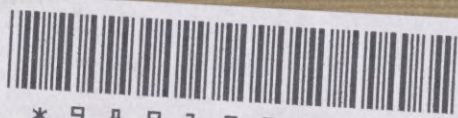


T

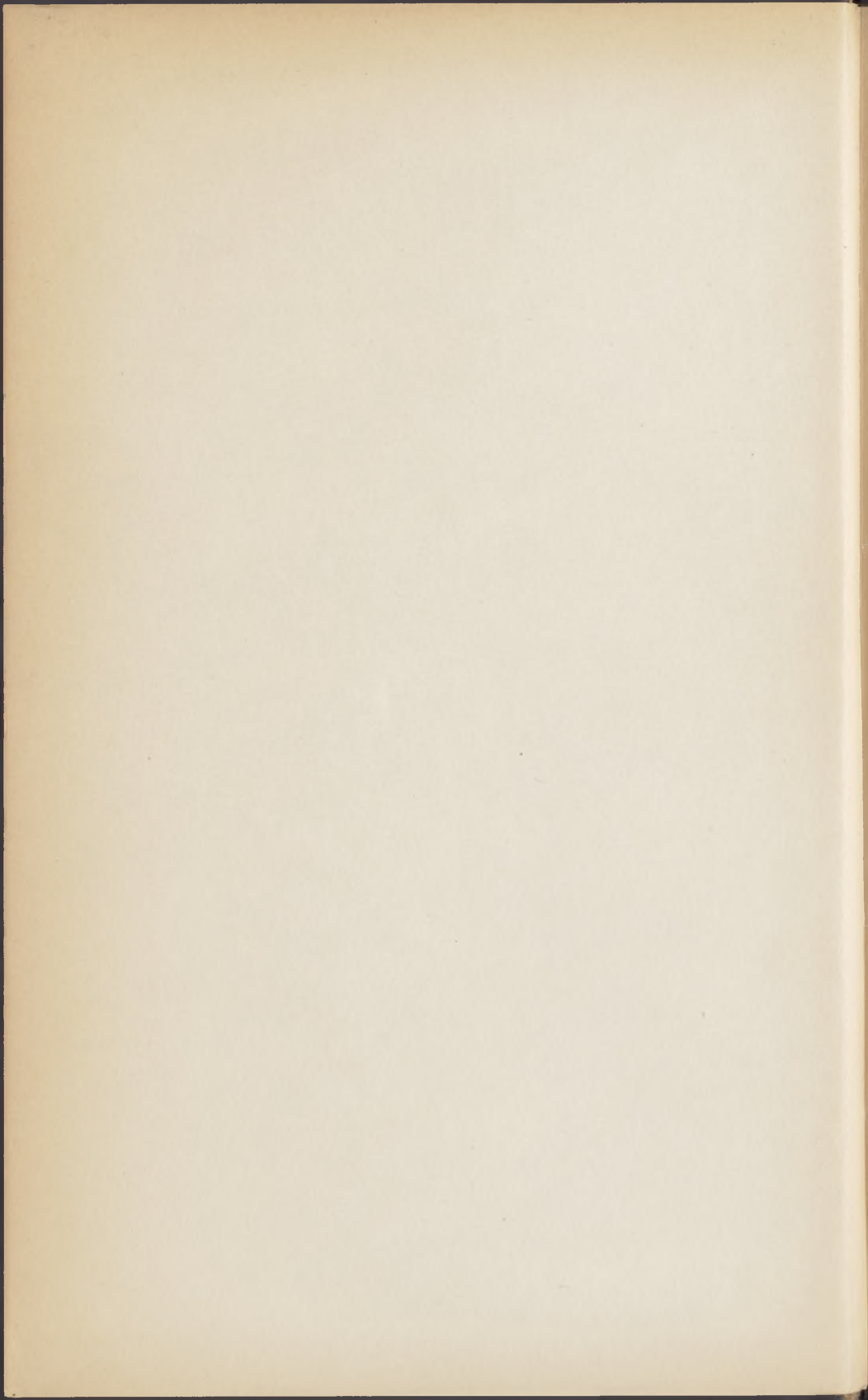


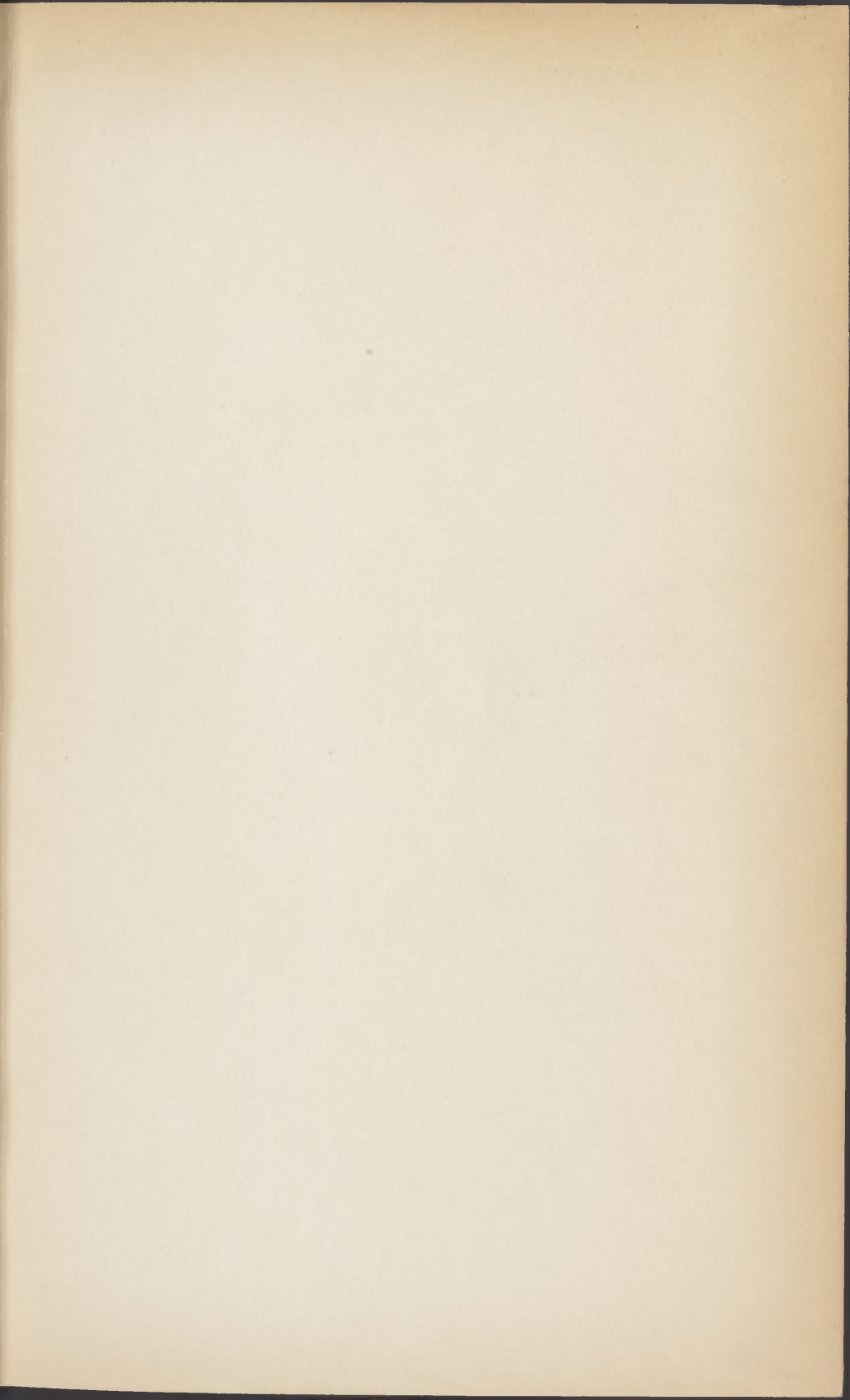
