STATEMENT OF THE CASE.

The Constitution of Illinois, adopted in 1870, contains the following in reference to the inspection of grain and the storage thereof in public warehouses:

"ARTICLE XIII.

WAREHOUSES.

SECTION 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

§ 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath before some officer designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignor thereof.

§ 3. The owners of property stored in any warehouse or holder of a receipt for the same, shall always be at liberty to examine

such property stored, and all the books and records of the warehouse in regard to such property.

§ 4. All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

§ 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee, or the elevator, or public warehouse, can be reached by any track owned, leased or used, or which can be used, by such railroad company; and all railroad companies shall permit connections to be made with their tracks, so that any such consignee, and any public warehouse, coal bank or coal yard may be reached by the cars on said railroad.

§ 6. It shall be the duty of the General Assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the Constitution, which shall be liberally construed, so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the General Assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common-law remedies.

§ 7. The General Assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce."

The provisions of the act of the General Assembly of Illinois, entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Article thirteen of the Constitution of this State," approved April 25, 1871, so far as the same have any direct bearing upon the present inquiry, are as follows:

"§ 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That public warehouses, as defined in Article thirteen of the Constitution of this State, shall be divided into three classes, to be designated as classes A, B and C, respectively."

"§ 2. Public warehouses of class A shall embrace all warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries, being located in cities having not less than one hundred thousand inhabitants. Public warehouses of class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. Public warehouses of class C shall embrace all other warehouses or places where property of any kind is stored for a consideration."

"§ 3. The proprietor, lessee or manager of any public warehouse of class A shall be required, before transacting any business in such warehouse, to procure from the Circuit Court of the county a license, permitting such proprietor, lessee or manager, to transact business as a public warehouseman under the laws of this State, which license shall be issued by the clerk of said court upon a written application, which shall set forth the location and name of such warehouse and the individual name of each person interested as owner or principal in the management of the same, or, if the warehouse be owned or managed by a corporation, the names of the president, secretary, and treasurer of such corporation shall be stated; and the license shall give authority to carry on and conduct the business of a public warehouse of class A in accordance with the laws of this State, and shall be revokable by the said court upon a summary proceeding before the court, upon complaint of any person in writing setting forth the particular

violation of law, and upon satisfactory proof to be taken in such manner as may be directed by the court."

"§ 4. The person receiving a license as herein provided, shall file with the clerk of the court granting the same, a bond to the People of the State of Illinois, with good and sufficient surety, to be approved by said court, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman of class A and the full and unreserved compliance with all laws of this State in relation thereto."

"§ 5. Any person who shall transact the business of a public warehouse of class A without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse) shall on conviction be fined in a sum not less than one hundred dollars for each and every day such business is so carried on; and the court may refuse to renew any license, or grant a new one to any of the persons whose license has been revoked, within one year from the time the same was revoked."

"§ 15. Every warehouseman of public warehouses of class A, shall be required during the first week of January of each year, to publish in one or more of the newspapers (daily, if there be such) published in the city in which such warehouse is situated, a table or schedule of rates for the storage of grain in the warehouse during the ensuing year, which rates shall not be increased, (except as provided for in section sixteen of this Act) during the year; and such published rates or any published reduction of them shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, for or against any charges made by such warehouseman for the storage of grain.

"The maximum charge of storage and handling of grain, including the cost of receiving and delivering, shall be for the first

thirty days or part thereof two cents per bushel, and for each fifteen days or part thereof, after the first thirty days, one-half of one cent per bushel; provided, however, that grain damp or liable to early damage, as indicated by its inspection when received, may be subject to two cents per pushel storage for the first ten days, and for each additional five days or part thereof not exceeding one-half of one per cent per bushel."

Other sections of the Act make provision for the inspection of grain by public officers, and the storage thereof in public warehouses. The sections here quoted are but parts of the general system of the laws of the State regulating such inspection and storage. Rev. Stat. of Ill. (of 1874) pp. 820-827.

While this Act was in force the State's Attorney of Cook connty, Illinois, filed an information in the Criminal Court of that county, in the name of The People of the State of Illinois against the plaintiffs in error, charging them with a violation of the Act above cited, in this:

"That said Ira Y. Munn and George L Scott, on the 28th day of June, 1872, at and within the city of Chicago, in said county of Cook, and State of Illinois aforesaid, were the *managers* of a certain public warehouse located in said city of Chicago, known as 'The Northwestern Elevator,' and that the said Ira Y. Munn and George L. Scott did then and there store grain in bulk in said warehouse, and did then and there mix the grain of different owners together, in said warehouse and that the said city of Chicago did then and there contain more than one hnndred thousand inhabitants; and that they, the said Ira Y. Munn and George L. Scott, did then and there unlawfully transact the business of public warehousemen in the said warehouse, in the manner and form aforesaid; and that they, the said Ira Y. Munn and George L. Scott, did not procure a license from the Circuit Court of said county permitting them to transact business as public warehousemen in said warehouse in manner and form as afore-

said, under the laws of the State of Illinois, before transacting the business of public warehousemen, contrary to the statute, and against the peace and dignity of the said people of the said State of Illinois.

The second count of the information charges that the defendants below carried on such business as *lessees* of the same warehouse without having procured a license therefor, and in other respects is substantially the same as the first count.

The cause was submitted to the court below upon an agreed statement of facts, as follows:

"It is agreed for the purpose of this trial that the respondents leased the premises in the city of Chicago, Cook county, Illinois, whereon 'The Northwestern Elevator' stands, of the owner, in the year A. D. 1862, and that respondents in that year, with their own capital and means, erected thereon the grain warehouse or elevator described in the information in this proceeding as the 'Northwestern Elevator,' and that they have, ever since that date, carried on in said elevator, and by means thereof, the business of receiving, storing and handling grain for hire, for which they have charged and received as a compensation such rates of storage as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January of each year, as the established rates for the year then next ensuing such publication.

"And for the purposes of this trial it is further agreed that at the time stated in the information, to-wit: the 28th day of June, A. D. 1872, the respondents were the managers and proprietors of the grain warehouse known and described in the information in this proceeding as the 'Northwestern Elevator, situate in the city of Chicago, county of Cook, and State of Illinois, wherein grain was stored in bulk, and in which the grain of different own-

ers was mixed together by said managers, and that the said respondents were then and there in and by means of said elevator carrying on the business of receiving, storing and delivering grain for hire, without having taken out a license from the Circuit Court of Cook county aforesaid, permitting them as such managers, to transact business as public warehousemen under the laws of the State, and without having filed with the clerk of the Circuit Court of Cook county a bond to the People of the State of Illinois, as is prescribed and required by the third (3d) and fourth (4th) sections of an act of the legislature of this State, entitled 'An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Article XIII of the Constitution of the State," approved April 25, A. D. 1871.

"And it is further admitted that the city of Chicago did, on the 28th day of June, A. D. 1872, and for more than two years prior thereto, have more than 100,000 inhabitants."

It was also stipulated that the respondents stored grain with the consent of the owners or consignees; that during the first week in January, 1872, respondents, together with other warehousemen in Chicago, published a notice containing a schedule of rates they would charge for storage, which is given at length in the stipulation.

That since the publication of such rates the respondent recei ed the rates of storage set out in said advertisement; that they complied with the Constitution and act in question except in these two particulars, viz: that respondents had never taken out any license or given any bond as required by sections three (3) and four (4) of said act, and that the rates of storage so published and received were higher rates of storage than the maximum rates specified in section 15 of said act.

The stipulation then proceeds as follows:

"It is hereby stipulated and agreed for and on behalf of the people, that the foregoing statement of facts is true, but that the

same is immaterial and irrelevant, and ought not to be considered by the court except as to so much thereof as sets forth and admits as follows, to-wit:

1. That the city of Chicago had a population of one hundred thousand inhabitants.

2. That the respondents were the proprietors and managers of the "Northwestern Elevator," the same being a grain warehouse in which grain was stored in bulk, and the grain of different owners was mixed together, and situate in said city of Chicago.

3. That the respondents transacted the business of warehousemen in said warehouse, and stored grain in bulk and mixed the grain of different owners together, without first taking out a license from the Circuit Court of Cook county permitting them to transact the business of public warehousemen in said warehouse under the laws of this State, and without having filed with the clerk of the Circuit Court a bond to the people of the State of Illinois, as provided by the 3d and 4th sections of an act in said statement referred to.

"It is further agreed for the purposes of this trial that the foregoing statement of facts, shall be received and considered by the court, with like legal effect as if the same were given in evidence by witnesses or other competent legal evidence, so far as the court shall deem the same admissible, and competent to be considered on the trial of this cause, and that thereupon after argument by counsel for the people and said respondents (if either party should desire to argue the same) such judgment shall be rendered by the court as it shall deem proper and warranted by the law and the evidence in the cause, saving and reserving to both parties all rights and advantage of exception to such decision of the court, the same as if a trial by jury or before the court had been had, and such exception and advantage had been taken and saved by means of timely and proper bills of exception thereto."

The court found the defendants, guilty and imposed a fine of $100, besides the payment of costs.

From this judgment of the Criminal Court the defendants therein prosecuted a writ of error to the Supreme Court of the State, where the judgment of the court below was affirmed. The plaintiffs in error having petitioned the Supreme Court for a re-hearing, such petition was denied at the September Term, A. D. 1874, of that Court. From thence they prosecuted a writ of error to this Court and make the following:

"ASSIGNMENT OF ERRORS.

"The Plaintiffs in Error say that the Supreme Court of Illinois committed error to their injury and prejudice in affirming the judgment of the Criminal Court of Cook county against them in this:—

"1. Sections three, four, five and fifteen of the Statute passed by the Legislature of Illinois, entitled "An Act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Article XIII of the Constitution of this State," approved April 25, 1871, under which the plaintiffs in error were convicted and fined, were unconstitutional and void.

