U.S. Supreme Court

New York v. Miln, 36 U.S. 11 Pet. 102 102 (1837)

New York v. Miln

36 U.S. (11 Pet.) 102

ON CERTIFICATE OF DIVISION IN OPINION OF THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

Syllabus

In February, 1824, the Legislature of New York passed "an act concerning passengers in vessels arriving in the port of New York." By one of the provisions of the law, the master of every vessel arriving in New York from any foreign port or from a port of any of the states of the United States other than New York is required, under certain penalties prescribed in the law, within twenty-four hours after his arrival, to make a report in writing containing the names, ages, and last legal settlement of every person who shall have been on board the vessel commanded by him during the voyage, and if any of the passengers shall have gone on board any other vessel or shall, during the voyage, have been landed at any place with a view to proceed to New fork, the same shall be stated in the report. The Corporation of the City of New York instituted an action of debt under this law against the master of the ship *Emily* for the recovery of certain penalties imposed by this act, and the declaration alleged that the *Emily,* of which William Thompson was the master, arrived in New Fork in August, 1829, from a country out of the United States, and that one hundred passengers were brought in the ship in the voyage, and that the master did not make the report required by the statute referred to. The defendant demurred to the declaration, and the judges of the circuit court being divided in opinion on the following point, it was certified to the Supreme Court.

"That the act of the Legislature of New York mentioned in the plaintiff's declaration assumes to regulate trade and commerce between the port of New York and foreign ports, and is unconstitutional and void."

The Supreme Court directed it to be certified to the Circuit Court of New York that so much of the section of the act of the Legislature of New York as applies to the breaches assigned in the declaration does not assume to regulate commerce between the port of New York and foreign ports, and that so much of the said act is constitutional.

The act of the Legislature of New York is not a regulation of commerce, but of police, and, being so, it was passed in the exercise of a power which rightfully belonged to the state. The State of New York possessed the power to pass this law before the adoption of the Constitution of the United States. The law was "intended to prevent the state's being burdened with an influx of foreigners and to prevent their becoming paupers, and who would be chargeable as such." The end and means here used are within the competency of the states, since a portion of their powers were surrendered to the federal government.

The case of *Gibbons v. Ogden,* 9 Wheat. 203, and *Brown v. State of Maryland,* 12 Wheat. 419, cited. The section of the act of the Legislature of New York on which this action is brought falls within the limits of the powers of state laws drawn by the Court in the case of *Gibbons v. Ogden,* and there is no aspect in which the powers exercised by it transcends these limits. There is not the least likeness between the case of *Brown v. State of Maryland* and the case before the Court.

In the case of *Brown v. State of Maryland,* this Court did indeed extend the power to regulate commerce, so as to protect the goods imported from a state tax,

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after they were landed and were yet in bulk, because they were the subjects of commerce and because, as the power to regulate commerce, under which the importation was made, implied a right to sell whilst the bales or packages were in their original form. This does not apply to persons. They are not the subjects of commerce.

There is a portion of the reasoning of the Court in the cases of *Ogden v. Saunders* and *Brown v. State of Maryland,* which would justify measures on the part of the state not only approaching the line which separates regulations of commerce from those of police, but even those which are almost identical with the former class if adopted in the exercise of their acknowledged powers. 22 U. S. 9 Wheat. 204, 22 U. S. 209.

From the language of the Court in these cases it appears that whilst a state is acting within the scope of its legitimate power as to the end to be attained, it may use whatever means, being appropriate to the end, it may think fit, although they may be the same or nearly the same as scarcely to be distinguished from those adopted by Congress acting under a different power, subject only, the Court said, to this limitation -- that in the event of collision, the law of the state must yield to the law of Congress. The Court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power. Even then, if the section of the act of New York under consideration in this case would be considered as partaking of the nature of a commercial regulation, the principle laid down in *Gibbons v. Ogden* would save it from condemnation if no such collision existed. There is no collision between the provisions of the section of the law of New York on which this suit has been brought and the provisions of the laws of the United States of 1799, or 1819, relating to passengers.

It is obvious that the passengers laws of the United States only affect, through the power over navigation, the passengers whilst on their voyage and until they shall have landed; after that, and when they shall have ceased to have any connection with the ship, and when therefore they have ceased to be passengers, the acts of Congress applying to them as such, and only professing to legislate in relation to them as such, have then performed their office, and can with no propriety of language be said to come into conflict with the law of a state, whose operation only begins where that of the laws of Congress end, whose operation is not even on the same subject, because although the person on whom it operates is the same, yet, having ceased to be a passenger, he no longer stands in the only relation in which the laws of Congress either professed or intended to act upon him.

A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation when that jurisdiction is not surrendered or restrained by the Constitution of the United States.

It is not only the right but the bounden and solemn duty of a state to advance the safety, happiness, and prosperity of its people and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends where the power over the particular subject or the manner of its exercise are not surrendered or restrained by the Constitution of the United States.

All those powers which relate to merely municipal legislation or which may more properly be called internal police are not surrendered or restrained, and consequently in relation to these the authority of a state is complete, unqualified, and exclusive.

It is at all times difficult to define any subject with precision and accuracy. If this be so in general, it is emphatically so in relation to a subject so diversified and

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various as that under the consideration of the Court in this case. If the Court were to attempt it, it would say that every law came within the description of a regulation of police, which concerned the welfare of the whole people of a state or any individual within it, whether it related to their rights or their duties, whether it respected them as men or as citizens of the state in their public or private relations, whether it related to the rights of persons or of property, of the whole people of a state or of any individual within it, and whose operation was within the territorial limits of the state and upon the persons and things within its jurisdiction. An example of the application of these principles is the right of a state to punish persons who commit offenses against its criminal laws within its territory.

Persons are not the subjects of commerce, and not being imported goods, they do not fall within the reasoning founded upon the construction of a power given to Congress to regulate commerce and the prohibition of the states from imposing a duty on imported goods.

In the Superior Court of the City of New York, the plaintiffs instituted an action of debt for the recovery of $15,000, the amount of certain penalties alleged to have been incurred by the defendant under the provisions of an Act of the Legislature of the State of New York passed February 11, 1824, entitled "an act concerning passengers in vessels coming to the port of New York." The defendant, being an alien, removed the cause into the Circuit Court of the United States, and the pleadings in the case were carried on to issue in that court.

The act of the Legislature of New York provides, in the first section, that the master of any ship or vessel arriving in the port of New York from any country of the United States, or from any other state of the United States, shall, within twenty-four hours after his arrival, make a report, in writing, to the Mayor of the City of New York or, in his absence, to the recorder, on oath or affirmation, of the name, place of birth, and last legal settlement, age and occupation of every person brought as a passenger in the ship or vessel or on board of her on her last voyage from any country out of the United States or from any of the United States into the port of New York or into any of the United States, and of all persons landed from the ship, during the voyage at any place, or put on board, or suffered to go on board any other vessel, with intention of proceeding to the City of New York, under a penalty, on the master and commander, the owner, consignee or consignees, of $75 for each passenger not

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reported and for every person whose name, place of birth, last legal settlement, age and occupation shall be falsely reported.

The second section authorizes the mayor, &c., to require from every master of such vessel that he be bound with sureties in such sum as the mayor, &c., shall think proper in a sum not to exceed $300 for every passenger, to indemnify and save harmless the mayor, &c., of the City of New York and the overseers of the poor of the city from all expenses of the maintenance of such person or of the child or children of such person born after such importation in case such person, child, or children shall become chargeable to the city within two years, and if, for three days after arrival, the master of the vessel shall neglect to give such security, the master of the vessels and the owners shall, severally and respectively, be liable to a penalty of $500 for each and every person not a citizen of the United States for whom the mayor or recorder shall determine that bonds should have been given.

The third section enacts that whenever any person brought in such vessel, not being a citizen of the United States, shall, by the mayor, &c., be deemed liable to become chargeable on the city, the master of the vessel shall, on an order of the mayor, &c., remove such person without delay to the place of his last settlement, and in default shall incur all the expenses attending the removal of such person and of his maintenance.

The fourth section provides that every person, not being a citizen of the United States, entering the City of New York with an intention of residing therein shall within twenty-four hours make a report of himself to the mayor stating his age, occupation, and the name of the ship or vessel in which he arrived, the place where he landed, and the name of the commander of the vessel.

The sixth section subjects the ship or vessel in which such passengers shall have arrived to the penalties imposed by the former sections for any neglect of the provisions of the law by the master or owner, and authorizes proceedings by attachment against the ship or vessel for the same in the courts of New York.

The declaration set forth the several provisions of the act and alleged breaches of the same, claiming that the amount of the penalties stated had become due in consequence of such breaches. To this declaration the defendant entered a demurrer, and the plaintiffs joined in the same.

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BARBOUR, Justice, delivered the opinion of the Court.

This case comes before this Court upon a certificate of division of the Circuit Court of the United States for the Southern District of New York. It was an action of debt brought in that court by the plaintiff to recover of the defendant as consignee of the ship called the *Emily,* the amount of certain penalties imposed by a statute of New York passed February 11, 1824, entitled, "an act concerning passengers in vessels coming to the port of New York." The statute, amongst other things, enacts that every master or commander of any ship or other vessel arriving at the port of New York from any country out of the United States or from any other of the United States than the State of New York, shall, within twenty-four hours after the arrival of such ship or vessel in the said port, make a report in writing, on oath or affirmation, to the Mayor of the City of New York, or, in case of his sickness or absence, to the recorder of the said city, of the name, place of birth, and last legal settlement, age and occupation, of every person who shall have been brought as a passenger in such ship or vessel on her last voyage from any country out of the United States into the

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port of New York or any of the United States and from any of the United States other than the State of New York, to the City of New York, and of all passengers who shall have landed or been suffered or permitted to land from such ship or vessel at any place during such her last voyage or have been put on board or suffered or permitted to go on board of any other ship or vessel with the intention of proceeding to the said city, under the penalty on such master or commander, and the owner or owners, consignee or consignees of such ship or vessel, severally and respectively, of $75 for every person neglected to be reported as aforesaid, and for every person whose name, place of birth, and last legal settlement, age and occupation, or either or any of such particulars, shall be falsely reported as aforesaid, to be used for and recovered as therein provided.

The declaration alleges that the defendant was consignee of the ship *Emily,* of which a certain William Thompson was master, and that in the month of August, 1829, said Thompson, being master of such ship, did arrive with the same in the port of New York from a country out of the United States, and that one hundred passengers were brought in said ship, on her then last voyage from a country out of the United States into the port of New York, and that the said master did not make the report required by the statute, as before recited. The defendant demurred to the declaration. The plaintiff joined in the demurrer, and the following point, on a division of the court, was thereupon certified to this Court, *viz.,*

"That the act of the Legislature of New York mentioned in the plaintiff's declaration assumes to regulate trade and commerce between the port of

New York and foreign ports, and is unconstitutional and void."

It is contended by the counsel for the defendant that the act in question is a regulation of commerce; that the power to regulate commerce is, by the Constitution of the United States, granted to Congress; that this power is exclusive, and that consequently the act is a violation of the Constitution of the United States.

On the part of the plaintiff it is argued that an affirmative grant of power previously existing in the states to Congress is not exclusive except 1st, where it is so expressly declared in terms by the clause giving the power, or 2d where a similar power is prohibited to the states, or 3d, where the power in the states would be

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repugnant to and incompatible with a similar power in Congress; that this power falls within neither of these predicaments; that it is not in terms declared to be exclusive; that it is not prohibited to the states, and that it is not repugnant to nor incompatible with a similar power in Congress, and that having preexisted in the states, they therefore have a concurred power in relation to the subject, and that the act in question would be valid, even if it were a regulation of commerce, it not contravening any regulation made by Congress. But they deny that it is a regulation of commerce; on the contrary, they assert that it is a mere regulation of internal police, a power over which is not granted to Congress, and which, therefore, as well upon the true construction of the Constitution as by force of the Tenth Amendment to that instrument, is reserved to and resides in the several states.

We shall not enter into any examination of the question whether the power to regulate commerce be or be not exclusive of the states, because the opinion which we have formed renders it unnecessary. In other words, we are of opinion that the act is not a regulation of commerce, but of police, and that being thus considered, it was passed in the exercise of a power which rightfully belonged to the states.

That the State of New York possessed power to pass this law before the adoption of the Constitution of the United States might probably be taken as a truism, without the necessity of proof. But as it may tend to present it in a clearer point of view, we will quote a few passages from a standard writer upon public law showing the origin and character of this power. Vattel, book 2, ch. 7, § 94.

