

DECISIONS PER CURIAM, FROM MARCH 14, 1933,
TO AND INCLUDING MAY 29, 1933 *

No. 669. HEALY, CHIEF OF POLICE, *v.* RATTA. Appeal from the District Court of the United States for the District of New Hampshire. Argued March 14, 1933. Decided March 20, 1933. *Per Curiam*: The appeal herein is dismissed for the want of jurisdiction, as it appears from the supplemental record and was admitted at the bar that the application for interlocutory injunction was not pressed but was waived, and there is therefore no ground for an appeal to this Court. *Smith v. Wilson*, 273 U.S. 388, 391; *Stratton v. St. Louis Southwestern Ry. Co.*, 282 U.S. 10, 15. *Mr. H. Thornton Lorimer*, Assistant Attorney General of New Hampshire, with whom *Mr. Francis W. Johnston*, Attorney General, was on the brief, for appellant. *Messrs. William N. Rogers* and *Jonathan Piper* filed a brief for appellee. Reported below: 1 F. Supp. 669.

No. —, original. EX PARTE LA PRADE. March 20, 1933. A rule is directed to issue to the Hon. Curtis D. Wilbur, Judge of the Circuit Court of Appeals for the Ninth Circuit, to the Hon. Fred C. Jacobs, Judge of the District Court of the United States for the District of Arizona, and to the Hon. Adolphus F. St. Sure, Judge of the District Court of the United States for the Northern District of California, sitting as a specially constituted District Court of the United States for the District of Arizona, directing them to show cause, by printed return on or before Monday, April 10 next, why leave to file the petition for writ of prohibition and writ of mandamus

* For decisions on applications for certiorari, see *post*, pp. 713, 723.

should not be granted in the above-entitled matter as prayed. The cause is assigned for argument on Monday, April 17 next; briefs for the parties shall be filed on or before the day of the argument. It is further ordered that all proceedings against the above-named petitioner in the specially constituted District Court be, and they are hereby, stayed; and that the respondents be, and they are hereby, directed to continue the term of the said District Court pending final determination of this application in this Court.

No. 260. COYNE, SECRETARY OF STATE, ET AL. *v.* PROUTY ET AL. Appeal from the District Court of the United States for the District of South Dakota. March 20, 1933. A rule is directed to issue to the appellants in this case to show cause, on or before Monday, April 17 next, why the decree of the specially constituted District Court entered herein should not be vacated and the cause remanded to that court with directions to dismiss the case as moot.

No. 589. MORTENSEN, COMMISSIONER OF INSURANCE, *v.* SECURITY INSURANCE Co. Appeal from the District Court of the United States for the Western District of Wisconsin. Argued March 22, 1933. Decided March 27, 1933. *Per Curiam*: Decree affirmed. *Terral v. Burke Construction Co.*, 257 U.S. 529; *Prudential Insurance Co. v. Cheek*, 259 U.S. 530, 544; *National Fire Insurance Co. v. Wanberg*, 260 U.S. 71, 75; *Fidelity & Deposit Co. v. Tafoya*, 270 U.S. 426, 434; *Hanover Fire Insurance Co. v. Harding*, 272 U.S. 494, 507.

MR. JUSTICE BRANDEIS dissents upon the authority of *Doyle v. Continental Insurance Co.*, 94 U.S. 535, and *Security Mutual Life Insurance Co. v. Prewitt*, 202 U.S. 246.

Mr. J. E. Messerschmidt, Assistant Attorney General of

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Wisconsin, with whom *Mr. James E. Finnegan*, Attorney General, was on the brief, for appellant. *Messrs. Samuel Levin* and *Wm. Marshall Bullitt* were on the brief for appellee.

