

DECISIONS PER CURIAM, FROM JANUARY 8,
1935, TO AND INCLUDING APRIL 1, 1935*

No. 603. PEOPLES TAXICAB Co. v. WICHITA, KANSAS, ET AL. Appeal from the Supreme Court of Kansas. Jurisdictional statement submitted January 5, 1935. Decided January 14, 1935. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Enterprise Irrigation District v. Canal Co.*, 243 U. S. 157, 165-166; *Hebert v. Louisiana*, 272 U. S. 312, 316-317; *American Railway Express v. Kentucky*, 273 U. S. 269, 272-273; *Secor v. Fulton*, 293 U. S. 517. *Mr. Thomas E. Elcock* for appellant. *Mr. H. W. Hart* for appellees. Reported below: 140 Kan. 129; 34 P. (2d) 545.

No. 610. STEPHENS, ADMINISTRATRIX, ET AL. v. PENNSYLVANIA. Appeal from the Superior Court of Pennsylvania. Jurisdictional statement submitted January 5, 1935. Decided January 14, 1935. *Per Curiam*: The appeal herein is dismissed upon the ground that the jurisdictional statement fails to disclose any properly presented substantial federal question. Rule 12. *Rosen v. Fry*, 293 U. S. 526. Leave to proceed further herein *in forma pauperis* is denied. *Mr. Walter Thomas* for appellants. *Mr. Russell J. Brownback* for appellee. Reported below: 114 Pa. Super. 126; 173 Atl. 869.

No. —, original. UNITED STATES v. WEST VIRGINIA. January 14, 1935. Motion for leave to file bill of com-

*For decisions on petitions for certiorari, see *post*, pp. 699, 705; for rehearing, *post*, p. 731.

plaint granted and process is ordered to issue returnable on Monday, April 1, 1935.

No. —, original. UNITED STATES *v.* ARIZONA. January 14, 1935. Motion for leave to file bill of complaint granted and process is ordered to issue returnable on Monday, April 1, 1935.

No. —, original. EX PARTE FIRST NATIONAL BANK OF CINCINNATI. January 14, 1935. The motion for leave to file petition for writ of mandamus is denied. *Messrs. Ralph Royall and James F. Hubbell* for petitioner.

No. 373. THATCHER ET AL. *v.* COUNTY OF SAN DIEGO ET AL. Appeal from the District Court of Appeal, 4th Appellate District, of California. Argued January 15, 1935. Decided January 21, 1935. *Per Curiam*: Judgment affirmed. *Roberts v. Richland Irrigation District*, 289 U. S. 71. *Mr. Irve C. Boldman*, with whom *Mr. W. H. Metson* was on the brief, for appellants. *Mr. Harvey H. Atherton*, with whom *Mr. Francis V. Keesling* was on the brief, for appellees. Reported below: 138 Cal. App. 503; 32 P. (2d) 979.

No. 400. IRONES ET AL. *v.* AMERICAN SECURITIES CO. Appeal from the Supreme Court of California. Argued January 15, 1935. Decided January 21, 1935. *Per Curiam*: Judgment affirmed. *Roberts v. Richland Irrigation District*, 289 U. S. 71; *Thatcher v. County of San Diego*, decided this day, *supra*. *Mr. C. L. Byers*, with whom *Mr. Challen B. Ellis* was on the brief, for appellants. *Mr. George Herrington*, with whom *Messrs. W. H. Orrick and W. J. Kenney* were on the brief, for appellee. Reported below: 220 Cal. 566; 32 P. (2d) 343.

294 U. S.

Decisions Per Curiam, Etc.

No. 387. CAPE FEAR RAILWAYS, INC., v. UNITED STATES ET AL. Appeal from the District Court of the United States for the Eastern District of Virginia. Argued January 18, 1935. Decided January 21, 1935. *Per Curiam*: Decree affirmed. *Mississippi Valley Barge Co. v. United States*, 292 U. S. 282, 286; *Florida v. United States*, 292 U. S. 1, 9; *Nashville, C. & St. L. Ry. v. Tennessee*, 262 U. S. 318, 324; *Edward Hines Trustees v. United States*, 263 U. S. 143, 148; *Chicago, I. & L. Ry. v. United States*, 270 U. S. 287, 295. *Mr. Moultrie Hitt*, with whom *Mr. G. Kirby Munson* was on the brief, for appellant. *Solicitor General Biggs*, *Assistant Attorney General Stephens*, and *Messrs. Daniel W. Knowlton, Elmer B. Collins, and J. Stanley Payne* filed a brief on behalf of the United States and Interstate Commerce Commission, appellees. *Messrs. Richard B. Gwathmey, Thomas W. Davis, and Frank W. Gwathmey* filed a brief on behalf of the Atlantic Coast Line R. Co., appellee. Reported below: 7 F. Supp. 429.

