county court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. * * * Until otherwise provided, the terms of the county court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks." Under this provision while the county court may sit for probate business in vacation it is apparent, that the provision does not apply to other business of the county court. The section fixes the terms of the court, and they can only be changed by order of the commissioners' court; and it seems to us that the Legislature is without power to provide for the court sitting at a called term. Section 17 of the same article also provides that the county court "may dispose of the probate business either in term time or vacation as may be provided by law," but makes no such provisions for other business.

We think it follows that the Legislature could not provide for a called term of the county court other than for probate business, and that, therefore, if the county judge had had jurisdiction of the matter, it must have been deemed a proceeding in vacation, and hence an order of the judge and not a judgment of the county court; and not being a judgment of the county court under the provision quoted from article 1383 of the Revised Statutes of 1895, no appeal would lie from it.

RHEA v. TERRELL, Land Com'r, et al.

(Supreme Court of Texas. June 26, 1907.)

PUBLIC LANDS — SCHOOL LANDS — LEASES — STATUTES—APPLICATION.

Rev. St. 1895, art. 4218v, declares that, if any lessee of school land shall fail to pay the annual rent due in advance within 60 days after such rent shall become due, the Commissioner of the General Land Office may declare the lease canceled, and the land shall become subject to purchase or lease, and that a lease shall not be made to original lessees until all arrears are fully paid, etc. *Held*, that such section only applied to the original lease, so that where, after forfeiture of a lease of school lands for failure to pay rent, the lease was canceled, subsequent leases made to the original lessee and her assignee, as tenants in common, were not void under such section.

Petition for mandamus, on the relation of J. B. Rhea, against J. J. Terrell, State Land Commissioner, and others. Writ denied.

Caldwell & Whitaker, for relator. R. V. Davidson, Atty. Gen., and Wm. E. Hawkins, Asst. Atty. Gen., for respondents.

WILLIAMS, J. The relator applies for a mandamus to compel the Commissioner of the General Land Office to accept his applications to purchase certain sections of school land, which the Commissioner has refused to do because the land is under lease to his co-respondents, and the question in the case is as to the validity of the lease. It appears that in 1898 and 1899 three several leases were executed by the Commissioner to Mrs. A. G. Cress, who was then a widow, but subsequently married W. K. Curtis. Mrs. Cress sold and conveyed to R. T. Reid an undivided one-third interest in her ranch, including her leasehold interests. In 1902, at different times, the three leases were canceled because of the failure of the lessee to pay the rent in advance, and later in the year the lease now in question was executed jointly to Reid and to Curtis and his wife, formerly Mrs. Cress, to such of the lands included in the former ones as had not been sold. At the time of its execution there would have been due as rents upon the old leases, had they remained in force, some small sums aggregating about $10. The rent was 3 cents per acre under the old lease, and 5 cents per acre under the new one, so that the amount paid the state under the latter was largely in excess of all that could ever have accrued under the former. This proceeding was begun on May 3, 1907.

The relator's contention is that the failure to pay the arrears of rent under the former leases rendered the last one void under the provisions of article 4218v, Rev. St. 1895, as construed in Kitchens v. Terrell, 96 Tex. 527, 74 S. W. 306. Several reasons might be given for refusing the mandamus; but one is sufficient, which is that the prohibition in the statute is against the "original lessee" alone. The lease under consideration, in legal effect, is to Reid and Curtis, neither of whom was the original lessee. They are not within the letter of the statute, and, if it were permissible to extend its provisions by construction, which we are by no means disposed to do, it would not be difficult to show that they are not within its spirit and purpose.

Writ refused.

TEXAS CO. v. STEPHENS et al.

(Supreme Court of Texas. June 26, 1907.)

1. WRIT OF ERROR—PETITION—ASSIGNMENTS.

Assignments of error, made in the Court of Civil Appeals, but not embraced in some form in the petition for a writ of error in the Supreme Court, cannot be considered by the latter.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, § 1960.]

2. JUDGMENT—PERSONS NOT PARTIES—STATES—ACTION AGAINST STATE OFFICERS.

Where, in a suit against certain state officers to restrain the collection of certain occupation taxes, the answer was by "the defendants," and they merely prayed that the state recover the tax, etc., without any showing that it was the intention of the Attorney General, who was a party defendant, to make the state a party or to sue in its name, the state was not a party to the action, and there was no warrant for a judgment in its favor for the taxes.

3. SAME—CONFORMITY TO PLEADINGS—OCCUPATION TAX—INJUNCTION—JUDGMENT.

Where, in a suit to restrain the collection of certain occupation taxes, defendants, who were state officers, answered, merely praying

that the state, which was not a party to the action, recover the taxes due, for the purpose of obtaining a construction of the statute and a declaration of the extent of plaintiff's liability only, defendants had no such right of action for the taxes as entitled them to an ordinary judgment against plaintiff therefor.

