

States and Persia of 1856, to the benefit of Article VI of that Treaty, and that the net assets of the decedent should be delivered to him accordingly.

The decree is reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

STATE TAX COMMISSION OF MISSISSIPPI *ET AL.*  
*v.* INTERSTATE NATURAL GAS CO., INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 40. Argued October 26, 1931.—Decided November 23, 1931.

The selling of gas wholesale to local, independent distributors from a supply passing into and through the State in interstate commerce, does not become a local affair and subject to a local privilege tax merely because the vendor, to deliver the quantities sold, uses a thermometer and a meter and reduces the pressure.

Affirmed.

APPEAL from a decree enjoining the Commission from enforcing a privilege tax.

*Mr. Edward R. Holmes, Jr.*, argued the cause for appellants, appearing *pro hac vice* by leave of Court; and *Messrs. George T. Mitchell*, Attorney General of Mississippi, and *J. A. Lauderdale*, Assistant Attorney General, were on the brief.

The New York contracts are simply executory contracts of sale. The appellee cannot tell what gas it will sell to the distributor at Woodville, or what gas it will carry on through Mississippi into Louisiana. None of the gas is actually sold before it leaves the gas fields in Louisiana. It is true that the appellee is transporting gas with a view to selling it, but, before it relinquishes the title and control of any of it by delivery to the distributor,

it must, under the very terms of its executory contract, prepare and treat it for sale and delivery. Appellee alone controls and operates its taps, regulators, thermometers and meters.

The sale is actually consummated at a time when the commodity is in Mississippi. This is not a case of delivery of an interstate shipment sent in response to an order. It is a case where the original package, being transported in interstate commerce, is broken, and the commodity prepared for sale and actually sold and delivered in Mississippi.

The method of measuring the tax by the number of miles of pipe line is reasonable. The tax can be validly imposed, even though it incidentally and indirectly affect and burden interstate business. *St. Louis R. Co. v. Arkansas*, 235 U. S. 350; *New York v. Sohmer*, 235 U. S. 549; *Cheney Bros. v. Massachusetts*, 246 U. S. 147; *Pullman Car Co. v. Adams*, 189 U. S. 420; *Hump Hair Pin Mfg. Co. v. Emmerson*, 258 U. S. 290; *U. S. Express Co. v. Minnesota*, 223 U. S. 335; *Maine v. Grand Trunk Ry. Co.*, 142 U. S. 217; *Sprout v. South Bend*, 277 U. S. 163.

It was not within the power of the parties by the form of their contract to convert a local business into an interstate business protected by the commerce clause, when the contract achieved nothing else. *Superior Oil Co. v. Mississippi ex rel. Knox*, 280 U. S. 390; *General Oil Co. v. Crane*, 209 U. S. 211; *Sonneborn Bros. v. Keeling*, 266 U. S. 505; *Atlantic Coast Line R. Co. v. Standard Oil Co.*, 275 U. S. 254; *Carson Petroleum Co. v. Vial*, 279 U. S. 95; *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465.

Distinguishing *Ozark Pipe Line Co. v. Monier*, 266 U. S. 555; *Missouri v. Kansas Gas Co.*, 265 U. S. 298; *Peoples Gas Co. v. Pennsylvania*, 270 U. S. 550; *Pennsylvania Gas Co. v. Public Service Comm.*, 252 U. S. 23; *Pennsylvania v. West Virginia*, 262 U. S. 533; *Public Utilities Comm. v. Landon*, 245 U. S. 236; *Eureka Gas*

*Co. v. Hallahan*, 257 U. S. 265; *United Fuel Gas Co. v. Hallahan*, 257 U. S. 277.

*Mr. David Clay Bramlette* for appellee.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from a decree of three Judges sitting according to statute in the District Court, by which the Tax Commission of the State of Mississippi is permanently enjoined from enforcing a Privilege Tax Law of that State, being c. 88 of the laws of 1930, against the Interstate Natural Gas Company, the plaintiff in this suit.

The facts are agreed. The plaintiff has a trunk line of pipe extending from gas fields in Louisiana through Mississippi and back to Louisiana; 72.42 miles having a diameter of 22 inches, 8.11 miles having a diameter of 12 inches and 4.99 miles a diameter of 10 inches. It sells daily to distributors in Louisiana about 70,000,000 cubic feet of natural gas in summer and about 75,000,000 feet in winter. In Mississippi it sells as will be explained from 204,000 to 520,000 feet according to the season. The gas flows continuously from the gas fields in Louisiana and obviously, for much the greater part at least, in interstate commerce. But the appellants rely upon business done under two similar contracts made in New York to show that there was intrastate commerce in Mississippi that may be taxed without burdening the main activity that the State cannot touch. *Ozark Pipe Line Corp. v. Monier*, 266 U. S. 555, 563. *East Ohio Gas Co. v. Tax Commission*, 283 U. S. 465, 470. Distributing companies tap the plaintiff's pipes near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured by a thermometer and a meter furnished by the plaintiff which is the only way in which it can be measured. The pressure of the gas is reduced by the plaintiff

before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail. *Missouri v. Kansas Gas Co.*, 265 U. S. 298. *Public Utilities Comm. v. Landon*, 249 U. S. 236, 245. *Ozark Pipe Line Corp. v. Monier*, 266 U. S. 555.

*Decree affirmed.*

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CHESAPEAKE & OHIO RAILWAY CO. *v.* KUHN.

CERTIORARI TO THE SUPREME COURT OF OHIO, AND TO  
THE COURT OF APPEALS OF PIKE COUNTY, OHIO.

Nos. 34 and 35. Argued October 23, 1931.—Decided November  
23, 1931.

1. The writ of certiorari properly goes to an intermediate appellate court where the supreme court of the State has declined to review its decision. P. 45.
2. In actions under the Federal Employers' Liability Act, where the undisputed evidence sustains the defense of assumption of risk, the trial judge should direct a verdict for the defendant. P. 46.

The evidence clearly showed that an injury to plaintiff's eye (caused by a steel chip which flew into it when a rail was being cut by sledge-hammer and cold chisel) resulted from ordinary hazards of his employment, which he fully understood and voluntarily assumed; that there was no complaint against his exposure to the obvious danger unprotected by goggles, nor any promise by his superior to mitigate it.

3. In such actions, wherever brought, the rights and obligations of the parties depend upon the federal Act and applicable principles of the common law as interpreted and applied in the federal courts; a subordinate state tribunal should follow in such cases the views of this Court, though they conflict with those of the supreme court of the State. P. 46.

Reversed.