

United States except when it is granted, the ruling might have been correct. But this suit is against a corporation of the State of Washington, brought originally in a Court of Oregon to enforce a supposed liability in contract. Even if a statute of the United States created a bar, it would be unusual if the act went to the jurisdiction rather than to the merits, *Fauntleroy v. Lum*, 210 U. S. 230, 235; and if the statute went further it would be more likely to exclude jurisdiction in all other Courts rather than merely in Courts of the United States as such. If the statute excluded jurisdiction in State as well as United States Courts the case could not be certified under § 238 of the Judicial Code. *Fore River Shipbuilding Co. v. Hagg*, 219 U. S. 175, 178. But the Dent Act does not contemplate suits against corporations in the Court of Claims, and we perceive no ground for the ruling as certified. It well may be that the Court was right in deciding that the allegations were not sufficient to justify a suit against the corporation, and our judgment is without prejudice to a judgment dismissing the case upon the merits. But it was error to decide that there was a want of jurisdiction and therefore the judgment must be reversed.

Judgment reversed.

LEWIS v. ROBERTS.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 284. Argued January 29, 1925.—Decided March 16, 1925.

Under § 63a of the Bankruptcy Act, including among provable debts "(1) a fixed liability, as evidenced by a judgment . . . absolutely owing at the time of the filing of the petition . . .", a judgment founded on a tort (personal injuries caused by negligence) is a provable claim. P. 468.

294 Fed. 171, reversed.

CERTIORARI to a decree of the Circuit Court of Appeals affirming a decree of the District Court which confirmed an order of a referee in bankruptcy disallowing the petitioner's claim.

Mr. H. L. Black for petitioner.

No appearance for respondent.

MR. JUSTICE SANFORD delivered the opinion of the Court.

The petitioner, Lewis, recovered a judgment against the Montevallo Mining Company for personal injuries caused by its negligence. The Company was thereafter adjudicated a bankrupt in the Northern District of Alabama. Lewis filed in the bankruptcy proceeding a proof of claim upon the judgment. The District Court confirmed an order of the referee disallowing this claim, upon the ground that a judgment founded upon a tort was not provable in bankruptcy. This decree was affirmed by the Circuit Court of Appeals. 294 Fed. 171. The writ of certiorari was then granted. 264 U. S. 578.

This decision is in conflict with an unbroken line of decisions in other Circuit Courts of Appeals and in the District Courts. *Re New York Tunnel Co.* (C. C. A.), 159 Fed. 688, 690; *Moore v. Douglas* (C. C. A.), 230 Fed. 399, 401; *Re Putnam* (D. C.), 193 Fed. 464, 468. And see *Re Lorde* (D. C.), 144 Fed. 320; *Ex parte Margiasso* (D. C.), 242 Fed. 990; *In re Madigan* (D. C.), 254 Fed. 221.

We think these prior decisions were correct.

Section 63a of the Bankruptcy Act,¹ entitled "Debts which may be Proved," provides that: "Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judg-

¹ Act of July 1, 1898, c. 541, 30 Stat. 544.

ment . . . absolutely owing at the time of the filing of the petition. . . ." Section 1, (11) declares that the word "debt" as used in the Act shall, unless inconsistent with the context, be construed to include "any debt, demand, or claim provable in bankruptcy."

It is clear that a judgment for tort is provable under the express provisions of § 63a(1). The language is broad and unqualified. It includes "a fixed liability" evidenced by a judgment *ex delicto* as well as by a judgment *ex contractu*, and makes the one as well as the other a provable "debt." There is nothing in the language or in the context which suggests its limitation to judgments founded on debts or warrants the reading in of such a limitation.

This conclusion is confirmed by a consideration of other provisions of the Act. By § 17, as originally enacted, it was provided that: "A discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as . . . (2) are judgments in actions for fraud, or obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another."² This express exception of certain judgments for torts from the "provable debts" released by a discharge, plainly indicates that Congress understood that under § 63a judgments for torts were "provable debts", and is strongly persuasive as a construction of that section.

Furthermore, if a judgment for tort is not a provable claim in bankruptcy under § 63a, it could not, under § 1, (11), be considered in determining whether one against whom an involuntary petition has been filed, is insolvent within the meaning of § 1, (15), providing that

² By the amendments of 1903 and 1917 the word "judgments" in clause 2 was changed to "liabilities", and other changes were made which are not here material. 32 Stat. 797, c. 487, § 5; 39 Stat. 999, c. 153.

“a person shall be deemed insolvent . . . whenever the aggregate of his property . . . shall not . . . be sufficient in amount to pay his debts.” The result of this would be that a person having property in excess of his other debts could not be adjudged an involuntary bankrupt under § 3b of the Act, although owing judgments for tort exceeding the amount of his property. Clearly Congress did not intend so anomalous a result.

The trustee contends, however, that despite the broad language of § 63a(1), the decision in *Wetmore v. Markoe*, 196 U. S. 68, necessarily leads to the conclusion that only judgments founded in debt are provable claims. It was there held that under § 17 of the Act the arrears of alimony previously awarded to the wife of the bankrupt for the support of herself and their minor children under a final decree of absolute divorce was not a provable debt which was released by the bankrupt's discharge. The ground of the decision was that the court could look into the proceedings to determine the nature of the liability which had been reduced to judgment; that a decree awarding alimony was not in any just sense a debt which had been put into the form of a judgment, but rather the legal means of enforcing the obligation of the husband to support his wife and children which was imposed upon him by the policy of the law; and that it could not be presumed, in the absence of a direct enactment, that Congress intended that the Bankruptcy Act should be made an instrument by which the wife and children should be deprived of the support which it was the purpose of the law to enforce. It is clear that this decision rested on the peculiar and exceptional nature of a decree for alimony. There was no suggestion in the opinion that an ordinary claim *ex delicto* that had been previously reduced to judgment was not a provable debt; and we think that its reasoning neither leads to nor warrants such a conclusion.

Nor is there anything to support this conclusion in *Schall v. Camors*, 251 U. S. 239, which dealt solely with unliquidated claims arising in tort, not previously reduced to judgment, and held merely that such unliquidated claims, not being included in the enumeration of provable debts under § 63a, could not be liquidated and proven under the provisions of § 63b.

The decrees of the District Court and of the Circuit Court of Appeal are reversed, and the cause is remanded to the District Court for further proceedings in accordance with this opinion.

Reversed and remanded.

UNITED STATES *v.* P. LORILLARD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

No. 319. Argued March 13, 1925.—Decided March 23, 1925.

By Rev. Stats. § 3386, as amended, a drawback on tobacco, etc., subsequently exported, on which the tax has been paid by affixing stamps before removal from the factory, is allowed "equal in amount to the value of the stamps found to have been so affixed." *Held* applicable to an additional tax on cigarettes imposed by the Act of February 24, 1919, payment of which would have been treated in practice as evidenced by the stamps already on the goods, if they had not been removed, but which, in view of their removal, took the form of a "floor tax." C. 18, Title VII, §§ 700, 702, 40 Stat. 1057, 1116. P. 473.

58 Ct. Cls. 541, affirmed.

APPEAL from a judgment of the Court of Claims allowing recovery, by way of drawback, of taxes on cigarettes, which were exported.

Mr. Merrill E. Otis, Special Assistant to the Attorney General, for the United States. *Mr. Solicitor General Beck*, *Mr. Assistant Attorney General Lovett*, *Mr. Nelson T. Hartson*, Solicitor of Internal Revenue, and *Mr. Robert H. Littleton*, were on the brief.