APPEALS FROM THE SUPREME COURT OF IOWA TO THE SUPREME COURT OF THE UNITED STATES

The courts involved in this study are the Supreme Court of the United States, the Supreme Court of the Territory of Michigan (1834–1836), the Supreme Court of the Territory of Wisconsin (1836–1838), the Supreme Court of the Territory of Iowa (1838–1846), and the Supreme Court of the State of Iowa.

There were few permanent settlers in the Iowa region prior to 1836,[1] and the position of Iowa was little affected by the organic laws of the various Territories before that time, but it is interesting to note that acts dealing with the Iowa country under these Territorial governments were relied upon thirteen times in cases appealed from the Territorial Supreme Courts and the Supreme Court of the State of Iowa. One of these cases came up as late as 1902.[2]

From 1834 to 1836 the Iowa country was annexed to the Territory of Michigan. On April 20, 1836, Congress created the Territory of Wisconsin, including the present area of Iowa. A Chief Justice and two Associate Justices, appointed by the President of the United States for a term of four years, made up the Supreme Court of the Territory of Wisconsin. Charles Dunn, David Irvin, and William Frazer served upon the Wisconsin bench at its yearly sessions during the period of Iowa's connection with that Ter-

[1] Shambaugh's *History of the Constitutions of Iowa*, p. 68; Petersen's *Some Beginnings in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXVIII, pp. 11–21.

[2] 45 U. S. 17; 46 U. S. 213; 47 U. S. 284; 51 U. S. 72, 81; 52 U. S. 437; 53 U. S. 1; 187 U. S. 87.

ritory. To afford final adjudication of all conflicts, the citizens of the Territory of Wisconsin were given the right of appeal to the Federal Supreme Court.[3]

An act of Congress approved on June 12, 1838, provided for the establishment of a Territorial government for Iowa and for a judicial organization in that Territory, consisting of a Supreme Court, district courts, probate courts, and justice of the peace courts. A Chief Justice and two Associate Justices were to be appointed by the President for a term of four years and were to hold district courts as provided by the Territorial legislature.[4]

The Supreme Court of the Territory of Iowa was served by three Justices: Charles Mason, Chief Justice, and Associate Justices Joseph Williams and Thomas S. Wilson. They were appointed in 1838 by President Van Buren for a period of four years. Their term of office, however, exceeded this, for they were reappointed and served until 1847. During the nine years these men served the Territory and the State of Iowa they delivered at least two hundred and sixteen opinions — the number of cases reported by Morris in his first volume of *Iowa Reports*. The reporter, however, apologizes for not including all of the opinions in his reports, stating that he was unable to secure them from the Justices.[5]

Under the State Constitution adopted in 1846, the two houses of the legislature in joint session were to elect a Chief Justice and two Associate Justices of the Supreme Court. The term of office was six years. The first General Assembly, however, failed to elect Supreme Court Judges,

[3] *United States Statutes at Large*, Vol. V, pp. 15, 16; Swisher's *The Judiciary of the Territory of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XX, p. 229; *Laws of the Territory of Wisconsin*, 1836–1838, pp. 18, 78.

[4] Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, pp. 108–110.

[5] See the preface to the first volume of Morris's *Iowa Reports*.

and as a result the three Territorial Judges were continued in office.[6]

Previous to the July term, 1847, Chief Justice Mason and Justice Williams resigned, and the Governor appointed Judge Williams Chief Justice, and John F. Kinney Associate Justice. The July term was held by Judges Williams, Wilson, and Kinney, and under the guidance of these three jurists the Supreme Court of the State of Iowa began its long and distinguished career. When the General Assembly met in December, 1848, these three men were named by the joint vote of the House and Senate as Judges of the State Supreme Court, their term beginning on January 15, 1849.[7] During the eleven years under the Constitution of 1846 the Iowa Supreme Court handed down more than eighteen hundred decisions.[8]

At present the judicial system of the State of Iowa operates under the Constitution of 1857 which provides for "a supreme court, district courts, and such other courts, inferior to the supreme court, as the general assembly may, from time to time establish". The General Assembly may increase the number of Supreme Court Judges, but no power is given the legislative branch to diminish the number of judges on the Supreme Bench.[9]

The original State Supreme Court under the Constitution of 1857 consisted of a Chief Justice and two Associate Justices elected directly by the people for a term of six

[6] This was in accordance with a provision stipulating that all officers, civil and military, holding their offices and appointments in the Territory under the authority of either the United States or the Territory, should continue in office until they should be superseded by men qualified under the Constitution.—Shambaugh's *Documentary Material Relating to the History of Iowa*, Vol. I, p. 209; Constitution of Iowa, 1846, Article XIII, Section 5.

[7] 1 Morris, vii; 1 Greene 5.

[8] 1 Greene contains 267 decisions: 2 Greene, 280; 3 Greene, 338; 4 Greene, 381; 1 Clarke, 204; 2 Clarke, 135; 3 Clarke, 182; and 4 Clarke, 40.

[9] Constitution of Iowa, 1857, Article V, Section 1.

years. At present the Court is composed of a Chief Justice and eight Associate Justices, holding office for a term of six years.[10] During this term these men are ineligible for other offices of trust in the State. Fifty-four men have served the State upon the Supreme Court since the adoption of the Constitution of 1846.[11]

CASES APPEALED FROM THE TERRITORIAL SUPREME COURT

In view of the predominantly frontier and agricultural conditions prevailing in the Territory of Iowa, it is not surprising that the first case reaching the Supreme Court of the United States from the Supreme Court of the Territory of Iowa was one dealing with the title to land. In fact, only two cases appealed to the Federal Supreme Court from the Territory of Iowa did not deal with some phase of the land situation.[12] It is significant also that the first appeal resulted in a vindication of the Territorial Court, and this action must have increased the confidence of the settlers in their judiciary. Of the eleven cases from the Territorial Supreme Court reaching final decision in the Supreme Court of the United States — all decided after 1846 — four were affirmed, four dismissed, and three reversed.[13] If we consider the cases dismissed as in effect

[10] *Laws of Iowa,* 1864, Ch. 23, Sec. 1, 1876, Ch. 7, Sec. 1, 1894, Ch. 69, Sec. 1, 1913, Ch. 22, Sec. 1, 1927, Ch. 230, Sec. 1, 1929, Ch. 260, Sec. 1.

[11] For the list of Justices down to 1933, see *Iowa Official Register,* 1931-1932, pp. 106, 107, and later.

[12] These two cases were Miners' Bank of Dubuque *v.* United States, 46 U. S. 213, dealing with contract rights, and McNulty *v.* Batty, 51 U. S. 72, dealing with a suit for damages.

[13] *Affirmed:* Levi *v.* Thompson, 45 U. S. 17; Sheppard *v.* Wilson, 46 U. S. 210; Bush *v.* Marshall, 47 U. S. 284; Sheppard *v.* Wilson, 47 U. S. 260. *Reversed:* Gear *v.* Parish, 46 U. S. 168; Marsh *v.* Brooks, 49 U. S. 233; Webster *v.* Reid, 52 U. S. 437. *Dismissed:* Miners' Bank of Dubuque *v.* United States, 46 U. S. 213; McNulty *v.* Batty, 51 U. S. 72; Preston *v.* Bracken, 51 U. S. 81; Messenger *v.* Mason, 77 U. S. 507.

being affirmed, we have a total of eight decisions affirmed with only three reversals.

The case of Levi *v.* Thompson illustrates how land titles came into litigation. Alexander Levi and John Thompson were tenants in common of a lot in the town of Dubuque. They secured their land by preëmption rights and were issued a receipt for payment upon the first day of April, 1840. It was a traditional April first transaction, for out of their common interests sprang conflicting claims of sufficient magnitude to require a final adjudication in the Supreme Court of the United States. Soon after the purchase of the property by Levi and Thompson, a suit was started against them to collect the sum of $780.50. A judgment was secured for this amount and the sheriff was ordered to sell the property in order to secure the money. Thompson bought the property at the sale, and later sold it to a third party who made the purchase in good faith. Levi then came forward and claimed an interest in the property on the ground that the Territory could not cause the title to the land to pass at a sheriff's sale because the title to the land was not vested in the Territory of Iowa but in the United States. The district court and the Supreme Court of the Territory did not uphold this contention, and an appeal was taken to the Supreme Court of the United States where the lower courts were sustained.[14]

But land titles did not furnish all the points to be considered in the appeals of this period. Seven cases involved the question of the position and jurisdiction of the Territorial judiciary.[15]

In sustaining a motion to dismiss a writ of error to the

[14] Levi *v.* Thompson, 45 U. S. 17.

[15] Miners' Bank of Dubuque *v.* United States, 46 U. S. 213; Sheppard *v.* Wilson, 46 U. S. 210, and 47 U. S. 260; McNulty *v.* Batty, 51 U. S. 72; Preston *v.* Bracken, 51 U. S. 81; Webster *v.* Reid, 52 U. S. 437; Messenger *v.* Mason, 77 U. S. 507.

Supreme Court of the Territory of Iowa in the case of the Miners' Bank *v.* The United States, Justice Roger B. Taney held that a final judgment must be rendered by the Territorial Court before an appeal could be made to the Supreme Court of the United States. There had been in this case at the time of appeal "no judgment of ouster against them [the officers of the bank], nor anything in the judgment which prevents them from continuing to exercise the liberties and privileges which the information charges them to have usurped. In order to make the decision a final one, the court, under the opinion expressed by them, should have proceeded to adjudge that the plaintiffs in error do not in any manner use the privileges and franchises in question". The Supreme Court of the Territory had awarded the *procedendo* to the district court, the Supreme Court having no power to give a judgment of ouster, in the shape in which the case came before it, but had not given final judgment.[16]

The inhabitants of the Territory, the United States Supreme Court ruled, were not to be denied the right of appeal to the Federal Supreme Court merely because of the phraseology of the Judiciary Act of 1789. A motion to dismiss a writ of error in the case of Sheppard *v.* Wilson was denied by Chief Justice Taney who, speaking for the Court, said: "it can hardly be supposed that Congress intended to deny to suitors in the Territorial courts the conveniences and facilities which it had provided for suitors in the courts of the United States when sitting in a State, and to require them to apply to the clerk of the Supreme Court for a writ of error, and to a justice of the Supreme Court to sign the citation and approve the bond, when these duties could be more conveniently performed by the clerk and a judge of the court of the Territory".[17] Any other construction

[16] 46 U. S. 213, at 214.

[17] 46 U. S. 210, at 212.

would, in effect, be equivalent to an absolute denial of the right of writ of error, because of the long period necessary to send the requisite documents to, and receive them from, the national capital. Expediency was to be one of the factors in interpreting acts of Congress relative to the judicial organization in the Territory of Iowa.

Having denied the motion to dismiss the writ of error, the Supreme Court placed the action upon its docket and the case reached final adjudication during the January term, 1848.[18] The case was an important one for it involved the validity of a statute of the Territory of Iowa concerning the time for filing of records with the Supreme Court of the Territory. It is a settled principle, Chief Justice Mason of the Territorial Supreme Court held in substance, in upholding the validity of the statute, that no bill of exceptions is valid which is not for matter excepted to at the trial.

In an earlier case, similar to the one under consideration, the court said: "We do not mean to say that it is necessary, (and in point of practice we know it to be otherwise,) that the bill of exceptions should be formally drawn and signed before the trial is at an end. It will be sufficient, if the exception be taken at the trial, and noted by the Court, with requisite certainty; and it may, afterwards, during the term, according to the rules of the Court, be reduced to form, and signed by the judge".[19]

Substantially this same argument was relied upon by the Supreme Court of the United States in upholding the decision of the Territorial Court. A two year lapse between the first trial and the attempt to secure the bill of exceptions could not be justified under the rule providing for the signing of a bill of exceptions *nunc pro tunc*. Expediency

[18] Sheppard *v.* Wilson, 47 U. S. 260.

[19] Walton *v.* United States, 22 U. S. 651, at 657, 658.

again argued in favor of the validity of judicial processes in the Territory of Iowa.

The inhabitants of the Territory were given protection from arbitrary judicial rules laid down by Congressional action, through the doctrine, enunciated in the case of Webster *v.* Reid,[20] and repeatedly affirmed by the Supreme Court, that Congress, when legislating upon the civil rights of inhabitants of the Territories, is governed by all those express and implied limitations which rest upon it when dealing with the same subjects within the States.[21] Right of trial by jury for the determination of matters of fact and personal notice before trial are both guaranteed to citizens of our Territories as a result of the decision of Justice John McLean in this case.

No provision was made by Congressional action for the trial of cases pending and unfinished at the time Iowa changed from a Territory to a State, if they belonged solely to the State courts after the admission of Iowa into the Union. Such cases seem to have been left to be provided for by State authorities.[22] This position was justified upon the grounds that the appellate power of the Supreme Court regarding Territorial cases rested not upon the Judiciary Act of 1789 but upon laws regulating the judicial proceedings in the Territories, and these powers necessarily ceased with the termination of the Territorial government.

Besides, after the termination of the Territorial government, there existed no court to which the mandate of the Supreme Court of the United States could be sent to carry into effect the judgment of the Federal tribunal. "Our power, therefore, would be incomplete and ineffectual,

[20] 52 U. S. 437.

[21] This doctrine was also supported in Scott *v.* Sandford, 60 U. S. 393; Reynolds *v.* United States, 98 U. S. 145; and others there cited.

