

Syllabus.

DELAWARE RIVER JOINT TOLL BRIDGE
COMMISSION *v.* COLBURN ET AL.

CERTIORARI TO THE COURT OF ERRORS AND APPEALS OF
NEW JERSEY.

No. 563. Argued February 26, 1940.—Decided May 27, 1940.

1. The construction of a compact made between two States and sanctioned by an Act of Congress involves a federal "title, right, privilege or immunity" which, when "specially set up and claimed" in a state court, may be reviewed under § 237 (b) of the Judicial Code. P. 427.
2. The compact of 1934 between New Jersey and Pennsylvania created a commission to perform state functions, including the location, construction and operation of bridges over the Delaware River; to that end it authorized the commission to acquire real property by purchase or eminent domain, defining real property as embracing "interests in land," including "claims for damages to real estate," and provided that, where resort to eminent domain was needful for the acquisition of such interests, the exercise of the power should be "in the manner provided" by an Act of New Jersey of April 1, 1912, as amended. *Held:*
 - (1) That, beyond payment for the land or interests therein of the price agreed upon by the Commission or fixed by proceedings in eminent domain, the Compact imposes no obligation on the Commission to compensate for damages inflicted by its acts, but leaves the Commission to such liability as is imposed by the law of the State within which the Commission acts, including the Act of 1912, as amended, in so far as the Compact has made that Act applicable. P. 428.
 - (2) Under the generally applicable decisions and statutes of New Jersey the Commission is not liable to pay such consequential damages. P. 430.
 - (3) The New Jersey statute of 1912, mentioned in the Compact, was by its terms applicable to a commission other than petitioner, and authorized the former to acquire by a prescribed procedure, existing bridges by purchase or eminent domain and to determine "damages for property taken, injured or destroyed." P. 429.
 - (4) Under the Compact, the New Jersey statute of 1912 is excluded from the operation of the Compact except as it affords a manner or procedure for exercising the right of eminent domain,

which is called into operation by the Compact only if the Commission is unable to acquire needed property by purchase and then only as a means of fixing the compensation which under the Compact the Commission is required to pay. P. 431.

3. Even though it were intended by the Compact to adopt the rule of damages prescribed by Art. XVI, § 8 of the Pennsylvania Constitution (1874), which provides that "Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements . . .," that section, as construed by the Supreme Court of Pennsylvania before the adoption of the Compact, applies only where there is a taking by eminent domain, and, in the absence of statute, gives no right of recovery from a landowner for consequential damages resulting from structures erected wholly on his own land whether acquired by purchase or by eminent domain. P. 432.

123 N. J. L. 197; 8 A. 2d 563, reversed.

CERTIORARI, 308 U. S. 549, to review the affirmance of a judgment sustaining a special verdict and awarding a peremptory mandamus (119 N. J. L. 600; 197 A. 896) requiring the Bridge Commission to pay consequential damages resulting from the construction of a bridge abutment on land purchased by the Commission, or to take further proceedings for a determination of the amount.

Mr. Edward P. Stout, with whom *Mr. John H. Pursel* was on the brief, for petitioner.

The meaning and application of the Compact present a federal question for ultimate adjudication by this Court. U. S. Const., Art. III, § 2; *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 110; *Kentucky v. Indiana*, 281 U. S. 163; *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 13 How. 518; *Green v. Biddle*, 8 Wheat. 1.

Even though the construction of interstate compacts involves determination of the effect of the legislation of

either State, this Court has the authority and duty to determine for itself all questions pertaining to the compact.

The two States are not necessary parties to this review. *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, *supra*.

The Compact is to be governed not by the statutes or judicial decisions of either State, or by decisions construing federal statutes, but by the "federal common law." *Hinderlider* case, *supra*; *Smith v. Alabama*, 124 U. S. 465, 477, 478.

The Compact is a contract, and the rule of law is that contracts to which the State is a party should be construed in favor of the State. *Panama-Pacific International Exposition Co. v. Panama-Pacific International Commission*, 178 Cal. 746; 174 P. 890.

The Compact did not give respondents a right to consequential damages.

In New Jersey there was and is no constitutional provision for damages for "injury" to property, but there is a provision only for damages for "taking" (Art. I, § 16).

