

RANDALL ET AL. *v.* BOARD OF COMMISSIONERS
OF TIPPECANOE COUNTY, INDIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 274. Argued January 25, 1923.—Decided February 19, 1923.

A writ of error to the highest court of a State must be dismissed when the judgment is one of an intermediate court which the highest court has declined to review for want of jurisdiction. Writ of error to review 131 N. E. 776, dismissed.

Mr. Otto Gresham for plaintiffs in error.

Mr. Clyde H. Jones, with whom *Mr. D. P. Flanagan* was on the brief, for defendant in error.

Memorandum opinion by MR. JUSTICE SUTHERLAND.

This is a writ of error to the Supreme Court of Indiana, when, clearly, it should have been to the State Appellate Court.

The action was brought in the Superior Court for Tippecanoe County. A demurrer to the complaint was sustained. An appeal was allowed to the Supreme Court but that court, of its own motion, entered an order transferring the cause to the Appellate Court, for want of jurisdiction. The Appellate Court thereupon took the case, received the briefs of counsel, heard oral arguments and affirmed the judgment of the trial court. A petition for rehearing was submitted and denied. Plaintiffs in error then applied to the Supreme Court for an order to vacate its former order of transfer, or, in the alternative, for a writ of error *coram nobis*, which the Supreme Court denied.

It therefore appears that the Supreme Court refused to take the case on appeal for want of jurisdiction, and the judgment of the highest court of the State in which a deci-

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sion in the suit could be had, Judicial Code, § 237, is that of the Appellate Court to which the writ should have been directed.

The writ of error must, therefore, be dismissed on the authority of *Western Union Telegraph Co. v. Hughes*, 203 U. S. 505; *Lane v. Wallace*, 131 U. S. Appendix CCXIX; *Norfolk & Suburban Turnpike Co. v. Virginia*, 225 U. S. 264, 269; *Second National Bank v. First National Bank*, 242 U. S. 600; *Prudential Insurance Co. v. Cheek*, 259 U. S. 530.

Dismissed.

UNITED STATES *v.* STATE OF OKLAHOMA.

IN EQUITY.

No. 25, Original. Argued on motion to dismiss January 2, 1923.—
Decided February 19, 1923.

1. The right to priority of payment provided for by Rev. Stats., § 3466, attaches when the conditions specified by the section come into existence; and it cannot be impaired or superseded by a state law. P. 259.
2. The State of Oklahoma acquires no lien on the assets of a state bank under § 303 of c. 6, Rev. Laws Okla. 1910, before possession of the bank has been taken by the state bank commissioner. P. 260.
3. The word "insolvent," as used in Rev. Stats., § 3466, and the Bankruptcy Law, applies only where a debtor's property is insufficient to pay all his debts. P. 260.
4. But "insolvent," in the sense of the Oklahoma statute, *supra*, where it authorizes the bank commissioner, upon becoming satisfied of a bank's insolvency, to take possession and wind up its affairs, is a broader term, applicable where a bank is unable to pay depositors in the ordinary course of business, though its assets may exceed its debts. *Id.*
5. Such a taking over of a bank by the act of the commissioner upon a finding by him of its insolvency, does not establish the right of the United States to priority of payment under Rev. Stats., § 3466, because it does not imply insolvency within the