

Ex parte PATRICK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

Submitted November 9, 1908.—Decided November 16, 1908.

Appeal from decision of the Circuit Court denying a petition for *habeas corpus* when petitioner was detained under power of a state court dismissed for want of jurisdiction. There was no certificate of probable cause for allowing the appeal in conformity with the act of March 10, 1908, c. 76, 35 Stat. 40.¹

Mr. Albert T. Patrick in *propria persona* and Mr. William L. McDonald for the appellant.

Mr. Robert C. Taylor for the State of New York appeared by leave of the court.

Per Curiam: Appeal dismissed for want of jurisdiction. Act of March 10, 1908, c. 76, 35 Stat. 40; *Bilik v. Strassheim*, sheriff of Cook County, Illinois, decided October 19, 1908, *ante*, p. 551. Application for writ of *habeas corpus* denied.

WATER, LIGHT & GAS COMPANY v. CITY OF HUTCHINSON, KANSAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF KANSAS.

No. 21. Argued November 13, 1908.—Decided November 16, 1908.

Water, Light & Gas Co. v. Hutchinson, 207 U. S. 385, in which it was held that an exclusive franchise cannot, under the statutes of Kansas, be granted by ordinance by a city of the second class, followed.

¹ For this act in full see *ante*, p. 551.

Per Curiam.

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Mr. Howard S. Lewis, Mr. H. Whiteside, Mr. John F. Dillon, Mr. Harry Hubbard and Mr. Frank Doster for appellant.

Mr. Max Pam and Mr. A. C. Mallory for appellees.

Per Curiam: Affirmed with costs, on authority of *Water, Light & Gas Co. of Hutchinson v. The City of Hutchinson*, 207 U. S. 385.

WESTERN LOAN & SAVINGS COMPANY *v.* COLORADO
SMELTING & MINING COMPANY.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MONTANA.

No. 581. Submitted November 9, 1908.—Decided November 16, 1908.

Western Loan Co. v. Butte & Boston Mining Co., 210 U. S. 368, followed.¹

Mr. John A. Shelton, for plaintiff in error.

No appearance for defendant in error.

Per Curiam: Judgment reversed with costs, and cause remanded on authority of *Western Loan & Savings Co. v. The Butte & Boston Consolidated Mining Co.*, 210 U. S. 368.

¹ The points involved in this case, as stated in the headnote of *Western Loan Co. v. Butte & Boston Mining Co.*, are as follows:

“Where diversity of citizenship exists so that the suit is cognizable in some Circuit Court the objection to the jurisdiction of the particular court in which the suit is brought may be waived by appearing and pleading to the merits. *In re Moore*, 209 U. S. 490, overruling anything to the contrary in *Ex parte Wisner*, 203 U. S. 449.

“In a State where objection that the court has not jurisdiction of the person must—as in Montana under Code, § 1820—be taken by special appearance and motion aimed at the jurisdiction, the interposition by defendant of a demurrer going to the merits as well as to the jurisdiction amounts to a waiver of the objection that the particular Circuit Court in which he is sued is without jurisdiction.”