

THE DANIEL BALL.

Supreme Court of United States.

560 *560 Mr. A.T. McReynolds, for the appellant.

Mr. Bristow, Solicitor-General, contra, for the United States.

562 *562 Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

Two questions are presented in this case for our determination.

First: Whether the steamer was at the time designated in the libel engaged in transporting merchandise and passengers on a **navigable** water of the United States within the meaning of the acts of Congress; and,

563 *563 Second: Whether those acts are applicable to a steamer engaged as a common carrier between places in the same State, when a portion of the merchandise transported by her is destined to places in other States, or comes from places without the State, she not running in connection with or in continuation of any line of steamers or other vessels, or any railway line leading to or from another State.

Upon the first of these questions we entertain no doubt. The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all of the navigability of waters. There no waters are **navigable** in fact, or at least to any considerable extent, which are not subject to the tide, and from this circumstance tide water and **navigable** water there signify substantially the same thing. But in this country the case is widely different. Some of our rivers are as **navigable** for many hundreds of miles above as they are below the limits of tide water, and some of them are **navigable** for great distances by large vessels, which are not even affected by the tide at any point during their entire length.^[1] A different test must, therefore, be applied to determine the navigability of our rivers, and that is found in their **navigable** capacity. Those rivers must be regarded as public **navigable** rivers in law which are **navigable** in fact. And they are **navigable** in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute **navigable** waters of the United States within the meaning of the acts of Congress, in contradistinction from the **navigable** waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.

564 *564 If we apply this test to Grand River, the conclusion follows that it must be regarded as a **navigable** water of the United States. From the conceded facts in the case the stream is capable of bearing a steamer of one hundred and twenty-three tons burden, laden with merchandise and passengers, as far as Grand Rapids, a distance of forty miles from its mouth in Lake Michigan. And by its junction with the lake it forms a continued highway for commerce, both with other States and with foreign countries, and is thus brought under the direct control of Congress in the exercise of its commercial power.

That power authorizes all appropriate legislation for the protection or advancement of either interstate or foreign commerce, and for that purpose such legislation as will insure the convenient and safe navigation of all the **navigable** waters of the United States, whether that legislation consists in requiring the removal of obstructions to their use, in prescribing the form and size of the vessels employed upon them, or in subjecting the vessels to inspection and license, in order to insure their proper construction and equipment. "The power to regulate commerce," this court said in *Gilman v. Philadelphia*,^[1] "comprehends the control for that purpose, and to the extent necessary, of all **navigable**

waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation of Congress."

But it is contended that the steamer Daniel Ball was only engaged in the internal commerce of the State of Michigan, and was not, therefore, required to be inspected or licensed, even if it be conceded that Grand River is a **navigable** water of the United States; and this brings us to the consideration of the second question presented.

565 There is undoubtedly an internal commerce which is subject to the control of the States. The power delegated to Congress is limited to commerce "among the several States," *565 with foreign nations, and with the Indian tribes. This limitation necessarily excludes from Federal control all commerce not thus designated, and of course that commerce which is carried on entirely within the limits of a State, and does not extend to or affect other States.^[*] 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; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with, or in continuation of, any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. 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 begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.

It is said that if the position here asserted be sustained, there is no such thing as the domestic trade of a State; that Congress may take the entire control of the commerce of the country, and extend its regulations to the railroads within a State on which grain or fruit is transported to a distant market.

566 *566 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 that 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.

We perceive no error in the record, and the decree of the Circuit Court must be

AFFIRMED.

[*] The Genesee Chief, 12 Howard, 457; Hine v. Trevor, 4 Wallace, 555

[*] 3 Wallace, 724.

[*] Gibbons v. Ogden, 9 Wheaton, 194, 195.