

DECISIONS PER CURIAM, FROM JANUARY 4,
1928, TO AND INCLUDING APRIL 9, 1928, OTHER
THAN DECISIONS ON PETITIONS FOR WRITS
OF CERTIORARI.

No. 122. LEO L. SPEARS *v.* STATE BOARD OF MEDICAL EXAMINERS OF COLORADO. January 9, 1928. *Per Curiam.* The petition for rehearing is denied, but the Court's order of dismissal entered December 12, 1927, is hereby changed so as to read: "Dismissed because the record does not disclose that any substantial federal question was made in the presentation of the cause in the State Supreme Court. *McCorquodale v. State of Texas*, 211 U. S. 432, 436, 437; *Consolidated Turnpike Co. v. Norfolk & Ocean View Ry. Co.*, 228 U. S. 326, 333, 334; *Godchaux Co. v. Estopinal*, 251 U. S. 179, 180, 181." *Messrs. Carle Whitehead and Albert L. Voge* for plaintiff in error. *Messrs. Wm. L. Boatright and Charles H. Haines* for defendant in error.

No. —, original. THE STATE OF CONNECTICUT *v.* THE COMMONWEALTH OF MASSACHUSETTS. January 9, 1928. The motion for leave to file the bill of complaint herein is granted, and process ordered to issue returnable on Monday, March 5, 1928. *Mr. Ernest L. Averill* for complainant.

No. 454. HARRY HAWKINS ET AL. *v.* ELMER E. KLEIN ET AL. Error to the Supreme Court of the State of Oklahoma. Motion to dismiss or affirm submitted January 3, 1928. Decided January 9, 1928. *Per Curiam.* The writ of error is dismissed on the authority of §237 of the Judicial Code, as amended by the act of February 13, 1925 (43 Stat. 936, 937), for lack of jurisdiction. *Jett Bros. Distilling Co. v. City of Carrollton*, 252 U. S. 1, 5, 6. Treating the writ of error as an application for certiorari,

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the application is denied. *Messrs. Vern E. Thompson and C. H. Merillat* for defendants in error, in support of the motion. *Mr. C. B. Ames* for plaintiffs in error, in opposition thereto.

No. 548. *HENRY O. HEAD v. OBION COUNTY, FOR THE USE OF HOUSER CREEK DRAINAGE DISTRICT*. Error to the Supreme Court of the State of Tennessee. Submitted January 3, 1928. Decided January 9, 1928. *Per Curiam*. Dismissed for want of a substantial federal question on the authority of *Pierce et al. v. Obion County*, 275 U. S. 509; *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Messrs. Rice Maxey and Henry O. Head* for plaintiff in error. No appearance for defendant in error.

No. 592. *JAMES C. COLGATE v. PHILADELPHIA ELECTRIC POWER COMPANY ET AL.* Appeal from the District Court of the United States for the Eastern District of Pennsylvania. Argued January 5, 1928. Decided January 9, 1928. *Per Curiam*. Dismissed for want of a substantial question on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Mr. E. J. Dimock*, with whom *Messrs. Charles F. Carusi, Benjamin C. Atlee, and Eleanor S. Burch* were on the brief, for appellant. *Messrs. John Fox Weiss and William Clarke Mason* were on the brief for appellees.

No. 143. *EMMA SANGO v. WILLIAM WILLIG*. Error to the Supreme Court of the State of Oklahoma. Argued January 5, 1928. Decided January 9, 1928. *Per Curiam*. The writ of error is dismissed on the authority of § 237 of the Judicial Code, as amended by the act of February 13,

1925 (43 Stat. 936, 937), for lack of jurisdiction. Treating the writ of error as an application for certiorari, the certiorari is denied. *Mr. Wm. Neff* for plaintiff in error. *Mr. G. R. Horner*, with whom *Mr. Lafayette Walker* was on the brief, for defendant in error.

No. 158. JOHN LAPIQUE, SUCCESSOR IN INTEREST OF THE ESTATE OF MARIA ESPIRITU CHILJULLA DE LEONIS, *v.* FRANK E. WALSH ET AL. Appeal from the District Court of the United States for the Southern District of California. Submitted January 6, 1928. Decided January 9, 1928. *Per Curiam*. Dismissed for lack of jurisdiction in this Court under § 238 of the Judicial Code, as amended by the act of February 13, 1925 (43 Stat. 936, 938), on the authority of *Southern Pacific Co. v. United States*, 270 U. S. 103, 105. *Mr. John Lapique, pro se.* *Mr. Herbert J. Goudge*, with whom *Messrs. Everett W. Mattoon* and *Lee A. Dayton* were on the brief for appellees, submitted.