"2. Said sections are repugnant to the third clause of section eight of Article I of the Constitution of the United States; and also to Article V of the Amendments to the Constitution; and also to the first section of Article XIV of the Amendments.

"3. The Supreme Court of Illinois decided erroneously said sections to be valid, and not repugnant to the Constitution of the United States, and erroneously affirmed the judgment of the Criminal Court of Cook County."

ARGUMENT FOR THE DEFENDANTS IN ERROR.

We shall consume no time in an effort to impress upon the Court a conviction of the great importance of the principles involved in this case. The mere fact that this Court is asked to adjudge, not only that a State statute, but that the provisions of a State Constitution are repugnant to the Federal Constitution, and therefore void, is sufficient to arrest the attention of the Court, and to secure its most careful consideration.

The first general proposition of the counsel for the plaintiffs in error is that the sections of the Illinois statute, before cited, are repugnant to the third clause of section 8, Article I, of the Constitution of the United States, which confers upon the Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

We shall insist:

I.

THE REGULATION OF THE INSPECTION AND STORAGE OF GRAIN IN PUBLIC WAREHOUSES AS CONTEMPLATED BY THE ACT IN QUESTION, IS NOT A REGULATION OF COMMERCE WITH FOREIGN NATIONS, NOR AMONG THE SEVERAL STATES, WITHIN THE PURVIEW OF THE FEDERAL CONSTITUTION.

A clear apprehension of the relations existing between the storage of grain in public warehouses in Chicago and our interstate commerce, is essential to an intelligent discussion of the legal questions arising upon this record.

We agree with the counsel for plaintiffs in error, that the Court will take notice, without proof, of the course of trade, and the general commercial usages of the country and the world, including

the manner in which the business of transportation and commerce is conducted. The same counsel also cites with approbation the language of the Supreme Court of Illinois in *Vincent* v. *C. & A. R. R. Co.*, 49 Ill., 38, where it is said :

"There are some facts connected with the vast internal commerce of this State, of which, independent of any averments in the bill, we will take judicial notice. The immense quantities of grain which are annually transported to Chicago over our lines of railways, making that city, with the aid of contributions from neighboring States, one of the great grain markets of the world, are chiefly sent in bulk. The grain is ordinarily consigned to commission merchants who have erected vast warehouses, termed elevators, connected by side tracts with the main line of some railway, and provided with machinery for the rapid unloading of the cars and storage of the grain. As the grain is of various grades and prices it is of great importance to the agricultural and mercantile interests of the State, that each shipment of grain should be stored by itself, or with grain of the same grade, and that every shipper should be able to select his own consignee, with the certainty that, if his elevator is on the line of the road by which the grain is transported, and the consignee is ready to receive the shipment, it shall be faithfully delivered to him."

In all this we fully concur; and we may add, that where a cause is brought before this Court, for review on writ of error to a State Court, the Supreme Court of the United States must of necessity take judicial knowledge of all such matters as the State Court is bound thus to know. The Court will undoubtedly take judicial notice of the ordinary mode of transacting business in matters of such magnitude as the grain trade of Chicago.

The Court will then take judicial notice of such facts as show the true relation of the storage and warehousing of grain in Chicago to the "commerce among the sveeral States," in the ordinary course of business. It will thus appear that in the

ordinary course of business, the grain which is shipped from places in the interior of Illinois to markets beyond the limits of that State, or which is shipped from States north and west of Illinois through that State to eastern or southern markets, does not stop by the way for storage in the Chicago elevators or warehouses. Such grain as is received and stored in the elevators or warehoses in Chicago is not grain *in transitu* through that city from a point, either within or without the State of Illinois to some place or market beyond its limits. On the contrary it is grain which has arrived at its destination. It has reached its consignee, who, for purposes of his own convenience, has it stored in these warehouses instead of taking it into personal custody and providing a place for its storage and safe-keeping. When the railway company delivers a train of cars laden with grain at a warehouse, the functions and liabilities of the common carrier both terminate. It is not delivered to the warehouseman as forwarding merchants, to be re-shipped, or sent forward to some remote consignee. It has for the time ceased to be the subject of inter-State commerce. It has reached the market where its owner desires it to be offered for sale, or to be placed in store for future sale. The grain is inspected by public officers, under authority of law. Rev. Statutes of Ill. of 1874, p. 823, § 108.

It is the duty of those following the vocation of common or public warehousemen, to receive the grain, store it in bulk with grain of the same grade, and issue to the owner or consignee a "warehouse receipt" therefor. *Ibid.* p. 821.

The particular grain thus stored has become confused in the general mass—its identity can no longer be traced; and the warehouse receipt issued therefor, is merely evidence of title to a like quantity of similar grain of the same grade. These receipts are, under the statute, negotiable by endorsement, which constitutes a valid transfer of the legal title to the grain represented thereby. (*Ibid.* p. 827, § 118.)

The grain remains in store a greater or less length of time, at the pleasure of its owner—not unfrequently from September until the following May. While thus in store, the grain is the subject of purchase and sale by those dealing in such commodities. A part is sold to millers of Illinois, who convert the same into flour, either for home consumption or for shipment to markets in other places. The greater portion is probab y sold to those who finally ship the same to other States or foreign countries.

It is a mistaken assumption that the grain transported through the State of Illinois, or even through the city of Chicago, in the course of one continuous shipment, to points outside of the State, is ever received for storage in the warehouses in Chicago.

It appears from the Report of the U. S. Commissioner of Agriculture for 1873, that the total number of bushels of corn, wheat, rye, oats and barley produced in Illinois, in that year, was two hundred and seven millions seven hundred and sixty-nine thousand, (207,769,000.)

Report of U. S. Dept. of Agricult. for 1873, p. 23.

The official Report of the Warehouse Registrar at Chicago, made to the Board of Railroad and Warehouse Commissioners of Illinois, shows that the total number of bushels of the same kinds of grain which were received in the public warehouses of that city during the year ending Nov. 1, 1873, was sixty-eight millions eighty five thousand seven hundred and eighty five, (68,085,785.)

Report of R. & W. Com'rs of Ill. for 1873, *p.* 43.

It appears, then, from sources of which the court will take judicial notice, so far as the facts may be material in the consideration of this case, that the entire quantity of grain which is received for storage in Chicago warehouses from the States of Illinois, Iowa, Wisconsin, Minnesota, Nebraska, Kansas and other States, and Territories, referred to in the argument of counsel for Plaintiffs in Error, is less than one-third of the product of Illinois of the same kinds of grain. No one informed upon the subject will

claim that all these great grain growing States do not annually ship to eastern markets either through or past Chicago, many times the amount of grain which is annually stored in Chicago warehouses.

This is accounted for by the fact that the *through* shipments, that is shipments of grain from those States, consigned to markets east of Chicago, do not enter the Chicago elevators or warehouses, although the same may, in their transit, pass through or around that city. In the ordinary course of business, these warehouses only receive such grain as is consigned to Chicago as its market and not such as merely passes through that city on its way to other markets. If the elevators or machinery pertaing to grain warehouses are ever used for the mere purpose of unloading railroad cars and transferring their contents to lake vessels or other means of transportation, it is only in exceptional cases, and the Statute, of Illinois, regulating the storage of such grain and providing the maximum rates therefore, have no application to such use of the machinery of such elevators. The Statute only applies to grain placed in store or "stored in bulk" for which negotiable warehouse receipts are required to be issued by the warehouseman.

Rev. Stat. of Ill. of 1874, pp. 820—823.

The Statute only affects, therefor, grain consigned to the Chicago market, or shipped to that city as its place of destination, and does not assume to regulate the transfer of grain from one means of transportation to another, while it is *in transitu* through the city of Chicago or State of Illinois. *In other words, the Chicago warehouses only receive and store the grain, which, for the time of such storage, is the subject of the domestic or internal commerce of the State, and not that which is passing through or from the State to markets beyond its limits, and is thus the subject of inter-State commerce.*

The transportation of such grain from one State to another is undoubtedly comprehended within, and forms a part of the "commerce among the several States." But such transportation is in nowise affected by the law in question.

This law only has application to such grain as may be shipped to Chicago as its market, and which is there received, retained, bought and sold, and enters into the local commerce of that city, or the internal commerce of the State. It is true the grain may have been the subject of "commerce among the several States" while in course of transportation from some place without the State of Illinois to the city of Chicago. And it may again become the subject of such commerce, if transported to some other State for sale or consumption. But during the interval between its receipt by its consignee in Chicago and delivery to a common carrier for shipment to another State, that is during the period of its storage in public warehouses in that city, its *situs* is there, and it is subject to State laws.

Its *status* and relations in this regard are not unlike that of goods purchased in other States by a wholesale merchant of Chicago for sale to his customers in other States. Such goods have been, and are intended again to become, the subject of inter-state commerce. But while they are kept in store in that city by the Chicago wholesale merchant, they remain subject to State regulation, State taxation and State control.

Woodruff v. *Parham*, 8 Wallace, 136.

In the case last cited, after affirming that such property is subject to taxation under State authority, this Court says:

"If we examine for a moment the results of an opposite doctrine, we shall be well satisfied with the wisdom of the Constitution as thus construed.

"The merchant of Chicago who buys his goods in New York and sells at wholesale in the original packages, may have his millions employed in trade for half a lifetime and escape all State, county, and city taxes; for all that he is worth is invested in goods which he claims to be protected as imports from New York. Neither the State, nor the city, which protects his life and property, can make him contribute a dollar to support the

government, improve its thoroughfares or educate its children. The merchant in a town in Massachusetts, who deals only in wholesale, if he purchase his goods in New York, is exempt from taxation. If his neighbor purchase in Boston, he must pay all the taxes which Massachusetts levies with equal justice on the property of all its citizens. These cases are merely mentioned as illustrations. But it is obvious that if articles brought from one State into another are exempt from taxation, even under the limited circumstances laid down in the case of *Brown* v. *Maryland*, the grossest injustice must prevail, and equality of public burdens in all our large cities is impossible."

