



## Great Antebellum Cases

- I. What is Property
  - a. Certainly physical property
  - b. Is it also a set of expectations about rules for commerce?
  - c. On the Frontier there was an expectation of maintaining a monopoly on having a mill – something vital to making frontier living even possible (have to be able to grind grain)
  - d. Supreme Court
    - i. Two Great Justices: Marshall, Tawney
    - ii. Shaped the nation by defining how things like property work.
- II. Fletcher v. Peck (1810)
  - a. Several grants of authority in the constitution to regulate economy at the state level
  - b. Contract Clause: Legislatures cannot nullify existing contracts
  - c. There was little gold around at this time. Debtors were enjoying inflation. Economy was in bad shape generally.
  - d. Does the contract clause apply to contracts with the federal government? To states? The supreme court says: yes!
  - e. Facts
    - i. 1795: the state legislature sold land to private investors
    - ii. The next year new investors appalled at corruption rescinded the sales (disrupted titles with all sales and resales).
    - iii. People had invested money and made plans – rescinding the original sales disrupted that
  - f. Shocking that court would interfere with the states.
- III. Dartmouth College v. Woodward (1819)
  - a. Corporations were very rare – enabled charities to have perpetual existence. Weren't really used for businesses.
  - b. Dartmouth had a charter from the King.
  - c. The state tried to rescind the charter and seize control.
  - d. Old controllers wanted the “contract” upheld even though it was originally with the king, not with the state.
  - e. The case came just at the time the states were starting to grant charters to businesses
  - f. The Industrial Revolution
    - i. Needed limited liability protection.
    - ii. Machinery was dangerous to people.
    - iii. Needed limited liability to even survive.
  - g. Court was permitting new enterprise to have a free hand.
- IV. McCullough v. Maryland (1819)
  - a. Court had given itself supervisory power over state legislation
  - b. Maryland passed \$15,000 tax on non state chartered banks – i.e. the U.S. Bank (the only one). It was taxing one particular bank.
  - c. The chairman refused to pay the tax, and the case ended up in the supreme court.
  - d. The court determined that the Bank of the U.S. was authorized in the constitution
  - e. Where? In the Necessary and Proper Clause. It was surely necessary to have such a bank to carry out the required duties!
  - f. Also, it's not okay to tax the bank, since “the power to tax is the power to destroy”
  - g. If the bank is allowed, nobody can tax it out of existence.
- V. Gibbons v. Ogden
  - a. Steamships (and then railroads) created regional markets and knit the country closer together.
  - b. In this case the court gave the last great power to interfere.
  - c. New York granted Ogden's steamship company a *monopoly* on a New York to New Jersey steamship run.
  - d. Gibbons licensed from the federal government operating in the same waters.

- e. The Court found for Gibbons. The constitution demanded federal regulation of commerce
  - f. States cannot interfere with federal regulation!
  - g. Now entrepreneurs had a free hand to develop without state-to-state intervention
  - h. Tradeoff: Many went out of business!
- VI. Charles River Bridge v. Warren Bridge (1837)
- a. History
    - i. Charles River Bridge was given a charter to operate a toll bridge
    - ii. With almost 30 years left on that charter the state issued another charter that demanded no tolls after six years.
  - b. In Portsmouth, the state actually rescinded the charter. Here they're not interfering with the charter, they're only violating *expectations*. Surely the expectation was that the Charles River Bridge would be the *only* bridge.
  - c. Charles River Bridge argued that the grant implied settled expectation rights. In fact, the same company had operated a ferry at the same location for eons earlier.
  - d. The court clearly sided with dynamic property competition. A monopoly's so offensive that it can exist only with an *explicit* guarantee from a charter.
  - e. These decisions laid the groundwork for becoming an industrial power after the Civil War.
- VII. Swift v. Tyson
- a. Court said that federal courts could create their own national business law.
  - b. Litigants coming into courts could cite national law now.
  - c. These are state laws being pulled up into federal courts
  - d. The Supreme Court has basically established itself as the final arbiter of commerce.