No. 166. UNITED STATES EX REL. NIELS PETER CLAUSSEN *v.* HENRY H. CURRAN, COMMISSIONER OF IMMIGRATION. On writ of certiorari to the Circuit Court of Appeals for the Second Circuit. Suggestion of abatement submitted January 6, 1928. Decided January 9, 1928. *Per Curiam*. In this case the order of the District Court dismissing the writ of habeas corpus was entered on February 1, 1926; an appeal was allowed on February 9, 1926, to the Circuit Court of Appeals for the Second Circuit, which court, on December 14, 1926, entered a judgment affirming that of the District Court. A writ of certiorari was granted by this Court on March 7, 1927.

It appearing that Henry H. Curran, sued herein as Commissioner of Immigration, resigned such office on March 31, 1926, and was succeeded by Benjamin M. Day,

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who now holds that office, and that no motion was made under § 11 of the act of February 13, 1925 (c. 229 43 Stat. 936, 941), asking the Court to "permit the cause to be continued and maintained by or against the successor in office of such officer," and that the six months' period, within which such a motion could have been made, has expired, the Court now vacates the judgments entered in the District Court and in the Circuit Court of Appeals and remands the cause to the District Court with a direction to dismiss the cause as abated. *Mr. Silas B. Axtell* for petitioner. *Solicitor General Mitchell*, *Assistant Attorney General Luhring*, and *Mr. Harry S. Ridgely* for respondent.

No. 686. *ARRINGTON v. GRAND LODGE*. See post, p. 617.

No. 153. *SEABOARD AIR LINE RAILWAY COMPANY AND ATLANTIC COAST LINE RAILROAD COMPANY v. WILLIAM T. LEE ET AL.* Appeal from the District Court of the United States for the Eastern District of North Carolina. Argued January 9, 10, 1928. Decided January 16, 1928. *Per Curiam*. Affirmed on the authority of *Atlantic Coast Line R. R. Co. v. Standard Oil Co. of Kentucky* and *Standard Oil Co. of Kentucky v. Atlantic Coast Line R. R. Co.*, 275 U. S. 257. *Mr. Frank W. Gwathmey*, with whom *Messrs. Thomas W. Davis* and *Murray Allen* were on the brief, for appellants. *Mr. Sidney S. Alderman*, with whom *Messrs. F. P. Hobgood, Jr., Dennis C. Brummitt*, and *P. W. McMullan* were on the brief, for appellees.

No. 155. *BRYANT ARNOLD, DOING BUSINESS AS KANSAS CITY HAY COMPANY, ET AL. v. FOREST HANNA AND C. P. ANDERSON*. Error to the Supreme Court of the State of Missouri. Argued January 10, 1928. Decided January

16, 1928. *Per Curiam*. Affirmed on the authority of (1) *Watters v. People of the State of Michigan*, 248 U. S. 65, 66; (2) *Payne v. State of Kansas*, 248 U. S. 112, 113. Mr. Charles M. Blackmar for plaintiffs in error. Mr. North T. Gentry was on the brief for defendants in error.

No. 179. GULF, MOBILE AND NORTHERN RAILROAD COMPANY *v.* L. G. TOUCHSTONE. On writ of certiorari to the Supreme Court of the State of Mississippi. Submitted January 12, 1928. Decided January 16, 1928. *Per Curiam*. Reversed on the authority of *Jacobs v. Southern Railway Co.*, 241 U. S. 229, 232, 236. Messrs. Ellis B. Cooper and Walter S. Welch for petitioner. Mr. W. Calvin Wells for respondent.

No. 180. ERNEST F. DUNHAM *v.* ALBERT OTTINGER, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF NEW YORK. Error to the Supreme Court of the State of New York. Submitted January 12, 1928. Decided January 16, 1928. *Per Curiam*. Dismissed for want of a substantial federal question on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. Mr. George Gordon Battle, with whom Messrs. Ernest F. Dunham, Joseph W. Spencer, and Louis Marshall were on the brief for plaintiff in error, submitted. Mr. William H. Milholland, with whom Mr. Albert Ottinger was on the brief, for defendant in error, submitted.

No. 172. LLOYD LITTRELL, RECEIVER, *v.* PETER G. CAMERON, SECRETARY OF BANKING OF PENNSYLVANIA, ET AL. Error to the Supreme Court of the State of Pennsylvania. Argued January 13, 1928. Decided January 16, 1928. *Per Curiam*. The judgment of the Supreme Court of the

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State of Pennsylvania in this case is affirmed for the reason that, on the record and on the facts, no substantial federal question is presented. *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. Mr. William S. Moorhead for plaintiff in error. Messrs. E. Lowry Humes and Leonard K. Guiler were on the brief for defendants in error.

No. 184. *FRED M. KIRBY v. UNITED STATES*. On writ of certiorari to the Court of Claims. Argued January 17, 18, 1928. Decided February 20, 1928. *Per Curiam*. Affirmed on the authority of (1) *Mason v. Routzahn, Collector of Internal Revenue*, 275 U. S. 175; (2) *United States v. Anderson*, 269 U. S. 422, 443. Mr. Martin A. Schenck, with whom Mr. Edward Cornell was on the brief, for petitioner. Solicitor General Mitchell, with whom Assistant Attorney General Galloway, and Mr. L. F. McCormick were on the brief, for the United States.

