Chapter 9

CALIFORNIA AND THE NATION

Conflicts between the various states and the federal courts can be traced back to the early days of the Republic. In 1794 the United States Supreme Court held that a citizen of one state could sue another state in the federal courts.[1] This conflict was settled by the Eleventh Amendment to the United States Constitution, but succeeding years produced new situations that again placed state and federal authority at odds with one another. The period after 1815, when the concept of states' rights gained prominence, saw several states defy the United States Supreme Court. In the 1850s three states in particular defied the federal courts: Ohio, Wisconsin, and California.

Defiance by the California Supreme Court consisted in the denial of the federal courts' jurisdiction in certain cases and in refusing to accept decisions of the United States courts and other federal bodies as binding on California's courts. Other problems involved the interpretation of the United States Constitution, laws, and treaties, and decisions in cases involving slavery.

[1] Chisholm v. Georgia (1793), 2 Dall. 419.

STATE AND FEDERAL AUTHORITY

The first case to reach the Supreme Court involving a possible conflict between California and federal authority was *People v. Naglee*,[2] which tested the California law taxing foreign miners. This law was passed by the Legislature in 1850 to collect license fees from foreigners who worked the mines in the state.[3] The case arose when Attorney General James A. McDougall questioned the defendant's right to collect the taxes, the latter being one of the fee collectors. Justice Bennett, speaking for the Court, said the law was not in violation of the United States Constitution, as a usurpation of defined congressional powers, since the state had the power of taxation over all persons within its territorial jurisdiction, and this held true even if the mining lands were public lands of the United States which the miners were working as mere trespassers or as claimers of a preemption right.

The promise of California attracted people from many countries of the world, and until such time as they became citizens of the United States many of their rights were to be determined by treaties between their native lands and the United States. In the 1850s the Supreme Court acknowledged the federal government's treaty-making powers and the authority of such treaties,[4] but the question of whether a specific law was indeed in conflict with a treaty still remained.

This conflict between state law and federal treaty was often the key to the legality of anti-Chinese legislation, but in California, in the twenty-five or so years after admission, the most important treaty was the Treaty of Guadalupe Hidalgo, signed May 30, 1848, ending the war with Mexico.[5]

Having decided that foreign miners could be taxed, the Court went on to discuss the provisions of the Treaty of Guadalupe Hidalgo dealing with the citizenship of the native Californians, and to examine the treaty-making power of the United States. By the eighth and ninth articles of the treaty, any Mexican citizen who did not either move to Mexico or declare his intention to retain his Mexican citizenship within one year of the exchange of ratifications, was to be considered as having elected to become a citizen of the

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2 People v. Naglee (1850), 1 Cal. 232.

3 Cal. Stats. (1850), chap. 97.

4 People v. Gerke (1855), 5 Cal. 381; Forbes v. Scannell (1859), 13 Cal. 242.

5 9 U.S. Stat. at L. (1848), 922–43.

United States.[6] The Court said that the statute was not in conflict with these treaty articles, and all Mexicans who had not declared their intentions to retain their Mexican citizenship were to be deemed American citizens and not subject to the tax. But if this or any state law were to clash with a treaty of the United States, it was not always necessary that the state law had to give way. In presenting a typical states' rights argument, the Court went on to state that the state law would give way only if the power to enact that law had been specifically relinquished by the state to the central government:

> If the state retains the power then the president and senate cannot take it away by a treaty. A treaty is supreme only when it is made in pursuance of that authority which has been conferred upon the treaty making department . . . . When it transcends these limits . . . it cannot supersede a state law which enforces or exercises any power of the state not granted away by the constitution.[7]

In spite of the authority of the *Naglee* case, some twenty years later the citizenship of Pablo de la Guerra was challenged.[8] De la Guerra, a member of a prominent Santa Barbara Californio family, had been one of the men to draw up California's 1849 Constitution, and like other members of his family, held various offices. In this particular case he had been elected a district judge in 1869, and the relator questioned de la Guerra's citizenship under the 1848 treaty, saying that an act of Congress admitting California's Mexicans to citizenship was needed. Said the Court: "The question raised would be of very grave import to the people of this State, were it not for the fact that its solution is quite obvious."[9] Justice Jackson Temple opined that the Treaty of Guadalupe Hidalgo itself had the direct effect of fixing the status of the inhabitants of the territories ceded under the treaty, and under the ninth article the only way in which it was possible to admit the Mexicans into full citizenship was by incorporating the ceded territory into the United States as a state. After such admission into the union, no further act was needed to define the rights of the inhabitants of the ceded territory. Jackson defined the steps more finely by adding that citizenship

6 49 U.S. Stats. at L. (1848), 922–43.

