

accordance with earlier provisions unless the legislative purpose so to do plainly appears." No plain purpose to change the status of the claim against petitioners as it existed just before June 2, 1924, can be spelled out of the words in § 278 or elsewhere.

Paragraph (e), (2), of § 278 expressly directs that that section shall not affect any assessment made before June 2, 1924. Counsel for the United States maintain that to extend the time for bringing suit thereon does not "affect" an assessment within the meaning of the paragraph. We cannot agree. Some real force must be given to the words used—they were not employed without definite purpose. The rather obvious design, we think, was to deprive § 278 of any possible application to cases where assessment had been made prior to June 2, 1924.

The legislative history of the Act of 1924 lends support to the conclusion which we have reached. The changes introduced into the Act of 1926 can not authorize construction of the earlier one not consonant with the language there employed.

The judgment is reversed. The cause will be remanded to the Circuit Court of Appeals for further proceedings in conformity with this opinion.

Reversed.

SLAKER, ADMINISTRATOR, *v.* O'CONNOR ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE
EIGHTH CIRCUIT.

No. 61. Argued November 23, 1928.—Decided January 2, 1929.

An appeal based on frivolous grounds and causing delay will be dismissed and a penalty may be taxed against the appellant. Appeal from 22 F. (2d) 147, dismissed.

APPEAL from a decree of the Circuit Court of Appeals, which reversed a decree of the District Court in a suit against the administrator.

Mr. Paul E. Boslaugh, with whom *Messrs. John A. Lawler* and *Edmund Nuss* were on the brief, for appellant.

Messrs. James M. Johnson, *Bernard McNeny*, and *Donald W. Johnson* were on the brief for appellees.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Charles O'Connor and others brought suit in the District Court of the United States for Nebraska against John Slaker, Administrator of John O'Connor, deceased, and the State of Nebraska, wherein they sought to establish claims to certain property within that State which belonged to John O'Connor at the time of his death. The petition contained three counts none of which questioned the validity of a state statute.

Upon motion the District Court dismissed the petition for want of jurisdiction, and thereafter allowed a broad appeal to the Circuit Court of Appeals. The latter held the cause was properly dismissed as to the State, but that under two counts of the petition jurisdiction existed as to the Administrator—appellant here. It accordingly reversed the action of the trial court and remanded the cause for further proceedings. The Administrator then sought and secured allowance of an appeal to this Court.

Manifestly, the decree below is not final. Under the Act of February 13, 1925, § 240 (b), appeals to this Court from circuit courts of appeals lie only from final judgments or decrees (*Martinez v. International Banking Corp'n*, 220 U. S. 214, 223; *Collins v. Miller*, 252 U. S. 364, 370) in cases where the validity of a state statute is

drawn in question on the ground of repugnance to the Constitution, treaties, or laws of the United States, and the decision is against its validity.

Section 1010, Rev. Stats. (§ 878, U. S. Code) provides—

“Where, upon a writ of error, judgment is affirmed in the Supreme Court or a circuit court, the court shall adjudicate to the respondents in error just damages for his delay, and single or double costs, at its discretion.”

Section 1012, Rev. Stats. (omitted from Judicial Code), in its present form provides—

“Appeals from the district courts shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error.” U. S. Code, Supp. I, Title 28, § 880.

The 30th (formerly 23rd) rule of this Court provides—

“2. In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, may be awarded upon the amount of the judgment.

“3. Paragraphs 1 and 2 of this rule shall be applicable to decrees for the payment of money in cases in equity, unless otherwise specially ordered by this court.”

The above provisions were considered in *Deming v. Carlisle Packing Co.*, 226 U. S. 102, 106, and *Wagner Electric Co. v. Lyndon*, 262 U. S. 226, 233. Together those cases determine that where a writ of error or appeal is dismissed because the alleged ground therefor is so unsubstantial as to be frivolous, a penalty may be imposed. In the first cited case—writ of error to state court—penalty of five per centum was imposed upon the plaintiff in error; in the second—an appeal from federal court—the appellant was subjected to penalty of fifteen hundred dollars and required to pay the costs. See also *Gibbs v. Diekma*, 131 U. S. Appendix clxxxvi.

Here, without any authority of law, the appellant obtained an appeal. Thereby he has needlessly consumed our time and imposed serious delay upon the appellees and otherwise burdened them.

The appeal must be dismissed. Damages of one hundred and fifty dollars payable to the appellees, together with all costs, will be taxed against the appellant.

Appeal dismissed.

ROE v. KANSAS EX REL. SMITH, ATTORNEY
GENERAL, ET AL.

ERROR TO THE SUPREME COURT OF KANSAS.

No. 63. Argued November 23, 1928. — Decided January 2, 1929.

1. A writ of error based on a frivolous ground will be dismissed and a penalty may be taxed against the plaintiff in error. P. 192.
2. There is no basis for doubting the power of a State to condemn places of unusual historical interest for the use and benefit of the public. P. 193.
3. Construction of state condemnation statutes by the State Supreme Court *held* binding on this Court. *Id.*

Writ of Error to 124 Kan. 716, dismissed.

ERROR to a judgment of the Supreme Court of Kansas affirming a judgment for the condemnation of plaintiff-in-error's land.

Mr. T. F. Railsback, with whom *Mr. J. H. Brady* was on the brief, for plaintiff in error.

Mr. Wm. A. Smith, Attorney General of Kansas, *Messrs. John G. Egan* and *Roland Boynton*, Assistant Attorneys General, *Mr. Howard Payne*, County Attorney, and *Messrs. Ray H. Calihan* and *Randal C. Harvey* were on the brief for defendants in error.