No. 18, original. UNITED STATES v. ARIZONA. Motion submitted January 18, 1935. Decided January 21, 1935. A rule is ordered to issue requiring the defendant to show cause, on or before February 4, next, why an order should not issue restraining interference by the defendant, Arizona, its officers, agents, and employees, with the construction of Parker Dam pending the final determination of this suit.

No. 16, original. NEBRASKA v. WYOMING. January 21, 1935. Motion to dismiss submitted by *Mr. Joseph C. O'Mahoney* in behalf of counsel for defendant.

No. —, original. EX PARTE CALLAHAN. February 4, 1935. Motion for leave to file petition for writ of habeas corpus denied. *Miss Sophy Callahan, pro se.*

No. —, original. EX PARTE LAND OWNERS ASSN. February 4, 1935. Motion for leave to file petition for writ of mandamus and/or prohibition denied. *Mr. Dean G. Acheson* for petitioner.

No. —, original. EX PARTE ABBOTT. February 4, 1935. Motion for leave to file petition for writ of mandamus and/or prohibition denied. *Mr. Charles S. Abbott, pro se.*

No. 344. ATLANTIC COAST LINE R. CO. *v.* FLORIDA ET AL.; and

No. 345. FLORIDA ET AL. *v.* UNITED STATES ET AL. Appeals from the District Court of the United States for the Northern District of Georgia. February 4, 1935. These cases are restored to the docket and assigned for reargument on Monday, March 4, next; and the attention of counsel is directed to the following points upon which the Court desires to hear argument: (1) Whether the District Court had jurisdiction to award restitution or should exercise such jurisdiction in a case of this character relating to intrastate rates; (2) If the District Court had such jurisdiction and should exercise it in a case of this character relating to the revenue needs of the carrier, what should be the measure of an award of restitution; and (3) In such an inquiry, what effect, evidentiary or otherwise, should be attributed to the proceedings before, and findings of, the Interstate Commerce Commission.

Counsel are also requested to point out what differences, if any, there are between the evidence before the District Court and that before the Interstate Commerce Commission.

No. 18, original. UNITED STATES *v.* ARIZONA. February 4, 1935. Return to rule to show cause presented.

294 U. S.

Decisions Per Curiam, Etc.

No. 233. *FREDERICK v. UNITED STATES*. On certificate from the Circuit Court of Appeals for the Eighth Circuit. Argued October 18, 1934. Dismissed February 11, 1935. *Per Curiam*: In view of the provisions of Public Resolution No. 1, 74th Congress, approved January 28, 1935, the certificate herein is dismissed to the end that further proceedings may be had in accordance with the Resolution. *Messrs. Warren E. Miller and Oscar W. Worthwine* for Frederick. *Mr. Will G. Beardslee and Solicitor General Biggs*, with whom *Messrs. Wilbur C. Pickett and W. Marvin Smith* were on the brief, for the United States.

No. 347. *EARWOOD, GUARDIAN, v. UNITED STATES*. On petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit. February 11, 1935. *Per Curiam*: The petition for certiorari in this case is granted. In view of the provisions of Public Resolution No. 1, 74th Congress, approved January 28, 1935, the judgment of the Circuit Court of Appeals is vacated and the cause is remanded to that Court with instructions to determine whether the District Court should have directed a verdict on the merits, and to enter judgment accordingly. *Mr. Walter McElreath* for petitioner. *Solicitor General Biggs and Messrs. Will G. Beardslee and Randolph C. Shaw* for the United States. Reported below: 71 F. (2d) 507.

No. 18, original. *UNITED STATES v. ARIZONA*. February 11, 1935. It is ordered that this cause be assigned for hearing on the application for an interlocutory injunction on Monday, March 4, next, at the head of the call for that day, and that the defendant, its officers, agents, and employees, be, and they hereby are, restrained from interfering with the construction of Parker Dam pending the hearing and determination of said application.

No. 478. *FOX FILM CORP. v. MULLER*. On writ of certiorari to the Supreme Court of Minnesota. Argued February 11, 1935. Decided February 18, 1935. *Per Curiam*: As it appears that no final judgment has been entered, the writ of certiorari is dismissed as improvidently granted. *Beaupre v. Noyes*, 138 U. S. 402; *National Life Ins. Co. v. Scheffer*, 131 U. S. (Appx.) ccciii. *Mr. James D. Shearer*, with whom *Mr. Percy Heiliger* was on the brief, for petitioner. *Mr. Abram F. Myers* filed a brief on behalf of respondent. Reported below: 192 Minn. 212; 255 N. W. 845.

