

DECISIONS PER CURIAM, ETC., FROM JANUARY
6, 1942, THROUGH MARCH 30, 1942.*

No. 108. *IDENTIFICATION DEVICES, INC. v. UNITED STATES.* January 12, 1942. The motion for leave to file an amended petition for appeal to the Court of Appeals for the District of Columbia is denied. *James M. Rulong, pro se.* Reported below: 121 F. 2d 895.

No. —, original. *EX PARTE GEORGE ACRET.* See *post*, p. 825.

No. 245. *CUDAHY PACKING Co. v. FLEMING, ADMINISTRATOR;*

No. 529. *FLEMING, ADMINISTRATOR, v. LOWELL SUN Co.;*

No. 622. *FLEMING, ADMINISTRATOR, v. A. H. BELO CORPORATION; and*

No. 805. *CUDAHY PACKING Co. v. FLEMING, ADMINISTRATOR.* January 12, 1942. Thomas W. Holland, present administrator of the Wage and Hour Division, U. S. Department of Labor, substituted as a party herein in the place and stead of Philip B. Fleming.

No. 816. *C. H. MUSSelman Co. v. ALDERSON, STATE TAX COMMISSIONER.* Appeal from the Circuit Court of

*MR. JUSTICE ROBERTS took no part in the consideration and decision of the orders announced on January 12th and 19th.

For decisions on applications for certiorari, see *post*, pp. 789, 796; rehearing, *post*, p. 825. For cases disposed of without consideration by the Court, *post*, p. 824.

Kanawha County, West Virginia. January 19, 1942. *Per Curiam*: The judgment is affirmed. *American Mfg. Co. v. St. Louis*, 250 U.S. 459; *Aponaug Mfg. Co. v. Stone*, 314 U.S. 577; *Department of Treasury v. Ingram-Richardson Mfg. Co.*, 313 U.S. 252, 254; *Brown v. Houston*, 114 U.S. 622; *McGoldrick v. Berwind-White Co.*, 309 U.S. 33, 51-53. *Messrs. Clarence E. Martin* and *Clarence E. Martin, Jr.*, for appellant. *Messrs. Clarence W. Meadows*, Attorney General of West Virginia, and *W. Holt Wooddell*, Assistant Attorney General, for appellee.

No. 184. BUCK, PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL. v. CASE, STATE TREASURER OF WASHINGTON, ET AL. Appeal from the District Court of the United States for the Western District of Washington. January 19, 1942. *Per Curiam*: The motion of appellee Lockhart to reinstate this case on the calendar is denied. On consideration of the stipulation of counsel the appeal is dismissed without costs. MR. JUSTICE JACKSON took no part in the consideration and decision of this case. *Messrs. Thomas G. Haight, Louis D. Frohlich*, and *Herman Finkelstein* for appellants. *Messrs. Smith Troy* and *John E. Belcher* for appellees.

No. 186. CITY OF TEXARKANA, TEXAS, v. ARKANSAS LOUISIANA GAS CO. Certiorari, 314 U.S. 591, to the Circuit Court of Appeals for the Fifth Circuit. January 19, 1942. *Per Curiam*: On consideration of the stipulation of the parties the judgment of the Circuit Court of Appeals is vacated and the cause is remanded to the District Court with directions to enter appropriate orders. The costs in this Court are to be paid by the respondent. *Messrs. Ed B. Levee* and *Benjamin E. Carter* for petitioner. *Messrs. Henry C. Walker, Jr., William C. Fitzhugh*, and *William H. Arnold, Jr.* for respondent.

No. —, original. *Ex parte John A. Kennedy*. January 19, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

No. 832. *Seago, Administratrix, v. New York Central Railroad Co.* On petition for writ of certiorari to the Supreme Court of Missouri. February 2, 1942. *Per Curiam*: The petition for writ of certiorari is granted and the judgment is reversed on the ground that there was sufficient evidence of negligence for submission to the jury. The case is remanded to the Supreme Court of Missouri for its consideration of other questions presented on the appeal and for further proceedings not inconsistent with this opinion. *Messrs. Mark D. Eagleton and William H. Allen* for petitioner. *Mr. Samuel W. Baxter* for respondent. Reported below: 348 Mo. 761, 155 S. W. 2d 126.