No. 733. PUBLIC SERVICE COMMISSION OF INDIANA ET AL. *v.* NORTHERN INDIANA PUBLIC SERVICE Co. Appeal from the District Court of the United States for the Northern District of Indiana. Jurisdictional statement submitted March 18, 1933. Decided March 27, 1933. *Per Curiam*: The decree of the District Court granting interlocutory injunction herein is vacated and the cause is remanded to the District Court, as specially constituted, for findings and conclusions appropriate to a decision upon the application for an interlocutory injunction, the temporary restraining order to remain in force pending that determination. *Public Service Commission of Wisconsin v. Wisconsin Telephone Co.*, ante, p. 67. *Mr. George W. Hufsmith* for appellants. *Messrs. Wm. A. McInerney* and *John C. Lawyer* for appellee. Reported below: 1 F. Supp. 296.

No. 780. ANTONOPLOS *v.* JOHN EICHLEAY, JR., Co. ET AL. Appeal from the Supreme Court of Pennsylvania. Jurisdictional statement submitted March 18, 1933. Decided March 27, 1933. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Von Hoffman v. City of Quincy*, 4 Wall. 535, 550; *Gunn v. Barry*, 15 Wall. 610, 623; *Hendrickson v. Apperson*, 245 U.S. 105, 112; *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311; *Wabash Ry. Co. v. Flannigan*, 192 U.S. 29; *Wick v. Chelan Electric Co.*, 280 U.S. 108, 111. *Mr. Harry F. Stambaugh* for appellant. No appearance for appellees. Reported below: 309 Pa. 411; 164 Atl. 343.

No. 537. ARTHUR C. HARVEY Co. v. MALLEY, ET AL., FORMER COLLECTORS. Certiorari to the Circuit Court of Appeals for the First Circuit. April 17, 1933. The motion to amend the judgment herein is denied. 288 U.S. 415.

No. 260. COYNE, SECRETARY OF STATE, ET AL. v. PROUTY ET AL. Appeal from the District Court of the United States for the District of South Dakota. Return to rule to show cause presented April 17, 1933. Decided April 24, 1933. *Per Curiam*: Decree reversed and cause remanded with directions to dismiss the bill of complaint upon the ground that the cause is moot. *Brownlow v. Schwartz*, 261 U.S. 216; *Alejandro v. Quezon*, 271 U.S. 528, 535, 536; *U.S. ex rel. Norwegian Nitrogen Products Co. v. Tariff Commission*, 274 U.S. 106, 112; *Railroad Commission of Texas v. MacMillan*, 287 U.S. 576. *Mr. Edward E. Wagner* for appellants. *Mr. A. B. Fairbank* for appellees. Reported below: 55 F. (2d) 289.

No. 805. HAWKINS v. CITY OF RED CLOUD ET AL. Appeal from the Supreme Court of Nebraska. Jurisdictional statement submitted April 15, 1933. Decided April 24, 1933. *Per Curiam*: The appeal herein is dismissed for want of a substantial federal question. *Gant v. Oklahoma City*, ante, 98, 102; *Standard Oil Co. v. Marysville*, 279 U.S. 582, 583; *Equitable Life Assurance Society v. Brown*, 187 U.S. 308, 311. *Mr. Jesse G. Hawkins, pro se*. No appearance for appellees. Reported below: 123 Neb. 487; 243 N.W. 431.

No. —. IN THE MATTER OF RALPH C. DAVIS. April 24, 1933. The clerk of this Court having reported that the costs taxed against the Greek Catholic Union, respondent, in the case of *American Surety Co. of New York v. Greek Catholic Union*, 284 U.S. 563, a bill for which

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was rendered on March 31, 1932, to Ralph C. Davis, a member of the Bar of this Court, counsel for the said respondent, had not been paid; and it appearing to the Court that the said Davis had failed to answer or respond to three letters sent him by the clerk of this Court under dates of August 8, 1932, November 29, 1932, and February 7, 1933, with respect to the payment of the said costs; and a rule having issued April 10, 1933, directing the said Davis to show cause why he should not be disbarred from the practice of the law in this Court for conduct unbecoming a member of the Bar of this Court; and said Davis having made return to such rule, and the costs in the above-mentioned case having been paid,

It is ordered that the respondent, Ralph C. Davis, be, and he is hereby, reprimanded for unjustified failure in a duty owed by him as a member of the Bar of this Court to respond to communications addressed to him by the clerk of this Court pertaining to the business of the Court;

And it is further ordered that the rule to show cause aforesaid be, and it is hereby, discharged.

