Cases Omitted in the Reports.

MONGER *v.* SHIRLEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

No. 355. December Term, 1871. — Decided March 25, 1872.

No appeal being asked for below or rendered, no appeal bond given, and there being no citation, the appeal is dismissed on motion.

MOTION to strike the case from the docket. The case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The record does not show that an appeal was asked for or rendered. An appeal bond was filed, but there was no approval of it by the court, nor was there any citation. It is unnecessary to say more than that the appeal must be dismissed. *Brockett* v. *Brockett*, 2 How. 238; *Palmer* v. *Donner*, 7 Wall. 541; *Castro* v. *United States*, 3 Wall. 46, 49. *Dismissed.*

Mr. John Baxter for the motion. *Mr. H. Maynard* and *Mr. T. A. R. Nelson*, opposing.

HUNTINGTON *v.* TEXAS.

FIRST NATIONAL BANK OF WASHINGTON *v.* TEXAS.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Nos. 429, 523. December Term, 1871. — Decided February 5, 1872.

After hearing the parties the court advances the causes as causes in which a State is a party under the act of June 30, 1870, 16 Stat. 176, c. 181. Rev. Stat. § 949.

MOTION TO ADVANCE. The case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The motion to advance these cases is made under the act giving priority to certain cases in which a State is a party in the courts of the United States. That act provides that it shall be the duty of the court on sufficient reasons shown, to give causes in which a State is a party preference and priority over all other civil causes pending in such court between private parties. The question presented by these cases relates to the right of the State of Texas to certain bonds of the United States which are said, under the decision of this court in *Texas* v. *White*, 7 Wall. 700, to belong to the State; and it is stated by the governor of the State that the money

represented by the bonds is part of the school fund and is very much wanted for the schools. This seems to us sufficient reason for advancing the causes. They will, therefore, be specially assigned for hearing on Monday, the 4th of March, unless the counsel agree upon a different day. *Motion granted.*

Mr. R. T. Merrick, *Mr. Geo. Taylor* and *Mr. T. J. Durant* for the motion. *Mr. Walter S. Cox* and *Mr. J. Hubley Ashton* opposing. *Mr. Caleb Cushing*, for the Bank of Washington, opposing.

WILLIAMS, Collector, *v.* REYNOLDS, Agent, etc., of the Lafayette and Indianapolis Railroad Company.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

No. 93. December Term, 1872. — Decided January 20, 1873.

Since the passage of the act of July 13, 1866, c. 184, §§ 67, 68, 14 Stat. 172, and the repeal of § 50 of the act of June 30, 1864, 13 Stat. 241, the Circuit Courts of the United States have no jurisdiction of cases arising under the internal revenue laws, to recover duties illegally assessed, and paid under protest, unless the plaintiff and defendant in such suit are citizens of different States.

The case is stated in the opinion.

Mr. Justice Clifford delivered the opinion of the court.

Internal Revenue taxes were assessed against the aforesaid Railroad Company, or against the plaintiff as their agent and trustee; and the plaintiff, as such agent and trustee, denying the legality of a portion of the tax, brought an action of *assumpsit* in the Circuit Court of the United States for that district against the defendant, the Collector of Internal Revenue, to recover back that amount, as having been unlawfully assessed by the assessor and illegally exacted by the defendant as such collector.

It appeared by the declaration that the net earnings of the Railroad Company for the period therein specified, were duly and correctly reported to the assessor, and that the assessor assessed the same as required by law, and that the plaintiff, as the agent and the trustee of the Company, paid the amount of the tax without complaint.

None of those proceedings are drawn in question; but it also appears that the Company had on hand at that time the sum of one hundred thousand dollars invested in government bonds, the same being a surplus fund which accrued from the net earnings of an