No. 187. *FORT SMITH, SUBIACO AND ROCK ISLAND RAILROAD COMPANY v. EMMA MOORE, ADMINISTRATRIX*. On writ of certiorari to the Supreme Court of the State of Arkansas. Argued January 18, 1928. Decided February 20, 1928. *Per Curiam*. Reversed on the authority of *Gulf, Mobile & Northern R. R. Co. v. Wells*, 275 U. S. 455; *Chicago, Milwaukee & St. Paul Ry. Co. v. Coogan*, 271 U. S. 472, 477, 478. Mr. James B. McDonough for petitioner. *Emma Moore, pro se*.

No. 203. *JOSEPH M. DAVIS AND SOUTHERN SURETY COMPANY v. ESTHER M. JESSUP, ADMINISTRATRIX*. Error to the Supreme Court of the State of Nebraska. Argued January 20, 1928. Decided February 20, 1928. *Per Cu-*

riam. The writ of error is dismissed for want of a final judgment in the highest court of the State as required by § 237 (a) of the Judicial Code, as amended by the act of February 13, 1925 (43 Stat. 936, 937), on the authority of *Haseltine v. Central Bank of Springfield (No. 1)*, 183 U. S. 130, 131; *Schlosser v. Hemphill*, 198 U. S. 173, 175; *Arnold v. United States, for the use of Guimarin & Co.*, 263 U. S. 427, 434. *Mr. Robert S. Neely*, with whom *Mr. Wymer Dressler* was on the brief, for plaintiffs in error. No appearance for defendant in error.

No. 154. *JOHN W. BLODGETT v. CHARLES HOLDEN*, COLLECTOR OF INTERNAL REVENUE. February 20, 1928.

It is hereby ordered that the opinion in Cause No. 154 of the present term, *John W. Blodgett v. Charles Holden*, Collector of Internal Revenue, on certificate from the United States Circuit Court of Appeals for the Sixth Circuit, heretofore handed down, be modified and made to read in the following manner:

By the Court: An equal division of opinion among the eight Justices who heard and considered this matter renders it impossible categorically to answer certified question No. 2. The other two questions, we think, are not essential. The statements of views by the Justices are enough to show that the tax exacted of Blodgett can not be sustained under §§ 319-324 of the Revenue Act of 1924, and they will enable the Circuit Court of Appeals readily to reach a proper decision. The cause will be remanded there for appropriate action.

The opinion of MR. JUSTICE McREYNOLDS is amended by striking out the words "And the question is so answered," and by adding thereto "The CHIEF JUSTICE, MR. JUSTICE Van DEVANTER, and MR. JUSTICE BUTLER concur in this opinion."

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The opinion of MR. JUSTICE HOLMES is concurred in by MR. JUSTICE BRANDEIS, MR. JUSTICE SANFORD, and MR. JUSTICE STONE.

[The opinions of McREYNOLDS and HOLMES, JJ., the former modified as above ordered, are reported in 275 U. S. 142.]

No. 96. ELLA R. CLARKE *v.* SHOSHONI LUMBER COMPANY AND ALLAN BOYSEN. Error to the Supreme Court of the State of Wyoming. Motion to dismiss submitted February 20, 1928. Decided February 21, 1928. *Per Curiam*. Dismissed for want of jurisdiction. *Messrs. Robert F. Cogswell, D. Avery Haggard and Michael A. Rattigan* for defendants in error in support of the motion. *Mr. Wm. J. Hughes, Jr.*, for plaintiff in error in opposition thereto.

No. 13, original. UNITED STATES *v.* STATE OF IDAHO. Motion submitted February 20, 1928. Decided February 27, 1928. *Per Curiam*. The motion by the United States for judgment on the pleadings is granted. It is ordered that the decree as proposed by the United States be entered, and that the Clerk be directed to send a copy thereof to the Governor of the State of Idaho, and to the Secretary of the Interior. *The Attorney General* for the United States. *Mr. F. L. Stephan* for defendant.

No. 631. L. F. VANCE *v.* CHICAGO PORTRAIT COMPANY ET AL. Appeal from the District Court of the United States for the Northern District of Ohio. Motion to dismiss submitted February 20, 1928. Decided February 27, 1928. *Per Curiam*. The motion to dismiss for lack of jurisdiction in this Court under §238 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936,

938), is granted. *Mr. John T. Evans* for appellees in support of the motion. *Mr. L. F. Vance, pro se*, in opposition thereto.

No. 430. STATE OF OHIO, ON RELATION OF NATIONAL MUTUAL INSURANCE COMPANY, *v.* WILLIAM C. SAFFORD, SUPERINTENDENT OF INSURANCE; and

No. 431. STATE OF OHIO, ON RELATION OF THE CELINA MUTUAL CASUALTY COMPANY, *v.* WILLIAM C. SAFFORD, SUPERINTENDENT OF INSURANCE. Error to the Supreme Court of the State of Ohio. Argued February 21, 1928. Decided February 27, 1928. *Per Curiam*. The writs of error are dismissed for want of a substantial federal question on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Messrs. Arthur I. Vorys and Herman L. Ekern* for plaintiffs in error. *Mr. C. S. Younger*, with whom *Mr. Edward C. Turner* was on the brief, for defendant in error.

