

The judgment of the Court of Appeals is reversed and that of the District Court affirmed.

*Reversed.*

MR. JUSTICE STONE, dissenting.

I think the judgment should be affirmed.

If "participation" means coöperation in the transportation, more than is involved in presence on the transporting vehicle with the knowledge that an explosive is being carried, I can perceive no ground for saying that there was participation here. That deceased had made the journey to deliver the caps and, as a "business invitee," had a right to return on the vehicle on which he had placed it, seems to me as irrelevant as though the deceased had embarked as a passenger on a railroad train on which the explosion occurred after he or his firm had shipped dynamite upon it. By the terms of the policy, participation, to exclude liability, must be at the time of the injury. After the return journey began, deceased did nothing to facilitate the transportation. He neither controlled nor had the right to control it. He was merely present. The distinction drawn between this case and that of mere presence, so difficult of statement and application, appears to me to obscure rather than to define the meaning of the term and to violate the cardinal principle that, so far as their language reasonably admits, insurance contracts are to be interpreted most favorably to the insured.

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CHASSANIOL *v.* CITY OF GREENWOOD.

APPEAL FROM THE SUPREME COURT OF MISSISSIPPI.

No. 428. Argued February 6, 1934.—Decided March 12, 1934.

The business of buying and selling cotton locally produced, processed and warehoused, is local in character; and a local occupation tax upon the buyer does not contravene the Commerce Clause, although the course of the business be such that all of the cotton so bought is

ultimately shipped by the buyer in interstate or foreign commerce. *Federal Compress & Warehouse Co. v. McLean*, ante, p. 17. P. 586. 166 Miss. 848; 148 So. 781, affirmed.

APPEAL from the affirmance of a judgment of a Circuit Court of Mississippi, which sustained on appeal an order of the City Council of Greenwood refusing a refund of taxes.

Mr. Edward W. Smith, with whom Messrs. Sam C. Cook, Marcellus Green, and Garner W. Green were on the brief, for appellant.

Messrs. J. A. Lauderdale and A. H. Bell, with whom Mr. J. A. Tyson was on the brief, for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The City of Greenwood, Mississippi, laid by ordinance, in 1931 and in 1932, a tax "upon every person engaged in the business of buying or selling cotton for himself" within the city. In each year a tax of \$50 was assessed to Chassaniol. He paid it under protest; and duly applied for refund to the City Council, claiming that the tax was illegal, and that the ordinances and the statutes authorizing it as construed and applied were void, because they violate the commerce clause of the Federal Constitution. The City Council refused the refund. Its action in denying this claim under the Constitution was sustained by both the Circuit Court of Leflore County and by the Supreme Court of the State, 166 Miss. 848; 148 So. 781. Whether they erred in so holding is the only question presented for decision by this appeal.

Greenwood is a concentration point for long staple cotton and an active market for its purchase and sale. All of the cotton there dealt in is grown and ginned in Mississippi. It reaches the Greenwood warehouses, about 70 per cent. by rail, the rest by automobile, truck, or wagon. There, it is compressed substantially as described in *Federal Compress & Warehouse Co. v. McLean*, ante, p. 17.



Purchases and sales are made upon the market by transfer and delivery of receipts issued by the local warehouses under the United States Warehouse Act. The prices are governed largely by transactions on the cotton exchanges of New York, Chicago, New Orleans and Liverpool.

There are at Greenwood about 25 cotton buyers, each of whom, like Chassaniol, purchases and sells cotton for himself. The buyer becomes the absolute owner. He makes the profit or bears the loss. But when he buys he customarily has in hand and in mind orders or contracts for that particular grade, for immediate or future delivery in other states or countries to the extent of about 90 per cent., on the average, of all cotton purchased by him. The remaining 10 per cent., he buys because, as often happens, growers of cotton refuse to sell less than their whole lot; and the lot may include a quantity greater than, or some bales of a grade different from, that for which the buyer has orders or contracts. The surpluses so bought are called "overs." Sometimes the "over" is held by the buyer until he gets an order or contract on which it can be placed. Sometimes the "over" is sold to another buyer at Greenwood. And some of the cotton bought as an "over" changes ownership several times within the State. But eventually the "overs," like the rest of the cotton, are shipped in interstate or foreign commerce.

Chassaniol contends that all the cotton is in interstate or foreign commerce from the moment it leaves the gin for Greenwood, or at least from the moment it is purchased at Greenwood by the buyer. The argument is that already at that time the cotton is destined for ultimate shipment to some other state or country; and that to tax the occupation of the cotton buyer burdens interstate commerce, since the buyer at Greenwood is the instrumentality by which the interstate transaction is initiated. The business involved is substantially like that described in

*Federal Compress Co. v. McLean*; and the rule there declared must govern here. Ginning cotton, transporting it to Greenwood, and warehousing, buying and compressing it there, are each, like the growing of it, steps in preparation for the sale and shipment in interstate or foreign commerce. But each step prior to the sale and shipment is a transaction local to Mississippi, a transaction in intrastate commerce. Hence those engaged in performing any such local function may be subjected to an occupation tax, just as the property used, or processed, by them may be subjected to a property tax.

There is nothing in *Dahnke-Walker Milling Co. v. Bondurant*, 257 U.S. 282 or in *Lemke v. Farmers Grain Co.*, 258 U.S. 50, inconsistent with this conclusion. The regulations involved in those cases were found to impose a direct burden upon interstate commerce itself. *Stafford v. Wallace*, 258 U.S. 495, is also in harmony with the rule here applied. See *Minnesota v. Blasius*, 290 U.S. 1, 7-8.

*Affirmed.*

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ARROW-HART & HEGEMAN ELECTRIC CO. v.  
FEDERAL TRADE COMMISSION.

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

No. 363. Argued February 8, 1934.—Decided March 12, 1934.

After commencement of a proceeding by the Federal Trade Commission to compel a holding company to divest itself of the voting stock of two competing operating companies, held by it in alleged violation of the Clayton Act, a reorganization was brought about through united participation of the owners of the holding company's shares and of the preferred stock of the operating companies, which the holding company never owned, whereby all the properties of the operating companies were acquired, through mergers, by a new corporation and the holding company was completely dissolved, pursuant to the state law.