No. 691. C. M. PATTEN & CO. ET AL. *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. May 8, 1933. *Per Curiam*: The petition for writ of certiorari in this case is granted. The decree of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court with directions to vacate its decree and to dismiss the proceeding upon the ground that the cause is moot. *Brownlow v. Schwartz*, 261 U.S. 216; *Alejandro v. Quezon*, 271 U.S. 528, 535, 536; *U.S. ex rel. Norwegian Nitrogen Products Co. v. Tariff Commission*, 274 U.S. 106, 112; *Railroad Commission of Texas v. MacMillan*, 287 U.S. 576. Mr. Frank P. Doherty for petitioners. Solicitor General Thacher for the United States. Reported below: 61 F. (2d) 970.

No. 906. SWARZ *v.* LOEFFLER. Appeal from the Appellate Court of Illinois. Jurisdictional statement submitted April 29, 1933. Decided May 8, 1933. *Per Curiam*: The motion for leave to proceed further herein *in forma pauperis* is denied. The appeal is dismissed for the want of jurisdiction. Section 237 (a) Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 936, 937). *Mr. August Swarz, pro se.* No appearance for appellee. Reported below: 265 Ill. App. 602.

Nos. 316, 317, and 318. UNITED STATES *v.* DUBILIER CONDENSER CORP. May 8, 1933. Ordered that the opinion in this case be amended as follows:

By striking out the following paragraph:

"Moreover no court could, however clear the proof of such a contract, order the execution of an assignment. No act of Congress has been called to our attention authorizing the United States to take a patent or to hold one by assignment. No statutory authority exists for the transfer of a patent to any department or officer of the Government, or for the administration of patents, or the issuance of licenses on behalf of the United States. In these circumstances no public policy requires us to deprive the inventor of his exclusive rights as respects the general public and to lodge them in a dead hand incapable of turning the patent to account for the benefit of the public."

The opinion is reported without this paragraph, *ante*, pp. 178, 196.

No. 932 (October Term, 1930). ART METAL CONSTRUCTION CO. *v.* UNITED STATES; and

No. 933 (October Term, 1930). ZELLER ET AL. *v.* SAME. Petitions for writs of certiorari to the Circuit Court of Appeals for the Second Circuit. May 8, 1933. The mo-

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tions for leave to file petitions for rehearing in the above-entitled causes are severally denied. *Bronson v. Schulten*, 104 U.S. 410, 415; *United States v. Mayer*, 235 U.S. 55, 67. Messrs. Dana B. Hellings, Frederick C. Slee, and Ralph Ulsh for the applicants. For previous decisions, see 283 U.S. 863; 47 F. (2d) 558; and 46 F. (2d) 1023.

NO. 810. LARABEE FLOUR MILLS CO. *v.* FIRST NATIONAL BANK OF DUBLIN. On certificate from the Circuit Court of Appeals for the Fifth Circuit. May 9, 1933. *Per Curiam*: The motion to bring up the whole record and cause is denied. The certificate is dismissed. *United States v. Bailey*, 9 Pet. 267, 272; *Chicago, B. & Q. Ry. v. Williams*, 205 U.S. 444, 451-454; *The Folmina*, 212 U.S. 354, 363; *United States v. Mayer*, 235 U.S. 55, 66; *Biddle v. Luvisch*, 266 U.S. 173, 174, 175; *News Syndicate Co. v. New York Central R. Co.*, 275 U.S. 179, 188. Messrs. W. W. Larsen and C. C. Crockett for Larabee Flour Mills Co. Messrs. Maynard Ramsey, Kenneth I. McKay, H. E. Hackney, G. P. Barse, and J. F. Anderson for the First National Bank of Dublin.