No. 6, original. STATE OF OKLAHOMA *v.* STATE OF TEXAS, UNITED STATES, INTERVENER. In equity. Order entered March 5, 1928. Announced by MR. JUSTICE SANFORD.

Upon consideration of the responses to the rule to show cause issued on January 9, 1928, it is ordered, adjudged and decreed that clause 1 of the decree entered in this cause on January 3, 1927 (273 U. S. 93), be and is changed so as to read as follows:

"1. The boundary between the State of Texas and the State of Oklahoma constituting the eastern boundary of the Panhandle of Texas and the main western boundary of Oklahoma, is the line of the true one-hundredth meridian of longitude west from Greenwich, extending north from its intersection with the south bank of the South

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Fork of Red River to its intersection with the northern boundary line of the State of Texas as surveyed and marked upon the ground by John H. Clark, United States Commissioner, under the Act of June 5, 1858, c. 92, or with a line running due east from the eastern terminus of the Clark survey if it is west of the meridian."

The clerk is directed to transmit copies of this order to the Governors of Texas and Oklahoma, the Secretary of the Interior, and Samuel S. Gannett, Commissioner, respectively.

No. —, original. Ex PARTE: THOMAS E. WILLIAMS, TAX COMMISSIONER. March 5, 1928. The motion for leave to file a petition for a writ of mandamus is granted. The petition will be filed, and an order, returnable April 9 next, will issue against Hon. Joseph W. Woodrough, Judge of the United States District Court for the District of Nebraska, Omaha Division, to show cause in printed form, if any there be, why a writ of mandamus should not issue out of this Court requiring him to call to his assistance two other Federal judges, as provided for by § 266 of the Judicial Code as amended by the act of February 13, 1925 (43 Stat. 936, 938) to hear and determine the case herein at the final hearing. *Messrs. O. S. Stillman, George L. Bayse, and Hugh LaMaster* for petitioner.

No. 223. WESTERN GAS CONSTRUCTION COMPANY v. COMMONWEALTH OF VIRGINIA, AT THE RELATION OF THE STATE CORPORATION COMMISSION. Error to the Supreme Court of Appeals of the State of Virginia. Submitted February 27, 1928. Decided March 5, 1928. *Per Curiam*. Affirmed on the authority of *Browning v. Waycross*, 233 U. S. 16, 22; *General Railway Signal Co. v. Virginia*, 246 U. S. 500, 510. *Messrs. M. J. Fulton, T. J. Michie, Jr., and John S. Brookes, Jr.*, for plaintiff in error. *Messrs.*

Leon M. Bazile and John R. Saunders for defendant in error.

NO. 227. CORA B. BEATTY, EXECUTRIX, *v.* D. B. HEINER, COLLECTOR. On writ of certiorari to the Circuit Court of Appeals for the Third Circuit. Argued February 28, 1928. Decided March 5, 1928. *Per Curiam*. Affirmed on the authority of *Irwin v. Gavitt*, 268 U. S. 161, 167, 168. The CHIEF JUSTICE took no part in the consideration or decision of this case. *Mr. W. D. Stewart*, with whom *Messrs. Earl F. Reed* and *W. A. Seifert* were on the brief, for petitioner. *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, with whom *Solicitor General Mitchell* was on the brief, for respondent.

NO. 230. HENRY ELLISON ET AL. *v.* MAX KOSWIG, TRADING AS F. F. KOSWIG. On writ of certiorari to the Superior Court of the State of Pennsylvania. Argued February 28, 1928. Decided March 5, 1928. *Per Curiam*. The grounds which were presented in the petition for certiorari, because of which the writ was granted, do not prove to have a substantial basis in the record because of the lack of assignments of error therein showing the proper presentation of federal questions to the Superior Court of the State. The certiorari heretofore granted in this case is, therefore, vacated on the authority of *Missouri Pacific Railroad Co. v. Hanna*, 266 U. S. 184; *El Paso & Southwestern Railroad Co. v. Eichel*, 226 U. S. 590, 598; *Chicago, Indianapolis & Louisville Ry. Co. v. McGuire*, 196 U. S. 128, 131, 132. *Mr. John G. Kaufman*, with whom *Messrs. H. Edgar Barnes* and *Albert T. Bauerle* were on the brief, for petitioners. *Messrs. Julius Henry Cohen* and *Kenneth Dayton* were on the brief for respondent.

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NO. 256. MRS. JAMES A. SWAYNE *v.* CITY OF HATTIESBURG, MISSISSIPPI. Error to the Supreme Court of the State of Mississippi. Submitted February 29, 1928. Decided March 5, 1928. *Per Curiam*. Affirmed on the authority of *Embree v. Kansas City Road District*, 240 U. S. 242, 250; *Valley Farms Co. v. Westchester County*, 261 U. S. 155, 162, 164. *Mr. T. J. Wills* for plaintiff in error. *M. J. N. Flowers* for defendant in error.