\* 9 8 9 1 9 9 3 9 6 \*

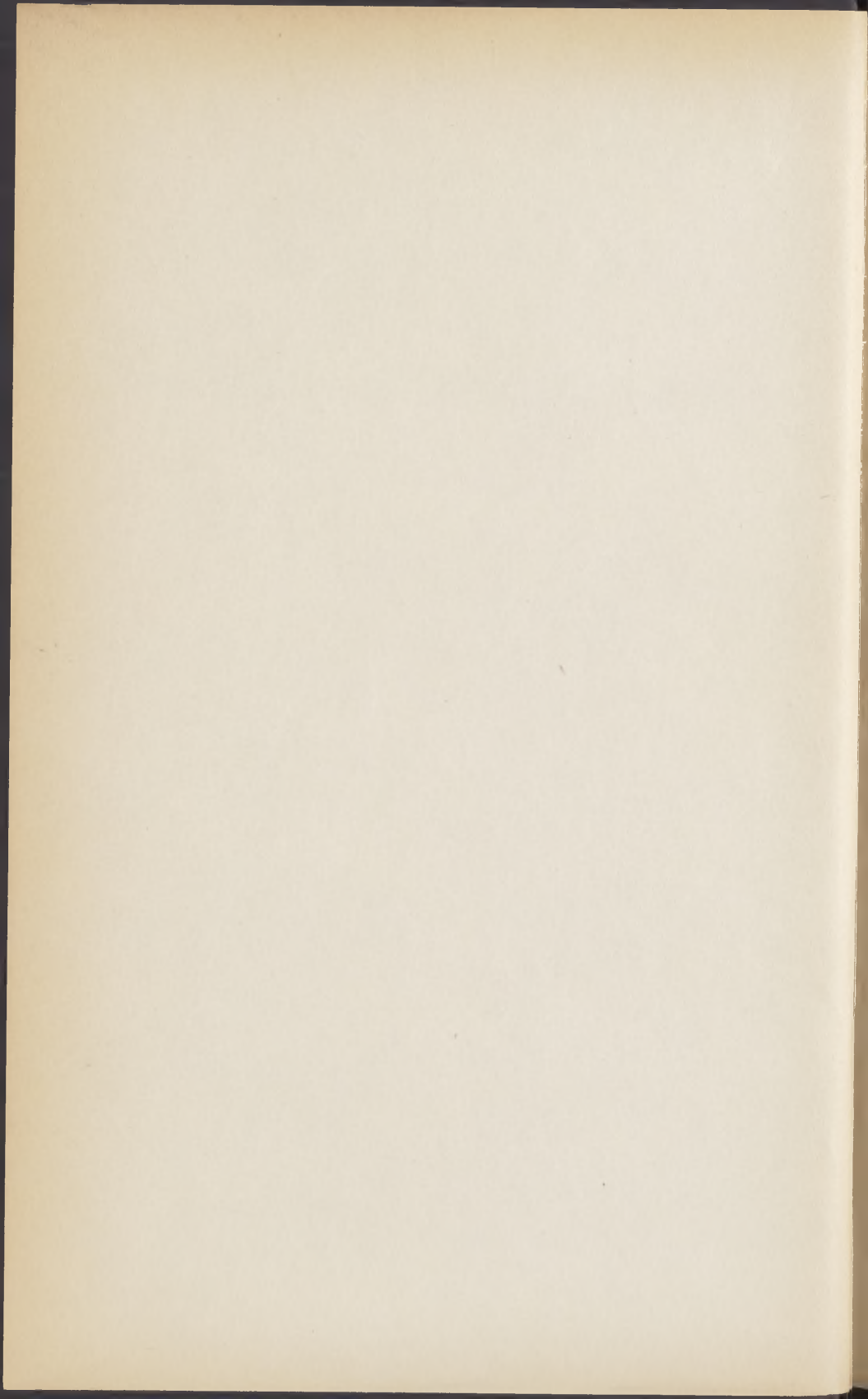
PROPERTY OF THE  
UNITED STATES  
GOVERNMENT

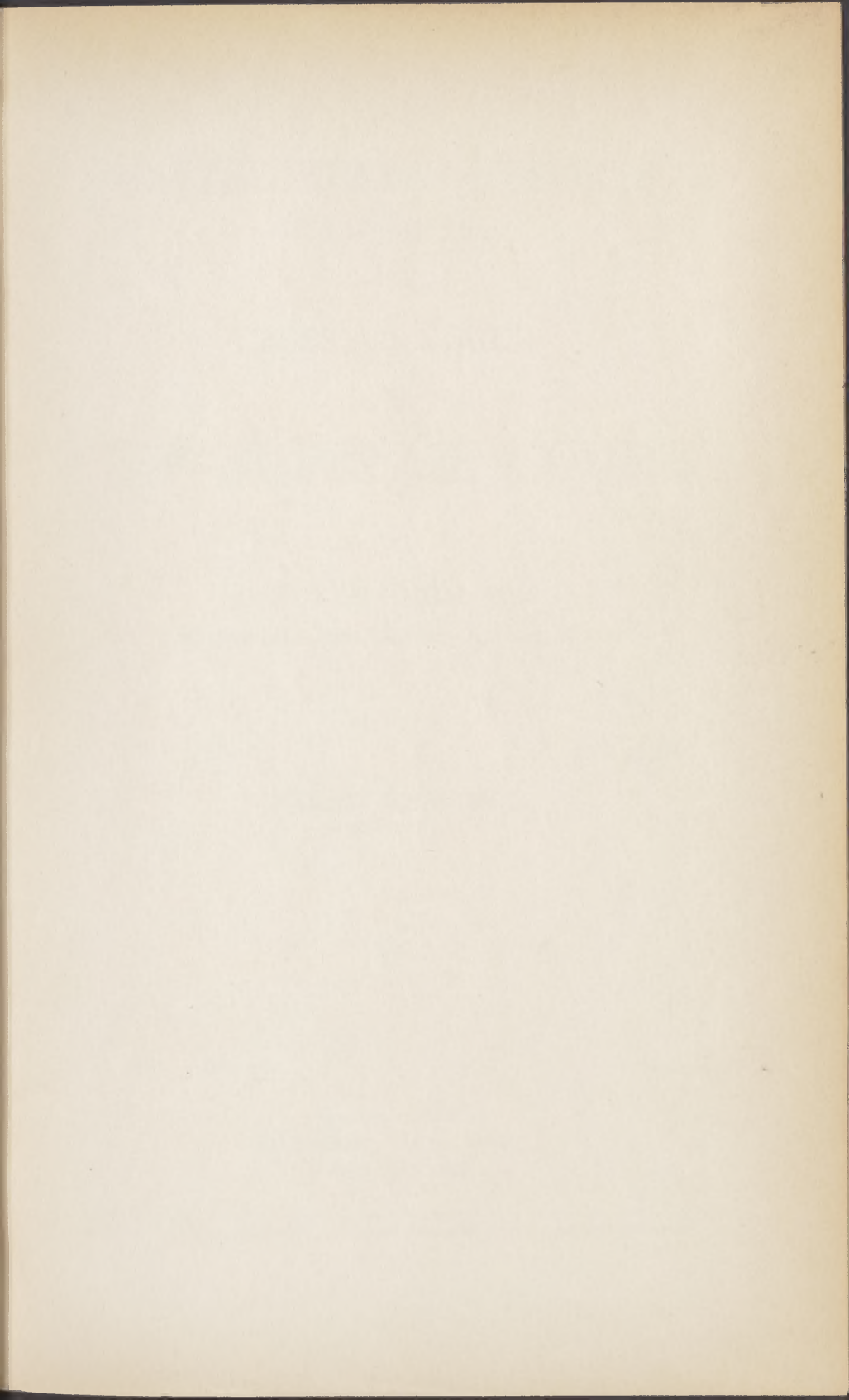
PROPERTY OF  
BUREAU OF WAR RISK LITIGATION  
DEPARTMENT OF JUSTICE

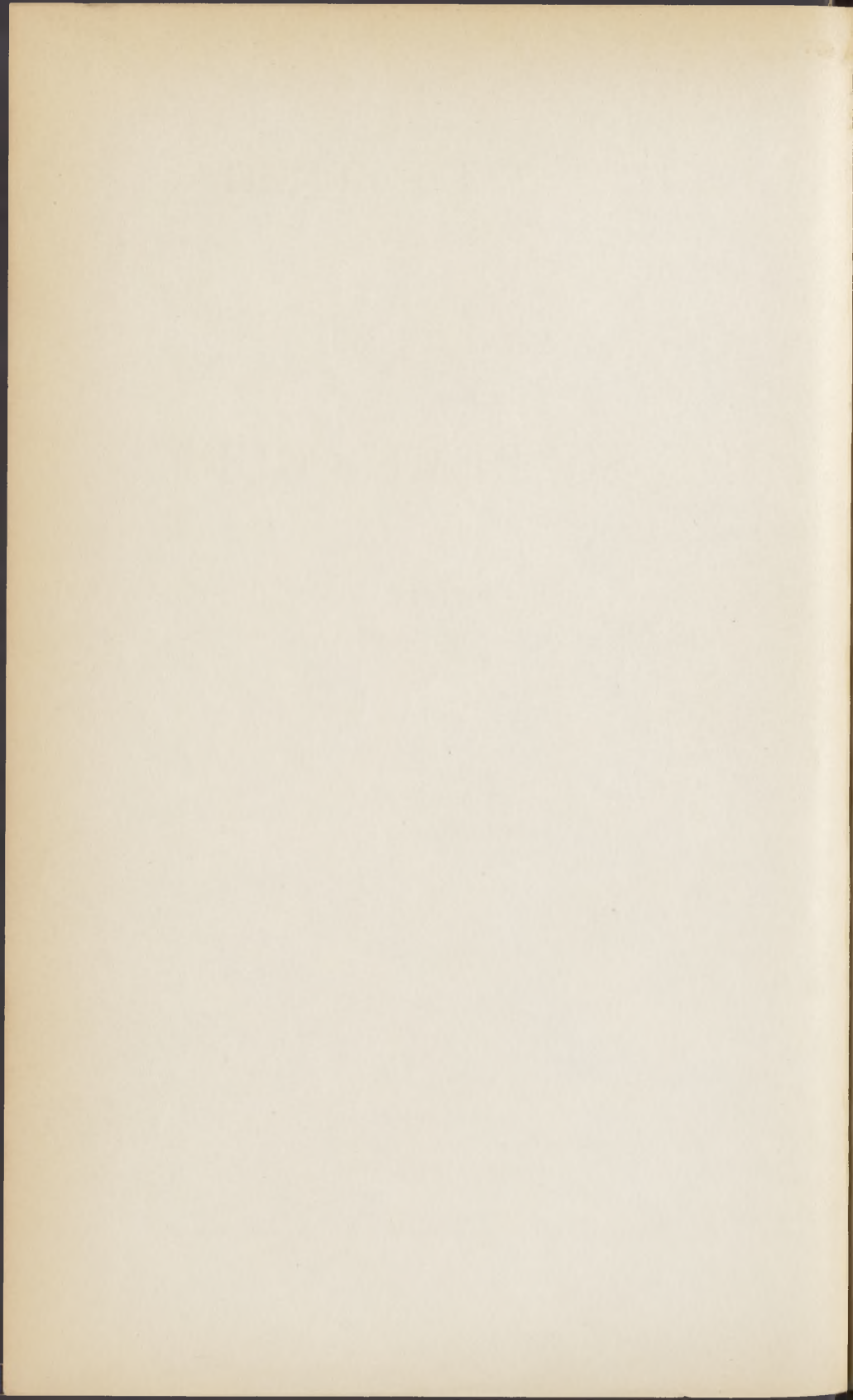
PROPERTY OF  
BUREAU OF WAR RISK LITIGATION  
DEPARTMENT OF JUSTICE











UNITED STATES REPORTS

VOLUME 299

---

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1936

FROM OCTOBER 5, 1936, THROUGH JANUARY 31, 1937

---

ERNEST KNAEBEL  
REPORTER



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1937

UNITED STATES REPORTS  
VOLUME 299  
CASES ADJUDGED  
THE SUPREME COURT

ERRATA

- 290 U. S. 600. In No. 124 the citation of the report below should be 13 F. Supp. 24.
- 298 U. S. 351, lines 11-12. "Solicitor General Biggs" should be changed to "Solicitor General Reed."
- 298 U. S. 655. In No. 779 add the name of Mr. Harry Hoffman to counsel for respondent.
- 298 U. S. 672. In No. 893 strike out line 6.

**JUSTICES**  
OF THE  
**SUPREME COURT**

DURING THE TIME OF THESE REPORTS <sup>1</sup>

---

CHARLES EVANS HUGHES, CHIEF JUSTICE.  
WILLIS VAN DEVANTER, ASSOCIATE JUSTICE.  
JAMES CLARK McREYNOLDS, ASSOCIATE JUSTICE.  
LOUIS D. BRANDEIS, ASSOCIATE JUSTICE.  
GEORGE SUTHERLAND, ASSOCIATE JUSTICE.  
PIERCE BUTLER, ASSOCIATE JUSTICE.  
HARLAN FISKE STONE, ASSOCIATE JUSTICE. <sup>2</sup>  