Under the New Jersey decisions there was no right to light, air and view over other lands, nor in eminent domain proceedings was there any right to an award for consequential damages for obstruction of view, limitation of light and air, or from the closing of streets. *Barnett v. Johnson*, 15 N. J. Eq. 481; *Harwood v. Tompkins*, 24 N. J. L. 425; *Hayden v. Dutcher*, 31 N. J. Eq. 217; *Newark v. Hatt*, 79 N. J. L. 548; *R. & A. Realty Corp. v. Pennsylvania R. Co.*, 16 N. J. Misc. Repts. 537.

The Pennsylvania Constitution provides for damages to property "injured" as well as damages for "taking," (Art. 16, § 8).

The Courts of Pennsylvania have held that even under their Constitution there could be no recovery by adjoining landowners for consequential damages unless, in addition

to the constitutional provision, there was a statute expressly giving a right thereto. *In re Soldiers and Sailors Memorial Bridge*, 308 Pa. 487; *Hoffer v. Reading Co.*, 287 Pa. 120; *Westmoreland C. & C. Co. v. Public Service Commission*, 294 Pa. 451; *Pennsylvania R. Co. v. Marchant*, 119 Pa. 541; aff'd 153 U. S. 380; *Pennsylvania R. Co. v. Lippincott*, 116 Pa. 472; *Holmes v. Public Service Commission*, 79 Pa. Sup. Ct. 381.

In other jurisdictions, even with constitutional provisions similar to those of Pennsylvania and with statutory provisions similar to the language of the Compact in question, injuries of the kind here involved were held to be *damnum absque injuria*. Cf. *Howell v. New York, N. H. & H. R. Co.*, 221 Mass. 169; *Eachus v. Los Angeles R. Co.*, 103 Cal. 614, 617.

The "federal common law," under which the compact is to be construed, adopts the general common law, *Smith v. Alabama*, 124 U. S. 465; and in construing the Compact between Pennsylvania and New Jersey, both of which are common law states, the sound and safe principles of the general common law should be applied.

The Compact should be strictly construed against the enlargement of the common law principle. *Shaw v. Railroad Co.*, 101 U. S. 557.

The Compact fails to bring to light any intention to create new, undefined and unlimited rights to consequential damages. The definition in the Compact of the term "real property" as including "claims for damage to real estate" relates only to that which the Bridge Commission may acquire by purchase or condemnation, and not to claims against the Commission.

The words "damage to real estate" clearly mean that when the Bridge Commission acquires real property by purchase or condemnation, it may also acquire claims for damage to real estate existing in favor of the property owners and against third parties.

The 1912 Act, as amended in 1919, only provided for the acquisition of existing toll bridges and turning of them into free bridges, and did not contemplate the construction of new bridges.

Reference in the Compact to the Act of 1912, as amended, provided only a specific eminent domain method, and gave no right to consequential damages.

Mr. Egbert Rosecrans for respondents.

The Court is without jurisdiction because the question presented for review is the construction of a state statute. *People v. Central R. Co. of N. J.*, 42 N. Y. 283, 294; 12 Wall. 455; *Adams v. Russell*, 229 U. S. 353; *Kenney v. Craven*, 215 U. S. 125.

The meaning and application of an interstate compact do not present a federal question.

The Compact clause does not make the Supreme Court the final arbiter with respect to the interpretation of interstate compacts. 34 Yale Law Journal 685, 694-695; *Virginia v. Tennessee*, 148 U. S. 503, 519.

This Court in *People v. Central Railroad*, 12 Wall. 455, has held that the adjudication by the highest state court as to the meaning of an interstate compact does not present a federal question. *People v. Central R. Co.*, 42 N. Y. 283. Cf. *Hinderlider v. LaPlata River & Cherry Creek Ditch Co.*, 304 U. S. 92.

The cases cited by petitioner do not hold that the interpretation of an interstate compact standing alone presents a federal question. *Hinderlider v. LaPlata River Co.*, *supra*; *Kentucky v. Indiana*, 281 U. S. 163; *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 13 How. 518; *Green v. Biddle*, 8 Wheat. 1; *People v. Central Railroad*, 12 Wall. 455; *Fleming v. Fleming*, 264 U. S. 29. See 35 Col. L. Rev. 76.

There is no showing that a federal question was presented for decision to the Court of Errors and Appeals of New Jersey.