No. 836. *Hoblitzelle v. City of University Park et al.* Appeal from the Court of Civil Appeals, Fifth Supreme Judicial District, of Texas. February 2, 1942. *Per Curiam*: The motions for leave to file a statement as to jurisdiction and an amended opposition are granted. The motion to dismiss is granted and the appeal is dismissed for the want of jurisdiction. § 237 (a), Judicial Code, as amended, 28 U. S. C. § 344 (a). 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, 28 U. S. C. § 344 (c), certiorari is denied. *Mr. David A. Frank* for appellant. *Mr. Percy C. Fewell* for appellees. Reported below: 150 S. W. 2d 169.

No. —, original. *Ex parte Edward Casebeer*. February 2, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. —, original. *Ex parte Rufo C. Romero*. February 2, 1942. The motion for leave to file petition for writ of habeas corpus is denied without prejudice to an application to the District Court.

No. 280. *Jones v. City of Opelika*. Certiorari, 314 U. S. 593, to the Supreme Court of Alabama. Argued February 5, 1942. Decided February 9, 1942. *Per Curiam*: The writ is dismissed for want of a final judgment. *Mr. Hayden Covington*, with whom *Mr. Joseph F. Rutherford* was on the brief, for petitioner. *Mr. Alfred A. Albert* entered an appearance for petitioner. *Mr. John W. Guider*, with whom *Mr. William S. Duke* was on the brief, for respondent. *Mr. Osmond K. Fraenkel* filed a brief on behalf of the American Civil Liberties Union, as *amicus curiae*, urging reversal. Reported below: 241 Ala. 279, 3 So. 2d 74, 76.

No. 868. *Black et al. v. California*. Appeal from the District Court of Appeal, 2nd Appellate District, of California. February 9, 1942. *Per Curiam*: The appeal is dismissed for want of a properly presented substantial federal question. (1) *Gorin v. United States*, 312 U. S. 19, 26-28; (2) *Hurtado v. California*, 110 U. S. 516; *Gaines v. Washington*, 277 U. S. 81, 86. *Mr. Morris Lavine* for appellants. *Messrs. Earl Warren*, Attorney General of California, and *Frank Richards*, Deputy Attorney General, for appellee. Reported below: 45 Cal. App. 2d 87, 113 P. 2d 746.

No. 898. *Ohio ex rel. Thompson v. Industrial Commission of Ohio*. Appeal from the Supreme Court of Ohio. February 9, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want

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of a properly presented federal question. *Live Oak Water Users' Association v. Railroad Commission*, 269 U. S. 354, 358-59; *Ohio ex rel. Squire v. Brown*, 312 U. S. 652. *Mr. Paul V. Connolly* for appellant. *Mr. Thomas J. Herbert*, Attorney General of Ohio, for appellee. Reported below: 138 Ohio St. 439, 35 N. E. 2d 727.

No. —, original. *Ex parte Robert G. Errington*; and No. —, original. *Ex parte Henry Long*. February 9, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 738. *UNITED STATES v. KERR, ADMINISTRATRIX*. February 16, 1942. Death of Elizabeth Kerr suggested and Citizens Loan & Trust Co., Administrator *de bonis non* of the estate of Joseph Kelly Kerr, deceased, substituted as the party respondent herein, per stipulation of counsel, on motion of *Solicitor General Fahy* in that behalf. See 314 U. S. 605.

No. 325. *RODIEK, ANCILLARY EXECUTOR, v. UNITED STATES ET AL.* Certiorari, 314 U. S. 597, to the Circuit Court of Appeals for the Second Circuit. Argued February 12, 13, 1942. Decided March 2, 1942. *Per Curiam*: The judgment is affirmed by an equally divided Court. The CHIEF JUSTICE, MR. JUSTICE MURPHY, and MR. JUSTICE JACKSON took no part in the consideration or decision of this case. *Mr. Sherwood E. Silliman*, with whom *Messrs. Reuben D. Silliman, Russell C. Gay, and Charles H. Lawson* were on the brief, for petitioner. *Assistant Attorney General Shea*, with whom *Solicitor General Fahy* and *Messrs. Melvin H. Siegel, Harry LeRoy Jones, Frederick L. Smith, Oscar H. Davis, and Archibald Cox* were on the brief, for respondents. Reported below: 117 F. 2d 588; 120 F. 2d 760.

