mers. The drummer in one State is not taxed in another;[1] and this was also held in a late case where a tax was laid on a domestic drummer.[2] It is held in a strong dissenting opinion by Chief Justice Waite in these cases, two judges concurring with him, that if the tax on the drummer is the same as on the foreign drummer, the reserved right of the State to tax business within its borders made this a legitimate exercise of the tax power without the purpose to interfere with interstate commerce as to the goods represented by the drummer of the other State.

The agent of an interstate line of railway is not taxable as such by a State. The tax is held to interfere with the freedom of interstate traffic and intercourse.[3] Nor can the privilege of keeping an office be taxed or interfered with.[4] Nor can a State tax telegraphic messages interstate, and a tax on the receipts from such messages is unconstitutional.[5] And a tax on all the receipts without discrimination is held to be unlawful; and so as to a tax upon freight where there was no discrimination as to the receipts from freight, but a tax was laid upon all receipts without discrimination.[6] In all these cases it will be seen that Congress regulates in the interest of a free commerce against State discrimination. And so where the tax is specifically upon interstate receipts it is not constitutional.[7]

§ 262. These doctrines have lately been affirmed in the case of *Postal Telegraph Co. v. Adams*, and *Railroad Co. v. Pennsylvania*.[8] So a State law requiring the posting of

[1] Robbins v. Shelby County Taxing District, 120 U. S. 489.

[2] Leloup v. Port of Mobile, 127 U. S. 640; Asher v. Texas, 128 id. 129; Stoutenburgh v. Hennick, 129 id. 141.

[3] McCall v. California, 136 U. S. 104.

[4] Lyng v. Michigan, 135 U. S. 161.

[5] W. U. Tel. Co. v. Alabama, etc., 132 U. S. 472.

[6] Case of The State Freight Tax, 15 Wall. 232; Pensacola Tel. Co. v. W. U. Tel. Co., 96 U. S. 1; Tel. Co. v. Texas, 105 id. 460; W. U. Tel. Co. v. Massachusetts, 125 id. 530; Ratterman v. W. U. Tel. Co., 127 id. 411. See also N. Y., L. Erie & W. R. R. v. Pennsylvania, 158 id. 431; Pacific Exp. Co. v. Siebert, 142 id. 339; Postal Tel. Cable Co. v. Charleston, 153 id. 692.

[7] Case of State Freight Tax, 15 Wall. 232, 284; Telegraph Co. v. Texas, 105 U. S. 460; Maine v. Grand Trunk R. R. Co., 142 id. 217.

[8] 155 U. S. 688; 158 id. 431.

the rates, etc., of a railroad engaged in interstate commerce is held a constitutional exercise of police power.[1] This accords with the case of *New York v. Miln*, *supra*. A law forbidding the employment of a color-blind locomotive engineer on a railroad engaged in interstate commerce was also held constitutional.[2] So a State may tax a railroad for transporting between two points in the same State, though the *transitus* may be through part of another State; it is one *transitus* between termini in one State.[3] A State may tax an interstate railroad on its receipts in proportion to the length of its road in that State. Such tax is not on interstate commerce, but upon the receipts of its own railroad within its own limits, ascertained in the proper way.

The State may tax the property of a railroad created by Congress, but cannot tax its operations.[4] So a State may regulate any local business by a foreign corporation, but not any commercial business by it with other States. It may regulate the speed of trains running into cities; and may forbid gunpowder being carried except in a way consistent with safety.[5] A State may tax a ship engaged in foreign or interstate commerce as property, but not on its tonnage. The first is police power; the last commercial.[6] A State may tax and license ferry-boats enrolled in the United States; but may not tax their tonnage.[7]

A State tax on an interstate bill of lading is void.[8] So a town, a State municipality, may build wharves, regulate wharf rates, and forbid landing except at wharves. These are police regulations, not commercial. These are for safety,

[1] Railroad Co. v. Fuller, 17 Wall. 560.

[2] Nashville, etc. R. R. v. Alabama, 128 U. S. 96.

[3] Lehigh Valley R. R. v. Pennsylvania, 145 U. S. 192.

[4] Railroad Co. v. Peniston, 18 Wall. 5.

[5] Crutcher v. Kentucky, 141 U. S. 47; Brown v. Maryland, 12 Wheat. 443; License Cases, 5 How. 576; Hooper v. California, 155 U. S. 648.

[6] State Tonnage Cases, 12 Wall. 204.

[7] Ferry Co. v. St. Louis, 107 U. S. 365.