[22] Benner *v.* Porter, 50 U. S. 235.

were we to consent to a review of the case", stated Justice Samuel Nelson on behalf of the Court.[23]

This doctrine is again stated by the Court in the case of Preston *et al. v.* Bracken,[24] decided at the December, 1850, term. These two cases bring out the point that when the Territories attained the position of States in the Union they were to assume the responsibilities of that position as well as to reap the benefits which might be derived from such action. The Federal Court would then decide cases dealing with Federal questions, but would leave the States to make provision for the final adjudication of cases involving local matters.[25]

JURISDICTION OF THE FEDERAL SUPREME COURT

The Federal government possesses only those powers which are expressly granted to it, or are necessary to carry into execution the powers granted by the Constitution. On the other hand, the States possess that great field of "residuary" powers: that is, all the powers of government not expressly granted to the Federal government by the Constitution nor denied by that instrument to the States. Since the adoption of the Constitution this field of powers has been greatly reduced by several factors: (1) State Constitutions have restricted State legislatures in the performance of certain acts; (2) the extension of the theory of "implied powers" has increased the power of the Federal government at the expense of the States; (3) the doctrine of judicial review has allowed the United States, through its own courts, to determine whether specific acts of the States are in conflict with Federal powers; (4) Constitutional amendments have increased the centralizing

[23] McNulty *v.* Batty, 51 U. S. 72, at 79.

[24] 51 U. S. 81.

[25] Preston *v.* Bracken, 51 U. S. 81.

power of the national government; and (5) the economic and social changes of the last generation have forced an extension of power upon the Federal government by creating national problems of increasing importance upon which the States, individually, are unable to legislate effectively.[26]

The Constitution and the laws of the United States made in pursuance thereof and all treaties made under the authority of the United States are declared to be the supreme law of the land; and the judges of every State are to be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.[27]

It is essential to the protection of the national jurisdiction and to prevent conflicts between State and Federal authorities, that the final decision upon all questions arising over such conflict of authorities should rest with the Federal courts. The Judiciary Act of 1789 provided for the appeal of certain cases to the Supreme Court of the United States after final judgment or decree had been rendered in the proper State court.

Such appeals may be taken in the following types of cases: (1) if the validity of a treaty, a Federal law, or the exercise of authority under the United States government is drawn in question and the decision of the State court is against their validity; (2) if the validity of a State statute or the exercise of authority under any State law is questioned on the ground that such law or exercise of authority is repugnant to the Federal Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; (3) if any title, right, privilege, or immunity is

[26] Beard's *American Government and Politics* (Fifth edition), Ch. 23, contains an excellent interpretation of this phase of constitutional development in the United States. See also Ogg and Ray's *Introduction to American Government* (Third edition), Ch. 10; Wilson's *Constitutional Government in the United States,* Ch. 7; Burdick's *The Law of the American Constitution,* Ch. 19.

[27] United States Constitution, Article VI, Sec. 2.

claimed under the Federal Constitution or any treaty or statute of the United States or commission held or authority exercised under the United States government, and the decision is against the title, right, privilege, or immunity specially set up or claimed by either party under such Constitution, treaty, statute, commission, or authority;[28] (4) if it is claimed that the case should have been tried originally in a Federal court, and the transfer to the Federal court has been refused by the State court.

But to authorize the removal of cases under this section of the Judiciary Act, it must appear by the record, expressly or by clear intendment, that one of these questions arose in the State court and was passed upon there. "We have repeatedly decided that an appeal to the jurisdiction of this court must not be a mere afterthought, and that if any right, privilege or immunity is asserted under the Constitution or laws of the United States it must be specially set up and claimed before the final adjudication of the case in the court from which the appeal is sought to be maintained."[29] It is not sufficient that the question might have arisen or have been applicable.[30]

Chief Justice Melville W. Fuller, in granting a motion to dismiss, for want of jurisdiction, the case of the First National Bank *v.* Estherville, decided in 1910, declared: "In order to give this court jurisdiction of a writ of error to the highest court of a State in which a decision could be had it must appear affirmatively that a Federal question was presented for decision, that its decision was necessary to the determination of the cause, and that it was actually

[28] *United States Statutes at Large,* Vol. I, pp. 85, 86, Vol. XIV, pp. 386, 387; *Revised Statutes of the United States,* 1878, Title XIII, Ch. 11.

[29] Justice Henry B. Brown speaking for the Court in the case of Bolln *v.* Nebraska, 176 U. S. 83, at 91.

[30] Messenger *v.* Mason, 77 U. S. 507; First National Bank *v.* Estherville, 215 U. S. 341.

decided or that the judgment rendered could not have been given without deciding it.'' He added: ''If plaintiffs in error believed that the local statute was unconstitutional and invalid because of conflict with the Federal Constitution or statute, they could and should have said so, but the validity of the act was nowhere specifically drawn in question.''[31]

The Federal Supreme Court has reserved to itself the right to decide in each case whether the Federal right was sufficiently alleged in the pleadings before the State courts, and it also maintains the right to determine, within certain limits, what constitutes a Federal question.[32]

Cases appealed from the Supreme Court of the State of Iowa have brought out the principle that a suit to recover usurious interest paid to a national bank presents a Federal question within the appellate jurisdiction of the Supreme Court, as granted to that body by the twenty-fifth section of the Judiciary Act of 1789 and subsequent

[31] 215 U. S. 341, at 346, 348. In an early case from this State the Court severely criticised counsels for appealing many cases, saying: ''Much expense to suitors would be spared if counsel would attend to the principle above stated, and as we have said, frequently laid down, before advising their clients to resort to the appellate jurisdiction of this court from the decisions of the State courts.''— Hurley *v.* Street, 81 U. S. 85, at 86, 87.

Other cases dismissed because they did not conform to the stated classes of appeals were: Berger *v.* Tracy, 215 U. S. 594 — no Federal question presented prior to petition for writ of error; Gray *v.* Coan, 154 U. S. 589; Moreland *v.* Page, 61 U. S. 522; Railroad Co. *v.* McClure, 77 U. S. 511 — question of the validity of county bonds is not of Federal jurisdiction; Railroad Co. *v.* Rock, 71 U. S. 177; Iowa *v.* Rood, 187 U. S. 87; McLaughlin Brothers *v.* Hallowell, 228 U. S. 278; Wall *et al. v.* Bankers Life Co., 282 U. S. 808; Bevins *v.* Iowa, 282 U. S. 815; Loftus *v.* Iowa, 283 U. S. 809. In Moreland *v.* Page the Court said: ''The record does not show that it draws in question any treaty, statute, or authority, exercised under the United States; or the validity of any State statute, for repugnancy to the Constitution of the United States; or the construction of any clause of the Constitution; or of a treaty or statute commission held under the United States. It is a mere question of boundary between two neighbors, both admitted to have valid grants from the United States.''

[32] First National Bank *v.* Anderson, 269 U. S. 341.

amendments thereto.[33] Furthermore, action brought against a State Board of Equalization to relieve a national bank from an alleged excessive rate of taxation presents a Federal question in so far as appellate jurisdiction of the Supreme Court of the United States is concerned.[34] A Federal question arose, it was decided, when a promissory note, to be paid *in specie,* was not paid in gold or silver at the demand of the payee, but "greenbacks" instead were offered by the payer in settlement of the note.[35]

When the right of removal of a cause from a State court to a Circuit Court of the United States was denied by the State court, this denial, it was held, raised a Federal question within the jurisdiction of the Supreme Court of the United States.[36] Again, when it was claimed in the State court that contracts had been rendered void by acts of Congress and the decision of the Supreme Court of Iowa denied this claim, the Supreme Court of the United States held that it had appellate jurisdiction under the Judiciary Act of 1789.[37]

In one case a United States marshal was prosecuted for trespass and defended himself upon the grounds that the acts complained of were performed by him under writ of attachment from the proper Federal authorities. The final

[33] Talbot *v.* Sioux City First National Bank, 185 U. S. 172; Talbot *v.* Sioux National Bank, 185 U. S. 182.

[34] Davenport Bank *v.* Davenport Board of Equalization, 123 U. S. 83.

[35] In Trebilcock *v.* Wilson *et ux.* (1871), 79 U. S. 687, the Iowa Supreme Court held that Greenbacks were specie within the meaning of the note, but the Supreme Court of the United States reversed the State Court's decision, thus holding that specie meant gold or silver coins of the United States. "Where a note is for dollars, payable by its terms, *in specie,* the term 'in specie' are merely descriptive of the kind of dollars in which the note is payable, there being more than one kind of dollars current recognized by law; and mean that the designated number of dollars shall be paid in so many gold or silver dollars of the coinage of the United States."

[36] Oakley *v.* Goodnow, 118 U. S. 43.

[37] Railroad *v.* Richmond, 82 U. S. 3.

decision of the State court was against such claim, but the Federal Supreme Court ruled that the case presented a Federal question and held that it had appellate jurisdiction.[38]

On the other hand, where a case arose between two parties, both having valid land grants from the United States, the United States Supreme Court has ruled that no Federal question was presented, since the settlement of the boundary line between land owners was a matter for the State courts to decide.[39] In another case the Supreme Court of Iowa decided that county bonds held by a railroad were void, and an appeal was taken to the Supreme Court of the United States. That Court ruled that it possessed no appellate jurisdiction under the Judiciary Act of 1789, since such a question was not of a Federal nature and was a matter of State concern only.[40] The question as to what time a cause of action accrues in a case, within the meaning of the statute of limitations of Iowa, is not a Federal question, according to a decision of the Federal court, but a local issue upon which the judgment of the highest court of the State can not be reviewed by the Supreme Court of the United States.[41]

Full Faith and Credit.— In several instances cases were appealed from the Iowa Court upon the grounds that "full faith and credit" had not been given to the judicial proceedings of another State by the decision of the Iowa Supreme Court. This contention, the Supreme Court of the United States maintained in the case of Great Western Telegraph Company *v.* Purdy, raises a Federal question within the meaning of the twenty-fifth section of the Judi-

38 Etheridge *v.* Sperry, 139 U. S. 266.

39 Moreland *v.* Page, 61 U. S. 522; Iowa *v.* Rood, 187 U. S. 87.

40 Railroad Co. *v.* McClure, 77 U. S. 511; Railroad Co. *v.* Rock, 71 U. S. 177.

41 Great Western Telegraph Co. *v.* Purdy, 162 U. S. 329.

ciary Act of 1789 and its amended sections. Though the Court held it had jurisdiction it reserved the right to define "full faith and credit".[42]

The "full faith and credit" clause regulates the attributes and qualities which judicial proceedings and records of one State shall have when offered in evidence in the courts of another State and implies that they shall be given the same effect in the courts of another State as they have by laws and usages at home. This provision, however, and the laws giving it effect establish a rule of evidence, and not of jurisdiction; they do not operate to make records and judgments legally effective for all purposes but only to give them a general validity and credit as evidence.[43]

There is no direct constitutional limitation nor any clause in the Constitution from which it can plausibly be inferred that a State may not legislate upon the remedy in suits upon the judgments of other States. It has been settled that the statute of limitations in one State may bar recoveries upon foreign judgments — that the effect intended to be given under our Constitution to judgments is that they are conclusive only as regard the merits. The Common Law principle then applies to suits upon them, that they must be brought within the time prescribed by the local law, the *lex fori,* or the suit will be barred.[44]

Justice Henry B. Brown, speaking for the United States Court in the case of Johnson *v.* New York Life Insurance Company, said: "The Supreme court of Iowa did not fail to give due faith and credit to the notice law of New York, since it was fully considered, and the decision of the state

[42] 162 U. S. 329, at 335.

[43] Cooley's *Constitutional Limitations* (Seventh edition), pp. 38–41; Dull *v.* Blackman, 169 U. S. 243.

[44] Great Western Telegraph Co. *v.* Purdy, 162 U. S. 329. See also Alabama State Bank *v.* Dalton, 50 U. S. 522, at 528; and Christmas *v.* Russell, 72 U. S. 290, at 301.

courts of New York were called to its attention and cited in its opinion. . . . Whether the Supreme Court of Iowa was correct in its construction of the applicability of the New York notice statute to this policy was immaterial, since it did not deny the full faith and credit due to the New York law, but construed it as not applying to the policy in this case."[45]

Diversity of Citizenship.— In at least two instances petitioners at the bar took advantage of the constitutional provision granting the Supreme Court of the United States appellate jurisdiction over cases involving a controversy between citizens of different States. In both actions the decision of the Supreme Court of the State of Iowa was sustained.[46]

Moot Questions.[47]— Prior to the passage of the Eighteenth Amendment, prohibition in Iowa placed several cases upon the docket of the Supreme Court of the United States. These cases resulted, for the most part, in decisions favoring the local statute, but the opponents of the law persisted in taking cases to the Federal courts for the purpose of testing the statutes of Iowa. The following case illustrates the situation.

A man named Bartemeyer was convicted in the circuit court of the State of Iowa of selling liquor in violation of a State law. The defendant alleged that the State law was in violation of the Fourteenth Amendment, but the Supreme Court of the State upheld the decision of the circuit court.

[45] 187 U. S. 491, at 495, 496.

[46] Beeson *v.* Johns, 124 U. S. 56; Iowa Central Railway Co. *v.* Bacon, 236 U. S. 305. See also note 36.

[47] Other sections of the Constitution giving the Supreme Court certain appellate jurisdiction are discussed under the various headings according to the general principles rather than as rules of appeal.