"The sovereign may forbid the entrance of his territory either to foreigners in general or in particular cases or to certain persons or for certain particular purposes, according as he may think it advantageous to the state."

Ibid., ch. 8, § 100.

"Since the lord of the territory may, whenever he thinks proper, forbid its being entered, he has no doubt a power to annex what conditions he pleases, to the permission to enter."

The power, then, of New York to pass this law having undeniably existed at the formation of the Constitution, the simple inquiry is whether by that instrument is was taken from the states and granted to Congress, for if it were not, it yet remains with them.

If, as we think, it be a regulation not of commerce, but police,

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then it is not taken from the states. To decide this, let us examine its purpose, the end to be attained, and the means of its attainment. It is apparent from the whole scope of the law that the object of the legislature was to prevent New York from being burdened by an influx of persons brought thither in ships, either from foreign countries or from any other of the states, and for that purpose a report was required of the names, places of birth, &c., of all passengers, that the necessary steps might be taken by the city authorities to prevent them from becoming chargeable as paupers. Now we hold that both the end and the means here used are within the competency of the states, since a portion of their powers were surrendered to the federal government. Let us see what powers are left with the states. The Federalist, No 45, speaking of this subject, says the powers reserved to the several states all extend to all the objects which in the ordinary course of affairs concern the lives, liberties, and properties of the people and the internal order, improvement and prosperity of the state. And this Court, in the case of *Gibbons v. Ogden,* 9 Wheat. 203, which will hereafter be more particularly noticed, in speaking of the inspection laws of the states, say they form a portion of that immense mass of legislation which embraces everything within the territory of a state not surrendered to the general government, all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state and those which respect turnpike roads, ferries, &c., are component parts of this mass.

Now if the act in question be tried by reference to the delineation of power laid down in the preceding quotations, it seems to us that we are necessarily brought to the conclusion that it falls within its limits. There is no aspect in which it can be viewed in which it transcends them. If we look at the place of its operation, we find it to be within the territory and therefore within the jurisdiction of New York. If we look at the person on whom it operates, he is found within the same territory and jurisdiction. If we look at the persons for whose benefit it was passed, they are the people of New York, for whose protection and welfare the Legislature of that state are authorized and in duty bound to provide. If we turn our attention to the purpose to be attained, it is to secure that very protection, and to provide for that very welfare. If

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we examine the means by which these ends are proposed to be accomplished, they bear a just, natural and appropriate relation to those ends.

But we are told that it violates the Constitution of the United States, and to prove this we have been referred to two cases in this Court -- the first, that of *Gibbons v. Ogden,* 9 Wheat. 1, and the other that of *Brown v. State of Maryland,* 12 Wheat. 419. The point decided in the first of these cases is that the acts of the Legislature of New York granting to certain individuals the exclusive navigation of all the waters within the jurisdiction of that state with boats moved by steam for a term of years are repugnant to the clause of the Constitution of the United States which authorizes Congress to regulate commerce so far as the said acts prohibit vessels licensed according to the laws of the United States for carrying on the coasting trade from navigating said waters by means of steam. In coming to that conclusion, this Court in its reasoning laid down several propositions, such as that the power over commerce included navigation, that it extended to the navigable waters of the states, that it extended to navigation carried on by vessels exclusively employed in transporting passengers. Now all this reasoning was intended to prove that a steam vessel licensed for the coasting trade was lawfully licensed by virtue of an act of Congress, and that as the exclusive right to navigate the waters of New York, granted by the law of that state, if suffered to operate, would be in collision with the right of the vessel licensed under the act of Congress to navigate the same waters, and that as when that collision occurred, the law of the states must yield to that of the United States when lawfully enacted, therefore the act of the State of New York was in that case void.

The second case, to-wit that of *Brown v. State of Maryland,* 12 Wheat. 419, decided that the act of the State of Maryland requiring all importers of foreign goods by the bale or package and other persons selling the same by wholesale, bale or package, &c., to take out a license for which they should pay fifty dollars, and in case of neglect or refusal to take out such license subjecting them to certain forfeitures and penalties, was repugnant first to that provision of the Constitution of the United States which declares that

"No state shall, without the consent of Congress, lay any impost or duty on imports or exports except what may be absolutely necessary for executing its inspection laws,"

and secondly

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to that which declares that Congress shall have power "to regulate commerce with foreign nations, among the several states and with the Indian tribes."

Now it is apparent from this short analysis of these two cases that the question involved in this case is not the very point which was decided in either of those which have been referred to. Let us examine whether in the reasoning of the Court there is any principle laid down in either of them which will go to prove that the section of the law of New York on which this prosecution is founded is a violation of the Constitution of the United States.

In *Gibbons v. Ogden,* the law of the state assumed to exercise authority over the navigable waters of the state; to do so by granting a privilege to certain individuals and by excluding all others from navigating them by vessels propelled by steam, and in the particular case this law was brought to bear in its operation directly upon a vessel sailing under a coasting license from the United States. The Court was of opinion that as the power to regulate commerce embraced within its scope that of regulating navigation also, as the power over navigation extended to all the navigable waters of the United States, as the waters on which Gibbons' vessel was sailing were navigable, and as his vessel was sailing under the authority of an act of Congress, the law of the state, which assumed, by its exclusive privilege granted to others, to deprive a vessel thus authorized of the right of navigating the same waters, was a violation of the Constitution of the United States because it directly conflicted with the power of Congress to regulate commerce. Now there is not in this case one of the circumstances which existed in that of *Gibbons v. Ogden,* which, in the opinion of the Court, rendered it obnoxious to the charge of unconstitutionality. On the contrary, the prominent facts of this case are in striking contrast with those which characterized that. In that case, the theater on which the law operated was navigable water, over which the Court said that the power to regulate commerce extended; in this, it was the territory of New York, over which that state possesses an acknowledged an undisputed jurisdiction for every purpose of internal regulation; in that, the subject matter on which it operated, was a vessel claiming the right of navigation, a right which the Court said is embraced in the power to regulate commerce; in this, the subjects on which it operates are

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persons whose rights and whose duties are rightfully prescribed and controlled by the laws of the respective states within whose territorial limits they are found -- in that, said the Court, the act of a state came into direct collision with an act of the United States; in this, no such collision exists.

Nor is there the least likeness between the facts of this case and those of *Brown v. State of Maryland.* The great grounds upon which the Court put that case were that sale is the object of all importation of goods; that therefore the power to allow importation implied the power to authorize the sale of the thing imported; that a penalty inflicted for selling an article in the character of importer was in opposition to the act of Congress which authorized importation under the authority to regulate commerce; that a power to tax an article in the hands of the importer the instant it was landed was the same in effect as a power to tax it whilst entering the port; that consequently the law of Maryland was obnoxious to the charge of unconstitutionality on the ground of its violating the two provisions of the Constitution, the one giving to Congress to power to regulate commerce, the other forbidding the states from taxing imports. In this case it will be seen that the discussion of the Court had reference to the extent of the power given no Congress to regulate commerce, and to the extent of the prohibition upon the states from imposing any duty upon imports. Now it is difficult to perceive what analogy there can be between a case where the right of the state was inquired into in relation to a tax imposed upon the sale of imported goods and one where, as in this case, the inquiry is as to its right over persons within its acknowledged

jurisdiction; the goods are the subject of commerce, the persons are not; the Court did indeed extend the power to regulate commerce, so as to protect the goods imported from a state tax after they were landed and were yet in bulk, but why? Because they were the subjects of commerce and because, as the power to regulate commerce under which the importation was made implied a right to sell; that right was complete without paying the state for a second right to sell whilst the bales or packages were in their original form. But how can this apply to persons? They are not the subject of commerce, and not being imported goods, cannot fall within a train of reasoning founded upon the construction of a power given to Congress to regulate

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commerce and the prohibition to the states from imposing a duty on imported goods.

Whilst, however, neither of the points decided in the cases thus referred to is the same with that now under consideration, and whilst the general scope of the reasoning of the Court in each of them applies to questions of a different nature, there is a portion of that reasoning in each which has a direct bearing upon the present subject and which would justify measures on the part of states not only approaching the line which separates regulations of commerce from those of police, but even those which are almost identical with the former class if adopted in the exercise of one of their acknowledged powers. In @ 22 U. S. 209, the Court said since, however, in regulating their own purely internal affairs, whether of trading or of police, the states may sometimes, enact laws the validity of which depends on their interfering with and being contrary to, an act of Congress passed in pursuance of the Constitution, it would inquire whether there was such collision in that case, and it came to the conclusion that there was.

From this it appears that whilst a state is acting within the legitimate scope of its power, as to the end to be attained it may use whatsoever means, being appropriate to that end, it may think fit, although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress, acting under a different power, subject only, said the Court, to this limitation -- that in the event of collision, the law of the state must yield to the law of Congress. The Court must be understood, of course, as meaning

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that the law of Congress is passed upon a subject within the sphere of its power. Even, then, if the section of the act in question could be considered as partaking of the nature of a commercial regulation, the principle here laid down would save it from condemnation if no such collision exist.

It has been contended at the bar that there is that collision, and in proof of it we have been referred to the revenue act of 1799 and to the act of 1819, relating to passengers. The whole amount of the provision in relation to this subject in the first of these acts is to require in the manifest of a cargo of goods a statement of the names of the passengers, with their baggage, specifying the number and description of packages belonging to each respectively; now it is apparent as well from the language of this provision as from the context that the purpose was to prevent goods being imported without paying the duties required by law under the pretext of being the baggage of passengers. The act of 1819 contains regulations obviously designed for the comfort of the passengers themselves; for this purpose, it prohibits the bringing more than a certain number, proportioned to the tonnage of the vessel, and prescribes the kind and quality of provisions, or sea stores, and their quantity, in a certain proportion to the number of the passengers. Another section requires the master to report to the collector a list of all passengers, designating the age, sex, occupation, the country to which they belong, &c., which list is required to be delivered to the Secretary of State, and which he is directed to lay before Congress. The object of this clause, in all probability, was to enable the government of the United States to form an accurate estimate of the increase of population by emigration, but whatsoever may have been its purpose, it is obvious that these laws only affect, through the power over navigation, the passengers whilst on their voyage and until they shall have landed. After that, and when they have ceased to have any connection with the ship, and when therefore they have ceased to be passengers, we are satisfied that acts of Congress, applying to them as such and only professing to legislate in relation to them as such, have then performed their office, and can with no propriety of language be said to come into conflict with the law of a state whose operation only begins when that of the laws of Congress ends; whose operation is not even on the same subject, because, although

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the person on whom it operates is the same, yet, having ceased to be a passenger, he no longer stands in the only relation in which the laws of Congress either professed or intended to act upon him.

There is then no collision between the law in question and the acts of Congress just commented on, and therefore, if the state law were to be considered as partaking of the nature of a commercial regulation, it would stand the test of the most rigid scrutiny if tried by the standard laid down in the reasoning of the Court quoted from the case of *Gibbons v. Ogden.*

But we do not place our opinion on this ground. We choose rather to plant ourselves on what we consider impregnable positions. They are these:

That a state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right but the bounden and solemn duty of a state to advance the safety, happiness, and prosperity of its people and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends where the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may perhaps more properly be called internal police, are not thus surrendered or restrained, and that consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive.

We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering. If we were to attempt it, we should say that every law came within this description which concerned the welfare of the whole people of a state or any individual within it, whether it related to their rights or their duties; whether it respected them as men, or as citizens of the state; whether in their public or private relations; whether it related to the rights of persons or of property, of the whole people of a state or of any individual within it, and whose operation was within the territorial limits of the state and upon the persons and things within its jurisdiction. But we will endeavor to illustrate our meaning rather by exemplification than by definition.

No one will deny that a state has a right to punish

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any individual found within its jurisdiction who shall have committed an offense within its jurisdiction against its criminal laws. We speak not here of foreign ambassadors, as to whom the doctrines of public law apply. We suppose it to be equally clear that a state has as much right to guard by anticipation against the commission of an offense against its laws as to inflict punishment upon the offender after it shall have been committed. The right to punish or to prevent crime does in no degree depend upon the citizenship of the party who is obnoxious to the law. The alien who shall just have set his foot upon the soil of the state is just as subject to the operation of the law as one who is a native citizen. In this very case, if either the master or one of the crew of the *Emily,* or one of the passengers who were landed, had, the next hour after they came on shore, committed an offense or indicated a disposition to do so, he would have been subject to the criminal law of New York either by punishment for the offense committed or by prevention from its commission, where good ground for apprehension was shown, by being required to enter into a recognizance, with surety, either to keep the peace or be of good behavior, as the case might be, and if he failed to give it, by liability to be imprisoned in the discretion of the competent authority. Let us follow this up to its possible results. If every officer and every seaman belonging to the *Emily,* had participated in the crime, they would all have been liable to arrest and punishment, although thereby the vessel would have been left without either commander or crew. Now why is this? For no other reason than this -- simply that being within the territory and jurisdiction of New York, they were liable to the laws of that state, and amongst others, to its criminal laws, and this too not only for treason, murder and other crimes of that degree of atrocity, but for the most petty offense which can be imagined.

