

GIBSON *v.* THOMPSON, TRUSTEE.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS.

No. 142. Decided October 21, 1957.

In this case arising under the Federal Employers' Liability Act, *held*: The proofs justified with reason the jury's conclusion that employer negligence played a part in producing petitioner's injury. Therefore, certiorari is granted, the judgment is reversed and the case is remanded.

156 Tex. 593, 298 S. W. 2d 97, reversed and remanded.

Fred Parks for petitioner.*Walter F. Woodul* for respondent.

PER CURIAM.

The petition for certiorari is granted, and the judgment of the Supreme Court of Texas is reversed and the case is remanded. We hold that the proofs justified with reason the jury's conclusion that employer negligence played a part in producing the petitioner's injury. *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500; *Webb v. Illinois Central R. Co.*, 352 U. S. 512; *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U. S. 521; *Shaw v. Atlantic Coast Line R. Co.*, 353 U. S. 920; *Futrelle v. Atlantic Coast Line R. Co.*, 353 U. S. 920; *Deen v. Gulf, C. & S. F. R. Co.*, 353 U. S. 925; *Thomson v. Texas & Pacific R. Co.*, 353 U. S. 926; *Arnold v. Panhandle & S. F. R. Co.*, 353 U. S. 360; *Ringhiser v. Chesapeake & O. R. Co.*, 354 U. S. 901; *McBride v. Toledo Terminal R. Co.*, 354 U. S. 517.

For the reasons set forth in his opinion in *Rogers v. Missouri Pacific R. Co.*, 352 U. S. 500, 524, MR. JUSTICE FRANKFURTER is of the view that the writ of certiorari is improvidently granted.

Memorandum of MR. JUSTICE HARLAN, with whom MR. JUSTICE BURTON and MR. JUSTICE WHITTAKER join.*

For reasons elaborated by MR. JUSTICE FRANKFURTER at the last Term, 352 U. S. 524, I think that certiorari should have been denied in each of these cases. However, I continue in the view, expressed at the last Term, 352 U. S. 559, that once certiorari has been granted in such cases, we disbelievers, consistent with the Court's certiorari procedure, should consider them on the merits. Further, much as I disagree, 352 U. S. 559, 562-564, with the reasoning and philosophy of the *Rogers* case, which strips the historic role of the judge in a jury trial of all meaningful significance, I feel presently bound to bow to it. Applying *Rogers* to the present cases, I am forced to concur in judgments of reversal in Nos. 142 and 350.

*[This memorandum applies also to No. 350, *Palermo v. Luckenbach Steamship Co.*, *post*, p. 20.]