NATURAL MILK PRODUCERS ASSOCIATION ET AL. *v.* CITY AND COUNTY OF SAN FRANCISCO ET AL.

APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

No. 385. Argued December 16, 17, 1942.—Decided January 11, 1943.

Where a federal question sought to be reviewed on certiorari becomes moot by reason of a change in the factual situation, which occurred after the trial and which was not noticed by the court below, the proper practice is to vacate the judgment, without costs to either party in this Court, and remand the cause to the court below for such further proceedings as it may deem proper. P. 424.

20 Cal. 2d 101, 124 P. 2d 25, vacated and remanded.

Mr. Philip S. Ehrlich for appellants.

Messrs. Henry Heidelberg and *Herbert Levy,* with whom *Mr. John J. O'Toole* was on the brief, for appellees.

PER CURIAM.

In this case appellants contend that the San Francisco Milk Ordinance violates the Fourteenth Amendment because it requires non-pasteurized raw milk sold in San Francisco to be certified by, and to conform to standards prescribed by, the Milk Commission of the San Francisco Medical Society, instead of by a public board or officer, while at the same time prohibiting the sale of all other non-pasteurized milk, including "guaranteed raw milk" which appellants allege is the same as certified raw milk. Subsequent to the trial of the case, the Milk Commission of the San Francisco Medical Society determined that non-pasteurized milk could not be certified by it as free from harmful bacteria, and promulgated an order accordingly, effective January 15, 1939. This fact, which apparently was not called to the attention of the Supreme Court of California, renders moot the federal questions

raised by appellants, since all milk sold in San Francisco, not certified by the Milk Commission of the Medical Society, is required by the ordinance to be pasteurized, and since appellants do not by this suit challenge the validity under the Fourteenth Amendment of the pasteurization requirement. In order that the state court may make proper disposition of the case in the light of the fact that the federal questions cannot be decided here, we vacate the judgment, without costs to either party in this Court, and remand the cause to the Supreme Court of California for such further proceedings as it may deem appropriate. *Florida* v. *Knott,* 308 U. S. 507; *Washington ex rel. Columbia Broadcasting Co.* v. *Superior Court,* 310 U. S. 613; *Missouri ex rel. Wabash Ry. Co.* v. *Public Service Comm'n,* 273 U. S. 126.

So ordered.

UNITED STATES *v.* MONIA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 248. Argued December 16, 1942.—Decided January 11, 1943.

One who, in obedience to a subpoena, appears before a grand jury inquiring into an alleged violation of the Sherman Act, and gives testimony under oath substantially touching the alleged offense, obtains immunity from prosecution for that offense, pursuant to the terms of the Sherman Act, as amended, although he does not claim his privilege against self-incrimination. P. 430.

Affirmed.

APPEAL under the Criminal Appeals Act from a judgment overruling demurrers to special pleas in bar filed by the appellees to an indictment for violation of the Sherman Act.

Mr. Edward H. Miller, with whom *Solicitor General Fahy, Assistant Attorney General Arnold,* and *Mr. Robert L. Stern* were on the brief, for the United States.