

Opinion of the Court.

265 U. S.

stone Tire & Rubber Co. v. Marlboro Cotton Mills, 282 Fed. 811, 814. Nor could its right not to be sued there be affected by anything which the garnishee did or omitted to do. Moreover, the garnishee's objection to the jurisdiction (on grounds later upheld by this Court in the *Farmers Co-operative Co. Case*) had been overruled by the state court. We have no occasion, therefore, to consider further the scope or the provisions of the statutes concerning garnishment.

Reversed.

TRANSPORTES MARITIMOS DO ESTADO *v.* ALMEIDA.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 265. Submitted April 30, 1924.—Decided May 12, 1924.

1. The defense of sovereign immunity by a defendant in the District Court does not present a question of federal jurisdiction reviewable here on direct appeal. *Oliver American Trading Co. v. United States of Mexico*, 264 U. S. 440. P. 105.
2. This is equally true whether the claim of immunity be contested because of the character of the defendant or because the immunity is alleged to have been waived. *Id.*

Writ of error dismissed and cause transferred.

ERROR to a judgment of the District Court for the plaintiff, Almeida, in his action for wages as a seaman.

Mr. F. Dudley Kohler for plaintiff in error.

Mr. Silas B. Axtell for defendant in error.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Almeida, a seaman, brought this action for wages against Transportes Maritimos do Estado on the common law side of the federal court for southern New York. The

defendant appeared generally; answered that it was a department of the Government of the Republic of Portugal; offered evidence in support of the allegation; and claimed the immunity of a sovereign from all process. The District Judge entered judgment for the plaintiff in an amount stipulated by counsel; allowed a direct writ of error from this Court; and issued the certificate of a jurisdictional question provided for in § 238 of the Judicial Code.

This Court is without jurisdiction of the writ of error. It was settled in *Oliver American Trading Co. v. United States of Mexico*, 264 U. S. 440 (decided since the entry of judgment below) that the claim of sovereign immunity does not present a question of federal jurisdiction within the meaning of § 238. This is equally true whether the claim of immunity is contested because of the character of the defendant or because the immunity is alleged to have been waived. The question involved here is not that presented in *The Pesaro*, 255 U. S. 216, and *The Carlo Poma*, 255 U. S. 219. There, the question requiring decision was whether Congress had conferred upon the district court sitting in admiralty power to entertain a suit against a "general ship engaged in the common carriage of merchandise by water, for hire" which, at the time of the arrest, was owned by the Italian Government and was in its possession. That question being one of the jurisdiction of the court as a federal court, the direct appeal was sustained in *The Pesaro* and the appeal to the Circuit Court of Appeals was ordered dismissed in *The Carlo Poma*. A related question was presented in *The Sao Vicente*, 260 U. S. 151, which was likewise a suit in admiralty. There, the writ of certiorari was dismissed. Compare *Ex parte Transportes Maritimos do Estado*, 264 U. S. 105.

As the writ of error from this Court was improvidently allowed, the case must be transferred to the Circuit Court

of Appeals for the Second Circuit. Section 238 (a) of the Judicial Code, Act of September 14, 1922, c. 305, 42 Stat. 837. *Smith v. Apple*, 264 U. S. 274.

It is so ordered.

BROOKS-SCANLON CORPORATION *v.* UNITED STATES.

UNITED STATES *v.* BROOKS-SCANLON CORPORATION.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 337, 385. Argued January 8, 1924.—Decided May 12, 1924.

1. Orders of the Emergency Fleet Corporation directed to a ship-builder expropriated a vessel in process of construction under a contract between the builder and the plaintiff, together with the materials purchased by the builder for its completion, the benefits and advantages of payments made, and of plans, specifications and prior inspection service provided, by the plaintiff, and placed the Fleet Corporation in the plaintiff's shoes with respect to the past and future execution of the contract by the builder. The United States thus obtained the ship early and the benefit of prices much lower than those prevailing at time of requisition.
Held:

- (a) That the plaintiff's rights under the contract with the builder were taken. P. 119.
- (b) That the just compensation to which the plaintiff was entitled did not depend upon the title to the materials used in the construction, and was not to be gauged by the progress payments made, or by the compensation payable if the Government had merely canceled the contract; but was to be measured by the value of the plaintiff's rights under the contract at the time of the taking. P. 121.
- (c) Just compensation is the sum which, considering all the circumstances, uncertainties of the war, etc., probably could have been obtained for an assignment of the plaintiff's rights under the contract, i. e., the sum that would in all probability result from fair negotiations between an owner willing to sell and a purchaser desirous of buying. P. 123.