and the contract will continue to bind petitioner during the period intended by the parties unless earlier altered by them or relaxed by state authority. *Georgia Ry. Co.* v. *Decatur,* 262 U. S. 432, 438. The losses attributable to the stretch of track in question and the five cent fare are immaterial while the rate contract continues. *Public Service Co.* v. *St. Cloud,* 265 U. S. 352, 355. *R. R. Commission* v. *Los Angeles R. Co.,* 280 U. S. 145, 152.

Decree affirmed.

WESTERN CARTRIDGE COMPANY *v.* EMMERSON, SECRETARY OF STATE OF ILLINOIS.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

No. 375. Argued April 21, 1930. Decided May 19, 1930.

A state franchise tax or license fee imposed on a manufacturing corporation at the rate of five cents per hundred shares of that portion of its issued capital stock which bore the same ratio to all its issued capital stock as the amount of its property and business within the State bore to its total business and property, *held* not violative of the commerce clause although much of the business included in the computation as transacted in the State consisted of sales of goods upon orders received from outside and accepted by mail, the goods being shipped by the corporation f. o. b. at its factories to the destinations designated by the purchasers. *Air Way Corp.* v. *Day,* 266 U. S. 71, distinguished.

335 Ill. 150, affirmed.

CERTIORARI, 280 U. S. 545, to review a judgment sustaining the dismissal of the bill in a suit to enjoin payment to the Treasurer of Illinois of the amount of a tax collected from the petitioner by the respondent Secretary of State.

Mr. Colin C. H. Fyffe for petitioner.

Mr. Bayard Lacey Catron, Assistant Attorney General of Illinois, with whom *Mr. Oscar E. Carlstrom,* Attorney General, was on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Petitioner, a Delaware corporation licensed to do business in Illinois, brought this suit in the circuit court of Sangamon county to enjoin payment to the state treasurer of the amount of a license fee or franchise tax that respondent as secretary of state collected from petitioner under § 105 of the general corporation act of that State. The suit was based upon the claim that, as construed and enforced by respondent, the section violates the commerce clause of the Federal Constitution. Art. I, § 8, cl. 3. After hearing upon bill, answer and an agreed statement of facts the court dismissed the bill. The state supreme court (335 Ill. 150) affirmed the decree following our decision in *Hump Hairpin Co.* v. *Emmerson,* 258 U. S. 290, which affirmed 293 Ill. 387.

Section 105 provides: "Each corporation for profit, . . . except insurance companies, . . . organized under the laws of this state or admitted to do business in this state, . . . shall pay an annual license fee or franchise tax . . . of five cents on each one hundred dollars of the proportion of its issued capital stock . . . represented by business transacted and property located in this state, . . ."

Petitioner operates factories and has its principal office in Illinois. It there receives, upon forms furnished by it, orders for its products from persons in Illinois and elsewhere and by sending written acceptance consummates contracts of sale. In accordance with the directions contained in the orders, petitioner delivers the goods at its factories to common carriers for transportation to purchasers at various destinations in Illinois, other States and foreign countries.

Petitioner had issued capital stock of the par value of $5,701,800; it had property valued at $6,924,804.92 of

which $6,894,903.27 was situated in Illinois; its business for the year in question amounted to $11,670,925.51 of which $1,919,822.73 represented products shipped to purchasers in Illinois and $9,751,042.78, reported as interstate commerce, was made up of shipments to customers outside the State.

Respondent treated all of petitioner's business as having been transacted in Illinois and based the tax on such proportion of its outstanding capital stock as its business plus its Illinois property was of such business and all its property. The tax so calculated amounted to $2,808.03, a substantial part of which resulted from the inclusion of the transactions reported by petitioner as interstate commerce.

All of the goods sold were manufactured by the petitioner in Illinois and the manufacturing was business carried on in that State. The receipt and acceptance of orders, the packing, giving shipping directions and delivery to common carriers also constituted business in that State; these things were common to all sales whether the goods sold were sent to destinations within or without the State, but as to products shipped to other States or foreign countries the acceptance of orders and what was subsequently done by petitioner became component parts of interstate or foreign commerce. *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282, 290. *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, 54. *Flanagan* v. *Federal Coal Co.,* 267 U. S. 222, 225. *Federal Trade Commission* v. *Pacific Paper Assn.,* 273 U. S. 52, 63–64.

Unquestionably Illinois has power to tax all petitioner's property therein without regard to its use in connection with interstate transactions and to impose a license fee or excise upon petitioner's local business. *International Paper Co.* v. *Massachusetts,* 246 U. S. 135, 141. The tax in question was not laid directly upon interstate commerce or any of its elements. For the determination of

the amount the taxpayer's business and property located in Illinois is divided by the total of all its business and property and that percentage is applied to the issued shares and the resulting number taken for taxation at the rate of five cents per $100. As the amount depends on the relation each to the others of the various elements employed in the calculation, the fee or tax does not directly depend upon the amount of the taxpayer's interstate transactions. The exaction may rise while the sales to customers outside Illinois decline and may fall while such sales increase.

The amount imposed upon petitioner did not even indirectly burden the interstate transportation resulting from the shipping directions given by petitioner in fulfillment of its contracts of sale. There is nothing to indicate that by the enactment in question the State intended to regulate or burden such commerce or to discriminate as between sales to Illinois customers and those made to buyers in other States and countries. The tax cannot be said directly or by necessary operation to affect any of the things done by petitioner which, by reason of transportation of goods to places outside Illinois in accordance with the directions of the purchasers, became elements or component parts of interstate or foreign commerce. Petitioner's sales prices are based on deliveries to common carriers at its factories. The expense of transportation is not involved in the calculation. And it is plain that, if the fee or tax in question affected petitioner's interstate or foreign commerce at all, the burden was indirect and remote and not a violation of the commerce clause.

The petitioner relies on *Air-Way Corp.* v. *Day,* 266 U. S. 71. But, as shown by the opinion, the tax considered in that case was based on the authorized capital stock and the rate was applied to a number of shares greatly in excess of the total of all that had been issued. The com-

pany was authorized to issue 400,000 shares; it had issued only 50,485 and these represented all its property and business. The tax at the rate of five cents each on 298,520 shares was held directly to burden the company's interstate commerce. Cf. *Cudahy Co.* v. *Hinkle,* 278 U. S. 460. The case now under consideration cannot be distinguished from *Hump Hairpin Co.* v. *Emmerson, supra.* And see *International Shoe Co.* v. *Shartel,* 279 U. S. 429, 433.

Decree affirmed.

CHARTER SHIPPING COMPANY, LIMITED, *v.* BOWRING, JONES & TIDY, LIMITED.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 397. Argued April 22, 1930.—Decided May 19, 1930.

1. The retention of jurisdiction of a suit in admiralty between foreigners is within the discretion of the District Court, and the exercise of that discretion may not be disturbed unless abused. P. 517.
2. Liability in general average arises not from contract but from participation in the common venture, and its extent in the absence of limiting clauses in the bill of lading is, under the admiralty rule, fixed by the law of the port of destination. *Id.*
3. In a suit in admiralty between British corporations for the recovery of a general average deposit made in London to release cargo shipped from ports in the United States, the litigation apparently involving the application of the law of England to a fund there located, but it being claimed that limiting clauses in the bills of lading modified the liability in general average so as to put in issue the seaworthiness of the vessel at the beginning of the voyage, on which question there were American witnesses, *held:*

   (1) It was for the District Court, upon consideration of all the circumstances, to say whether it should decline jurisdiction. P. 518.

   (2) In declining jurisdiction, the District Court can not be said to have improvidently exercised its discretion. *Id.*