

has a *situs* with the creditor is merely to clothe a foregone conclusion with a fiction. The place of the property is not material except where inability to protect carries with it inability to tax. But that is an exceptional consequence. One State may tax the owner of bonds of another State, although it certainly contributes nothing to their validity. *Bonaparte v. Tax Court*, 104 U. S. 592. It is admitted that Maryland could tax the trustee in this case although most at least of the securities handed over were beyond the power of Maryland to affect in any substantial way. The equitable owners of the fund were in Virginia and I think they could be taxed for it there. I do not understand that any merely technical question is raised on the naming of the trustee instead of the *cestuis que trustent* as the party taxed. Nor is there any question of the amount. Throughout the record, by the Court and by the trustee, the single issue is stated to be whether the fund can be reached. In the words of the trustee it is: "Has such corpus, so created and held, a taxable situs in Virginia within the sanction of section one of the 14th Amendment to the Constitution of the United States?" I think the judgment should be affirmed.

UNITED STATES ET AL. v. ERIE RAILROAD COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

No. 30. Argued November 1, 1929.—Decided November 25, 1929.

1. The Interstate Commerce Commission has power to establish rates on intrastate shipments which are part of foreign commerce. P. 100.
2. Whether a shipment is foreign or local is determined by the essential character of the commerce; it is not dependent upon the question when or to whom title passes; and the shipment may be

foreign in its entirety even though completed under a local bill of lading with a temporary detention before or after the local movement. P. 101.

3. The Commission found that the consignee of shipments from abroad acted only as agent of the consignors under a duty to reconsign the goods on a local bill of lading to their ultimate destination, in accordance with what it found to be the continuing intent from the time the goods were placed on board the steamers. There being ample evidence to support these findings, they should have been accepted by the District Court as conclusive; and the holding that the local movement was in fact a part of foreign commerce should not have been disturbed. P. 102.

32 F. (2d) 613, reversed.

APPEAL from a decree of the District Court setting aside and annulling an order of the Interstate Commerce Commission which required the establishment of a specific rate on shipments of imported wood pulp, from Hoboken, the place of importation, to another place in New Jersey.

Solicitor General Hughes, Assistant to the Attorney General O'Brian, and Messrs. George C. Butte and Elmer B. Collins, Special Assistants to the Attorney General, filed a brief on behalf of the United States.

Mr. Edward M. Reidy, with whom Mr. Daniel W. Knowlton was on the brief, for the Interstate Commerce Commission.

Mr. Marion B. Pierce, with whom Mr. Herbert A. Taylor was on the brief, for appellees.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Upon complaint of Hamersley Manufacturing Company, the Interstate Commerce Commission issued an order that the Erie Railroad Company and a connecting carrier establish an all-rail rate of 10 cents per 100 pounds

on wood pulp imported through the port of Hoboken, New Jersey, and shipped from there to Garfield, New Jersey, in carloads. *Hamersley Mfg. Co. v. Erie R. Co.*, 126 I. C. C. 491; 148 I. C. C. 47. The carriers brought this suit in the federal court for that State to enjoin enforcement of the order and to set it aside. The District Court granted the relief. *Erie R. Co. v. United States*, 32 F. (2d) 613. The case is here on direct appeal under Act of October 22, 1913, c. 32, 38 Stat. 208, 220, Act of February 13, 1925, c. 229, 43 Stat. 936, 938, amending § 238 of the Judicial Code. The sole ground for the carriers' attack on the order, and also the sole ground for the decree below, is that the shipments are wholly intrastate and, therefore, the Commission lacked jurisdiction over the rates.