No. 529. **HOLLAND, ADMINISTRATOR, WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR, v. LOWELL SUN CO.** Certiorari, 314 U. S. 599, to the Circuit Court of Appeals for the First Circuit. Argued February 4, 5, 1942. Decided March 2, 1942. *Per Curiam*: The judgment is affirmed by an equally divided Court. MR. JUSTICE MURPHY took no part in the consideration or decision of this case. *Mr. Warner W. Gardner*, with whom *Solicitor General Fahy* and *Messrs. Richard S. Salant, Irving J. Levy, and Jacob D. Hyman* were on the brief, for petitioner. *Mr. Elisha Hanson*, with whom *Mr. Frank Goldman* was on the brief, for respondent. *Mr. Victor W. Klein* filed a brief, as *amicus curiae*, in support of respondent. Reported below: 120 F. 2d 213.

No. 161. **STEWART, ADMINISTRATOR, v. SOUTHERN RAILWAY CO.** Certiorari, 314 U. S. 591, to the Circuit Court of Appeals for the Eighth Circuit. March 9, 1942. *Per Curiam*: Upon petition for rehearing, it appearing that the case has been settled, the petition is granted and the judgment entered February 16, 1942, 315 U. S. 283, is vacated. The judgment of the Circuit Court of Appeals is reversed with costs and the case is remanded to the District Court with directions to dismiss the suit as moot.

No. 532. **CENTERS v. SANFORD, WARDEN.** Certiorari, 314 U. S. 603, to the Circuit Court of Appeals for the Fifth Circuit. Argued March 4, 1942. Decided March 9, 1942. *Per Curiam*: Upon consent of the Government, the judgment below is vacated and the case is remanded to the District Court with permission to both parties to reopen the case for the purpose of taking further evidence with respect to all issues in the case, and for find-

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ings on those issues, including whether petitioner consulted with appointed counsel, whether such counsel appeared in court with him, or whether he waived such consultation or appearance, and whether he understood the charge to which he pleaded guilty. *Mr. Paul Crutchfield*, with whom *Mr. Augustus M. Roan* was on the brief, for petitioner. *Mr. Herbert Wechsler* argued the cause, and *Assistant Attorney General Berge* and *Messrs. Warner W. Gardner* and *W. Marvin Smith* were on the brief, for respondent. Reported below: 120 F. 2d 217.

No. 805. *CUDAHY PACKING Co. v. HOLLAND, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR.* On petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. March 9, 1942. *Per Curiam*: The petition for writ of certiorari is granted. The judgment is reversed on the authority of *Cudahy Packing Co. v. Holland, ante*, p. 357. *MR. JUSTICE MURPHY* took no part in the consideration or decision of this case. *Mr. William C. Green* for petitioner. *Solicitor General Fahy* for respondent. Reported below: 122 F. 2d 1005.

No. 967. *McSWEENEY v. EQUITABLE TRUST Co.* Appeal from the Court of Errors and Appeals of New Jersey. March 9, 1942. *Per Curiam*: The motion to dismiss the appeal is granted and the appeal is dismissed for the reason that the judgment was based upon a nonfederal ground adequate to support it. *Enterprise Irrigation Dist. v. Canal Co.*, 243 U. S. 157; *Utley v. St. Petersburg*, 292 U. S. 106, 111-112. *Messrs. Samuel Kaufman, William T. Connor, and Nathan Bilder* for appellant. *Mr. Louis J. Cohen* for appellee. Reported below: 127 N. J. L. 299, 22 A. 2d 282.

No. —, original. *Ex parte Daniel P. Doyle*; and No. —, original. *Ex parte Ralph W. Fleeman*. March 9, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 28. *Cloverleaf Butter Co. v. Patterson, Commissioner of Agriculture and Industries of Alabama, et al.* The opinion of February 2, 1942, *ante*, p. 148, is amended as follows:

On page 4, line 5, strike out the words "comes under" and substitute therefor the words "is subject to."

On page 14, line 15, strike out the word "watches" and substitute therefor the words "has authority to watch."