Thus a Federal question was raised and an appeal was effected to the Supreme Court of the United States. When the case was before that Court, the following principle of practice was laid down by Justice Samuel F. Miller on behalf of the Court:

"The defendant, from his first appearance before the justice of the peace to his final argument in the Supreme Court, asserted in the record in various forms that the statute under which he was prosecuted was in violation of the Constitution of the United States. The act of the prosecuting attorney, under these circumstances, in going to trial without any replication or denial of the plea, which was intended manifestly to raise that question, but which carried on its face the strongest probability of falsehood, satisfies us that a moot case was deliberately made up to raise the particular point when the *real* facts of the case would not have done so. As the Supreme Court of Iowa did not consider this question as raised by the record, and passed no opinion on it, we do not feel at liberty, under all the circumstances, to pass on it on this record."[48]

One other case bearing upon this aspect of the appellate jurisdiction of the Federal tribunal was appealed from the Iowa Supreme Court. This was the case of Hamblin *v.* Western Land Company[49] in which the United States Court held that a real and not a fictitious Federal question was essential to the jurisdiction of the Supreme Court of the United States over the judgments of the State courts. "There must be at least color of ground for the averment of a Federal question in a case brought here by writ of error to the highest court of a State, in order to give this court jurisdiction", said Justice Brown, in delivering the opinion of the Court.[50]

[48] Bartemeyer *v.* Iowa, 85 U. S. 129, at 135.

[49] 147 U. S. 531.

[50] 147 U. S. 531, at 532.

Rules Fixed by the United States Supreme Court.— A few fundamental principles of practice before the Supreme Court of the United States may be secured from a study of the cases appealed from the Supreme Court of Iowa.

The doctrine set up in the case of Miners' Bank *v.* United States, previously referred to, that in order to effect an appeal to the Federal Supreme Court the judgment of the State Court must be a final adjudication, was repeated by the United States Supreme Court in the case of Chicago, Great Western Railroad Company *v.* Basham, decided at the October term, 1918.[51] This case dealt with the Federal Employer's Liability Act, Section 237 of the Judicial Code, and the denial by the State Court of the rights and immunities claimed under this act. The appeal was instigated by a motion to allow a writ of error to be issued to the Supreme Court of the State of Iowa, but the Court dismissed the motion upon the ground that appeal from a State Supreme Court, which had denied privileges and immunities claimed under the Federal Employer's Liability Act, could be effected only by writ of certiorari.[52] There were four

[51] 249 U. S. 164.

[52] *United States Statutes at Large,* Vol. XXXV, p. 65, Ch. 149, as amended by the act of September 6, 1912.— *United States Statutes at Large,* Vol. XXXIX, p. 726, Ch. 448, Sec. 2. The amended section, upon which the Court relied for this technicality, reads as follows: "It shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege, or immunity, especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority."

other instances in which appeals were made upon a writ of certiorari and in each case the writ was granted.[53]

Cases often crowd the docket of the Supreme Court of the United States in such numbers as to force the Court to fall far behind with its decisions. A large percentage of these cases are appealed upon purely technical grounds. In order to relieve the pressure thus placed upon the tribunal, an elaborate set of rules has been developed by that body. Cases arising in Iowa have encountered at least two of these regulations, all of the cases being dismissed. Ten cases were dismissed in pursuance of the rule of the Court (the tenth) which provides for the payment of the cost of printing the records,[54] while one case was dismissed upon

[53] (a) Northwestern Union Packet Co. *v.* Home Insurance Co., 154 U. S. 588. A motion to dismiss a writ of error was upheld, but the order dismissing the case was rescinded and a writ of certiorari granted. The case was later decided, at the December term, 1872, as number 228, in favor of the decision of the Iowa Court.

(b) A petition for a writ of certiorari was granted in the case of Neilsen *v.* Johnson, 277 U. S. 583, at the October term, 1927. This case was finally disposed of the following year and resulted in a reversal of the Iowa decision.—279 U. S. 47.

(c) Petitions for writs of certiorari were granted in the cases of Iowa-Des Moines National Bank *v.* Stewart, 283 U. S. 813, and Central State Bank *v.* Stewart, 283 U. S. 813. These cases were argued and decided as one action during the October term of court, 1931. Mr. Justice Brandeis wrote the opinion reversing the Iowa Supreme Court's decision.

[54] The tenth rule (Section 2) of the Court reads as follows: "The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay for it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed." For these cases see the following: Kitteringham *v.* Blair Town Lot and Land Co., 145 U. S. 643; Dubuque and Sioux City Railroad Co. *v.* Snell, 159 U. S. 252; Tuttle *v.* Iowa State Traveling Men's Association, 220 U. S. 628; Brown *v.* Powers, 226 U. S. 620; Gustaveson *v.* State of Iowa, 227 U. S. 681; Hubbell *v.* Higgins, 227 U. S. 684; Jones *v.* Mould, 231 U. S. 765; Hamil *v.* Schiltz Brewing Co., 245 U. S. 676; Simpson *v.* Board of Supervisors, 255 U. S. 579.

the authority of the ninth rule which provides for the time given for docketing of cases.[55] Other cases have been dismissed by agreement, or upon failure of one party to appear before, or file briefs with, the Supreme Court of the United States. Twenty-one cases fall in this classification.[56]

Stare Decisis.— In eleven instances the Supreme Court relied solely upon a strict interpretation of the doctrine of *stare decisis* in disposing of appeals from the Supreme Court of the State of Iowa. In each case the court merely stated that the case was dismissed, or affirmed as the case might be, upon the authority of a number of cases cited. Four cases were affirmed, while seven were dismissed.[57]

CASES INVOLVING TREATIES OF THE UNITED STATES

One of the main motives behind the formation of our Federal Constitution was the desire to create an effective

[55] Coon Rapids National Bank *v.* Lee, 239 U. S. 659.

[56] Iowa Falls and Sioux City Ry. Co. *v.* Beck, 136 U. S. 639; Iowa Falls and Sioux City Ry. Co. *v.* Nichols, 136 U. S. 639; Iowa Falls and Sioux City Ry. Co. *v.* Wentworth, 136 U. S. 639; Leicht *v.* McLean, 136 U. S. 641; Bonn *v.* Thrasher, 140 U. S. 673; Florang *v.* Craig, 140 U. S. 680; Fuller *v.* American Emigrant Co., 149 U. S. 774; Omaha and Council Bluffs Railway Co. *v.* Smith, 166 U. S. 719; Scottish Union and National Insurance Co. *v.* Herriott, 187 U. S. 651; Chicago, Rock Island and Pacific Railroad Co. *v.* Mumford, 203 U. S. 601; Mengel *v.* Mengel, 218 U. S. 694; Chicago, Burlington and Quincy Railroad Co. *v.* Hamilton, 223 U. S. 743; Majestic Theater Co. *v.* Cedar Rapids, 232 U. S. 730; Illinois Central Railroad Co. *v.* Pelton, 239 U. S. 655; Judge and Bunting *v.* Powers, 241 U. S. 686; Hallagan *v.* Dowell, 246 U. S. 678; Interurban Railway Co. *v.* Mrs. Smith, 253 U. S. 499; Chicago, Rock Island and Pacific Railroad Co. *v.* Vander Zyl, 266 U. S. 636; Rowley *v.* Iowa, 269 U. S. 594; Royal Indemnity Co. *v.* Andrew, 281 U. S. 725.

[57] *Dismissed:* Olander *v.* Hollowell, 262 U. S. 731; Mengel *v.* Mengel, 227 U. S. 675; Chicago, Rock Island and Pacific Railroad Co. *v.* Bradbury, 223 U. S. 711; Cedar Rapids Water Co. *v.* City of Cedar Rapids, 199 U. S. 600; Wall *et al. v.* Bankers Life Co., 282 U. S. 808; Bevins *v.* Iowa, 282 U. S. 815; Loftus *v.* Iowa, 283 U. S. 815.

Affirmed: Minneapolis and St. Louis Railroad Co. *v.* Gano, 190 U. S. 557; Wrenn *v.* Iowa, 263 U. S. 688; Taylor *v.* Drainage District No. 56 of Emmet County, 244 U. S. 644; Burlington and Missouri River Railroad Co. *v.* Mills County, 154 U. S. 658.

instrument to deal with foreign relations. To convince other nations of our sincerity, it was necessary that some provision be made in that Constitution for the recognition of the binding force of treaties with foreign nations. As a result we have the provision that treaties made in pursuance of the Constitution are to be considered as the supreme law of the land and the States are forbidden to pass laws at variance with these treaties.

In the case of Neilsen *v.* Johnson it was held that the treaty-making power of this nation is independent of, and superior to, the legislative power of the States. Moreover, in ascertaining the meaning of a treaty, the courts are not restricted by the necessity of avoiding possible conflict with State legislation and the treaty may be very liberally construed. When once the meaning of a treaty provision is established by judicial decision such provision must prevail over inconsistent State enactments.[58] In fact, the Supreme Court of the United States has gone so far as to say that a treaty can totally annihilate any part of the Constitution of any of the individual States in so far as it is contrary to the treaty.[59]

In two cases reaching the Federal tribunal from the Iowa Supreme Court a law of the State of Iowa taxing inheritances of non-resident aliens higher than the inheritances of residents of the State was held not to be in conflict with a treaty with Denmark[60] even when the treaty was liberally interpreted. In both cases the person whose estate was being settled was a citizen of the United States and a resident of Iowa at the time of death.

[58] Neilsen *v.* Johnson, 279 U. S. 47.

[59] Ware *v.* Hylton, 3 U. S. 199, at 242, 243, Justice Samuel Chase, for the court.

[60] *United States Statutes at Large*, Vol. VIII, p. 340, as amended in *United States Statutes at Large*, Vol. XI, p. 719; Petersen *et al. v.* Iowa, 245 U. S. 170; Duus *v.* Brown, 245 U. S. 176.

CASES INVOLVING POWERS OF FEDERAL OFFICERS AND DEPARTMENTS

Federal supremacy is maintained not only through express limitations upon actions of the State and by explicit grants of power to Congress, but also through implied powers of the Federal government and by powers granted to Federal officers and departments.

If an officer of the Federal government is acting under orders from the proper legal authorities, he may properly rely upon these orders as a defence against State prosecution. If the decisions of the State courts are against this claim, the officer may appeal to the Federal courts.[61]

Protection of the authority of departments of the Federal government, by right of appeal to the Federal courts, is secured by acts of Congress granting to specific departments certain definite powers and duties. In the case of Buena Vista County, Iowa *v.* Iowa Falls and Sioux City Railway Company the power of the Secretary of the Interior to review acts of the Commissioner of the Land Office was interpreted to allow the Secretary to review and examine the selection of swamp lands in Iowa and to permit him to disallow any such selections.[62]

Judicial decisions have allowed an expansion of the powers of Federal officers not only by liberal interpretation of acts of Congress granting those powers, but also by laying down the principle that the Federal Land Office may interpret an act of Congress to the best of its ability. Such an interpretation is valid until overruled by a court decision. This rule, however, can not prevent a person from objecting to the interpretation of the act, nor prevent him from bringing suit to challenge the powers thus taken over.[63]

[61] Etheridge *v.* Sperry, 139 U. S. 266.

[62] 112 U. S. 165.

[63] Buena Vista County *v.* Iowa Falls and Sioux City Railroad Co., 112 U. S. 165.

It is as essential to the maintenance of Federal supremacy that the organs and institutions set up by that government be free from destructive State legislation, as it is that Federal officers and departments shall not be hindered in the exercise of their powers by State enactments. This principle is illustrated in the case of Easton *v.* Iowa[64] which was appealed from the Iowa Supreme Court.

In 1899, James H. Easton, president of a national bank operating under Federal law, was found guilty in the District Court of Winneshiek County of having received a deposit when he knew that the bank was in an insolvent condition. He was sentenced to the penitentiary for five years. The Supreme Court of the United States, on appeal, held: (1) Congress, having the power to create a system of national banks, is judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations; (2) Congress had dealt with insolvency of national banks directly, by congressional action, and it was not competent for a State legislature to interfere with national banks or their officers in the exercise of those powers granted to them by Congress.

State legislatures are also forbidden to pass laws which burden or impede the credit of the United States. In Home Savings Bank *v.* Des Moines it was held that a statute of the State of Iowa directing that shares of stock of State banks should be assessed to such banks, and not to the individual shareholders, operated as a tax on the property of the bank, and, therefore, in so far as such property represented Federal securities, violated the immunity of such securities from State taxation.[65]

[64] 188 U. S. 220.

[65] Home Savings Bank *v.* City of Des Moines, 205 U. S. 503; People's Savings Bank *v.* Des Moines, 205 U. S. 503; Des Moines Savings Bank *v.* Des Moines, 205 U. S. 503.

But a tax levied upon shares of stock in the hands of their holders has been uniformly held not to be a tax upon the company nor a tax upon the corporate franchise.[66] It has also been consistently held that a State may tax the shares of a national bank in the hands of the shareholders, but they may not tax them at a higher rate "than is assessed upon other moneyed capital in the hands of individual citizens of such State." The equality in rate of taxation demanded in Section 5219 of the *Revised Statutes of the United States* is not, however, perfect equality. Rather, the section is to be construed as meaning that the system of taxation in a State shall not work a discrimination favorable to its own citizens and corporations and unfavorable to holders of shares in national banks.[67]

CASES INVOLVING INTERSTATE COMMERCE

In one of his decisions Chief Justice Marshall wrote: "The oppressed and degraded state of commerce previous to the adoption of the constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests; and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Congress, indeed, possessed the power of making treaties; but the inability of the federal government to enforce them had become so apparent as to render that power in a great degree useless. Those who felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from

[66] Van Allen *v.* Assessors, 70 U. S. 573; Palmer *v.* McMahon, 133 U. S. 660.