The fact that the owner of grain has the same stored in a public warehouse, while the wholesale merchant keeps his goods in his own storehouse, does not affect the question as to whether such goods are the subject of the internal commerce of the State, or of the "commerce among the several States." The fact that goods have once been, or may become, subjects of inter-state commerce, does not permanently, or indellibly, stamp that character upon them. It continues no longer than they are the objects of commercial transfer from one State to another.

When that relation ceases, the liability to Congressional regulation terminates.

Property while in transit from one State to another, or through a State, cannot be taxed by authority of such State.

Case of the State Freight Tax, 15 Wal., 281.

But after it has reached its destination, and is there offered for sale, it is subject to taxation by State authority equally with other similar property there situated.

Woodruff v. *Parham*, 8 Wal., 123, 136.

Hinson v. *Lott*. Ib. 152.

This Court has frequently pointed out distinctions between local transactions and those which form a pa t of the inter-state commerce. Thus, in *Paul* v. *Virginia*, 8 Wal., 183, it is said:

"Issuing a policy of insurance is not a transaction of commerce. The policies are simple contracts of indemnity against loss by fire, entered into between the corporations and the assured for a consideration paid by the latter. These contracts are not articles of commerce in any proper meaning of the word. They are not subjects of trade and barter offered in the market as something having an existence and value independent of the parties to them. They are not commodities to be shipped or forwarded from one State to another, and then put up for sale. They are like other personal contracts between parties which are completed by their signature and the transfer of the consideration. Such contracts are not inter-state transactions, though the parties may be domiciled in different States. The policies do not take effect, are not executed, until delivered by the agent in Virginia. They are, then, local transactions, and are governed by the local law. They do not constitute a part of the commerce between the States any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia, would constitute a portion of such commerce."

The purchase of grain stored in a Chicago warehouse by a citizen of another State would not therefore, constitute commerce between the States. If so, upon what ground can it be held that the storage of grain in public warehouses for the purpose of such sale, constitutes a part of such commerce? As we have already shown such storage is not a mere incident of its transportation from one State to another. It is the storage or preservation of the grain by, or for, its owner, in the market where it is placed and kept for sale. After the grain is transported to its market, it is necessary to store the same during the period it is held for sale; so it is necessary to store the same until the owner sees fit to ship it elsewhere; and without such storage neither the inter-state nor domestic commerce in the grain can be conveniently carried on. It is equally necessary to both the inter-state and domestic commerce, that the fields should be cultivated, and the

crop should be harvested and threshed, or prepared for the market; yet none of these things are a part of the inter-state commerce.

An ordinance of the city of Mobile required that every express company or railroad company doing a business extending beyond the limits of the State, should pay an annual license of $500, which should be deemed a first grade license; that every express or railroad company doing a business within the limits of the State, should take out a license called a second grade license, and pay therefor $100; and that every such company doing business within the city, should take a third grade license, paying therefor $50. And it subjected any person or incorporated company who should violate any of its provisions to a fine not exceeding $50 for each day of such violation.

The validity of this ordinance was assailed upon the ground that it imposed a burden upon inter-state commerce, and was therefore repugnant to the clause of the Constitution which confers upon Congress the power to regulate commerce between the States. This Court overruled that objection, and held the ordinance to be valid; and at the conclusion of the opinion, say:

"The license tax in the present case was upon a business carried on within the city of Mobile. The business licensed included transportation beyond the limits of the State, or rather the making of contracts within the State for such transportation beyond it. It was with reference to this feature of the business that the tax was in part imposed; but it was no more a tax upon inter-state commerce than a general tax on drayage would be, because the licensed drayman might sometimes be employed in hauling goods to vessels to be transported beyond the limits of the State."

Osborne v. *Mobile*, 16 Wal., 482.

It is not everything which affects commerce which amounts to a regulation of it, within the meaning of the Constitution. *Ibid.*

It is not incumbent upon us to show that the regulation of the storage of grain, in bulk, in public warehouses, in nowise affects

inter-state commerce in such grain. The internal commerce of the respective States, and the commerce between the several States have intimate relations, and in many respects are closely interwoven, so that one is larely dependent upon the other. Yet the States possess the undoubted power to regulate their domestic commerce.

Nathan v. *Lousiana* 8 Howard 82.

In the exercise of this power, the inter-state commerce must necessarily be more or less influenced, for the same commodities are upon one day, the subject of the domestic commerce of a State, and the next day, or even hour, may become the subject of commerce between the States. In order to determine whether any given law of a State is a regulation of the commerce of such State or of the "commerce among the several States" a fair test would seem to be this: To ascertain whether it assumes to regulate transactions in the article or commodity in question, while it is a part of the general mass of property having its *situs* in such State, and which transactions do not necessarily embrace the transportation of such property from one State to another; or whether the law is brought into active operation, and applies to the property because of its transportation from one State to another, or in other words, on account of its entering into, and becoming the subject of inter-state commerce.

If the former is the scope and purpose of the law, we insist it should be classed among regulations of the domestic, or internal commerce of the State.

If the latter, then we are willing to concede that it would, with propriety, be regarded as a regulation of "commerce among the several States."

These propositions are clearly deducible from the decisions of this court.

Thus, a State cannot tax, or in anywise embarrass or restrain the transportation of goods from one State to another, by those

who chose to engage in inter-state commerce. *Case of the State Freight-Tax.* 15 Wal. 281.

Nor can a State in anywise discriminate against such goods upon the ground that the same are to become, or have been, the subjects of such commerce.

Woodruff v. *Parham.* 8 Wal. 139.

Nevertheless, when the property has reached its consignee, and is become a part of the general mass of property having its *situs* within the State, it may be taxed and subjected to the commercial regulations of the State in like manner, and to the same extent, as other property therein, which had never been the subject of inter-state commerce. *Ibid.*

Hinsin v. *Lott* 8 Wallace 150.

Reference is made in the arguments of Counsel, to the geographical position of the city of Chicago, and to the fact that the grain warehouses of that city are so situated as to be accessible from the system of railroads centering there, and from the Chicago River, which forms the harbor of that port, connecting with the Lakes. The inference is sought to be raised, that because these warehouses are thus situated, and are to a considerable extent used in the receiving and storing of grain transported to them from other States, which is subsequently re-shipped by water or rail to Eastern markets, that the warehouses themselves are so identified with inter-state commerce as to be of necesity free from commercial regulation by State authority, and only subjected to the control of Congress This conclusion we submit does not follow from the premises.

If this argument is sound, much of the most important business carried on in that great city, possesses a like immunity from State control. For example, the Lumberyards of that city are situated at points accessible by both railroad and water communication. They seek these positions, because of the greater facilities thereby offered, for receiving the lumber from the vessels engaged in

inter-state commerce upon the Lakes, and shipping the same to their customers in Illinois and other States. The transportation of lumber from Wisconsin and Michigan, to the Chicago lumberyards, is a part of the inter-state commerce. So is its transportation from thence to other States, for sale; and during such transportation to and from the Chicago lumber yards, it is subject to such commercial regulations as Congress may see fit to impose. But during the period of its storage in the Chicago lumber yards, and the time it is there kept for sale, such lumber sustains another relation, viz: It is subject to such commercial regulations as may be prescribed in the laws of Illinois. Its *status*, in this regard is identical with the wholesale merchant's goods while in his storehouse in Chicago, for sale. The State cannot discriminate against such goods, or such lumber, because of their having been imported from another State; but it may place the same upon terms of equality with similar goods produced within the State, and regulate transactions in the same by equal and undiscriminating laws.

The storage of grain in Chicago for purpose of sale, in warehouses suitably situated and adapted to that purpose, must, as regards this question, stand upon the same basis, as the storage of lumber in Chicago lumber yards for the purpose of sale, or the storage of goods in the warehouses of the wholesale merchants of that city, to await future sales in the regular course of their business.

II

A STATE MAY REGULAT THE INSPECTION AND STORAGE OF GRAIN IN PUBLIC WAREHOUSES AS A BRANCH OF ITS INTERNAL COMMERCE.

In *Gibbons* v. *Ogden*, 9 Wheaton, 203, Chief Justice Marshall discussing the validity of State Inspection laws, says: "The object of inspection laws is to improve the quality of articles pro-

duced by the labor of a country; to fit them for exportation; or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the general government; all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating *the internal commerce of a State*, and those respecting turnpike roads, ferries, etc., are component parts of this mass."

This language is quoted with approbation in the recent opinion of this Court in the *Slaughter House Cases*, 16 Wal., 63.

The power of the States to regulate their internal commerce cannot be seriously questioned. *Ibid.*

People v. *Saratoga and Rens. R. R. Co.*, 15 Wend., 135.

Nathan v. *Louisiana*, 8 Howard, 82.

We have already shown that the inspection laws of Illinois, in their practical operation, only affect such grain as is at the time the subject of the internal commerce of the State.

Grain, which is in the course of transportation from one State to another, or through the State of Illinois, is not deposited in the Chicago warehouses. It is grain consigned to that market for sale, which there finds a resting place. If such grain has ever been transferred from State to State, and was thus the subject of inter-state commerce, its relations in this regard terminate when it has reached the place of its destination, and become a part of the general mass of property there held for sale in the regular course of the commerce there carried on.

We do not understand that the learned counsel for plaintiffs in error deny the power of the State to pass inspection laws, and to regulate the inspection of grain. The existence of this power is unquestionable.

Gibbons v. *Ogden*, 9 Wheaton, 203.

Slaughter House Cases 16 Wal. 63.

Gilman v. *Philadelphia* 3 Wal. 726.

City of New York v. *Miln.* 11 Peters 133.

