

DECISIONS PER CURIAM, ETC., FROM APRIL 12,  
1938, THROUGH MAY 31, 1938.\*

No. 887. EUREKA PRODUCTIONS, INC. *v.* LEHMAN, GOVERNOR, ET AL. Appeal from the District Court of the United States for the Southern District of New York. Decided April 25, 1938. *Per Curiam*: The motion of the appellees to affirm is granted and the judgment is affirmed. *Mutual Film Corp. v. Ohio Industrial Comm'n*, 236 U. S. 230, 240, 241; *Mutual Film Corp. v. Kansas*, 236 U. S. 248, 258. *Mr. Henry Pearlman* for appellant. *Mr. Henry Epstein*, Solicitor General of New York, for appellees.

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No. 965. TENNESSEE ELECTRIC POWER CO. *v.* ICKES, ADMINISTRATOR OF THE FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS. Appeal from the District Court of the United States for the District of Columbia. Decided April 25, 1938. *Per Curiam*: The motion of the appellee to affirm is granted and the decree of the District Court is affirmed. *Alabama Power Co. v. Ickes*, 302 U. S. 464; *Duke Power Co. v. Greenwood County*, 302 U. S. 485. *Mr. Spencer Gordon* for appellant. *Acting Solicitor General Bell* for appellees. Reported below: 22 F. Supp. 639.

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No. —, original. EX PARTE VICTOR J. EVANS. April 25, 1938. The motion for leave to file petition for writ of habeas corpus is denied.

\* Mr. Justice Cardozo was absent from the bench, on account of illness, during the period covered by this volume.

For decisions on applications for certiorari, see *post*, pp. 552, 558; for rehearing, *post*, p. 586.

NO. 511. *NEW NEGRO ALLIANCE ET AL. v. SANITARY GROCERY Co.* April 25, 1938. It is ordered that the opinion in this cause be amended (1) by striking out the last three sentences in the first full paragraph on page 5 and substituting therefor the following: "The Court of Appeals thought that the dispute was not a labor dispute within the Norris-LaGuardia Act because it did not involve terms and conditions of employment such as wages, hours, unionization or betterment of working conditions, and that the trial court, therefore, had jurisdiction to issue the injunction. We think the conclusion that the dispute was not a labor dispute within the meaning of the Act, because it did not involve terms and conditions of employment in the sense of wages, hours, unionization or betterment of working conditions is erroneous.";

(2) By striking out of the second full paragraph on page 6 the first and second sentences and so much of the third sentence as reads: "In the first place" and starting a new sentence with a capital "T";

(3) By striking out the words "In the second place" in the fourth sentence in the second full paragraph on page 6 and beginning the sentence with a capital "T."

Opinion reported as amended, 303 U. S. 552.

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Nos. 715 and 716. *WRIGHT v. UNION CENTRAL LIFE INSURANCE Co.* April 25, 1938. In view of the Act of August 24, 1937 (50 Stat. 751), the Court hereby certifies to the Attorney General of the United States that the constitutionality of § 75 of the Bankruptcy Act, as amended by the Act of August 28, 1935 (49 Stat. 942), is drawn in question in this cause. *Messrs. Samuel E. Cook, Wm. Lemke, Elmer McClain, and Ray M. Foreman* for petitioner. *Messrs. Louis M. Mantynband, Stanley K. Henshaw, and Virgie D. Parish* for respondent. Reported below: 91 F. 2d 894.

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No. 978. *AMERICAN NATIONAL BANK v. AMES ET AL.* April 25, 1938. It is ordered that execution pursuant to the judgment of the Supreme Court of Appeals of Virginia entered in this cause be, and the same is hereby, stayed pending action upon the petition for writ of certiorari. *Messrs. George P. Barse, Tazewell Taylor, and L. E. Birdzell* for petitioner. *Messrs. Wm. G. Maupin and James E. Heath* for respondent. Reported below: 169 Va. 711; 194 S. E. 784.

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No. 960. *ARIZONA PUBLISHING Co. v. O'NEIL ET AL., MEMBERS OF AND CONSTITUTING THE STATE TAX COMMISSION OF ARIZONA.* Appeal from the District Court of the United States for the District of Arizona. Decided May 2, 1938. *Per Curiam*: The judgment is affirmed. *Grosjean v. American Press Co.*, 297 U. S. 233, 250; *Associated Press v. Labor Board*, 301 U. S. 103, 133; *Giragi v. Moore*, 301 U. S. 670. *Messrs. Elisha Hanson and John Mason Ross* for appellant. *Mr. Allan K. Perry* for appellees. Reported below: 22 F. Supp. 117.

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No. —, original. *EX PARTE ELZA G. WYATT.* May 2, 1938. The motion for leave to file petition for writ of habeas corpus is denied.

