

DECISIONS PER CURIAM, FROM APRIL 2, 1935,
TO AND INCLUDING JUNE 3, 1935.*

No. 788. GENERAL CONSTRUCTION CO. *v.* FISHER ET AL. Appeal from the Supreme Court of Oregon. Jurisdictional statement submitted March 30, 1935. Decided April 8, 1935. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Trinityfarm Co. v. Grosjean*, 291 U. S. 466, 472; *Metcalf & Eddy v. Mitchell*, 269 U. S. 514; *Lucas v. Howard*, 280 U. S. 526; *Lucas v. Reed*, 281 U. S. 699; *Alward v. Johnson*, 282 U. S. 509, 514; *Willcuts v. Bunn*, 282 U. S. 224, *et seq.*; *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382. Mr. Seth W. Richardson for appellant. Messrs. I. H. Van Winkle and Willis S. Moore for appellees. Reported below: 149 Ore. 84; 39 P. (2d) 358.

No. —, original. EX PARTE GIBSON. April 8, 1935. The motion for leave to file petition for writ of habeas corpus is denied. Mr. George H. Gibson, *pro se*.

No. —, original. EX PARTE VEACH. April 8, 1935. The motion for leave to file petition for writ of mandamus is denied. Mr. Charles M. Veach, *pro se*.

No. 858. WILSHIRE OIL CO., INC. ET AL. *v.* UNITED STATES ET AL. On certificate from the Circuit Court of Appeals for the Ninth Circuit. April 9, 1935. The Court desires counsel for the respective parties to file

* For decisions on petitions for certiorari, see *post*, pp. 722, 731; for rehearing, p. 767.

briefs on or before April 25, 1935, upon the question whether the appeal described in the certificate presents any question other than whether the District Court committed an abuse of discretion in granting an interlocutory injunction. See *Alabama v. United States*, 279 U. S. 229; *United Drug Co. v. Washburn*, 284 U. S. 593; *Binford v. J. H. McLeaish & Co.*, 284 U. S. 598; *South Carolina Power Co. v. South Carolina Tax Comm'n*, 286 U. S. 525; *Ogden & Moffett Co. v. Michigan Public Utilities Comm'n*, 286 U. S. 525; *Langer v. Grandin Farmers Coöperative Elevator Co.*, 292 U. S. 605; *Baldwin v. G. A. F. Seelig, Inc.*, 293 U. S. 522. [See *ante*, p. 100.]

No. 833. *TEXAS LAND & CATTLE CO. ET AL. v. FORT WORTH*. Appeal from the Court of Civil Appeals, 2nd Supreme Judicial District, of Texas. Jurisdictional statement submitted April 13, 1935. Decided April 29, 1935. *Per Curiam*: The appeal herein is dismissed upon the ground that the judgment sought to be reviewed is joint and the record fails to disclose summons and severance. *Hartford Accident & Indemnity Co. v. Bunn*, 285 U. S. 169; *Capital National Bank v. Board of Supervisors*, 286 U. S. 550; *Fidelity Union Casualty Co. v. Hanson*, 287 U. S. 599; *Louisville & Nashville R. Co. v. Parker*, 287 U. S. 569; *Wagner Tug Boat Co. v. Meagher*, 287 U. S. 657; *Missouri State Life Ins. Co. v. Johnson*, 288 U. S. 609; *Morgenthau v. Stephens*, 294 U. S. 720. *Mr. U. M. Simon* for appellants. *Mr. R. E. Rouer* for appellee. Reported below: 73 S. W. (2d) 860.

No. 857. *HOME CAB CO. v. WICHITA ET AL.* Appeal from the Supreme Court of Kansas. Jurisdictional statement submitted April 13, 1935. Decided April 29, 1935. *Per Curiam*: The appeal herein is dismissed (1) for the

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want of a properly presented federal question, *Dewey v. Des Moines*, 173 U. S. 193, 197-198; *Keokuk & Hamilton Bridge Co. v. Illinois*, 175 U. S. 626, 633-635; *New York v. Kleinert*, 268 U. S. 646, 650; *Whitney v. California*, 274 U. S. 357, 362-363; and (2) for the want of a substantial federal question, *Sunday Lake Iron Co. v. Wakefield*, 247 U. S. 350, 353; *Chicago Great Western Ry. v. Kendall*, 266 U. S. 94, 99; *Southern Ry. Co. v. Watts*, 260 U. S. 519, 526-527. Mr. James G. Martin for appellant. Mr. Harry W. Hart for appellees. Reported below: 141 Kan. 697; 42 P. (2d) 972.

No. —, original. EX PARTE RICO MANUFACTURING CO., INC. ET AL. May 6, 1935. The motion for leave to file petition for writ of mandamus is denied. Messrs. James E. Dooley and Perley H. Plant for petitioners.