[8] Woodruff v. Parham, 8 Wall. 123.

not for obstruction; but the regulation must not discriminate against vessels of other States.[1]

State laws which are *bona fide* aimed at the safety of commerce, and are not obstructive of it, and are not opposed to the laws of Congress regulating commerce, are held to be constitutional. They are for the safety of commerce, and not for its regulation.[2] And State laws providing for buoys, etc., as facilities to commerce and not obstructive of it are constitutional.[3] It is held that a State may regulate the use of elevators, warehouses, etc., used for internal, and even for interstate, trade, and allow charges for the use thereof, not discriminating against other States. This is a police, not a commercial, regulation, unless Congress acts upon it, when it will be held that its law is paramount to that of the State.

§ 263. It will be proper now to consider the recent conflict between State and Federal power in reference to the traffic in liquor. Some of the States have, for preserving the health of the people, limited the importation of liquor into the State, and the question has arisen how far such legislation conflicts with the interstate commerce power of Congress. The case of *Mugler v. Kansas*[4] arose out of a law of Kansas prohibiting the manufacture of intoxicating liquor within the State to be sold for general use as a beverage; and declaring that any still kept and maintained for the manufacture of such liquor should be abated as a common nuisance, and that the offenders should be tried upon indictment. Nothing in the laws of Kansas, as far as the record shows, forbade the manufacture of such liquor to be exported to other States. It was held not only that such legislation did not violate any other of the provisions of the Constitution or its amendments, the fourteenth included, but there

[1] Packet v. Keokuk, 95 U. S. 80; Packet Co. v. St. Louis, 100 id. 423; Packet Co. v. Catlettsburg, 105 id. 559; Pittsburg Coal Co. v. Louisiana, 156 id. 590.

[2] Steamship Co. v. Joliffe, 2 Wall. 459; Cooley v. Board of Wardens, 12 How. 299; Wilson v. McNamee, 102 U. S. 572.

[3] Ward v. Maryland, 12 Wall. 418; Guy v. Baltimore, 100 id. 434; Mobile v. Kimball, 102 id. 691; Pittsburg, etc. Co. v. Louisiana, 156 id. 590.

[4] 123 U. S. 623.

was nothing to show that it operated at all upon commerce in such articles with foreign nations or among the States. The law was sustained. It was held a lawful exercise of the police power in respect to the well-being of its people. The court referred to the language of the judges in the *License Cases*,[1] and a number of others.

In *Bowman v. Railroad Co.*,[2] the court discusses an act passed by Iowa forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, unless furnished with an official certificate from a State official permitting it to be done. Bowman offered for shipment to the defendant railway company five thousand barrels of beer, to be shipped from Chicago, Ill., to Marshalltown, in the State of Iowa. The defendant company filed a special plea excusing its refusal to accept the beer for shipment as above stated, because the law of Iowa forbade it. To this plea a demurrer was entered by the plaintiff. The Supreme Court held that the plea was bad, because it forbade interstate commerce in the article; that the law of Iowa could not be deemed an inspection law nor a quarantine law, because the quarantine power does not allow a State at its mere will to declare that an article manufactured in another State is not to be regarded as property by the legislative declaration of the State to which the article is consigned. If a quarantine power involved the right to determine what were proper objects, then it might really forbid all, and thus nullify the commercial power altogether. To this opinion of the court there was strong dissent of three judges, who held that the police power to protect a people from the use of such liquors could not be overborne by the commercial power of Congress.

In the case of *Kidd v. Pearson*[3] the question assumed another form. Iowa passed a law allowing the manufacture of liquors within the State for mechanical, medicinal, culi-

[1] 5 How. 504; Bartemeyer v. Iowa, 18 Wall. 129; Beer Co. v. Massachusetts, 97 U. S. 25; Foster v. Kansas, 122 id. 201; Gibbons v. Ogden, 9 Wheat. 1.

[2] 125 U. S. 465.

[3] 128 U. S. 1.

nary and sacramental purposes, but no other,— not even for transportation beyond the limits of the State; and punished by fine and imprisonment every person violating the statute. The defendant in this case answered that all his manufactured liquors were for exportation, and were sold outside of the State of Iowa. The court decided that the liquor was manufactured by Kidd for none of the four specified purposes named in the act, but for exportation, and this did not amount to the creation of such property in the liquor as to make it a subject of commerce. Liquor so manufactured was by the law of the State condemned as no property at all. That law operated in the State of Iowa before the effort to export. The question then was, did the liquor ever become the subject of the commercial power? It was condemned as no property before it started on its *transitus*. The commerce power, therefore, never operated upon it. The law of Iowa was upheld; it being held that the power of Congress could not invest the article with the quality of property so as to be subject to the commercial power when the State had declared it should have no such quality.