If the State may regulate the inspection of grain and impose upon the shipper or producer the charges for such inspection, as a condition precedent o his right to have such grain stored in a public warehouse, may not the State at the same time regulate such storage, and protect the shipper or producer against extortionate charges therefor ?

The regulation of the storage of grain in public warehouses is a necessary incident of the regulation of its inspection. This will be seen from an examination of the Illinois Statute upon the subject.

Rev. Stat. of Illinois. (of 1874.) pp, 820, 827.

The Court must take judicial notice of the fact, (for such it is) that the great mass of cereal grains produced from the broad fields of the West and Northwest, is chiefly shipped in bulk. To carry out any efficient system of inspection, it is necessary to require, as the Illinois Statute provides, that warehousemen shall not mix different grades of grain, but shall store each grade with other grain of the same kind and quality,

Rev. Stat. of Ill., (of 1874), p. 821, § 101, and p. 825, § 111.

It is necessary not only that the grain should be inspected *into* the warehouses when it is there delivered, but that it should be inspected *out*, when it is sold to be shipped elsewhere. (*Ibid* p. 821, § 101.)

The warehouseman's receipt, issued to the owner of the grain, is required to indicate the grade of the grain, "as inspected." (*Ibid*, § 102.)

This receipt constitutes the evidence of title to the grain, as well as of its grade and quality. The receipts are negotiable by indorsement, and thus constitute the instruments, by the use of which, very extensive commercial transactions are carried on. All

this is based upon the faith and confidence which the business public place in the system of State inspection and regulation of the storage of the grain in the public warehouses.

Unless the State may follow the grain into the warehouse and regulate its storage, it would be useless to inspect each car load or consignment as it is placed in store. It is impracticable to store each car load in a separate bin, and unless the power of the State extends so far as to require each grade of grain to be stored by itself, and generally to regulate such storage, the attempt to regulate the inspection would prove a failure. It could subserve no useful purpose to inspect a car load of wheat and determine its grade and quality, if it may, while stored in market for sale, be confused with a mass of other wheat of a different grade or quality. We submit therefore, that it is but the exercise of the legitimate powers of a State, to regulate the inspection and warehousing or storage of grain, thus placed upon the market for sale within its limits.

If the State of Illinois should undertake to regulate the transportation of grain from State to State, or to impose any obstructions to, or burdens upon, such transportation, a case would arise to which could be applied the arguments of the learned counsel for plaintiffs in error, denying the existence of such power on the part of the State.

But, we submit, no such question arises on this record.

The fact that a part of the grain shipped to Chicago, and stored in the warehouses of that city, has once been, or may again become the subject of inter-State commerce, does not impress that character upon it while it is held for sale in the Chicago market. The law does not discriminate against grain which may have been shipped from other States to Chicago, nor because it may be transported from thence to other States. It deals with it all alike as the subject of the domestic commerce of the State.

For example:—A State may not levy a poll tax upon its citizens who travel beyond its limits, because they exercise such right.

Crandall v. *Nevada*, 6 Wal. 35.

Nevertheless the power of a State to levy a poll tax upon its citizens is unquestionable; and the fact that a portion of such citizens, subject to the tax, exercise their right to travel beyond its limits, affords no ground for exemption. Upon the same principle, the fact that grain may have been, or again may become, the subject of inter-state commerce, does not withdraw the same from the full operation of State laws, at a period when it sustains no such relation.

It is not denied that a State may regulate the warehousing of grain which is the product of its own soil, and not transported to its markets from other States. If so, why may not a State regulate the storage of such grain in connection with like grain shipped to its markets from other States, and by consent of such shippers stored in the same bin and confused in one common mass with the domestic products of the State?

The right of the importer of foreign commodities to an immunity from State taxation upon his sales thereof, exists only so long as he retains the same in their original packages, and ceases as soon as the same are either sold by him or *become confused in the general mass of property in the State.*

Brown v. *Maryland*, 12 Wheat., 419, 441.

License Cases, 5 How., 574, 577, 595.

If such is the rule respecting foreign importations, for stronger reasons should grain shipped from one State to the markets of another State, and there, by consent of its owner, confused with the mass of like grain, which is the product of the latter State, be subject to its general system of internal police, and the laws regulating its domestic commerce, which are of uniform operation, and in nowise discriminate against the products of other States.

Woodruff v. *Parham*, 8 Wal., 123, 140.

III.

THE POWER TO ENACT LAWS REGULATING THE INSPECTION OF GRAIN AND THE STORAGE THEREOF IN PUBLIC WAREHOUSES, IF REGARDED IN ANY SENSE AS A REGULATION OF INTER-STATE COMMERCE, BELONGS TO THAT CLASS OF POWERS WHICH MAY BE EXERCISED BY THE STATE IN THE ABSENCE OF CONFLICTING CONGRESSIONAL LEGISLATION.

State laws which were conceeded to be regulations of inter-state of commerce, have frequently been upheld, upon the ground that the same were of such character as not to require uniform regulation throughout the Nation, and that the same did not come in conflict with any act of Congress.

Thus it is held that: "Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress, is to lose sight of the nature of the subjects of this power, and to assert concerning all of them, what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. That this cannot be affirmed of laws for the regulation of pilots and pilotage, is plain."

Cooley v. *Wardens of Port of Phila.*, 12 Howard 319.

So, the power to regulate commerce among the States, comprehends the power to control, to the extent necessary for that purpose, all the navigable waters of the United States which are accessible from any other State than that in which such waters lie; and includes the power to keep the same open and free from any obstruction to their navigation, interposed under State authority; and to regulate the construction of bridges across such navigable streams. Nevertheless, a State may authorize the construction of a bridge over a navigable river when the exercise of

such power does not come in conflict with the congressional regulations upon the subject. *Gilman* v. *Philadelphia*, 3 Wal. 713.

The Court say: "The power to regulate commerce covers a wide field, and embraces a great variety of subjects. Some of these subjects call for uniform rules and national legislation; others can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operation to such localities respectively. To this extent the power to regulate commerce may be exercised by the States."

"Whether the power in any given case is vested exclusively in the general Government depends upon the nature of the subject to be regulated. Pilot laws are regulations of commerce; but if a State enact them in good faith and not covertly for another purpose, they are not in conflict with the power to regulate commerce committed to Congress by the Constitution."

Ibid, 3 Wal., pp. 726–727.

This principle has frequently been affirmed.

Wilson v. *Blackbird Creek Marsh Co.*, 2 Peters 250.

Crandall v. *State of Nevada*, 6 Wal. p. 42.

License Cases, 5 How., 578, 581.

Laws regulating in a suitable manner the inspection and storage in warehouses of the cotton, sugar and rice of the South and Southwest, would be found wholly inappropriate, if applied to the inspection and storage in bulk of the product of the wheat and cornfields of the Northwest. It would be a visionary and futile scheme to attempt uniformity throughout the Nation in such regulations. Heretofore these matters have been safely confided to the municipal regulations of the various States.

The exercise of such power by the States has been found to be compatible with the power of Congress to regulate inter-state commerce.

If Congress in fact possesses the power to regulate the inspection and warehousing of grain, such power has never been exercised. It has hitherto lain dormant. Shall the mere suggestion of the existence of such paramount power on the part of Congress, dispel and strike out of existence all of the State laws upon the subject?

Unless it is held that the inspection and storage of grain, as it is carried on in connection with the public warehouses in Chicago, does not pertain to the internal or domestic commerce of Illinois, but is in reality "commerce among the several States," it must be held that Congress has no power to regulate the same. And to deny such power to the States, it must be shown not only that Congress has power to regulate the storage and inspection of grain in Illinois, but that such power is vested exclusively in that body. We have elsewhere shown that such power may be exercised by the States, which is sufficient for our present purpose.

IV.

THE ACT IN QUESTION IS NOT OBNOXIOUS TO THE OBJECTION THAT IT IS REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES IN GIVING A "PREFERENCE TO THE PORTS OF ONE STATE OVER THOSE OF ANOTHER."

This proposition might be dismissed with the suggestion that the alleged repugnancy between the act in question, and this clause of the Federal Constitution is not embraced in the assignment of errors, (*Ante*, p. 11) and it is manifestly introduced into the argument of counsel for plaintiffs in error, as a mere makeweight. Its discussion however is germane to the general subject, and we do not choose to avail ourselves of this privilege.

The fifth clause of the ninth section of the first article of the Constitution of the United States contains this provision: "No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue to the ports of one State over those of another; nor shall

vessels bound to or from one State be obliged to enter, clear or pay duties in other"

This clause purports to be a limitation on the power of Congress in framing its revenue laws and regulations of commerce "with foreign nations and among the several States."

It contains no limitations upon the power of the States to frame laws regulating their internal police, and the inspection and storage of commodities offered for sale in their markets.

It was not designed to secure uniform laws or regulations over the class of subjects concerning which the States retained the power to legislate.

Among other prohibitions of power to the States contained in Section 10, Article I, of the Federal Constitution, is the following:

"No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except *what may be absolutely necessary for executing its inspection law.*"

It is held that this prohibition relates to foreign and not to inter-state commerce.

Woodruff v. *Parham*, 8 Wal., 123.

But this does not confine the recognition of the power of the States to pass "inspection laws" to commodities which are the subjects of commerce with foreign nations.

The Constitution does not assume to confer upon the States the power to pass inspection laws respecting the subjects of foreign commerce, nor to reserve this power to the States from the powers granted to the general Government. On the contrary, it recognizes the power as existing in the States to pass inspection laws, independently of the power of Congress to regulate foreign and inter-state commerce, and notwithstanding the provision that no preference shall be given "by any regulation of commerce to the ports of one State over those of another."