NO. 811. FIRST NATIONAL BANK OF ST. PETERSBURG *v.* MIAMI. On certificate from the Circuit Court of Appeals for the Fifth Circuit. May 9, 1933. *Per Curiam*: The certificate is dismissed. *United States v. Bailey*, 9 Pet. 267, 272, 274; *Chicago, B. & Q. Ry. v. Williams*, 205 U.S. 444, 451-454; *The Folmina*, 212 U.S. 354, 363; *United States v. Mayer*, 235 U.S. 55, 66; *Biddle v. Luvisch*, 266 U.S. 173, 174, 175; *News Syndicate Co. v. New York Central R. Co.* 275 U.S. 179, 188. Messrs. Kenneth I. McKay, Maynard Ramsey, H. E. Hackney, G. P. Barse, and J. F. Anderson for the First National Bank of St. Petersburg. Mr. C. I. Carey for Miami.

For an amendment to the General Orders in Bankruptcy, promulgated May 15, 1933, see 288 U.S. 655.

No. 834. ALLEN ET AL. *v.* GALVESTON TRUCK LINE CORP. Appeal from the District Court of the United States for the Southern District of Texas. Argued May 9, 1933. Decided May 15, 1933. *Per Curiam*: Decree affirmed. (1) *Texas & New Orleans R. Co. v. Sabine Tram Co.*, 227 U.S. 111; *Baltimore & Ohio S. W. R. Co. v. Settle*, 260 U.S. 166, 170, 173, 174; *United States v. Erie R. Co.*, 280 U.S. 98, 101, 102; (2) *Buck v. Kuykendall*, 267 U.S. 307, 315, 316; *Bush Co. v. Maloy*, 267 U.S. 317, 324, 325; *Sprout v. South Bend*, 277 U.S. 163, 169-171; *Bradley v. Public Utilities Comm'n, ante*, 92, 95. *Mr. Elbert Hooper*, Assistant Attorney General of Texas, with whom *Messrs. James V. Allred*, Attorney General, and *Claude Pollard* were on the brief, for appellants. *Mr. Mart H. Royston*, with whom *Mr. J. Newton Rayzor* was on the brief, for appellee. Reported below: 2 F. Supp. 488.

No. 927. CHEWNING *v.* VIRGINIA. Appeal from the Supreme Court of Appeals of Virginia. Jurisdictional statement submitted May 6, 1933. Decided May 15, 1933. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *State Board of Tax Commissioners v. Jackson*, 283 U.S. 527, 537; *Castillo v. McConnico*, 168 U.S. 674, 683; *Moffitt v. Kelley*, 218 U.S. 400, 404, 405; *Nickel v. Cole*, 256 U.S. 222, 226; *Glenn v. Doyall*, 285 U.S. 526; *Long v. Kelley*, 288 U.S. 591. *Mr. David Meade White* for appellant. No appearance for appellee.

No. 922. BOARD OF SUPERVISORS OF HARRISON COUNTY, IOWA, ET AL. *v.* BOARD OF SUPERVISORS OF POTTAWATTAMIE COUNTY, IOWA, ET AL. Appeal from the Supreme Court of

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Iowa. May 15, 1933. Further consideration of the question of the jurisdiction of this Court in this case is postponed to the hearing on the merits. The attention of counsel is directed to the question of the right of the appellants to raise the questions presented under the Federal Constitution. *Hunter v. Pittsburgh*, 207 U.S. 161, 178-181; *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394; *Trenton v. New Jersey*, 262 U.S. 182, 185, 188, 191, 192; *Railroad Commission v. Los Angeles R. Co.*, 280 U.S. 145, 156; *Chicago v. Chicago Rapid Transit Co.*, 284 U.S. 577, 578; *Greenville v. Query*, 286 U.S. 472, 482.