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No. 18, original. *EX PARTE TINKOFF.* May 2, 1938. Motion for leave to proceed *in forma pauperis* granted. Motion for leave to file petition for writ of certiorari also granted. *Paysoff Tinkoff, pro se.*

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No. 891. *PHILADELPHIA v. UNION TRACTION Co.* May 2, 1938. The application for writ of certiorari to the

Circuit Court of Appeals for the Third Circuit is dismissed as premature. *Craig v. United States*, 298 U. S. 637; *Continental Oil Co. v. United States*, 299 U. S. 510. Mr. G. Coe Farrier for petitioner. Messrs. Francis Shunk Brown and Joseph Gilfillan for respondent.

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No. 9, original. NEBRASKA *v.* WYOMING ET AL. May 2, 1938. After argument on the motion of the United States for leave to intervene and on the objections of the several States thereto, it was ordered that a proposed form of order be prepared by counsel and submitted for the consideration of the Court.

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No. 215. TAX COMMISSION *v.* WILBUR ET AL., CO-TRUSTEES. Certiorari, 302 U. S. 668, to the Court of Appeals of Cuyahoga County, Ohio. Argued January 6, 1938. Decided May 16, 1938. *Per Curiam*: The writ of certiorari is dismissed as it appears upon argument that the judgment sought to be reviewed rests upon a non-federal ground adequate to support it. *Cuyahoga Power Co. v. Northern Realty Co.*, 244 U. S. 300, 303, 304; *Knights of Pythias v. Meyer*, 265 U. S. 30, 32, 33; *Lynch v. New York*, 293 U. S. 52, 54, 55. Messrs. A. F. O'Neil, First Assistant Attorney General of Ohio, and Will P. Stephenson, with whom Messrs. Herbert S. Duffy, Attorney General of Ohio, and W. H. Middleton, Jr. were on the brief, for petitioner. Mr. Edwin H. Chaney, with whom Messrs. Harold T. Clark, Atlee Pomerene, and Howard L. Barkdull were on the brief, for respondents. By leave of Court, Mr. Mortimer M. Kassell filed a brief on behalf of the Tax Commission of the State of New York, as *amicus curiae*, in support of the petitioner.

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No. —. NORTHERN PACIFIC R. CO. ET AL. *v.* UNITED STATES ET AL.; and

No. —. SCHMIDT ET AL. *v.* UNITED STATES ET AL. May 16, 1938. The applications, presented to the Chief Justice and referred by him to the Court, are denied.

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No. —, original. EX PARTE CLARENCE M. BRUMMITT; and

No. —, original. EX PARTE JOSEPH J. MCCARTHY. May 16, 1938. Applications denied.

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No. 9, original. NEBRASKA *v.* WYOMING ET AL. Argued May 2, 1938. Decided May 16, 1938. The United States having moved for leave to intervene herein, and the States of Nebraska, Wyoming, and Colorado having filed their objections to the granting of such motion, and the Court having heard argument by counsel upon the motion and objections;

It is now here ordered and adjudged as follows:

1. The motion of the United States for leave to intervene as a party herein is granted;

2. The United States shall have leave to file a petition of intervention within thirty days, with leave to the States of Nebraska, Wyoming, and Colorado within thirty days thereafter to file their answers thereto;

3. The record and testimony already received and exhibits filed shall stand as against the United States as the record of evidence in the cause to this date; but the United States shall be permitted to introduce such evidence as it may deem necessary to correct and supplement such testimony and exhibits;

4. This order shall be without prejudice to the determination on final decree of any of the substantive questions of law or fact advanced or to be advanced by any of the parties herein;

5. The States of Nebraska, Wyoming, and Colorado agree, and it is hereby ordered that, the United States may amend its petition at any time hereafter during the proceedings herein;

6. The orders heretofore entered with respect to reference to the Special Master are hereby extended to include the issues raised or to be raised by the intervention of the United States.

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No. 1, original. *GEORGIA v. TENNESSEE COPPER CO. ET AL.* May 16, 1938. Decree entered vacating all orders and decrees which have heretofore been entered in this cause against The Ducktown Sulphur, Copper & Iron Company, Ltd., and Tennessee Copper Company excepting insofar as they relate to the taxation of costs, and the cause dismissed. A rule is ordered to issue returnable on May 26, next, requiring the Ducktown Chemical & Iron Company to show cause why it should not pay costs charged against the defendant Ducktown Sulphur, Copper & Iron Company, Ltd. *Mr. M. J. Yeomans*, Attorney General of Georgia, for complainant. *Mr. R. M. McConnell* for Tennessee Copper Co.

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No. 357. *GENERAL TALKING PICTURES CORP. v. WESTERN ELECTRIC CO. ET AL.* May 16, 1938. It is ordered that the opinion in this cause be amended by striking from the last sentence of the opinion the word "original" and by inserting in its place the word "continuation," and by striking therefrom the words "the continuation applications" and inserting in their place the word "they." As amended, the sentence reads as follows: "In the absence

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of intervening adverse rights for more than two years prior to the continuation applications, they were in time." Reported as amended, *ante*, p. 175.

