Counsel for Parties.

ARKANSAS LOUISIANA GAS CO. *v.* DEPARTMENT OF PUBLIC UTILITIES ET AL.

APPEAL FROM THE SUPREME COURT OF ARKANSAS.

No. 645. Argued March 31, 1938.—Decided April 25, 1938.

1. A corporation acquired natural gas in Louisiana, piped it into Arkansas, and there disposed of it, partly by selling it as a public utility to consumers in cities—an activity carried on through a special department of the corporate business—and partly by sales to selected industrial and other customers, under special contracts made in Louisiana, delivery of gas being made to them directly from the main pipeline, or through connecting spurs. *Held*, that a general order of an Arkansas state agency requiring all public utilities to file schedules of their rates is not unconstitutional when applied to the sales under the special contracts even though they be sales in interstate commerce. P. 62.

   In the circumstances it may be highly important for the State, which regulates local rates, to have information of all the operations. Merely requiring comprehensive reports of such operations would not materially burden or unduly interfere with interstate commerce.

2. The Court is not called upon to decide whether the sales under the special contracts are subject to rate regulation by Arkansas. P. 63.

194 Ark. 354; 108 S. W. 2d 586, affirmed.

APPEAL from a judgment which reversed that of a court of first instance holding invalid an order of the State Department of Public Utilities. The case got into the latter court by petition for a review of the order.

Mr. H. C. Walker, Jr., with whom *Mr. J. Merrick Moore* was on the brief, for appellant.

Messrs. Thomas Fitzhugh and *John E. Benton* for appellees. *Mr. P. A. Lasley* was on a brief with *Mr. Fitzhugh*. By leave of Court, *Mr. Clyde S. Bailey* and *Mr. Benton* filed a brief on behalf of the National Association of Railroad and Utilities Commissioners, as *amicus curiae*, in support of appellees.

MR. JUSTICE MCREYNOLDS delivered the opinion of the Court.

Appellant, a Delaware corporation, lawfully purchases and produces natural gas in Texas and Louisiana and thereafter transports and delivers it through pipe lines to selected industries and public utility distributing corporations—so-called "pipe line customers"—at points in Arkansas. These deliveries are made under contracts entered into at Shreveport, Louisiana, and are effected by tapping a main pipe line or through connecting spurs. They amount annually to some eight billion cubic feet.

Appellant, by admission, also maintains a distribution department, through which it acts as a public utility, for the local sale and distribution of gas in many Arkansas towns; but this organization is distinct from the one which supplies pipe line customers.

The Arkansas Department of Public Utilities, proceeding under a local statute, in April 1935 issued a general order (No. 13) requiring public utilities to file, upon specified forms, schedules of rates, charges, etc. Appellant presented such schedules for local utility service in the State, but declined to file copies of contracts, agreements, etc., for sales and deliveries to pipe line customers.

Thereupon the Department issued an order to show cause for this failure. In response appellant "set forth that the sale and delivery of gas from its Texas and Louisiana fields to its pipe line and industrial customers in Arkansas constitute interstate commerce, and that in making such sales and deliveries it was and is not acting as a public utility, and that accordingly the sale and delivery of said gas and the rates, schedules and charges upon which the same is delivered and sold were and are not subject to the jurisdiction of the Department and are

beyond its power to regulate, and that Order No. 13 is not legally applicable to said business."

After a hearing upon the citation and response and much evidence, April 30, 1936, the Department ordered compliance with the general order. The matter then went for review to the Circuit Court, Pulaski County, and it held the challenged order invalid. Upon appeal, the Supreme Court ruled that the sales and deliveries in question were not free from state regulation because parts of interstate commerce, and directed compliance with the Department's general order.

The question for present determination is whether this general order, valid under the laws of the State, which only compels appellant to file certain designated information, amounts to an infringement of any right or privilege guaranteed to it by the Federal Constitution. And to this a negative answer must be given.

If, as claimed, certain of appellant's activities in Arkansas are parts of interstate commerce, that alone (and no other defense is relied upon) would not suffice to justify refusal to furnish the information presently demanded by the State.

Appellant operates locally at many places in Arkansas, also delivers within the State great quantities of gas said to move without interruption from another State. In such circumstances it may be highly important for the state authorities to have information concerning all its operations. We are unable to see that merely to require comprehensive reports covering all of them would materially burden or unduly interfere with the free flow of commerce between the States.

In case the Department undertakes by some future action to impose what may be deemed unreasonable restraint or burden upon appellant's interstate business, through rate regulation or otherwise, that may be con-

tested. The rule here often announced is that no constitutional question will be passed upon unless necessary for disposition of the pending cause.

The judgment of the Supreme Court must be

Affirmed.

MR. JUSTICE CARDOZO took no part in the consideration or decision of this cause.

ERIE RAILROAD CO. *v.* TOMPKINS.

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

No. 367. Argued January 31, 1938.—Decided April 25, 1938.

1. The liability of a railroad company for injury caused by negligent operation of its train to a pedestrian on a much-used, beaten path on its right-of-way along and near the rails, depends, in the absence of a federal or state statute, upon the unwritten law of the State where the accident occurred. Pp. 71 *et seq.*
2. A federal court exercising jurisdiction over such a case on the ground of diversity of citizenship, is not free to treat this question as one of so-called "general law," but must apply the state law as declared by the highest state court. *Swift* v. *Tyson,* 16 Pet. 1, overruled. *Id.*
3. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or "general," whether they be commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of federal concern. P. 78.
4. In disapproving the doctrine of *Swift* v. *Tyson,* the Court does not hold unconstitutional § 34 of the Federal Judiciary Act of 1789 or any other Act of Congress. It merely declares that by applying the doctrine of that case rights which are reserved by the Constitution to the several States have been invaded. P. 79.

90 F. 2d 603, reversed.