OWEN J. ROBERTS, ASSOCIATE JUSTICE.  
BENJAMIN N. CARDOZO, ASSOCIATE JUSTICE.

---

HOMER S. CUMMINGS, ATTORNEY GENERAL.  
STANLEY REED, SOLICITOR GENERAL.  
CHARLES ELMORE CROPLEY, CLERK.  
FRANK KEY GREEN, MARSHAL.

---

<sup>1</sup> For allotment of the Chief Justice and Associate Justices among the several circuits, see next page.

<sup>2</sup> Mr. JUSTICE STONE was absent from the bench, on account of illness, from October 14, 1936, to February 1, 1937.

## SUPREME COURT OF THE UNITED STATES

### ALLOTMENT OF JUSTICES

*It is ordered,* That the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, agreeably to the acts of Congress in such case made and provided, and that such allotment be entered of record, viz:

For the First Circuit, LOUIS DEMBITZ BRANDEIS, Associate Justice.

For the Second Circuit, HARLAN FISKE STONE, Associate Justice.

For the Third Circuit, OWEN J. ROBERTS, Associate Justice.

For the Fourth Circuit, CHARLES EVANS HUGHES, Chief Justice.

For the Fifth Circuit, BENJAMIN N. CARDOZO, Associate Justice.

For the Sixth Circuit, JAMES C. McREYNOLDS, Associate Justice.

For the Seventh Circuit, WILLIS VAN DEVANTER, Associate Justice.

For the Eighth Circuit, PIERCE BUTLER, Associate Justice.