[67] Des Moines National Bank *v.* Fairweather, 263 U. S. 103; First National Bank *v.* Anderson, 269 U. S. 341; *Revised Statutes of the United States,* Sec. 5219; Davenport Bank *v.* Davenport Board of Equalization, 123 U. S. 83.

the feebleness of the federal government, contributed more to the great revolution which introduced the present system, than the deep and general conviction, that commerce ought to be regulated by Congress."[68]

Because of the fact that the Constitution nowhere gives a definition of the term "commerce", it has been left to the judicial branch of the government to determine, by a process of inclusion and exclusion, just what the term really means.

Chief Justice Marshall defined the term as "commercial intercourse between nations, and the parts of nations, in all its branches".[69] By 1903 the term had been interpreted to mean traffic, intercourse, trade, navigation, communication, the transportation of persons, and the transmission of messages by telegraph — indeed, every specie of commercial intercourse.[70]

Navigation is an important part of commerce. All navigable waters are the property of the nation as a whole and not of a single State. Navigable streams used for interstate commerce are under the control of Congress by a grant of power in Article I, Section 3, of the Federal Constitution. Congress possesses the power to regulate these waters only in so far as they are used for interstate or foreign commerce as this use may be threatened by State or private action.

Admiralty jurisdiction must be distinguished from the jurisdiction secured under the commerce clause. Since the decision in the case of the *Genesee Chief*, 53 U. S. 443, it has been an established principle that Federal jurisdiction extends to all navigable waters of the nation whether they be used for interstate commerce or not. But this means

[68] Chief Justice Marshall, in Brown *v.* Maryland, 25 U. S. 419, at 445, 446.

[69] Gibbons *v.* Ogden, 22 U. S. 1, at 189, 190.

[70] Lottery Cases, 188 U. S. 321; Willoughby's *The Constitutional Law of the United States,* Vol. II, Secs. 289–292.

that such jurisdiction extends only in so far as the law of the sea is applicable. So it has been held that in no case may a State court entertain a suit in the nature of an admiralty proceeding, that is, proceedings *in rem* against a vessel.[71]

The city of Keokuk, Iowa, was given the power, by an act of the General Assembly of the State, to construct wharves on the Mississippi River, an artery of interstate trade, and power to fix rates of landing and wharfage of all vessels using this service. A packet company, operating a line of vessels using the city's wharves, objected to paying a tax laid upon them in proportion to the tonnage of the vessels, upon the grounds that such action was a regulation of interstate commerce over which the State had no control. But this contention was overruled by the Supreme Court of the United States in affirming the decision of the State Court.[72]

Having drawn the line between the admiralty jurisdiction of the Federal government and the commerce power of Congress, we may turn to other fields which have been excluded from the term commerce as used in the Federal Constitution. Insurance policies are not a part of commerce within the comprehension of the commerce clause of the Constitution.[73] Neither is manufacturing a part of commerce.[74]

To what extent may a State pass legislation affecting interstate commerce and still not invade the power granted

[71] The Hine *v.* Trevor, 71 U. S. 555.

[72] Packet Co. *v.* Keokuk, 95 U. S. 80.

[73] Paul *v.* Virginia, 75 U. S. 168. There were but two cases appealed from the Iowa Supreme Court by insurance companies. One relied upon full faith and credit, but its petition for a writ of error was denied (Johnson *v.* New York Life Insurance Co., 187 U. S. 491). The action in Scottish Union and National Insurance Co. *v.* Herriott, 187 U. S. 651, was dismissed, per stipulation, upon motion for the insurance company.

[74] Kidd *v.* Pearson, 128 U. S. 1.

to Congress? The power to regulate commerce among the several States was vested in Congress in order to secure equality and freedom in commercial intercourse.[75]

A State may regulate the extent to which a common carrier may by contract relieve itself of its Common Law liabilities. In Chicago, Milwaukee and St. Paul Railway Company *v.* Solan, decided in January, 1898, it was held that such a State statute was valid even as applied to interstate commerce.[76] But on June 29, 1906, Congress passed the Hepburn Act which established a uniform rule of liability. Such action upon the part of the Federal government, in a field in which it was explicitly granted power to regulate, naturally superseded all State legislation.[77]

In the early case of Kidd *v.* Pearson (1888) it was held that a statute of a State which provided: (1) that foreign intoxicating liquors could be imported into the State, and there kept for sale by the importer in the original packages, or for transportation in such packages and sale beyond the limits of the States; and (2) that intoxicating liquors might be manufactured and sold in the State for mechanical, medicinal, culinary, and sacramental purposes, but for no others, not even for the purposes of transportation beyond the limits of the State, did not conflict with Article I, Section eight, of the Constitution of the United States by undertaking to regulate commerce among the States. But if such a statute prohibited the importation in the original package of liquors, the Court ruled, it was void as conflicting with the Federal Constitution.[78]

[75] Railroad Co. *v.* Richmond (1873), 86 U. S. 584.

[76] Chicago, Milwaukee and St. Paul Railroad Co. *v.* Solan, 169 U. S. 133; Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549.

[77] Chicago, Rock Island and Pacific Railroad Co. *v.* Cramer, 232 U. S. 490.

[78] Kidd *v.* Pearson (1888), 128 U. S. 1; Leisy *v.* Hardin (1897), 135 U. S. 100; Rhodes *v.* Iowa, 170 U. S. 412; American Express Co. *v.* Iowa (1904), 196 U. S. 133; Adams Express Co. *v.* Iowa (1904), 196 U. S. 147.

"The term original package is not defined by statute", held Justice Brown in the case of Cook *v.* Marshall County, Iowa, and while it may be impossible to determine its size or shape judicially, under the principle upon which its exemption is founded, the term does not include packages which can not "be commercially transported from one State to another." The original package doctrine has been expanded to include the usual method of transporting goods. It has been held that "where a party, in transporting goods from one State to another, selects an unusual method for the express purpose of evading or defying the police laws of the latter State the commerce clause of the Federal Constitution cannot be invoked as a cover for fraudulent dealing."[79]

In 1890 Congress passed what was known as the Wilson Bill.[80] Its purpose was to assist States with prohibitory laws and communities with prohibition by local option by making intoxicating liquor subject to State law "upon its arrival". In a later case the United States Supreme Court

[79] Cook *v.* Marshall County, Iowa, 196 U. S. 261, at 270, 271. In Leisy *v.* Hardin, quarter barrels, and even one-eighth barrels, and cases of beer were recognized as original packages, while in Schollenberger *v.* Pennsylvania, 171 U. S. 1, oleomargarine transported and sold in packages of ten pounds weight was considered to be an original package, but in Cook *v.* Marshall County, Iowa, 196 U. S. 261, it was held that cigarettes shipped in small packages, as sold over the counter, loose and not tied in bundles or in cartons, could not be considered original packages within the meaning of that term as judicially interpreted. This was similar to the ruling in Austin *v.* Tennessee, 179 U. S. 343.

[80] This bill was introduced by Senator James F. Wilson of Iowa. All "fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."—*United States Statutes at Large,* Vol. XXVI, Ch. 728, p. 313. This law was passed just after the decision in the case of Leisy *v.* Hardin, 135 U. S. 100.

ruled that the goods had not actually arrived until they had been delivered to the consignee, or at any rate until the carrier ceased to hold the goods as a carrier. In line with this reasoning the Court held that moving goods in the station from the platform, on which they were first put upon arrival, to the freight house, was a part of interstate commerce transportation, and goods in such a position were not subject to State regulations.[81]

In the case of Chicago, Milwaukee and St. Paul Ry. Co. *v.* Iowa[82] it was held that the Supreme Court could not, at the instance of the carrier, hold void as interfering with interstate commerce, an order of the State Railway Commission requiring the carrier to forward interstate shipments, after receipt, to intrastate points, in the same equipment, because the cars were vehicles of interstate commerce.

A requirement that rates of fare and freight shall be fixed annually and published is legitimate as an exercise of the police power and it is not, it has been decided, an interference with interstate commerce.[83]

In summing up this section, it is evident from an examination of even such a limited number of cases as arise on direct appeals from the Supreme Court of a single State to the Supreme Court of the United States, that there exists a very close relationship between commerce regulations and the police power of the States.

The State may enact measures under the police power, even though such measures may affect foreign and interstate commerce, subject to the following rules: (1) every measure of State legislation, however legitimate in itself, yields to positive regulations of interstate commerce or

[81] Rhodes *v.* Iowa, 170 U. S. 412.

[82] 233 U. S. 334.

[83] Chicago and Northwestern Railroad Co. *v.* Fuller, 154 U. S. 595, citing Railroad Co. *v.* Fuller, 84 U. S. 560.

foreign commerce by acts of Congress; (2) State statutes discriminating against interstate or foreign commerce are void; (3) the Federal courts determine whether an article is a lawful article of commerce or not; determination by the State judiciary is neither sufficient nor conclusive; (4) a State may not, by statutory enactment, or otherwise, place a burden upon interstate or foreign commerce.

CASES INVOLVING PUBLIC LANDS

In fifty-four cases appealed to the Supreme Court of the United States from the Iowa Supreme Court some dispute over public lands was directly involved. A large percentage of these cases rested upon purely technical grounds, but it is strikingly significant that one-third of the entire appeals from the Iowa tribunal were connected with this problem.

The complexity of the factors involved in the title to the lands in Iowa has been the cause of this large amount of litigation. All claims of foreign governments to the land in what is now Iowa were extinguished by the Louisiana Purchase,[84] but this treaty with France did not extinguish the title the Indians held to the Iowa country. Several Indian treaties further complicated the situation by drafting and re-drafting the Indian boundary lines, and it was not until August 5, 1851, that the control of the lands in Iowa was finally relinquished by the Sioux Indians — the last red men to cede their lands in Iowa.[85] Other complicating factors in the situation were the land grants from the Spanish government, the extensive grants-in-aid to railroads in Iowa, the swamp land grants to the State by the

[84] *United States Statutes at Large*, Vol. VIII, p. 202.

[85] *United States Statutes at Large*, Vol. X, pp. 949, 954. William J. Petersen has a survey of the extinction of the Indian title to Iowa in an article entitled *Some Beginnings in Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XXVIII, pp. 1–54, especially pp. 6–11.

Federal government, and the homestead grants made by the Federal government to the early settlers in the country. These factors were involved in litigation from the first case appealed, that of Levi *v.* Thompson,[86] decided in 1846, to the case of Logan *v.* Davis,[87] decided at the October term of the United States Supreme Court in 1913.

In the case of Marsh *et al. v.* Brooks *et al.*, decided in 1850, the Supreme Court of the United States said: "The patent of 1839, was, *prima facie,* a conclusive title; but by the treaty of 1824, with the Sac and Fox Indians, the land in dispute was admitted by the United States to lie within the territory ceded by the treaty; and the Indian title, such as it was before the treaty, is reserved to the half-breeds. This Indian title consisted of the usufruct and right of occupancy and enjoyment; and, so long as it continued, was superior to and excluded those claiming the reserved lands by patents made subsequent to the ratification of the treaty; they could not disturb the occupants under the Indian title."[88]

In another case decided the same year, the Supreme Court of the United States held that "where the legislature of the Territory of Iowa directed that suits might be instituted against 'the Owners of the Half-breed Lands lying in Lee County,' notice thereof being given through the newspapers, and judgments were recovered in suits so instituted, these judgments were nullities."[89]

The Supreme Court of the United States has held, in substance, that "although the fee to Indian lands is in the United States, and, therefore, that the Indians are not able to grant titles to the same which will be recognized in the

[86] 45 U. S. 17 (1846).

[87] 233 U. S. 613 (1913).

[88] 49 U. S. 223, at 232. The decision was by Justice John Catron.

[89] Webster *v.* Reid, 52 U. S. 437, at 437.

courts of the United States, nevertheless these Indians have certain possessory rights from which they may be dispossessed by the United States only with their consent, and upon compensation therefor.''[90]

Four years after the treaties of Traverse des Sioux and Mendota, whereby the Sioux Indians agreed to withdraw from Iowa, the first railroads entered Iowa. Popular enthusiasm and the need for rapid transportation facilities resulted in many petitions to Congress asking that extensive grants-in-aid of railroads be made to the State. Out of these grants many causes of litigation arose.

The grants of land made to Iowa to aid in the construction of railroads were *in praesenti,* that is, the title to the land, specified in the act of Congress granting the land, was vested in the State when the line of the proposed road should have been definitely fixed.[91] In order that the railroads would be really aided by these grants of land, Congress provided that one hundred and twenty sections of land might be sold in advance of the construction of any part of the proposed road. Other land along the road could be acquired only as designated portions of the railroad were completed.[92]

The fact that a railroad company had surveyed and staked a line upon the ground did not operate to conclude the title to the land: it was necessary that a survey of this proposed line be filed with the Federal government before a patent to the land could be granted.[93] Furthermore, when

[90] Willoughby's *The Constitutional Law of the United States,* Vol. I, p. 400.

[91] Grinnell *v.* Railroad Co., 103 U. S. 739; Iowa Railroad Land Co. *v.* Blumer, 206 U. S. 482; Sioux City and Iowa Falls Town Lot and Land Co. *v.* Griffey, 143 U. S. 32.

[92] *United States Statutes at Large,* Vol. XI, p. 9, as amended in *United States Statutes at Large,* Vol. XIII, p. 95; Railroad Land Co. *v.* Courtright, 88 U. S. 310.

