Thus, regardless of what the statute commands, there is no such showing of threatened denial of a hearing or of injury to a property right as would warrant resort to the equity powers of a federal court. *Vandalia R. Co.* v. *Public Service Comm'n,* 242 U.S. 255; *United States* v. *Los Angeles & St. L. R. Co.,* 273 U.S. 299, 314; *White* v. *Johnson,* 282 U.S. 367, 373; *Porter* v. *Investors Syndicate, supra.*

MR. JUSTICE BRANDEIS, MR. JUSTICE ROBERTS, and MR. JUSTICE CARDOZO concur in this opinion.

TRINITYFARM CONSTRUCTION CO. *v.* GROSJEAN, SUPERVISOR OF PUBLIC ACCOUNTS OF LOUISIANA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 355. Argued February 7, 1934.—Decided March 5, 1934.

Petitioner entered into a contract with the Federal Government for the construction of levees, in aid of navigation of the Mississippi River, in the performance of which gasoline was used to supply power for machinery. *Held* that a state excise tax on the gasoline so used was not invalid, as a tax on a means or instrumentality of the Federal Government, its effect, if any, upon that Government being consequential and remote. P. 472.

3 F.Supp. 785, affirmed.

APPEAL from a decree of the District Court of three judges, which dismissed a bill to enjoin enforcement of state taxes.

Mr. D. K. Woodward, Jr., with whom *Messrs. Victor A. Sachse* and *H. Payne Breazeale* were on the brief, for appellant.

The contracts are governmental means or instrumentalities. *Gillespie* v. *Oklahoma,* 257 U.S. 501; *Indian*

Territory Oil Co. v. *Oklahoma,* 240 U.S. 522; *Choctaw O. & G. Co.* v. *Harrison,* 235 U.S. 292; *Burnet* v. *Coronado Oil & Gas Co.,* 285 U.S. 393.

The tax is not a tax upon the gasoline itself, nor upon the "distribution," "storage," or "withdrawal" of the gasoline. Distinguishing: *Nashville, C. & St. L. Ry. Co.* v. *Wallace,* 288 U.S. 249, and *Edelman* v. *Boeing Air Transport,* 289 U.S. 249.

The tax can arise solely with reference to gasoline "used or consumed,"—exploded for fuel.

If "use" were held to mean "withdrawal" from storage, the tax upon the privilege of withdrawal under the facts in this case would still be a direct burden on the federal contracts.

In the interstate cases above cited the act of withdrawal is held to have been completed before interstate commerce began and the burden of the tax with respect thereto is held too remote.

But, as said by Mr. Justice Holmes in *Gillespie* v. *Oklahoma,* 257 U.S. 501, distinguishing between attempts by a State to levy taxes on transactions in interstate commerce and upon the operation of the Federal Government, "The rule as to instrumentalities of the United States, on the other hand, is absolute in form and at least stricter in substance."

An examination of the facts here will demonstrate that the burden upon the federal contracts is direct, even if "use" be given the most comprehensive meaning yet accorded to it.

Up to the time the gasoline came to rest in appellant's storage tanks it was in interstate commerce and no contention is made that it was subject to the questioned tax. It was then stored in appellant's tanks, on or near appellant's work and was a part of appellant's equipment, assembled for performance of its federal contract, like the tanks which contained it, the tractors and trucks in which

it was presently to be consumed. Like them it had been brought to the site solely and exclusively because the federal contract had been made and was then actually being performed. Every act with respect to the gasoline which could possibly be subject to the tax, of necessity occurred after and not before the performance of the federal contract had begun—a situation wholly different from that passed upon in the interstate commerce cases where the taxable acts were completed before interstate transportation commenced.

After the gasoline came to rest in appellant's storage tanks, it was "used" in four ways, in the broadest possible sense of the word. It remained stored where it was; it was withdrawn from storage; it was put in appellant's fuel tanks; and it was exploded and consumed as engine fuel in actual levee construction.

In legal effect it matters not at all which act the State may select as the basis of its levy. Each act occurs after and not before the federal contract is commenced; each act is part performance of that contract; each act is done solely because of the federal contract; each act adds part of the cost or expense of performing the federal contract; each act is essential to the performance of that contract.