For the Ninth Circuit, GEORGE SUTHERLAND, Associate Justice.

For the Tenth Circuit, WILLIS VAN DEVANTER, Associate Justice.

March 28, 1932.

## TABLE OF CASES REPORTED

	Page.
A. B. C. Fireproof Warehouse Co. <i>v.</i> A., T. & S. F. Ry. ....	555
Abel <i>v.</i> Kennedy.....	580, 622
A. B. Leach & Co., United States <i>v.</i> .....	531
Acme Can Co., United States <i>v.</i> .....	207
Adams, Florida <i>ex rel.</i> , Lee <i>v.</i> .....	542
Adams, Kester <i>v.</i> .....	608
Adamson <i>v.</i> Adamson.....	554
Adamson, Adamson <i>v.</i> .....	554
Aderhold, Ellis <i>v.</i> .....	587
Aderhold, Jones <i>v.</i> .....	611
A. D. Saenger, Inc. <i>v.</i> Commissioner.....	577
Aetna Life Insurance Co. <i>v.</i> Haworth.....	536
A. F. Anderson Estate <i>v.</i> Payne.....	575
Alabama Power Co. <i>v.</i> Ickes.....	583
Alaska Packers Assn. <i>v.</i> Pillsbury.....	538
Alaska Steamship Co. <i>v.</i> Rooker.....	552
Aleograph Co. <i>v.</i> Electrical Research Products, Inc. ....	551, 620
All Continent Corp., Steelman <i>v.</i> .....	522
Allen, Citizens National Bank <i>v.</i> .....	564
Allman & Olins, Inc. <i>v.</i> Joseph I. Shapiro, Inc.....	587
Alonso Hermanos, Matos <i>v.</i> .....	527
A. McLean & Son <i>v.</i> Federal Trade Comm'n.....	590
American Bakeries Co. <i>v.</i> Huntsville.....	514
American Gas & Power Co., Darling <i>v.</i> .....	556
American Life Insurance Co. <i>v.</i> Stewart.....	536
American National Bank, Tennessee Pub. Co. <i>v.</i> ....	18
American Natural Gas Co. <i>v.</i> United States.....	547
American Pharmaceutical Co. <i>v.</i> Shering & Glatz, Inc. ....	594
American Surety Co., Dugas <i>v.</i> .....	532

	Page.
American Telephone Co. <i>v.</i> United States.....	232
American Water Works & E. Co., Landis <i>v.</i> ....	248, 530
American Writing Paper Co., Holyoke Co. <i>v.</i> .....	526
Anderegg, Massachusetts Bonding & Ins. Co. <i>v.</i> ....	567
Anderson (A. F.) Estate <i>v.</i> Payne.....	575
Andrews <i>v.</i> Drake.....	572
Andrews, E. C. Stearns & Co. <i>v.</i> .....	515
Andrews, W. H. H. Chamberlin, Inc. <i>v.</i> .....	515
Anglo-Chilean Nitrate Corp., Grace S. S. Co. <i>v.</i>	586, 587
Arizona <i>v.</i> California.....	618
Armand Co. <i>v.</i> Federal Trade Comm'n.....	597, 623
Armstrong <i>v.</i> Corporation Counsel.....	576
Ashton <i>v.</i> Cameron County Water Dist.....	619
Associated Industries <i>v.</i> Department of Labor.....	515
Associated Press, KVOS <i>v.</i> .....	269
Associated Press <i>v.</i> National Labor Board.....	532
Atchison, T. & S. F. Ry., A. B. C. Warehouse Co. <i>v.</i> .....	555
Atchison, T. & S. F. Ry. Co. <i>v.</i> Scarlett.....	537
Auditorium Conditioning Corp. <i>v.</i> Warner Bros. Pic- tures.....	563
Automatic Washer Co., United States <i>v.</i> .....	531
Avery <i>v.</i> Commissioner.....	604
Bailen, Deitrick <i>v.</i> .....	579
Baker, Security Trust Co. <i>v.</i> .....	568
Baldwin <i>v.</i> Huffman.....	550
Baldwin <i>v.</i> Nelson.....	550
Ballf <i>v.</i> Kranz.....	549, 621
Baltimore & Ohio R. Co., York <i>v.</i> .....	548
Banner Cleaners & Dyers <i>v.</i> Louisiana.....	505
Barbour <i>v.</i> George.....	579
Barker, Lauro <i>v.</i> .....	521
Barnett <i>v.</i> United States.....	546, 620
Barwise <i>v.</i> Sheppard.....	33, 622
Bassick <i>v.</i> Commissioner.....	592, 623
Bateman <i>v.</i> Ideal Building & Loan Assn.....	615
Beale, Northrop <i>v.</i> .....	516, 624

TABLE OF CASES REPORTED.