NO. 709. LILLIAN WEARE *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. March 5, 1928. *Per Curiam*. The petition for a writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit is granted, and, on confession of error by the United States, the judgment is reversed and the cause is remanded with directions to dismiss the case. *Mr. Donald G. Hughes* for petitioner. *Solicitor General Mitchell*, *Assistant Attorney General Luhring*, and *Mr. Harry S. Ridgely* for the United States.

NO. 301. C. P. AND S. J. BEATY ET AL. *v.* W. S. RICHARDSON, TAX COLLECTOR. Error to the Supreme Court of the State of Georgia. Submitted March 5, 1928. Decided March 12, 1928. *Per Curiam*. Dismissed for want of jurisdiction for the reason that the federal questions sought to be presented were by the record abandoned in the State Supreme court. *Harding v. Illinois*, 196 U. S. 78, 88; *Hulbert v. Chicago*, 202 U. S. 275, 281; *Central Union Telephone Co. v. Edwardsville*, 269 U. S. 190, 194, 195. *Mr. R. E. Church* for plaintiffs in error. *Messrs. George M. Napier* and *T. R. Gress* for defendant in error.

NO. 291. PENINSULA PRODUCE EXCHANGE *v.* NEW YORK, PHILADELPHIA AND NORFOLK RAILROAD COMPANY, AND THE PENNSYLVANIA RAILROAD COMPANY. Error to the

Court of Appeals of the State of Maryland. Argued March 5, 1928. Decided March 12, 1928. *Per Curiam*. Affirmed on the authority of *Kansas City Southern Ry. Co. v. Wolf*, 261 U. S. 133, 139, 140; *Danzer & Co. v. Gulf & Ship Island R. R. Co.*, 268 U. S. 633, 636. *Mr. J. M. Crockett*, with whom *Messrs. George F. Graham* and *Robert E. Quirk* were on the brief, for plaintiff in error. *Messrs. F. D. McKenney, John S. Flannery, George R. Allen, and Henry W. Bikelé* were on the brief for defendants in error.

No. 292. *ARTHUR E. HOFFMAN, EXECUTOR, v. THE INDUSTRIAL COMMISSION OF OHIO*. Error to the Supreme Court of the State of Ohio. Motion to dismiss submitted March 5, 1928. Decided March 12, 1928. *Per Curiam*. The motion to dismiss is granted for want of a federal question. *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Messrs. Frank Davis, Jr., and Edward C. Turner* for defendant in error in support of the motion. *Messrs. Wm. H. Miller and Frank H. Ward* for plaintiff in error in opposition thereto.

No. 296. *C. A. KING & COMPANY v. D. O. HORTON*; and
No. 304. *D. O. HORTON v. C. A. KING & COMPANY*. Error to the Supreme Court of the State of Ohio. Argued March 5, 1928. Decided March 12, 1928. *Per Curiam*. The writs of error are dismissed for want of jurisdiction for the reason that the only federal questions presented are frivolous, on the authority of *Farrell v. O'Brien*, 199 U. S. 89, 100; *Toup v. Ulyssess Land Co.*, 237 U. S. 580, 583; *Piedmont Power & Light Co. v. Town of Graham*, 253 U. S. 193, 195; *Seaboard Air Line v. Padgett*, 236, U. S. 668, 671; *Quong Ham Wah Co. v. Industrial Com-*

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mission, 255 U. S. 445, 448, 449. *Mr. Morris Townley*, with whom *Messrs. Robert Newbegin* and *E. R. Morrison* were on the brief, for King & Co. *Mr. A. L. Gebhard*, with whom *Mr. E. R. Effler* was on the brief, for Horton.

No. 297. BEATRICE GRAYSON JOHNSON *v.* WRIGHT THORNBURGH, ADMINISTRATOR, ET AL. On writ of certiorari to the Supreme Court of the State of Oklahoma. Argued March 7, 1928. Decided March 12, 1928. *Per Curiam*. Dismissed for want of a federal question in that the decision of the court below could be sustained, and was sustained, on non-federal grounds. *Eustis v. Bolles*, 150 U. S. 361, 366, 370; *New York ex rel. Doyle v. Atwell*, 261 U. S. 590, 592; *Richardson Machinery Co. v. Scott*, *ante*, p. 128. *Mr. A. L. Emery*, with whom *Mr. C. B. McCrory* was on the brief, for petitioner. *Messrs. Joseph L. Hull, Nathan A. Gibson, and James M. Hays* were on the brief for respondents.

