particulars for the purpose of showing that in view of its statements the Government would be "unable to make a case." The court granted the motion to quash, and the Government brought this appeal under the Criminal Appeals Act. 18 U. S. C. 682. Defendants' motion to dismiss the appeal was postponed to the hearing on the merits.

The District Judge rendered no opinion, but certified that his "decision and order quashing the indictment herein were not based in any respect upon the invalidity or construction of section 215 of the Criminal Code upon which the indictment in said cause is founded."

We find no basis for the contention that defendants' motion to quash was in substance a "special plea in bar" within the meaning of the Criminal Appeals Act. See *United States* v. *Storrs,* 272 U. S. 652, 654; *United States* v. *Murdock,* 284 U. S. 141, 147. The motion and the affidavit in its support challenged the sufficiency of the indictment in the light of the bill of particulars. As it does not appear that the decision of the District Judge was based upon the construction or invalidity of the statute upon which the indictment is founded, and as it may well be that the decision was based upon the construction of the indictment and its insufficiency as a pleading, this Court is without jurisdiction of the appeal. *United States* v. *Carter,* 231 U. S. 492, 493, 494; *United States* v. *Moist,* 231 U. S. 701, 702; *United States* v. *Colgate & Co.,* 250 U. S. 300, 301, 302; *United States* v. *Hastings, ante,* p. 188.

Dismissed.

CORPORATION COMMISSION OF OKLAHOMA ET AL. *v.* CARY, TRUSTEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

No. 124. Argued December 13, 1935.—Decided December 23, 1935.

1. The Act of May 14, 1934, restricting the jurisdiction of the District Court over suits to restrain the enforcement of orders of state

administrative boards or commissions affecting unconstitutionally the rates chargeable by public utilities, is by its terms inapplicable where the existence of an effective judicial remedy in the state courts is uncertain. P. 457.

2. In granting a temporary injunction restraining enforcement of gas rates prescribed by a commission in Oklahoma which were alleged to be confiscatory, the District Court rightfully concluded that, in view of the conflicting decisions of the Supreme Court of the State, the right to a judicial review of the order in the state courts was seriously uncertain. P. 458.
3. Upon appeal from such an interlocutory decree, review by this Court is confined to the questions whether the District Court had jurisdiction and whether it abused its discretion. *Id.*
4. Adjudication of these questions cannot be influenced by a decision of the state court made after the District Court had acquired jurisdiction and entered the interlocutory decree. *Id.*

9 F. Supp. 709, affirmed.

APPEAL from an interlocutory decree of the three judge District Court restraining the enforcement of an administrative order prescribing gas rates.

Mr. Holmes Baldridge for appellants.

A plain, speedy and efficient remedy at law in the state courts is available. The Supreme Court of Oklahoma reviews judicially such orders as are here involved, and therefore the Act of May 14, 1934, depriving the lower federal courts of jurisdiction is applicable.

A plain, speedy and efficient remedy in equity is available. The State District Courts of Oklahoma have equity power judicially to review orders of the Corporation Commission.

An adequate equitable remedy is available, and therefore due process of law requirements are met, even though review by the State Supreme Court be legislative rather than judicial in character.

The phrase "in equity" is sufficiently broad to include legislative review. *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428; *Porter* v. *Investors Syndicate,* 286 U. S. 461.

Legislative review by the State Supreme Court does not prevent judicial review by the Supreme Court of the United States of the legislative order of the Supreme Court. *Washington ex rel. Oregon R. & N. Co.* v. *Fairchild,* 224 U. S. 510; *Sterling Refining Co.* v. *Walker,* 165 Okla. 45; *Oklahoma Cotton Ginners' Assn.* v. *State,* 51 P. (2d) 327.

This Court has, by necessary implication, held that it has power to review judicially an order of the Supreme Court of Oklahoma, acting legislatively in a public utility rate proceeding. *Oklahoma Natural Gas Co.* v. *State,* 258 U. S. 234.

A broad interpretation of congressional language will always be made in order to effectuate the congressional purpose. *Oklahoma Natural Gas Co.* v. *Russell,* 261 U. S. 290; *Louisville & N. Ry. Co.* v. *Finn,* 235 U. S. 601; *Cumberland Tel. & Tel. Co.* v. *Louisiana Pub. Serv. Comm'n,* 260 U. S. 212; *Georgia Continental Tel. Co.* v. *Georgia Pub. Serv. Comm'n,* 8 F. Supp. 434.