On page 15, line 7, strike out the word "subjected" and substitute therefor the word "subject."

On page 15, lines 7 and 8, strike out the word "continuous."

Respondents' petition for rehearing is denied.

Opinion reported as amended, *ante*, p. 148.

No. 622. *Holland, Administrator, v. A. H. Belo Corporation*. March 9, 1942. L. Metcalfe Walling, present administrator of the Wage and Hour Division, U. S. Department of Labor, substituted as the party petitioner in the place and stead of Thomas W. Holland, resigned, on motion of *Solicitor General Fahy* for the petitioner.

No. 954. *Public Service Company of Indiana et al. v. City of Lebanon*. Appeal from the Supreme Court of Indiana. March 16, 1942. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *McGovern v. New York City*, 229 U. S. 363; *Roberts v. New York City*, 295 U. S. 264; *Shriver v. Woodbine Savings Bank*, 285 U. S. 467; *Pennsylvania Hospital v. Philadelphia*, 245 U. S. 20; *Violet Trapping Co. v. Grace*, 297 U. S. 119. *Messrs. William P. Evans, Edmond W. Hebel*,

Willett H. Parr, Willett H. Parr, Jr., Ara Allen Parr, and Elza O. Rogers for appellants. *Mr. Roscoe Hollingsworth* for appellee. Reported below: 219 Ind. 62; 34 N. E. 2d 20; 36 N. E. 2d 852.

No. 924. ARSENAL BUILDING CORP. ET AL. *v. FLEMING, ADMINISTRATOR.* March 16, 1942. The motion to substitute is granted and L. Metcalfe Walling, present Administrator of the Wage and Hour Division, U. S. Department of Labor, is substituted as the party respondent herein in the place and stead of Philip B. Fleming, resigned.

No. 523. WEBER *v. UNITED STATES.* Certiorari, 314 U. S. 600, to the Circuit Court of Appeals for the Ninth Circuit. Argued March 9, 1942. Decided March 30, 1942. *Per Curiam:* The judgment is affirmed by an equally divided Court. MR. JUSTICE JACKSON took no part in the consideration or decision of this case. *Mr. Archibald Cox*, with whom *Solicitor General Fahy* and *Mr. W. Marvin Smith* were on the brief, for the United States. *Messrs. A. L. Wirin* and *Arthur Garfield Hays* submitted for petitioner. *Mr. Allen W. Ashburn* filed a brief, as *amicus curiae*, urging affirmance. Reported below: 119 F. 2d 932.

No. 950. MCARTHUR ET AL., A COPARTNERSHIP, DOING BUSINESS AS ANACONDA VAN LINES, *v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Northern District of Illinois. March 30, 1942. *Per Curiam:* It does not appear that the questions involved in this appeal are substantial. The motion to affirm is therefore granted and the judgment is affirmed. *United States v. N. E. Rosenblum Truck Lines, Inc., ante, p. 50; Lubetich v. United States, ante, p. 57.* *Mr. L. Q. C. Lamar* for appellants. *Solicitor General Fahy* and *Mr.*

Daniel W. Knowlton for appellees. Reported below: 44 F. Supp. 697.

No. —, original. *Ex parte John St. Francis Sllaughter*; and

No. —, original. *Ex parte Pedro E. Sanchez Tapia*. March 30, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —, original. *DeWindt et al. v. South Carolina*. March 30, 1942. The motion for leave to file a petition is denied.

No. —. *Smith v. Western Union Telegraph Co. et al.* March 30, 1942. Application denied.

No. 49. *Morton Salt Co. v. G. S. Suppiger Co.* March 30, 1942. Ordered that the last three lines on page 1 of the opinion in this case be amended to read: "The Clayton Act authorizes those injured by violations tending to monopoly to main—".

Opinion reported as amended, 314 U. S. 488.

No. 245. *Cudahy Packing Co., Ltd. v. Holland, Administrator*. March 30, 1942. Ordered that the opinion in this case be amended as follows:

1. Strike from the last line on page 5 the phrase "the Bituminous Coal Act of 1937,".

2. Strike from the fifth line of page 6 the phrase ", save possibly one,".

3. Strike footnotes 6 and 9.

4. Rerumber the footnotes accordingly.

Opinion reported as amended, *ante*, p. 357.