7 People v. Naglee, 246.

8 People v. de la Guerra (1870), 40 Cal. 311.

9 Ibid., 339.

came with the cession to the United States, and statehood brought political power. "The possession of all political rights is not essential to citizenship. When Congress admitted California as a State, the constituent members of the State, in their aggregate capacity, became vested with the sovereign powers of government, "'according to the principles of the Constitution.'"[10]

The bulk of the cases involving an interpretation of the Treaty of Guadalupe Hidalgo, however, dealt with land grants emanating from the Mexican period, and the problem of these grants was largely assumed by the federal government.

Without mentioning the *Naglee* case the treaty-making power of the United States was upheld by the Court in *People v. Gerke*, where a Prussian citizen had died intestate, and the state claimed that the estate should have reverted to it because there was nobody competent to inherit.[11] In supporting the appointment of Henry Gerke as administrator and his sale of part of the estate on behalf of the absent heirs, the Court gave precedence to an 1828 treaty between Prussia and the United States, one of whose articles provided for such a contingency by allowing the heir to sell the property and take the proceeds.[12] In answering the claim of the state that the United States could not make such a provision by treaty, the Court said that before the federal constitution was written the individual states had the power to make such treaties, but by the federal compact "they expressly granted it to the Federal Government in general terms, and prohibited it to themselves."[13]

A similar treaty with the Hanseatic towns[14] was brought up in *Siemssen v. Bofer*, where the inheritors, again nonresident aliens, attempted to bring an action of ejectment.[15] Chief Justice Murray cast doubt on the *Gerke* case without actually overruling it, holding that the ejectment could not be maintained, but the interest in the property could be sold since the state authorized sales of real estate by parties not in possession.[16] In 1859 *People v. Gerke* was expressly upheld in *Forbes v. Scannell*, where an assignment to a creditor was held valid,

10 Ibid., 343–44.
11 People v. Gerke (1855), 5 Cal. 381.
12 8 U.S. Stat. at L. (1828), 378–86.
13 People v. Gerke, 383.
14 8 U.S. Stat. at L. (1827), 366–73.
15 Siemssen v. Bofer (1856), 6 Cal. 250.
16 Cal. Stats. (1850), chap. 101, § 34.

although it was made in Canton, China, before the United States consul, Oliver H. Perry, under an 1844 treaty between China and the United States.[17]

In 1855 one Frank Knowles petitioned the California Supreme Court to become a naturalized United States citizen. The Court denied his petition, which was based on an 1802 act of Congress giving any state court the power to naturalize.[18] In *Ex parte Knowles*, the Court denied its own jurisdiction, saying that it had only appellate powers, and the power to naturalize was one of original jurisdiction.[19] In any event, the California Legislature gave the district courts of the state the power to grant naturalization,[20] and the district court was the only state court with this power, as Congress could not confer any judicial power on a state court. But a state court could take the case where a seaman sued his master for past wages, where seaman, master, and ship were all British. Justice Bennett, speaking for the Court, said it was the duty of the courts to foreign nations to protect foreign subjects, especially as the seaman would have had a good case in an English court as well.[21]

It was also possible on occasion for both state and federal courts to have jurisdiction over a matter, and suit could be brought in both courts. In an action for money due on freight it was not enough of an answer to say that there was a suit on the same matter in the District Court of the United States. Chief Justice Murray said, "both actions may proceed at the same time without the fear of any danger of any collision or clashing of jurisdiction."[22]

A direct challenge to federal authority arose when the California Supreme Court denied the jurisdiction of the United States Supreme Court under the twenty-fifth section of the Federal Judiciary Act of 1789,[23] which gave the federal courts jurisdiction over certain classes of cases, as occurred in the 1850s in the cases of *Gordon v. Johnson*[24] and *Taylor v. The Steamer Columbia*.[25] In the former case the California Supreme Court