It would have availed neither officer, seaman, nor passenger to have alleged either of these several relations in the recent voyage across the Atlantic. The short but decisive answer would have been that we know you now only as offenders against the criminal laws of New York, and being now within her jurisdiction, you are now liable to the cognizance of those laws. Surely the officers and seamen of the vessel have not only as much, but more, concern with navigation than a passenger, and yet in the case here put, any and every one of them would be held liable. There would be the same liability, and for the same reasons, on the part of the officers, seamen,

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and passengers to the civil process of New York in a suit for the most trivial sum, and if, according to the laws of that state, the party might be arrested and held to bail in the event of his failing to give it, he might be prisoned until discharged by law. Here, then, are the officers and seamen, the very agents of navigation, liable to be arrested and imprisoned under civil process and to arrest and punishment under the criminal law.

But the instrument of navigation -- that is, the vessel -- when within the jurisdiction of the state, is also liable by its laws to execution. If the state has a right to vindicate its criminal justice against the officers, seamen and passengers who are within its jurisdiction, and also, in the administration of its civil justice, to cause process of execution to be served on the body of the very agents of navigation, and also on the instrument of navigation, under which it may be sold because they are within its jurisdiction and subject to its laws, the same reasons precisely equally subject the master, in the case before the Court, to liability for failure to comply with the requisitions of the section of the statute sued upon. Each of these laws depends upon the same principle for its support, and that is that it was passed by the State of New York by virtue of her power to enact such laws for internal policy as it deemed best, which laws operate upon the persons and things within her territorial limits, and therefore within her jurisdiction.

Now in relation to the section in the act immediately before us, that is obviously passed with a view to prevent her citizens from being oppressed by the support of multitudes of poor persons who come from foreign countries without possessing the means of supporting themselves. There can be no mode in which the power to regulate internal police could be more appropriately exercised. New York, from her particular situation, is perhaps more than any other city in the Union exposed to the evil of thousands of foreign emigrants arriving there, and the consequent danger of her citizens being subjected to a heavy charge in the maintenance of those who are poor. It is the duty of the state to protect its citizens from this evil; they have endeavored to do so by passing, amongst other things, the section of the law in question. We should upon principle, say that it had a right to do so.

Let us compare this power with a mass of power, said by this Court in *Gibbons v. Ogden* not to be surrendered to the general government. They are inspection laws, quarantine laws, health

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laws of every description, as well as laws for regulating the internal commerce of a state, &c. To which it may be added that this Court, in *Brown v. State of Maryland,* admits the power of a state to direct the removal of gunpowder as a branch of the police power which unquestionably remains, and ought to remain, with the states. It is easy to show that if these powers, as is admitted, remain with the states, they are stronger examples than the one now in question. The power to pass inspection laws involves the right to examine articles which are imported, and are

therefore directly the subject of commerce, and if any of them are found to be unsound or infectious, to cause them to be removed or even destroyed. But the power to pass these inspection laws is itself a branch of the general power to regulate internal police. Again, the power to pass quarantine laws operates on the ship which arrives, the goods which it brings, and all persons in it, whether the officers and crew or the passengers; now the officers and crew are not agents of navigation; the ship is an instrument of it, and the cargo on board is the subject of commerce, and yet it is not only admitted that this power remains with the states, but the laws of the United States expressly sanction the quarantines and other restraints which shall be required and established by the health laws of any state and declare that they shall be duly observed by the collectors and all other revenue officers of the United States.

We consider it unnecessary to pursue this comparison further, because we think that if the stronger powers, under the necessity of the case, by inspection laws and quarantine laws, to delay the landing of a ship and cargo, which are the subjects of commerce and navigation, and to remove or even to destroy unsound and infectious articles, also the subject of commerce, can be rightfully exercised, then that it must follow as a consequence that powers less strong, such as the one in question, which operates upon no subject either of commerce or navigation, but which operates alone within the limits and jurisdiction of New York upon a person at the time not even engaged in navigation, is still more clearly embraced within the general power of the states to regulate their own internal police and to take care that no detriment come to the commonwealth. We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts as it is to guard against the physical pestilence which may arise from unsound and infections articles

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imported or from a ship the crew of which may be laboring under an infectious disease.

As to any supposed conflict between this provision and certain treaties of the United States by which reciprocity as to trade and intercourse is granted to the citizens of the governments with which those treaties were made, it is obvious to remark that the record does not show that any person in this case was a subject or citizen of a country to which treaty stipulation applies; but moreover, those which we have examined stipulate that the citizens and subjects of the contracting parties shall submit themselves to the laws, decrees, and usages to which native citizens and subjects are subjected.

We are therefore of opinion, and do direct it to be certified to the circuit court for the Southern District of New York, that so much of the section of the act of the Legislature of New York as applies to the breaches assigned in the declaration does not assume to regulate commerce between the port of New York and foreign ports, and that so much of said section is constitutional. We express no opinion on any other part of the act of the Legislature of New York, because no question could arise in the case in relation to any part of the act except that declared upon.

THOMPSON, Justice.

This case comes up from the Supreme Court for the Southern District of New York upon a certificate of a division of opinion of the judges upon a question which arose upon the trial of the cause. The action is founded upon an act of the Legislature of the State of New York concerning passengers in vessels coming to the port of New York, and is brought against the defendant, being consignee of the ship *Emily,* to recover certain penalties given in the act for the neglect of the master of the ship to make a report to the Mayor of New York of the name and description of the passengers who had been brought in the ship on her last voyage.

The declaration sets out in part, the law on which the action is founded, and avers that on 27 August, in the year 1829, William Thompson, being master or commander of said ship, did arrive with the said ship or vessel in the port of New York from a country out of the United States, to-wit, from Liverpool, in England, or from one of the United States other than this state (New York), to-wit, from the State of New Jersey, at the city and within the county of New York, and it is further averred that one hundred

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persons were brought as passengers in the said ship on her last voyage from a country out of the United States, to-wit, from Liverpool aforesaid, into the port of New York or into one of the United States other than the State of New York, to-wit, into the State of New Jersey, and from thence to the City of New York, and that the said master of the vessel did not, within twenty-four hours after the arrival of the ship in the port of New York, made a report in writing to the mayor or recorder of the said city of the name, place of birth, and last legal settlement, age, and occupation of the several persons so brought as passengers in said ship pursuant to the provisions of the act in part hereinbefore recited, but that a large number of the said persons, to-wit, one hundred, were neglected to be reported, contrary to the directions and provisions of the said act, whereby an action hath accrued to the plaintiff, to demand and have from the defendant, the consignee of the said ship, the sum of $7,500. To this declaration there is a general demurrer and joinder.

The certificate then states that the cause was continued from term to term until the last Monday in October in the year 1829, at which term, the following point was presented on the part of the defendant, *viz.,* that the act of the Legislature of the State of New York mentioned in the plaintiff's declaration assumes to regulate trade and commerce between the port of New York and foreign ports and is unconstitutional and void. And upon the question thus occurring, the opinions of the two judges were opposed, and the point upon which the disagreement happened is certified to this Court.

Although the point as here stated is general, and might embrace the whole of the act referred to in the plaintiff's declaration, yet its validity cannot come under consideration here any further than it applied to the question before the circuit court. The question arose upon a general demurrer to the declaration, and the certificate under which the cause is sent here contains the pleadings upon which the question arose and shows that no part of the act was drawn in question except that which relates to the neglect of the master to report to the mayor or recorder an account of his

passengers according to the requisition of the act. No other part of the act could have been brought under the consideration of the circuit court or could now be passed upon by this Court was it even presented in a separate and distinct point. For this Court will not entertain any abstract question upon a certificate of division of opinion which does not

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arise in the cause. The question must occur before the circuit court according to the express terms of the act of Congress in order to come here upon such division of opinion. And if the only cause of action alleged in the declaration was the neglect of the master to report his passengers to the mayor or recorder, no other part of the act could have been drawn in question, and although the question, as stated, may be broader than was necessary, yet as the declaration and demurrer are embraced in the certificate, the question in the circuit court cannot be mistaken. The certificate might have been sent back for a more specific statement of the point, but as the breach is assigned under this part of the act only, and as we see that no other part of the act could have been drawn in question in the circuit court, it is not deemed necessary to send the cause back for more specific statement of the point. I shall accordingly confine my inquiries simply to that part of the act of the Legislature of the State of New York which requires the master, within twenty-four hours after the arrival of the vessel in the port of New York, to make a report in writing to the mayor or recorder of the name, place of birth, and last legal settlement, age and occupation of every person who shall have been brought as a passenger in such ship or vessel on her last voyage. I do not mean, however, to intimate that any other part of the act is unconstitutional, but confine my inquiries to the part here referred to, because it is the only part that can arise in this case. And any opinion expressed upon other parts, would be extrajudicial.

This act is alleged to be unconstitutional on the ground that it assumes to regulate trade and commerce between the port of New York and foreign ports and is a violation of that part of the Constitution of the United States which gives to Congress the power to regulate commerce with foreign nations. This clause in the Constitution has repeatedly been drawn in question before this Court and has undergone elaborate discussion both at the bar and upon the bench, and so far as any points have been settled, I do not consider them now open for examination. In the leading cases upon this question where the state law has been held to be unconstitutional, there was an actual conflict between the legislation of Congress and that of the states upon the right drawn in question. 22 U. S. 9 Wheat. 195; 25 U. S. 12 Wheat. 446; 31 U. S. 6 Pet. 515. And in all such cases, the law of Congress is supreme, and the state law, though enacted in the exercise of powers not controverted, must yield to it.

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But in the case now before the Court, no such conflict arises. Congress has not legislated on this subject in any manner to affect this question. By the 23d section of the duty act of 1799, 1 Stat. 644, it is required that the manifest shall contain the names of the several passengers, distinguishing whether cabin or steerage passengers, or both, with their baggage, specifying the number and description of packages belonging to each, respectively; but this is a mere revenue law, having no relation to the passengers after they have landed. Nor does the act regulating passenger ships and vessels, 3 Stat. 488, at all conflict with this state law. Its principal object is to provide for the comfort and safety of passengers on the voyage; it requires the captain or master of the vessel to deliver a list or manifest of all passengers with the manifest of the cargo, and the collector is directed to return, quarterly, to the Secretary of State copies of such list of passengers, by whom statements of the same are required to be laid before Congress at every session, by which it is evident that some statistical or political object was in view by this provision.

It is not necessary in this case to fix any limits upon the legislation of Congress and of the states on this subject or to say how far Congress may, under the power to regulate commerce, control state legislation in this respect. It is enough to say that whatever the power of Congress may be, it has not been exercised so as in any manner to conflict with the state law, and if the mere grant of the power to Congress does not necessarily imply a prohibition of the states to exercise the power until Congress assumes to exercise it, no objection on that ground can arise to this law. Nor is it necessary to decide, definitively whether the provisions of this law may be considered as at all embraced within the power to regulate commerce. Under either view of the case, the law of New York, so far at least as it is drawn in question in the present suit, is entirely unobjectionable.

This law does not in any respect interfere with the entry of the vessel or cargo. It requires the report of the master to be made within twenty-four hours after the arrival of the vessel. In the case of *Gibbons v. Ogden,* 9 Wheat. 195, it is said the genius and character of the whole government seems to be that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the states generally, but not to those which are completely within a particular state which do not affect other states

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and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a state may then be considered as reserved for the state itself.