The Commission found the following facts concerning the course of the business involved. The Hamersley Company makes to a New York broker, who is a commission agent for specified foreign mills, its offer to buy a certain quantity and grade of pulp manufactured abroad. The broker cables the offer to one of the foreign mills which he represents, naming the prospective purchaser. If the offer is accepted, the broker so informs the Company and then makes a contract with it in his own name, sending a copy to the mill. The contract provides for shipment from abroad during a specified period and delivery, at the agreed price, on dock New York Harbor. The mill is not named in the contract. It ships to the broker the ordered quantities marked with a brand, but not so as to show the individual customer, and cables the broker when the shipment is made, naming the steamer, the quantity, the customers, and the date of expected arrival. This information is communicated by the broker to the Company. It appears from the record that the broker pays the mill as soon as he is thus advised of the shipment; and that the ship's bill of lading is sent to him.

The pulp destined for the Company may be part of a larger shipment. But the number of bales allotted to it are always delivered at Garfield; none may be diverted to any other customer; and no pulp is shipped to the broker for sale to purchasers to be obtained while the pulp is in transit or after its arrival. Upon arrival of the pulp in Hoboken, the broker gives to a terminal company the dock orders, specifying delivery of the required number of bales, and makes out the bills of lading for shipment from there to Garfield. These papers name the ship by which the pulp arrived at the Hoboken dock. There may be some delay in forwarding the wood pulp by rail after delivery on the dock because, under an arrangement between the broker and the Company, the pulp is shipped from the dock in lots of two or three cars in order to prevent congestion at Garfield. The freight from the dock to Garfield is paid by the Company to the rail carrier. The Commission found "that from the time the pulp is placed on board steamers at foreign ports there is a continuing intent on the part of the shipper that it shall be transported to Garfield."

The carriers contend that title to the pulp does not pass to the Company until the broker arranges, at the Hoboken dock, for shipment of the specific lot to Garfield; that the shipment by the mill to its agent, as consignee, of pulp in quantity exceeding that ultimately destined to Garfield, terminates when the pulp is delivered on dock at Hoboken; that this foreign shipment is distinct from the subsequent shipment by the broker to Garfield of the smaller quantity, under a new and local bill of lading; and that therefore, the rail movement from Hoboken to Garfield is an independent intrastate transaction. But the nature of the shipment is not dependent upon the question when or to whom the title passes, *Pennsylvania R. Co. v. Clark Coal Co.*, 238 U. S. 456, 465-6. It is deter-

mined by the essential character of the commerce. *Baltimore & Ohio S. W. R. Co. v. Settle*, 260 U. S. 166, 170. It is not affected by the fact that the transaction is initiated or completed under a local bill of lading which is wholly intrastate, *Ohio R. R. Commission v. Worthington*, 225 U. S. 101, 108-110; *Texas & New Orleans R. Co. v. Sabine Tram Co.*, 227 U. S. 111; *Hughes Bros. Co. v. Minnesota*, 272 U. S. 469; or by the fact that there may be a detention before or after the shipment on the local bill of lading, *Carson Petroleum Co. v. Vial*, 279 U. S. 95. The findings of the Commission, that the broker acts only as agent and that from the time that the pulp is put aboard the steamer there is a continuing intent that it should be transported to Garfield, ought to have been accepted by the District Court as conclusive, since there was ample evidence to sustain them. *Western Paper Makers' Chemical Co. v. United States*, 271 U. S. 268; *Virginian R. Co. v. United States*, 272 U. S. 658. The rail transportation is in fact a part of foreign commerce.

Reversed.

CHESAPEAKE & OHIO RAILWAY COMPANY *v.*
MIHAS.

CERTIORARI TO THE APPELLATE COURT FOR THE FIRST
DISTRICT OF ILLINOIS AND THE SUPREME COURT OF
ILLINOIS.

No. 21. Argued October 24, 1929.—Decided November 25, 1929.

1. A judgment of the Appellate Court of Illinois, which, under Cahill's Rev. Stats. Ill., 1927, c. 110, § 121, is final unless the judges of that court grant a certificate of importance and an appeal to the Supreme Court of the State, or the latter court grants an application for review, is affirmed when the Supreme Court refuses such an application and is then final for purposes of review in this Court, although no application for certificate of importance and appeal to that court has been made to the Appellate Court. P. 103.