Per Curiam.

# FOX, TAX COMMISSIONER OF WEST VIRGINIA, *v.* GULF REFINING CO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA.

No. 70. Argued April 2, 1935.—Decided April 8, 1935.

Where all questions relied on to sustain a judgment appealed from the District Court were disposed of adversely to appellee while the appeal was pending by a decision of this Court in another case, except a question of state law which the District Court had not decided, the judgment was reversed and the cause remanded to the District Court for decision of that question.

Reversed.

APPEAL from a decree of the District Court, of three judges, permanently enjoining enforcement of the West Virginia Chain Store Taxing Act.

*Mr. Homer A. Holt,* Attorney General of West Virginia, with whom *Messrs. R. Dennis Steed* and *Wm. Holt Wooddell,* Assistant Attorneys General, were on the brief, for appellant.

*Mr. Arthur Dayton,* with whom *Mr. Fred O. Blue* was on the brief, for appellee.

PER CURIAM.

The appellee brought this suit to restrain the enforcement of the West Virginia Chain Store Act (c. 36, West Virginia Acts, 1933), upon the grounds (1) that gasoline filling stations were not "stores" within the meaning of the Act; (2) that, if the Act were interpreted to include such filling stations, it violated the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States; and (3) that if the foregoing questions were resolved against appellee,

there were certain filling stations, particularly described, which were not stores "belonging to, operated or controlled" by appellee.

The District Court of three judges (28 U. S. C. 380) entered a final decree permanently enjoining the enforcement of the Act, and the case comes here on appeal. In so deciding, the District Court sustained the first of the above-mentioned contentions of appellee, and also the second contention with respect to the denial of the equal protection of the laws, following its decision to the same effect in *Standard Oil Co.* v. *Fox,* 6 F. Supp. 494. That decision was reversed by this Court. *Fox* v. *Standard Oil Co.,* 294 U. S. 87. The District Court did not determine the third contention of appellee, as to its relation to certain gasoline stations, and that is the only question now sought to be presented to this Court. The judgment is reversed and the cause is remanded to the District Court, composed as above stated, in order that it may consider and decide that issue.

*Reversed.*

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## STANLEY *v.* PUBLIC UTILITIES COMMISSION.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

No. 551. Argued April 3, 1935.—Decided April 15, 1935.

In limiting the use of state highways for intrastate transportation for hire, the legislature reasonably may provide that carriers who have furnished adequate, responsible and continuous service over a given route from a specified date in the past shall be entitled to licenses as a matter of right, but that the licensing of those whose service over the route began later than the date specified shall depend upon the public convenience and necessity. P. 78.

133 Me. 91; 174 Atl. 93, affirmed.

APPEAL from a judgment overruling exceptions taken in the court below for the review of an order of the Public