The railroads first entered Iowa in the year 1855. There were two main reasons for the appearance of the railroad at this time: first, the general movement toward westward expansion by means of great transcontinental railroads was generally recognized by the political leaders of the day as a necessary part of the movement toward national solidarity; and second, the farmers demanded quicker methods of transporting their produce to the eastern markets. Towns everywhere vied with one another to secure a favorable routing of the railroads; joining with the farmers, they petitioned Congress that extensive grants-in-aid be made for railroad purposes in the State of Iowa. The city of Dubuque was a constant petitioner in these matters. Of the eleven grants made by Congress for railroad purposes in Iowa, four were for roads which passed through, or had their terminal points in, the city of Dubuque.[1]

Grants of land made by Congress to the State of Iowa for purposes of giving aid to the railroads amounted to over 4,800,000 acres. One road, the Dubuque and Pacific Railroad, owned in 1858 "over 7000 Town Lots in the principal towns and villages on the line of the road which at an average value of $145 amount to over a million of dol-

[1] For the road from Davenport to Council Bluffs see *Laws of Iowa,* 1848-1849, p. 89; Dubuque to Keokuk, *Laws of Iowa,* 1848-1849, p. 100; Iowa Western, *Laws of Iowa,* 1850-1851, p. 127; Dubuque and Keokuk South, *Laws of Iowa,* 1850-1851, p. 202; Dubuque and Keokuk North, *Laws of Iowa,* 1850-1851, p. 129; Davenport and Iowa City, *Laws of Iowa,* 1850-1851, p. 22; Camanche and Council Bluffs, *Laws of Iowa,* 1850-1851, p. 70; Burlington and Keokuk to Missouri River, *Laws of Iowa,* 1852-1853, p. 199; Dubuque to Missouri River, *Laws of Iowa,* 1852-1853, p. 218; McGregor to Missouri River, *Laws of Iowa,* 1852-1853, p. 201; Davenport, Muscatine, and Council Bluffs, *Laws of Iowa,* 1852-1853, p. 214.

lars. Most of the lots were procured by donation. All are held in the name of the Company. No director owns lots at any of the stations.''[2] Dubuque (which boasted a population of 15,956) was the only town of over sixteen hundred inhabitants along the route of the road. This road, however, was reduced to the verge of bankruptcy by the panic of 1857 and by the failure to negotiate a bond issue in England.[3]

New York bankers and investors were interested in these experiments in the Middle West and this class was represented upon the board of directors of several of the railroads operating from Dubuque. The extensive land grants were probably largely responsible for this interest, although such enterprises were in themselves, for the most part, paying propositions. A New York investor who was very influential in the railroad building from Dubuque toward the West was a man by the name of Herman Gelpcke. He was president of the Dubuque and Pacific Railroad in 1860[4] and held a mortgage upon the road by virtue of which he acted in the capacity of trustee for that railroad.[5] Herman Gelpcke also held a mortgage on the Dubuque and Western Railroad and was as well an important stockholder in the company.[6]

The residents of Dubuque were interested in these projects, not only as an investment but also as a means of bringing a greater volume of business to the city. Edward Langworthy and his brother, L. H. Langworthy, were behind most of these projects. L. H. Langworthy was presi-

[2] *Report of the Dubuque and Pacific Railroad Company,* 1858, p. 6; Brindley's *History of Taxation in Iowa,* Vol. II, p. 8.

[3] *Report of the Dubuque and Pacific Railroad Company,* 1858, pp. 12–16.

[4] *Report of the Dubuque and Pacific Railroad Company,* 1860, p. 2.

[5] *Report of the Dubuque and Pacific Railroad Company,* 1860, p. 2.

[6] *The Receipts and Expenditures of the Dubuque Western Railroad,* 1858, p. 18.

dent of the Dubuque Western Railroad in 1858, and Edward Langworthy was treasurer of the same road.[7] Both, of course, were members of the executive committee. L. H. Langworthy held stock in, and was one of the original members of, the corporation created by the legislature of Iowa in favor of the Dubuque and Pacific Railroad Company.[8]

The case of Gelpcke *v.* The City of Dubuque, decided by the United States Supreme Court in December, 1863, involved the validity of bonds issued by the city of Dubuque for the purchase of stock in the Dubuque Western Railroad. At the time the case came up, the bonds were held by Herman Gelpcke and a number of other New York investors. In order to understand the points at issue, it will be well to give a brief history of the events preceding the hearing of the case. When these bonds were issued the Constitution of 1846 was still in force.