4. LICENSES—OCCUPATION TAXES—POWER TO TAX—EXCESS OF CONSTITUTIONAL LEVY.

Acts 29th Leg. p. 364, c. 148, § 9, imposing an occupation tax on wholesale dealers in petroleum products in addition to general taxes, was not invalid because such occupation tax was an ad valorem tax, levied on the value of the corporation's property, and with the general tax levy exceeded the constitutional rate of taxation.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 32, Licenses, §§ 13–15.]

5. CONSTITUTIONAL LAW—OCCUPATION TAXES — UNIFORMITY — EQUAL PROTECTION OF LAWS.

Acts 29th Leg. p. 364, c. 148, § 9, provides that every person, association, or corporation engaged in wholesaling petroleum products shall pay an annual tax of 2 per cent. on the gross receipts from sales of such products, and on the gross value of articles derived from petroleum, possessed, handled, or disposed of in any other manner than by sale within the state. *Held*, that the fact that the act imposed similar taxes on persons engaged in wholesaling other goods and products at less rates than that imposed on wholesalers of oil products did not render the act unconstitutional for inequality, or as denying wholesalers of oil products the equal protection of the laws.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 10, Constitutional Law, § 687.]

6. SAME — SEVERE PENALTY — OBJECTION — RIGHT TO URGE.

An objection to the constitutionality of Acts 29th Leg. p. 358, c. 148, imposing an occupation tax on persons engaged in various businesses, because of the severity of the measures authorized for its enforcement, and of the penalties prescribed, cannot be considered where none of the measures objected to were attempted to be enforced in the instant case.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 10, Constitutional Law, § 39.]

7. LICENSES — OCCUPATION TAX — DIFFERENT BUSINESSES.

Where a person or corporation carries on several different businesses, on which an occupation tax is imposed by Acts 29th Leg. p. 358, c. 148, each business is subject to tax as though operated by different persons.

8. SAME—EXTENT OF BUSINESS.

Where an occupation tax is assessed against a business, as provided by Acts 29th Leg. p. 358, c. 148, operations which constitute a mere incident to such business are not subject to tax under the act, as constituting a separate and independent business.

9. SAME—CONSTRUCTION.

Acts 29th Leg. p. 358, c. 148, is in part entitled "An act for the levy and collection of a tax on individuals," etc., owning, operating, managing, or controlling for profit the business of wholesale dealers in coal oil, etc., and section 9 requires that only those on whom the tax is imposed shall engage in the wholesale oil business. *Held*, that one engaged in the wholesale oil business was a wholesale "dealer" within such act, whether he bought the oil to sell again, or whether he bought crude oil and refined it into different petroleum products, and sold the latter.

10. SAME—SALES WITHOUT STATE.

Where an occupation tax imposed by Acts 29th Leg. p. 358, c. 148, was levied against complainant's business, which was located wholly within the state, it was proper that sales and deliveries outside the state should be included in determining the volume of complainant's business for the purpose of fixing the amount of the tax.

11. COMMERCE—INTERSTATE COMMERCE—OCCUPATION TAXES.

The commerce clause of the federal Constitution does not apply to the levy of occupation taxes on a business carried on wholly within the state, though including sales and deliveries outside the state.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 10, Commerce, §§ 103, 104.]

12. LICENSES — OCCUPATION TAXES—WHOLESALE DEALERS.

In determining the amount of an occupation tax levied on a wholesale oil dealer, as provided by Acts 29th Leg. p. 358, c. 148, wholesale sales to consumers, as well as sales to retailers, were properly included in determining the volume of the taxpayer's business.

13. SAME — CONSTITUTIONALITY —OCCUPATION TAXES—UNIFORMITY.

Acts 29th Leg. p. 367, c. 148, § 12, imposes a tax on every individual, etc., owning or operating a pipe line or lines for the transportation of oil, gas, steam, or other articles by pneumatic or other power for others for hire or profit. *Held*, that such provision was not subject to constitutional objection for nonuniformity, because the owners of pipe lines employing the same exclusively for their own purposes are not also subjected to the tax.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 32, Licenses, § 8.]