No. 319. STANDARD PIPE LINE COMPANY, INC., ET AL. *v.* COMMISSIONERS OF INDEX SULPHUR DRAINAGE DISTRICT. Error to the Supreme Court of the State of Arkansas. Argued March 7, 1928. Decided March 12, 1928. *Per Curiam*. The writ of error is dismissed on the authority of § 237 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937), for lack of jurisdiction. *Jett Bros. Distilling Co. v. City of Carrollton*, 252 U. S. 1, 5, 6. Upon the application of the plaintiffs in error the writ will be treated as a petition for a writ of certiorari and will be considered upon the filing of briefs on such petition on or before March 21, 1928. *Mr. Wm. H. Arnold*, with whom *Mr. David C. Arnold* was on the brief, for plaintiffs in error. *Mr. Henry Moore, Jr.*, was on the brief for defendants in error.

No. 321. MUTUAL LIFE INSURANCE COMPANY OF NEW YORK *v.* EDGAR M. WRIGHT, GUARDIAN. On writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit. Argued March 7, 1928. Decided March 12, 1928. *Per Curiam*. Affirmed for the reason that the amount involved is not sufficient to sustain federal jurisdiction, on the authority of *Elgin v. Marshall*, 106 U. S. 578, 580; *Opelika City v. Daniel*, 109 U. S. 108, 109; *Vicksburg, Shreveport & Pacific R. R. Co. v. Smith*, 135 U. S. 195, 200; *The Sydney*, 139 U. S. 331, 334, 336; *New England Mortgage Co. v. Gay*, 145 U. S. 123, 127. Mr. Wm. D. Arant, with whom Mr. Frederick L. Allen was on the brief, for petitioner. Messrs. B. P. Crum and Richard T. Rives were on the brief for respondent.

No. 364. MUTUAL LIFE INSURANCE COMPANY OF NEW YORK *v.* STATE OF WISCONSIN; and

No. 365. NEW YORK LIFE INSURANCE COMPANY *v.* STATE OF WISCONSIN. Error to the Supreme Court of the State of Wisconsin. Argued March 8, 9, 1928. Decided March 12, 1928. *Per Curiam*. Dismissed for want of a substantial federal question, on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. Mr. J. Gilbert Hardgrove, with whom Messrs. George P. Miller, Edwin S. Mack, Arthur W. Fairchild, and Frederick L. Allen were on the brief, for plaintiffs in error. Messrs. John W. Reynolds and T. L. McIntosh were on the brief for the State of Wisconsin.

No. 366. G. F. DEGRAFF, TREASURER, *v.* CITY OF SPOKANE, WASHINGTON. Error to the Supreme Court of the State of Washington. Argued March 9, 1928. Decided March 12, 1928. *Per Curiam*. Dismissed for want of a

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federal question, on the authority of *Risty v. Chicago, Rock Island & Pacific Ry Co.*, 270 U. S. 378, 390; *City of Trenton v. New Jersey*, 262 U. S. 182, 192; *City of Pawhuska v. Pawhuska Oil Co.*, 250 U. S. 394, 399; *Maryland v. B. & O. R. R. Co.*, 3 Howard 534, 550, 551; *Edgewood v. Wilksburg & East Pittsburgh Street Ry. Co.*, 258 U. S. 604; *Avon v. Detroit United Railways*, 257 U. S. 618; *Chicago v. Chicago Ry. Co.*, 257 U. S. 617; *Chicago v. Dempcy*, 250 U. S. 651. Messrs. Charles W. Greenough and A. O. Colburn, with whom Mr. Samuel M. Driver was on the brief, for plaintiff in error. Messrs. J. M. Geraghty and Alex M. Winston were on the brief for defendant in error.

No. 615. THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY *v.* THE TRANSIT COMMISSION OF THE STATE OF NEW YORK; and

No. 616. THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY AND THE STATEN ISLAND RAILWAY COMPANY *v.* THE TRANSIT COMMISSION OF THE STATE OF NEW YORK. Error to the Transit Commission of the State of New York. Motion to amend writ of error submitted March 12, 1928. Decided March 19, 1928. *Per Curiam*. The writs of error are dismissed for lack of jurisdiction in that the writs herein are not directed to a court, but to an administrative commission. MR. JUSTICE McREYNOLDS, MR. JUSTICE SANFORD, and MR. JUSTICE STONE entertain a different view.

The motions to amend the writs of error, or for other appropriate relief in the premises, or that the writs of error be treated as petitions for certiorari to the Court of Appeals of the State of New York, are denied. Mr. Frederick H. Wood for plaintiffs in error. Messrs. Clarence M. Lewis and George P. Nicholson for defendant in error.

No. 538. A. B. CAPLINGER, COUNTY JUDGE OF POINSETT COUNTY, ARKANSAS, *v.* UNITED STATES ON RELATION OF HARRIMAN NATIONAL BANK. On writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. Motion to dismiss submitted March 12, 1928. Decided March 19, 1928. *Per Curiam.* The motion of the respondent to dismiss is granted in view of the recent decision of the Supreme Court of the State of Arkansas in the case of *Jackson v. Madison County*, 175 Ark. 826. *Messrs. Harvey D. Jacob, Joe T. Robinson, Joe W. House, and C. H. Moses* for respondent in support of the motion. *Mr. A. B. Caplinger, pro se*, in opposition thereto.