VII

	Page.
Beale <i>v.</i> Snead.....	619
Beasley, Cate <i>v.</i> .....	30
Beckwith <i>v.</i> McCarter.....	601
Bell, Hernig <i>v.</i> .....	577
Belmont, United States <i>v.</i> .....	537
Benedum, Helvering <i>v.</i> .....	520, 529
Bengzon <i>v.</i> Secretary of Justice.....	410, 526
Bennett <i>v.</i> Chicago Board of Trade.....	606
Berry <i>v.</i> Harrell.....	559
Bertino, Marion Steam Shovel Co. <i>v.</i> .....	556
Best, Woolsey <i>v.</i> .....	1
Bibb Manufacturing Co. <i>v.</i> Rose.....	550
Bickford, Needham <i>v.</i> .....	560
Bielaski, Bronx County Trust Co. <i>v.</i> .....	563
Bingaman, Morf <i>v.</i> .....	619
Bingaman, Piper <i>v.</i> .....	619
Bingaman, U. S. Fidelity & G. Co. <i>v.</i> .....	619
Binney <i>v.</i> Long.....	280
Bishop & Co., Midland Bank <i>v.</i> .....	587
Bitker <i>v.</i> Hotel Duluth Co.....	577
Black-Clawson Co., Centrifugal Eng. Corp. <i>v.</i> .....	554
Blackmore <i>v.</i> Public Service Comm'n.....	617
Blair <i>v.</i> Commissioner.....	527
Blankenship, Magnolia Petroleum Co. <i>v.</i> .....	608, 624
Blanton, Pope <i>v.</i> .....	521
Blue Ridge Oil Co. <i>v.</i> Rogan.....	574
Board of Equalization, British-American Oil Co. <i>v.</i> .....	159, 624
Board of Osteopathic Examiners, Gustason <i>v.</i> .....	545
Boise Payette Lumber Co. <i>v.</i> Idaho Corp.....	577
Bonita Co. <i>v.</i> Federal Trade Comm'n.....	590
Boseman <i>v.</i> Connecticut General Life Ins. Co.....	537
Boston & Albany R. Co. <i>v.</i> Hietala.....	589
Boston-Continental National Bank, Kennedy <i>v.</i> .....	533
Boston-Continental Nationl Bank, Wendell Phillips Co. <i>v.</i> .....	533
Boston & Maine R. Co., Davis <i>v.</i> .....	614

	Page.
Boston Safe Deposit & Trust Co. <i>v.</i> Long.....	518
Bourdieu <i>v.</i> Pacific Western Oil Co.....	65, 622
Bowen, Ohio <i>ex rel.</i> Van Schaick <i>v.</i> .....	597
Bowers, Farmers' Loan & Trust Co. <i>v.</i> .....	582
Bracken <i>v.</i> Securities & Exchange Comm'n.....	504
Bradley Lumber Co. <i>v.</i> National Labor Board.....	559
Brennan <i>v.</i> Sabine Towing Co.....	599, 624
Brenner <i>v.</i> 333 North Michigan Avenue Bldg. Corp.	602
Breon (George A.) & Co. <i>v.</i> Wisconsin Foundation.	598
British-American Oil Co. <i>v.</i> Board of Equaliza- tion.....	159, 624
Broderick, Quintal <i>v.</i> .....	614
Bronx County Trust Co. <i>v.</i> Bielaski.....	563
Brookins <i>v.</i> Ohio Bell Telephone Co.....	568
Brophy, Hammersmith <i>v.</i> .....	540
Broughton & Wiggins Navigation Co., Hammond Co. <i>v.</i> .....	600
Brower <i>v.</i> United States.....	562
Brown <i>v.</i> O'Keefe.....	539
Brown (W. P.) & Sons Lumber Co. <i>v.</i> Louisville & N. R. Co.....	393, 524
Brummett, <i>Ex parte</i> .....	514
Brush <i>v.</i> Commissioner.....	536
Brusselback, Cago Corp. <i>v.</i> .....	586
Brusselback, Gage <i>v.</i> .....	615
Bryant, Employers Reinsurance Corp. <i>v.</i> .....	374, 525
Buie <i>v.</i> United States.....	596
Bullard, Citizens National Bank <i>v.</i> .....	564
Burbank, Hammond <i>v.</i> .....	519
Bush Terminal Co. <i>v.</i> Preferred Stockholders Com- mittee.....	596
Cago Corp. <i>v.</i> Brusselback.....	586
California, Arizona <i>v.</i> .....	618
California, Fitzgerald <i>v.</i> .....	593
California Iron Yards Corp. <i>v.</i> Commissioner.....	553
Californian, The, J. V. Lane & Co. <i>v.</i> .....	620
Cameron County Water District, Ashton <i>v.</i> .....	619

## TABLE OF CASES REPORTED.

IX

	Page.
Candado Stevedoring Corp. <i>v.</i> Lowe.....	588
Cannon <i>v.</i> Louisiana.....	503
Capital Co., Fox <i>v.</i> ....	105
Capital Endowment Co. <i>v.</i> Ohio <i>ex rel.</i> Warner.....	561
Carkhuff <i>v.</i> Commissioner.....	568
Carlin (P. J.) Construction Co. <i>v.</i> Heaney.....	41
Carolla <i>v.</i> United States.....	573
Carpenter <i>v.</i> Nichols.....	598
Cassel, <i>Ex parte</i> .....	516
Cate <i>v.</i> Beasley.....	30
Central Fibre Products Co. <i>v.</i> Hardin.....	547, 620
Central Hanover Bank, Siemens & Halske <i>v.</i> ....	585
Central Illinois Electric Co. <i>v.</i> Finance Co.....	549
Centrifugal Engineering Corp. <i>v.</i> Black-Clawson Co.	554
Chain, United States for the use of Wilhelm <i>v.</i> ....	531
Chamberlain Co., Drackett Co. <i>v.</i> ....	503
Chamberlin (W. H. H.), Inc. <i>v.</i> Andrews.....	515
Chamblin <i>v.</i> Chamblin.....	541
Chamblin, Chamblin <i>v.</i> ....	541
Charlesworth <i>v.</i> Hipsh, Inc.....	594
Chase National Bank <i>v.</i> Commissioner.....	552
Cheyenne, Van Tassel Real Estate Co. <i>v.</i> ....	574
Chicago, Hauge <i>v.</i> ....	387
Chicago Board of Trade, Bennett <i>v.</i> ....	606
Chicago Mercantile Exchange, Moore <i>v.</i> ....	606
Chicago, M., St. P. & P. R. Co. <i>v.</i> Schiefelbein.....	558
Chicago Title & Trust Co., Tinkoff <i>v.</i> ....	611
Chisholm <i>v.</i> Gilmer.....	99, 623
Citizens National Bank <i>v.</i> Allen.....	564
Citizens National Bank <i>v.</i> Bullard.....	564
Citizens National Bank, Fidelity & Casualty Co. <i>v.</i> ..	612
Citizens National Bank <i>v.</i> Golden.....	563
Citizens National Bank <i>v.</i> Pigford.....	564
City Bank Farmers Trust Co. <i>v.</i> Irving Trust Co.....	433, 532
City Bus Co. <i>v.</i> Mississippi.....	520