In *Giozza v. Tiernan*,[1] it was also held that the commercial power must not be so used as to destroy the essential reserved right of a State; and that when the *transitus* has not begun, or having begun has ceased, the Congressional power does not attach, and the State power is exclusive. It is only when the article is in commercial *transitus* that the State cannot touch it. When is liquor under the commercial power *in transitu?* When delivered at the terminus *a quo*. Does it cease to be under this power when delivered to the consignee at the terminus *ad quem?* The answer is in the negative.

Following *Brown v. Maryland*,[2] the Supreme Court, in *Leisy v. Hardin*,[3] held that the article was not subject to State power upon its arrival at the terminus *ad quem*, if sold by the consignee in the original package, unbroken and un-

[1] 148 U. S. 657.
[2] 12 Wheat. 443.
[3] 135 U. S. 100. See Pittsburg Coal Co. v. Bates, 156 id. 577, and Schollenberger v. Pennsylvania, 171 id. 1.

opened; that the importation was not complete until the consignee had either broken the package or sold it. In this case there was still a strong dissent of three judges. This decision rests upon the cases already cited.[1] Where the package is broken by the importer or the unbroken package is sold by him, the *transitus* is complete and the property passes under State power; but it seems if the consignee chooses to transport the unbroken package to another State he may do so. Congress has recently passed a law to conform its regulations of commerce to these State laws as to the importation of liquor. This, as in the quarantine cases already referred to, divorces the commercial power and the State police power. Such a law is held constitutional as a proper defense of the reserved power of the State.

The late case of *Plumley v. Massachusetts*[2] decides that the commerce power does not preclude a State from passing laws preventing the sale of articles brought into the State from another, if intended to prevent the people from being cheated in the purchase of such articles by their deceptive appearance, and is a strong assertion of the police power of the State, when properly exercised, against any conflicting provisions under the power to regulate commerce.

The case of *Coe v. Erroll*[3] is very valuable for the illustration of these distinctions. In this case logs were cut and hauled from a place in New Hampshire to Erroll in the same State, for the purpose of transporting them by water from Erroll to a place in the State of Maine. The intent to transport did not withdraw them from State jurisdiction, and it was held that New Hampshire could still tax them. When started from Erroll to Maine they are *in transitu* interstate, and no longer subject to State jurisdiction, but are under the commercial power until the *transitus* is ended; and though the *transitus* be from State A to State C, through State B, they are not taxable by B, for they are

[1] Pervear v. Commonwealth, 5 Wall. 479; Waring v. Mayor, 8 id. 110.
[2] 155 U. S. 461.
[3] 116 U. S. 517.

subjects of interstate commerce. But if the logs or other property be taxed more than other like articles because to be transported, the tax is unconstitutional, for it is a tax in effect on the transport, and not on the property. Nor does the *transitus* begin while the property is being conveyed by dray or the like to the depot. The *transitus* does not begin until delivery is made at the depot of the interstate railroad.[1]

§ 264. A question of great importance has been discussed, whether the Congressional power over commerce excludes the exercise of the power to regulate commerce by the States.[2] It is obvious that the existence of the power when not exercised does not in all cases preclude the exercise of it by the States.[3] Suppose Congress should refuse to provide lighthouses, buoys, etc., or to remove obstructions in rivers or harbors, can a State do so? And by analogy as to postal matters, if Congress refused to establish a postal system, would the States be precluded? The cases already cited in reference to these matters decide this question.[4]

Take another class of cases. May not a State erect a bridge over a navigable river? The answer is obvious. A bridge is a part of the internal polity of the State, and may be erected if it does not obstruct commerce. If it obstructs commerce, *pro tanto* it is forbidden, as in that event it would be a regulation of commerce. But in itself it is not. Hence a bridge across the Ohio river is not necessarily a commercial regulation. As a convenience to its people it is a police regulation. If it be a law obstructing commerce it is a commercial regulation. The maxim applies to both governments, *sic utere tuo ut non alienum lædas*. For a State by means of its bridge to obstruct commerce would be to trench on the power of Congress; for Congress to abate the bridge as a nuisance when it was not obstructive of commerce would be

