

Deficiencies Act (U. S. C., Tit. 28, § 47) and hence are not open to review on this appeal. *Pittsburgh & West Virginia Ry. Co. v. United States*, 281 U. S. 479, 488.

The remaining questions with respect to the adequacy of the rentals fixed, the other terms of the proposed leases, and the public interests involved, relate to the propriety of the action of the Commission in the exercise of its authority under the statute as construed. As to these matters the parties were fully heard, pertinent evidence was received and considered, and we find no basis for a contention that the order of the Commission was not adequately supported or had any confiscatory effect. *Virginian Ry. Co. v. United States*, 272 U. S. 658, 663; *Georgia Commission v. United States*, 283 U. S. 765, 775.

*Decree affirmed.*

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### MOSHER *v.* CITY OF PHOENIX.

#### CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Nos. 6 and 7. Argued October 17, 1932.—Decided November 7, 1932.

1. Jurisdiction of the District Court upon the ground of federal question, is determined by the allegations of the bill, and not by the way the facts turn out or by a decision of the merits. P. 30.
2. Where a bill complaining of the attempted appropriation of plaintiff's land by a city as part of a street alleges that the city's action is without authority from the state law, but goes on to say that, under color of state authority, the city is attempting to take and appropriate the use of plaintiff's property and deprive him thereof without compensation or condemnation proceedings, and without due process of law, in violation of the Fourteenth Amendment, a substantial federal question is presented. P. 32.

54 F. (2d) 777, 778, reversed.

CERTIORARI, 285 U. S. 535, to review affirmances of two decrees of the District Court dismissing bills by which the

plaintiff sought to enjoin the city from appropriating land, as part of a street.

*Mr. John W. Ray* for petitioner.

*Messrs. Sidman D. Barber* and *John L. Gust* appeared for respondent.

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

Decrees dismissing the bills of complaint for the want of jurisdiction were affirmed by the Circuit Court of Appeals, 54 F. (2d) 777, 778, and writs of certiorari were granted limited to the question of the jurisdiction of the District Court as a federal court. 285 U. S. 535.

There is no diversity of citizenship and jurisdiction depends upon the presentation by the bills of complaint of a substantial federal question. Jurisdiction is thus determined by the allegations of the bills and not by the way the facts turn out or by a decision of the merits. *Pacific Electric Ry. Co. v. Los Angeles*, 194 U. S. 112, 118; *Columbus Railway, Power & Light Co. v. Columbus*, 249 U. S. 399, 406; *South Covington & Cincinnati Street Ry. Co. v. Newport*, 259 U. S. 97, 99.

The suits were brought by petitioner as owner of parcels of land in the City of Phoenix, Arizona, to restrain the City from appropriating her land for purposes of a street improvement. The Circuit Court of Appeals, having decided in *Collins v. Phoenix*, 54 F. (2d) 770 (where jurisdiction of the federal court rested on diversity of citizenship), that the proceedings of the City were not authorized by the statutes of Arizona,<sup>1</sup> held in the instant cases that the petitioner, having alleged that the proceedings were void under the state law, had not presented a

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<sup>1</sup>Compare decision of Supreme Court of Arizona in *Mosher v. Phoenix*, 7 P. (2d) 622.

substantial federal question. But petitioner did not stop with allegations as to the City's authority under state law. Petitioner also alleged, in No. 6, after setting forth her title, her claim as to the width of the street in question, and the action of the City in including her property as a part of the street and in contracting for the street improvement upon that basis, that the City was thereby "attempting to take and appropriate the property of plaintiff without compensation, and to take and appropriate and use same and deprive the said plaintiff of the permanent use thereof without due process of law, or any process of law, . . . and in violation of the rights of plaintiff as guaranteed her under the Constitution of the United States, and particularly under amendments five and fourteen thereof, which plaintiff here and now pleads and relies on for her protection against the wrongs and threatened wrongs of the defendant city in the proposed taking of her property as hereinbefore described." And this appeal to the Fourteenth Amendment was reiterated as against the action of the City which was alleged to have been taken "under the authority" of the "ordinances, resolutions and acts" set forth in the bill of complaint, it being also alleged that there had been no dedication or deed to the City and no proceedings for condemnation. Similar allegations of federal right, but more briefly stated, are found in the bill of complaint in No. 7.

In this respect the instant cases are similar to that of *Cuyahoga Power Co. v. Akron*, 240 U. S. 462, where the plaintiff, after setting forth provisions of the statutes and constitution of Ohio and concluding that the City had no constitutional power to take the property and franchises of the plaintiff and was exceeding the authority conferred by state law, further alleged that the City was attempting to take the plaintiff's property without compensation and was going forward with the enterprise in question in violation of the contract clause and Fourteenth Amendment

of the Constitution of the United States. This Court held that "whether the plaintiff has any rights that the City is bound to respect can be decided only by taking jurisdiction of the case" and that it was necessary for the District Court to deal with the merits. See, also, *Fidelity & Deposit Co. v. Tafoya*, 270 U. S. 426, 434; *Iowa-Des Moines National Bank v. Bennett*, 284 U. S. 239, 246.

We are of the opinion that the allegations of the bills of complaint that the City acting under color of state authority was violating the asserted private right secured by the Federal Constitution, presented a substantial federal question and that it was error of the District Court to refuse jurisdiction.

*Decrees reversed.*

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GULF STATES STEEL CO. ET AL. v. UNITED STATES.

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

No. 24. Argued October 20, 1932.—Decided November 7, 1932.

1. While a claim for abatement of a deficiency assessment was before the Commissioner of Internal Revenue, and when the period of limitation on collection was about to expire, the taxpayer, in order to secure delay and opportunity to present further proofs, filed a bond to indemnify the Collector against any resulting loss. After the period of limitation had run, the taxpayer filed a second bond, for the purpose of releasing the surety on the first and substituting a pledge of securities; then a third bond releasing the pledge and introducing another surety. Each of the later bonds recited the assessment, the pendency of the claim for abatement, and the preceding bond, and was conditioned upon payment to the Collector of such amount of the tax "as is not abated." Thereafter, the Commissioner rejected the claim for abatement and sustained the assessment; but the Board of Tax Appeals, which was not established until after the second bond had been given, held, at the instance of the taxpayer, that no tax deficiency existed, since collec-