If the State may tax the storage of gasoline used in performing a federal contract, it may not be denied the power to tax the storage of coal, oil or other fuel, or, for that matter, the "storage" of draglines or other equipment while not actively engaged in work upon the contract.

Surrender to the State the right to tax any one of the acts enumerated and it will have power to destroy the contract; to defeat the ability of the Government to enter into such contracts.

It is in evidence and undisputed that the asserted tax would add to the cost of the work; that the bid price of appellant to the Government would have been higher

upon these identical contracts had appellant conceded the validity of the asserted tax; that future bids will be proportionately higher if the tax is sustained. A burden more direct upon the contract, and through it upon the Government, can not easily be conceived—a burden falling with equal force and certainty regardless of the act subjected to the tax.

The invalidity of taxes of this nature is established by an unbroken line of decisions of this Court. *McCulloch* v. *Maryland,* 4 Wheat. 316; *Stockton* v. *Baltimore Ry. Co.,* 32 Fed. 9; *Pembina Co.* v. *Pennsylvania,* 125 U.S. 181; *Horn Silver Mining Co.* v. *New York,* 143 U.S. 302; *Sault Ste. Marie* v. *International Transit Co.,* 234 U.S. 333; *Panhandle Oil Co.* v. *Mississippi,* 277 U.S. 218; *Helson* v. *Kentucky,* 279 U.S. 245.

The difference between an excise tax based on sales and one based on use of property is obvious and substantial. *Hart Refineries* v. *Harmon,* 278 U.S. 499.

When it is asserted a contract with the Federal Government is not a means selected by Congress for carrying out its delegated powers, careless thinking or want of knowledge is apparent. That the holder of such a contract is not an agent in the strict legal sense may be admitted; that the contract is a means to the delegated end may not be intelligently denied. What is meant, most frequently, is that the incidence of the tax on the governmental means is not admitted or, if it exists, that it is too remote. Cf. *Osborn* v. *Bank,* 9 Wheat. 737, 865.

Messrs. Peyton R. Sandoz and *Justin C. Daspit,* with whom *Mr. Gaston L. Porterie,* Attorney General of Louisiana, was on the brief, for appellee.

Mr. Justice Butler delivered the opinion of the Court.

Appellant has contracts with the United States for the construction of levees in Louisiana to control the waters of

the Mississippi River. It consumes much gasoline in the operation of machinery employed to do the work. It imports its supply from other States in carload lots and places it in a central tank from which distribution is made to other tanks located on its right of way in proximity to the machines. Appellee, an officer of Louisiana, is required to enforce the provisions of its statutes that impose an excise of five cents per gallon in respect of gasoline so imported and used.[1] The state supreme court has held that the exaction is an excise tax levied upon all gasoline or motor fuel sold, used or consumed in the State (*State* v. *Tri-State Co.*, 173 La. 682; 138 So. 507) and we accept that characterization. Claiming that these enactments are repugnant to several clauses of the Federal Constitution, appellant brought this suit to enjoin the collection of the tax in respect of the gasoline so used by it. A three judge court, having granted a temporary injunction, heard the case on the merits, upheld the tax and dismissed the bill. 3 F.Supp. 785.

The appellant seeks reversal on the ground that the contracts are federal means or instrumentalities, that the enactments referred to impose a direct burden upon them

[1]Act No. 6, Special Session of 1928, as amended by Act No. 8 of 1930, Act No. 16 of 1932, levies a tax of four cents a gallon "on all gasoline, or motor fuel, sold, used or consumed in the State of Louisiana for domestic consumption." § 1. The tax is collected from "dealers" who, as defined by § 2 of the Act, include "the person . . . who imports such gasoline or motor fuel from any other State or foreign country for distribution, sale or use in the State of Louisiana." And on "all gasoline or motor fuel imported from other States and used by him, the 'dealer' . . . shall pay the tax on the amount so imported and used, the same as if it has [*sic*] been sold for domestic consumption." Section 14 provides that the tax "shall not apply to sales to the United States Government or any agency or department thereof." Act No. 1, extraordinary Session of 1930, imposed an additional tax of one cent a gallon.