[1] The Daniel Ball, 10 Wall. 557; Coe v. Erroll, *supra*.
[2] Federalist, No. XXII.
[3] Mobile v. Kimball, 102 U. S. 691.
[4] Ward v. Maryland, 12 Wall. 418; Cook v. Pennsylvania, 97 U. S. 566; Guy v. Baltimore, 100 id. 434; Mobile v. Kimball, 102 id. 691; Pittsburg Coal, etc. Co. v. Louisiana, 156 id. 590.

for Congress to invade the reserved power of the State. This question arose in the *Wheeling Bridge Case*.[1] In that case the bridge was abated because it obstructed commerce; not because, in itself, it was a regulation of commerce. A bridge, therefore, is legal until Congress forbids. Hence, now, Congress grants the right to a State to build a bridge across a navigable river, and the bridge is built in the exercise of a police power inconsistent with the commercial power.[2]

Another class of cases arises where the State law directly infringes on the freedom of interstate or foreign commerce, as in the case of *Brown v. Maryland*, *supra*, and others. The act of the State is political, as by taxation or other interference. The trade to be regulated by Congress is either left free or has some regulations imposed upon it. In the former case, Congress by non-action having left the commerce free, any limitation or restriction upon it by the State would violate the Constitution; and if Congress has made a regulation respecting it, then that regulation, if proper, is paramount to any that is made by the State. The distinction is therefore obvious that a bridge or the like character of internal polity remains good unless in effect it obstructs commerce, but a tax or law forbidding commerce is *per se* a regulation of commerce and is void because of conflict with the commerce clause.[3] Other cases on the subject may be cited.[4]

An illustration of this divisional line between State and Federal power is furnished in the case of patented articles; though patented by the United States, the State may forbid their sale for the safety of its citizens.[5] But Congress cannot forbid the sale where the State does not, for it is for the State to determine under the police power whether it shall

[1] 13 How. 518; 18 id. 421.
[2] Bridge Co. v. United States, 105 U. S. 470; Willamette Iron Bridge Co. v. Hatch, 125 id. 1.
[3] Mobile v. Kimball, 102 U. S. 691.
[4] Willson v. Blackbird Creek Marsh Co., 2 Pet. 250; Cooley v. Board of Wardens, 12 How. 319; Pennsylvania v. Wheeling & Belmont Bridge Co., 18 id. 420; Gilman v. Philadelphia, 3 Wall. 713; Osborne v. Mobile, 16 id. 479; Texas, etc. Ry. Co. v. Interstate, etc. Co., 155 U. S. 585; Monongahela Nav. Co. v. United States, 148 id. 312; Wisconsin v. Duluth, 96 id. 379.
[5] Patterson v. Kentucky, 97 U. S. 501.

or shall not be allowed.[1] So a Congressional license tax cannot prevail against a State law forbidding it. Congress may tax a business, but cannot license it; it is for the State alone to determine this question.[2]

§ 265. Another class of cases may now be referred to — questions arising out of the migration of the Chinese to the United States. The commerce power of Congress has been held applicable, in consistency with the view already stated, that this is a lawful regulation of commerce.[3]

The singular case of *Crandall v. Nevada*[4] arose upon a law of that State imposing a tax on railroad and stage companies for every passenger carried out of the State by them. This was held to be virtually a tax upon the passenger for the privilege of passing through the State. The court was divided upon the question whether this was an exercise of the power to regulate commerce between the States by the State, the majority of the court thinking it was not, but two of the judges holding that it was. The majority of the court put it on the ground of the right of the Federal government to require, and the correlative right of the citizen to have, free transit in ordinary travel throughout the whole country. The case was not argued except for the State of Nevada, and, while the decision may be sustained, it would seem to rest more strongly upon the view already taken as to the clause of the Constitution relating to citizenship and the construction of that clause by Justice Miller in the *Slaughter-House Cases*.[5] Construing this clause in connection with the fourth of the Articles of Confederation, we have seen that it secured absolute freedom of ingress and egress to the citizen of any State into, through and from every other. On this

[1] United States v. De Witt, 9 Wall. 41; Webber v. Virginia, 103 U. S. 346; Plumley v. Massachusetts, 155 id. 461.

[2] License Tax Cases, 5 Wall. 462, 473; Plumley v. Massachusetts, 155 U. S. 461.

[3] Const. U. S., Art. I, sec. 9, clause 1; Chinese Exclusion Case, 130 U. S. 581; Nishimura Ekiu v. United States, 142 id. 651; Chinese Cases, 149 id. 698; Lau Ow Bew v. United States, 144 id. 47; Lem Moon Sing v. United States, 158 id. 539; United States v. Wong Kim Ark, 169 id. 649.