[93] Sioux City and Iowa Falls Town Lots and Land Co. *v.* Griffey, 143 U. S. 32.

the proposed line of a land grant railroad did not satisfy the terms of the granting act, the Land Department could consider such a line as temporary and provisional.[94]

When a corporation receiving the grant-in-aid failed to complete its proposed line, all lands not disposed of by that corporation and included in the original grant reverted to the State acting as a trustee for the United States. The State, in turn, certified this land back to the United States pursuant to a statute of the State of Iowa. All this land was then subject to entry under the preëmption and homestead laws.[95]

A Land Grant Adjustment Act was passed by Congress in 1887 to aid in straightening out the land title situation in the mid-western States. It was held in Logan *v.* Davis that a person was a purchaser in good faith within the meaning of this Adjustment Act if he was in actual ignorance of the defects in the railway company's title and if the transaction was an honest one on his part. The Court also held in this case that a "remedial statute is to be construed liberally so as to effectuate the purpose of the legislative body enacting it".[96]

A second factor complicating the land title situation in Iowa was that of the Federal Swamp Land Act of September 28, 1850, and subsequent amendments thereto.[97] In the first case in this connection reaching the Supreme Court of the United States from the Iowa tribunal, the Court held that the text of the act was clear and needed no interpretation by the Court.[98] There were, however, eight cases in-

[94] Hamblin *v.* Western Land Company, 147 U. S. 531.

[95] Sioux City and St. Paul Railroad Co. *v.* Countryman, 159 U. S. 377; *Laws of Iowa,* 1884, Ch. 71, 1882, Ch. 107.

[96] 233 U. S. 613, at 614.

[97] *United States Statutes at Large,* Vol. IX, p. 519, Vol. X, p. 634, Vol. XI, p. 251.

[98] Railroad Company *v.* Fremont County, 76 U. S. 89.

volving titles based upon these acts after this decision was handed down in 1869 and these acts continued to be causes of court action until as late as 1913.[99]

The swamp and overflowed lands granted to the State of Iowa were subject to disposal by the State.[100] By an act of the General Assembly of the State of Iowa, these lands were granted to the counties in which such lands were situated. No party other than the United States could question this disposal or enforce the conditions of the grant, because the obligations imposed rested, for their fulfillment, upon the good faith of the State of Iowa.[101]

But the United States government did reserve the right to examine, through the Secretary of the Interior, into the selection of swamp lands in Iowa. Furthermore, this officer was given power to allow or disallow selections made by the State. His decision, however, did not prevent a person from objecting, in the courts, to the selection made.[102]

In the case of Rogers Locomotive Machine Works *v.* American Emigrant Company the Supreme Court held that when the Secretary of the Interior certified, in 1858, that certain lands inured to the State of Iowa under the Railroad Act of 1856, he, in effect, decided they were not included in the lands coming under the Swamp Land Act of 1850; if it was believed that these lands passed to the State under the Swamp Lands Act, the State of Iowa, before accepting the lands under the railroad grant, should have served notice of such transfer. The State of Iowa could not take lands under one act, and, while holding them under

[99] Marshall Dental Manufacturing Company *v.* Iowa, 226 U. S. 460.

[100] Mills County *v.* Railroad Companies, 107 U. S. 557.

[101] *Laws of Iowa,* 1853-1854, Ch. 13, 1854-1855, Ch. 110; Mills County *v.* Railroad Companies, 107 U. S. 557.

[102] Buena Vista County *v.* Iowa Falls and Sioux City Railroad Co., 112 U. S. 165.

that act, pass to one of its counties the right to assert an interest in the lands under another and different act.[103]

By the law of Iowa, riparian owners of land bordering on a non-navigable body of water take only to the water's edge.[104] Grants of the United States to the State of Iowa followed the State rule and conveyed no land under an unnavigable lake. The title to the bed of a meandered lake, formerly within the public domain of the United States, for which there had been no patent issued, was declared to reside either in the United States or to have passed to the State under the Swamp Land Act.[105]

A third factor complicating the land titles in Iowa was the legislation dealing with Federal land grants to Iowa for the improvement of the Des Moines River. In the case of Dubuque and Sioux City Ry. Co. *v.* Des Moines Valley Ry. Co. it was held that the grant, in 1846, of lands to the Territory of Iowa for the improvement of the Des Moines River did not extend above the Raccoon Fork because the Indian title to this area had not been extinguished. But this grant, the Court held, excluded these lands from the act of 1856 which granted lands in Iowa to aid in the construction of railroads. The title to this land was vested in the State of Iowa for the purpose of river improvement by an act passed by Congress in 1862. When this last mentioned act took effect the Indians had relinquished all title to the land involved and the title was awarded to the company holding under the grant of 1846 as confirmed by the act of 1862.[106]

Turning from these various grants to aid internal im-

[103] 164 U. S. 559.

[104] Wright *v.* Council Bluffs, 130 Iowa 274; State *v.* Thompson, 134 Iowa 25; State *v.* Jones, 143 Iowa 398.

[105] Marshall Dental Manufacturing Company *v.* Iowa, 226 U. S. 460.

[106] 109 U. S. 329; *United States Statutes at Large,* Vol. IX, p. 77, Vol. XI, p. 9, Vol. XII, p. 543.

provements to the general homestead grants, we find that the mere location of a land warrant did not operate to pass the equitable title from the United States to the individual. A patent for the land could be secured only upon payment of the government price.[107]

CASES INVOLVING POLICE POWER OF THE STATE

One of the fundamental theories upon which this nation was founded was that the individual Commonwealths possessed all powers not given to the Federal government nor denied them by the Federal Constitution. One of the most important of these fields of action is the police power. In American constitutional law this power is considered to be inherent in the States, a power which the States can not contract away. It is one of the residuary powers possessed by the States.[108]

The police power is the power of the State to legislate on behalf of the health, morals, safety, and general welfare of its citizens. It is not surprising, therefore, that such diverse interests as railroads, schools, labor unions, banks, manufacturers, and property rights are regulated by legislative enactments passed under this power and are represented in the cases appealed from the Supreme Court of the State of Iowa to the Supreme Court of the United States.

A statute of the State of Iowa required that foreign corporations of certain specified classes, as a condition of obtaining a permit for the transaction of business in the State of Iowa, should agree not to remove into the Federal courts certain suits which they would, by the laws of the United States, have a right to remove. In the case of

[107] Sargent and Lahr *v.* Herrick and Stevens, 221 U. S. 404; Hussman *v.* Durham, 165 U. S. 144.

[108] Ogg and Ray's *Introduction to American Government* (Third edition), pp. 693, 694.

Barron *v.* Burnside, this law was held to be void because it made the right to a permit dependent upon the surrender of a privilege secured by the Constitution and the laws of the United States. Furthermore, the Federal Court said, the State can not "confer jurisdiction upon the Federal courts, nor restrict the authority given to them by Congress in pursuance of the Constitution."[109]

But States do possess the power to regulate the exercise of certain business within the States. Railroad corporations have been the subject of a great deal of legislation in Iowa. Several of these statutes regulating railroads have been questioned in the courts by the railroads.

In such cases the Federal Supreme Court has consistently held that it is competent for a State to pass laws whose whole object and effect are to make it more certain that railroad corporations shall use the utmost care and diligence in the transportation of passengers and goods, a duty resting upon them by virtue of their employment as common carriers.[110]

In line with this reasoning, the Supreme Court of the United States upheld a law of the State of Iowa which provided that "No contract, receipt, rule, or regulation, shall exempt any corporation engaged in transporting persons or property by railroad from liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation, been made or entered into."[111] But after the passage of the Hepburn Act of 1906 this statute was declared to be non-applicable in the case of Chicago, Rock Island and Pacific Ry. Co. *v.* Cramer.[112] The Federal Supreme Court has also ruled that

109 *Laws of Iowa*, 1886, Ch. 76; Barron *v.* Burnside, 121 U. S. 186, at 198.

110 Chicago, Milwaukee and St. Paul Railroad Co. *v.* Solan, 169 U. S. 133.

111 *Code of 1873*, Sec. 1308; Chicago, Milwaukee and St. Paul Railroad Co. *v.* Solan, 169 U. S. 133.

112 *United States Statutes at Large*, Vol. XXXIV, p. 584; 232 U. S. 490.

the States may pass laws which require railroad companies to fix their rates annually for the transportation of passengers and freight, and may also require them to post a printed copy of such rates in all their stations.[113]

A State may compel a railroad company to reship a consignment of coal in the same cars which were used in interstate commerce, to other points within the State, and such a statute does not invade the power of Congress to regulate interstate commerce. The problem as to whether commerce is interstate or intrastate is determined by the essential character of the commerce and not by mere billings or forms of contract.[114]

Very closely related to the problem of exercising the police power legitimately in the field of railroad legislation is the exercise of that power in the matter of local prohibition. Prior to the passage of the Eighteenth Amendment this field was left within the jurisdiction of the States. So long as State prohibition laws did not impede or obstruct interstate commerce, they were not subject to Federal interpretation unless it could be shown that they deprived some person of his liberty or property without due process of law. Of the seven cases in this field reaching the Supreme Court of the United States from the Iowa tribunal, three were affirmed and four were reversed. In all of the cases reversed the laws were declared void because the State statutes interfered in one way or another with the free passage of commerce from one State to another.[115]

[113] Chicago and Northwestern Railroad Co. *v.* Fuller, 154 U. S. 595; Railroad Company *v.* Fuller, 84 U. S. 560.

[114] Chicago, Milwaukee and St. Paul Railroad Co. *v.* Iowa, 233 U. S. 334.

[115] *Affirmed:* Bartemeyer *v.* Iowa, 85 U. S. 129; Kidd *v.* Pearson, 128 U. S. 1; Eilenbecker *v.* Plymouth County, 134 U. S. 31.

Reversed: Leisy *v.* Hardin, 135 U. S. 100; Rhodes *v.* Iowa, 170 U. S. 412; American Express Co. *v.* Iowa, 196 U. S. 133; Adams Express Co. *v.* Iowa, 196 U. S. 147. These cases have been discussed at greater length under the topic, Interstate Commerce.

The police power of a State may be legitimately exercised in prohibiting the sale of any commodity under the name of ice cream which does not meet certain specifications set forth in a statute. Such a law has been held to be justified as preventing companies from practicing a fraud upon the public — a legitimate exercise of the police power by the State.[116]

In legislating for the general welfare, it is competent for a State to enact measures forbidding labor contracts limiting the liability of a railroad in case of injury to its employees.[117]

A statute of the State of Iowa imposing a tax on the real property whereon cigarettes are sold and upon the owner thereof has been declared to be a legitimate exercise of the police power of the State.[118]

In the case of Bartels *v.* Iowa the Supreme Court of the United States held invalid a law of the State of Iowa forbidding the teaching in any school whatsoever of any modern language, other than English, to any child in the eighth grade or below.[119] This statute was passed under the influence of the "Red Scare" which followed the signing of the Armistice in 1918.

Practically all of these cases are also of interest in connection with the Fourteenth Amendment and Interstate Commerce. It is evident that there exists a very close relationship between these sections. In the exercise of this inherent and reserved right to enact statutes in behalf of the general welfare, the State must not violate rights guaranteed to the individual by the Federal Constitution.

[116] Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153; Sanders Ice Cream Co. *v.* Iowa, 242 U. S. 153; Traer *v.* Clews, 115 U. S. 528.

[117] Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549.

[118] Hodge *v.* Muscatine County, Iowa, 196 U. S. 276; Cook *v.* Marshall County, Iowa, 196 U. S. 261.

[119] 262 U. S. 404; *Laws of Iowa,* 1919, Ch. 198.

When Congress enacts a measure in a field of delegated powers, such action supersedes all State legislation upon the subject, and the States are restrained from passing further laws affecting this field of action.

These principles are well illustrated in the field of bank legislation. A large number of cases in this connection have been appealed from the Iowa Court to the Supreme Court of the United States.

The Constitution has conferred upon the Federal government the power to borrow money upon the credit of the United States and this power can not be burdened or impeded by the action of a State.[120] Furthermore, Congress having the power to create a system of national banks, is the sole judge as to the extent of the powers to be conferred upon such institutions: the power to regulate and control the operation of national banks belongs solely to Congress. When Congress has provided regulations governing the conduct of officials of national banks the State possesses no power to enact legislation in conflict with these Federal laws.[121]

Despite these restrictions upon the actions of the States in the field of banking regulations, the State does possess power to enact laws for the purpose of protecting the interests of its citizens in regard to fraud in banking transactions.[122] Laws of the State prohibiting a usurious rate of interest have been deemed a rightful exercise of the police power of the State of Iowa. It has also been held that a State may, under the police power of the State, regulate bankruptcy proceedings.[123]

120 Home Savings Bank *v.* City of Des Moines, 205 U. S. 503; People's Savings Bank *v.* City of Des Moines, 205 U. S. 503; Des Moines Savings Bank *v.* City of Des Moines, 205 U. S. 503.

121 Easton *v.* Iowa, 188 U. S. 220.

122 Easton *v.* Iowa, 188 U. S. 220.

123 Talbot *v.* Sioux City First National Bank, 185 U. S. 172; Talbot *v.* Sioux National Bank, 185 U. S. 172; Traer *v.* Clews, 115 U. S. 528.

RESTRICTIONS ON THE TAXING POWER OF THE STATE

Probably no other power possessed by the State is as comprehensive as the power to tax. Indeed, the very existence of governmental activity is dependent upon this power. Likewise, of all the powers possessed by a State that of taxation is most liable to abuse. "Given a purpose or object for which taxation may be lawfully used and the extent of its exercise is in its very nature unlimited. . . . The power to tax is . . . . the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people."[124]

The power of the State to tax extends to all objects within the sovereignty of the State. But this power to tax is limited to persons, property, and business within the State and it can not reach the person of a non-resident. A State tax for special improvements can not be made a personal liability upon a non-resident although it may be made a first lien upon his property within the State.[125]

A State is also unable to tax public lands, which have been located under warrant, until the equitable title has passed from the United States. Such lands are not within the jurisdiction of the States. Even though the lands be within the jurisdiction of a State, that State is not given power to make discriminations in taxing such lands. Where the only discrimination made was between improved and unimproved lands, however, without regard to the residence of the owners, the Supreme Court held such action was not in violation of the above stated principle. The fact that more improved land was held by residents than by non-residents of the State could not be held to be sufficient grounds for declaring the tax law invalid.[126]

[124] Loan Association *v.* Topeka, 87 U. S. 655, at 663.