14. SAME—DISCRIMINATION—EVIDENCE.

Acts 29th Leg. p. 367, c. 148, § 12, imposes an occupation tax on the owners of pipe lines for the transportation of various substances for hire, and then declares that each pipe line company engaged in conveying oil shall report as a part of its gross receipts such sums as it would have been compelled to pay for conveying oil owned by it and conveyed for itself if it had employed some other pipe line company to convey it, and imposes a tax of 2 per cent. on the gross receipts as shown by such report. *Held* that, in the absence of proof that any pipe line companies or persons transporting other things mentioned in such section did not also transport oil, the section could not be held unconstitutional as discriminating against the owners of pipe lines for oil.

15. SAME—CLASSIFICATION.

The fact that all persons owning or controlling pipe lines, without reference to the products transported, are included in a single class in the first part of the section, and taxed as such, did not preclude the Legislature from making a subclassification, and providing different rules for the purpose of arriving at the amount to be charged on the occupation of transporting products for hire by pipe lines.

16. SAME—OCCUPATION TAX—PIPE LINE OWNER.

Acts 29th Leg. p. 358, c. 148, imposes an occupation tax on the owners of pipe lines used for hire or profit, and requires a report showing as a part of the gross receipts of such companies such sums as it would have been compelled to pay for conveying oil owned by it and conveyed for itself if it had employed some other pipe line company to convey it. *Held*, that such section was applicable to a corporation operating a pipe line for its own business, though there was no connection between its lines and those of others carrying oil, so that it could not have employed the lines of others.

17. STATUTES—EFFECT—TIME.

Acts 29th Leg. p. 358, c. 148, imposing an occupation tax on certain businesses, was passed with an emergency clause, and was approved April 17, 1905. *Held* that, the act having fixed

the first quarter for the payment of occupation taxes thereunder as April 1st, it was effective to require the payment of taxes for the period between April 17th and July 1st, the beginning of the next quarter.

Error to Court of Civil Appeals, Third Supreme Judicial District.

Action by the Texas Company against J. W. Stephens and others. From a judgment for defendants, plaintiff appealed to the Court of Civil Appeals, and defendants assigned cross-errors, on which the judgment was reformed and affirmed (99 S. W. 160), after which the Texas Company brought error. Reformed and rendered.

Jas. L. Autry and Gregory & Batts, for plaintiff in error. R. V. Davidson, Atty. Gen., and Claude Pollard, for defendants in error.

WILLIAMS, J. This was an action brought by the plaintiff in error in the district court of Travis county against the defendants, J. W. Stephens, Comptroller of Public Accounts, J. W. Robbins, State Treasurer, R. V. Davidson, Attorney General, and J. W. Brady, county attorney of Travis county; its purpose, generally stated, being to obtain an injunction to restrain the defendants from proceeding to enforce against plaintiff the provisions of chapter 148, p. 338, of the Acts of the Twenty-Ninth Legislature, generally called the "Kennedy bill," by which certain taxes were levied. The complaint was founded upon contentions that the entire act, and more especially sections 9, 11, 12, and 13 thereof, which more immediately affected the plaintiff, are unconstitutional and void, and also that the defendants, upon an erroneous construction of those sections, were about to proceed to require of plaintiff reports and to charge it with liabilities and subject it to prosecutions and suits not warranted by their provisions. The defendants took various exceptions to the petition, involving, among others, the propositions that no cause for an injunction against them was shown, and that the action was in effect one against the state. They, however, affirmatively set up facts upon which they contended that plaintiff was liable to the state under the act referred to for taxes, and prayed for judgment therefor in behalf of the state. In no other way was the state made a party to the proceedings. Upon final hearing the district court held the act valid, and that, upon a proper construction of its provisions, the plaintiff was liable for some of the sums of money, and was not liable for others, which the defendants claimed of it. Judgment was rendered adjudging that the defendants recover of the plaintiff the sums for which plaintiff was held to be liable, and acquitting it of all other liability. No disposition of the preliminary injunction which had been issued appears, except inferentially, to have been made. The plaintiff appealed to the Court of Civil Appeals, assigning as errors the rulings of the trial court against it, and the defendants filed cross-assignments upon the rulings against them. The Court of Civil Appeals reformed the judgment so as to adjudge a recovery by the state of the sums adjudged below to the defendants, and in all things else affirmed the action of the district court. The plaintiff alone has applied for a writ of error, and we are not advised by anything said or done in this court by counsel for defendants whether or not they expect action at our hands upon their cross-assignments presented in the Court of Civil Appeals. We deem it proper to say that as causes must be brought to this court upon petition for writ of error specifying the grounds upon which the writ is sought, and as our consideration must be confined to the grounds so specified, assignments made in the Court of Civil Appeals, but not embraced in some form in a petition for writ of error, lay no basis for a review by this court of the judgment of the Court of Civil Appeals. Such assignments are looked to only for the purpose of ascertaining whether or not the points made in the petition were raised in the Court of Civil Appeals. The case is therefore before us only upon plaintiff's petition, and is so presented as to confine us to the points made therein reviewing the action of the Court of Civil Appeals.

