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Opinion of the Court.

the case at bar a jury was demanded, the trial was before such jury, and their verdict determined the questions at issue, it follows that the record should have been brought to this court by writ of error and not by appeal.

*Appeal dismissed.*

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WESTERN UNION TELEGRAPH COMPANY v. HUGHES.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

No. 119. Argued December 6, 1906.—Decided December 17, 1906.

Where the highest court of the State dismisses the writ of error to the trial court solely and expressly because of lack of jurisdiction, the result of the ruling is to determine that the trial court is the final court where the question could be decided, and the writ of error from this court should be directed to the trial court, and not to the highest court, although that court may be clothed with jurisdiction of questions of state and Federal constitutionality of state laws, and may have discussed, and found without merit, the constitutional question.

104 Virginia, 240, writ of error dismissed.

THE facts are stated in the opinion.

*Mr. Rush Taggart*, with whom *Mr. John F. Dillon*, *Mr. George H. Fearons* and *Mr. Francis Raymond Stark* were on the brief, for plaintiff in error.

There was no appearance for defendant in error.

MR. JUSTICE WHITE delivered the opinion of the court.

By statutes of the State of Virginia a liability to forfeit the sum of one hundred dollars was imposed upon a telegraph company for an omission to promptly transmit and deliver telegrams received by it. Code of Virginia, 1887, secs. 1291,

1292. On November 2, 1903, Hughes, the defendant in error, handed to the Western Union Telegraph Company, at its office in Danville, Virginia, a message to be transmitted by wire to Pocahontas, Virginia, and there delivered to the addressee. In regular course such message would have gone by way of Bluefield, West Virginia. It reached that point, but was not sent further. For failure to make delivery Hughes sued the telegraph company in the Corporation Court of the city of Danville to recover the statutory penalty, and obtained a judgment. Error was prosecuted to the Supreme Court of Appeals of Virginia, upon the contention that the transmission of the message in question was interstate commerce and not subject to the statutory regulations of Virginia, heretofore referred to. The appellate court, however, held (104 Virginia, 240) that the case was ruled by a prior decision, *Western Union Telegraph Co. v. Reynolds*, 100 Virginia, 459, and that such decision had not been overruled by the decision of this court in *Hanley v. Kansas City So. R. Co.*, 187 U. S. 617, and being of opinion, as recited on its journal, "that the writ of error was improvidently awarded," and that it had "no jurisdiction to entertain the same," dismissed the writ of error.

Treating the order of dismissal as a final judgment, we are now asked on this writ of error to reverse the ruling of the Supreme Court of Appeals of Virginia. This, however, we cannot do. It is immaterial that the Supreme Court of Appeals was vested by the state constitution with appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the constitution of Virginia or of the United States, or that in the opinion delivered by the court it discussed the Federal question and declared it to be without merit. The fact is undoubted that the writ of error was dismissed solely and expressly because of a want of jurisdiction, and the effect of the formal entry, adjudging that the court was without jurisdiction to pass upon the questions presented by the writ of error, cannot be different from what it would have been had the court not given expression to its views

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Argument for Plaintiff in Error.

in a written opinion. The necessary result of the ruling that the court had not jurisdiction of the writ of error was to determine that the trial court was the final court where the questions presented by the writ could be decided; and, hence, the writ of error should have been directed to that court. *Missouri, K. & T. Ry. v. Elliott*, 184 U. S. 530, 539.

*Writ of error dismissed.*

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REARICK v. PENNSYLVANIA.

ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

No. 47. Argued October 18, 19, 1906.—Decided December 17, 1906.

Where orders are given for goods sold in a State by an agent of a person employed to solicit them in another State, and the purchaser is not bound to pay for the goods until delivery and unless according to sample, the goods sent specifically to the customer in fulfillment of such orders are, until actually delivered, within the protection of the commerce clause of the Constitution, and a municipal ordinance requiring a license fee for the solicitation of orders for delivering goods not of the parties' own manufacture is void as an interference with interstate commerce against such an agent.

THE facts are stated in the opinion.

*Mr. Campbell M. Voorhees* for plaintiff in error, submitted:

It is a principle established beyond controversy that the negotiation of sales of goods that are in another State for the purpose of introducing them into the State in which the negotiation is made is interstate commerce, and is protected from local interference, burdens, or tax, by clause 3, § 8, Art. I, Constitution of the United States, which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian