

In a convincing and well-reasoned opinion rendered by Mr. Sutherland, A. J., the Court held that the statute under consideration did not come within any of the four classes heretofore mentioned, and that the setting of standards of minimum wages would be extending the police power too far and would be an infringement of the rights and liberties guaranteed to every citizen by the Constitution and the amendments thereto. The Court points out with special emphasis wherein the statute under consideration differs from those laws fixing hours of labor. The Court says: "It is sufficient now to point out that the latter deals with the incidents of employment having no necessary effect upon the heart of the contract; that is, the amount of wages to be paid and received. A law forbidding work to continue beyond a certain number of hours leaves the parties free to contract about wages, and therefore equalize what additional burdens are placed beyond the employer as a result of the restrictions as to hours, by or adjustment in respect of the amount of wages."

Furthermore, in order for an act to be sustained upon the ground of police power it must be shown that the subject to be corrected is directly connected with the public health or morals. The mere assertion that the subject relates, though but in a remote degree, to the public health or morals does not necessarily render the enactment valid. The Court commented on this phase of the case, saying: "It cannot be shown that well-paid women safeguard their morals more carefully than those who are poorly paid; morality rests upon other considerations than wages." The Court further points out that the statute does not take cognizance of the earning power of the employee, the number of hours which happen to constitute a working day; and while it has no basis to support its validity other than the assumed necessities of the employee, it takes no account of other sources of income she may have. It also follows that if a minimum wage can be established, thus limiting the employer's freedom of contract, should the occasion demand it, a maximum wage could be set, thus limiting the employee's right of contract. C. J. Taft and A. J. Holmes dissented from the decision, both of them believing that the statute was analogous to those statutes limiting the hours of labor, but Taft, C. J., carefully refrained from intimating what his opinion was as to the constitutionality of a minimum wage law for men.

MONOPOLY—FEDERAL TRADE COMMISSION—JURISDICTION— GASOLINE TANKS AND PUMPS.

Federal Trade Commission, Petitioner, v. Sinclair Refining Company (No. 213) (U. S. Sup. Ct. Adv. Ops. May 1, '23, page 483). Federal Trade Commission, Petitioner, v. Standard Oil Company (New Jersey) (No. 637). Federal Trade Commission, Petitioner, v. Gulf Refining Company (No. 638). Federal Trade Commission, Petitioner, v. Maloney Oil & Manufacturing Company (No. 639).

On writs of *certiorari* to the United States Courts of Appeals for the third and seventh circuits, to review judgments nullifying orders of the Federal Trade Commission requiring the abandonment of the practice of leasing tanks and pumps for the handling of petroleum products. Affirmed.

The practice engaged in by the respondents in this case and held to be an unfair method of competition in interstate commerce, was substantially the following: The respondents, refiners and wholesalers of petroleum products, leased underground tanks with pumps to retail dealers at nominal prices and upon condition that the equipment should be used only with gasoline supplied by the lessor. The lease also provided that "Upon the termination of this license, by whatever means effected, the party of the first part shall have the right to enter upon said premises and remove the said equipment and each and every part thereof; provided, however, that the party of the second part shall have the right and option at such time to purchase said equipment by paying therefor the sum of * * *."

In delivering the opinion of the Court Mr. Justice McReynolds said, in part: "Respondents' written contract does not undertake to limit the lessee's right to use or deal in the goods of a competitor of the lessor, but leaves him free to follow his own judgment. It is not properly described in the complaint, and is not within the letter of the Clayton Act."

"There is no covenant in the present contract which obligates the lessee not to sell the goods of another; and its language cannot be so construed. * * * Many competitors seek to sell excellent brands of gasoline, and no one of them is essential to the retail business. The lessee is free to buy where he chooses; he may freely accept and use as many pumps as he wishes, and may discontinue any or all of them. He may carry on business as his judgment dictates and his means permit, save only that he cannot use the lessor's equipment for dispensing another's brand. By investing a comparatively small sum, he can buy an outfit and use it without hindrance. He can have the respondents' gasoline, with the pump or without the pump, and many competitors seek to supply his needs."

"Is the challenged practiced an unfair method of competition within the meaning of Sec. 5 of the Federal Trade Commission Act? Reviewing the circumstances, four circuit courts of appeals have answered 'no'. And we can find no reason for a contrary conclusion. Certainly, the practice is not opposed to good morals because characterized by deception, bad faith, fraud or oppression. * * * It has been openly adopted by many competing concerns. * * * The contract, open and fair upon its face, provides an unconstrained recipient with free receptacle and pump for storing, dispensing, advertising, and protecting the lessor's brand. * * * No purpose or power to acquire unlawful monopoly has been disclosed, and the record does not show that the probable defect of the practice will be unduly to lessen competition."

"The powers of the commission are limited by the statutes. It has no general authority to compel competitors to a common level, to interfere with ordinary business methods, or to prescribe arbitrary standards for those engaged in the conflict for advantage called 'competition.'"