To test the present case by this rule. The duly here imposed arises after the master and passengers have arrived within the limits of the state, and is applied to the purely internal concerns of the state. This provision does not affect other states, nor any subject necessary for the purpose of executing any of the general powers of the government of the Union. For although commerce, within the sense of the Constitution, may mean intercourse, and the power to regulate it be coextensive with the subject on which it acts, and cannot be stopped at the external boundary of a state, according to the language of this Court in the case of *Brown v. Maryland,* 12 Wheat. 446, it cannot be claimed that the master or the passengers are exempted from any duty imposed by the laws of a state after their arrival within its jurisdiction, or have a right to wander uncontrolled after they become mixed with the general population of the state, or that any greater rights or privileges attach to them because they come in through the medium of navigation than if they come by land from an adjoining state, and if the state had a right to guard against paupers' becoming chargeable to the city, it would seem necessarily to follow that it had the power to prescribe the means of ascertaining who they were,

and a list of their names is indispensable to effect that object. The purposes intended to be answered by this law fall within that internal police of the state, which, throughout the whole case of *Gibbons v. Ogden,* is admitted to remain with the states. The Court there, in speaking of inspection laws, said they form a portion of that immense mass of legislation which embraces everything within the territory of a state not surrendered to the general government, all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state and those which respect turnpike roads, ferries, &c., are component parts of this mass. No direct general power over these objects is granted to Congress, and consequently they remain subject to state legislation. If the legislative power of the state can reach them, it must be for national purposes; it must be, when the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly

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given.

Again, in speaking of the law relative to the regulation of pilots, it is said that when the government of the Union was brought into existence, it found a system for the regulation of its pilots in full force in every state, and that the adoption of these laws, as also the prospective legislation of the states, manifests an intention to leave this subject entirely to the states until Congress should think proper to interpose, but that the section of the law under consideration is confined to pilots within the bays, inlets, rivers, harbors and ports of the United States, which are, of course, in whole or in part, within the limits of some particular state, and that the acknowledged power of a state to regulate its police, its domestic trade, and to govern its own citizens may enable it to legislate on this subject to a considerable extent. But that the adoption of the state system, being temporary, until further legislative provision shall be made by Congress, shows conclusively an opinion that Congress could control the whole subject, and might adopt the system of the states or provide one of its own. Here seems to be a full recognition of the right of a state to legislate on a subject coming confessedly within the power to regulate commerce until Congress adopts a system of its own.

And again, in the case of *Brown v. State of Maryland,* the Court, in speaking of state laws in relation to gunpowder, said the power to direct the removal of gunpowder is a branch of the police power which unquestionably remains, and ought to remain, with the states. The state law here is brought to act directly upon the article imported, and may even prevent its landing because it might endanger the public safety,

Can anything fall more directly within the police power and internal regulation of a state than that which concerns the care and management of paupers or convicts or any other class or description of persons that may be thrown into the country and likely to endanger its safety, or become chargeably for their maintenance? It is not intended by this remark to cast any reproach upon foreigners who may arrive in this country. But if all power to guard against these mischiefs is taken away, the safety and welfare of the community may be very much endangered.

A resolution of the old Congress, passed on 16f September 1788, has an important bearing on this subject; 13 vol. Journals of Congress 142. It is as follows:

"Resolved that it be and it is hereby recommended to the several states to pass proper laws for

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preventing the transportation of convicted malefactors from foreign countries into the United States."

Although this resolution is confined to a certain description of persons, the principle involved in it must embrace every description which may be thought to endanger the safety and security of the country. But the more important bearing which this resolution has upon the question now before the Court relates to the source of the power which is to interpose this protection. It was passed, after the adoption of the Constitution by the convention, which was on 17 September 1787. It was moved by Mr. Baldwin and seconded by Mr. Williamson, both distinguished members of the convention which formed the Constitution, and is a strong contemporaneous expression, not only of their opinion but that of Congress, that this was a power resting with the states, and not only not relinquished by the states, or embraced in any powers granted to the general government, but still remains exclusively in the states.

The case of *Willson v. Blackbird Creek Marsh Company,* 2 Pet. 251, is a strong case to show that a power admitted to fall within the power to regulate commerce may be exercised by the states, until Congress assumes the exercise. The state law under consideration in that case authorized the erection of a dam across a creek up which the tide flowed for some distance, and thereby abridged the right of navigation by those who had been accustomed to use it. The Court said

"The counsel for the plaintiff in error insist that it comes in conflict with the power of the United States to regulate commerce with foreign nations and among the several states. If Congress had passed any act which bore upon the case, any act in execution of the power to regulate commerce the object of which was to control state legislation over those small navigable creeks into which the tide flows and which abound throughout the lower country of the middle and southern states, we should not have much difficulty in saying that a state law, coming in conflict with such act, would be void. But Congress has passed no such act; the repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several states -- a power which has not been so exercised as to affect the question. We do not think that the act empowering the Blackbird Creek Marsh Company to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate

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commerce in its *dormant state,* or as being in conflict with any law passed on the subject."

The state law here operated upon the navigation of waters over which the power to regulate commerce confessedly extends, and yet the state law, not coming in conflict with any act of Congress, was held not to be unconstitutional, and was not affected by the *dormant* power to regulate commerce. By the same rule of construction, the law of New York, not coming in conflict with any act of Congress, is not void by reason of the *dormant power* to regulate commerce, even if it should be admitted that the subject embraced in that law fell within such power.

This principle is fully recognized by the whole Court in the case of *Houston v. Moore,* 5 Wheat. 1. The validity of a law of the State of Pennsylvania relative to the militia of that state came under the consideration of the Court, and Mr. Justice Washington, who spoke for a majority of the Court, said:

"It may be admitted at once that the militia belongs to the states respectively in which they are enrolled, and that they are subject both in their civil and military capacities to the jurisdiction and laws of such state except so far as those laws are controlled by acts of Congress, constitutionally made. Congress has power to provide for organizing, arming, and disciplining the militia, and it is presumable that the framers of the Constitution contemplated a full exercise of this power. Nevertheless if Congress had declined to exercise them, it was competent for the state governments to provide for organizing, arming and disciplining their respective militia in such manner as they may think proper."

And Mr. Justice Johnson, who dissented from the Court in the result of the judgment, when speaking on this point says:

"It is contended that if the states do possess this power over the militia, they may abuse it. This, says he, is a branch of the exploded doctrine that within the scope in which Congress may legislate, the states shall not legislate. That they cannot, when legislating within that wide region of power, run counter to the laws of Congress is denied by no one. When instances of this opposition occur, it will be time enough to meet them."

And MR. JUSTICE STORY, who also dissented from the result of the judgment, is still more full and explicit on this point. "The Constitution," said he,

"containing a grant of powers, in many instances similar to those already existing in the state governments, and some of these being of vital importance also to state authority and state legislation, it is not to be admitted that a mere grant of such powers in affirmative terms to Congress does *per se* transfer an exclusive

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sovereignty on such subjects to the latter. On the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the states, unless when the Constitution has expressly, in terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the states, or where there is a direct repugnancy, or incompatibility in the exercise of it by the states. The example of the first class is to be found in the *exclusive* legislation delegated to Congress over places purchased by the consent of the Legislature of the state in which the same shall be, for forts, arsenals, dockyards, &c.; of the second class, the prohibition of a state to coin money, or emit bills of credit; of the third class, as this Court has already held, the power to establish a uniform rule of naturalization and the delegation of admiralty and maritime jurisdiction. In all other cases not falling within the classes already mentioned, it seems unquestionable that the states retain concurrent authority with Congress, not only upon the letter and spirit of the Eleventh Amendment of the Constitution, but upon the soundest principle of reasoning. There is this reserve, however, that in cases of concurrent authority, when the laws of a state and of the Union are in direct and manifest collision on the same subject, those of the Union, being the supreme law of the land, are of paramount authority, and the state laws so far, and so far only, as such incompatibility exists, must necessarily yield."

Whether therefore the law of New York, so far as it is drawn in question in this case, be considered as relating purely to the police and internal government of the state, and as part of the system of poor laws in the City of New York, and in this view belonging exclusively to the legislation of the state, or whether the subject matter of the law be considered as belonging concurrently to the state and to Congress, but never having been exercised by the latter, no constitutional objection can be made to it. Although the law, as set out in the record appears to have been recently passed, 11 February, 1824, yet a similar law has been in force in that state for nearly forty years, 1 Rev.Laws 1801, 556, and from the references at the argument to the legislation of other states, especially those bordering on the Atlantic, similar laws exist in those states. To pronounce all such laws unconstitutional would be productive of the most serious and alarming consequences, and ought not to be done

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unless demanded by the most clear and unquestioned construction of the Constitution.

It has been argued at the bar that this law violates certain treaties between the United States and foreign nations, and the treaties with Brazil, Prussia and Austria, 8 Stat. 378, 390, 398, have been referred to as being in conflict with it. It would be a sufficient answer to this objection that the national character of the defendant or of the master or vessel do not appear upon the record accompanying the certificate, so as to enable the Court to inquire whether the law conflicts with any treaty stipulation. But there is nothing in the law, so far, at all events, as it relates to the present case, which is at all at variance with any of the treaties referred to. These treaties were entered into for the purpose of establishing a reciprocity of commercial intercourse between the contracting parties, but give no privileges or exemptions to the citizens or subjects of the one country over those of the other. But in some of them, particularly in the treaty with Brazil, it is expressly provided that the citizens and subjects of each of the contracting parties shall enjoy all the rights, privileges, and exemptions in navigation and commerce which native citizens or subjects do or shall enjoy, submitting themselves to the laws, decrees, and usages there established, to which native citizens or subjects are subjected. And the other treaties referred to have substantially the same provision.

Whether the law of New York, so far as it applies to the case now before the Court, be considered as a mere police regulation and the exercise of a power belonging exclusively to the state, or whether it be considered as legislating on a subject falling within the power to regulate commerce, but which still remains dormant, Congress not having exercised any power conflicting with the law in this respect, no constitutional objection can, in my judgment, arise against it. I have chosen to consider this question under this double aspect because I do not find, as yet laid down by this Court, and certain and defined limits to the exercise of this power to regulate commerce, or what shall be considered commerce with foreign nations and what the regulations of domestic trade and police. And when it is denied that a state law, in requiring a list of the passengers arriving in the port of New York from a foreign country to be reported to the police authority of the city, is unconstitutional and void because embraced within that power, I am at a loss to say where its limits are to be found. It becomes therefore a very important

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principle to establish that the states retain the exercise of powers which, although they may in some measure partake of the character of commercial regulations, until Congress asserts the exercise of the power under the grant of the power to regulate commerce.

MR. JUSTICE STORY, dissenting.

The present case comes before the court upon a certificate of division of opinion of the judges of the Circuit Court of the Southern District of New York. Of course, according to the well known practice of this Court and the mandates of the law, we can look only to the question certified to us and to it in the very form in which it is certified. In the circuit court, the following point was presented on the part of the defendant, *viz.,* that the act of the Legislature of the State of New York, mentioned in the plaintiff's declaration assumes to regulate trade and commerce between the port of New York and foreign ports, and is unconstitutional and void. And this point constitutes the matter of division in the circuit court and that upon which our opinion is now required.

The act of New York here referred to, was passed on 11 February 1824, and is entitled "an act concerning passengers in vessels coming to the port of New York." By the first section it requires the master of any ship arriving at the port of New York from any country out of the United States or from any other of the United States than New York, within twenty-four hours after the arrival, to make a report in writing, on oath or affirmation, to the mayor of the city, &c., of the name, place of birth, and last legal settlement, age and occupation of every passenger brought in the ship on her last voyage, from any foreign country or from any other of the United States to the City of New York, and of all passengers landed or suffered or permitted to land at any place during her last voyage or put on board or suffered or permitted to go on board of any other ship with an intention of proceeding to the said city, under the penalty of $75 for every passenger not so reported, to be paid by the master, owner or consignee. The second section makes it lawful for the mayor, &c., to require every such master to give bond, with two sufficient sureties, in a sum not exceeding $300 for each passenger, not being a citizen of the United States, to indemnity and save harmless the mayor, &c., and overseers of the poor, from all expense and charge

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which may be incurred for the maintenance and support of every such passenger, &c., under a penalty of $500. The third section provides, that whenever any person brought in such ship, and *being a citizen of the United States,* shall be, by the mayor, &c., deemed likely to become chargeable to the city, the master or owner shall, upon an order for this purpose, remove every such person without delay to the place of his last settlement, and in default shall be chargeable with the expenses of the maintenance and removal of such person. The fourth section requires persons not citizens entering into the city with the intention of residing there to make a report prescribed by the act under the penalty of $100. The fifth section provides for the manner of recovering the penalties; the sixth section makes the ship liable to attachment and seizure for the penalties. The seventh section repeals former acts, and the eighth and last section declares persons swearing or affirming falsely in the premises guilty of perjury and punishable accordingly.