One of the objections is that the Court of Civil Appeals erred in rendering judgment in favor of the state when the state was not a party to the action, and we must hold that it is well taken. Whether or not the Attorney General would have been authorized to make the state a party by cross-action to recover the taxes due we need not decide. He did not assume to do so. The answer is by "the defendants," and they merely pray that the state recover, etc. Nowhere do we find that there was ever an intention on the part of the Attorney General to make the state a party or to sue in its name. The idea of the defendants in pleading as they did doubtless was to obtain a construction of the statute determining and declaring the extent of the plaintiff's liability put in issue by the petition in accordance with their own contention, and probably the judgment of the district court was intended only as an adjudication of these issues. It went too far, however, as was held by the Court of Civil Appeals, in adjudging a recovery by the defendants in the ordinary form of judgments for the recovery of money. The defendants had no such right of action for the taxes as entitled them to such a judgment. We shall return to the question as to the character of judgment to be rendered after other questions shall have been disposed of.

In its attack upon the validity of the statute, the plaintiff has invoked many provisions of the state and federal Constitutions, and urged many propositions which have so little relevancy that they require no further

notice. We shall confine our attention to those which seem to us to present real questions. One of them is that the sections before referred to, which are the ones applying to the businesses in which plaintiff has been engaged, levy an ad valorem tax upon the value of its property in excess of the rate allowed by the Constitution. This contention has been made with reference to a number of like statutes in this state, and has invariably been overruled. State v. Stephens, 4 Tex. 137; Albrecht v. State, 8 Tex. App. 216, 34 Am. Rep. 737; State v. G., H. & S. A. R. R. Co., 97 S. W. 71, 16 Tex. Ct. Rep. 909; 2 Cooley on Taxation, pp. 1094, 1095, 1105–1107, 1109, and authorities cited. In the case of Producers' Oil Co. v. Stephens (Tex. Civ. App.) 99 S. W. 157, in which this court recently refused a writ of error, the point was made that the tax levied by section 13 of the act under consideration upon producers of oil was a tax upon property; but the courts below held otherwise, and this court in refusing the writ of error approved the holding. The taxes in the act are levied because the persons specified are engaged in particular, defined businesses, and are laid upon the carrying on of those businesses. The amounts of the taxes to be paid by those engaged in the businesses are to be ascertained by various standards, depending upon the characters of such businesses, but in no instance is a tax laid upon all or any of the property owned by such persons. Had the statute simply defined the businesses and imposed a tax of a fixed sum upon each, no one would have questioned that it was a tax upon the doing of the businesses; in other words, an occupation tax. The fact that the amount of the tax is to be determined in prescribed methods from the value, or extent, or magnitude of the businesses done, cannot convert it into an ad valorem tax upon the property of the persons conducting them. We could only hold that it does by disregarding not only the nature of the provisions themselves and the language in which they are expressed, but the course of judicial decision here and elsewhere and of former legislation in this state, by which such laws have been treated as imposing occupation taxes.

As especial reliance to sustain this contention is placed upon the language of section 9, we may as well discuss it at this point, and, as other questions arise out of it, we set out its material provisions. It provides that each and every person, association, or corporation "which shall engage * * * in the wholesale business of coal oil, naptha (sic), benzine or any other mineral oils refined from petroleum, and any and all mineral oils, shall pay an annual tax of two per cent. upon their gross receipts from any and all sales in this state of any of said articles * * *, and an annual tax of two per cent. of the cash market value of any and all of said articles that may be received or possessed or handled or disposed of in any manner other than by sale in this state, and it is hereby expressly provided that delivery to or possession by any person, etc., in this state of any of the articles hereinabove mentioned * * * from whatever source the same may have been received, shall for the purpose of this act be held and considered such a sale and such ownership and possession of such articles and property (when no sale is made) as will and shall subject the same to the tax herein provided for." The concluding language quoted is appropriate to the levy of a tax upon the property mentioned, but it is controlled by the leading provision defining the business on the doing of which the tax is imposed. This, when considered in connection with the general scope and purpose of the statute, fixes the character of the tax, and all of the other provisions of section 9 must be viewed as merely dealing with incidents of the business taxed, and as specifying more fully the elements of value to be taken into account in arriving at the amount charged upon the pursuing of the occupation, and as probably intended also to prevent evasions. When the character of the business and of the tax upon it are ascertained, the operation of the incidental provisions, inapt as the language is when applied to such a subject, may be in most cases determined without great difficulty. The persons referred to as receiving, possessing, handling, or disposing of the specified commodities are those first mentioned as engaged in the wholesale business of oil, etc., from which it follows that the receiving, etc., must be while they are so engaged; that is, as a part or incident of that business. The provision specially relied on as characterizing the tax as one upon the property cannot be isolated from those which control its meaning; and, when all are considered together, no doubt is left as to their character. It is urged that it is apparent from the statute itself that it is a mere evasion of section 9, art. 8, of the Constitution, limiting the rate of taxation upon property to 35 cents on the $100 valuation, but the power to impose taxes on occupations is expressly given by the same article, with no limitation as to their amount or the manner in which it shall be ascertained, and, as we have already shown, the method here employed had been sanctioned by judicial decisions and legislative practice long before the adoption of the present Constitution. The courts have no authority to interfere merely because heavier burdens are imposed than ever before, if that be the fact.