[4] 6 Wall. 35.

[5] Const. U. S., Art. IV, sec. 2.

foundation the State tax is clearly unconstitutional, as would be any tax by Congress upon any such passenger. Mr. Justice Clifford and Chief Justice Chase, in their dissent, express strong doubts as to the possession of any such power by Congress — a doubt which grows into conviction against any such power, because of the article we have referred to.

This power to regulate commerce applies to the District of Columbia and the Territories as well as to the States.[1] This is obvious as to foreign commerce, but is also applicable to commerce between the District or Territories and the States upon the same reasons which were urged by the court in respect to the imposition of the direct tax upon the District and Territories in the case of *Loughborough v. Blake*.[2] And so the power to regulate commerce strictly internal to the District and Territories belongs to Congress under the express provisions of the Constitution.[3] It was under the Congressional power that the Interstate Commerce Bill was passed regulating the rates of railroads and those of other carriers engaged in interstate commerce; by this bill also the commission is constituted to adjudicate all such questions. As all these public carriers, if corporations, held their franchises under the States, their regulation of rates, etc., if they affected the rights of interstate commerce, would be as void as if done by the State under whose authority they were created. And Congress exercised the power to regulate such commerce by controlling the unjust action of public carriers in destroying the freedom of this commerce which the Constitution designed. The Supreme Court has sustained the constitutionality of that act in several cases.[4]

[1] Stoutenburgh v. Hennick, 129 U. S. 141.

[2] 5 Wheat. 517.

[3] Art. I, sec. 8, clause 17; Art. IV, sec. 3, clause 2.

[4] Maine v. Trunk Line, 142 U. S. 217; Interstate Commerce Commission v. B. & O. Ry. Co., 145 id. 263; Gulf, etc. Ry. Co. v. Hefley, 158 id. 98; Richmond & Alleghany R. R. Co. v. R. A. Patterson Tobacco Co., 169 id. 311; United States v. Joint Traffic Ass'n, 171 id. 505: Hopkins v. United States, id. 578; Interstate Commerce Commission v. Alabama Midland R. R. Co., 168 id. 144; Anderson v. United States, id. 604.

§ 266. A remarkable case arose before the Civil War, to which reference may be made.[1] A Virginian shipped from a Virginia port a number of slaves on a steamer bound to the port of New York. He was carrying them to Texas, to which State he had removed. When they reached New York they were being carried from the wharf where the boat landed to another wharf where a Galveston steamer lay, to be placed on the latter to be transported to Texas. While *in transitu* from wharf to wharf they were intercepted, taken from the possession of the owner, and were by *habeas corpus* discharged from his custody, and declared to be free, under the laws of New York prohibiting slavery. The case was carried to the Supreme Court of New York and decided in favor of the slaves, that court affirming the decision of the court below, three judges in favor of affirming and two for reversing. Preparations were made to carry the case by appeal to the Supreme Court of the United States, when the Civil War broke out, which ended the controversy. The constitutional question involved was whether, when the slaves were *in transitu* from Virginia to Texas, the New York law of emancipation operated upon them at all; whether the power of Congress over interstate commerce did not free them from the jurisdiction of New York while *in transitu* from Virginia to Texas. It would seem upon principles settled by the Supreme Court in cases already referred to, that if the vessel upon which they were shipped for Texas had only stopped at New York, and continued from New York to Texas, the journey would have been continuous and the law of New York could not have attached.[2] But the contrary contention was, that the continuous transit from Virginia to Texas was broken at New York by their transit from wharf to wharf to another steamer, and that, therefore, in that interval they became subject to the law of New York.

In *Pullman Car Co. v. Pennsylvania*[3] the State power to

[1] Lemmon Slave Case, 20 N. Y. 562.

[2] Lehigh Valley R. Co. v. Pennsylvania, 145 U. S. 192; Brown v. Houston, 114 id. 622; Pittsburg, etc. Coal Co. v. Bates, 156 id. 577.

[3] 141 U. S. 18.

tax the plaintiff upon the cars which were constantly in the State of Pennsylvania, upon such proportion of its capital stock as the miles of transit in the State bore to the whole number of miles in all the States over which the cars ran, was held not to violate the commerce power. The dissenting opinions of Judge Bradley and two other judges involve the question considered in the slave case *supra*.

§ 267. In closing this prolonged discussion of this important clause a few additional considerations may be noted.