No. 890. *LEWIS v. NEW YORK*. Appeal from the Childrens Court of Broome County, New York. Jurisdictional statement submitted May 9, 1933. Decided May 22, 1933. *Per Curiam*: The motion for leave to file amended statement as to jurisdiction is granted. The appeal herein is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 936, 937); *Citizens National Bank v. Durr*, 257 U.S. 99, 106; *Jett Bros. Distilling Co. v. Carrollton*, 252 U.S. 1, 4, 5, 6; *Indian Territory Co. v. Board of Equalization*, 287 U.S. 573. Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, § 237(c) Judicial Code as amended (43 Stat. 936, 938), certiorari is denied. *Mr. Joseph E. North* for appellant. No appearance for appellee. Reported below: 260 N.Y. 171; 183 N.E. 353.

No. 919. *WESTERN PUBLIC SERVICE CO. v. CITY OF MITCHELL*. Appeal from the Supreme Court of Nebraska. Jurisdictional statement submitted May 13, 1933. Decided May 22, 1933. *Per Curiam*: The motion to dismiss the appeal herein is granted and the appeal is dismissed for the want of a final judgment. *Grays Harbor Co. v.*

Coats-Fordney Co., 243 U.S. 251, 255, 256; *Ornstein v. Chesapeake & Ohio Ry. Co.*, 284 U.S. 572; *Meagher v. Minnesota Thresher Mfg. Co.*, 145 U.S. 608, 611; *California National Bank v. Statler*, 171 U.S. 447, 449; *Cotton v. Hawaii*, 211 U.S. 162, 170, 171; *Bruce v. Tobin*, 245 U.S. 18. *Messrs. William Morrow, Thomas M. Morrow, Roscoe T. York, and J. G. Mothersead* for appellant. *Messrs. Floyd E. Wright and Fred A. Wright* for appellee. Reported below: 124 Neb. 248; 246 N.W. 484.

No. 5, original. WISCONSIN ET AL. *v.* ILLINOIS ET AL.;

No. 8, original. MICHIGAN *v.* SAME; and

No. 9, original. NEW YORK *v.* SAME. On application of the complainant States, Wisconsin, Minnesota, Ohio, and Michigan for the appointment of a commissioner or special officer to execute the decree of April 21, 1930, (281 U.S. 696) on behalf and at the expense of defendants. May 22, 1933. These causes came on to be heard on the Report of the Special Master, Edward F. McClennen, under order entered December 19, 1932, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered by this Court that the decree of April 21, 1930 (281 U.S. 696), be, and the same is hereby, enlarged by the addition of the following provision:

That the State of Illinois is hereby required to take all necessary steps, including whatever authorizations or requirements, or provisions for the raising, appropriation and application of moneys, may be needed in order to cause and secure the completion of adequate sewage treatment or sewage disposal plants and sewers, together with controlling works to prevent reversals of the Chicago River if such works are necessary, and all other incidental facilities, for the disposition of the sewage of the area embraced within the Sanitary District of Chicago so as to preclude any ground of objection on the part of

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the State or of any of its municipalities to the reduction of the diversion of the waters of the Great Lakes-St. Lawrence system or watershed to the extent, and at the times and in the manner, provided in this decree.

And the State of Illinois is hereby required to file in the office of the Clerk of this Court, on or before October 2, 1933, a report to this Court of its action in compliance with this provision.

AND IT IS FURTHER ORDERED that, except as above provided, the application of the complainant States herein be, and the same is hereby, denied. Costs, including the expenses incurred by the Special Master and his compensation, to be fixed by the Court, shall be taxable against the defendants. (Entered May 22, 1933. See 289 U.S. 395.)

No. 941. MUELLER *v.* ILLINOIS. Appeal from the Supreme Court of Illinois. Jurisdictional statement submitted May 22, 1933. Decided May 29, 1933. *Per Curiam*: The appeal is dismissed for the want of a substantial federal question. *Waters-Pierce Oil Co. v. Texas* (No. 1), 212 U.S. 86, 108-111; *Fox v. Washington*, 236 U.S. 273, 277; *Miller v. Strahl*, 239 U.S. 426, 434; *Omaechevarria v. Idaho*, 246 U.S. 343, 348; *Hygrade Provision Co. v. Sherman*, 266 U.S. 497, 501-503; *Bandini v. Superior Court*, 284 U.S. 8, 18; *Sproles v. Binford*, 286 U.S. 374, 393; *Lavine v. California*, 286 U.S. 528; *Leach v. California*, 287 U.S. 579, 580. *Messrs. Benjamin C. Bachrach and Chester E. Cleveland* for appellant. *Mr. Montgomery S. Winning* for appellee. Reported below: 352 Ill. 124; 185 N.E. 239.