No. 830. EDITH E. KELLEY *v.* JAMES COMPTON ET AL. Appeal from the Supreme Court of the State of Washington. March 19, 1928. *Per Curiam.* The motion for leave to proceed further herein *in forma pauperis* is denied for the reason that the Court, upon examination of the unprinted record herein submitted, finds that no federal question is presented, and that there are no grounds upon which the jurisdiction of this Court can be sustained. The appeal is therefore dismissed. Such costs as have already been incurred herein shall, by direction of the Court, be paid by the clerk from the special fund in his custody as provided in the order of October 29, 1926. *Edith E. Kelley, pro se.* No appearance for appellees.

No. 117. DANIEL V. HARKIN AND UNION BANK OF CHICAGO, RECEIVERS, ETC., *v.* EDWARD J. BRUNDAGE, RECEIVER, ETC., ET AL. Motion submitted March 12, 1928. Decided March 19, 1928. The motion to amend the opinion already filed in this case is granted as to one addition on page eleven, and denied in other respects. *Mr. Henry J. Darby* for respondents in support of the motion. No appearance for petitioners. [The opinion is reported *ante* p. 37, amended as here ordered.]

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NO. 387. *BANK OF INDIANOLA ET AL. v. W. J. MILLER, REVENUE AGENT OF THE STATE OF MISSISSIPPI.* Error to the Supreme Court of the State of Mississippi. Argued March 12, 1928. Decided March 19, 1928. *Per Curiam.* Dismissed for want of a substantial federal question on the authority of *Farrell v. O'Brien*, 199 U. S. 89, 100; *Toup v. Ulysses Land Co.*, 237 U. S. 580, 585; *Piedmont Power & Light Co. v. Town of Graham*, 253 U. S. 193, 195; *Seaboard Air Line v. Padgett*, 236 U. S. 668, 671; *Quong Ham Wah Co. v. Industrial Commission*, 255 U. S. 445, 448, 449. *Mr. Cary C. Moody*, for plaintiffs in error, submitted. *Mr. J. H. Sumrall*, with whom *Mr. Marion W. Reily* was on the brief, for defendants in error.

NO. 388. *MAX M. TANNENBAUM AND HANNAH N. TANNENBAUM, BOTH INDIVIDUALLY AND AS EXECUTORS, v. JOHN J. O'NIELL, INHERITANCE TAX COLLECTOR.* Error to the Supreme Court of the State of Louisiana. Argued March 12, 1928. Decided March 19, 1928. *Per Curiam.* The writ of error is dismissed for want of a final judgment in the highest court of the state as required by § 237 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937), on the authority of *Haseltine v. Central Bank of Springfield (No. 1)*, 183 U. S. 130, 131; *Schlosser v. Hemphill*, 198 U. S. 173, 175; *Arnold v. United States, for the use of Guimarin & Co.*, 263 U. S. 427, 434. *Mr. Benjamin Y. Wolf*, with whom *Mr. Max M. Tannenbaum*, *pro se*, was on the brief, for plaintiffs in error. *Mr. Harry Gamble*, for defendant in error, submitted.

NO. 391. *A. R. YOUNG CONSTRUCTION COMPANY AND CECIL L. NEWBOLD, RECEIVER, v. D. E. DUNNE, G. C. DUNNE, AND G. M. DUNNE, PARTNERS.* Error to the Supreme Court of the State of Kansas. Argued March 12,

1928. Decided March 19, 1928. *Per Curiam*. Dismissed for want of a substantial federal question on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Mr. Willard Brooks*, with whom *Mr. Charles N. Miller* was on the brief, for plaintiffs in error. *Messrs. Chester I. Long* and *Austin M. Cowan* were on the brief for defendants in error.

No. 399. *GEORGE A. WILCOX v. GEORGE B. MUNGER, TAX COLLECTOR, ET AL.*; and

No. 400. *GEORGE A. WILCOX v. TOWN OF MADISON ET AL.* Error to the Supreme Court of Errors of the State of Connecticut. Submitted March 12, 1928. Decided March 19, 1928. *Per Curiam*. The writs of error are dismissed for want of a substantial federal question on the authority of *Shulthis v. McDougal*, 225 U. S. 561, 569; *Hull v. Burr*, 234 U. S. 712, 720; *Norton v. Whiteside*, 239 U. S. 144, 147. *Mr. George E. Beers* for plaintiff in error. *Messrs. Ernest L. Averill* and *Thomas R. Fitzsimmons* for defendants in error.