The act incorporating the city of Dubuque, which was adopted on February 24, 1847, contained the usual provisions relating to municipal powers. Section 27 of this act provided: "whenever, in the opinion of the city council, it is expedient to borrow money for any public purpose, the question shall be submitted to the citizens of Dubuque, the nature and object of the loan shall be stated, and a day fixed for the electors of said city to express their wishes; the like notice shall be given as in cases of election, and the loan shall not be made unless two-thirds of all the votes polled at such election shall be given in the affirmative."[9] This section was amended by an act of January 18, 1851, so "as to empower the city council to levy annually a special

[7] *The Receipts and Expenditures of the Dubuque Western Railroad,* 1858, p. 1.

[8] *Articles of Incorporation of the Dubuque and Pacific Railroad Company,* 1855, p. 3.

[9] *Laws of Iowa,* 1846-1847, p. 114.

tax, to pay the interest on such loans as are authorized'' under the section described above.[10]

The question of issuing bonds to aid the Dubuque Western Railroad and the Dubuque, St. Peter's and St. Paul Railroad, in amounts up to $250,000 for each road, was submitted to the electorate of Dubuque in December, 1856, and the proposition carried by the required majority. It appears, however, that there was some question as to the legality of these bonds, for on January 28, 1857, the legislature passed a special act declaring that the bonds issued to aid in the construction of these two railroads, in accordance with the vote of the electors of Dubuque, were legal and valid and the city council was ''authorized and required to levy a special tax to meet the principal and interest of said bonds in case it shall become necessary from the failure of funds from other sources.''[11]

The bonds issued for the benefit of the Dubuque Western Railroad bore the date of July 1, 1857, and were payable to Edward Langworthy, the treasurer of the Dubuque Western Railroad, or bearer, twenty years from date. The bonds were ''given for and in consideration of'' stock in the Dubuque Western Railroad. Both bonds and interest were to be payable at the Metropolitan Bank in New York City.

At the time the bonds were issued there seems to have been no serious question as to their validity. Previous to June, 1862, it appears that the Iowa Supreme Court had rendered seven decisions on the validity of bonds issued under circumstances similar to those affecting the Dubuque bonds.[12] These decisions were in conformity with the deci-

[10] *Laws of Iowa,* 1850-1851, p. 46.

[11] *Laws of Iowa,* 1856-1857, pp. 339, 340.

[12] Dubuque County *v.* The Dubuque and Pacific R. R. Co., 4 Iowa (Greene) 1; State of Iowa *v.* Bissell, 4 Iowa (Greene) 328; Clapp *v.* Cedar County, 5 Iowa 15; Ring *v.* Johnson County, 6 Iowa 265; McMillen *v.* Boyles, 6 Iowa 304; McMillen *v.* Lee County, 6 Iowa 391; Games *v.* Robb, 8 Iowa 193.

sions in sixteen other States of the Union.[13] Thus it appears that when Herman Gelpcke and others became the owners of these Dubuque bonds, they had every reason to suppose that the bonds were a good investment, authorized by the State legislature, approved by a vote of the people of the municipality, and apparently recognized as valid by decisions of the State Supreme Court.

About this time, however, the Iowa Supreme Court handed down a decision in June, 1862, which reversed its previous rulings in regard to the validity of bonds issued by counties and municipalities for the purpose of aiding public improvements. The case — the State of Iowa *v.* Wapello County[14] — involved the obligation of a county to issue bonds after the question had been voted on affirmatively by the electors. In this case the Iowa Supreme Court declared that the State legislature had no legal right to authorize counties or municipalities to issue bonds for such public improvements as railroads, especially when the money was largely spent outside the limits of the tax district concerned.