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No. 943. CONWAY *v.* ALLEN, JUDGE, ET AL. May 16, 1938. On suggestion of a diminution of the record the motion for a writ of certiorari to the Supreme Court of the State of Washington is denied. The petition for rehearing is also denied. *Tom Conway, pro se.* No appearance for respondent.

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No. 21, original. EX PARTE NATIONAL LABOR RELATIONS BOARD ET AL. May 16, 1938. Motion for leave to file petition for writs of prohibition and mandamus submitted by *Mr. Solicitor General Jackson* for the petitioners. The motion for leave to file the petition is granted and a rule is ordered to issue directed to the Honorable Joseph Bufington, the Honorable J. Warren Davis, the Honorable J. Whitaker Thompson, Circuit Judges of the Third Judicial Circuit, and the other judges and officers of the Circuit Court of Appeals for the Third Circuit, to show cause why the relief should not be granted as prayed. Said rule shall be returnable on Monday, May 23, at twelve o'clock, when the parties will be heard upon the question of the jurisdiction of the Circuit Court of Appeals to make the order complained of. *Solicitor General Jackson* and *Mr. Robert B. Watts* for petitioners. *Messrs. Luther Day, Thomas F. Patton, Joseph W. Henderson, Thomas F. Veach* and *Mortimor S. Gordon* for the Republic Steel Corporation.

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No. 980. McALVAY ET AL. *v.* STOCKWELL ET AL. Appeal from the Supreme Court of California. Decided May 23, 1938. *Per Curiam*: The appeal herein 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 a writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. *Mr. Joseph L. Lewinson* for appellants. *Mr. Nathan Newby* for appellees. Reported below: 10 Cal. 2d 748; 74 P. 2d 504.

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No. 996. *HUGHES v. WISCONSIN TAX COMMISSION ET AL.* Appeal from the Supreme Court of Wisconsin. Decided May 23, 1938. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for the want of a properly presented substantial federal question. (1) *Hiawassee Power Co. v. Carolina-Tenn. Co.*, 252 U. S. 341, 344; *Whitney v. California*, 274 U. S. 357, 360; *White River Co. v. Arkansas*, 279 U. S. 692, 700; *Morris v. Alabama*, 302 U. S. 642. (2) *Lawrence v. State Tax Commission*, 286 U. S. 276, 279-281; *New York ex rel. Cohn v. Graves*, 300 U. S. 308, 313. *Mr. S. W. Jensch* for appellant. *Mr. Joseph E. Messerschmidt* for appellees. Reported below: 227 Wis. 403; 278 N. W. 403.

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No. 997. *DROMEY, ADMINISTRATOR v. WISCONSIN TAX COMMISSION ET AL.* Appeal from the Supreme Court of Wisconsin. Decided May 23, 1938. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted and the appeal is dismissed for the want of a properly presented substantial federal question. (1) *Hiawassee Power Co. v. Carolina-Tenn. Co.*, 252 U. S. 341, 344; *Whitney v. California*, 274 U. S. 357, 360; *White River Co. v. Arkansas*, 279 U. S. 692, 700; *Morris v. Alabama*, 302 U. S. 642; (2) *Lawrence v. State Tax Commission*, 286 U. S. 276, 279-281; *New York ex rel. Cohn v. Graves*, 300

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U. S. 308, 313; *Mitchell v. United States*, 21 Wall. 350, 353. *Mr. S. W. Jensch* for appellant. *Mr. Joseph E. Messerschmidt* for respondents. Reported below: 227 Wis. 400; 278 N. W. 400.

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No. 1010. *BERMAN v. ILLINOIS BELL TELEPHONE CO. ET AL.* Appeal from the District Court of the United States for the Northern District of Illinois. May 23, 1938. *Per Curiam*: The motion to affirm is granted. *Mr. Meyer Abrams* for appellant. *Messrs. Kenneth F. Burgess, Leslie N. Jones, and W. Clyde Jones* for appellees.

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No. —, original. *EX PARTE DENNIS J. MCCARTHY.* May 23, 1938. Application denied.

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No. 16, original. *MISSOURI v. IOWA.* May 23, 1938. Samuel Williston, Esq., of Cambridge, Massachusetts, appointed Special Master in this cause.

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No. 993. *CHAMPLIN REFINING CO. v. RYAN, SECRETARY OF STATE.* Appeal from the Supreme Court of Kansas. Decided May 31, 1938. *Per Curiam*: The appeal herein 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). The petition for writ of certiorari is denied. *Mr. Horace G. McKeever* for appellant. No appearance for respondent. Reported below: 147 Kan. 160; 75 P. 2d 245.