17 Forbes v. Scannell (1859), 13 Cal. 242.
18 2 U.S. Stat. at L. (1802), 153–55.
19 Ex parte Knowles (1855), 5 Cal. 300.
20 Cal. Stats. (1853), chap. 168.
21 Pugh v. Gilliam (1851), Cal. 485.
22 Russell v. Alvarez (1855), 5 Cal. 48.
23 1 U.S. Stat. at L. (1789), 73–92.
24 Gordon v. Johnson (1854), 4 Cal. 368.
25 Taylor v. The Steamer Columbia (1855), 5 Cal. 268.

denied a writ of error to enable an appeal to the United States District Court. Justice Solomon Heydenfeldt, speaking for a unanimous court, followed a line of reasoning already enunciated by the Virginia State Supreme Court and John C. Calhoun: the twenty-fifth section of the Federal Judiciary Act was unconstitutional and void since it was a patent usurpation of state powers. As there was no provision in the United States Constitution for this section, the Court held that state and federal courts were coordinate tribunals, with jurisdiction attaching to the court first receiving the matter for adjudication. The rule, then, became:

> 1st, that no cause can be transferred from a State Court to any Court of the United States.
>
> 2d, that neither a writ of error nor appeal lies to take a case from a State Court to the Supreme Court of the United States.[26]

State and federal courts were thus held to be coordinate, and by implication, completely independent of one another. Justice Heydenfeldt expanded his view the next year in the *Taylor* case, which involved the question of admiralty jurisdiction. The Court decided that judicial power over admiralty cases was not exclusive in United States courts, even though they had received jurisdiction to all admiralty and maritime cases from the federal constitution.[27] In so holding, the Court sustained statutory provisions giving the state's district courts equal jurisdiction with federal courts in admiralty cases;[28] jurisdiction attached to the court first receiving the matter for adjudication because the federal constitution nowhere gave exclusive jurisdiction to federal courts. One historian of the Supreme Court concluded that the reason for the state Court's hostile view was the physical isolation of California in the years prior to the building of the transcontinental railroad.[29]

The Legislature attempted to counter these decisions by passing an act compelling the state judiciary to comply with the Federal Judiciary Act.[30]

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26 Gordon v. Johnson, 374.

27 U.S. Const., art. III, § 2.

28 Cal. Stats. (1851), chap. 5, §§ 317–32.

29 Charles Warren, The Supreme Court in United States History, vol. II (2 vols.; rev. ed., Boston: Little, Brown, and Company, 1922, 1926), 257.

30 Cal. Stats. (1855), chap. 73, §§ 2, 3.

However, the Court changed its position before the decade ended. In *Warner v. Uncle Sam*, Justice Peter H. Burnett said the decisions in the *Johnson* and *Taylor* cases were wrong, but he did not overrule them in express terms.[31] In his view concurrent admiralty jurisdiction could be sustained only if the appellate power of the federal courts extended to the state courts: "The exercise of this original jurisdiction by the state courts, subject to the supervisory powers of the Supreme Court of the United States, would seem to be compatible with the harmony and efficiency of the system and beneficial in its practical effects."[32]

The Supreme Court of California gave formal judicial recognition to the disputed section of the Judiciary Act in *Ferris v. Coover*, although holding that the appellate power of the Supreme Court of the United States was limited to those instances actually mentioned in the section in controversy.[33] Although Chief Justice David S. Terry dissented, Justice Joseph Baldwin, with the concurrence of Justice Stephen J. Field, said that the arguments were all exhausted, and that the doctrine of federal judicial supremacy had long been established. Baldwin went on to say that "there should be a central tribunal having power to give authoritative exposition to the Constitution, and laws, and treaties of the United States, and which should also possess the power to secure to every citizen the rights to which he is entitled under them, seems to us highly expedient."[34] In spite of a vigorous dissent by Chief Justice Terry, California judicially "joined the Union."