It could not therefore have been the design of the framers of the Constitution, to require uniformity in the laws of the various

States, relative to the inspection of grain, nor to confer upon Congress the exclusive power to pass such laws, even as respects the commerce with foreign nations. A *fortiori* the power of States to provide for the inspection of commodities which enter into their domestic and inter-state commerce should be upheld. We have elsewhere shown that the regulation of the storage of grain in bulk is necessarily connected with the regulation of its inspection. Such grain is not placed upon the market in packages, sacks, casks, bales, or boxes, as is the case with most other commodities, which become the subjects of commerce, and cannot be thus inspected. It is stored in large bins, the property of different owners being confused in one mass, so that the grain of no particular owner can be identified or distinguished from that belonging to another. If the States may regulate the inspection of such grain, the power to regulate its storage necessarily exists in order to render such inspection practicable, and to subserve some useful end. The regulation of such storage cannot be regarded as giving a preference to the ports of one State over those of another. The States may well be allowed to emulate each other as to which shall provide the most efficient system of "inspection laws;" and if one State succeeds in the exercise of this power better than another, it is absurd to charge it with a violation of this clause of the Federal Constitution.

Cooley v. *Board of Wardens*, 12 Howard, 299, 314.

The provisions of the law in question, regulating the storage of grain in public warehouses, and prescribing the maximum rates, are manifestly for the protection and advantage of those engaged in the grain trade at Chicago, and inure to the benefit of the producers and consumers of such grain; and cannot, by any fair mode of reasoning, be distorted into burdens or restraints upon such commerce. The warehouseman is not required to charge the full maximum rates fixed in the law. He is simply prohibited from charging greater rates for storage than those thus prescribed.

In the argument of one of the counsel for plaintiffs in error, it is said:

"If this power is sustained, the legislature may, by another act, declare that every such warehouseman may charge and receive five cents for every bushel of grain received. The citizen of Wisconsin, who lives on the Northwestern Railroad, and raises grain on his farm, or the merchant to whom he sells his products, where prices are regulated by the London or New York markets, or perhaps those of Chicago, cannot obtain the full value of his property, because the five cents levy for the warehouseman of Chicago must be deducted. He cannot escape this gateway of commerce; there is no other route by which the grain can reach its ultimate market, for the lines of transportation all lie through Chicago. * * * * * * * * * *

If the legislature of Illinois can thus make commercial rules, the legislature of New York can do so too. A statute may be passed in regard to the grain elevators at Buffalo, and the farmers and dealers of the West will be subject to such rules as New York pleases to enact, as well as of Illinois. Every other State may exercise the same power, and it is to be supposed that retaliatory legislation would be the sure result. The object of the union of these States, which was to remove just such a state of affairs in the confederation, would be defeated."

The fallacy of the argument of the learned counsel, lies in the fact that the Illinois statute does not undertake to prescribe the minimum rates which warehousemen may charge for storage. Notwithstanding the statute, they may lawfully charge as much less than the rates named in the statute, as they think proper. The "farmers and dealers in the West," for whom counsel seem to feel so much solicitude, will not be likely to feel agrieved if New York should undertake to prevent extortionate charges for storage of grain by warehousemen in that State. The consumers of grain in the East will not have any just ground of complaint

if Illinois prevents extortionate charges for the storage of grain in Illinois warehouses, although such grain may subsequently be shipped to eastern markets. The interests of the producer and dealer in the West, concur with those of the consumer and dealer in the East, in restraining within reasonable limits the charges for the storage of grain, which maybe made by the Chicago warehousemen, who are not inaptly said to occupy the "gateway of commerce," as to all grain bought or sold in the Chicago market. There is not much danger of any serious evils resulting from "retaliatory legislation" of this character. If each State endeavors to promote honesty and fair dealing, and to break up oppressive combinations and monopolies, within its limits, among those who are in a position to control articles of prime necessity for food, it will be absurd to condemn such laws as giving a preference to the ports of one State over those of another, and therefore unconstitutional.

V.

THE ACT IN QUESTION DOES NOT DEPRIVE THE WAREHOUSEMEN OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW, WITHIN THE PROHIBITION OF THE CONSTITUTION.

1. The first section of the Fourteenth Amendment to the Constitution, is as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

It is from this section that the Supreme Court of the United States derives its jurisdiction to finally determine whether a

State statute deprives any person of property without due process of law, and is therefore unconstitutional and void.

The Fifth Amendment was always construed as a restraint on Federal power, and not upon the legislation of the States. A similar provision, respecting "due process of law," is found in the Constitution of most, if not all, of the States, and the provision has frequently been subjected to judicial interpretation in the State and Federal courts.

We insist that under no construction of this constitutional provision, which has ever received the sanction of the courts, can it be held that the act in question deprives warehousemen of their property without due process of law, although it prescribes the maximum rates which may be charged for the storage of grain by those following the vocation of public warehousemen.

Slaughter Houses Cases, 16 Wal., 80.

Where the owner of property is left in the unmolested possession and enjoyment of his property, he is not "deprived" thereof within the meaning of this section.

To constitute such deprivation or taking, it must be seized and appropriated to public use, or to the use of another.

Sharpless v. *Mayor of Philadelphia*, 27 Pa. State Rep., 166, 173.

Grant v. *Courter*, 24 Barbour, (N. Y.) 232, 238.

Any proper exercise of the powers of government, which does not directly encroach upon the property of an individual, or disturb him its enjoyment, is not a taking or deprivation of his property within the meaning of the Constitution, and will not entitle him to compensation, or give him a right of action.

Cooley on Constitutional Limitations, (1st Ed.) p. 541.

The law neither takes from, nor deprives any warehouseman of his property. It simply provides that if he uses his property for a specific purpose, and follows the vocation of a public warehouseman, he shall conform to certain regulations deemed essential to the protection of public interests. He is not required by

law to use his property for the storage of grain for the public, nor in anywise to follow the vocation of a public warehouseman.

An individual may be restrained by law from using his property for any particular purpose deemed prejudicial to the public interests, yet if he is left in the possession and enjoyment of his property for other purposes, he is not deprived thereof in a constitutional sense.

A Massachusetts statute, which imposed a penalty on "any person who shall take, carry away or remove any stone, gravel or sand from any of the beaches in the town of Chelsea," passed for the protection of Boston Harbor, was held to extend to the owners of the soil as well as strangers, but not to be such a taking of private property and appropriating it to public use with the meaning of the declaration of rights, as to render it unconstitutional and void, although no compensation was therein provided for the owner.

Commonwealth v. *Tewksbury*, 11 Met., 55.

The Court say:

"But the other and far the more important question is, whether such a law is a taking or appropriation to public use, of the land of all those who own land bordering on the seashore, within the meaning of the declaration of rights, and whether it is a law which the legislature have no constitutional and legitimate authority to make, without providing compensation for such owners.

"The Court are of the opinion that such law is not a taking of the property for public use, within the meaning of the Constitution, but is a just and legitimate exercise of the power of the legislature, to regulate and restrain such particular use of property as would be inconsistent with, or injurious to, the rights of the public.

"It is competent for the General Assembly to restrain the use of property by the owner in any manner or for any purpose detrimental to the public welfare, and such restraint is neither a taking of property for public use, nor depriving the owner thereof,

without due process of law within the meaning of the declaration of rights."

Commonwealth v. *Alger*, 7 Cushing 86.

2. The learned counsel for plaintiffs in errors cite, and seem to place strong reliance upon *Pumpelly* v. *Green Bay Company*, 13 Wal. 166, in support of their proposition that the provisions of the Illinois Statute establishing maximum rates which may be charged by public warehousemen for the storage of grain, deprives such warehousemen of their property without "due process of law." In stating the question presented for decision in that case the Court say:

"The declaration states that by reason of the dam the water of the lake was so raised as to cause it to overflow all his land, and the overflow remained continuously from the completion of the dam, in the year 1861, to the commencement of the suit in the year 1867, and the nature of the injuries set out in the declaration are such as show that it worked an almost complete destruction of the value of the land," *Ibid*, p. 177.

The Court held, that to thus permanently overflow and deprive the owner of the use of his land was a *deprivation* or *taking* of his property within the meaning of the Constitution of Wisconsin; and that he was accordingly entitled to a "just compensation therefor." We admit the correctness of that decision; but deny the conclusion counsel seek to deduce from it, viz:—that therefore the provision of the Illinois warehouse law prescribing the maximum rates for the storage of grain which may be charged by public warehousemen, deprives such warehousemen of their property without due process of law.

The case of *Wynehamer* v. *The People*, 13 N. Y. (3 Kern.) 378, is also adduced as authority in support of the same proposition. We might concede the soundness of all that is said in the various opinions of the judges in that case, with safety to the present case.

The substantial question there presented was, whether the Legislature can confiscate and destroy property, to-wit: intoxicating liquors, which had been lawfully acquired before the act in question took effect.

It cannot be claimed that the Illinois Statute produced any such effect upon warehouse property.

The Court of Appeals of New York in a subsequent case, when Justice Hunt was a member of the Court, use this language:
"Yet this is the only ground its violators can occupy to raise any question as to its validity. They are restrained of no liberty except that of violating the law by engaging in a forbidden traffic; and the assumption is not even plausible that the act works a deprivation of property to any one within the meaning of constitutiona restrictions upon legislative authority."

* * * * * * *

"It is a groundless pretext therefore, that the act in question conflicts with any provision of the Constitution of the United States, or of this State. It falls within the legislative power, exerted not for the first time, but unremittedly since the origin of the government. No one heretofore has questioned, on constitutional grounds, the validity of such an enactment, or called upon the judiciary to declare it void, and, perhaps, would not at this time, except as emboldened by the inconsiderate *dicta* of some of the judges in the case of *Wynehamer* v. *The People*, 3 Kern. 378. If there be no constitutional objection, the rule fully obtains 'that the will of the Legislature is the supreme law of the land and demands perfect obedience.' Men are not to violate legislative enactments, and expect from courts immunity and protection, instead of punishment. Judicial interposition to vacate or nullify legislative action (unless an infringement of some rule of the Constitution, or an invasion of private rights plainly expressed therein, and intended to be inviolable) would be 'to set the judicial above the legislative, which would be subversive of

all government.' It is the exercise of a judical function, of the most delicate nature, to declare an act of the Legislature void, and it is not to be expected that Courts will assume it, unless the case be plainly and clearly in derogation of constitutional limitations; nor is it to be expected that they will be zealous or astute to find grounds to thwart or defeat the legislative will, or resort to subtle or strained construction to bring a Statute into conflict with the organic law."