Such is the substance of the act. It is apparent that it applies to all vessels coming from foreign ports and to all coasting vessels and steam boats from other states, and to all foreigners, and to all citizens who are passengers, whether they come from foreign ports or from other states. It applies also not only to passengers who arrive at New York, but to all passengers landed in other states or put on board of other vessels, although not within the territorial jurisdiction or limits of New York.

The questions then presented for our consideration under these circumstances are:

1st. Whether this act assumes to regulate trade and commerce between the port of New York and foreign ports?

2d. If it does, whether it is unconstitutional and void.

The counsel for the plaintiff assert the negative; the counsel for the defendant maintain the affirmative, on both points.

In considering the first point, we are spared even the necessity of any definition or interpretation of the words of the Constitution by which power is given to Congress "to regulate commerce with foreign nations and among the several states," for the subject was most elaborately considered in *Gibbons v. Ogden,* 9 Wheat. 1. On that occasion, Mr. Chief Justice Marshall, in delivering the opinion of the Court, said

"Commerce undoubtedly is traffic, but it is something more; it is intercourse; it describes the commercial intercourse between nations, and parts of nations in all its branches,

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and is regulated by prescribing rules for carrying on that intercourse."

22 U. S. 9 Wheat. 189. And again,

"These words comprehend every species of commercial intercourse between the United States and foreign nations; no sort of trade can be carried on between this country and any other to which this power does not extend."

22 U. S. 9 Wheat. 193-194.

"In regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines of the several states; it would be a very useless power if it could not pass those lines. . . . If Congress has the power to regulate it, that power must be exercised wherever the subject exists; if it exists within the states, if a foreign voyage may commerce or terminate at a port within a state, then the power of Congress may be exercised within a state."

22 U. S. 9 Wheat. 195.

"The power of Congress then comprehends navigation within the limits of every state in the Union, so far as that navigation may be connected with commerce, with foreign nations or among the several states."

22 U. S. 9 Wheat. 197. And again, "it is the power to regulate, that is, to prescribe the rule, by which commerce is governed." 22 U. S. 9 Wheat. 196. But, what is most important to the point now under consideration, it was expressly decided in that case that vessels engaged in carrying passengers were as much within the constitutional power of Congress to regulate commerce as vessels engaged in the transportation of goods.

"Vessels [said the Chief Justice] have always been employed, to a greater or less extent in the transportation of passengers, and have never been supposed to be on that account withdrawn from the control or protection of Congress. Packets which ply along the coast, as well as those which make voyages between Europe and America, consider the transportation of passengers as an important part of their business, yet it has never been suspected that the general laws of navigation did not apply to them."

And again, "a coasting vessel employed in the transportation of passengers is as much a portion of the American marine as one employed in the transportation of a cargo." 22 U. S. 9 Wheat. 215-216. And this language is the more impressive because the case then before the Court was that of a steamboat, whose principal business was the transportation of passengers. If, then, the regulation of passenger ships be in truth a regulation of trade and commerce, it seems very difficult to escape from the conclusion that the act in controversy is, in the sense of the objection, an act which assumes to regulate trade and commerce between the port of New York and foreign ports. It requires a

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report not only of passengers who arrive at New York, but of all who have been landed at any places out of the territorial limits of New York, whether in foreign ports or in the ports of other states. It requires bonds to be given by the master or owner for all passengers, not citizens, and it compels them to remove or pay the expenses of removal of all passengers who are citizens and are deemed likely to become chargeable to the city, under severe penalties. If these enactments had been contained in any act passed by Congress, it would not have been doubted that they were regulations of passenger ships engaged in foreign commerce? Is their character changed by their being found in the laws of a state?

I admit in the most unhesitating manner that the states have a right to pass health laws and quarantine laws and other police laws not contravening the laws of Congress rightfully passed under their constitutional authority. I admit that they have a right to pass poor laws and laws to prevent the introduction of paupers into the state under the like qualifications. I go further and admit that in the exercise of their legitimate authority over any particular subject, the states may generally use the same means which are used by Congress if these means are suitable to the end. But I cannot admit that the states have authority to enact laws which act upon subjects beyond their territorial limits, or within those limits and which trench upon the authority of Congress in its power to regulate commerce. It was said by this Court in the case of *Brown v. State of Maryland,* 12 Wheat. 419, that even the acknowledged power of taxation by a state cannot be so exercised as to interfere with any regulation of commerce by Congress.

It has been argued that the act of New York is not a regulation of commerce, but is a mere police law upon the subject of paupers, and it has been likened to the cases of health laws, quarantine laws, ballast laws, gunpowder laws, and others of a similar nature. The nature and character of these laws were fully considered and the true answer given to them in the case of *Gibbons v. Ogden,* 9 Wheat. 1, and though the reasoning there given might be expanded, it cannot, in its grounds and distinctions, be more pointedly illustrated or better expounded. I have already said that I admit the power of the states to pass such laws and to use the proper means to effectuate the objects of them, but it is with this reserve -- that these means are not exclusively vested in Congress. A state cannot make a regulation of commerce to enforce its health laws, because it is a

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means withdrawn from its authority. It may be admitted that it is a means adapted to the end, but it is quite a different question whether it be a means within the competency of the state jurisdiction. The states have a right to borrow money, and borrowing by the issue of bills of credit would

certainly be an appropriate means; but we all know that the emission of bills of credit by a state is expressly prohibited by the Constitution. If the power to regulate commerce be exclusive in Congress, then there is no difference between an express and an implied prohibition upon the states.

But how can it be truly said that the act of New York is not a regulation of commerce? No one can well doubt that if the same act had been passed by Congress, it would have been a regulation of commerce, and in that way and in that only would it be a constitutional act of Congress. The right of Congress to pass such an act has been expressly conceded at the argument. The act of New York purports on its very face to regulate the conduct of masters and owners and passengers in foreign trade and in foreign ports and places. Suppose the act had required that the master and owner of ships should make report of all goods taken on board or landed in foreign ports, and of the nature, qualities and value of such goods; could there be a doubt that it would have been a regulation of commerce? If not, in what essential respect does the requirement of a report of the passengers taken or landed in a foreign port or place differ from the case put? I profess not to be able to see any. I listened with great attention to the argument to ascertain upon what ground the act of New York was to be maintained not to be a regulation of commerce. I confess that I was unable to ascertain any from the reasoning of either of the learned counsel who spoke for the plaintiff. Their whole argument on this point seemed to me to amount to this, that if it were a regulation of commerce, still it might also be deemed a regulation of police and a part of the system of poor laws, and therefore justifiable as a means to attain the end. In my judgment, for the reasons already suggested, that is not a just consequence or a legitimate deduction. If the act is a regulation of commerce and that subject belongs exclusively to Congress, it is a means cut off from the range of state sovereignty and state legislation.

And this leads me more distinctly to the consideration of the other point in question, and that is whether, if the act of New York be a regulation of commerce, it is void and unconstitutional? If the power of Congress to regulate commerce be an exclusive power or

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if the subject matter has been constitutionally regulated by Congress so as to exclude all additional or conflicting legislation by the states, then and in either case it is clear, that the act of New York is void and unconstitutional. Let us consider the question under these aspects.

It has been argued that the power of Congress to regulate commerce is not exclusive, but concurrent with that of the states. If this were a new question in this Court, wholly untouched by doctrine or decision, I should not hesitate to go into a full examination of all the grounds upon which concurrent authority is attempted to be maintained. But in point of fact the whole argument on this very question, as presented by the learned counsel on the present occasion, was presented by the learned counsel who argued the case of *Gibbons v. Ogden,* 9 Wheat. 1, and it was then deliberately examined and deemed inadmissible by the Court. Mr. Chief Justice Marshall, with his accustomed accuracy and fullness of illustration, reviewed at that time the whole grounds of the controversy, and from that time to the present the question has been considered (so far as I know) to be at rest. The power given to Congress to regulate commerce with foreign nations and among the states has been deemed exclusive from the nature and objects of the power and the necessary implications growing out of its exercise. Full power to regulate a particular subject implies the whole power, and leaves no residuum, and a grant of the whole to one is incompatible with a grant to another of a part. When a state proceeds to regulate commerce with foreign nations or among the states, it is doing the very thing which Congress is authorized to do. *Gibbons v. Ogden,* 9 Wheat. 198-199. And it has been remarked with great cogency and accuracy that the regulation of a subject indicates and designates the entire result, applying to those parts which remain as they were as well as to those parts which are altered. It produces a uniform whole, which is as much disturbed and deranged by changing what the regulating power designs to leave untouched as that upon which it has operated. *Gibbons v. Ogden,* 9 Wheat. 209.

This last suggestion is peculiarly important in the present case, for Congress has, by the Act of 2 March 1819, ch. 170, regulated passenger ships and vessels. Subject to the regulations therein provided, passengers may be brought into the United States from foreign ports. These regulations, being all which Congress have chosen to enact, amount, upon the reasoning already stated, to a

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complete exercise of its power over the whole subject, as well in what is omitted as what is provided for. Unless, then, we are prepared to say that wherever Congress has legislated upon this subject clearly within its constitutional authority and made all such regulations as in its own judgment and discretion were deemed expedient, the states may step in and supply all other regulations which they may deem expedient as complementary to those of Congress, thus subjecting all our trade, commerce and navigation and intercourse with foreign nations to the double operations of distinct and independent sovereignties, it seems to me impossible to maintain the doctrine that the states have a concurrent jurisdiction with Congress on the regulation of commerce, whether Congress has or has not legislated upon the subject; *a fortiori* when it has legislated.

There is another consideration which ought not to be overlooked in discussing this subject. It is that Congress, by its legislation, has in fact authorized not only the transportation but the introduction of passengers into the country. The act of New York imposes restraints and burdens upon this right of transportation and introduction. It goes even further and authorizes the removal of passengers, under certain circumstances, out of the state, and at the expense of the master and owner in whose ship they have been introduced, and this though they are citizens of the United States and were brought from other states. Now if this act be constitutional to this extent, it will justify the states in regulating, controlling, and, in effect, interdicting the transportation of passengers from one state to another in steamboats and packets. They may levy a tax upon all such passengers; they may require bonds from the master that no such passengers shall become chargeable to the state; they may require such passengers to give bonds that they shall not become so chargeable; they may authorize the immediate removal of such passengers back to the place from which they came. These would be most burdensome and inconvenient regulations respecting passengers, and would entirely defeat the object of Congress in licensing the trade or business. And yet if the argument which we have heard be well founded, it is a power strictly within the authority of the states, and may be exerted at the pleasure of all or any of them, to the ruin and perhaps annihilation of our passenger

navigation. It is no answer to the objection to say, that the states will have too much wisdom and prudence to exercise the authority to so great an extent. Laws were actually passed of a retaliatory nature by the States of New York, New Jersey, and

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Connecticut during the steamboat controversy which threatened the safety and security of the Union and demonstrated the necessity that the power to regulate commerce among the states should be exclusive in the Union in order to prevent the most injurious restraints upon it.

In the case of *Brown v. State of Maryland,* 12 Wheat. 419, the state had by an act required that every importer of foreign goods selling the same by wholesale should, before he was authorized to sell the same, take out a license for which he should pay fifty dollars, and in default the importer was subjected to a penalty. The question was whether the state legislature could constitutionally require the importer of foreign goods to take out such a license before he should be permitted to sell the same in the imported package. The Court held that the act was unconstitutional and void as laying a duty on imports, and also as interfering with the power of Congress to regulate commerce. On that occasion, arguments were addressed to the court on behalf of the State of Maryland by their learned counsel similar to those which have been addressed to us on the present occasion, and in a particular manner the arguments that the act did not reach the property until after its arrival within the territorial limits of the state; that it did not obstruct the importation, but only the sale of goods, after the importation. The Court said

"There is no difference in effect between the power to prohibit the sale of an article and the power to prohibit its introduction into the country; the one would be a necessary consequence of the other; none would be imported if none could be sold. . . . It is obvious that the same power which imposes a light duty can impose a heavy one, which amounts to a prohibition. Questions of power do not depend on the degree to which it may be exercised; if it may be exercised at all, it must be exercised at the will of those in whose hands it is placed. . . . The power claimed by the state is in its nature in conflict with that given to Congress [to regulate commerce], and the greater or less extent to which it may be exercised, does not enter into the inquiry concerning its existence. . . . Any charge on the introduction and incorporation of the articles into and with the mass of property in the country must be hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and principal object of it, is to prescribe the regular means of accomplishing that introduction and incorporation."