[125] Dewey *v.* Des Moines, 173 U. S. 193.

[126] Sargent and Lahr *v.* Herrick and Stevens, 221 U. S. 404; Hussman *v.* Durham, 165 U. S. 144; Beeson *v.* Johns, 124 U. S. 56.

A State may properly make a distinction between retail and wholesale dealers when levying a tax upon the sale of cigarettes in the State.[127] A tax to carry on a business may be made a lien upon the property where the business is carried on. Statutory provisions of the State of Iowa placing such a burden upon property where cigarettes are sold was declared to be a valid exercise of the taxing power. The owner of the property used for such purposes was presumed to know the business carried on there and to have leased the property with the knowledge that it might be encumbered by a tax on such business.[128]

The power of the State to tax national banks and shares of stock of banks holding Federal bonds as capital was discussed in the chapter dealing with Federal officers and departments and needs no further consideration at this point. Suffice it to say, however, that the State is unable to impair, by taxation, the power of the Federal government to borrow money upon the credit of the United States.[129]

Finally, the power of the State to tax may be restricted by treaties between the United States and foreign nations.[130]

THE BILL OF RIGHTS

The first eight amendments to the Constitution of the United States have reference only to powers exercised by the Federal government and not to those exercised by the States. This general principle of American constitutional law was relied upon by the Supreme Court of the United States in affirming a decision of the Iowa Supreme Court which upheld a statute of the State of Iowa providing that a violation of an injunction restraining a person from sell-

127 Cook *v.* Marshall County, Iowa, 196 U. S. 261.

128 Hodge *v.* Muscatine County, Iowa, 196 U. S. 276. This tax is also discussed under the police power.

129 Home Savings Bank *v.* City of Des Moines, 205 U. S. 503.

130 Neilsen *v.* Johnson, 279 U. S. 47.

ing intoxicating liquors could be punished as contempt of court by fine or imprisonment or both.[131]

Punishment for contempt of court violates neither the Fifth, the Sixth, nor the Eighth Amendment to the Federal Constitution. This position was based upon the reasoning, given by Justice Samuel F. Miller on behalf of the Court, in which he said: "If it has ever been understood that proceedings according to the common law for contempt of court have been subject to the right of trial by jury, we have been unable to find any instance of it. It has always been one of the attributes — one of the powers necessarily incident to a court of justice — that it should have this power of vindicating its dignity, of enforcing its orders, of protecting itself from insult, without the necessity of calling upon a jury to assist it in the exercise of this power." Right of trial by jury, as set forth in Article III, Section 2 of the Federal Constitution, likewise relates only to the judicial power of the United States.[132]

The case of Thomas *v.* Iowa, twice appealed to the Supreme Court of the United States, turned rather upon technical grounds of appeal than upon the point under consideration here.[133]

THE FOURTEENTH AMENDMENT AND DUE PROCESS

The Fourteenth Amendment is possibly the most important of all the amendments to the Federal Constitution

[131] Eilenbecker *v.* Plymouth County, 134 U. S. 31. The law in question was the State Prohibition Act.— *Code of 1873*, Secs. 1523–1559.

[132] Eilenbecker *v.* Plymouth County, 134 U. S. 31, at 36. But this power to issue orders compelling or prohibiting certain actions is not a power possessed alone by the courts, for a State may, so long as it acts within its own jurisdiction and not in hostility to any Federal regulation, invest its Railroad Commission with power to issue mandatory injunctions and such orders are not unconstitutional as depriving a railroad of its property without due process of law.— See Chicago, Milwaukee and St. Paul Railroad Co. *v.* Iowa, 233 U. S. 334.

[133] 209 U. S. 258, at 261, 262; 215 U. S. 591. The question, nicely evaded,

from the standpoint of application in the courts. Its provisions relate to citizenship, the privileges and immunities of citizens, due process of law, the apportionment of Representatives in Congress among the States, the exclusion from office of persons who, having previously sworn to support the United States Constitution, have taken part in a rebellion, the validation of debts incurred by the government during the Civil War, the nullification of debts incurred in aid of the rebellion, and the power of Congress to enforce the provisions of the amendment by appropriate legislation.

In a study of the cases appealed from the Iowa tribunal to the Federal Supreme Court, it is not surprising to find that approximately ten per cent of such appeals have been based upon various clauses of the Fourteenth Amendment.[134] Over half of these cases based their appeals directly upon the "due process" clause, and of this group

is stated by the Court in the following terms: "The count of the indictment upon which the verdict was returned alleged that the accused deliberately, premeditatively, and with malice aforethought murdered one Mabel Schofield by administering poison to her. The judge presiding at the trial instructed the jury in substance that if they were satisfied that the accused administered poison to Mabel Schofield, unlawfully and with bad intent, and that she died from the poison thus administered, then they should find him guilty of murder in the first degree, although there was no specific intent to kill. This instruction was approved by the Supreme Court as a correct expression of the law of the State. With that aspect of the question we have nothing to do. But it is assigned as error and argued here that this instruction in effect withdrew from the jury the question of the degree of the murder, and to that extent denied the plaintiff in error a trial by jury, and therefore denied him due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. Without intimating that upon this statement any Federal question was presented, we must first consider whether the question was raised in the court below in such a manner as to give us jurisdiction to consider it." The court then proceeded to deny the writ of error upon the grounds that the Federal question, if any existed, had not been raised prior to the petition for a writ of error.

134 Fifteen cases out of a total of one hundred and seventy-three were based squarely upon the Fourteenth Amendment. This number is exclusive of the cases involving the police powers of the State, nearly all of which touched upon some phase of the Fourteenth Amendment.

seven were appealed by corporations or business concerns.[135] These cases also involved the police power of the State of Iowa, interference with interstate commerce, and social legislation, as well as personal liberties and privileges of the citizens of the United States.

No final or complete definition of due process of law has been given by the Supreme Court of the United States. "Few phases of the law are so elusive of exact apprehension as this. . . . This court has always declined to give a comprehensive definition of it, and has preferred that its full meaning should be gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise."[136] An examination of the cases reaching the Supreme Court from the Iowa courts will illustrate some aspects of the phrase "due process of law".

The first case appealed under the due process clause was rejected upon grounds of jurisdiction and hence we find no discussion of the phrase, "due process", in the decision.[137]

In the case of Kidd *v.* Pearson,[138] it was held that a State law prohibiting or restricting the manufacture of intoxicating liquors within a State and providing regulations for the abatement, as a common nuisance, of the property

[135] Cases appealed depending directly upon the Fourteenth Amendment were: Bartemeyer *v.* Iowa, 85 U. S. 129; Kidd *v.* Pearson, 128 U. S. 1; Eilenbecker *v.* Plymouth County, 134 U. S. 31; Iowa Central Ry. Co. *v.* Iowa, 160 U. S. 389; Dewey *v.* Des Moines, 173 U. S. 193; Hodge *v.* Muscatine County, Iowa, 196 U. S. 276; Thomas *v.* Iowa, 209 U. S. 258; Thomas *v.* Iowa, 215 U. S. 591; Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549; Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 223 U. S. 655; Chicago, Milwaukee, and Saint Paul Ry. Co. *v.* Iowa, 233 U. S. 334; Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153; Sanders Ice Cream Co. *v.* Iowa, 242 U. S. 153; Breiholz *v.* Board of Supervisors, 257 U. S. 118; and Bartels *v.* Iowa, 262 U. S. 404.

[136] Twining *v.* New Jersey, 211 U. S. 78, at 99, 100.

[137] This was the case of Bartemeyer *v.* Iowa, 85 U. S. 129.

[138] 128 U. S. 1.

used for such forbidden purposes did not deprive any person of property without due process of law, nor did such action abridge any liberty or immunity of a citizen of the United States within the meaning of the Fourteenth Amendment. This principle was repeated the following year in another case.[139]

The Fourteenth Amendment to the Constitution in no way undertakes to control the power of the State to determine by what process legal rights may be asserted, or legal obligations enforced, provided the method of procedure adopted for this purpose gives reasonable notice, and affords a fair opportunity to be heard, before the issues are decided. It is no denial of a right protected by the Constitution of the United States to refuse a jury trial in a civil cause pending in a State court even though it be clearly erroneous to construe the laws of the State as justifying the refusal.[140]

And it has been held that the appointment of a receiver, to act in the interests of the stockholders of a corporation, without notice to the petitioner in action against the corporation did not deny the petitioner due process of law within the meaning of the Fourteenth Amendment.[141] So it is evident that in at least one case, the right of notice could be dispensed with and the protection of due process of law was not held to be violated by such action.

It is impossible for a State to enforce against a non-resident an assessment upon land for special improvements by an act which makes the assessment a personal liability upon the owner. Such action would amount to taking his property without due process of law.[142]

139 Eilenbecker *v.* Plymouth County, Iowa, 134 U. S. 31.

140 Iowa Central Railroad Co. *v.* Iowa, 160 U. S. 389.

141 Great Western Telegraph Co. *v.* Purdy, 162 U. S. 329.

142 Dewey *v.* Des Moines, 173 U. S. 193. See also Willoughby's *The Constitutional Law of the United States,* Vol. II, p. 944.

If a taxpayer is given an opportunity to test the validity of a tax at any time before it is made final, either before a board having quasi-judicial powers or a tribunal provided by the State for that purpose, and does not do so, the subsequent sale of his property for refusal to pay the original tax does not deny him due process of law.[143]

In the case of Thomas *v.* Iowa, hereinbefore mentioned, the Supreme Court, while holding that it could not take the case under consideration for technical reasons, stated that it was not concerned with an interpretation of a State statute providing for a directed verdict, as this was a State question to be left to the decision of the State Supreme Court. This phase of due process of law, then, resides with each State.

A statute of a State, prohibiting contracts between the railroads and their employees limiting the right to recover damages at Common Law is not unconstitutional under the due process clause of the Fourteenth Amendment. Nor does such a statute necessarily deny equal protection of the law because it is limited to a certain class of railway employees.[144]

The property of a public utility company is not taken without due process of law by a city ordinance reducing the rates to be charged (the original contract being in the form of a city ordinance passed by the council and accepted by the company) if fair treatment is accorded the company as to the value of its property and its net earnings.[145] Neither is the property of a railroad taken without due process of law when, by means of an injunction, the State Railway Commission forces a railroad to accept, for further reshipment over its lines to points within the

[143] Hodge *v.* Muscatine County, Iowa, 196 U. S. 276.

[144] Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549.

[145] Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 223 U. S. 655.

State, cars already loaded and in suitable condition for such reshipment.[146]

It is possible for the State to regulate the ingredients, within certain reasonable limits, of ice cream and to prevent the sale of any article under that name which does not meet the requirements of the State statute. Even though such a statute might conceivably force a concern out of business, thus depriving the owners of their property, such a law would not, the United States Supreme Court has held, violate the due process clause of the Constitution.[147]

A State law under which a drainage district has been established, the ditches constructed, and the cost assessed upon the landowners in proportion to the benefits, all after due notice and opportunity to be heard, does not violate their right to due process in empowering a supervising board, *without further notice,* to determine the necessity and extent of cleaning and repairs, and to assess the cost upon the landowners in proportion to the original assessments.[148]

It has been held that as long as the fundamental rights of the litigants to a fair trial, as regards notice, opportunity to produce evidence, and adequate relief, are protected, the specific requirements of the Constitution are not violated. Cases appealed from the Iowa Supreme Court very clearly point out that due process of law is process according to the "law of the land" in each State, and a process which derives its authority from the inherent and reserved powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. The greatest security for such principles is found in the

146 Chicago, Milwaukee and St. Paul Railroad Co. *v.* Iowa, 233 U. S. 334.

147 Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153; Sanders Ice Cream Co. *v.* Iowa, 242 U. S. 153.

148 Breiholz *v.* Board of Supervisors, 257 U. S. 118.

right of the people to make their own laws and to alter them at their pleasure. The Federal Supreme Court has power over a State law only to determine whether it is in conflict with the supreme law of the land, and not to state what that law is or should be.

OBLIGATION OF CONTRACTS

In addition to being prohibited by the Fourteenth Amendment from depriving any person of life, liberty, or property without due process of law, the States are, by Article I, Section 10, of the Constitution, expressly denied the power to pass any law impairing the obligation of contracts.