Met. Board of Police v. *Barret*, 34 New York 667-8.

If *Wynehamer* v. *The People* can be regarded as authority upon the question actually decided, it will not bear the extension and strain required to make it cover the question arising on this record.

In the recent case of *Bartemeyer* v. *Iowa*, 18 Wal. 133, this Court said:

"The weight of authority is overwhelming that no such immunity has heretofore existed, as would prevent State Legislatures from regulating and even prohibiting the traffic in intoxicating drinks, with a solitary exception. That exception is the case of a law operating so rigidly on property in existence at the time of its passage, absolutely prohibiting its sale, as to amount to depriving the owner of his property. A single case, that of *Wynehamer* v. *The People*, has held that as to such property, the statute would be void for that reason. But no case has held that such a law was void as violating the privileges or immunities of citizens of a State or of the United States. If, however, such a proposition is seriously urged we think that the right to sell intoxicating liquors, so far as such a right exists, is not one of the rights growing out of citizenship of the United States, and in this regard, the case falls within the principles laid down by this Court in the *Slaughter House Cases*.

"But if it were true, and it was fairly presented to us that the defendant was the owner of the glass of intoxicating liquor which

he sold to Hickey at the time that the State of Iowa first imposed an absolute prohibition on the sale of such liquors, then we concede that two very grave questions would arise, namely: 1. Whether this wonld be a statute depriving him of his property without due process of law; and secondly, whether if it were so, it would be so far a violation of the fourteenth amendment, in that regard, as would call for judicial action by this Court?

"Both of these questions, whenever they may be presented to us, are of an importance to require the most careful and serions consideration. They are not to be lightly treated, nor are we authorized to make advances to meet them until we are required to do so by the duties of onr position."

Conceding that both of the questions thus stated by the Court, shonld be decided in the affirmative, when actually presented, it would by no means follow that because the sale of property lawfully acquired, cannot be absolutely prohibited by subsequent laws, that therefore its use may not be regulated by subsequent laws, in such manner as the public interests may require.

3. The fact that the judicial and legislative precedents furnish no express authority for regulating by law the charges of warehousemen for storage of goods, should not be regarded as evidence that the power does not exist in respect to modern elevators or warehouses, for the storage of grain.

The shipping of graiu in bulk, and receiving aud handling the same in modern elevators, the constant and almost uniform practice of confusing in one mass the property of different owners, the issuing of negotiable warehouse receipts to be used in commercial transactions as the ordinary evidence of title to grain in store, and the combinations among warehousemen to prevent legitimate business competition, are of quite recent development, and are not within the scope or purview of the old authorities relating to the duties and liabilities of warehousemen and forwarding merchants.

The growth and development of this modern practice of shipping and storing grain in bulk is aptly described by Justice BREESE in delivering the opinion of the Court in *The People ex rel.* v. *C. & A. R. R. Co.*, 55 Ill. 112.

He says :—

"When we consider the vast amount of grain annually produced for the market, in the rich country through which this road passes, on its way to the great grain market of the west, the difficulty, if not impossibility, of providing sacks, or other contrivances to secure properly this production for shipment, is quite apparent. This led to the establishment of costly elevators, and they induced the custom, which has obtained with all railroads in this State at least, to receive grain in bulk, it being equally as well protected in that condition in its transit by cars as in sacks, and as speedily unloaded from them by means of the steam power and appropriate machinery employed by them. These erections have had the same powerful influence upon the production of wheat, one of our great staples, as the introduction of the reaper, for without the agency of the latter, those vast fields yearly blossoming with this product, would be devoted to other purposes, and but for the steam car and elevator, if cultivated up to the limit of their capacity, their products could find no market. Hand in hand these powerful influences are at work, and so long as the two latter make no unjust discriminations, and are satisfied with moderate charges, the stimulus to the agricultural interest will be unceasing, and nothing will be wanting to make this the great grain growing State of the West, if not of the Union."

The People ex rel. v. *C. & A. R. R. Co.*, 55 Ill. 112.

The judicial reports of Illinois, furnish ample evidence of the tendency of the managers of railway companies and proprietors of grain elevators and warehouses to enter into combinations to secure a monopoly of the storage of grain, and to compel shippers

from the interior to consign their grain to such warehouses in Chicago, for storage, as may suit the purposes of the managers of the railways and warehouses.

C. & N. W. R. Co. v. *The People.* 56 Ill. 367.

Vincent v. *C. & A. R. R. Co.* 49 Ill. 33.

The People ex rel v. *C. & A. R. R. Co.* 55 Ill. 95.

And in cases where there is no combination between the common carrier and the warehousemen, grain shipped in bulk by a railroad, must of necessity be delivered by the railroad company to some elevator or warehouse upon the line of its road, or connected with it by a railroad track. As might be anticipated, this reduces the number of those who are in a situation to enter into competition for storage of grain, received over any line of railroad, to comparatiely few persons.

The Report of the Railroad and Warehouse Commissioners of Illinois for 1874, (p. 39.) shows that nine business firms controlled all the elevators and warehouses for the storage of grain in Chicago, for the year ending Oct. 31, 1874. Every producer or grain dealer in Illinois or elsewhere, who ships grain to the Chicago market for sale, is compelled to consign the same for storage in some one of these warehouses; and from a physical necessity is limited to those accessible from the railroad track of the line of road upon which he makes his shipment. If he ships to the Chicago market, " he cannot escape this gateway to commerce. " (Mr. Gondy's argument, p. 22). He can only escape the Chicago warehouses, by making his shipments to some other grain market than Chicago.

From this condition of affairs, the natural result is that combinations are formed among the fewwarehousemen who thus have the entire monopoly of the storage of grain in Chicago, to charge such rates of storage as they see fit to arrange among themselves, and not such rates as would result from an healthy business competition.

If the Court is to take judicial notice of the manner in which this business is conducted in Chicago, it will not overlook the practice termed "pooling," which has hitherto prevailed among many, if not all, of the warehousemen whose elevators are so situated as to come into practical competition. The substance of this system of "pooling," is understood to be, that the total net profits derived from the storage of grain by all the warehousemen entering into the "pool," is divided among them in proportion to the storing capacity of their respective elevators, without any regard to the amount of business actually done by each elevator. At least, the Legislature had right to take notice of the existence of these abuses at the time of enactment of the law in question, prescribing the maximum rates of storage in such warehouses. And now when this Court is asked to sit in judgment upon the constitutionality of the act of this Legislature, may not the vision of this Court be as broad and searching, in order to possess itself with a complete knowledge of the subject, as that properly exercised by the Legislature at the time of the passage of the act?

In order to determine the constitutionality of the law, may not the Court take judicial knowledge of every fact of which the legislature had the right to take political knowledge, for the same purpose?

If not, then it must be confessed the Illinois Legislature possessed better facilities than is possessed by this court, for the determination of the constitutionality, as well as the propriety and expediency of this law.

However this may be, there is sufficient appearing upon the face of the record to show that these warehousemen maintained a practical monopoly of the storage of grain in Chicago.

It appears from the record that from 1862 up to the time of the filing this information, shippers were compelled to pay such rates of storage as the warehousemen saw fit to demand.

The stipulation upon which the cause was submitted states: that respondents erected the "Northwestern Elevator" in 1862, and "that they have ever since that date carried on in said elevator, and by means thereof, the business of receiving, storing and handling grain for hire, for *which they have charged and received as a compensation such rates of storage as have been from year to year agreed upon and established by the different elevators or ware houses in the city of Chicago*, and which rates have been annually published in one or more newspapers printed in said city in the month of January of each year as the established rates for the year then next ensuing such publication."

In reference to this condition of affairs the following language is used by chief justice Breese in delivering the opinion of the Supreme Court of Illinois in the present case:

"In another part of their argument they say that they, by consent of their customers, have received during the past year higher rates of storage than those specified in the act, and so, in this respect, the act is a plain palpable violation of the clause of the constitution relied on; that depriving them of the value of the use, is depriving them of their property. This argument is answered by what we have already said. It is idle to talk about the consent of their customers to a higher rate of charges than the law allows them to receive. Their customers, before this law was enacted, had no protection against these monopolists. They had no consent to give. They were obliged to have their grain taken to these warehouses, and be subjected to such charges, as the organized combination, shutting out all competition, might choose to demand. The producer and shipper had no alternative but submission. They were completely in the power of this combination, and it does not fail to demand and exact the highest charges."

It thus appears that a few persons, following the vocation of public warehousemen for the storage of grain in Chicago, occu-

pied such a position, that unless restrained by law, they could impose such charges as they saw fit, upon all the grain shipped to that market for sale, and the shippers had no alternative but to submit to their demands.

4. Warehousemen for the storage of grain in the manner the business is conducted at Chicago, are engaged in a public employment as distinguished from ordinary business pursuits. In this regard they occupy a position similar to common carriers who are held to "exercise a sort of public office," and have public duties to perform.

N. J. Steam Nav. Co. v. *Merchants' Bank*, 6 How. 382.

Sanford v. *Railroad Co.*, 24 Penn., State Rep. 381.

Coggs v. *Bernard*, 2 Lord Raymond's Rep. 909.

C. & N. W. R. R. Co. v. *The People*, 56 Ill. 377.

Like common carriers, they are required by law to receive grain from all persons, and store the same upon equal terms and conditions.

Rev. Stat. of Ill. (of 1874), p. 821, § 101.