This whole reasoning is directly applicable to the present case if,

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instead of the language respecting the introduction and importation of goods, we merely substitute the words, respecting the introduction and importation of passengers, we shall instantly perceive its full purpose and effect. The result of the whole reasoning is that whatever restrains or prevents the introduction or importation of passengers or goods into the country, authorized and allowed by Congress, whether in the shape of a tax or other charge or whether before or after their arrival in port, interferes with the exclusive right of Congress to regulate commerce.

Such is a brief view of the grounds upon which my judgment is that the act of New York is unconstitutional and void. In this opinion I have the consolation to know that I had the entire concurrence, upon the same grounds, of that great constitutional jurist, the late Mr. Chief Justice Marshall. Having heard the former arguments, his deliberate opinion was that the act of New York was unconstitutional and that the present case fell directly within the principles established in the case of *Gibbons v. Ogden,* 9 Wheat. 1, and *Brown v. State of Maryland,* 12 Wheat. 419.

MR. JUSTICE BALDWIN.

The direct question on which this case turns is whether a law of New York directing the commanders of passenger vessels arriving from foreign ports, to make a report of their numbers, &c., and to give security that they shall not become chargeable to the city as paupers, before they shall be permitted to land, is repugnant to that provision of the Constitution of the United States, which gives to Congress power "to regulate commerce with foreign nations," &c. In considering this question, I shall not inquire whether this power is exclusive in Congress or may be, to a certain extent, concurrent in the states, but shall confine myself to an inquiry as to its extent and objects. That the regulation of commerce in all its branches was exclusively in the several colonies and states from April 1776, and that it remained so, subject to the ninth Article of Confederation, till and adoption of the Constitution (one great object of which was to confer on Congress such portion of this power as was necessary for federal purposes), is most apparent from the political history of the country, from the peace of 1782 till 1787. 1 Laws U.S. 28-58. It was indispensable to the efficiency of any federal government that it should have the power of regulating foreign commerce, and between the states, by laws of uniform operation throughout the United States, but it was one of the most delicate subjects which could be touched on account of the difficulty of imposing restraints upon the extension of the power to matters not directly appertaining to commercial regulation.

"This idea that the same measure might, according to circumstances, be arranged with different classes of powers was no novelty to the framers of the Constitution. Those illustrious patriots and statesmen had been, many of them, deeply engaged in the discussions which preceded the war of our revolution, and all of them were well read in those discussions. The right to regulate commerce, even by the imposition of duties, was not controverted, but the right to impose a duty for the purpose of revenue produced a war perhaps as important in its consequences to the human race as any the world has ever witnessed."

Gibbons v. Ogden, 9 Wheat. 202.

In the declaration of rights in 1774, Congress expressly admitted the authority of such acts of Parliament

"as are *bona fide* restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole

empire to the mother country, and the commercial benefits of its respective members, excluding every idea of taxation, internal or external, for raising a revenue on the subject in America, without their consent."

But in admitting this right, they asserted the free and exclusive power of

"legislation in their several provincial legislatures in all cases of taxation and internal polity, subject only to the negative of their sovereign, as has been heretofore used and accustomed."

Taxation was not the only fear of the colonies, as an incident or means of regulating external commerce; it was the practical consequences of making it the pretext of assuming the power of interfering with their "internal polity," changing their "internal police," the "regulation thereof," "of intermeddling with our provisions for the support of civil government, or the administration of justice." *See* Journ.Cong. 28, 98, 147, 177.

The states were equally afraid of entrusting their delegates in Congress with any powers which should be so extended, by implication or construction, of which the instructions of Rhode Island in May, 1776, are a specimen.

"Taking the greatest care to secure to this colony in the strongest and most perfect manner its present form and all the powers of government so far as it relates to its internal police and conduct of our own officers, civil and religious."

2 Journ.Cong. 163. In consenting to a declaration of independence, the convention of Pennsylvania added this proviso: that "the forming the government, and regulating the internal police of the colony, be always reserved to the people of the colony." In the 3d Article of Confederation, the states guarantee to each other their freedom, &c., and against all attacks on their sovereignty and trade; in the treaty of alliance with France, the latter guarantees to the states their sovereignty "in matters of commerce," absolute and unlimited. In the 9th Article of Confederation, the same feeling is manifest in the restriction on the treatymaking power by reserving the legislative power of the states over commerce with foreign nations. It also appears in the cautious and guarded language of the Constitution in the grant of the power of taxation and the regulation of commerce, which give them, in the most express terms, yet in such as admit of no extension to other subjects of legislation, which are not included in the enumeration of powers. In giving power to Congress "to lay and collect taxes, duties, imposts and excises," the objects are defined "to pay the debts, and provide for the common defense and general welfare of the United States;" this does not interfere with the power of the states to tax for the support of their own government, nor is the exercise of that power by the states an exercise of any portion of the power that is granted to the United States. 22 U. S. 9 Wheat. 199.

"That the power of taxation is retained by the states, is not abridged by the grant to Congress, and may be exercised concurrently are truths which have never been denied."

4 *id.* 425. It results from the nature and objects of taxation that it must be concurrent, as the power of raising revenue for the purposes of each government is equally indispensable, though the extent of taxation is a matter which must depend on their discretion. *Id.,* 428; 29 U. S. 4 Pet. 561-563. The objects of taxation depend, of course, on those to which the proceeds are to be applied. Congress is limited to those which are defined in the terms of the grant, but the states have no other limitations imposed on them than are found in their constitutions and such as necessarily result from the powers of Congress, which states cannot annul or obstruct by taxation. 17 U. S. 4 Wheat. 400; 22 U. S. 9 Wheat. 816; 27 U. S. 2 Pet. 463. In other respects, the taxing power of Congress leads to no collision with the laws of the states. But the power to regulate commerce had been a subject of more difficulty, from the time the Constitution was framed, owing to the peculiar situation of the country. In other nations, commerce is only of two descriptions, foreign and domestic; in a confederated government, there is necessarily a third -- "commerce between the constituent members of the confederacy;" in the United States there was a fourth kind, which was carried on with the numerous Indian tribes, which occupied a vast portion of the territory. Each description of commerce was in its nature distinct from the other in the mode of conducting it, the subjects of operation, and its regulation; from its nature, there was only one kind which could be regulated by state law -- that commerce which was confined to its own boundaries, between its own citizens or between them and the Indians. All objects of uniformity would have been defeated if any state had been left at liberty to make its own laws on any of the other subjects of commerce, but the people of the states would never surrender their own control of that portion of their commerce which was purely internal. Hence the grant is confined "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," which restricts the term "commerce" to that which concerns more states than one, and the enumeration of the particular classes to which the power was to be extended, presupposes something to which it does not extend. "The completely internal commerce of a state, then, may be considered as reserved for the state itself." 22 U. S. 9 Wheat. 194-195.

This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. This principle is now universally admitted. 17 U. S. 4 Wheat. 405. Another principle is equally so: that all powers not granted to the United States or prohibited to the states remain as they were before the adoption of the Constitution, by the express reservation of the 10th Amendment, 14 U. S. 1 Wheat. 325; 17 U. S. 4 Wheat. 193, and that an exception presupposes the existence of the power excepted. 25 U. S. 12 Wheat. 438. Though these principles have been universally adopted, their application presents questions which perpetually arise, as to the extent of the powers which are granted or prohibited, "and will probably continue to arise as long as our system shall exist;" 17 U. S. 4 Wheat. 405.

It would seem that the term "commerce," in its ordinary sense and as defined by this Court, would by this time have become intelligible; it has been held to embrace every species of commercial intercourse, trade, traffic and navigation; "all foreign commerce," and "all commerce among the states," 22 U. S. 9 Wheat. 193; 25 U. S. 12 Wheat. 446, the regulation of which has been surrendered. But it has been at the same time held that as to those subjects of legislation "which are not surrendered to the general government," inspection, quarantine, health laws of every description, the internal commerce and police of a state, turnpike roads, ferries, &c., "no direct general power over these objects is granted to

Congress; consequently they remain subject to state legislation," 22 U. S. 9 Wheat. 203, and "ought to remain with the states." 25 U. S. 12 Wheat. 443. In the broad definition given in these two cases, "to commerce with foreign nations, and among the several states," it has been applied, in the most cautious and guarded language, to three kinds of commerce which are placed under the jurisdiction of Congress, expressly excluding the fourth kind, the internal commerce of a state. The Court very properly call these branches of commerce, units, 22 U. S. 9 Wheat. 194, each of distinct subject matter of regulation, which the states might delegate or reserve.

It would contradict every principle laid down by the Court to contend that a grant of the power "to regulate commerce with foreign nations" would carry with it the power to regulate commerce "among the several states, or with the Indian tribes," either by implication, construction, or as a means of carrying the first power into execution. It would be equally so to contend that the grant of the three powers could embrace the fourth, which is as distinct from all the others as they are from each other; as units, they cannot be blended, but must remain as distinct as any other powers over other subjects which have not been surrendered by the states.

If, then, the power of regulating internal commerce has not been granted to Congress, it remains with the states as fully as if the Constitution had not been adopted, and every reason which leads to this result applies with still greater force to the internal polity of a state, over which there is no pretense of any jurisdiction by Congress. No subtlety of reasoning, no refinement of construction or ingenuity of supposition can make commerce embrace police or pauperism which would not, by parity of reasoning, include the whole code of state legislation. Quarantine, health, and inspection laws come much nearer to regulations of commerce than those which relate to paupers only; if the latter are prohibited by the Constitution, the former are certainly so, for they operate directly on the subjects of commerce -- the ship, the cargo, crew and passengers -- whereas, poor laws operate only on passengers who come within their purview.

On the same principle by which a state may prevent the introduction of infected persons or goods and articles dangerous to the persons or property of its citizens, it may exclude paupers who will add to the burdens of taxation, or convicts who will corrupt the morals of the people, threatening them with more evils than gunpowder or disease. The whole subject is necessarily connected with the internal police of a state, no item of which has to any extent been delegated to Congress, every branch of which has been excepted from the prohibitions on the states, and is, of course, included among their reserved powers.

If there is any one case to which the following remark of this Court is peculiarly applicable, it is this:

"It does not appear to be a violent construction of the Constitution, and is certainly a convenient one, to consider the power of the states as existing over such cases as the laws of the Union may not reach."

17 U. S. 4 Wheat. 195. Let this case be tested by this rule, and let it be shown that any clause in the Constitution empowers Congress to pass a law which can reach the subject of pauperism, or the case of pauper imported from a foreign nation or another state. They are not articles of merchandise or traffic, imports or exports. Congress cannot compel the states to receive and maintain them, nor establish a system of poor laws for their benefit or support, and there can be found in no decision of this Court any color for the proposition that they are in any respect placed under the regulation of the laws of the Union or that the states have not plenary power over them. The utmost extent to which they have held the power of regulating commerce by Congress to operate as a prohibition on states has been in the cases of *Gibbons v. Ogden,* to the vessel in which goods or passengers were transported from one state to another, and in *Brown v. Maryland,* to the importation of goods from foreign ports to the United States.

In the former case, the only question was whether a state law was valid which prohibited a vessel propelled with steam from navigating the waters of New York, though she had a coasting license; in the latter, the question was whether a state law "could compel an importer of foreign articles to take out a license from the state before he shall be permitted to sell a bale or package so imported." Both laws were held void on account of their direct repugnance to the Constitution and existing laws of Congress, the Court holding that they comprehended vessels of all descriptions, however propelled and whether employed in the transportation of goods or passengers, and that an importer of goods on which he had paid or secured the duties could not be prevented from selling them as he pleased before the packages were broken up. In the New York case, the whole reasoning of the Court was to show that "a coasting vessel employed in the transportation of passengers is as much a portion of the American marine as one employed in the transportation of a cargo," and they referred to the provisions of the law regulating the coasting trade, to the Constitution respecting the migration or importation of certain persons, to the duty acts containing provisions respecting passengers, and the act of 1819 for regulating passenger ships for the same purpose. 22 U. S. 9 Wheat. 215-219, &c. Nothing more was decided or was intended to be decided than that the power to regulate commerce, including navigation, comprehended all vessels, and "the language of the laws excluding none, none can be excluded by construction."

"The question, then, whether the conveyance of passengers be a part of the coasting trade and whether a vessel can be protected in that occupation by a coasting license are not and cannot be raised in this case. The real and sole question seems to be whether a steam machine in actual use deprives a vessel of the privilege conferred by a license."

