸¹⁷ *Gibson v. United States*, 166 U.S. 269 (1897). See also *Bridge Co. v. United States*, 105 U.S. 470 (1882); *United States v. Rio Grande Irrigation Co.*, 174 U.S. 690 (1899); *United States v. Chandler-Dunbar Co.*, 229 U.S. 53 (1913); *Seattle v. Oregon & W.R.R.*, 255 U.S. 56, 63 (1921); *Economy Light Co. v. United States*, 256 U.S. 113 (1921); *United States v. River Rouge Co.*, 269 U.S. 411, 419 (1926); *Ford & Son v. Little Falls Co.*, 280 U.S. 369 (1930); *United States v. Commodore Park, Inc.*, 324 U.S. 386 (1945); *United States v. Twin City Power Co.*, 350 U.S. 222 (1956); *United States v. Rands*, 389 U.S. 121 (1967).

⁸¹⁸ *United States v. Cress*, 243 U.S. 316 (1917).

⁸¹⁹ *United States v. Chicago, M., St. P. & P. R.R.*, 312 U.S. 592, 597 (1941); *United States v. Willow River Power Co.*, 324 U.S. 499 (1945).

⁸²⁰ *United States v. Rio Grande Irrigation Co.*, 174 U.S. 690 (1899).

⁸²¹ 77 U.S. (10 Wall.) 557 (1871).