Ross v. *Johnson*, 5 Burrows, 2827.

In like manner they have a lien for their just charges upon the grain stored with them.

Rev. Stat. of Ill. (of 1874), p. 821, § 106.

Story on Bailments, § 453.

The right of a lien has always been admitted where the party was bound by law to receive the goods of another as bailee.

Grinnell v. *Cook*, 3 Hill (N. Y), 491.

It was held by the Supreme Court of Illinois, before the enactment of any statute to that effect, that common warehousemen were at common law entitled to a lien for their proper charges on the property stored with them. The Court say:

"We can conceive of no reason or policy why common warehousemen should not have a lien on property stored by them for their proper charges and the consequent right to retain the possession until paid.

"It is true the authorities leave the law in this respect somewhat unsettled, but warehousemen, like common carriers hold themselves out as publicans (so to speak), ready, to the extent of their ability, to accommodate, all in the safe keeping and forwarding of property according to the course of commerce; and must necessarily look to the property, rather than to the responsibility of the owner, of whom they seldom have any knowledge, for their reward. In case, therefore, where delivery of the property to the owner is called for, there would seem to be the same reason and necessity for this lien in favor of warehousemen, as of carriers or artizans; and they should stand in this respect, upon the same footing."

Low v. *Martin*, 18 Ill., 288.

Steinman v. *Wilkins*, 7 Watts & Serg., 466, 468.

The first section of Article XIII of the Constitution of Illinois is as follows:

SEC: 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be *public* warehouses.

The use of the word "*public*" in this connection is severely criticised by counsel for plaintiffs in error. (Mr. Jewett's argument, p. 36. Mr. Goudy's argument, p. 38).

Although the owuership of the property is private, the use may be *public* in a strict legal sense. Hence in judicial opinion the terms "public wharves," "public roads," "public houses," and "public warehouses," are of frequent occurrence, although the property may be the subject of private ownership.

Dutton v. *Strong*, 1 Black. 32

Ives v. *Hartley*, 51 Ill., 523.

Olcott v. *The Supervisors*, 16 Wal., 678.

In the case last cited this Court says :—

"Whether the use of a railroad is a public or a private one depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. No matter who is the agent, the function performed is that of the State. Though the ownership is private the use is public. So turnpikes, bridges, ferries and canals, although made by individuals under public grants, or by companies, are regarded as *publici juris*." Ibid p. 695.

When the owners of grain warehouses open the same to the general use of the public, and exercise the statutory right of confusing the grain of different owners in one indistinguishable mass, for which negotiable receipts are issued under the statute; when they take possession of the "gateway to commerce" and place themselves in such position, and pursue their vocation in such manner, that the grain dealers and producers have no option but to use their warehouses for the storage of grain, we respectfully submit that their warehouses may, without impropriety, be designated "public," and that the Constitutional Convention and General Assembly of Illinois, were quite excusable for treating them as such, and had authority to make all necessary regulations respecting such public use.

5. This general proposition is fairly deducible from the authorities :

Whenever any person pursues a public calling and sustains such relations to the public that the people must of necessity deal with him, and are under a moral duress to submit to his terms if he is unrestrained by law, then in order to prevent extortion and an abuse of his position, the price he may charge for his services may be regulated by law.

With due deference, we must insist that it is but mere trifling with great and vital interests, to place legislation of this character upon the footing of laws attempting to fix the price of labor in ordinary avocations, or the price of merchandise in the usual transactions of commerce. Upon what principle is it that laws are constitutionally based which fix the price at which money may be loaned? Whatever diversity of opinion may exist as to the wisdom or policy of such laws, no one questions their constitutionality. It has been a long and uniform custom in large cities to license and regulate by law or municipal ordinance cartmen, hackmen, stage and omnibus lines, and fix their maximum rates of charges, and so far as our investigation has extended the validity of such laws and ordinances have been invariably sustained.

Commonwealth v. *Duane*, 98 Mass. R. 1.

So too, as to laws fixing the maximum amount of toll which may be taken by millers for grinding grain.

State v. *Perry*, 5 Jones' Law, (N. C.) Rep. 252.

State v. *Nixon*, Id., 258.

Such laws have been in force in Illinois ever since its organization as a State, and their validity has never been questioned.

Laws of Illinois, (Ed. of 1823) p. 264.

Rev. Stat. of Ill. of 1845, Chap. 71.

Rev. Stat. of Ill. of 1874, p. 702

Notwithstanding these statutes have been so repeatedly reenacted and continually in force, it is believed no decision can be found holding the same invalid or unconstitutional.

The enactment of laws of this character was no innovation in the exercise of legislative powers. In the third year of the reign of William and Mary, *cap.* 12, *sect.* 24, it was enacted "that the justices of the peace of every county and other place within the realm of England or dominion of Wales, shall have power or

authority, and are hereby enjoined and required at their next respective quarter or general sessions after Easter day, yearly, to assess and rate the prices of all land carriage of goods whatsoever, to be brought into any place or places within their respective limits and jurisdiction, by any common carrier or wagoner; and the .ates and assessments so made to certify to the several mayors and other chief officers of each respective market town, to which all persons may resort for their information; and that no such wagoner or carrier shall take carriage of such goods and merchandise above the rates and prices set upon pain to forfeit for every such offense the sum of five pounds, to be levied by distress and sale of his or their goods by warrant of any two justices of the peace where such wagoner or carrier shall reside, in manner aforesaid to the use of the party grieved."

Bacon's Abridg. Title "Carriers." [D.]

This act was passed at a time when *Magna Charta* had been recognized as the fundamental law of England for hundreds of years.

This great charter embodied the principle that no person shall be deprived of life, liberty or property, "but by the judgment of his peers, or the law of the land," which is an equivalent for the modern phrase "due process of law."

The validity of this act was repeatedly recognized by the highest English courts, and it seems never to have been regarded by any one as a violation of *Magna Charta.*

Kirkham v. *Shawcross*, 6 Term Rep. 17.

2 Peakes' N. P. C., 185.

10 Mees. and Welsby, 415–417.

Pickford v. *Grand Junction R. R. Co.*

In *Ogden* v. *Saunders*, 12 Wheat., 259, laws "which limit the fees of professional men, and the charges of tavern-keepers and a multitude of others" of a similar character, which are said to

"crowd the codes of every State," are referred to as of unquestionable validity.

The right of the General Assembly to regulate ferries and prescribe maximum rates of ferriage is conceded. But Counsel say:

"The right to control is incident to the right to create the franchise; and in the making of the grant, it is entirely competent to affix to it such conditions as to the grantor shall seem proper. But there is no such origin or history in respect to the right to keep a warehouse. The right to build and operate a warehouse was a common law, and always has been a private and individual right. The business is, in its nature, a private business. There are not and never were any exclusive privileges associated with it; nor did the law ever assume to protect it by any special guarantees or penalties."

We have already shown that the practice of shipping grain in bulk, and the storage thereof in modern elevators or warehouses, in such manner that the property of different owners is confused in one indistinguishable mass, is of a recent origin, and it is not to be expected that the common law precedents would meet all questions arising out of these new relations.

If upon a fair consideration of the question it is apparent that every reason exists for governmental control of such public warehouses for the storage of grain, which can be urged in support of such control of ferries, then we insist the principle upon which the right thus to regulate ferries is based, must be broad enough to support the Illinois warehouse law. Why is it that a citizen may not maintain a common or public ferry, and charge tolls therefor without a license from the Government? It will not answer the question to say that the right to maintain a ferry is a "franchise," and therefore the difference!

It is necessary to look beneath the mere word "franchise" and ascertain why it is that the Government is authorized to place

the right of the citizen to maintain a ferry for hire, upon a different basis from his right to follow any other industrial pursuit.

Why may Government say to the citizen, you have no right to maintain a common ferry and charge tolls therefor, even upon your own land, without a license or permit, or unless the franchise has been granted to you? Riparian possessors are not by virtue of such possession entitled to the privilege of maintaining a ferry.

Mills v. *County Commissioners*, 3 Scam., 53.

A ferry franchise is not an incident to the ownership of land. A party cannot maintain a ferry on his own land without the consent of the State.

Trustees of Schools v. *Tatman*, 13 Ill., 37.

Why should a citizen be thus restrained in the use of his own land?

The answer to these questions is obvious.

The ferryman pursues a public calling, and occupies such a position that the public, or those who travel, must avail themselves of his services. When the traveller arrives at the river, he has no option but to submit to the ferryman's terms, and pay such charges as he may demand. He does not stand upon equal terms with him to negotiate a contract as to the price he shall pay.

For this reason the ferryman is not permitted to follow the vocation without procuring a license from Government, conferring the privilege or franchise, and submitting to governmental regulation of his charges.

So too, upon the same principle (if not for stronger reasons) the public warehouseman may be restrained from using his own property to carry on a public warehouse, without procuring a license from the State and submitting to governmental regulation of his charges.

We have already shown that for the year 1874, nine business firms at Chicago possessed a monopoly of the storage of all grain consigned to that market. If unrestrained by law, they can impose such rates upon shippers and producers of grain as they see fit. In the language of counsel, they are in the possession of the very "gateway to commerce."

The right of Government to regulate such public warehouses, we submit, rests upon a more substantial foundation, if possible, than the conceded right to regulate public ferries. The fact that the power was not exercised as to such warehousemen as are known to the old common law, is no proof that it may not be rightfully exercised as to such modern grain warehouses as exist to-day in Chicago.

It is the crowning excellence of the common law that it is not a mere collection of arbitrary rules, but rather the embodiment of vital principles which adjust themselves to the exigencies of an advancing civilization.

When the same reasons exist for governmental control of public warehouses for the storage of grain, as were sufficient to warrant the assumption of such control over ferries, then the power to regulate such warehouses cannot be denied.