Still other cases arose which involved relations between the state and the federal government, such as whether a state court could enjoin proceedings in a federal court. *Phelan v. Smith*[35] said that no such power existed, and in *Ex parte Lewis Crandall*[36] the Court enforced the federal act of 1790, which made desertion a crime.[37] The Court, in 1857, declared unconstitutional a state law which placed a passenger tax of $50 on each Chinese brought into California.[38] This decision was based on similar cases

31 Warner v. Uncle Sam (1858), 9 Cal. 697.
32 Ibid., 728.
33 Ferris v. Coover (1858), 11 Cal. 175.
34 Ibid., 179.
35 Phelan v. Smith (1857), 8 Cal. 520.
36 Ex parte Lewis Crandall (1852), 2 Cal. 144.
37 1 U.S. Stat. at L. (1790), 131–35.
38 Cal. Stats. (1855), chap. 153.

previously adjudicated by the United States Supreme Court,[39] and in *Mitchell v. Steelman*,[40] the California Statute of Frauds[41] was made to yield to the federal statute with which it was in conflict.[42]

It seems appropriate here to discuss, briefly, some cases arising from land considerations. In 1852 the Legislature enacted a law providing for the disposal of 500,000 acres of land granted to California under an 1841 act of Congress.[43] In *Nims v. Palmer*,[44] the Court held that the two laws were not in conflict, even though the latter act provided for the location of the land after survey.[45] "The State had the most perfect right to determine what shall constitute evidences of title as between her own citizens, to all lands within her boundaries."[46] In *Gunn v. Bates*, the Court said that since the United States Supreme Court had decided that a conditional grant from the Mexican government conveyed a good title even without performance of the conditions, the California court would not question the rule, although in a partial dissent Justice Terry said he did not agree on all points.[47] In 1859 the Court went on to say that decisions of the United States Land Commission and United States district courts could be used as evidence in disputes involving land,[48] and the state courts could not interfere with decisions of the United States Board of Land Commissioners.[49]

With these important questions of federal authority settled, later cases coming before the California Supreme Court involving federal relations still raised points that needed to be settled, not only those dealing with judicial relationships, but the interpretation by the state courts of the United States Constitution, federal laws, and treaties. Corollary to such a study is an examination of the relationship between California and other states of the federal union.

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39 People v. Downer (1857), 7 Cal. 169.
40 Mitchell v. Steelman (1857), 8 Cal. 363.
41 Cal. Stats. (1850), chap. 114, § 17.
42 9 U.S. Stat. at L. (1850), 440–41.
43 Cal. Stats. (1852), chap. 4.
44 Nims v. Palmer (1856), 6 Cal. 8.
45 5 U.S. Stat. at L. (1841), 453–58.
46 Nims v. Palmer, 13.
47 Gunn v. Bates (1856), 6 Cal. 263.
48 Gregory v. McPherson (1859), 13 Cal. 562.
49 Waterman v. Smith (1859), 13 Cal. 373; Moore v. Wilkinson (1859), 13 Cal. 478.

CALIFORNIA AND SLAVERY

Probably nothing in the period under discussion caused more excitement than the issue of slavery. Even before statehood slaves had been brought into California, many coming with their masters to work in the mines. Many people felt, or at least hoped, that California would become a slave state, but slavery was not permitted in the state constitution,[50] and the Legislature passed an act requiring all slaves to leave the state,[51] which was broader than the federal Fugitive Slave Act,[52] as it required slaves brought here voluntarily as well as fugitive slaves to leave the state. Two slave cases reached the Supreme Court in the 1850s, *In the Matter of Perkins*[53] and *Ex parte Archy*,[54] both by use of writs of habeas corpus. In the *Perkins* case, three slaves were brought into California voluntarily before statehood, and once there, the slaves freed themselves, and went into business on their own account. A provision of the 1852 act said that slaves brought here voluntarily before statehood who refused to return to their home state upon demand of their owner, should be deemed fugitives from labor and apprehended and returned to their owners. The Court said that the state law did not limit the federal act, but allowed such cases to be brought to state courts. The state, in so allowing, was also relieving itself of an obnoxious class of persons and was in no way considering the freedom of the slaves.

The *Archy* case, which was not decided until 1857, caused a great deal of discussion and excitement throughout the state. Archy was brought into the state by his master, Charles A. Stovall, who travelled to California for his health and who remained here a short time and then returned to Mississippi. Stovall worked for some time as a teacher, and then decided to send Archy back to Mississippi. He placed him on a steamer, from which the slave escaped. Legal proceedings were then begun.