The language of the statutes creating the bridge commission and granting it the power of eminent domain expressly provides for the allowance of consequential damages. Chapter 297 of the Laws of New Jersey of 1912, as amended by c. 76 of the Laws of 1919, now Revised Statutes of 1937; *Burns Holding Corp. v. State Highway Commission*, 8 N. J. Misc. 452; *Sommer v. State Highway Commission*, 106 N. J. L. 26; *Wolfson v. Commission of Perth Amboy*, 9 N. J. Misc. 161.

The Constitution of Pennsylvania required compensation for property in that State "taken, injured or destroyed" for public use. Art. 16, § 8.

Under this provision a taking is not a prerequisite to an award for damages caused by a public improvement. The provision was intended for the protection of not only the person whose property was taken, but equally for those who suffered consequential damages by reason of a public improvement. *Pennsylvania R. Co. v. Miller*, 132 U. S. 75; *Chester County v. Brower*, 117 Pa. 647; 12 Atl. 577.

The Pennsylvania courts in interpreting statutes similar to the statute in question have held that the statutes create new rights to consequential damages. Distinguishing *In re Soldiers and Sailors Memorial Bridge*, 308 Pa. 487; 162 Atl. 309; *Hoffer v. Reading Co.*, 287 Pa. 120; 134 Atl. 415; *Westmoreland Chemical & Color Co. v. Public Service Commission*, 294 Pa. 451; 144 Atl. 407; *Pennsylvania Railroad v. Lippincott*, 116 Pa. 462; 9 Atl. 871; *Pennsylvania Railroad v. Marchant*, 119 Pa. 541; 13 Atl. 690. See: *Pennsylvania S. F. R. Co. v. Walsh*, 124 Pa. 544, 558; 17 Atl. 186, 187; *Holmes & Holmes v. Public Service Commission*, 79 Pa. Super. Court, 381, 386.

The Pennsylvania courts in interpreting the constitutional provision and legislation thereunder allowing damages to property injured by an improvement have consistently held that new rights are created in favor of owners who suffer diminution in value of their property

irrespective of their location with reference to the improvement. *Mellor v. Philadelphia*, 160 Pa. 614; 28 Atl. 991; *Bodemer v. County of Northampton*, 101 Pa. Super. Ct. 492; *In re Melon Street*, 182 Pa. 397; 38 Atl. 482; *In re Construction of Walnut St. Bridge*, 191 Pa. 153; 43 Atl. 88; *Re Chatham Street*, 191 Pa. 604; 43 Atl. 365; *Lewis v. Homestead*, 194 Pa. 199; 45 Atl. 123.

The authorities recognize that statutes providing for damages for "property taken, injured or destroyed" apply to all classes of property which is depreciated in value by reason of the improvement. *Lewis on Eminent Domain* (3d ed.) Vol. 1, §§ 359, 360 and 354; *Nicholas on Eminent Domain*, Vol. 1, p. 324.

The New Jersey Act of 1912, as amended, was the exclusive method prescribed for exercising the general power of eminent domain granted the Commission by the Compact.

MR. JUSTICE STONE delivered the opinion of the Court.

The question is of the right of respondents to recover consequential damages to their New Jersey land, due to interference with their access to the land and with their light, air and view caused by petitioner's construction of a bridge abutment on adjacent land. The answer turns on the question whether the Compact of 1934 between New Jersey and Pennsylvania authorizing the construction of the bridge and its approaches, excluded the application to petitioner of a New Jersey statute without which respondents would enjoy no right of recovery under New Jersey law.

Petitioner, the Bridge Commission, is a "body corporate and politic" created by the Compact adopted by the legislatures of the two states, N. J. P. L. 1934, Ch. 215 (now N. J. R. S. 1937, 32: 8-1 *et seq.*), 1931 Pa. P. L. 1352; 1933 Pa. P. L. 827, and consented to by Congress, 49 Stat. 1058 (1935). The Compact authorized the

Commission to build bridges across the Delaware River between the two states, and for that purpose gave the Commission authority to acquire real property by purchase or by the exercise of eminent domain. The Commission, in the exercise of its authority in construction of a bridge between Phillipsburg, New Jersey and Easton, Pennsylvania, acquired by purchase land in the town of Phillipsburg, upon which it has located and constructed a highway approach to the bridge, on an embankment or abutment leading to the New Jersey end of the bridge. The property thus acquired and used includes land adjoining the rear of property owned by respondents, having its front on a public street. The embankment and the land on which it rests also crosses certain streets in the neighborhood not immediately adjacent to respondents' land which have been permanently closed by the public authorities, in order to provide for the bridge approach.

