

SEATTLE GAS CO. *v.* SEATTLE.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

No. 359. Argued January 12, 15, 1934.—Decided March 19, 1934.

Decided upon the authority of *Puget Sound Power & Light Co. v. Seattle*, *ante*, p. 619.

172 Wash. 701; 21 P. (2d) 732, affirmed.

APPEAL from the affirmance of a judgment sustaining a demurrer and dismissing the complaint in a suit by the Gas Company to recover money paid under protest as a tax, and to enjoin future assessments.

*Mr. DeWolfe Emory*, with whom *Mr. C. K. Poe* was on the brief, for appellant.

*Messrs. Walter L. Baumgartner* and *A. C. Van Soelen* for appellee.

MR. JUSTICE STONE delivered the opinion of the Court.

This case comes here on appeal under § 237 of the Judicial Code from a judgment of the Supreme Court of Washington, 172 Wash. 701; 21 P. (2d) 732, upholding a municipal license or excise tax, assailed by appellant as repugnant to the Fourteenth Amendment and the contract clause of the Federal Constitution. The ordinance, which imposes a tax of 3% of the gross income from appellant's business of furnishing gas to consumers in the City of Seattle, and the federal questions raised are the same as those in *Puget Sound Power & Light Co. v. City of Seattle*, decided this day, *ante*, p. 619. Appellant's bill of complaint, demurrer to which was sustained by the state court, alleges that the appellant is engaged in the distribution of gas, used for lighting in the City of Seattle, in competition with the city, the appellee, which conducts an electric light business, and that its constitutional rights are in-

fringed by the imposition of the tax. Appellant seeks recovery of an installment of the tax which it has paid, and an injunction restraining the collection of future installments. For the reasons stated at length in the opinion in *Puget Sound Power & Light Co. v. City of Seattle*, *supra*, the judgment is

*Affirmed.*

MR. JUSTICE VAN DEVANTER, MR. JUSTICE McREYNOLDS, MR. JUSTICE SUTHERLAND and MR. JUSTICE BUTLER, concur in the result.

financed by the imposition of the tax. Appellant seeks recovery of an abatement of the tax which it has paid, and an injunction restraining the collection of future installments. For the reasons stated at length in the opinion in *People's Gas & Light Co. v. City of Seattle*, supra, the judgment is affirmed.

Mr. Justice Van Dusen, Mr. Justice McHugh, Mr. Justice McHugh, and Mr. Justice McHugh, concur in the result. Mr. Justice McHugh, Mr. Justice McHugh, and Mr. Justice McHugh, concur in the result. Mr. Justice McHugh, Mr. Justice McHugh, and Mr. Justice McHugh, concur in the result.

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