

not infer that the Legislature would have enacted the law at all. Accordingly it affirmed the decree of that court as it had full power to do.

The application for the writ of certiorari is denied and the writ of error is dismissed.

HALLANAN, STATE TAX COMMISSIONER, ET AL.
v. UNITED FUEL GAS COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI AND IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA.

Nos. 570 and 886. Motion to dismiss or affirm submitted March 12, 1923.—Decided April 9, 1923.

Decided on the authority of *Hallanan v. Eureka Pipe Line Co.*, ante, 393.

Petition for certiorari (No. 570) denied.

Writ of error (No. 886) dismissed.

WRIT of error and petition for certiorari to review a judgment of the Supreme Court of Appeals of West Virginia, entered after the reversal of the same case by this Court in *United Fuel Gas Co. v. Hallanan*, 257 U. S. 277.

Mr. Edward T. England, Attorney General of the State of West Virginia, *Mr. S. B. Avis*, *Mr. Fred O. Blue* and *Mr. Wm. Gordon Mathews* for petitioners and plaintiffs in error.

Mr. Malcolm Jackson and *Mr. R. G. Altizer* for respondent and defendant in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is a case like that of *Hallanan v. Eureka Pipe Line Co.*, just decided, ante, 393, involving the question

whether the Supreme Court of Appeals of West Virginia has complied with the mandate of this Court issued on a judgment entered in the case of *United Fuel Gas Co. v. Hallanan*, decided December 12, 1921, 257 U. S. 277. It is in all respects similar to that in *Eureka Pipe Line Co. Case* and requires the same judgment.

The petition for the writ of certiorari is denied and the writ of error is dismissed.

TOLEDO SCALE COMPANY v. COMPUTING SCALE COMPANY.

FIDELITY & DEPOSIT COMPANY OF MARYLAND
ET AL. v. COMPUTING SCALE COMPANY
ET AL.

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

Nos. 339 and 388. Argued March 16, 1923.—Decided April 9, 1923.

1. Under the Act of September 6, 1916, this Court has no jurisdiction to review on certiorari the merits of a final decree entered by the Circuit Court of Appeals more than three months before the certiorari was applied for. P. 417.
2. Applications made to the Circuit Court of Appeals after it had affirmed a decree upholding a patent and ordering an accounting, and renewed upon the appeal from the accounting, whereby the defendant sought to reopen the case upon the ground of newly discovered evidence of prior discovery, manufacture, sale and use of the invention, were addressed to the sound discretion of the court and properly overruled where the failure to discover the evidence in time for the original hearing in the District Court was due to the applicant's lack of diligence. P. 419.
3. To justify setting aside a decree for fraud, extrinsic or intrinsic, it must appear that the fraud charged prevented the party complaining from making a full and fair defense. P. 421.
4. A party suing on a patent is under no duty to furnish his opponent evidence of an anticipation of the invention; nor does his silence concerning such evidence, unaccompanied by acts preventing the