

GIBBONS v. OGDEN
(federal power over interstate commerce)

Art. I, § 8

The Congress shall have Power ...

par.3

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes

principles suggesting that federal power should be strictly (narrowly) construed

principles suggesting that federal power should be broadly construed

Strict Construction

Broad Construction

States were sovereign prior to entering Union

That sovereignty was preserved, except where power was expressly delegated

Power is granted in enumerated terms

Breadth of power is construed in favor of the granting entity

"Interstate commerce" means only buying/selling (trade) carried out among 2 or more states (not navigation)

power "to regulate" means only to specify conditions, but not to license or to prohibit

Invalid

Federal license granted to Gibbons

Valid

The constitution emanated from the People (who are sov'er'n), not States

No rule of construction favors State over federal power

Although power is enumerated, terms used are complete

Necessary & Proper clause augments enumerated powers

"Interstate commerce" includes every form of commercial transaction except that wholly within a state

power "to regulate" is plenary (complete) & includes every type of government power

Effect on NY license granted to Ogden

Preempted

No effect

NY resisted this rule, at the very least because the 10th Amendment reserves to the States all powers not granted to the federal government

Justice Johnson would hold that the NY license was invalid, even had Congress never acted, because it interfered with Congress' plenary and exclusive power to regulate interstate commerce

Marshall finds it unnecessary to decide the issue, but "there is great force in this argument, and the Court is not satisfied that it has been refuted"