The present suit is a proceeding in mandamus, brought in the New Jersey Supreme Court to compel the Commission to take proceedings, which it is alleged are authorized and required by the Compact, to fix and award compensation to respondents for damages to their land, suffered by reason of the Commission's action in the construction of the abutment. The State Supreme Court sustained the special verdict of a jury which found that the Commission's action had damaged respondents by depriving them of access to their land and their enjoyment of light, air and view. The court found as a matter of law that as the abutment was located wholly on land acquired by the Commission, and as the streets in the neighborhood had been closed and grades changed by state authority, respondents were without right of recovery for the damages suffered, in the absence of some statute authorizing recovery. But it found such a statute in Ch. 297 of P. L. 1912 as amended by Ch. 76 of P. L. 1919

(now N. J. R. S. 1937, 32:9-1 *et seq.*), which it construed with the Compact as requiring the Commission to compensate for the damages which respondents had suffered. 119 N. J. L. 600; 197 A. 896.

Respondents, being without other adequate legal remedy, the court awarded a peremptory mandamus directing petitioner to compensate them for the damage or to take proceedings for the determination of the amount to be awarded as compensation pursuant to the provisions of Article III of the Compact, which it also held required the proceedings for that purpose to be taken according to Chapter 297 of P. L. 1912 as amended by Ch. 76 of P. L. 1919 (now N. J. R. S. 1937, 32:9-1 *et seq.*) On appeal the New Jersey Court of Errors and Appeals affirmed on the same grounds as those on which the Supreme Court rested its decision. 123 N. J. L. 197; 8 A. 2d 563. We granted certiorari, 308 U. S. 549, the questions of the construction of the Compact between states and of the jurisdiction of this Court being of public importance.

In *People v. Central Railroad*, 12 Wall. 455, jurisdiction of this Court to review a judgment of a state court construing a compact between states was denied on the ground that the Compact was not a statute of the United States and that the construction of the Act of Congress giving consent was in no way drawn in question, nor was any right set up under it. This decision has long been doubted, see *Hinderlider v. La Plata Co.*, 304 U. S. 92, 110, note 12, and we now conclude that the construction of such a compact sanctioned by Congress by virtue of Article I, § 10, Clause 3 of the Constitution, involves a federal "title, right, privilege or immunity" which when "specially set up and claimed" in a state court may be reviewed here on certiorari under § 237 (b) of the Judicial Code, 28 U. S. C. § 344. See *Green v. Biddle*, 8 Wheat. 1; *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 13

How. 518; *Wedding v. Meyler*, 192 U. S. 573; cf. *Wharton v. Wise*, 153 U. S. 155; *Kentucky Union Co. v. Kentucky*, 219 U. S. 140, 161; *Hinderlider v. La Plata Co.*, *supra*. Hence we address ourselves to the language of the Compact on which respondents rely to sustain a right of recovery for injury to their lands, for which, apart from the New Jersey statute of 1912, referred to in the Compact, the New Jersey courts have held there is no support in state law.

The Compact created the Commission as a "public corporate instrumentality" of the two states, to perform state functions, among others, the location, construction, operation and maintenance of bridges extending between the two states and across a specified section of the Delaware River. To this end it conferred upon the Commission the power:

"(b) To sue and be sued; . . .

"(h) To enter into contracts; . . .

"(j) To acquire, own, use, lease, operate and dispose of real property and interest in real property, and to make improvements thereon; . . . and

"(m) To exercise the power of eminent domain."

In connection with the acquisition of any real property for any authorized purpose, Article III of the Compact provides:

"If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the State of New Jersey, for any reason whatsoever, then the commission may acquire such property by the exercise of the right of eminent domain, in the manner provided by an act of the State of New Jersey, entitled 'An Act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware River, and providing for free travel across the same,' approved the first day of April, one thousand

nine hundred and twelve (chapter two hundred ninety-seven), and the various acts amendatory thereof and supplementary thereto, relating to the acquisition of interstate toll bridges over the Delaware River.”

It further provides:

“The term ‘real property,’ as used in this compact, includes lands, . . . and interests in land, . . . and any and all things and rights usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.”