Justice Burnett wrote the opinion in which he said that the right of property (a slave) went with its owner, and thus Stovall had a right to a slave while travelling, but Stovall changed his status by taking a position as a teacher. By this statement Burnett seemingly laid the way for Archy's

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50 Cal. Const. (1849), art. I, § 18

51 Cal. Stats. (1852), chap. 33, § 1.

52 9 U.S. Stat. at L. (1850), 462–65.

53 In the Matter of Perkins (1852), 2 Cal. 424.

54 Ex parte Archy (1857), 9 Cal. 147.

freedom, but gave Archy to Stovall's custody anyway, saying there were circumstances which would exempt Stovall from these rules, and that in the future the rules would be strictly enforced. For whatever reasons Burnett had for this action, Archy eventually gained his freedom as the matter came up before a United States commissioner, who freed Archy, as Stovall changed his story, claiming Archy had escaped in Mississippi.[55]

Justice Burnett's opinion brought about a great deal of adverse comment that was directed toward the Court in general and Burnett in particular. Joseph G. Baldwin is supposed to have stated that the Court "gave the law to the North and the Negro to the South."[56] The concurrence in the decision by Chief Justice Terry, an ardent pro-Southerner, was not surprising, but Burnett never explained the reason for his decision. One student of Burnett's career claims that Burnett had a record of dislike of African Americans, forever trying to bar them from whatever area in which he resided.[57]

The judicial relations between California and the United States were not atypical of the turbulent decade before the United States. California was not the first state to question federal judicial supremacy, nor was it to be the last. What tended to stimulate such a self-asserting point of view in California was the physical distance from the rest of the nation. California's geographical situation provided not only physical isolation but also a sense of aloneness that created a feeling of independence from the national government. As the decade went on, the slavery controversy tended to involve the state more in national questions, and the Court reversed its earlier stand on the Federal Judiciary Act.

JUDICIAL RELATIONSHIPS

The judicial recognition of the Federal Judiciary Act in *Ferris v. Coover* did not serve to extend a jurisdictional carte blanche to the federal judiciary over actions in California's courts. What the case did decide was, first, that in

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55 Theodore H. Hittell, *History of California*, vol. IV (4 vols., N. J. Stone & Company, 1885–97), 246.

56 J. Edward Johnson, *History of the Supreme Court Justices of California*, vol. 1 (2 vols., vol. 1 San Francisco: Bender-Moss Company, 1963; vol. 2 San Francisco: Bancroft-Whitney Company, 1966), 63.

57 William E. Franklin, "The Archy Case: The California Supreme Court Refuses to Free a Slave," *Pacific Historical Review* XX–XII (May, 1963): 153.

certain instances, such as maritime cases, causes could be transferred from state to federal courts, and second, that certain classes of cases could be appealed to the United States Supreme Court. In each such instance, however, the provisions of the Judiciary Act of 1789 and later federal laws dealing with the judiciary had to be followed with exactitude. In discussing an attempt to sue out a writ of error in order to have the United States Supreme Court review the key case of *Hart v. Burnett*, the decision that determined rights to San Francisco's pueblo lands,[58] Chief Justice Stephen J. Field wrote: "The Supreme Court of this State, whilst admitting the constitutionality of this [25th] section" does not recognize an unlimited right of appeal from its decisions to the Supreme Court of the United States."[59] Field added that appeals under the section in question were limited to the instances enumerated therein. Thus, he said, "In accordance with the views here expressed, I must, when applied to for a citation, judge, in the first instance, whether the case is covered by the Act of Congress."[60] In this particular instance Field refused the writ of error, holding that the federal act referred to final judgments, and the case sought to be reviewed was not a final judgment in that sense, but a determination of law to be used by the lower court in the rehearing of that case. In *Tompkins v. Mahoney*, the Supreme Court added that appeals from it to federal courts were limited to the United States Supreme Court and not to a United States Circuit Court even if such court were presided over by a United States Supreme Court justice.[61]

Problems of jurisdiction at the trial level might best be seen by examining cases that involved maritime questions. The acceptance of the 1789 Judiciary Act involved the determination that federal courts had exclusive jurisdiction over maritime cases, but this did not prevent such suits from appearing in state courts, but with a different form of action. In *Bohannan v. Hammond* a suit was brought for damages incurred by goods shipped by the plaintiff, and damaged by the defendant, a common carrier.[62] The defendant contended that state courts lacked jurisdiction because the action was brought on a maritime contract and could only be brought in