No. 704. ALLISON v. TEXAS. Appeal from the Court of Criminal Appeals, of Texas. Argued May 3, 6, 1935. Decided May 13, 1935. *Per Curiam*: The appeal herein is dismissed (1) for the reason that the judgment of the state court sought to be reviewed is based upon a non-federal ground adequate to support it, *Stone v. State*, 48 Tex. Cr. 114; 86 S. W. 1029; *Farson Son & Co. v. Bird*, 248 U. S. 268, 271; *Doyle v. Atwell*, 261 U. S. 590, *McCoy v. Shaw*, 277 U. S. 302, and (2) for the want of a substantial federal question, *Watson v. Maryland*, 218 U. S. 173, 175-180; *Crane v. Johnson*, 242 U. S. 339, 342-344; *McNaughton v. Johnson*, 242 U. S. 344, 348-349; *Graves v. Minnesota*, 272 U. S. 425; *Hurwitz v. North*, 271 U. S. 40, 43. Mr. Clarence E. Farmer, with whom Mr. G. R. Lipscomb was on the brief, for appellant. Mr. William McCraw, Attorney General of Texas, Mr. Will R. Parker, District Attorney, Messrs. Cecil C. Rotsch and Homer B. Green, Assistant District At-

torneys, and *Mr. Lloyd W. Davidson*, State's Attorney, were on the brief for appellee. Reported below: 127 Tex. Cr. Rep. —; 76 S. W. (2d) 527.

No. 899. *MISSISSIPPI CENTRAL RAILROAD CO. v. SMITH*. Appeal from the Supreme Court of Mississippi. Jurisdictional statement submitted May 4, 1935. Decided May 13, 1935. *Per Curiam*: The appeal herein is dismissed for the want of a final judgment. *Bruce v. Tobin*, 245 U. S. 18; *California National Bank v. Stateler*, 171 U. S. 447, 449; *Grays Harbor Co. v. Coats-Fordney Co.*, 243 U. S. 251, 255-256; *Western Public Service Co. v. Mitchell*, 289 U. S. 709. *Mr. Thomas Brady, Jr.*, for appellant. *Messrs. William H. Watkins and S. B. Laub* for appellee. Reported below: 173 Miss. 507; 154 So. 533; 159 So. 562.

No. —, original. *EX PARTE UNITED STATES EX REL. DUKE*. May 13, 1935. The motion for leave to file petition for writ of prohibition and/or mandamus is denied. *Mr. Jesse C. Duke, pro se*.

No. 923. *NATIONAL ACCOUNTING CO. v. DORMAN, BANKING COMMISSIONER*. Appeal from the District Court of the United States for the Eastern District of Kentucky. Jurisdictional statement submitted May 11, 1935. Decided May 20, 1935. *Per Curiam*: The order denying interlocutory injunction is affirmed. *Alabama v. United States*, 279 U. S. 229, 231; *South Carolina Power Co. v. South Carolina Tax Comm'n*, 286 U. S. 525; *Ogden & Moffett Co. v. Michigan Public Utilities Comm'n*, 286 U. S. 525; *Langer v. Grandin Farmers Coöperative Elevator Co.*, 292 U. S. 605; *Northwest Bancorporation v. Benson*, 292 U. S. 606; *Baldwin v. G. A. F. Seelig, Inc.*, 293

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U. S. 522; *Wilshire Oil Co. v. United States*, ante, p. 100. Messrs. Ernest Woodward, Fred R. Wright, and Ed C. O'Rear for appellant. Messrs. Bailey P. Wootten, Arthur Bensinger, and John S. Milliken for appellee.

No. —, original. EX PARTE BRUMMETT. May 20, 1935. The motion for leave to file petition for writ of habeas corpus is denied. *Mr. C. M. Brummett, pro se.*

No. —, original. EX PARTE LERNER. May 20, 1935. The rule to show cause is discharged and the motion for leave to file petition for a writ of mandamus is denied. Messrs. Emil Hersh, Herbert Morse, and I. J. Post for petitioner.

No. 602. HARTLEY, EXECUTOR, v. COMMISSIONER OF INTERNAL REVENUE. May 20, 1935. Ordered that the opinion delivered in this cause on April 29, 1935, be modified as follows:

By adding at the end of line 2 on page 1 the words "and held";

By striking from lines 19 and 20 on page 1 the words "to which the Revenue Acts of 1921 and 1924 were respectively applicable";

By substituting for the words "1924 Act" wherever they occur, the words "1924 and 1926 Acts," and by making changes in punctuation and wording appropriate to the last mentioned modifications. [Opinion reported as modified, ante, p. 216.]