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No. 1004. *MUTUAL BENEFIT, HEALTH & ACCIDENT ASSN. v. BOWMAN.* On petition for writ of certiorari to

the Circuit Court of Appeals for the Eighth Circuit. Decided May 31, 1938. *Per Curiam*: The petition for writ of certiorari is granted limited to the question of the right of respondent to recover under the law of New Mexico. The judgment of the Circuit Court of Appeals is vacated and the cause is remanded to the Circuit Court of Appeals for determination of the question presented. *Erie Railroad Co. v. Tompkins*, ante, p. 64; *New York Life Ins. Co. v. Jackson*, ante, p. 261; *Rosenthal v. New York Life Ins. Co.*, ante, p. 263. *Messrs. John S. Leahy, Philip E. Horan, and William C. Michaels* for petitioner. No appearance for respondent. Reported below: 96 F. 2d 7.

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No. 1045. *MOSHER v. AMERICAN SURETY CO. ET AL.* Appeal from the Superior Court of Maricopa County, Arizona. Decided May 31, 1938. *Per Curiam*: The motion of the appellee to dismiss the appeal 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 a writ of certiorari as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. *Mr. John W. Ray* for appellants. *Mr. Fred Blair Townsend* for appellees. Reported below: 48 Ariz. 552.

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No. 948. *NED ET AL. v. ROBINSON.* Appeal from the Supreme Court of Oklahoma. Decided May 31, 1938. *Per Curiam*: The appeal herein is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938). The petition for writ of certiorari is denied. *Mr. H. A. Ledbetter* for appellants. No appearance for appellee. Reported below: 181 Okla. 507; 74 P. 2d 1156.

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No. 1030. OIL SHARES INCORPORATED *v.* COMMERCIAL TRUST CO. ET AL. On petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit. Decided May 31, 1938. *Per Curiam*: The petition for writ of certiorari is granted, the decree of the Circuit Court of Appeals is reversed, and the decree of the District Court dismissing the complaint as to the respondent, Commercial Trust Company of New Jersey, is vacated. The cause is remanded to the District Court with instructions to set forth its findings of fact and conclusions of law in accordance with Equity Rule 70 $\frac{1}{2}$ . *Mr. William M. Chadbourne* for petitioner. *Messrs. Thomas G. Haight and Albert C. Wall* for respondents. Reported below: 94 F. 2d 751.

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No. —, original. EX PARTE MERRITT B. SCHUYLER. May 31, 1938. Application denied.

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No. 1, original. GEORGIA *v.* TENNESSEE COPPER CO. ET AL. May 31, 1938. The return to the rule to show cause is received and ordered to be filed with leave to file a supplemental return on or before October 3, next.

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No. 11, original. TEXAS *v.* NEW MEXICO. May 31, 1938. Motion for leave to file petition and brief on behalf of Belen-Ladera Acequia, as *amicus curiae*, denied.

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No. —, original. EX PARTE FOWLER, ADMINISTRATOR, ET AL. May 31, 1938. The motion for leave to file petition for writ of mandamus is denied. Reported below: 95 F. 2d 627.

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No. 313. LONE STAR GAS CO. *v.* TEXAS ET AL. May 31, 1938. It is ordered that the opinion in this cause be amended by striking the word "interstate" from the ninth

line on page four thereof and substituting the word "intra-state" therefor, so that the sentence will read: "The fair value of its intrastate property was thus claimed to be \$38,350,882.32 and the net amount available at the Commission's rate for return on intrastate deliveries of gas as less than four per cent." Reported as amended, *ante*, p. 224.

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No. 72. CROWN CORK & SEAL CO. *v.* FERDINAND GUTMANN Co. May 31, 1938. The motion to amend the judgment is denied. *Messrs. Thomas G. Haight and John J. Darby* for petitioner. *Mr. Wm. E. Warland* for respondent. Reported below: 86 F. 2d 698. See *ante*, p. 159.

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DECISIONS GRANTING CERTIORARI, FROM  
APRIL 12, 1938, THROUGH MAY 31, 1938.

No. 437. HINDERLIDER, STATE ENGINEER, ET AL. *v.* LAPLATA RIVER & CHERRY CREEK DITCH Co. See *ante*, p. 92.

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No. 877. STAHMANN ET AL. *v.* VIDAL, COLLECTOR OF INTERNAL REVENUE. April 25, 1938. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit granted, limited to the question whether the petitioners were the proper parties to maintain the suit. *Mr. Thornton Hardie* for petitioners. *Solicitor General Jackson, Assistant Attorney General Morris*, and *Messrs. Sewall Key and F. E. Youngman* for respondent. Reported below: 93 F. 2d 902.

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No. 905. DAVIS *v.* DAVIS. April 25, 1938. Petition for writ of certiorari to the Court of Appeals for the