58 Hart v. Burnett (1860), 15 Cal. 530.
59 Hart v. Burnett (1862), 20 Cal. 171.
60 Ibid.
61 Tompkins v. Mahoney (1867), 32 Cal. 231.
62 Bohannan v. Hammond (1871), 42 Cal. 227.

admiralty. The Supreme Court rejected this argument, saying that the Judiciary Act defining jurisdiction of federal courts allowed a common law remedy if the common law could be applied, and a suit like this, seeking damages, was one such instance; state courts "have concurrent jurisdiction of causes of action, cognizable in admiralty, where only a common law remedy is sought."[63] The Court amplified its view the same year in *Crawford v. Bark Caroline Reed*,[64] where the plaintiff sued to enforce a materials lien under a California statute.[65] The Court held that the contract breached was a maritime contract, and the courts of the United States had exclusive jurisdiction of proceedings in rem to enforce a lien against the ship. The California statute was unconstitutional insofar as it tried to authorize proceedings in rem for causes cognizable in admiralty. This contract was enforceable in admiralty courts.

> The language of the Judiciary Act is not that the [federal] District Courts shall have exclusive, original cognizance of actions to enforce maritime liens, but of all civil causes of admiralty and maritime jurisdiction. The cause of action is the breach of the contract. For this an action lies in admiralty. It is the fact that it is a maritime contract which gives that Court jurisdiction, and not the fact that a maritime lien is to be enforced.[66]

If the case was one belonging to admiralty courts, their jurisdiction was exclusive unless the case fell within the saving clause of the Judiciary Act, which allowed a suit in state courts if there were a common law remedy. "It must follow from this that whenever Courts of admiralty have jurisdiction of a cause of action, whether it afford a remedy *in rem*, or *in personam* merely, that jurisdiction is exclusive, except as to the common law remedy reserved by that Act."[67] In determining whether a case was maritime or not, regardless of the pleading, the cause "must relate to the business of commerce and navigation."[68] Wharfage fees were not so related.

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63 Ibid., 229.

64 Crawford v. Bark Caroline Reed (1871), 42 Cal. 469.

65 Cal. Stats. (1851), chap. 5, § 317.

66 Crawford v. Bark Caroline Reed, 474.

67 Ibid.

68 People v. Steamer America (1868), 34 Cal. 676.

Whether a federal or state court had jurisdiction could also depend on the citizenship of the litigants, as well as the type of action involved. In *Calderwood v. Hagar*, an application for a mandamus to compel removal to the United States Circuit Court for trial, the relator, one of eleven defendants, claimed to be an alien, and the other defendants were not.[69] The twelfth section of the 1789 Judiciary Act said an alien defendant could ask for such a removal, but the California Supreme Court held that where there was a group of defendants, all had to be aliens, and all had to join in the application for removal. Further, the plaintiff had to be a United States citizen: "It is well settled that the United States Courts have no jurisdiction over suits between alien and alien, but they are confined to actions between citizens and foreigners where their jurisdiction is founded upon citizenship."[70]

Admitting the jurisdiction of the courts of the United States necessarily implied the acceptance of the decisions of those courts. In *Brumagin v. Tillinghast*, an 1861 case, the California Supreme Court said that a decision of the United States Supreme Court declaring a California statute unconstitutional was conclusive on it.[71] In 1879 the Court went somewhat further, saying, "When our judgment must depend upon a question which may be reexamined by the Supreme Court of the United States on writ of error, we will follow the rule of law laid down by that Court."[72]

Relations between California courts and courts of other states and nations also came up for review. In *Taylor v. Shew*, the Court said that an action on a judgment of a court of competent jurisdiction could be maintained in California, even though an appeal was pending in that case.[73] The presumption was that the decision of the other court was legal and correct.

CONFLICT OF LAWS

The acceptance of the authority of the United States Supreme Court effectively settled judicial relationships, but still left open the problem of interpreting laws. The most obvious type of situation was one in which a

69 Calderwood v. Hager (1862), 20 Cal. 167.
70 Orosco v. Gagliardo (1863), 22 Cal. 83.
71 Brumagim v. Tillinghast (1861), 18 Cal. 265.
72 Belcher v. Chambers (1879), 53 Cal. 643.
73 Taylor v. Shew (1870), 39 Cal. 536.

state law conflicted with a federal law or treaty or with the United States Constitution, but other problems did arise in interpreting laws.