No. 787. UNITED STATES v. FIDELITY & DEPOSIT CO. On petition for writ of certiorari to the Circuit Court of

Appeals for the Second Circuit. May 27, 1935. *Per Curiam*: The petition for a writ of certiorari herein is granted. It is ordered that the judgment of the Circuit Court of Appeals for the Second Circuit be, and it is hereby, vacated, and the cause is remanded to that court with directions to dismiss the appeal upon the ground that the judgment sought to be reviewed is joint and the record fails to disclose summons and severance. *Hartford Accident & Indemnity Co. v. Bunn*, 285 U. S. 169; *Wagner Tug Boat Co. v. Meagher*, 287 U. S. 657; *Missouri State Life Ins. Co. v. Johnson*, 288 U. S. 609; *Texas Land & Cattle Co. v. Fort Worth*, *ante*, p. 716. *Solicitor General Biggs* for the United States. No appearance for respondent. Reported below: 74 F. (2d) 296.

No. 974. *ROSENTHAL v. LANGLEY ET AL.* Appeal from the Supreme Court of Georgia. Motion submitted May 18, 1935. Decided May 27, 1935. *Per Curiam*: The motion for leave to proceed further in *forma pauperis* is denied. The motion to dismiss the appeal herein is granted and 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). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c) of the Judicial Code as amended (43 Stat. 936, 938), certiorari is denied. *Mr. Ben E. Pierce* for appellant. No appearance for appellees. Reported below: 180 Ga. 253; 179 S. E. 383.

No. —, original. *EX PARTE ALEOGRAPH CO.* May 27, 1935. The motion for leave to file petition for writ of mandamus is denied. *Messrs. R. L. Batts and Frank H. Booth* for petitioner.

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No. —, original. *EX PARTE PORESKEY*. May 27, 1935. The motion for leave to file petition for writ of mandamus is denied. *Mr. Joseph Poresky, pro se.*

No. 976. *BASS ET AL. v. MILLEDGEVILLE ET AL.* Appeal from the Supreme Court of Georgia. Motion submitted May 29, 1935. Decided June 3, 1935. *Per Curiam*: The motion to substitute L. N. Jordan as a party appellee is granted. The motion of the appellees to dismiss the appeal herein is granted, and the appeal is dismissed for the reason that the judgment sought herein to be reviewed is based upon a nonfederal ground adequate to support it. *Utley v. St. Petersburg*, 292 U. S. 106, 111–112; *Wood v. Chesborough*, 228 U. S. 672 *et seq.*; *Preston v. Chicago*, 226 U. S. 447, 450. *Mr. John R. L. Smith* for appellants. *Mr. Daniel MacDougald* for appellees. Reported below: 180 Ga. 156; 178 S. E. 529.

No. 970. *HOPKINS FEDERAL SAVINGS & LOAN ASSN. ET AL. v. CLEARY ET AL.*;

No. 971. *RELIANCE BUILDING & LOAN ASSN. v. SAME*; and

No. 972. *NORTHERN BUILDING & LOAN ASSN. v. SAME*. Appeals from the Supreme Court of Wisconsin. Motions submitted May 31, 1935. Decided June 3, 1935. *Per Curiam*: The motions of the appellees to dismiss the appeals herein are granted and the appeals are dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeals were allowed as petitions for writs of certiorari as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), writs of certiorari are granted. *Mr. Emery J. Woodall* for appellants. *Mr. Benjamin Poss* for appellees. Reported below: 217 Wis. 179; 257 N. W. 684.

No. —, original. *Ex PARTE MARINE*. June 3, 1935. Motion for leave to file petition for writ of mandamus denied. *Mr. Richard E. Marine, pro se.*

No. 16, original. *NEBRASKA v. WYOMING*. June 3, 1935. Answer of defendant is received and ordered to be filed.

No. 17, original. *UNITED STATES v. WEST VIRGINIA ET AL.* June 3, 1935. The motion for leave to file an amended and supplemental bill of complaint is denied. [*Ante*, p. 463.]

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APRIL 2, 1935, TO AND INCLUDING JUNE 3,
1935.

No. 726. *PAYNE v. UNITED STATES*. April 8, 1935. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted. *Mr. George E. Flood* for petitioner. *Solicitor General Biggs* and *Messrs. Will G. Beardslee* and *Wilbur C. Pickett* for the United States. Reported below: 73 F. (2d) 900.

No. 541. *DOUGLAS v. WILL CUTS, COLLECTOR*. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. April 8, 1935. It appearing that a conflict of decisions has arisen since the order denying the petition for writ of certiorari herein was entered, it is ordered that the petition for rehearing herein be, and the same is hereby, granted. The order heretofore entered on January 7, 1935 [293 U. S. 626], denying the petition for writ of certiorari is vacated, and it is ordered that the petition for writ of certiorari in this case be, and the same is hereby, granted. *Mr. Clark R. Fletcher*