Another objection is that the statute discriminates between plaintiff and others pursuing occupations which belong to the same class in imposing heavier taxes upon plaintiff than are imposed upon them, and is therefore violative of the Constitution of the state, which provides that "occupation taxes shall be equal and uniform upon the same

class of subjects within the limits of the authority levying the tax," and also violative of the fourteenth amendment to the Constitution of the United States, in that it denies to plaintiff the equal protection of the laws. The very language of the Constitution of the state implies power in the Legislature to classify the subjects of occupation taxes and only requires that the tax shall be equal and uniform upon the same class. Persons who, in the most general sense, may be regarded as pursuing the same occupation, as, for instance, merchants, may thus be divided into classes, and the classes may be taxed in different amounts and according to different standards. Merchants may be divided into wholesalers and retailers, and, if there be reasonable grounds, these may be further divided according to the particular classes of business in which they may engage. The considerations upon which such classifications shall be based are primarily within the discretion of the Legislature. The courts, under the provisions relied on, can only interfere when it is made clearly to appear that an attempted classification has no reasonable basis in the nature of the businesses classified, and that the law operates unequally upon subjects between which there is no real difference to justify the separate treatment of them undertaken by the Legislature. This is the rule in applying both the state and federal Constitutions, and it has been so often stated as to render unnecessary further discussion of it. State v. G., H. & S. A. R. R. Co., supra. The objection urged along this line is more particularly directed against section 9, because it is said to levy higher taxes upon those engaged in the "wholesale business of oil," etc., than upon others engaged in wholesale businesses of other commodities. This is predicated entirely upon a comparison of the laws levying taxes upon the several classes of business, and upon the bare fact that they levy different amounts or by different standards, and is therefore a mere assumption of the true point of controversy, which is whether or not there was reasonable ground for the discriminations made by the Legislature. We have not been aided by a showing of any facts by which a comparison might be made of the characters of the different businesses and of the conditions under which they are pursued. That there may be differences, affecting the question, between the "wholesale business of oil," etc., and wholesale businesses carried on with other articles of commerce, is obvious. Differences in the profits derived, in the extent of the consumption of the articles, and therefore in the facility with which the burdens may in the course of business be distributed among consumers generally, and other conditions that might be supposed could properly be taken into consideration by the Legislature in making classifications and determining the amount of the tax to be laid upon each; and it would be only an extreme and a clear case that would justify an interference by the courts with the legislative action. We see nothing of the kind in this law. The mere fact that discrimination is made proves nothing against a classification which is not, on its face, an arbitrary, unreasonable, or unreal one. The attack upon the statute because of the severity of the measures authorized for its enforcement and of the penalties prescribed is met by the fact that the question as to their validity is not now involved. None of them were enforced in this case, and we think it quite clear that they do not affect the right of the state to collect the taxes themselves, which is all that is now before us.

Other objections may best be considered in construing the several sections of the law to which they relate. Much is said of the effect of the law in piling up taxes upon the same property in its passage through different processes and its employment in different businesses. Since the taxes are upon occupations, and not on property, such complaints, of course, present nothing for the court, unless they involve questions as to the power of the Legislature or as to the construction of the different provisions of the statute. With its alleged iniquity merely the court has nothing to do. A little attention, however, to a few obvious propositions will suggest the solution of almost all of the difficulties of this character. The same person or corporation may carry on several different businesses, and, of course, may be taxed in respect of each; but, when the Legislature has defined and taxed one business, it is not to be assumed that it has intended to again tax the same business under another name, nor is it to be assumed that it has intended to tax, as a distinct business, that which is a mere incident of another business which has been defined and taxed as a whole. Sections 9, 11, 12, and 13, under which it was sought to make plaintiff liable, levy taxes upon those engaged in the following businesses: (1) Section 9, the wholesale business of oil, etc. (2) Section 11, the leasing, renting, operating, hiring, or charging mileage for the use of various classes of cars, including tank cars. (3) Section 12, owning or operating pipe lines for various purposes. (4) Section 13, producing oil from wells. During the periods in question the plaintiff in this state produced crude petroleum from wells upon one tract of land owned by it, and purchased crude petroleum produced by others. Some of this it sold in its crude state, both to consumers and to retailers, some at points within the state and some at points without the state. Other crude oil so purchased and produced it refined into the various products named in section 9 of the statute, and sold these refined products partly to consumers and partly to retailers, and partly within and partly without the state. These are the facts upon which its liability under section 9 depends. It also during the same periods leased or