The action of Lee County, Iowa, in voting to issue bonds to buy stock in two railroads was contested by a taxpayer and the State Supreme Court held the election irregular and the bonds void. But the legislative body of the State passed a legalizing act, and a tax to pay for the bonds was levied by the county. Again a taxpayer objected, but the Supreme Court of the State held that the General Assembly had the power to pass such a legalizing act. A third case was taken to the State Court and this time the Iowa tribunal reversed its former decisions and declared the bonds void. The Supreme Court of the United States, upon appeal, declared the bonds valid, but stated that bonds executed after the last decision of the Iowa court would be controlled by it. The change in judicial decisions could not be allowed to render invalid contracts which, when made, were valid.[149]

Contracts valid when made, continue valid during the term covered by the agreement and are capable of enforcement, so long, at least, as peace lasts between the governments of the contracting parties, notwithstanding changes

[149] Thomson *v.* Lee County, 70 U. S. 327.

in conditions of business.[150] So it has been repeatedly held that no question can be raised as to the impairment of a contract when a company accepts its corporate powers subject to the reserved power of the State to modify its Constitution and to impose additional burdens upon the exercise of the franchise.[151]

The legislative body may modify or change existing remedies, or prescribe new modes of procedure, without impairing the obligation of contracts, providing a substantial remedy remains or is given, by means of which a party can enforce its rights under the contract. Legislative action changing the original contract requiring a city street railway company to pave between the rails so as to force that company to pave an additional foot on each side of the rails, as well as between the rails, was held not to be an impairment of the original contract.[152] An ordinance passed by a city council, lessening the rates to be charged for gas, was also not considered an impairment of the contract because the company took the franchise under the reserved right of the State, through its subordinate unit, the municipality, to modify the franchise in this matter. A substantial remedy was left to the company by providing for appeal to the courts of the State for enforcement of the contract.[153]

A State may provide that no contract may exempt any railroad corporation from the liability of a common carrier of passengers which would have existed if no contract had been made. It has been held that such a statute, passed by the General Assembly of the State of Iowa, applied to

[150] For cases on this point see Railroads *v.* Richmond, 82 U. S. 3; Railroad *v.* Richmond, 86 U. S. 584.

[151] Sioux City Street Railway Co. *v.* Sioux City, 138 U. S. 98; Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 223 U. S. 655.

[152] Sioux City Street Railway Co. *v.* Sioux City, 138 U. S. 98.

[153] Cedar Rapids Gas Light Co. *v.* Cedar Rapids, 223 U. S. 655.

employees of the railway as well as to the shippers and passengers.[154]

Marriage, though often properly described as a contract, is not a contract in the sense that its obligations prescribed by law are protected from changes by the State legislatures.[155]

Lastly, the impairment of contract obligations forbidden by Article I, Section 10, of the Federal Constitution is impairment by legislative action. In the case of Fleming *v.* Fleming, Chief Justice William H. Taft stated that the proposition that judicial impairment was included had been so frequently denied that it could not be used to support a writ of error to the State Supreme Court.[156]

SUMMARY

"The importance of the judiciary in political construction", Henry Sidgwick has written, "is rather profound than prominent. On the one hand, in popular discussion of forms and changes of Government, the judicial organ often drops out of sight; on the other hand, in determining a nation's rank in political civilization, no test is more decisive than the degree in which justice, as defined by the law, is actually realized in its judicial administration, both as between one private citizen and another, and as between private citizens and members of the government."[157] Certainly no man can over-estimate the importance of the mechanism of justice.

[154] Chicago, Milwaukee and St. Paul Railroad Co. *v.* Solan, 169 U. S. 133; Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549; Chicago, Rock Island and Pacific Railroad Co. *v.* Cramer, 323 U. S. 490.

[155] Maynard *v.* Hill, 125 U. S. 190. An Iowa case in which this statement is alluded to is that of Fleming *v.* Fleming, 264 U. S. 29.

[156] 264 U. S. 29, at 31, upon the authority of Tidal Oil Co. *v.* Flanagan, 263 U. S. 444, and cases there cited.

[157] Sidgwick's *Elements of Politics,* p. 481.

A total of one hundred and seventy-three cases have reached the Supreme Court of the United States upon direct appeal from the Supreme Court of the Territory and State of Iowa since 1845. An alphabetical list of these cases is given below:

Adams County *v.* Burlington and Missouri Railroad Co., 112 U. S. 123 (1884), Justice Waite, dismissing 55 Iowa 94 (1880)

Adams Express Co. *v.* Iowa, 196 U. S. 147 (1904), Justice White, reversing 95 N. W. 1129

American Express Co. *v.* Iowa, 196 U. S. 133 (1904), Justice White, reversing 118 Iowa 447 (1902)

Barrett *v.* Holmes, 102 U. S. 651 (1880), Justice Woods, affirming 48 Iowa 103 (1878)

Barron *v.* Burnside, 121 U. S. 186 (1886), Justice Blatchford, reversing 70 Iowa 362 (1886)

Bartels *v.* Iowa, 262 U. S. 404 (1922), Justice McReynolds, reversing 191 Iowa 1060 (1921)

Bartemeyer *v.* Iowa, 81 U. S. 26 (1871), Justice Miller, dismissing 31 Iowa 601 (1871)

Bartemeyer *v.* Iowa, 85 U. S. 129 (1873), Justice Miller, affirming 31 Iowa 601 (1871)

Beeson *v.* Johns, 124 U. S. 56 (1887), Justice Miller, affirming 59 Iowa 166 (1882)

Berger *v.* Tracy, 215 U. S. 594 (1909), per curiam, dismissing 135 Iowa 597 (1907)

Bevins *v.* Iowa, 282 U. S. 815 (1930), per curiam, dismissing 230 U. S. 865 (1928)

Bonn *v.* Thrasher, 140 U. S. 673 (1890), per curiam, dismissing 70 Iowa 752 (1886)

Breiholz *et al. v.* Board of Supervisors of Pocahontas County, 257 U. S. 118 (1921), Justice Clarke, affirming 186 Iowa 1147 (1919)

Brown *v.* Powers (2 cases), 226 U. S. 620, 621 (1912), per curiam, dismissing 146 Iowa 729 (1910)

Buena Vista County *v.* Iowa Falls and Sioux City Railroad Co., 112 U. S. 165 (1884), Justice Mathews, affirming 55 Iowa 157 (1880)

Bullard *v.* Des Moines and Fort Dodge Railroad Co., 122 U. S. 167 (1886), Justice Miller, affirming 62 Iowa 382 (1883)

Burlington and Missouri River Railroad Co. *v.* Mills County, 154 U. S. 568 (1870), Justice Nelson, affirming 22 Iowa 91 (1867)

Burlington Gas Light Co. *v.* Burlington, Cedar Rapids and Northern Railway Co., 165 U. S. 370 (1896), Justice Brewer, affirming 91 Iowa 470 (1894)

Bush *v.* Marshall and Whitesides, 47 U. S. 284 (1848), Justice Grier, affirming 1 Morris 275 (1844)

Cedar Rapids Gas Light Co. *v.* City of Cedar Rapids, 223 U. S. 655 (1911), Justice Holmes, affirming 144 Iowa 426 (1909)

Cedar Rapids and Missouri River Railroad Co. *v.* Boyd, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Brooks, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Cutler, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Dundon, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Greenstreet, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Herring, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Iddings, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Jewell, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Lake, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids and Missouri River Railroad Co. *v.* Wooster, 110 U. S. 27 (1883), Justice Miller, affirming 52 Iowa 687 (1879)

Cedar Rapids Water Co. *v.* City of Cedar Rapids, 199 U. S. 600 (1905), per curiam, dismissing 118 Iowa 234 (1902)

Central State Bank *v.* Stewart, 283 U. S. 813 (1931), per curiam, granting petition of writ of certiorari, 232 N. W. 445 (1929)

Chapman *v.* Goodnow's Administrator, 123 U. S. 527 (1887), Justice Waite, affirming 65 Iowa 201 (1884)

Chapman *v.* Goodnow's Administrator, 123 U. S. 540 (1887), Justice Waite, affirming 63 Iowa 569 and 64 Iowa 602 (1884)

Chicago, Burlington and Quincy Railway Co. *v.* Hamilton, 223 U. S. 743 (1911), per curiam, dismissing 145 Iowa 431 (1910)

Chicago, Burlington and Quincy Railroad Co. *v.* McGuire, 219 U. S. 549 (1910), Justice Hughes, affirming 138 Iowa 664 (1908)

Chicago, Great Western Railroad Co. *v.* Basham, 249 U. S. 164 (1918), Justice Pitney, dismissing 178 Iowa 998 (1916)

Chicago, Milwaukee and St. Paul Railway Co. *v.* Solan, 169 U. S. 133 (1897), Justice Gray, affirming 95 Iowa 260 (1895)

Chicago, Milwaukee and St. Paul Railroad Co. *v.* Iowa, 233

U. S. 334 (1913), Justice Hughes affirming 152 Iowa 317 (1911)

Chicago and Northwestern Railway Co. *v.* Fuller, 154 U. S. 595 (1873), Justice Swayne, affirming 31 Iowa 187, at 211 (1871)

Chicago, Rock Island and Pacific Railway Co. *v.* Bradbury, 223 U. S. 711 (1911), per curiam, dismissing 149 Iowa 51 (1910)

Chicago, Rock Island and Pacific Railway Co. *v.* Cramer, 232 U. S. 490 (1913), Justice Lamar, reversing 153 Iowa 103 (1911)

Chicago, Rock Island and Pacific Railway Co. *v.* Mumford, 203 U. S. 601 (1906), per curiam

Chicago, Rock Island and Pacific Railway Co. *v.* Vander Zyl, 266 U. S. 636 (1924), per curiam, dismissing 195 Iowa 901 (1923)

Commercial National Bank of Council Bluffs *v.* Burke, 275 U, S. 502 (1927), per curiam, dismissing 201 Iowa 994 (1926)

Cook *v.* Marshall County, Iowa, 196 U. S. 261 (1904), Justice Brown, affirming 119 Iowa 384 (1903)

Coon Rapids National Bank *v.* Lee, 239 U. S. 659 (1915), per curiam, dismissing 166 Iowa 242 (1914)

Davenport Bank *v.* Davenport Board of Equalization, 123 U. S. 83 (1887), Justice Miller, affirming 64 Iowa 140 (1884)

Des Moines National Bank *v.* Fairweather, 263 U. S. 103 (1923), Justice Van Devanter, affirming 191 Iowa 1240 (1921)

Des Moines Navigation and Railroad Co. *v.* Iowa Homestead Co., 123 U. S. 552 (1887), Justice Waite, reversing 63 Iowa 285 (1884)

Des Moines Savings Bank *v.* City of Des Moines, 205 U. S. 503 (1906), Justice Moody, reversing 101 N. W. 867

Dewey *v.* Des Moines, 173 U. S. 193 (1898), Justice Peckham, reversing 101 Iowa 416 (1897)

Dubuque and Sioux City Railroad Co. *v.* Des Moines Valley Railroad Co., 109 U. S. 329 (1883), Justice Waite affirming 54 Iowa (1880)

Dubuque and Sioux City Railroad Co. *v.* Snell, 159 U. S. 252 (1895), per curiam, dismissing 88 Iowa 442 (1893)

Dull *v.* Blackman, 169 U. S. 243 (1897), Justice Brewer, affirming 96 Iowa 541 (1896)

Duus *v.* Brown, 245 U. S. 176 (1917); Justice White, affirming 168 Iowa 511 (1915)

Easton *v.* Iowa, 188 U. S. 220 (1902), Justice Shiras, reversing 113 Iowa 516 (1901)

Eilenbecker *v.* District Court of Plymouth County, Iowa, 134 U. S. 31 (1889), Justice Miller, affirming 69 Iowa 240 (1886)

Etheridge *v.* Sperry, 139 U. S. 266 (1890), Justice Brewer, affirming 70 Iowa 27 (1886)

First National Bank *v.* Estherville, 215 U. S. 341 (1909), Justice Fuller, dismissing 136 Iowa 203 (1906)

First National Bank of Guthrie Center *v.* Anderson, 269 U. S. 341 (1925), Justice Van Devanter, reversing 196 Iowa 587 (1923)

Fleming *et al. v.* Fleming, 264 U. S. 29 (1923), Justice Taft, dismissing 194 Iowa 71 (1922)

Florang *v.* Craig, 140 U. S. 680 (1890), per curiam, dismissing 71 Iowa 761 (1887)

Fuller *v.* American Emigrant Co., 149 U. S. 774 (1892), per curiam, dismissing 83 Iowa 599 (1891)

Gear *v.* Parish, 46 U. S. 168 (1847), Justice Nelson, reversing 1 Pinney (Wis.) 261

Goodell *v.* Kriechbaum, 131 U. S. 437 (1888), per curiam, reversing 70 Iowa 362 (1886)

Gray *v.* Coan, 154 U. S. 589 (1871), Justice Chase, dismissing 30 Iowa 536 (1870)

Great Western Telegraph Co. *v.* Purdy, 162 U. S. 329 (1895), Justice Gray, affirming 83 Iowa 430 (1891)
Grinnell *v.* Railroad Co., 103 U. S. 739 (1880), Justice Miller affirming 51 Iowa 476 (1879)
Gustaveson *v.* Iowa, 227 U. S. 681 (1912), per curiam
Hallagan *v.* Dowell, 246 U. S. 678 (1917), per curiam, dismissing 179 Iowa 172 (1917)
Hamblin *v.* Western Land Co., 147 U. S. 531 (1892), Justice Brewer, affirming 79 Iowa 539 (1890)
Hamill *v.* Schlitz Brewing Co., 245 U. S. 676 (1917), per curiam, dismissing 165 Iowa 266 (1914)
The Hine *v.* Trevor, 71 U. S. 555 (1866), Justice Miller, reversing 17 Iowa 349 (1864)
Hodge *v.* Muscatine County, Iowa, 196 U. S. 276 (1904), Justice Brown, affirming 121 Iowa 482 (1903)
Home Savings Bank *v.* City of Des Moines, 205 U. S. 503 (1906), Justice Moody, reversing 101 N. W. 867
Hubbell *v.* Higgins, 227 U. S. 684 (1912), per curiam, dismissing 148 Iowa 36 (1910)
Hussman *v.* Durham, 165 U. S. 144 (1896), Justice Brewer, affirming 88 Iowa 29 (1893)
Hurley *v.* Street, 81 U. S. 85 (1871), Justice Chase, dismissing 29 Iowa 429 (1870)
Hutchinson Ice Cream Co. *v.* Iowa, 242 U. S. 153 (1916), Justice Brandeis, affirming 168 Iowa 1 (1914)
Illinois Central Railroad Co. *v.* Pelton, 239 U. S. 655 (1915), per curiam, dismissing 171 Iowa 91 (1915)
Inter-Urban Railway Co. *v.* Mrs. Fred Smith, 253 U. S. 499 (1919), per curiam, dismissing 186 Iowa 1045 (1919)
Iowa *v.* Rood, 187 U. S. 87 (1902), Justice Brown, dismissing 109 Iowa 5 (1899)
Iowa Central Railway Co. *v.* Bacon, 236 U. S. 305 (1914), Justice Day, affirming 157 Iowa 493 (1912)
Iowa Central Railway Co. *v.* Iowa, 160 U. S. 389 (1895), Justice White, dismissing 71 Iowa 410 (1887)