No. 675. *CHANDLER v. MARLATT, EXECUTOR*. Appeal from the Supreme Court of Ohio. Motion to dismiss submitted February 9, 1935. Decided February 18, 1935. *Per Curiam*: The motion of appellee to dismiss the appeal herein is granted, and the appeal is dismissed upon the ground that it does not appear that the decision of a federal question was necessary to the determination of the cause or was actually determined. *Lynch v. New York ex rel. Pierson*, 293 U. S. 52; *Wetzel v. Fulton*, 293 U. S. 531; *Kagarise v. Railroad Commission*, 293 U. S. 527. *Mr. William K. Gardner* for appellant. *Mr. Thomas H. Garry* for appellee. Reported below: 128 Oh. St. 642; 193 N. E. 75.

No. 412. *PANHANDLE EASTERN PIPE LINE CO. v. STATE HIGHWAY COMM'N*. Appeal from the Supreme Court of Kansas. February 18, 1935. This case is restored to the docket and assigned for reargument on Monday, March 11 next. The Court especially desires to hear argument with respect to the rights and privileges of the appellant as a pipe-line company, and the obligations and burdens imposed upon the appellant, under the statutes of the State of Kansas.

294 U. S.

Decisions Per Curiam, Etc.

No. 702. CARTER ET AL. *v.* BURNETT, TAX COLLECTOR. Appeal from the Supreme Court of Florida. Jurisdictional statement submitted February 12, 1935. Decided March 4, 1935. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Toyota v. Hawaii*, 226 U. S. 184, 191-192; *Tax Commissioners v. Jackson*, 283 U. S. 527, 537. *Mr. Edwin Brobston* for appellants. No appearance for appellee. Reported below: 116 Fla. 699; 156 So. 698.

No. —, original. EX PARTE PORESKEY. March 4, 1935. The motion for leave to file petition for writ of mandamus is denied. *Mr. Joseph Poresky, pro se.*

No. 13, original. UNITED STATES *v.* OREGON. March 4, 1935. Motion for order appointing a Receiver and motion for leave to file supplemental answer submitted by *Mr. L. A. Liljeqvist* for the defendant with leave to the complainant to reply thereto by Friday next on motion of *Solicitor General Biggs*.

No. —, original. EX PARTE KENNER. March 11, 1935. The motion for leave to file petition for writ of mandamus is denied. *Mr. Hiddleston Kenner, pro se.*

No. 580. STATE AUTOMOBILE INSURANCE ASSN. *v.* GLICK, ADMINISTRATRIX. On writ of certiorari to the Supreme Court of Nebraska. Argued March 11, 1935. Decided March 18, 1935. *Per Curiam*: As it appears that the judgment of the state court rested upon a non-federal ground adequate to support it, the writ of certiorari is dismissed as improvidently granted. *Mr. Guy C. Chambers*, with whom *Mr. George B. Boland* was on the

brief, for petitioner. *Mr. Herbert Baird*, with whom *Messrs. Richard F. Stout* and *Allen W. Field* were on the brief, for respondent. Reported below: 127 Neb. 350; 255 N. W. 57.

No. —. [844]. NATURAL GAS CO. OF WEST VIRGINIA v. PUBLIC SERVICE COMM'N ET AL. Appeal from the Supreme Court of Appeals of West Virginia. April 1, 1935. Upon consideration of the petition of the appellant, Natural Gas Company of West Virginia,

It is ordered that the appellees herein, the Public Service Commission of West Virginia and the City of Wheeling, and each of them, their agents, servants, attorneys and representatives, be, and they are hereby, enjoined from in any manner enforcing or attempting to enforce the order of the Public Service Commission of the State of West Virginia, dated December 15, 1934, as amended December 18, 1934, requiring the Natural Gas Company of West Virginia to put into effect a rate of forty-four cents per thousand cubic feet, subject to a prompt payment discount of two cents per thousand cubic feet, for natural gas for domestic, commercial, and municipal use in West Virginia, pending the final determination of the above-entitled cause by this Court, or until further order by this Court. *Messrs. David E. Mitchell, Donald O. Blagg, Frederick H. Wood, Harold A. Ritz, and H. D. Rummel* for appellant.

No. —, original. EX PARTE WALTER. April 1, 1935. The motion for leave to file petition for writ of habeas corpus is denied. *Mr. James Walter, pro se.*