rented to railroads, for the transportation of oil, its tank cars at the rates fixed by the Railroad Commission of this state. This raised the question under section 11. It also operated pipe lines, transporting the oil of others for hire and also transporting its own oil. For this, upon both kinds of transportation, it was charged with liability under section 12. It also, as stated above, produced oil from its own wells, to which business section 13 applies.

Taking up first the question as to its liability under section 9, we observe that the courts below held that it was not liable for sales of oil in its crude state, whether purchased or produced by it—this upon a construction of section 9 that its language includes only products refined from petroleum and not the crude oil. So that the question which is left is as to plaintiff's liability to be charged in respect of the sale of such refined products. Its first contention is that, when the caption of the statute and section 9 are construed together, the tax is found to be imposed only on wholesale dealers, and that it was not such in any proper sense of the phrase. The caption of the act, so far as it is necessary to quote, entitles it an act for the levy and collection upon individuals, etc., "owning, operating, managing or controlling for profit * * * the business of * * * wholesale dealers in coal oil," etc. Section 9 requires only that those upon whom the tax is imposed shall "engage in * * * the wholesale business of oil," etc., and adds the other provisions specifying the elements to be taken into consideration in arriving at the value or basis for estimating the amount to be charged. The word "wholesale" accurately imports a selling, and "to sell by wholesale, is to sell by large parcels, generally in original packages and not by retail." Bouvier. The word is defined by the International Dictionary as the "sale of goods by the piece or large quantities, as distinguished from retail," and this is its accurate popular meaning. The words used in section 9, therefore, require nothing more than the engaging in the business of selling in the way properly designated by the word "wholesale," as thus defined. But it is urged that we must add the word "dealer" taken from the caption so as to define the business as that of wholesale dealer, which may be granted, and it is then argued that by judicial interpretation a dealer is one who buys to sell again, and not one who buys to keep or produces to sell, that both the elements of buying and selling must be present to constitute the business of a dealer. Decisions are cited which hold that such was the meaning of the word as employed in statutes undergoing interpretation, and all of them are probably sound as constructions of those statutes. Some of them say that such is its popular meaning, and therefore its legal meaning in a statute, unless there be something else to control. But certainly that is not its only popular use, nor do the decisions referred to so hold and we doubt if it is most commonly so limited in actual use. The law attaches no absolute signification to the word, less than such as it may properly have in general use. It is quite plain that the statute in question when it describes the business intended as "the wholesale business of oil," and, by way of caution, adds the other provisions above set out, which, in effect, make it immaterial how the possession, etc., of the commodities may have been obtained, does not mean a business so restricted as the definition which is contended for of the word "dealer" would make it. But it is said that the section 9, unless so construed, would embrace subjects not covered by the caption, and violate the Constitution. This assumes that the words in the caption could have no other meaning than that ascribed to them in this contention, and that it was out of the power of the Legislature to define, in the body of the act, the sense in which those words were employed in the caption. It seems clear that the terms "business of wholesale dealer," in the title, were sufficient to point attention to any admissible definition of the business intended that might be introduced into the body of the act. It may be true that, under a caption expressed in such specific language, it would not have been permissible to tax a business which no sense of that language could be made to embrace, but that is not what this statute attempts. In our opinion, the word "dealer" as accurately applies, according to popular use, to one engaged, as must be those described in section 9, as to one who buys to sell again. One who acquires, possesses, handles, and sells oil may properly be said to deal in oil whether he has bought it to sell again or not. It will be seen that the plaintiff buys crude oil, refines it into the different products, and sells those products. We can perceive no sound reason for holding that to this extent at least plaintiff is not a wholesale dealer according to its own definition. The fact that the commodity is separated into different articles, and is improved and rendered fit for more enlarged uses after purchase of the crude oil, and before sale of the refined product, should have no decisive influence upon the applicability of this statute, even if it were necessary that the plaintiff should be found to be a dealer in the sense contended for. Were we to hold that, in refining and selling the oil produced by itself, plaintiff is not a dealer in such oil, it would still be true that in carrying on the other part of its business, in buying and refining crude oil, and in selling the refined product, it would be a dealer, taxable as such, and there is good authority for the proposition that in ascertaining the amount of the tax applicable to such business the entire amount of its sales from its entire stock thus made up should be taken into account. Union Oil Co. v. Marrero, 52 La. Ann. 357, 26 South. 766. But, as we have seen, no such interpretation of the statute is

permissible. The plaintiff's entire wholesale business in the commodities mentioned in section 9 falls within its terms.