If the legislature had no authority to authorize such bonds, then the Dubuque bonds were worthless. The bondholders, however, were by no means willing to concede this point, and, indeed, the circumstances were not the same as in the Wapello County case. When the Dubuque officials refused or failed to pay the interest coupons on the bonds, Gelpcke and his associates brought suit in the Federal District Court against the city of Dubuque. The fact that they were citizens of a different State, of course, gave them the opportunity to sue in the Federal Court. The suit was for the amount of the coupons on which the city had defaulted, together with interest at the New York rate from the date

[13] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 190, 206.

[14] 13 Iowa 388.

of their maturity and the cost of exchange on the city of New York.[15]

The District Court held that the bonds were invalid since they were not authorized under the Constitution. In this interpretation the Federal Court agreed with the latest ruling of the Iowa Supreme Court. The case (there were really three separate cases) was appealed to the United States Supreme Court on a writ of error. The question at issue was whether the Federal Court should decide the case independent of the rulings of the Iowa Supreme Court, follow the latest pronouncement of the Iowa tribunal, or base its decision on the earlier and more numerous decisions of the Iowa Court.

Existing conditions were played upon by the counsel for Gelpcke, who argued that the national judiciary was supreme and could interpret, independently of the latest settled adjudications of the State courts, cases involving questions such as were brought up here. Coming at a time when the doctrine of "States' Rights" was a vital political issue, this argument must have had a strong influence upon the Federal Court. The Court claimed that this was not the question at bar but the direct effect of the decision might justify classing this case as among the greatest in settling the relationship existing between the State and Federal judiciary. It was decided in favor of the Federal supremacy at a period in our history when that supremacy was being seriously threatened by the success of Southern arms on the field of conflict.[16]

A comparison of the decision of the Supreme Court of Iowa in the case of the State of Iowa *v.* Wapello County[17]

[15] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 178.

[16] *Gelpcke v. The City of Dubuque; Federal and State Decisions* in Thayer's *Legal Essays*, pp. 141–152.

[17] The State of Iowa *v.* Wapello County, 13 Iowa 388.

and the argument of the legal representatives of Dubuque[18] before the Supreme Court of the United States in the case under consideration shows how closely the argument of the city of Dubuque followed the opinion of the Iowa tribunal.

The point before the court for decision was: "Whether a subscription to an extra-territorial railway,— made by a city corporation under authority of an act of the legislature, — is valid under the *Constitution and decisions of the State of Iowa*?"[19]

The argument of the counsel for the city took up six main points. In the first place, it was conceded that a municipal corporation had no power by virtue of its ordinary charter to make a subscription of bonds for railroad stock. If this power existed at all, it came only from legislation directly authorizing it. But the legislature of the State of Iowa was not omnipotent as is the English Parliament. One of the limitations upon the legislature is that it can not take property, even for a public purpose, without *just* compensation. The argument continued with a statement to the effect that what the legislature could not do by command it could not do by taxation. But property is taken by taxation: therefore, argued the counsel, these taxes must be *just*. He held that a just tax could be defined as follows:

> In regard to a man's property taken by tax and applied to purposes purely local and about him, he gets the just recompense, by the application itself. Where the application is to purposes of a wider and more public kind,— for the purposes of his State, or the United States,— he gets a just recompense, provided all others are taxed *proportionably* with him. But just in so far as he is taxed *above* them, he gets no just recompense at all.[20]

[18] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 191–202.

[19] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 191.

[20] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 192.

In the second place, the counsel for the city drew a distinction between private and public corporations which was intended to bring out the point that public corporations were made by the legislature for the purpose of carrying out governmental powers. The counsel then showed, so he thought, that an enterprise such as was under consideration was not governmental in scope and, hence, unwilling members of an involuntary corporation would have their property taken from them by taxation for purposes outside those expressed in the charter of the corporation.

Third, the counsel presented the constitutional limitations upon the power of the legislature in passing such an enabling act as was referred to above. He held, under this point, that Art. I, Sec. 6, of the Constitution of the State of Iowa, 1846, under which this controversy arose, was violated. Does a law have a uniform operation, he asked, when the cost of a railroad "is laid on the people living at one terminus, all those along its line being exempt?"[21] His answer, obviously, was no! The counsel argued that Art. III, Sec. 1, of the State Constitution of 1846 had also been violated. The legislature was not authorized to delegate its powers; but, he asked, "is it not delegated when, by statute, you give a city power to legislate in a manner, which, but for the statute, it confessedly would not have?"[22]

The defendant city also argued that the purpose for which the municipality had been given this corporate power of buying stock in a railroad was neither a political nor a municipal purpose and hence the act was in violation of Art. IX, Sec. 2, of the State Constitution.[23] The counsel

[21] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 193. The Constitution of Iowa, Art. I, Sec. 6, provides that all laws of a general nature shall have a uniform operation.