	Page.
City of Chattanooga, The, Merchants & Miners Co. <i>v.</i> .....	599
Clark, <i>Ex parte</i> .....	516, 520
Clark <i>v.</i> Delaware & Hudson R. Corp.....	591
Clawans, District of Columbia <i>v.</i> .....	524
Coastwise Steamship & B. Co., Sperry Co. <i>v.</i> .....	612
Coe, Martin <i>v.</i> .....	558
Cogger <i>v.</i> Hazen.....	598
Collector, Manila Gas Corp. <i>v.</i> .....	571
Columbia Casualty Co. <i>v.</i> Industrial Comm'n..	569, 570, 621
Columbian National Life Ins. Co. <i>v.</i> Comfort.....	571
Comfort, Columbian National Life Ins. Co. <i>v.</i> .....	571
Commissioner, A. D. Saenger, Inc. <i>v.</i> .....	577
Commissioner, Avery <i>v.</i> .....	604
Commissioner, Bassick <i>v.</i> .....	592, 623
Commissioner, Blair <i>v.</i> .....	527
Commissioner, Brush <i>v.</i> .....	536
Commissioner, California Iron Yards Corp. <i>v.</i> .....	553
Commissioner, Carkhuff <i>v.</i> .....	568
Commissioner, Chase Nationl Bank <i>v.</i> .....	552
Commissioner, Elmhurst Cemetery Co. <i>v.</i> .....	527
Commissioner, Fairbanks Court Co. <i>v.</i> .....	582
Commissioner, Farren <i>v.</i> .....	617
Commissioner, Gold & Stock Telegraph Co. <i>v.</i> .....	564
Commissioner, Gulf, M. & N. R. Co. <i>v.</i> .....	574
Commissioner, Himelhoch Bros. & Co. <i>v.</i> .....	572
Commissioner, Hobart Iron Co. <i>v.</i> .....	543
Commissioner, McCrary <i>v.</i> .....	617
Commissioner, McGuire <i>v.</i> .....	591
Commissioner, Pacific & Atlantic Telegraph Co. <i>v.</i> ..	564
Commissioner, Pease <i>v.</i> .....	562
Commissioner, Perkins <i>v.</i> .....	592, 623
Commissioner, Remco Steamship Co. <i>v.</i> .....	555
Commissioner, R. & L., Inc. <i>v.</i> .....	588
Commissioner, Rumsey <i>v.</i> .....	552
Commissioner, Silk Center Building, Inc. <i>v.</i> .....	619

TABLE OF CASES REPORTED.

XI

	Page.
Commissioner, Stuart <i>v.</i> . . . . .	575
Commissioner, Travelers Fire Insurance Co. <i>v.</i> . . . . .	566
Commissioner, Travelers Indemnity Co. <i>v.</i> . . . . .	566
Commissioner, Turbeville <i>v.</i> . . . . .	581
Commissioner, Twining <i>v.</i> . . . . .	578
Commissioner, U S L Battery Corp. <i>v.</i> . . . . .	593
Commissioner, Vawter <i>v.</i> . . . . .	578
Commissioner, Weil <i>v.</i> . . . . .	552
Compton, Hammond Lumber Co. <i>v.</i> . . . . .	578
Connecticut General Life Ins. Co., Boseman <i>v.</i> . . . . .	537
Connolly, United States <i>v.</i> . . . . .	598
Consolidated Oil Co., Crown Central Corp. <i>v.</i> . . . . .	600
Continental Mills <i>v.</i> United States. . . . .	614
Continental Oil Co. <i>v.</i> United States. . . . .	510
Conway, Union Building Corp. <i>v.</i> . . . . .	515
Corporation Counsel, Armstrong <i>v.</i> . . . . .	576
Cotterill <i>v.</i> Kroeger. . . . .	302
Cottman (J. H.) & Co. <i>v.</i> United States. . . . .	566
Craig <i>v.</i> United States. . . . .	620
Crawford, Orcutt <i>v.</i> . . . . .	594
Crew <i>v.</i> Simmons Co. . . . .	569
Crosby, Fidelity-Phenix Fire Ins. Co. <i>v.</i> . . . . .	587
Crosby, Liverpool & L. & G. Ins. Co. <i>v.</i> . . . . .	587
Crown Central Petroleum Corp. <i>v.</i> Consolidated Oil Co. . . . .	600
Culhane, Mechanics Universal Joint Co. <i>v.</i> . . . . .	51
Cummings <i>v.</i> Deutsche Bank. . . . .	527
Cummings, Steinberg <i>v.</i> . . . . .	602
Curtiss-Wright Export Corp., United States <i>v.</i> . . . . .	304
Dale Consolidated Mines, Moodey <i>v.</i> . . . . .	549
Damen & Jarvis Bldg. Corp. <i>v.</i> Mechanics' Ins. Co..	556
Darling <i>v.</i> American Gas & Power Co. . . . .	556
Dattel <i>v.</i> Jefferson Standard Life Ins. Co. . . . .	567
Davis <i>v.</i> Boston & Maine R. Co. . . . .	614
Day, Equitable Life Assurance Society <i>v.</i> . . . . .	548
Day, Metropolitan Life Ins. Co. <i>v.</i> . . . . .	560
Day, Schulten <i>v.</i> . . . . .	584