A State is held in many of the cases to have no power to tax a foreign drummer, nor to forbid a person or corporation freely to engage in interstate commerce, and the reason assigned in the decisions has generally been that a State thus regulates interstate commerce. If this be so, then it would naturally follow that Congress could do these things because it is a regulation of commerce. This seems to the author to be a fallacy as to the ground of decision. For it has been seen that the article of the Constitution in reference to citizenship prevents a State or Congress from taxing or preventing intercourse of persons or *transitus* of property between the States. Both of these the Constitution left free, and they cannot be interfered with by State or Congress. Both are inhibited from the exercise of such power by the clause referred to.[1]

Again, in the case of *Groves v. Slaughter*,[2] the reasoning of the court is to the effect that while each State under its police power could forbid the importation of slaves from other States, Congress could not do so. How could it, by any regulation of commerce, force slavery into a State which repelled and forbade it. This made the police power supreme and paramount to the commerce power. On the same ground Congress cannot, under the interstate commerce clause, force into a State contrary to its law moral or physical disease, or any institution of society which the State may forbid. The internal polity of the latter would be held paramount over any regulation of commerce to the contrary.

Can dynamite or gunpowder, by a regulation of commerce,

[1] Const. U. S., Art. IV, sec. 2.

[2] 15 Pet. 449.

be carried in uncovered cars through any State of the Union? A negative answer is sustained by the whole current of authorities, and by the forcible language of the court in *Crutcher v. Kentucky*,[1] in which Mr. Justice Bradley says: "Disease, pestilence, pauperism are not subjects of commerce. . . . They are not things to be regulated and trafficked in, but to be prevented."

Reference may also be had to a very late decision in the case of *Plumley v. Massachusetts*,[2] in which, after the review of a large number of cases, the court, through Justice Harlan, uses this strong language:

"We are not unmindful of the fact — indeed this court has often had occasion to observe — that the acknowledged power of the States to protect the morals, the health, and safety of their people by appropriate legislation, sometimes touches, in its exercise, the line separating the respective domains of National and State authority. But in view of the complex system of government which exists in this country, 'presenting,' as this court, speaking by Chief Justice Marshall, has said, 'the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous State governments, which retain and exercise all powers not delegated to the Union,' the judiciary of the United States should not strike down a legislative enactment of a State — especially if it has direct connection with the social order, the health, and the morals of the people — unless such legislation plainly and palpably violates some right granted or secured by the National Constitution or encroaches upon the authority delegated to the United States for the attainment of objects of National concern."

The question has been mooted whether Congress can regulate negotiable instruments, interstate and foreign, and whether they constitute commerce within this clause. We have seen that an interstate bill of lading is beyond the power

[1] 141 U. S. 47, 60, 61.

[2] 155 U. S. 461, 479.

of a State to regulate, because such action would be a regulation of commerce.[1] But this is the regulation of an instrument which connects itself with the thing which is *in transitu* interstate or to foreign countries. But could the contract involved in negotiable paper be the subject of regulation by Congress? Upon this there are no decisions, but a negative answer to the question is strongly confirmed by the late case of *Hooper v. California*,[2] citing the opinion in *Paul v. Virginia*[3] and other cases.

Does this power include the improvement of rivers and harbors and the like by Congress? If it be the improvement of waters strictly internal to the State, the answer is in the negative.[4] But where the waters, though within a State, are parts of the water-way between points in that State to other States and to foreign countries, the power to improve them has been asserted with strong reasoning for the constitutionality of its exercise. Without going into this question fully, reference may be made to what has already been said about the regulation of commerce proposed between Virginia and Maryland in 1786, for a system of regulation of commerce between those two States. In this compact stipulations as to light-houses, buoys, etc., at points expressly for the safety of navigation, were held to be regulations of commerce.[5] We may fairly interpret the meaning of the words used in this clause by the meaning attached to them by previous compacts between the States.

Furthermore, it was proposed in the convention that the States should not be restricted in laying tonnage duties for the purpose of clearing harbors and erecting light-houses. It was argued for the rejection of the proposition, and for the adoption of that in the Constitution, that no such duty should be laid by the State without the consent of Congress; that the power to clear harbors, erect light-houses and the like was included in the power of Congress to regulate com-

[1] Woodruff v. Parham, 8 Wall. 123.

[2] 155 U. S. 648.

[3] 8 Wall. 168.

[4] The Daniel Ball, 10 Wall. 557.

[5] 12 Henning's Statutes at Large, 50–55.