One such instance had to do with federal laws that dealt with the state's courts in some way. In 1855 the Supreme Court of the state denied Frank Knowles' petition for citizenship as being outside of its exclusively appellate jurisdiction, as noted above. The 1862 amendments assigned naturalization powers to the county courts,[74] and in 1869 the Supreme Court held that such an assignment was compatible with the federal statute.[75] If the federal government could not confer powers on the state courts, the question then arose whether such courts could nonetheless enforce federal statutes. In *People v. Kelly*, the Court said that for an act to be punishable in a state court the act had to have been contrary to a state law, and such was not the situation in that case.[76]

The conflict between a state law and the United States Constitution, federal treaties, and laws, has been discussed previously in several instances. Many of these, such as the cases dealing with attempts at Chinese exclusion, were examples of the conflict between the state's police powers and federal authority, and were essentially decided on the premise that when the federal government had preempted a sphere of legislation, the state could not enact laws in the same area. This same premise was used to decide cases not involving state police powers, such as state bankruptcy laws. In 1867 the United States Congress enacted a bankruptcy law,[77] pursuant to the constitutional provision conferring upon Congress the power to establish uniform bankruptcy laws.[78] The power so conferred, said the California Supreme Court, did not become exclusive until Congress did act. Until such time states could pass laws on that subject, but when Congress did so act, such law was to be considered supreme, and while in force, all state laws on the same subject and in conflict with it were suspended.[79] However, if the federal law did not prohibit a state from also acting, or expressly withheld federal exclusivity, then state and federal governments

74 Cal. Const. (1849), art. VI, § 8 (amended 1862).
75 In the Matter of Martin Conner (1870), 39 Cal. 98.
76 People v. Kelly (1869), 38 Cal. 145.
77 14 U.S. Stat. at L. (1867), 517–41.
78 U.S. Const., art. I, § 8.
79 Martin v. Berry (1869), 37 Cal. 208.

could enact laws on the same subject.[80] With this rule established, seemingly there could be no more conflicts, but such was not the case. In 1874 the Legislature passed a law authorizing the San Francisco Board of Supervisors to obtain a ship to be used to instruct boys in seamanship.[81] Later the same year Congress passed a similar act, but with certain conditions attached.[82] The Court held that the board could not accept the ship applied for from the United States because the act of Congress was inconsistent with the state act.[83]

State laws not only had to yield to conflicting federal laws, but they also had to conform to the federal constitution and to treaties entered into by the central government. As with many state–federal legal controversies a key problem was to find, or pinpoint, the line separating state and federal powers. In particular, California found legislative enactments based on its so-called police powers struck down as being in conflict with the United States Constitution and various treaties. Such was the case with California's attempt to keep Chinese out of the state. Laws attempting to exclude Chinese immigrants were found to be in contravention of the commerce clause of the United States Constitution. This clause was used to void other state acts as well. One such enactment was an 1858 law that placed a stamp tax on all gold and silver transported from the state,[84] but the Court said that such a requirement amounted to a tax on exports and was unconstitutional[85] under authority of the United States Supreme Court.[86] A similar tax on tickets of persons leaving the state,[87] was declared unconstitutional on the same grounds in 1868.[88] Another statute determined to be a usurpation of federal authority was one passed in 1866 authorizing Alpine County to collect a toll on logs floating down the Carson River toward Nevada.[89] The Court said that the act was an attempt to

80 People v. White (1867), 34 Cal. 183.
81 Cal. Stats. (1873–74), chap. 288.
82 18 U.S. Stat. at L. (1874), 121.
83 Glass v. Ashbury (1875), 49 Cal. 571.
84 Cal. Stats, (1858), chap. 319.
85 Brumagim v. Tillinghast, *supra*.
86 Almy v. State of California (1860), 24 How. 169.
87 Cal. Stats. (1862), chap. 230, § 416.
88 People v. Raymond (1868), 34 Cal. 492.
89 Cal. Stats. (1865–66), chap. 311.

regulate commerce between the states of California and Nevada, and such power was vested in the United States.[90]