193.

[23] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 194.

further held that the State had become indirectly a stockholder in a corporation by allowing, by statute, a political unit of the State to become a stockholder. This, the counsel argued, was contrary to the Constitution.[24]

In the fourth place, the counsel for the defendant argued that the decisions relied upon by the plaintiff were based upon other grounds than was the case before the Iowa Court. Cases quoted from Tennessee, Kentucky, Pennsylvania, Illinois, and Florida were not applicable because of differences in the Constitutions of these States.[25] He concluded this portion of his argument with the statement: "In many of the decisions, the courts seem to have been imbued with the frenzy of the day, and to have lost sight of the well-defined distinction between the powers and liabilities of municipal and private corporations."[26]

The fifth argument was that the decision of the Supreme Court of Iowa in the State of Iowa *v.* Wapello County[27] represented the latest settled decision of the State Court. The sixth point made was a discussion of the question whether the Constitution and laws of a State were to be construed by the State courts of other States, or by the State's own courts.

All of the four major points considered in the decision of the Iowa Court in the case of the State of Iowa *v.* Wapello County[28] were relied upon by the counsel for the city in Gelpcke *v.* The City of Dubuque.[29] The Supreme Court of

[24] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 194.

[25] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 194–197.

[26] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 197.

[27] 13 Iowa 388.

[28] 13 Iowa 388.

[29] 68 United States (1 Wallace) 175.

Iowa examined the cases which had previously been decided in the State and came to the conclusion that the questions presented had never been *definitely* settled prior to this case. They thought that this gave them a basis for reversing their former decisions regardless of the hardships which this might bring upon investors. Cases which had arisen in other States were examined. The Court decided, however, that these cases had not reached "conclusions that are satisfactory to the inquiries and consciousness of the public heart."[30] (This position was also held by Associate Justice Samuel F. Miller dissenting in the Gelpcke case.)

The Court then proceeded to an examination of the constitutional provisions which the county claimed were violated by the enabling act of the legislature of the State. Approximately the same conclusions were reached by the Supreme Court of Iowa as were set forth by the counsel for the city in the case under consideration.[31] But the Supreme Court of Iowa probed into the history of the act which was supposed to have given Wapello County power to issue these bonds, and found that the intent of the legislature was not to give this power of subscribing "*to any work of internal improvement,*"[32] but just to certain "public" improvements. If it was not the intent of the legislature to give this power, then, said the Court, it would not interpret the act as giving this power to the county. The third argument of the Court relied upon by the counsel for the city in the case we are considering was the difference between private and public corporations. It was pointed out that the distribution of the tax must be a just one.

In drafting the decision in the case of Gelpcke *v.* Dubuque, rendered in December, 1863, Mr. Justice Noah H.

[30] State of Iowa *v.* Wapello County, 13 Iowa 388, at 394.

[31] 68 United States (1 Wallace) 175.

[32] State of Iowa *v.* Wapello County, 13 Iowa 388, at 397.

Swayne stated the problem of the case in a few terse words: "The whole case resolves itself into a question of the power of the city to issue bonds for the purpose stated."[33] Technically this point of view is correct, but the larger question involved was, as stated by the counsel for Gelpcke, "a question as to the number and relative weight of decisions of the Supreme Court of Iowa alone, and in its own constitution and statutes; a settlement of the balance on an account domestic simply."[34]

The Supreme Court of the State of Iowa had decided that counties and municipalities did not have the power to issue the bonds in question. It had given this decision despite its former decisions regarding a similar power on the part of the counties. As has been pointed out, very strong reasons for reversing its former decisions were presented by the State Court. The matter was purely that of interpretation of the State statutes and the State Constitution. It was a domestic affair. The argument for the city plainly points out that the case was one of local application. To this argument was added the broad principle of constitutional law — the Supreme Court of the United States will usually follow the latest settled adjudications of a State Supreme Court in matters relating to the construction of a statute of a State.[35] In spite of these arguments, the United States Supreme Court decided that the issue of such bonds was legal and reversed the decision of the Federal District Court. Why? This question was not definitely answered one way or the other by the United States Supreme Court. In refusing to accept the last judgment of the Iowa Court, the Federal Supreme Court did not base

[33] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 202.