22 U. S. 9 Wheat. 219. It is evident, therefore, that there is nothing in the cases then before the Court in their reasoning or judgment which can operate unfavorably on the present law; on the contrary, there is much (in my opinion) which directly affirms its validity, not merely negatively, but positively, as the necessary result of the principles declared in these and other cases.

Taking it as a settled principle that those subjects of legislation which are not enumerated in the surrender to the general government remain subject to state regulation, it follows that the sovereignty of the states over them, not having been abridged, impaired, or altered by the Constitution, is as perfect as if it had not been adopted. Having referred to the cases in which this Court has defined the nature and extent of state sovereignty, "in all cases where its action is not restrained by the Constitution," it is unnecessary to make a second quotation from their opinions, the inevitable conclusion from which is that, independently of the grants and prohibitions of the Constitution, each state was and is "a

single sovereign power," a nation over whom no external power can operate, whose jurisdiction is necessarily exclusive and absolute, within its own boundaries, and susceptible of no limitation not imposed by itself by a grant or cession to the government of the Union. The same conclusion results from the nature of an exception or reservation in a grant; the thing excepted or reserved always is in the grantor, and always was; of consequence, the reserved powers of a state remain, as stated in the treaty of alliance with France, and the Confederation.

The states severally bound themselves to assist each other against all attacks on account of sovereignty, trade or any other pretext whatever. France guaranteed to them their liberty, sovereignty and independence, absolute and unlimited, as well in matters of government as commerce. So the states remain in all respects where the Constitution has not abridged their powers; the original jurisdiction of the state adheres to its territory as a portion of sovereignty not yet given away, and subject to the grant of power, the residuary powers of legislation remain in the state. If the power of regulating trade had not been given to the general government, each state would have yet had the power of regulating the trade within its territory, 16 U. S. 3 Wheat. 386, 16 U. S. 389, and this power yet adheres to it, subject to the grant, the only question then is to what trade or commerce that grant extends. This Court has held that it does not extend to the internal commerce of a state, to its system of police, to the subjects of inspection, quarantine, health, roads, ferries, &c., which is a direct negation of any power in Congress. They have also held that "consequently, they remain subject to state legislation," which is a direct affirmation that those subjects are within the powers reserved, and not those granted or prohibited.

We must then ascertain what is commerce and what is police, so that when there arises a collision between an act of Congress regulating commerce or imposing a duty on goods and a state law which prohibits or subjects the landing of such goods to state regulations, we may know which shall give way to the other; which is supreme and which is subordinate, the law of the Union or the law of the state. On this subject, this Court seems to me to have been very explicit. In *Brown v. Maryland,* they held that an importer of foreign goods may land them and hold them free from any state taxation till he sells them or mixes them with the general property of the state by breaking up his packages, &c. Up to this point, then, the goods remained under the protection of the power to regulate foreign commerce, to the exclusion of any state power to tax them as articles of domestic commerce. This drew a definite line between the powers of the two governments, as to the regulation of what was commerce or trade, and it cannot be questioned that it was the true one; the power of Congress was held supreme and that of the state subordinate. But the conclusion of the Court was very different when it contemplated a conflict between the laws which authorized the importation and landing of ordinary articles of merchandise and the police laws of a state, which imposed restrictions on the importation of gunpowder or articles injurious to the public health. In considering the extent of the prohibition on states against imposing a tax on imports or exports, this Court use this language:

"The power to direct the removal of gunpowder is a branch of the police power, which unquestionably remains and ought to remain with the states. If the possessor stores it himself, out of town, the removal cannot be a duty on imports, because it contributes nothing to the revenue. If he prefers placing it in a public magazine, it is because he stores it there, in his own opinion, more advantageously than elsewhere. We are not sure that this may not be classed among inspection laws. The removal or destruction of infectious or unsound articles is undoubtedly an exercise of that power and forms an express exception to the prohibition we are considering. Indeed, the laws of the United States expressly sanction the health laws of a state. The principle, then, that the importer acquires a right not only to bring the articles into the country, but to mix them with the common mass of property does not interfere with the necessary power of taxation, which is acknowledged to reside in the states to that dangerous extent which is apprehended. It carries the prohibition in the Constitution no further than to prevent the states from doing that which it was the great object of the Constitution."

25 U. S. 12 Wheat. 442-444.

Now as it is acknowledged that the right of the importer, so secured by the Constitution and acts of Congress, is subject to the restraints and limitations of the police laws of a state and the removal and destruction of dangerous, infectious, and unsound articles is an undoubted exercise of the power of a state to pass inspection laws, the consequence is obvious. The power of Congress is and must be subordinate to that of the states whenever commerce reaches that point at which the vessel, the cargo, the crew, or the passengers on board become subject to the police laws of a state; the importer must submit to inspection, health and quarantine laws, and can land nothing contrary to their provisions. For such purposes they are an express exception to the prohibitions on the states against imposing duties on exports and imports, which power might have been exercised by the states had it not been forbidden, 22 U. S. 9 Wheat. 200; the restriction presupposes the existence of the power restrained, and the Constitution certainly recognizes inspection laws as the exercise of a power remaining in the state. 22 U. S. 9 Wheat. 203; 25 U. S. 12 Wheat. 438-442. The Constitution thus has made such laws an exception to the prohibition. The prohibition was a restriction on the preexisting power of the state, and being removed as to all police laws and those of inspection, the effect thereof is, by all the principles of this Court as to exceptions, the same as by the rules of the common law. "An exception out of an exception leaves the thing unexcepted." 4 Day's Com.Dig. 290.

It may therefore, U.S. be taken as an established rule of constitutional law that whenever anything which is the subject of foreign commerce is brought within the jurisdiction of a state, it becomes subject to taxation and regulation by the laws of a state so far as is necessary for enforcing the inspection and all analogous laws, which are a part of its internal police. And as these laws are passed in virtue of an original inherent right in the people of each state to an exclusive and absolute jurisdiction and legislative power, which the Constitution has neither granted to the general government nor prohibited to the states, the authority of these laws is supreme and incapable of any limitation or control by Congress. In the emphatic language of this Court, this power "adheres to the territory of the state as a portion of sovereignty not yet given away." It is a part of its soil, of both of which the state is tenant in fee till she makes an alienation.

No opinions could be in more perfect conformity with the spirit and words of the Constitution than those delivered in the two cases. They assert and maintain the power of Congress over the three kinds of commerce which are committed to their regulation, extend it to all its ratifications, so as to meet the objects of the grant to their fullest extent, and prevent the states from interposing any obstructions to its legitimate exercise within their jurisdiction. But having done this -- having vindicated the supremacy of the laws of the Union over foreign commerce wherever it exists and

for all the purposes of the Constitution -- the Court most strictly adhered to that line which separated the powers of Congress from those of the states, and is drawn too plainly to be mistaken when there is a desire to find it.

By the Constitution,

"The Congress shall have power . . . to regulate commerce with foreign nations, and to pass all laws which may be necessary and proper for carrying into execution the foregoing power . . . as to regulate commerce,"

&c. By inherent original right, as a single sovereign power, each state has the exclusive and absolute power of regulating its internal police and of passing inspection, health, and quarantine laws, and by the Constitution, as construed by this Court, may lay any imposts and duties on imports and exports, which may be absolutely necessary for executing its inspection laws and those which relate to analogous subjects. Here are two powers in Congress by a grant from states -- one to regulate, the other to enforce, execute, or carry its regulations into effect; there are also two powers in a state, one to pass inspection laws, the other to lay duties and imposts on exports and imports, for the purpose of executing such laws. The power of the state is original, that of Congress is derivative by the grant of the state; both powers are brought to bear on an article imported after it has been brought within the state, so that each government has jurisdiction over the article for different purposes, and there is no constitutional objection to the exercise of the powers of either by their respective laws. The framers of the Constitution foresaw and guarded against the conflict by first providing against the imposition of taxes, by a state, on the articles of commerce, for the purposes of revenue and next securing to the states the execution of their inspection laws, by this provision:

"No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the Treasury of the Treasury of the United States, and all such laws shall be subject to the revision and control of the Congress."

There can be no plainer or better defined line of power; a state can, by its reserved power, tax imports and exports to execute its inspection laws; it can tax them for no other purpose without the consent of Congress, and if it is even by an inspection law, it is subject to two restrictions -- the United States is to receive the net produce, and Congress may revise and control the law. If the inspection law imposes no duty or impost, Congress has no power of revision or control over it, and its regulations of commerce must be subject to its provisions; no restraints were imposed on this reserved power in the states, because its exercise would neither defeat nor obstruct any of the powers of Congress, and these are the reasons of the Court for the construction of the Constitution which they have given.

"It carries the prohibition in the Constitution no further than to prevent the states from doing that which it was the great object of the Constitution to prevent."

This object is clearly pointed out in the clause above quoted by the nature of the prohibition, with its qualifications; it was not to wholly deny to the states the power of taxing imports or exports, it only imposed, as a condition, the consent of Congress. In this respect it left to the states a greater power over exports than Congress had, for by the ninth section of the first article, they were prohibited from taxing exports without any qualification, even by the consent of the states, whereas, with the consent of Congress, any state can impose such a tax by a law, subject to the conditions prescribed. But if the state law imposes no tax on imports or exports, the prohibition does not touch it, either by requiring the consent of Congress, or making the law subject to its revision or control; consequently an inspection law which consists merely of regulations as to matters appropriate to such subjects is no more subject to any control than any other law relating to police. If the law imposes a tax, it then becomes so far subject to revision; but this power to revise and control extends only to the tax, and as to that Congress cannot go so far as to prevent a state from imposing such as "may be absolutely necessary for executing its inspection laws." Thus far the power of the state is incapable of control, and as this Court has declared that health, police, and quarantine laws come within the same principle as inspection laws, the same rule must apply to them; the powers of the states over these subjects are absolute if they impose no tax or duty on imports or exports. If they impose such a tax, the law is valid by the original authority of the state, and if not altered by Congress, by its supervisory power, is as binding as it would have been before the Constitution, because it has conferred no original jurisdiction over such subjects to Congress.

Taken in this view, the object of this prohibition is apparent, and when carefully examined will be found materially different from the prohibitions in the next sentence, which relate to matters wholly distinct, and are as different in their nature as their object. Among them is a prohibition on the states, against laying a duty on tonnage without the consent of Congress, but it imposes no other condition, so that if this consent is once given, no revision or control over the law exists. This provision would apply to a law regulating pilots, which has never been considered by Congress as a regulation of commerce and has been left to the states, whose laws have been adopted from the beginning of the government, such adoption being the consent required by the Constitution.

When the Constitution thus gives Congress a revising and controlling power over state laws which impose a tax or duty on imports or exports or in any case makes their consent necessary to give validity to any law or act of a state, the meaning, object and intention is to declare that no other restriction exists. Any case, therefore, which does not come within the prohibition or in which the prohibition is removed by the performance of the condition can be no more reached by any act of Congress than if no jurisdiction over it had been granted. The reserved power of the state, when thus disencumbered of all restraints, embraces the case as one appropriate to its exclusive power of legislation, which Congress cannot interfere with, though it may tax or regulate the same thing for federal purposes, it cannot impair the power of the states to do either for such purposes and objects as are recognized or authorized by the Constitution. Thus the states, by inspection and analogous laws, may regulate the importation and exportation of the subject of foreign commerce so far as is necessary for the execution of such laws; for all other purposes, the power of Congress over them is exclusive until they are mixed with the common mass of the property in a state by a package sale. Thus, all the objects of the Constitution having been effected, the state has the same power over the articles imported as over those which had never been subject to the regulation of Congress.

In applying these plain deductions from the provisions of the Constitution, as expounded by this Court, to the present case, it comes within none of the prohibitions. The law in question encroaches on no power of Congress, it imposes no tax for any purpose; it is a measure necessary for the protection of the people of a state against taxation for the support of paupers from abroad or from other states, which Congress has no power to impose by direct assessment or as a consequence of its power over commerce. The constitutional restraints on state laws which bear on imports, exports or tonnage were intended and are applicable only to cases where they would injuriously affect the regulations of commerce prescribed by Congress, not the execution of inspection or analogous laws, with which the Constitution interferes no further than to prevent them from being perverted to the raising money for the use of the state and subjecting them to the revision and control of Congress. In this view of the respective powers of the general and state governments, they operate without any collision. Commerce is unrestricted by any state laws which assume the obstruction of navigation by any vessels authorized by law to navigate from state to state, or from foreign ports to those of a state, whether to transport goods or passengers. Imported articles remain undisturbed, under the protection of Congress, after they are landed, until by a package sale they become incorporated into the common mass of property within a state, subject to its powers of taxation and general jurisdiction. But neither vessels nor goods are protected from the operation of those laws and regulations of internal police, over which the states have a acknowledged power, unaffected by any grant or prohibition which impairs its plenitude, the consequence of which is Congress has no jurisdiction of the subject matter, can pass no laws for its regulation, nor make any exemption from their provisions.