This involves the question as to plaintiff's liability to be charged in respect of sales of articles refined from oil produced by it. As we have before indicated, the tax is not laid upon the doing of that which is nothing more than an incident of another business defined and taxed. The business of producing oil is so defined and taxed and a necessary incident of such business is the selling of the product. The doing of this by wholesale is as much an incident as the selling by retail, and we are not prepared to hold that the mere refining of the oil by the producer before selling would alter the case. But the plaintiff's business of selling is more than that. It procures its stock of crude oil by production and purchase, refines it, indiscriminately, and thus obtains its stock of refined products with which it conducts a wholesale business in coal oil, naphtha, etc. It thus brings itself within the very terms of the statute. Union Oil Co. v. Marrero, supra. The provisions of section 9 concerning articles received, possessed, handled, or disposed of otherwise than by sale, and that concerning delivery to or possession by any persons, etc., of such articles, were intended both to indicate the character and scope of the wholesale business to be taxed, and the values to be taken into account in determining the amount of the tax, and they leave no doubt of the correctness of the conclusion just announced, if the preceding language would admit of any. Difficulties might be presented by the facts of particular cases in determining the property to be considered under the special provisions just referred to, in estimating the amount of the tax, but none such arise in this case; the court below having based its estimate on sales only. Those provisions clearly reveal the intention of the Legislature with respect to the character of the wholesale business which is taxed.

With reference to the contention that plaintiff's business, in so far as it consisted of sales and deliveries out of the state, was not within the taxing power of the Legislature, we deem it sufficient to say that the occupation taxed was carried on wholly within the state, and that occupation is the subject of the tax. Particular sales are not taxed; the volume of the business being consulted merely to determine the amount of the tax upon the occupation. The commerce clause of the Constitution of the United States does not apply to the case. Ficklen v. Shelby County, 145 U. S. 21, 12 Sup. Ct. 810, 36 L. Ed. 601. Sales to consumers may be by wholesale in the sense of this statute, as well as sales to retailers, and the court below did not err in holding that the tax was to be estimated with reference to all such sales. This disposes of all questions arising under section 9 of the act.

The judgment of the district court exempted the plaintiff from liability under section 11 concerning tank cars, and no question is before us as to the correctness of that holding.

Section 12 declares that "every individual, joint-stock association, company, copartnership or corporation * * * which owns or operates a pipe line or lines within the state of Texas, whether such pipe lines be used for the transmission of oil, natural or artificial gas, whether the same be for illuminating or fuel purposes or for any other purpose, or for steam, for heat or power, or for the transmission of articles by pneumatic or other power, shall be deemed and held to be a pipe line company." It then requires quarterly reports showing charges and freights within this state paid to or uncollected by such pipe line company on account of any business transacted by it in the capacity of a pipe line company as defined, and that each pipe line company engaged in conveying oil shall report, as a part of its gross receipts, such sums as it would have been compelled to pay for conveying oil owned by it and conveyed for itself if it had employed some other pipe line company to convey it. It then requires the payment of 2 per cent. on the gross receipts as shown by such report. It is easily deduced from all of the provisions together that the tax is levied upon those engaged in the business of transportation by pipe lines for others for hire or profit, and the title of the act re-enforces this idea, in that all of the businesses specified in it are to be conducted for profit. To all such section 12 applies, and the position cannot be maintained that it exempts from the burden imposed any business of the same class; that is, such as are engaged in serving the public for hire. There is no doubt that those carrying on such businesses may be properly classified for taxation, apart from the owners of different businesses who, as an incident of their businesses, use pipe lines to transport exclusively their own commodities. The plaintiff falls within the class designated in the act, and the fact that owners of private businesses employing pipe lines for their own purposes are not also subjected to the tax raised no constitutional objection. American Sugar Refining Co. v. State, 179 U. S. 94, 21 Sup. Ct. 43, 45 L. Ed. 102; Pacific Express Co. v. Seibert, 142 U. S. 339, 12 Sup. Ct. 250, 35 L. Ed. 1035; State v. G., H. & S. A. R. R. Co., supra. A more difficult question arises from the provision that, in the amount upon which the occupation tax is to be calculated as against companies transporting oil, there is to be included, not only the amount received for service rendered to others, but also a sum calculated as the cost of transporting their own oil; the difficulty being in the fact that the last-named imposition is not placed upon the owners of any of the other pipe line businesses mentioned in the twelfth section. This being only a method of arriving at the amount to be

