

is paramount. . . . But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities . . . in different states. The paramount interest is not local but national . . .” (p. 309). It was there emphasized that the “business of the Supply Company, with an exception not important here, [was] wholly interstate.” (p. 306.) In *Shafer v. Farmers Grain Co.*, 268 U. S. 189, 192, where a North Dakota regulation was held invalid, “about 90 per cent. [of the wheat was] sold within the state to buyers who purchase for shipment, and ship, to terminal markets outside the state” and the “price paid at the country elevators rises and falls with the price at the terminal markets.” In these two cases the burden was deemed a direct one because the businesses were essentially interstate. In *Pennsylvania v. West Virginia*, 262 U. S. 553, the state regulation was held void as discriminating against interstate commerce.

In my opinion the judgment below should be reversed.

OKLAHOMA v. TEXAS, UNITED STATES,
INTERVENER.

No. 6, Original. Decree entered January 3, 1927.

Decree declaring part of the boundary between Texas and Oklahoma; appointing and instructing a commissioner to survey and mark it, subject to approval of the Court; with provisions as to costs.

Announced by MR. JUSTICE SANFORD.

This cause having been heard and submitted under the counterclaim of the State of Texas, and the Court having considered the same and announced its conclusions in an opinion delivered October 11, 1926 [272 U. S. 21], it is ordered, adjudged and decreed as follows:

1. The boundary between the State of Texas and the State of Oklahoma constituting the eastern boundary of

the Panhandle of Texas and the main western boundary of Oklahoma, is the line of the true one-hundredth meridian of longitude west from Greenwich, extending north from its intersection with the south bank of the South Fork of Red River to its intersection with the line of the parallel of 36 degrees 30 minutes north latitude.

2. Samuel S. Gannett, geodetic and astronomic engineer, is designated as commissioner to run, locate and mark the boundary between the two States as determined by this decree. In ascertaining and locating the line of said meridian the commissioner shall use the most accurate method now known to science and applicable in that locality; and he shall mark the boundary, as thus ascertained, by establishing permanent monuments thereon, suitably marked and at appropriate distances.

3. The commissioner shall include in his report a description of the monuments so established and of their locations. And he shall file with his report the field notes of his survey, showing the method used by him in ascertaining and locating the line of the meridian, and a map showing the boundary line as run and marked by him; also ten copies of his report and map.

4. Before entering upon his work the commissioner shall take and subscribe his oath to perform his duties faithfully and impartially. He shall prosecute the work with diligence and dispatch, and shall have authority to employ such assistants as may be needed therein; and he shall include in his report a statement of the work done, the time employed and the expenses incurred.

5. The work of the commissioner shall be subject in all its parts to the approval of the Court. One copy each of the commissioner's report and map shall be promptly transmitted by the clerk to the Governors of the two States and the Secretary of the Interior; and exceptions or objections to the commissioner's report, if there be such, shall be presented to the Court, or, if it be not in

session, filed with the clerk, within forty days after the report is filed.

6. If, for any reason, there occurs a vacancy in the commission when the Court is not in session, the same may be filled by the designation of a new commissioner by the Chief Justice.

7. All the costs of executing this decree, including the compensation and expenses of the commissioner, shall be borne in three equal parts by the two States and the United States.

McGUIRE v. UNITED STATES.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR
THE SECOND CIRCUIT

No. 85. Argued November 24, 1926.—Decided January 3, 1927.

Samples of intoxicating liquor constituting part of a quantity seized by federal officers under a valid search warrant may consistently with the Fourth and Fifth Amendments be used as evidence against the occupant of the premises, in a prosecution under the Prohibition Act, even though when they made the seizure the officers unlawfully destroyed the remainder of the liquor, and even assuming that, by so doing, they became civilly liable as trespassers *ab initio*. P. 97.

ANSWER to questions propounded by the Circuit Court of Appeals, 6 Fed. (2d) 276, upon review of a conviction of McGuire in the District Court for a violation of the Prohibition Act. 300 Fed. 98.

Mr. Ransom H. Gillett for the plaintiff in error.

Congress never intended to authorize government officers to summarily destroy either liquor or any other kind of property which they seized when acting under the authority conferred upon them by a search warrant. *Steele v. United States*, 267 U. S. 498; *United States v. 9 Bbls. Beer*, 6 Fed. (2d) 401; *Murby v. United States*,