No. 610. *UNITED STATES v. JOHN BARTH COMPANY AND UNITED STATES FIDELITY & GUARANTY COMPANY*. On certificate from the Circuit Court of Appeals for the Seventh Circuit. Argued March 13, 1928. Decided March 19, 1928. *Per Curiam*. The questions certified in this case require in their answer a consideration of eight sections in the Revenue Acts of 1918 and 1921, 1924, and of 1926, and are not properly confined to any distinct question or proposition of law and need not be answered. The lower court is not authorized to make, or require this Court to accept, a transfer of the case. The certificate of the two questions is dismissed on the authority of *News*

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Syndicate Co. v. New York Central R. R. Co. et al., 275 U. S. 179; *The Folmina*, 212 U. S. 354, 363; *United States v. Bailey*, 9 Peters 267, 273, 274; *United States v. Mayer*, 235 U. S. 55, 66; *Chicago, Burlington & Quincy Ry. Co. v. Williams*, 205 U. S. 444, 451, 454. Assistant Attorney General Mabel Walker Willebrandt, with whom Solicitor General Mitchell and Mr. J. Louis Monarch were on the brief, for the United States. Messrs. M. K. Whyte and Louis Quarles, with whom Messrs. Richard S. Doyle and S. Sidney Stein were on the brief, for Barth Co. et al.

No. 663. *F. M. RING v. STATE OF OREGON*. Error to the Supreme Court of the State of Oregon. Argued March 13, 14, 1928. Decided March 19, 1928. *Per Curiam*. Affirmed on the authority of *Olsen v. Smith*, 195 U. S. 332, 342, 343, 345. Messrs. Thomas Mannix and Edward W. Wickey, with whom Messrs. Jerry A. Matthews and Josephus C. Trimble were on the brief, for plaintiff in error. Messrs. I. H. Van Winkle and G. C. Fulton were on the brief for defendant in error.

No. 841. *WALLACE C. GAINES v. STATE OF WASHINGTON*. Error to the Supreme Court of the State of Washington. March 19, 1928. *Per Curiam*. Upon examination of the record herein submitted, the Court finds that this is not a case in which there is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity; or where is drawn in question the validity of a statute of the State of Washington, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity. It is, therefore, not a case which, under § 237 (a) of the Judicial Code as amended by the act of February 13, 1925 (43 Stat. 936, 937), may be reviewed

by this Court on writ of error, and this Court has no jurisdiction thereof under said section. Treating the writ of error as a petition for writ of certiorari under § 237(c) of the Judicial Code, as amended by the act of February 13, 1925 (43 Stat. 936, 938), the clerk is directed to issue an order returnable April 23 next against Wallace C. Gaines to show cause, if any there be, by printed return and printed brief, why the petition for certiorari should not be denied for lack of a substantial federal question shown in the record giving this Court jurisdiction. *Mr. W. P. Guthrie* for plaintiff in error. *Mr. Ewing D. Colvin* for defendant in error.

NO. 877. *JOE WYSONG v. PEOPLE OF THE STATE OF CALIFORNIA*. Error to the District Court of Appeals, Second Appellate District, State of California. April 9, 1928. *Per Curiam*. Upon consideration of the record herein submitted, the Court finds that this is not a case in which there is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity; or where is properly drawn in question the validity of a statute of the State of California, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity. It is, therefore, not a case which, under § 237(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937), may be reviewed by this Court on writ of error, and this Court has no jurisdiction thereof under said section. *Jett Bros. Distilling Co. v. City of Carrollton*, 252 U. S. 1, 5, 6.

Treating the writ of error as a petition for writ of certiorari under § 237(c) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937), the Clerk is directed to issue an order returnable April 30th next against Joe Wysong to show cause, if any there be,

by printed return and printed brief, why the petition for certiorari should not be denied for lack of a substantial federal question shown in the record giving this Court jurisdiction. *Mr. James E. Fenton* for plaintiff in error. No appearance for defendant in error.

PETITIONS FOR CERTIORARI GRANTED, FROM
JANUARY 4, 1928, TO AND INCLUDING APRIL
9, 1928.

No. 636. *ANNA MARIE MANEY v. UNITED STATES*. January 9, 1928. The petition for a writ of certiorari and the motion for leave to proceed further herein *in forma pauperis* are granted. The clerk is hereby directed to have the record printed forthwith and to pay the cost thereof, as well as the costs already incurred herein, from the special fund in his custody as provided in the order of October 29, 1926. *Messrs. Edwin S. Mack, Louis Marshall and Bruno B. Bitker* for petitioner. *Solicitor General Mitchell, Assistant Attorney General Luhring and Mr. Harry S. Ridgely* for the United States.

No. 493. *ROY OLMSTEAD ET AL. v. UNITED STATES*;

No. 532. *CHARLES S. GREEN ET AL. v. UNITED STATES*;
and

No. 533. *EDWARD H. MCINNIS v. UNITED STATES*. January 9, 1928. Orders were entered on November 21, 1927, denying petitions for certiorari in these cases. Thereafter a petition for rehearing in No. 533 was denied January 3, 1928, and a similar petition has been filed in No. 532. This Court now reconsiders all these three petitions for certiorari and grants the writs therein, limiting their consideration, however, to the question whether the use of evidence of private telephone conversations, between the defendants and others, intercepted by means of wire tap-