

Per Curiam.

BENZ *v.* NEW YORK STATE THRUWAY
AUTHORITY.

CERTIORARI TO THE COURT OF APPEALS OF NEW YORK.

No. 234. Argued February 28–March 1, 1962.—
Decided March 19, 1962.

Since it now appears that this case presents no substantial federal question, the writ of certiorari is dismissed as improvidently granted.

Reported below: 9 N. Y. 2d 486, 174 N. E. 2d 727.

Lauren D. Rachlin argued the cause and filed briefs for petitioner.

Julius L. Sackman argued the cause for respondent. With him on the briefs were *Louis J. Lefkowitz*, Attorney General of New York, and *Paxton Blair*, Solicitor General.

PER CURIAM.

We granted certiorari in this case, 368 U. S. 886, to decide whether the State of New York could, consistently with the Fourteenth Amendment, assert sovereign immunity in a suit brought by petitioner to reform on grounds of mutual mistake, or to rescind for fraud in the inducement, an agreement fixing compensation for land taken under the power of eminent domain. Contrary to our initial impression of the case on the basis of the petition for certiorari, plenary consideration has satisfied us that the New York Court of Appeals decided no more than that this suit could not be maintained in the Supreme Court of the State of New York because exclusive jurisdiction over litigation of this character had been vested in the New York Court of Claims. The case then involves only a matter relating to “the distribution of jurisdiction in the state courts,” and presents no substantial federal question. *E. g.*, *Honeyman v. Hanan*, 302 U. S. 375.

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Since the representative of the State Attorney General advised us on oral argument that the Attorney General will recommend passage of a bill by the State Legislature relieving petitioner from the operation of the statute of limitations governing proceedings in the New York Court of Claims, [*] we assume that she will be free to present her claims in the appropriate state forum.

The writ is dismissed as improvidently granted.

MR. JUSTICE BLACK dissents.

MR. JUSTICE WHITTAKER took no part in the consideration or decision of this case.

[*REPORTER'S NOTE: Such a bill became a law on April 29, 1962, N. Y. Laws 1962, c. 940.]