Certain taxes on imports could be deemed constitutional, however. In *Addison v. Saulnier* the Court held that the fee charged by the state gauger for examining certain imported wines was not a tax within the meaning of the state constitution,[91] and that the act authorizing the gauger's examination did not impose a duty on imports, but was merely an inspection law.[92] It was also possible to tax imported goods for general state and county taxes, if they were taxed like other goods. In the words of the Court: "It is admitted that the state may tax imported goods after they have become incorporated with the mass of the wealth of the state."[93]

CALIFORNIA AND THE STATES

The first two sections of the Fourth Article of the United States Constitution outline the relative position of one state to another.[94] Essentially these sections say that each state is to recognize the laws and judicial proceedings of the other states, and citizens of one state are to enjoy the same rights of citizenship in all the other states. Judicial proceedings were discussed in connection with *Taylor v. Shew*, and the same case also used the judicial rule that unless proof was given to the contrary about the law of another state, the presumption was that the law in that state was the same as in California.[95] Similarly, if a common law rule were brought up, the presumption was that the common law was the basis of that state's laws, and this was applied to all states formed from the original colonies, and states formed from later acquired land, whose populace was formed from the original states.

> But no such presumption can apply to States in which a government already existed at the time of their accession to the country, as Florida, Louisiana, and Texas. They had already laws of their own, which remained in force until by the proper authority they

90 C. R. L. Co. v. Patterson (1867), 33 Cal. 334.
91 Addison v. Saulnier (1861), 19 Cal. 82.
92 Cal. Stats. (1852), chap. 58.
93 Low v. Austin (1870), 1 Cal. Unrep. 642.
94 U.S. Const., art. IV.
95 Taylor v. Shew, *supra*.

> were abrogated and new laws were promulgated. With them there is no more presumption of the existence of the common law than of any other law. [96]

In such an instance, and the case involved Texas law, the Court went on the presumption that the Texas law was the same as that in California, and decided the issue on that basis. As Chief Justice Stephen J. Field explained the situation:

> We are called upon to determine the matter in controversy, and are not at liberty to follow our own arbitrary notions of justice. We cannot take judicial notice of the laws of Texas and we must, therefore, as a matter of necessity, look to our own laws as furnishing the only rule of decision upon which we can act; and to meet the requirements that the case is to be disposed of according to the laws of Texas, the presumption is indulged that the laws of the two States are in accordance with each other.[97]

In 1862 the Court was able to summarize this position by saying that the presumption applied to statute law as well as the common law.[98] The acceptance of laws from another state included territories,[99] and even mining customs of a territory would be enforced in a California court.[100] Presumably California law would have been used in the absence of proof about territorial laws or mining customs as well.

One thorny problem to be handled in dealing with the relations between states was the matter of fugitives from justice. The United States Constitution states: "A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."[101]

Cases involving extradition came before the Court as habeas corpus proceedings in which the alleged fugitives challenged their imprisonment

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96 Norris v. Harris (1860), 15 Cal. 253.

97 Ibid.

98 Hickman v. Alpaugh (1862), 21 Cal. 225.

99 Pearson v. Pearson (1875), 21 Cal. 120.

100 Blodgett v. Potosi G. & S. M. Co. (1867), 34 Cal. 227.

101 U.S. Const., art. IV, § 2.

in California. One such case was *In the Matter of Romaine*, in which the California Supreme Court indicated, without saying so directly, that Congress could not pass a law dealing with fugitives from justice, because this was a matter between the various states themselves.[102] California passed a law extending extradition privileges to territories as well as states, sending the petitioners back to Idaho, then still a territory.[103] In 1875 the Court upheld a section of the Penal Code[104] that the alleged fugitive had to have a prosecution pending against him in the state from which he fled.[105]

One phenomenon of the period after 1860 was the termination, physical and otherwise, of California's isolation from the rest of the nation. The building of the national railroad network essentially ended the physical isolation, and the Civil War did much to end the sense of mental isolation by helping California identify with national problems.

Compared to the decade of the 1850s the judicial relationship between California and the rest of the nation after 1860 was relatively serene. No longer would courts defy the central government, and in a sense, California "came of age" judicially.

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[102] In the Matter of Romaine (1863), 23 Cal. 585.

[103] Cal. Stats. (1851), chap. 29, § 665.

[104] Cal. Penal Code (1872), § 1548.

[105] Ex parte White (1875), 49 Cal. 433.