It will be noted that the effect of these provisions is to authorize the Commission to acquire “real property” by purchase or by eminent domain, and that by definition real property includes “interests in land” which are so defined as to include “claims for damage to real estate,” and that, where resort to eminent domain is needful for the acquisition of such interests, the exercise of that power is to be “in the manner provided” in the New Jersey statute of 1912 as amended. By its terms the Compact confers upon the Commission the power to acquire the specified interests in land or relating to land, conditioned upon payment for the interests acquired, an amount agreed upon or fixed by proceedings in eminent domain. Beyond this it imposes no duty or obligation on the Commission to compensate for damages inflicted by its acts, but leaves the Commission subject to such liability as is imposed by the law of the state within which the Commission acts.

The New Jersey statute of 1912 which, as prescribed by Article III of the Compact affords the procedure by which the Commission is to exercise its power of eminent

domain, does not enlarge the duties or liability of the Commission as prescribed by the Compact. The amended statute of 1912 authorized a state commission, acting in cooperation with a like commission of Pennsylvania, to acquire the rights, franchises and property of bridge companies owning and operating existing toll bridges across the Delaware River within a specified territory and to operate and maintain them as free bridges.

It authorized the Commission to acquire the bridges by purchase or by eminent domain and for that purpose "to determine the compensation to be allowed as of the time of entry upon the property and taking possession thereof, for the value of property, franchises, easements or rights in the two States." It commands that after view of the premises and hearing, the Commission, in determining the amount of compensation, "shall estimate the value of the property taken, including any easement, rights or franchises incident thereto, as well as the damages for property taken, injured or destroyed, and shall state to whom the damages are payable."

Respondents insist that this direction that the commission created under the 1912 Act "shall estimate . . . damages for property taken, injured or destroyed" is, by the Compact, made a direction to petitioner for payment of consequential injuries to property to which the Compact makes no reference. Under the generally applicable decisions and statutes of New Jersey, as her courts have held in this case, the Commission is without liability to pay consequential damages. But it found a statutory creation of such liability in the Act of 1912 as amended in 1919. At the time of the adoption of the Compact there was no statute in New Jersey purporting to impose such a liability which was on its face applicable to the Commission. If the Act of 1912 as amended imposed such a liability, it appeared to be applicable only to a different corporate body from petitioner and then only in the case

of the transfer of ownership of existing toll bridges to the commission the acquisition of which could inflict no consequential damages. In entering into a compact it was then competent for the states to provide by its terms the extent to which they were to take over and apply to the new Commission, performing a different function under different circumstances, the substantive rules governing compensation upon the acquisition of existing toll bridges under the 1912 Act. The Compact was explicit in its specifications of what property interests should be taken and compensated for, and of the right and authority of the Commission to acquire them by purchase or by eminent domain. By its silence it left the Commission subject to such liability for consequential damages only as was imposed by the laws of the state, including the Act of 1912, except in so far as the Compact restricted the application of that Act. The Compact was equally explicit in its statement of the effect which was to be given to the 1912 Act and its amendments.

It is plain that, under the Compact, without reference to that legislation, the Commission could have acquired land by purchase and built a bridge upon it without subjecting itself to liability for consequential damages. But it was necessary that a procedure should be adopted for the exercise of the power of eminent domain conferred on the Commission by the Compact and this was done by the provision of the Compact that "the Commission may acquire such property by the exercise of the right of eminent domain, in the manner provided" by the 1912 Act. Under the Compact that Act is given effect only to the extent that it affords a manner or procedure of exercising the right of eminent domain, which is called into operation only if the Commission is unable to acquire needed property by purchase and then only as a means of fixing the compensation which, under the Compact, the Commission is required to pay. The Compact can be given

a more extensive effect only by disregarding its language and by attributing to its draftsmen an intention to adopt a rule of damages not generally applicable in the state and now for the first time adopted by a construction plainly inapplicable to the acquisition of existing toll bridges to which the Act of 1912 and its amendments alone referred.

