

"Apart from the facts that appellant was privileged to do business in California, and that the risks reinsured were originally insured against in that state by companies also authorized to do business there, California had no relationship to appellant or to the reinsurance contracts. No act in the course of their formation, performance or discharge, took place there. The performance of those acts was not dependent upon any privilege or authority granted by it, and California laws afforded to them no protection."

And finally the court concluded:

"All that appellant did in effecting the reinsurance was done without the state and for its transaction no privilege or license by California was needful. The tax cannot be sustained either as laid on property, business done, or transactions carried on within the state, or as a tax on a privilege granted by the state."

I think that the judgment below should be affirmed.

The CHIEF JUSTICE, MR. JUSTICE McREYNOLDS and MR. JUSTICE REED concur in this opinion.

WISCONSIN ET AL. *v.* MINNESOTA MINING &
MANUFACTURING CO.

CERTIORARI TO THE SUPREME COURT OF WISCONSIN.

No. 48. Argued November 20, 1940.—Decided December 16, 1940.

1. Decided, in part, upon the authority of *Wisconsin et al. v. J. C. Penney Co.*, *ante*, p. 435. P. 453.
2. A state tax on earnings of a foreign corporation attributable to activities in the taxing State, *held*, consistent with the commerce clause, although the liability to pay it was made contingent upon happenings outside of the State. P. 453.

233 Wis. 306; 289 N. W. 686, reversed.

CERTIORARI, 310 U. S. 619, to review the reversal of a judgment which confirmed an order of the Wisconsin Tax Commission assessing a tax.

Messrs. Harold H. Persons, Assistant Attorney General of Wisconsin, and *James Ward Rector*, Deputy Attorney General, with whom *Mr. John E. Martin*, Attorney General, was on the brief, for petitioners.

Mr. John L. Connolly, with whom *Messrs. Frederick J. Miller* and *G. Burgess Ela* were on the brief, for respondent.

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This case, involving another application of the Wisconsin Privilege Dividend Tax considered in *Wisconsin v. J. C. Penney Co., ante*, p. 435, is governed by that decision except for a contention made by this respondent but not pressed here in *Penney's* case.

The Commerce Clause is invoked. But it is too late in the day to find offense to that Clause because a state tax is imposed on corporate net income of an interstate enterprise which is attributable to earnings within the taxing state, *Matson Navigation Co. v. State Board*, 297 U. S. 441. That liability for such a tax is made contingent upon later happenings, as in the circumstances of the present case, makes no difference.

Reversed.

The CHIEF JUSTICE, MR. JUSTICE McREYNOLDS, MR. JUSTICE ROBERTS, and MR. JUSTICE REED dissent for the reasons stated in the dissenting opinion in *Wisconsin v. J. C. Penney Co., ante*, p. 446.