Iowa-Des Moines National Bank *v.* Stewart, 283 U. S. 815 (1931), per curiam, granting petition for writ of certiorari, 232 N. W. 445 (1929)

Iowa-Des Moines National Bank *v.* Stewart, 284 U. S. 239 (1931), Justice Brandeis, reversing 232 N. W. 445 (1929)

Iowa Falls and Sioux City Railroad Co. *v.* Beck, 136 U. S. 639 (1889), per curiam, dismissing 67 Iowa 421 (1885)

Iowa Falls and Sioux City Railroad Co. *v.* Nichols (2 cases), 136 U. S. 639 (1889), per curiam, dismissing 67 Iowa 421 (1885)

Iowa Falls and Sioux City Railroad Co. *v.* Wentworth, 136 U. S. 639 (1889), per curiam, dismissing 67 Iowa 421 (1885)

Iowa Railroad Land Co. *v.* Blumer, 206 U. S. 482 (1906), Justice Day, affirming 129 Iowa 32 (1905)

Johnson *v.* New York Life Insurance Co., 187 U. S. 491 (1902), Justice Brown, dismissing 109 Iowa 708 (1899)

Jones *v.* Mould *et al.*, 231 U. S. 765 (1913), per curiam, dismissing 138 Iowa 683 (1908)

Judge *v.* Powers *et al.*, 241 U. S. 686 (1915), per curiam, dismissing 156 Iowa 251 (1912)

Kidd *v.* Pearson, 128 U. S. 1 (1888), Justice Lamar, affirming 72 Iowa 348 (1887)

Kitteringham *v.* Blair Town Lot and Land Co., 145 U. S. 643 (1891), per curiam, dismissing 73 Iowa 421 (1887)

Leicht *v.* McLane, 136 U. S. 641 (1889), per curiam, dismissing 70 Iowa 752 (1886)

Leisy *v.* Hardin, 135 U. S. 100 (1889), Justice Fuller, reversing 78 Iowa 286 (1889)

Levi *v.* Thompson *et al.*, 45 U. S. 17 (1846), Justice Wayne, affirming 1 Morris 235 (1843)

Litchfield *v.* Goodnow's Administrator (2 cases), 123 U. S. 527 (1887), Justice Waite, affirming 67 Iowa 691 (1885)

Litchfield *v.* Goodnow's Administrator, 123 U. S. 549 (1887), Justice Waite, affirming 62 Iowa 221 (1883)

Loftus *v.* Iowa, 283 U. S. 809 (1931), per curiam, dismissing 232 N. W. 412 (1929)

Logan *v.* Davis, 233 U. S. 613 (1913), Justice Van Devanter, reversing 147 Iowa 441 (1910)

McCormick *v.* Hayes, 159 U. S. 332 (1895), Justice Harlan, reversing 83 Iowa 89 (1891)

McLaughlin Brothers *v.* Hallowell, 228 U. S. 278 (1912), Justice Pitney, dismissing 121 N. W. 1039

McNulty *v.* Batty *et al.*, 51 U. S. 72 (1850), Justice Nelson, dismissing 2 Pinney (Wis.) 53

Majestic Theater Co. *v.* City of Cedar Rapids, 232 U. S. 730 (1913), per curiam, dismissing 153 Iowa 219 (1911)

Marsh *et al. v.* Brooks *et al.*, 49 U. S. 223 (1850), Justice Catron, reversing 2 Greene (Iowa) 94 (1849)

Marshall Dental Manufacturing Co. *v.* Iowa, 226 U. S. 460 (1912), Justice Holmes, affirming 143 Iowa 398 (1909)

Melendy *v.* Rice, 94 U. S. 796 (1876), Justice Waite, affirming 41 Iowa 395 (1875)

Mengel *v.* Mengel, 218 U. S. 694 (1910), per curiam, dismissing 145 Iowa 737 (1909)

Mengel *v.* Mengel, 227 U. S. 675 (1912), per curiam, dismissing 157 Iowa 630 (1912)

Messenger *v.* Mason, 77 U. S. 507 (1870), Justice Nelson, dismissing 17 Iowa 261 (1864)

Meyer *v.* Construction Co., 100 U. S. 457 (1879), Justice Waite, reversing 46 Iowa 406 (1877)

Midland Linseed Co. *v.* American Liquid Fireproofing Co., 254 U. S. 610 (1920), per curiam, dismissing 183 Iowa 1046 (1918)

Mills County, Iowa *v.* Railroad Co., 107 U. S. 557 (1882), Justice Bradley, affirming 47 Iowa 66 (1877)

Miners' Bank of Dubuque *v.* United States, *ex rel.* Grant, 46 U. S. 213 (1847), Justice Taney, dismissing 1 Morris 482 (1846)

Miners' Bank of Dubuque *v.* Iowa, 53 U. S. 1 (1851), Justice Daniel, dismissing 1 Greene 553 (1848)

Minneapolis and St. Louis Railroad Co. *v.* Gano, 190 U. S. 557 (1902), per curiam, affirming 114 Iowa 713 (1901)

Moreland *v.* Page, 61 U. S. 522 (1857), Justice Grier, dismissing 2 Iowa 139 (1855)

Nagel *v.* Iowa, 254 U. S. 620 (1920), per curiam, dismissing 185 Iowa 1038 (1919)

Neilsen *v.* Johnson, 277 U. S. 583 (1928), per curiam, granting writ to 205 Iowa 324 (1928)

Neilsen *v.* Johnson, 279 U. S. 47 (1928), Justice Stone, reversing 205 Iowa 324 (1928)

Northwestern Union Packet Co. *v.* Home Insurance Co., 154 U. S. 588 (1872), Justice Chase, dismissing 32 Iowa 223 (1871)

Oakley *v.* Goodnow's Administrator, 118 U. S. 43 (1885), Justice Waite, affirming 68 Iowa 25 (1885)

Olander *v.* Hollowell, 262 U. S. 731 (1922), per curiam, dismissing 193 Iowa 979 (1922)

Omaha and Council Bluffs Railway and Bridge Co. of Nebraska *v.* Smith, 166 U. S. 719 (1896), per curiam, dismissing 97 Iowa 545 (1896)

Packet Company *v.* Keokuk, 95 U. S. 80 (1877), Justice Strong, affirming 45 Iowa 196 (1876)

People's Savings Bank *v.* City of Des Moines, 205 U. S. 503 (1906), Justice Moody, reversing 101 N. W. 867

Petersen *et al. v.* Iowa, 245 U. S. 170 (1917), Justice White, affirming 166 Iowa 617 (1914)

Plumb *v.* Goodnow's Administrator, 123 U. S. 560 (1887), Justice Waite, reversing 64 Iowa 672 (1884)

Preston *et al. v.* Bracken, 51 U. S. 81 (1850), Justice Nelson, dismissing Pinney (Wis.) 365

Railroad Land Co. *v.* Courtright, 88 U. S. 310 (1874), Justice Field, affirming 35 Iowa 386 (1872)

Railroad Co. *v.* Fremont County, Iowa, 76 U. S. 89 (1869), Justice Nelson, affirming 22 Iowa 91 (1867)

Railroad Co. *v.* McClure, 77 U. S. 511 (1870), Justice Swayne, dismissing 26 Iowa 243 (1868)

Railroad Co. *v.* McKinley, 99 U. S. 147 (1878), Justice Waite, affirming 44 Iowa 314 (1876)

Railroad Co. *v.* Renwick, 102 U. S. 180 (1880), Justice Waite, affirming 49 Iowa 664 (1878)

Railroad Co. *v.* Richmond, 82 U. S. 3 (1872), Justice Chase, granting writ to 33 Iowa 422 (1871)

Railroad Co. *v.* Richmond, 86 U. S. 584 (1873), Justice Field, affirming 33 Iowa 422 (1871)

Railroad Co. *v.* Rock, 71 U. S. 177 (1866), Justice Miller, dismissing 14 Iowa 593 (1863)

Rhodes *v.* Iowa, 170 U. S. 412 (1897), Justice White, reversing 90 Iowa 496 (1894)

Rogers Locomotive Machine Works *v.* American Emigrant Co., 164 U. S. 559 (1896), Justice Harlan, reversing 83 Iowa 612 (1891)

Rowley *v.* Iowa, 269 U. S. 594 (1925), per curiam, dismissing 198 Iowa 613 (1924)

Royal Indemnity Co. *v.* Andrew, 281 U. S. 725 (1929), per curiam, dismissing 224 N. W. 499 (1927)

Sanders Ice Cream Co. *v.* Iowa, 242 U. S. 153 (1916), Justice Brandeis, affirming 168 Iowa 1 (1914)

Sargent and Lahr *v.* Herrick and Stevens, 221 U. S. 404 (1910), Justice Van Devanter, reversing 140 Iowa 590 (1908)

Schlosser *v.* Hemphill, 198 U. S. 173 (1904), Justice Fuller, dismissing 118 Iowa 452 (1902)

Scottish Union, etc. *v.* Herriott, 187 U. S. 651 (1902), per curiam, dismissing 109 Iowa 606 (1899)

Sheppard *et al. v.* Wilson, 46 U. S. 210 (1847), Justice Taney, affirming 1 Morris 448 (1845)

Sheppard *et al. v.* Wilson, 47 U. S. 260 (1848), Justice Grier, affirming 1 Morris 448 (1845)

Sioux City and Iowa Falls Town Lot and Land Co. *v.* Griffey, 143 U. S. 32 (1891), Justice Brewer, affirming 72 Iowa 505 (1887)

Sioux City and St. Paul Railroad Co. *v.* Countryman, 159 U. S. 377 (1895), Justice Harlan, affirming 83 Iowa 172 (1891)

Sioux City Street Railway Co. *v.* City of Sioux City, 138 U. S. 98 (1890), Justice Blatchford, affirming 78 Iowa 367 (1889)

Simpson *v.* Board of Supervisors of Kossuth County, 255 U. S. 579 (1920), per curiam, dismissing 186 Iowa 1034 (1919)

Stryker *v.* Goodnow's Administrator, 123 U. S. 527 (1887), Justice Waite, affirming 62 Iowa 221 (1883)

Stryker *v.* Goodnow's Administrator, 123 U. S. 540 (1887), Justice Waite, affirming 62 Iowa 221 (1883)

Taft Co. *v.* Iowa, 252 U. S. 569 (1919), per curiam, dismissing 183 Iowa 548 (1918)

Talbot *v.* Sioux City First National Bank, 185 U. S. 172 (1901), Justice McKenna, affirming 106 Iowa 361 (1898)

Talbot *v.* Sioux National Bank, 185 U. S. 182 (1901), Justice McKenna, affirming 111 Iowa 583 (1900)

Taylor *v.* Drainage District No. 56 of Emmet County, 244 U. S. 644 (1916), per curiam, dismissing 167 Iowa 42 (1914)

Thomas *v.* Iowa, 209 U. S. 258 (1907), Justice Moody, dismissing 135 Iowa 717 (1907)

Thomas *v.* Iowa, 215 U. S. 591 (1909), per curiam, dismissing 135 Iowa 717 (1907)

Traer *et al. v.* Clews, 115 U. S. 528 (1885), Justice Woods, affirming 57 Iowa 459 (1881)

Trebilcock *v.* Wilson *et ux.*, 79 U. S. 687 (1871), Justice Field, reversing 23 Iowa 331 (1867)

Tuttle *v.* Iowa State Traveling Men's Association, 220 U. S. 628 (1910), per curiam, dismissing 132 Iowa 652 (1907)

Wall *et al. v.* Banker's Life Co., 282 U. S. 808 (1930), per curiam, dismissing 208 Iowa 1053 (1929)

Webster *v.* Reid, 52 U. S. 437 (1850), Justice McLean, reversing 1 Morris 467 (1846)
Welles [Wells] *v.* Goodnow's Administrator, 123 U. S. 527 (1887), Justice Waite, affirming 67 Iowa 654 (1885)
Wells *v.* Goodnow's Administrator, 150 U. S. 84 (1893), Justice Fuller, dismissing 78 Iowa 760 (1888)
Wrenn *v.* Iowa, 263 U. S. 688 (1923), per curiam, affirming 194 Iowa 552 (1922)

Of this total, sixty-eight were dismissed for want of jurisdiction, by agreement, or because of technicalities involved in the rules of the court. Twenty-eight cases resulted in reversals of the decisions of the Supreme Court of the State of Iowa. The remaining appeals were affirmed by the Federal Court — a total of seventy-seven cases.

If we consider the cases which were dismissed as in effect being really cases where the Supreme Court of the State of Iowa was upheld, we find a total of one hundred and forty-five cases affirmed as against twenty-eight reversals. Only one case out of six appealed resulted in a reversal of the Iowa Supreme Court. This, other things being equal, seems to show a relatively high efficiency on the part of the Iowa judicial system.

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