charged upon the occupation of transporting for hire, we can perceive no constitutional objection against the mere inclusion of the element mentioned in ascertaining the scope of the business. The Legislature might have thought not unreasonably that the value of the entire use made of his pipe lines by one holding himself out as transporting goods for the public should be looked to, and that this included the benefits resulting from the use in his own business, as well as from the use in the service of the public. But, if this was the idea it was adopted with reference to companies transporting oil only, and there is an apparent discrimination against them. The difficulties in the way of sustaining the plaintiff's contention that this is not a permissible discrimination are twofold. In the first place it is not made to appear, and we do not know judicially, that there are in the state any of the other companies or persons transporting the other things mentioned who do not also transport oil. In other words, it is not shown that there is in fact any discrimination between plaintiff and others. In the second place, there is the question of classification, to which we have before alluded. The fact that all persons, etc., owning or controlling pipe lines are included in the first part of the section and are taxed as a class does not, as plaintiff's counsel seem to argue, preclude further classification, and the application of differing rules among them. That is what is done, in effect, by the provision in question when it makes a special rule applicable only to those transporting oil, and the contention, if all the necessary facts were shown, would come back to the question as to whether or not such classification is based upon some real difference between the businesses or is arbitrary and capricious merely. We cannot say, as the cause is presented to us, that the business of piping oil partly for the public and partly for the owner of the line does not differ so substantially from the businesses of so transporting the other things as to furnish reason for the application of different rules to them.

We cannot see the force of plaintiff's contention that the provision in question cannot be applied to it because it has no connections between its pipe lines and those of others carrying oil for hire, and therefore could not have employed the lines of others. The provision intends merely to get at the basis for estimating the occupation tax, and for that purpose prescribes a standard for ascertaining the value of the use the owner has made for his own purposes of his pipe lines also engaged in the service of the public.

The propositions attacking the validity of the tax laid by section 13 upon those producing oil from oil wells have been heretofore considered by this court in refusing the writ of error in the case of the Producers' Company referred to in the early part of this opinion. We shall not consume further time in discussion. The contentions on this branch of the case are all met by the propositions that the taking of oil from oil wells, as conducted by plaintiff and others so engaged, is a business subject to be taxed, that such business is sufficiently indicated in the statute and the tax is imposed upon it as an occupation tax and not as a tax upon land or oil or property of any kind.

The contention that the Kennedy bill did not take effect before July 1, 1905, so as to impose liability for the taxes for such part of the preceding quarter as elapsed after April 17th of that year cannot be sustained. The bill was passed with the emergency clause and by the requisite vote to put in force upon its passage and, having been approved on April 17th, it went into effect at once as a law. Of course, it is true, as contended, that the time when taxes became due under it is to be ascertained from the intention manifested by its provision. It fixes the first quarter as beginning April 1st, but, its passage through the Legislature having been delayed until that time had passed, it could not operate during the interval from April 1st to April 17th. The intention was clearly manifested, however, by its history and by the emergency clause, that it should become effective as a revenue producing measure as soon as it could be enacted, and there is nothing in the facts stated to prevent that intention from controlling. State v. G., H. & S. A. R. R. Co., supra.

This disposes of all the objections deserving discussion to the action of the district court and Court of Civil Appeals, and it remains only to determine the proper judgment to be rendered by this court. The issues made in the district court involved the determination of the extent of the liability of the plaintiff, and that was done by the judgment; the particular sums collectible being clearly stated therein. The proper judgment to give effect to the rulings of the court would have been to so far dissolve the injunction previously granted as to allow the defendants to proceed with the collection of such sums and to perpetuate the writ as to all the others in issue, and that will be the judgment of this court. No question has been made here as to the sufficiency of plaintiff's allegations to entitle it to an injunction, and we shall not discuss that question. We may remark, however, that the case is different in some important respects from that of Stephens v. Railway, 97 S. W. 309, 16 Tex. Ct. Rep. 918. Both the district court and the Court of Civil Appeals held the plaintiff liable for all costs, and we discover no complaint of such holdings in the petition for writ of error and it need not be discussed. The judgment of this court will accordingly be in favor of the defendants for all costs, except those of the writ of error from the Court of Civil Appeals to this court which will be adjudged against the defendants in error.

Reformed and rendered.