In any other view, collisions between the laws of the states and Congress would be at inevitable as interminable. The powers of a state to execute its inspection laws is as constitutional as that of Congress to carry into execution its regulations of commerce; if Congress can exercise police powers as a means of regulating commerce, a state can, by the same parity of reasoning, assume the regulation of commerce with foreign nations as the means of executing and enforcing its police and inspection laws. There is no warrant in the Constitution to authorize Congress to encroach upon the reserved rights of the states by the assumption that it is necessary and proper for carrying its enumerated powers into execution, or to authorize a state, under color of its reserved powers or the power of executing its inspection or police regulations, to touch upon the powers granted to Congress or prohibited to the states. Implied or constructive powers of either description are as wholly unknown to the Constitution as they are utterly incompatible with its spirit and provisions.

"The Constitution unavoidably deals in general language," 14 U. S. 1 Wheat. 326; "it marks only its great outlines and designates its important objects," 17 U. S. 4 Wheat. 407; but these outlines and objects are all enumerated; none can be added or taken away; what is so marked and designated in general terms comprehends the subject matter in its detail. A grant of legislative power over any given subject comprehends the whole subject -- the corpus, the body, and all its constituent parts; so does a prohibition to legislate; yet the framers of the Constitution could not have intended to leave it in the power of Congress to so extend the details of a granted power as to embrace any part of the corpus of a reserved power. A power reserved or excepted in general terms, as internal police, is reserved as much in detail and in all its ramifications as the granted power to regulate commerce with foreign nations; the parts or subdivisions of the one cannot be carried into the other by any assumed necessity of carrying the given power in one case into execution which could not be done in the other. "Necessary" is but another word for "discretionary" when there is a desire to assume power; let it once be admitted as a constitutional apology for the assumption by a state of any portion of a granted power, or by Congress of any portion of a reserved power, the same reasoning will authorize the assumption of the entire power. States have the same right of deciding when a necessity exists and legislating on its assumption as Congress has. The Constitution has put them on the same footing in this respect, but its framers have not left their great work subject to be mangled and mutilated by any construction or implication which depends on discretion or actual or assumed necessity. Its grants, exceptions, and reservations are of entire powers, unless there are some expressed qualifications or limitations; if either are extended or contracted by mere implication, there are no limits which can be assigned, and there can be no certainty in any provision in the Constitution or its amendments. If one power can be incorporated into and amalgamated with another distinct power, or if substantive and distinct powers, which are vested in one legislative body, can be infused by construction into another legislature as the means of carrying into execution some other power, the consequences are obvious.

Any enumeration or specification of legislative powers is useless if those which are omitted are inserted on the ground of necessity; this would be supplying the defects of the Constitution by assuming the organic powers of conventions of the people in the several states; so it would be if constructive restrictions on the states were made in cases where none had been imposed, or none resulted from the granted powers which were enumerated. When an implied power or restriction would thus be added as a constructive provision of the Constitution, it would have the same force and effect as if it was expressed in words, or was apparent on inspection; as a power which was necessary and proper, it must also be construed to carry with it the proper means of carrying it into effect by a still further absorption by Congress of specific powers reserved to the states or by the states of those enumerated in the grant to Congress.

Let, then, this principle be once incorporated in the Constitution, the federal government becomes one of consolidated powers or its enumerated powers will be usurped by the states. When the line of power between them is drawn by construction, and substantive powers are used as necessary means to enforce other distinct powers, the powers, the nature and character of the federal and state governments must necessarily depend on the mere opinions of the constituent members of the tribunal which expounds the Constitution from time to time, according to their views of an existing necessity. No case can arise in which the doctrine of construction has been attempted to be carried further than in this; the law of New York, on which this case turns, has but one object, the prevention of foreign paupers from becoming chargeable on the city or other parts of the state; it is a part of the system of internal police prescribing laws in relation to paupers. The state asserts as a right of self-protection the exclusion of foreigners who are attempted to be forced upon them under the power of the laws for the regulation of commerce, which the defendant contends protects all passengers from foreign countries till they are landed, and puts it out of the power of a state to prevent it. On the same principle, convicts from abroad may be forced into the states without limitation; so of paupers from other states, if once put in a vessel with a coasting license; so that all police regulations on these subjects by states must be held unconstitutional.

One of two consequences must follow. There can be no poor laws applicable to foreigners; they must be admitted into the state and be supported by a tax on its citizens, or Congress must take the subject into its own hands as a means of carrying into execution its power to regulate commerce. Its laws must not be confined to the seaports in the states into which foreign paupers are introduced; they must extend to every part of the state to which paupers from other states can be brought, for the power to regulate commerce among the several states is as broad in all respects as to do it with foreign nations.

"It has been truly said that commerce, as the word is used in the Constitution, is a unit every part of which is indicated by the term. . . . If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit unless there be some plain intelligible cause which alters it."

22 U. S. 9 Wheat. 194. To my mind there can be no such cause for discriminating between an imported and a domestic pauper; one is as much an article of commerce as another, and the same power which can force them into a state from a vessel can do it from a wagon and regulate their conveyance on the roads or canals of a state, as well as on its rivers, havens or arms of the sea. In following out these principles to their consequences, Congress may, and to be consistent ought, to go further. Poor laws are analogous to health, quarantine, and inspection laws, all being parts of a system of internal police to prevent the introduction of what is dangerous to the safety or health of the people, and health and quarantine laws extend to the vessel, the cargo, and passengers. Laws excluding convicts and paupers are as necessary to preserve the morals of the people from corruption and their property from taxation as any laws of the other description can be; nor do they interfere any further with the regulations of commerce; as laws *in pari materia* they must stand or fall together or some arbitrary unintelligible distinction must be made between them, which is neither to be found in the Constitution nor decisions of this Court.

If the principle on which health and quarantine laws are sustained is applied to this case, the validity of the law in question is not to be doubted; if this principle is not so applied, then it is an unsound one, which must be abandoned, whereby the reserved powers of the states over their internal police, must devolve on Congress as an incident to or the means of regulating, "commerce with foreign nations" and "among the several states." There is no middle ground on which health and quarantine laws can be supported which will not equally support poor laws; nor can poor laws be declared void on any ground that will not prostrate the others; all must be included within or excepted from the prohibition.

When we recur to the political history of the country from 1774 to the adoption of the Constitution, we find the people and the states uniformly opposing any interference with their internal polity by Parliament or Congress; it is not a little strange that they should have adopted a Constitution which has taken from the states the power of regulating pauperism within their territory. They little thought that, in the grant of a power to regulate commerce with foreign nations and among the states, they also granted, as a means, the regulation of internal police; they little feared that the powers which were cautiously reserved to themselves by an amendment could be taken from them by construction, or that any reasoning would prevail, by which the grant would be so stretched as to embrace them. We should never have had a federal government if there had been a declaration in its frame that Congress could pass poor laws or interfere to revise or control those passed by the states, or that Congress could legislate on any subject of legislation over which no jurisdiction was granted to them and which was reserved to the states or people in the same plenitude as they held it before they surrendered any portion of their power. The Constitution gives no color for such doctrines, nor can they be infused into it by any just rule of interpretation; the Tenth Amendment becomes a dead letter if the Constitution does not point to the powers which are "delegated to the United States," or "prohibited to the states," and reserve all other powers "to the states respectively or the people." Any enumeration of powers granted, any specific prohibitions on the states, will not only become wholly unmeaning, if new subjects may be brought within their scope, as means of enforcing the given powers, or the prohibitions on the states extended beyond those which are specified, but the implied powers and implied prohibitions must be more illimitable than those which are express.

When the Constitution grants a power, it makes exceptions to such as were not intended to be absolute; but from the nature of those which are assumed, they are not included in the enumeration and cannot be controlled by the exceptions, which apply only to what is granted. When prohibitions are imposed on the states, the Constitution uses terms which denote their character, whether they are intended to be absolute or qualified. In the first clause of the tenth section of the first article, the prohibitions are positive and absolute; no power can dispense with them; those in the second are qualified; "no state shall, without the consent of Congress" is merely a conditional prohibition; when the consent is given, the condition is performed, and the power of the state remains as if no condition had ever been exacted. *See Poole v. Fleeger, post,* 36 U. S. 212. But if a state lays a tax on imports or exports, then two other conditions are imposed, the produce goes to the United States, and Congress may revise and control the state law; Congress can, however, do no more than consent or dissent or revise or control the law of the state; it has no power to pass a distinct law embracing the same subject in detail. The original primary power is in the state, and, subject to the consent and supervision of Congress, it admits of no other restriction.

Now when a law which imposes no tax on imports, exports, or tonnage is brought within a prohibition by construction, it cannot be validated by the consent of Congress, and if it can take jurisdiction of the subject, it cannot be confined to mere revision or control; the power must be coextensive with its opinion of the necessity of using it as the means of effecting the object. This seems to me utterly inconsistent with the Constitution, which has imposed only a qualified prohibition on the power of states to tax the direct subjects of foreign commerce, imports, and exports. I cannot think that it intended or can be construed to impose an unqualified prohibition on a state to prevent the introduction of convicts or paupers, who are entitled to no higher protection than the vessel or goods on board, which are subject to state taxation with the assent of Congress, and to health, inspection and quarantine laws without their consent. I can discriminate no line of power between the different subjects of internal police, nor find any principle in the Constitution or rule of construing it by this Court that places any part of a police system within any jurisdiction except that of a state, or which can revise or in any way control its exercise except as specified. Police regulations are not within any grant of powers to the federal government for federal purposes; Congress may make them in the territories, this District, and other places where they have exclusive powers of legislation, but cannot interfere with the police of any part of a state. As a power excepted and reserved by the states, it remains in them in full and unimpaired sovereignty, as absolutely as their soil, which has not been granted to individuals or ceded to the United States; as a right of jurisdiction over the land and waters of a state, it adheres to both, so as to be incapable of exercise by any other power, without cession or usurpation. Congress had the same power of exclusive legislation in this District, without a cession from Maryland and Virginia; they have the same power over the sites of forts, arsenals and navy yards, without a cession from a state or purchase with its consent as they have to interfere with its internal police.

It is the highest and most sovereign jurisdiction, indispensable to the separate existence of a state; it a power vested by original inherent right, existing before the Constitution, remaining in its plenitude, incapable of any abridgment by any of its provisions. The law in question is confined to matters of police, it affects no regulations of commerce, it impairs no rights of any persons engaged in its pursuits; and while such laws are not

extended beyond the legitimate objects of police, there is in my opinion no power under the Constitution which can impair its force or by which Congress can assume any portion or part of this power under any pretext whatever. By every sound rule of constitutional and common law, a power excepted or reserved by a grantor "always is with him and always was," and whatever is a part of it is the thing reserved, which must remain with the grantor.

If it be doubtful whether the power is granted, prohibited, or reserved, then, by the settled rules and course of this Court, its decision must be in favor of the validity of the state law. 10 U. S. 6 Cranch 128; 25 U. S. 12 Wheat. 436. That such a course of decision is called for by the highest considerations no one can doubt; in a complicated system of government like ours, in which the powers of legislation by state and federal government are defined by written Constitutions ordained by the same people, the great object to be effected in their exposition is harmony in their movements. If a plain collision arises, the subordinate law must yield to that which is paramount, but this collision must not be sought by the exercise of ingenuity or refinement of reasoning; it ought to be avoided, whenever reason or authority will authorize such a construction of a law, *"ut magis valeat quam pereat."* While this remains, as it has been, the governing rule of this Court, its opinions will be respected, its judgments will control public opinion, and tend to give perpetuity to the institutions of the country. But if state laws are adjudged void on slight or doubtful grounds when they are not manifestly repugnant to the Constitution, there is great reason to fear that the people, or the legislatures of the states may feel it necessary to provide some additional protection to their reserved powers, remove some of the restrictions on their exercise, and abridge those delegated to Congress.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York and on the question and point on which the judges of the said circuit court were opposed in opinion and which was certified to this Court for its opinion agreeable to the act of Congress in such case made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court that so much of the section of the act of the Legislature of New York as applies to the breaches assigned in the declaration does not assume to regulate commerce between the port of New York and foreign ports, and that so much of said section is constitutional. Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.