San Pablo & Tulare R. Co., 149 U. S. 308, 314; *Stearns* v. *Wood*, 236 U. S. 75, 78; *Cincinnati* v. *Vester*, 281 U. S. 439, 449.

Dismissed.

E. R. SQUIBB & SONS *v.* MALLINCKRODT CHEMICAL WORKS.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 42. Argued November 7, 1934.—Decided November 19, 1934.

Where an appeal is properly before the Circuit Court of Appeals and, upon hearing it, the court determines that such assignments of error as have been duly filed have been abandoned, the court may affirm the decree.

QUESTIONS certified by the court below after it had affirmed an interlocutory decree enjoining infringement of the plaintiff's patent, see 69 F. (2d) 685, and after a petition for rehearing had been filed.

Mr. Frederick H. Wood for E. R. Squibb & Sons.

Mr. Frank Y. Gladney, with whom *Mr. Lawrence C. Kingsland* was on the brief, for Mallinckrodt Chemical Works.

PER CURIAM.

The Circuit Court of Appeals has certified the following questions:

"Question 1. Where, on an appeal properly in this court, the appellee contends that one of the assignments of errors has been abandoned and all others are not presentable because defective either as assignments of errors or as specifications of errors and urges affirmance of the decree appealed from and this court determines that such contention is well founded in all respects and that no issue on the merits is, for such reasons, presentable to it, is it proper to affirm the decree appealed from?

"Question 2. If question 1 should be answered in the negative, should the order of this court be a dismissal without prejudice?"

Where an appellant fails to file assignments of error as required by the applicable rule (28 U. S. C. 862, 880; Rule No. 11 of the Rules of the Circuit Court of Appeals for the Eighth Circuit), the appeal may be dismissed. Compare Rules of this Court No. 9 and No. 27, pars. 4, 5. But where an appeal is properly before the Court and, upon hearing the appeal, the Court determines that such assignments of error as have been duly filed have been abandoned, the Court may affirm the decree from which the appeal is taken.

Question No. 1 is answered in the affirmative.

HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* NORTHERN COAL CO.*

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

No. 18 (October Term, 1933). Petition for Rehearing Argued October 8, 1934.—Decided October 22, 1934.

Under § 1005 (a) of the Revenue Act of 1926, a petition for the rehearing of a case in which this Court has affirmed a judgment sustaining a decision of the Board of Tax Appeals can not be entertained if filed more than 30 days after the issuance of this Court's mandate.

Petition for rehearing denied.

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* Together with No. 19 (October Term, 1933), *Helvering* v. *C. H. Sprague & Son Co.*, certiorari to the Circuit Court of Appeals for the First Circuit; No. 20 (October Term, 1933), *Helvering* v. *U. S. Refractories Corp.*, certiorari to the Circuit Court of Appeals for the Third Circuit; and No. 21 (October Term, 1933), *Helvering* v. *Oswego & Syracuse R. Co.*, certiorari to the Circuit Court of Appeals for the Second Circuit.