[34] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 179.

[35] Willoughby's *Constitutional Law of the United States,* Vol. II, p. 1028.

this refusal upon the ground that the decision was unsettled. After quoting from Leffingwell *v.* Warren[36] to the effect that the Federal Court would follow the latest "settled" adjudication of the State Court, the Court said: "Whether the judgment in question can, under the circumstances, be deemed to come within that category, it is not now necessary to determine."[37] The District Court was reversed on the grounds that the decision of the State Supreme Court in the State of Iowa *v.* Wapello County[38] impaired contracts which had been entered into prior to the decision. Thus the court applied the rule to judicial decisions which is usually applicable only to legislative acts.[39] It further held: "However we may regard the late case in Iowa as affecting the future, it can have no effect upon the past."[40] If the contract, when made, was valid by the laws of the State as then expounded by the various departments, its validity can not be changed by subsequent decisions of the courts in which they reverse themselves.[41]

We find no decision given on the point mainly relied upon by the counsel for Gelpcke: namely, the relative merits of the various decisions of the Supreme Court of Iowa. The earlier and later holdings of the State Supreme Court are not passed upon as an abstract proposition, but they are, in effect, definitely decided. A decision of the highest tribunal of a sovereign State is put in the same class as an ordinary

[36] 67 United States (2 Black) 599.

[37] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 205.

[38] 13 Iowa 388.

[39] Willoughby's *Constitutional Law of the United States,* Vol. II, p. 923; Tidal Oil Company *v.* Clanagan, 263 United States 444.

[40] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 206.

[41] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 206.

statute conflicting with the Federal Constitution. Without definitely stating it in the opinion, and without using the usual method of *obiter dicta,* the United States Court held that it need not follow the latest settled interpretation of a State Supreme Court even in matters which relate to purely local affairs.

Contract rights acquired under a law which had been declared constitutional by the State courts will be protected by the Federal courts from impairment by later decisions of the State courts declaring them unconstitutional, when the case is brought into the Federal courts because of the diversity of citizenship of the parties litigant. The rule of contracts, as stated above, has been followed by the Supreme Court and may now be regarded as a settled one.[42]

In one case, the United States Supreme Court declared: "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed".[43] This rule, however, was not followed in the case of Gelpcke *v.* Dubuque.[44] W. W. Willoughby is of the opinion that the exception to the general rule made in this case was "an illogical and ill-considered one".[45]

How did the Supreme Court of the United States decide that the city of Dubuque had the power to issue the bonds in question when the Supreme Court of Iowa had decided otherwise? It relied upon the former decision of the Supreme Court of Iowa, saying: "It cannot be expected that

[42] Havemeyer *v.* Iowa County, 70 United States (3 Wallace) 294; Butz *v.* Muscatine, 75 United States (8 Wallace) 575; Pleasant Township *v.* Aetna Life Insurance Company, 138 United States 67; Folsom *v.* Township Ninety-Six, 159 United States 611; Stanly County *v.* Coler, 190 United States 437.

[43] Norton *v.* Shelby County, 118 United States 425, at 442.

[44] 68 United States (1 Wallace) 175.

[45] Willoughby's *Constitutional Law of the United States,* Vol. I, p. 10.

this court will follow every such oscillation, from whatever cause arising, that may possibly occur. The earlier decisions, we think, are sustained by reason and authority. They are in harmony with the adjudications of sixteen States of the Union.''[46]

On all points involved the court followed the doctrine of *stare decisis* with the exceptions of comity (Federal and State) and contracts.[47]

Associate Justice Samuel F. Miller, one of the ablest of the men who have been appointed to the Supreme Court of the United States, dissented from the opinion of the majority. Justice Miller was an Iowa man at the time of his appointment by President Lincoln. More decisions concerning constitutional law were rendered by him, during his term of office, it is said, than had previously been rendered by the Court during the whole period of its existence. Justice Miller was a man of straight and logical thinking capacity. His dissenting opinion in this case is exceptionally clear and logical.[48]

In the first place, said Justice Miller, this decision gives us ''two courts, sitting within the same jurisdiction, deciding upon the same rights, arising out of the same statute, yet always arriving at opposite results, with no common arbiter of their differences. There is no hope of avoiding this, if this court adheres to its ruling. For there is in this court no power, in this class of cases, to issue its writ of error to the State court, and thus compel a uniformity of construction, because it is not pretended that either the statute of Iowa, or its Constitution, or the decision of its

[46] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 205, 206.

