

Syllabus—Opinion of the Court.

GOOD SHOT *v.* UNITED STATES.CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH
CIRCUIT.

No. 447. Submitted October 22, 1900.—Decided October 29, 1900.

A Circuit Court of Appeals has no jurisdiction to review upon writ of error the trial, judgment and sentence of an Indian to imprisonment for life founded upon a verdict rendered on a trial of an indictment of the Indian for murder, by which verdict the jury find the defendant "guilty as charged in the indictment, without capital punishment."

THE case is stated in the opinion.

Mr. Melvin Grigsby and *Mr. S. H. Wright* for Good Shot.

Mr. Assistant Attorney General Hoyt for the United States.

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

Good Shot, an Indian, was indicted in the District Court of the United States for the District of South Dakota for the murder of Emily Good Shot, and, the indictment having been remitted to the Circuit Court, was arraigned and pleaded not guilty; was tried; found "guilty as charged in the indictment, without capital punishment;" was sentenced to imprisonment at hard labor in the penitentiary at Sioux Falls, in the State of South Dakota for life; and a writ of error was duly sued out of the Circuit Court of Appeals for the Eighth Circuit to review the judgment of the Circuit Court. The United States moved to dismiss the writ for want of jurisdiction, whereupon the Circuit Court of Appeals certified to this court, on facts stated, the following question: "Has this Circuit Court of Appeals jurisdiction to review upon writ of error the trial, judgment and sentence of an Indian to imprisonment for life founded upon a verdict rendered on a trial of an indictment of the Indian for murder, by which verdict the jury find the defendant

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'guilty as charged in the indictment, without capital punishment.'"

The certificate was duly transmitted to the clerk of this court, but not filed until October 15, 1900; and on October 17, Good Shot filed a petition praying that a certiorari might be issued requiring the entire record and cause to be sent up from the Circuit Court of Appeals. On the same day a certified transcript of an order of the Circuit Court of Appeals, entered October 15, purporting to vacate and annul the order certifying the case, and to recall the certificate, in view of the decision of this court in *Fitzpatrick v. United States*, 178 U. S. 304, was filed.

In the case referred to we held that a conviction for murder, punishable with death, was not the less a conviction for a capital crime by reason of the fact that the jury, in a particular case, qualified the punishment, and that, in such circumstances, this court had jurisdiction under section 5 of the judiciary act of March 3, 1891, providing therefor "in cases of conviction of a capital crime." It followed that Circuit Courts of Appeals did not have jurisdiction.

If we should dismiss the certificate because of the action of the Circuit Court of Appeals on October 15, or if we answer the question certified, the same result is reached, namely, the dismissal of the writ of error below. And in the posture of the case disclosed by the record, we think the better course is to answer the question, which we do necessarily in the negative.

As the Circuit Court of Appeals did not have jurisdiction, the application for a certiorari must be denied. That writ may be issued by this court to the Circuit Courts of Appeals under section 6 of the act of March 3, 1891, on application, and ordinarily after judgment, in cases in which judgments are made final in those courts by the section, and also where questions of law have been certified to this court by those courts for their guidance in disposing of such cases.

In this case there is no judgment in the Circuit Court of Appeals, and the sole question certified relates to the jurisdiction of that court, and it having been determined that jurisdiction does not exist, the writ of certiorari cannot properly be issued

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to require the court to send up a cause over which it has no jurisdiction for determination on the merits. The remedy is by writ of error from this court to the Circuit Court.

The question certified will be answered in the negative, and the petition for certiorari will be denied. So ordered.

AMERICAN SUGAR REFINING COMPANY v.
LOUISIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No 38. Submitted October 10, 1900.—Decided November 5, 1900.

A state statute imposing a license tax upon persons and corporations carrying on the business of refining sugar and molasses does not, by exempting from such tax "planters and farmers grinding and refining their own sugar and molasses," deny sugar refiners the equal protection of the laws within the Fourteenth Amendment.

THIS was a petition filed in the Civil District Court for the Parish of Orleans by John Brewster, tax collector, against the American Sugar Refining Company, a corporation engaged in the business of refining sugar and molasses, to recover the sum of \$3500 per year as a state license tax for the years 1892 to 1897, inclusive, alleged to be due under the act of July 9, 1890, of the State of Louisiana, enacted in 1890, entitled "An act to levy, collect and enforce payment of an annual license tax upon all persons, associations of persons or business firms and corporations pursuing any trade, profession, vocation, calling or business, except those who are expressly excepted from such license tax by articles 206 and 207 of the constitution."

By the ninth section it is enacted "that for carrying on each business of . . . refining sugar and molasses . . . the license shall be based on the gross annual receipts of each person, association of persons, business firm or corporation engaged in said business, as follows: Provided, that this section shall not apply to *planters and farmers grinding and refining their own*