Messrs. Streeter B. Flynn and *Robert M. Rainey* for appellee.

This question whether the State Supreme Court acted in a judicial or legislative capacity in affirming the gas rate order involved herein was not then doubtful. Theretofore the State Supreme Court had repeatedly and consistently held that it acted legislatively in reviewing such orders; and when occasion required it had substituted rates for those established by the Commission.

The Supreme Court of the State actually established rates pursuant to the legislative power vested in it under § 23, Art. IX of the state constitution.

This Court, the United States Circuit Court of Appeals for the Tenth Circuit, and the District Courts of the United States in Oklahoma, have consistently recognized the question as settled. *Oklahoma Natural Gas Co.* v.

Russell, 261 U. S. 290; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.,* 292 U. S. 386, 388; *Oklahoma Gas & Electric Co.* v. *Wilson & Co.,* 54 F. (2d) 596, 598; *Frost* v. *Corporation Comm'n,* 26 F. (2d) 508, 516, reversed on other grounds, 278 U. S. 515; *Oklahoma Gas & Electric Co. v. Corporation Comm'n,* 1 F. Supp. 966, 967; *Oklahoma Gas & Electric Co.* v. *Oklahoma Packing Co.,* 6 F. Supp. 893, 894, reversed on other grounds, 292 U. S. 386.

In view of many cases there can be no question but that the Supreme Court of the State, in affirming the order complained of herein, acted legislatively.

In *Oklahoma Cotton Ginners Assn.* v. *State,* 51 P. (2d) 327, the Supreme Court of the State held that its review of orders similar to the one involved herein was judicial. It recognized, however, in the opinion, that it had been reviewing similar orders legislatively in the past, but said that its right to exercise such legislative jurisdiction either had not been challenged, or was due to the fact that the parties had stipulated it might exercise such jurisdiction.

It will be observed that appellants in their briefs are unable to refer to any case wherein the Supreme Court of Oklahoma has even intimated that the law was unsettled in regard to the nature of its review of gas rate orders, except the recent case of *Oklahoma Cotton Ginners Assn.* v. *State, supra.*

Under § 22, Art. IX, of the state constitution, the supreme court was expressly prohibited from permitting a party to introduce evidence. When a state constitution expressly forbids a court, under any circumstances, to permit the introduction of evidence, we submit a review cannot be judicial. While the Supreme Court of Oklahoma may say that its review is judicial, "we must not be misled by name but look to the substance and intent of the proceeding." *Federal Radio Comm'n* v. *Nelson Bros. Co.,* 289 U. S. 266.

In the event a reduction in rates is ordered and the utility prosecutes an appeal to the State Supreme Court, asserting in that court that the reduced rates deprive it of its property without due process of law, contrary to the Fourteenth Amendment, it cannot under any circumstances introduce in that court evidence in support of such claim. This fact we suggest prevents the appeal from being judicial. *Ohio Valley Water Co.* v. *Ben Avon Borough,* 253 U. S. 287, 289; *Crowell* v. *Benson,* 285 U. S. 22, 26; *Denver Stock Yard Co.* v. *United States,* 57 F. (2d) 735, 739; *American Comm. Co.* v. *United States,* 11 F. Supp. 965, 969. Cf. *Oklahoma Gas & Electric Co.* v. *Corporation Comm'n,* 1 F. Supp. 966.

Appellants again urge, as they did in the lower court, that if the Supreme Court of the State affirms a rate order of the Commission, it acts judicially, while if it reverses the order its action is legislative. The cases of *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, 226, 227, 229, 230, and *McAlester Gas & Coke Co.* v. *Corporation Comm'n,* 101 Okla. 268, 270, effectively answer the argument.

When this suit was filed, the decree entered, and this appeal taken, no remedy existed at law or in equity in the courts of the State.

Appellee's right to assert his constitutional objections to the Commission's order accrued when his petition for rehearing was denied by the State Supreme Court in June, 1934. This right still existed when the decree herein was entered in February, 1935, and "whatever may be the prospective effect" of the decision in *Oklahoma Cotton Ginners Assn.* v. *State,* 174 Okla. 243; 51 P. (2d) 327, "it cannot be given a retroactive effect in respect of the judgment of the Federal District Court so as to 'make that erroneous which was not so when the judgment of that court was given,'" (*Concordia Ins. Co.* v. *School District,* 282 U. S. 545, 553–554) or to take away the

right, which he had when this suit was filed, to present his federal question to the United States Court.