Only by reading into the words of the Compact such a strained and unnatural meaning, is it possible to find in it a modification of the settled law of the state defining the recoverable damages upon the construction of public works. Nothing in the history of the Compact has been brought to our attention to suggest any reason or purpose for such modification in the special case of bridges to be constructed between the two states. Both the New Jersey courts thought they discerned such a reason in Article XVI, § 8 of the Pennsylvania constitution of 1874, which provides: "Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements . . ." In passing upon this case they thought that this provision of the Pennsylvania constitution as construed by two decisions of the Pennsylvania Supreme Court in 1888 and 1889, *Chester County v. Brower*, 117 Pa. 647; 12 A. 577; *Appeal of Delaware County*, 119 Pa. 159; 13 A. 62, required compensation for consequential damages in eminent domain proceedings.

From this they reasoned that by the provisions of the Compact for the acquisition of property by eminent domain proceedings "in the manner" provided by the 1912 Act with its stipulation for payment of "damages for property taken, injured or destroyed" it was intended by the Compact to make the rule of damage under the Pennsylvania constitution applicable to property similarly ac-

quired by the Commission in New Jersey. But this reasoning overlooks the important circumstance that the Pennsylvania courts have consistently ruled that the constitutional provision is without application where there is no taking by eminent domain, and that municipal corporations or others, although possessed of the power of eminent domain, are not liable for consequential damages inflicted by the erection of structures wholly on their own land acquired by purchase. *Pennsylvania R. Co. v. Lippincott*, 116 Pa. 472; 9 A. 871; *Pennsylvania R. Co. v. Marchant*, 119 Pa. 541; 13 A. 690; *Hartman v. Pittsburgh Incline Plane Co.*, 159 Pa. 442; 28 A. 145; *Gillespie v. Buffalo, R. & P. Ry. Co.*, 226 Pa. 31; 74 A. 738; *Ridge-way v. Philadelphia & Reading Ry. Co.*, 244 Pa. 282; 90 A. 652.

Moreover, in 1928, six years before the Compact, the Supreme Court of Pennsylvania, in *Westmoreland Chemical & Color Co. v. Public Service Comm'n*, 294 Pa. 451; 144 A. 407, departed from its ruling in *Chester County v. Brower*, *supra*, and *Appeal of Delaware County*, *supra*, and has since held that the constitutional provision in the absence of a statute requiring it gives no right of recovery from a landowner for consequential damages resulting from structures located wholly on his own land whether acquired by purchase or eminent domain. *Hoffer v. Reading Co.*, 287 Pa. 120; 134 A. 415; *Soldiers and Sailors Memorial Bridge*, 308 Pa. 487, 491; 162 A. 309; *McGarrity v. Commonwealth*, 311 Pa. 436, 439; 166 A. 895.

Even though it be thought that it was intended to adopt, by the 1912 Act, the then prevailing interpretation of the Pennsylvania constitutional provision, that fact could have no force here, both because the constitutional provision has never been regarded by the Pennsylvania courts as applicable to the use of land acquired by purchase and because the Compact by its terms excludes

the 1912 Act from its operation except in so far as it affords a manner or method of procedure when the Commission resorts to eminent domain.

Reversed.

SECURITIES AND EXCHANGE COMMISSION *v.*
UNITED STATES REALTY & IMPROVEMENT
CO.

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

No. 796. Argued April 29, 30, 1940.—Decided May 27, 1940.

1. A bankruptcy court has jurisdiction to make orders not subject to collateral attack in a proceeding for an "arrangement" with unsecured creditors brought by a debtor corporation under Chapter XI of the Chandler Act, although the financial and corporate setup of the debtor are such that adequate protection and relief can not be obtained under the limitations of that chapter but require a reorganization under Chapter X with the special procedure and safeguards which that chapter affords. P. 446.

Chapter X, devised as a substitute for the equity receivership, is specially adapted to the reorganization of large corporations whose securities are held by the public, and sets up a special procedure for the protection of widely scattered security holders and the public through the intervention of the Securities and Exchange Commission, while Chapter XI, which is peculiarly adapted to the speedy composition of debts of small individual and corporate businesses, omits the machinery for reorganization set up by Chapter X, and contains no provision for participation by the Commission in a proceeding under Chapter XI.

2. Chapters X and XI of the Chandler Act, in providing that a plan or arrangement, to warrant its confirmation, shall be "fair and equitable," use those words with the meaning attached to them, as words of art, in cases of reorganization through equity receiverships or under former § 77B, viz., that, in any plan of corporate reorganization, creditors are entitled to priority over stockholders to the full extent of their debts, and that any scaling down of