

port a finding that it is or will be unjust or unreasonable for the appellee lines to bear the cost of transfer of the westbound through traffic. The order cannot be sustained. *Florida East Coast Ry. v. United States*, 234 U. S. 167. *Louis. & Nash. R. R. v. United States*, 238 U. S. 1.

Decree reversed.

McCOY *v.* SHAW, STATE AUDITOR, ET AL.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

No. 403. Submitted April 9, 1928.—Decided May 21, 1928.

A suit to enjoin collection of a tax as violative of treaties between the United States and the Chickasaw Indians and of certain Acts of Congress, was dismissed by the state court upon the ground that there was a plain, adequate and exclusive remedy at law by paying the tax under protest and suing for its recovery. *Held* that this Court had no jurisdiction to review, as the judgment was put upon an independent, non-federal ground, adequate to sustain it. P. 303. Certiorari to 124 Okla. 256, dismissed.

CERTIORARI, 275 U. S. 515, to a judgment of the Supreme Court of Oklahoma, dismissing a suit to enjoin collection of taxes.

Messrs. Robert M. Rainey, Streeter B. Flynn, Calvin Jones and Jay W. Whitney were on the brief for petitioner.

Messrs. Edwin Dabney, Attorney General of Oklahoma, and *V. P. Crowe*, Assistant Attorney General, were on the brief for respondents.

MR. JUSTICE SANFORD delivered the opinion of the Court.

McCoy, the petitioner, a Chickasaw Indian of one-fourth blood, brought this suit in equity in a state court

of Oklahoma to enjoin the collection of a gross production tax on his one-eighth royalty interest in the oil produced under a lease of lands patented to him as his homestead and surplus allotments from which all restrictions on alienation and incumbrance had been removed—claiming that this tax on his royalty share in the oil was in violation of the treaties between the United States and the Chickasaw Indians and the Acts of Congress relating thereto. The court dismissed the suit on motion, for want of equity; and this was affirmed by the Supreme Court of Oklahoma, without consideration of the federal question, on the ground that under §§ 9971 and 9973 of the Compiled Oklahoma Statutes, 1921, the petitioner had a plain, adequate and exclusive remedy at law by paying the tax under protest and suing for its recovery. 124 Okla. 256.

It is settled law that a judgment of a state court which is put upon a non-federal ground, independent of the federal question involved and broad enough to sustain the judgment, cannot be reviewed by this Court, unless the non-federal ground is so plainly unfounded that it may be regarded as essentially arbitrary or a mere device to prevent the review of a decision upon the federal question. *Leathe v. Thomas*, 207 U. S. 93, 99; *Vandalia Railroad v. South Bend*, 207 U. S. 359, 367; *Enterprise Irrig. Dist. v. Canal Co.*, 243 U. S. 157, 164; *Ward v. Love County*, 253 U. S. 17, 22; and cases therein cited.

Here the non-federal ground upon which the Oklahoma court based its decision—namely, that under the Oklahoma statutes the petitioner had a plain, adequate and exclusive remedy at law—was based on its earlier decision in *Black v. Geissler*, 58 Okla. 335. It is in harmony with the decisions of this Court relating to similar statutes of other States. *Tennessee v. Sneed*, 96 U. S. 69, 75; *Shelton v. Platt*, 139 U. S. 591, 595; *Indiana Mfg.*

Co. v. Koehne, 188 U. S. 681, 686; *Raymond v. Chicago Traction Co.*, 207 U. S. 20, 39; *Singer Sewing Mach. Co. v. Benedict*, 229 U. S. 481, 487; *Union Pac. R. R. Co. v. Weld County*, 247 U. S. 282, 285. And no intent to evade the federal question is indicated.

We are without authority to determine the federal right claimed by the petitioner. And the writ of certiorari is

Dismissed for want of jurisdiction.

SOUTHERN PACIFIC COMPANY *v.* HAGLUND,
ADMINISTRATRIX, ET AL.

SAME *v.* MOORE SHIPBUILDING COMPANY ET AL.

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

Nos. 472, 473. Submitted April 13, 1928.—Decided May 21, 1928.

While a steamship, without power or lookout, was being held "dead" across a channel by a tug, leaving, however, ample space for navigation past her stern, a ferryboat, approaching the opening with its view of the channel beyond obstructed by the steamer, blew a single blast of her whistle, indicating her intention to pass in the rear of the steamer, and having received an acceptance by a like blast from the tug, continued at full speed until within the opening, when, perceiving another vessel approaching her, though not dangerously near, she began prematurely her movement to pass her and struck and injured the steamer. *Held*:

1. The collision was due solely to the negligence of the ferryboat. P. 309.

2. The signal of the tug was merely its assent to the proposed passing in the rear of the steamer. P. 310.

3. The tug was not at fault in accepting the passing signal and in not sounding a warning instead, though aware of the approach of the vessel on the other side, there being nothing in the situation to indicate that the ferryboat would be thereby prevented from passing the steamer safely, if navigated with due care. *Id.*