PER CURIAM.

This suit was brought in the United States District Court for the Western District of Oklahoma to restrain the enforcement of an order of the Corporation Commission of that State reducing gas rates. Plaintiff, trustee of the properties of the Consolidated Gas Service Company, alleged that the order was confiscatory and violated the due process clause of the Fourteenth Amendment of the Constitution of the United States. Application for an interlocutory injunction was brought before the District Court composed of three judges. 28 U. S. C. 380. Defendants, the Corporation Commission and its members, moved to dismiss the complaint upon the ground that the court was without jurisdiction, by reason of the terms of the Act of Congress of May 14, 1934 (48 Stat. 775) which provide that no District Court shall have jurisdiction to restrain the enforcement of an order of an administrative board or commission of a State--

"where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

Plaintiff contended that the constitution and laws of Oklahoma did not afford an opportunity for judicial review in the courts of the State of orders affecting rates for the transportation and sale of gas. The District Court considered the provision of the Constitution of Oklahoma creating the Corporation Commission and providing for review of its orders (Const. Okla., Art. IX, §§ 20, 23, 35),

the state legislation with respect to appeals from orders affecting gas rates (Laws of 1913, chap. 93, § 5), and the pertinent decisions of the Supreme Court of the State. The District Court found that it had been repeatedly held by the state court that the reviewing power conferred upon it by the provision of the state constitution was legislative in character (compare *Oklahoma Natural Gas Co.* v. *Russell,* 261 U. S. 290, 291); and upon the question whether any opportunity was afforded in the courts of the State for a judicial review of an order of the Commission, the District Court found serious uncertainty because of "diametrically opposed decisions" of the state court. And as it did not appear that "a plain, speedy, and efficient remedy" could be had "at law or in equity in the courts of such State," the District Court took jurisdiction and granted an injunction pending a hearing upon the merits. 9 F. Supp. 709.

We find no error in that action. An examination of the decisions of the Supreme Court of Oklahoma confirms the conclusion reached by the court below as to the uncertainty with which it was confronted and the consequent lack of the effective judicial remedy in the state courts which was contemplated by the Act of May 14, 1934. The question presented on this appeal from the interlocutory order is whether the District Court had jurisdiction, and, if so, whether it abused its discretion in issuing the injunction. *Alabama* v. *United States,* 279 U. S. 229, 231; *National Fire Ins. Co.* v. *Thompson,* 281 U. S. 331, 338; *United Fuel Gas Co.* v. *Public Service Comm'n,* 278 U. S. 322, 326, 327; *Baldwin* v. *G. A. F. Seelig, Inc.,* 293 U. S. 522. Appellants' counsel invoke the decision of the Supreme Court of Oklahoma in *Oklahoma Cotton Ginners' Assn.* v. *State,* 174 Okla. 243, but it is unnecessary to analyze that decision or to attempt to determine its import in relation to subsequent litigation, as the decision was rendered after this suit was brought and the interlocutory injunction had been

granted. The jurisdiction of the District Court had already attached and there is no ground for concluding that the granting of the injunction was an improvident exercise of judicial discretion.

The decree is

Affirmed.

RADIO CORPORATION OF AMERICA *v.* RAYTHEON MANUFACTURING CO.

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

No. 127. Argued December 11, 1935.—Decided December 23, 1935.

In an action at law for damages, the issue whether a release relied on by the defendant and attacked by the plaintiff is void at law, cannot be transferred on motion of the defendant and over the plaintiff's objection for decision as an equitable issue. P. 462.
76 F. (2d) 943, affirmed.

CERTIORARI* to review the reversal of a decree sustaining a release set up as a defense in an action for triple damages under the Sherman Act.

Messrs. John W. Davis and *Richard Wait* argued the cause and *Mr. Davis,* with *Messrs. John L. Hall, Manton Davis,* and *Claude R. Branch,* filed a brief, for petitioner.

Mr. Edward F. McClennen for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The question is whether in the circumstances here exhibited the validity of a release pleaded by a defendant as a bar to a cause of action at law is triable in equity.

Plaintiff, respondent in this court, is a Massachusetts corporation, once known as Raytheon Manufacturing Company, now known as Raytheon, Inc. It sues for the

* See Table of Cases Reported in this volume.