[47] The court ruled on: points of action; evidence; municipal bonds; municipal powers; comity, State and Federal; contracts; statutes; and negotiable instruments.

[48] Gregory's *Samuel Freeman Miller*, pp. 17, 18.

courts thereon, are in conflict with the Constitution of the United States, or any law or treaty made under it."[49]

Continuing, the Associate Justice said: "I apprehend that none of my brethren who concur in the opinion just delivered, would go so far as to say that the inferior State courts would have a right to disregard the decision of their own appellate court, and give judgment that the bonds were valid. Such a course would be as useless, as it would be destructive of all judicial subordination."[50]

Justice Miller held, in the second place, that the Court, in the decision from which he was dissenting, had broken with a well-established principle. The interpretation of a State statute is as much a part of the statute as the text itself. The Associate Justice pointed out that there had been cases where the Supreme Court of the United States had reversed itself by following the rule of latest settled adjudications of the State Court in regard to State statutes.[51]

The third point brought up by Justice Miller was that the Court was not called upon to decide whether there had been an infringement of an obligation of contract by the decision of the lower court, but was called upon to decide whether a contract had ever been made or not. This, said Miller, had been decided by the Supreme Court of Iowa in several decisions. The Supreme Court of the United States should follow the State Court in declaring the bonds void. As a parting thrust, Justice Miller added that the United States Supreme Court was not called upon to "retract any decision it had ever made" in upholding the District Court in accept-

[49] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 209.

[50] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 208.

[51] United States *v.* Morrison, 29 United States (4 Peters) 124; Patton *v.* Easton, 14 United States (1 Wheaton) 476; Powell *v.* Harman, 27 United States (2 Peters) 241; Leffingwell *v.* Warren, 67 United States (2 Black) 599.

ing the interpretation given by the State Supreme Court, but rather the Court was called upon to uphold a long recognized principle of American constitutional law.

Justice Miller then proceeded to an examination of the cases relied upon by the Supreme Court as showing an oscillating attitude on the part of the Supreme Court of the State of Iowa. Justice Miller pointed out the fact that in all of the seven decisions preceding the State of Iowa *v.* Wapello County[52] the State Court felt bound to follow the doctrine of *stare decisis* despite doubts concerning the validity of the bonds issued by counties for the purpose of aiding in the construction of railroads. In bringing this fact to the front, Miller was arguing that the latest decision of the Supreme Court of Iowa, which the Supreme Court of the United States was directing its subordinate courts to disregard, was the latest settled adjudication of the problems involved rather than those cases upon which the Supreme Court relied.

He concluded his opinion with his characteristic clear-sightedness and firmness: "I think I have sustained, by this examination of the cases, the assertion made in the commencement of this opinion, that the court has, in this case, taken a step in advance of anything heretofore decided by it on this subject. That advance is in the direction of a usurpation of the right, which belongs to the State courts, to decide as a finality upon the construction of State constitutions and State statutes. This invasion is made in a case where there is no pretense that the constitution, as thus construed, is any infraction of the laws or Constitution of the United States."[53]

Associate Justice Miller accepted rather completely the

[52] 13 Iowa 388.

[53] Gelpcke *v.* The City of Dubuque, 68 United States (1 Wallace) 175, at 219 and 220.

arguments of the counsel for the city of Dubuque and the decision of the Supreme Court of Iowa in the State of Iowa *v.* Wapello County.[54] He forcibly argued their cause in his dissenting opinion. Such a dissenting opinion from the pen of a northern judge must have brought joy to the hearts of the champions of the "States' Rights" school.

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[54] 13 Iowa 388.