No. —, original. *EX PARTE LANSDOWN ET AL.* May 29, 1933. The motion for leave to file petition for writ of mandamus is denied without prejudice to application to the Circuit Court of Appeals. *Messrs. Samuel A. Ettelson and Leonard B. Ettelson* for petitioners.

No. 13, original. *NEW JERSEY v. CITY OF NEW YORK*. May 29, 1933. May 8, 1933, complainant filed its petition representing that the defendant has failed to take action necessary to comply with our decree entered December 7, 1931, (284 U. S. 585) and praying an order that defendant show cause why it should not be adjudged in contempt. On the same day defendant filed an application asserting its inability to comply with the decree within the time limited, and praying that the time for the taking effect of the injunction be extended from June 1, 1933, to April 1, 1934. It is ordered:

These applications will be heard November 6, 1933.

Edward K. Campbell is appointed Special Master, empowered to issue subpoenas for witnesses and to take the evidence that may be offered by the respective parties, and also such as he may deem necessary, to show: (1) What shall have been done by defendant, up to September 15, 1933, and the time reasonably required to enable it to comply with the decree; (2) The amounts that shall have been expended, subsequent to June 1, 1933, by New Jersey and its political subdivisions to prevent or lessen the defilement or pollution of the waters, shores or beaches within that State and the damages respectively sustained by them as a result of defendant's failure to comply with the decree.

The evidence shall be taken at such times and places as the Master, by notice to counsel, shall fix. And he is directed to report to the Court, not later than October 20, 1933, the evidence so taken together with his findings of fact thereon. His findings will be subject to consideration, revision or approval by the Court. When the report of the Special Master is filed the Clerk of the Court shall cause the same to be printed and the Court, without the filing of exceptions, will hear the parties thereon.

[The order makes provision also for the compensation and expenses of the Master; apportionment of the cost of

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printing the report; and for a new appointment by the Chief Justice if this one be not accepted or become vacant during the recess of the Court.]

No. 693. *FACTOR v. LAUBENHEIMER, U.S. MARSHAL, ET AL.* Certiorari to the Circuit Court of Appeals for the Seventh Circuit. Argued April 18, 1933. Restored to docket May 29, 1933. This case is restored to the docket and assigned for reargument on Monday, October 9 next, upon all questions involved, including the question whether the offense charged is an extraditable offense under the Treaty of 1889, even if the offense does not constitute a crime under the law of the State of Illinois or under any acts of Congress. The attention of counsel is directed to the interpretation placed upon Article X of the treaty of 1842 by the Secretary of State of the United States, John C. Calhoun, shortly after the ratification of the Treaty (August 7, 1844, January 28, 1845, MSS. Inst. Gr. Br.), and also to the available diplomatic correspondence relating to Article X of the Treaty of 1842 and the Treaty of 1889. *Mr. Newton D. Baker*, with whom *Messrs. Rush C. Butler, S. O. Levinson, and G. Gale Gilbert, Jr.*, were on the brief, for petitioner. *Mr. Franklin R. Overmyer* for respondents. Reported below: 61 F. (2d) 626.

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No. 693. *FACTOR v. LAUBENHEIMER, U.S. MARSHAL, ET AL.* March 20, 1933. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Messrs. Newton D. Baker, Rush C. Butler, S. O. Levinson, and G. Gale Gilbert, Jr.*, for petitioner. *Mr. Franklin Overmyer* for respondents. Reported below: 61 F. (2d) 626.