The regulation of draymen and hackmen, including the charges they may receive, is conceded to be "within the legitimate exercise of the police powers of the goverment." (Mr. Goudy's argument, p, 46.) It is suggested that this right arises from the fact that such persons ply their vocation upon the public streets.

A moment's consideration will show that the motive and necessity for the exercise of such power, proceeds from another source. It is an application of the same principle which justifies the regulation of the tolls of millers or ferrymen, or the charges of other common carriers. In populous cities and towns, travellers are compelled to employ such means of transportation of their

persons, luggage or other property, as may be at hand, and cannot, without great inconvenience, stop to dicker about the price.

Unless such charges may be regulated by law, those who employ hackmen or draymen would frequently be subjected to imposition and extortion. Moreover such persons, like public warehousemen, pursue a public employment. They are in reality common carriers, who must offer their services to all upon equal terms.

Undoubtedly the regulation of their charges is a legitimate exercise of the police power. If so, it must also be a legitimate exercise of the police powers of the government to regulate the prices which may be charged by public warehousemen, for the storage of grain, who have greater opportunities than hackmen to practice extortion, and also like common carriers pursue a public employment, and must receive grain, in the regular course of their business, from all persons upon equal terms.

"The police of a State, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not not only to preserve the public order, and to prevent offenses against the State, but also to establish for the intercourse of citizen with citizen those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterruped enjoyment of his own so far as reasonably consistent with a like enjoyment of rights by others."

Cooley on Const. Lim., 572.

"We think it is a settled principle," says Chief Justice Shaw, "growing out of the nature of well-ordered society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoymen of others having an equal right to the enjoyment of their property, *nor injurious to the rights of the community.* All property in this Commonwealth is held subject to those regulations which are necessary to the common

good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law, as the Legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of a government to take and appropriate property whenever the public exigency requires it, which can only be done on condition of providing a reasonable compensation therefor. The power we allude to is rather the police power; the power vested in the Legislature by the Constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark the boundaries or prescribe limits to its exercise."

Commonwealth v. *Alger*, 7 Cushing 84.

Chief Justice Taney, in the License Cases, thus defines the police powers of a State:

"But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instrumen s to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say the power of sovereignty, the power to govern men and things within the limits of its dominion."

License Cases, 5 Howard, 583.

The Supreme Court of Illinois use this language:

"The power to enact police regulations operates upon all alike. This is a fundamental principle, and lies at the foundation of society itself. It is yielded by each member when he enters society for the benefit of all. It is incident to, and a part of, government itself, and need not be expressly reserved, when it grants rights or property to individuals or corporate bodies, as they take subservient to this right. Although individual rights may be said to be absolute, they are all subject to be controlled in their enjoyment for the general good. It is in the just exercise of this power that individuals have been required to fence their lands or forfeit the right to recover damages for trespasses committed by stock, of other persons. So of quarantine regulations to protect communities against the introduction and the spread of contagious diseases; and in prohibiting the exercise of noxious and unhealthy trades and manufactures, and in requiring the fencing of salpetre caves and growing castor beans; in prohibiting the sale of unwholesome provisions, and stock running at large affected with contagious or infectious distempers; from the sale of obscene books and prints, cards and gaming implements. The law has imposed all these and many other duties and prohibitions upon individuals for the protection of citizens. their morals and property; and notwithstanding it may appear in some degree to abridge individuals of a portion of their rights, yet we are not aware that their constitutionality has ever been challenged. Their eminent justice and propriety has commended them to the community at large as highly proper. The exercise of the power may be referred to the maxim, *Salus populi suprema est lex*,' 'That regard be had to the public welfare is the highest law.'"

O. & M. R. R. Co. v. *McClelland*, 25 Ill., 144.

Chief Justice Redfield speaks of the power thus: "There is also the general police power of the State, by which persons and property are subjected to all kinds of restraints and burdens in

order to secure the general comfort, health and prosperity of the State; of the perfect right in the legislature to do which no question ever was, or, upon acknowledged general principles, can be made, so far as natural persons are concerned."

Thorpe v. *R. & B. R. R. Co.*, 27 Ver. 150.

The foregoing authorities are cited with approbation by counsel for the plaintiffs in error. But it is claimed that the principles upon which they rest are not broad enough to support the act in question. We maintain the contrary. As we have already shown, the law does not take from any warehouseman, or deprive any one of his property, within the meaning of our bill of rights or the fourteenth amendment. It simply prohibits the exercise of functions having a most important public relation without procuring the prescribed license, and entering into the statutory bond, conditioned that in the course of such business he will conform to the law. The statute fixes the maximum compensation that they may receive, who voluntarily assume the positions of public warehousemen. This is its full extent.

The fact that the plaintiffs in error were the owners or lesses of their warehouse prior to the enactment of the law in question, cannot affect the question of its validity or application to such warehouse. Would not a statute prescribing a less rate of interest than had previously been authorized by the laws of a State apply equally to those who loaned money they owned before, or at the time of its passage, as well as to those who loaned money subsequently acquired? Would not a municipal ordinance fixing the rates that may be charged by hackmen, or the owners of omnibus lines, apply to those who had previously invested their capital in such vehicles?

There can be no other than affirmative answers to these questions. An owner of such property is not, therefore, "deprived" thereof within the meaning of the Constitution, by the enactment of laws, the effect of which may be to diminish the profits he may make from the use of such property.

In that part of the argument of counsel for plaintiffs in error, wherein they seek to show that the storage of grain in the manner the business is conducted by Chicago warehousemen, is "covered by the word *commerce*," the storage of grain in such warehouses, in its public relations, is placed upon the same footing as the transportation of grain by common carriers. (Mr. Goudy's argument p. 11.) Counsel say "If the carriage of grain in boats and vessels by land and water is *commerce*, then the handling of grain in the manner shown by this record is commerce." * * "This warehouse or elevator is just as necessary for the purposes of commerce and trade, as the bottoms which float on the water, or the superstructure on which the cars run, or the use of locomotives or cars." (*Idid* p. 14.)

If so, then it must be conceded that the storage of such grain in public warehouses is of general public concern, in like manner as its transportation by common carriers.

The public warehousemen must therefore, in the language of the authorities, pursue a "public employment" or "exercise a sort of public office."

New Jersey Steam Nav. Co. v. *Merchants Bank*, 6 How. 381.

Sanford v. *Railroad Company*, 24 Penn. State Rep. 381.

C. & N. W. R Co. v. *The People*, 56 Ill. 277.

If grain warehousemen in Chicago "pursue a public employment" or "exercise a sort of public office" and sustain such relations to the public, that all the grain consigned to "the greatest grain market in the world" must necessarily pass through their hands, we insist that it is a competent exercise of legislative power to pass laws prescribing maximum rates of storage, and thus prevent extortion and an abuse of their position.

A State may enact such laws in virtue of its unquestionable power to regulate its internal commerce; for the storage of grain offered for sale in the markets of a State most clearly pertains to its internal or domestic commerce.

The commission of the offence of extortion is not necessarily confined to public officers strictly speaking. It may be committed by any person who pursues a public employment, and sustains such relations to the public that the people must without great inconvenience, necessarily deal with him.

Thus at common law: "In the case of a miller where the custom has ascertained the toll, if the miller takes more than the custom warrants, it is extortion: and the same if a ferryman takes more than his due by custom for the use of his ferry. And it was held that if the farmer of a market erects so many stalls as not to leave sufficient room for the market people to stand and sell their wares, so that, for want of room they are forced to hire stalls of the farmer, the taking money for the use of the stalls in such a case is extortion."

Bishop Crim. Law, (5th Ed.) § 394.

Rex v. *Burdett*, 1 Ld. Raymond, 148.

Rex v. *Roberts*, 4 Mod., 101.

1 *Russell on Crimes*, 143.

The right of the State to enact the law in question may safely rest upon its general police powers. The power to enact laws to prevent extortion and an abuse of their position by those engaged in "public employments" or exercising callings in the nature of public offices, most clearly falls within any proper definition of the police powers of the State.

In the language of Chief Justice Marshall: The question whether a law be void for its repugnancy to the Constitution, is

at all times a question of much delicacy, which ought seldom if ever to be decided in the affirmative in a doubtful case. The Court when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes; but it is not on slight implication and vague conjecture, that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other."

Fletcher v. *Peck*, 6 Cranch 128.

"It is but a decent respect due to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed, to presume in favor of its validity, until its violation of the Constitution is proved beyond all reasonable doubt."

Ogden v. *Saunders*, 12 Wheaton 270.

The General Assembly of Illinois was the competent and proper body to determine all questions as to the necessity or expediency of the act in question, and in the first instance to pass upon the question of its constitutionality. The majority of the Supreme Court of that State has also affirmed its validity.

Does this record present such a case as will warrant this Court in reversing the judgment of the Supreme Court of Illinois, upon the ground that the Legislature in its enactment, transcended the restraints upon their power, imposed by the Federal Constitution.

No other class of questions can arise in this Court, and these questions are:

1. Whether the right to regulate the storage of grain in public warehouses in Chicago, consigned to that market for sale, is vested *exclusively* in Congress?

2. Does a State statute, which, to prevent extortion, prescribes the maximum rates to be charged for the storage of grain by those who assume the vocation of public warehousemen, and requires them to procure license and give bonds for the faithful performance of such public employment, deprive such warehousemen of their property without due process of law, within the prohibition of the Constitution?

To sustain either of these propositions, it is respectfully submitted, would extend these constitutional restraints beyond their true meaning, as established by the repeated adjudications of the State and National Courts, and constitute an unwarranted encroachment upon the acknowledged powers of the States.

Hitherto this Court, as stated in the *Slaughter House Cases*, has "always held with a steady and an even hand, the balance between State and Federal power, and we trust that such may continue to be the history of its relation to that subject, so long as it shall have duties to perform, which demand of it a construction of the Constitution, or of any of its parts."

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For Defendants in Error.