and that the State was without power to impose the tax. And on that basis it seeks to invoke the rule that, consistently with the Federal Constitution, a State may not tax the operations of an instrument employed by the government of the Union to carry its powers into operation. That principle, while not expressly stated in the Constitution, necessarily arises out of our dual government. It has often been given effect.[2] And reciprocally it safeguards every State against federal tax on its governmental agencies or operations.[3] Its application does not depend upon the amount of the exaction, the weight of the burden or the extent of the resulting interference with sovereign independence. Where it applies, the principle is an absolute one wholly unaffected by matters or distinctions of degree. *Indian Motocycle Co.* v. *United States,* 283 U.S. 570, 575, and cases cited. Its right application is essential to the orderly conduct of the national and the state governments and the attainment of justice as between them.

The power granted by the commerce clause is undoubtedly broad enough to include construction and maintenance of levees in aid of navigation of the Mississippi

[2] *McCulloch* v. *Maryland,* 4 Wheat. 316, 400, 436. *Weston* v. *Charleston,* 2 Pet. 449, 463, 466, *et seq.* *Dobbins* v. *Erie County,* 16 Pet. 435, 443, 447. *Farmers & Mechanics Bank* v. *Minnesota,* 232 U.S. 516, 526. *Choctaw, O. & G. R. Co.* v. *Harrison,* 235 U.S. 292. *Indian Oil Co.* v. *Oklahoma,* 240 U.S. 522. *Gillespie* v. *Oklahoma,* 257 U.S. 501. *Panhandle Oil Co.* v. *Knox,* 277 U.S. 218. Cf. *Susquehanna Power Co.* v. *Tax Comm'n,* 283 U.S. 291.

[3] *Collector* v. *Day,* 11 Wall. 113. *United States* v. *Railroad Co.,* 17 Wall. 322, 327. *Pollock* v. *Farmers' Loan & Trust Co.,* 157 U.S. 429, 584. *South Carolina* v. *United States,* 199 U.S. 437, 452, 461. *Indian Motocycle Co.* v. *United States,* 283 U.S. 570. *Burnet* v. *Coronado Oil & Gas Co.,* 285 U.S. 393. Cf. *Metcalf & Eddy* v. *Mitchell,* 269 U.S. 514. *Group No. 1 Oil Corp.* v. *Bass,* 283 U.S. 279. *Burnet* v. *A. T. Jergins Trust,* 288 U.S. 508.

River, and to authorize the performance of the work directly by government officers and employees or pursuant to contracts such as those awarded to appellant. The latter method was chosen and the validity of the challenged tax is to be tested on that basis. It is not laid upon the choice of means, the making of the contracts, the contracts themselves, or any transaction to which the federal government is a party or in which it is immediately or directly concerned. Nor is the exaction laid or dependent upon the amounts, gross or net, received by the contractor. The exaction in respect of its relation to the federal undertaking is wholly unlike those considered in *Choctaw, O. & G. R. Co.* v. *Harrison,* 235 U.S. 292; *Indian Oil Co.* v. *Oklahoma,* 240 U.S. 522; and *Gillespie* v. *Oklahoma,* 257 U.S. 501. Appellant is an independent contractor. *Casement* v. *Brown,* 148 U.S. 615, 622. It is not a government instrumentality. Cf. *Metcalf & Eddy* v. *Mitchell,* 269 U.S. 514. *Group No. 1 Oil Corp.* v. *Bass,* 283 U.S. 279. Unquestionably, as appellant here concedes, Louisiana is free to tax the machinery, storage tanks, tools, etc., that are used for the performance of the contracts. These things are as closely connected with the work as is the gasoline in respect of which is laid the excise in question. There is no room for any distinction between the plant so employed and the gasoline used to generate power. If the payment of state taxes imposed on the property and operations of appellant affects the federal government at all, it at most gives rise to a burden which is consequential and remote and not to one that is necessary, immediate or direct. *Thomas* v. *Gay,* 169 U.S. 264, 275. *Metcalf & Eddy* v. *Mitchell, supra,* 524 *et seq. Wheeler Lumber Co.* v. *United States,* 281 U.S. 572, 579. Appellant's claim of immunity is without foundation.

Affirmed.

Mr. Justice Cardozo concurs in the result.