	Page.
DeBenque <i>v.</i> United States.....	620
Dederick <i>v.</i> Smith.....	506
Deitrick <i>v.</i> Bailen.....	579
DeJonge <i>v.</i> Oregon.....	353
Delaware & Hudson R. Corp., Clark <i>v.</i> .....	591
Delaware, L. & W. R. Co., Van Derveer <i>v.</i> .....	595
Denson <i>v.</i> Provident Mutual Life Ins. Co.....	556, 622
Department of Labor, Associated Industries <i>v.</i> .....	515
Dern, Miami Beach Jockey Club <i>v.</i> .....	556
Deutsche Bank, Cummings <i>v.</i> .....	527
Dexter Horton Estate, Ogilvie <i>v.</i> .....	614
District Director of Immigration, Kishan Singh <i>v.</i> ...	561
District of Columbia <i>v.</i> Clawans.....	524
Ditto, Inc., Flanigan <i>v.</i> .....	598, 607, 623
Dixie Oil Co. <i>v.</i> Fort.....	595
D & M Machine Works <i>v.</i> Texas Rubber Corp.....	548
Doherty Research Co. <i>v.</i> Vickers Petroleum Co.....	545
Douglass, Sims <i>v.</i> .....	546
Dows Estate, Inc., Virdone <i>v.</i> .....	604
Drackett Co. <i>v.</i> Chamberlain Co.....	503
Drake, Andrews <i>v.</i> .....	572
Druiss Co., Loporto <i>v.</i> .....	617
Dugas <i>v.</i> American Surety Co.....	532
Duke Power Co. <i>v.</i> Greenwood County.....	259
DuPont <i>v.</i> United States.....	531
DuPont De Nemours (E. I.) & Co. <i>v.</i> Waxed Prod- ucts Co.....	601
East Coast Oil Co., Helvering <i>v.</i> .....	608
Eastern Cherokees <i>v.</i> United States.....	551, 552
Eastman <i>v.</i> Ohio.....	505
Eastman Kodak Co. <i>v.</i> United States.....	581
E. C. Stearns & Co. <i>v.</i> Andrews.....	515
Edgewater, Mayor of, Ross <i>v.</i> .....	543
Egan, Jordahl <i>v.</i> .....	597
E. I. DuPont De Nemours & Co. <i>v.</i> Waxed Products Co.....	601
Einhorn, Helvering <i>v.</i> .....	175, 529

TABLE OF CASES REPORTED.

XIII

	Page.
Eisenhardt <i>v.</i> Louisiana.....	512, 621
El Dorado Foundry Machine & S. Co., Pump Co. <i>v.</i>	560
Electrical Research Products, Inc., Aleograph Co. <i>v.</i> .....	551, 620
Electric Ferries, Inc., Wolker <i>v.</i> .....	540
Ellis <i>v.</i> Aderhold.....	587
Elmhurst Cemetery Co. <i>v.</i> Commissioner.....	527
Emigrant Cherokees <i>v.</i> United States.....	551, 552
Employers Reinsurance Corp. <i>v.</i> Bryant.....	374, 525
Engebretson <i>v.</i> Marcell.....	566, 621
Equitable Life Assurance Society <i>v.</i> Day.....	548
Equitable Life Assurance Society, Ham <i>v.</i> .....	505
Erickson, Winnetka <i>v.</i> .....	585
Erie R. Co. <i>v.</i> Leuthe.....	570
Esnault-Pelterie, United States <i>v.</i> .....	201
Essex Razor Blade Corp. <i>v.</i> Gillette Co.....	94
Estate of Parks, Pufahl <i>v.</i> .....	217
<i>Ex parte.</i> See name of party.	
Factor (Max) & Co., Kunsman <i>v.</i> .....	198
Fairbanks Court Wholesale Grocery Co. <i>v.</i> Com- missioner.....	582
Farmers' Loan & Trust Co. <i>v.</i> Bowers.....	582
Farren <i>v.</i> Commissioner.....	617
Feak <i>v.</i> Marion Steam Shovel Co.....	604
Federal Crude Oil Co. <i>v.</i> Yount-Lee Oil Co.....	554
Federal Life Insurance Co. <i>v.</i> Zebec.....	558
Federal Reserve Bank, Ocean City <i>v.</i> .....	584
Federal Trade Comm'n, A. McLean & Son <i>v.</i> .....	590
Federal Trade Comm'n, Armand Co. <i>v.</i> .....	597, 623
Federal Trade Comm'n, Bonita Co. <i>v.</i> .....	590
Federal Trade Comm'n, Hofeller <i>v.</i> .....	557
Federal Trade Comm'n, M. J. Holloway & Co. <i>v.</i> ...	590
Federal Trade Comm'n, Queen Anne Candy Co. <i>v.</i> ..	590
Fernandez, National City Bank <i>v.</i> .....	586
Fidelity & Casualty Co. <i>v.</i> Citizens National Bank.	612
Fidelity-Phenix Fire Ins. Co. <i>v.</i> Crosby.....	587
Fidelity-Phenix Fire Ins. Co. <i>v.</i> Murphy.....	557

	Page.
Fierman <i>v.</i> United States.....	606
First National Bank, Giesy <i>v.</i> .....	547
First National Bank, Gully <i>v.</i> .....	109
First National Bank, Maryland Casualty Co. <i>v.</i> ....	549
First National Bank, Rehmeier <i>v.</i> .....	541
Fischer <i>v.</i> Kroeger.....	302
Fitzgerald <i>v.</i> California.....	593
Flanigan <i>v.</i> Ditto, Inc.....	598, 607, 623
Flat-Top Fuel Co. <i>v.</i> Martin.....	585
Florida <i>ex rel.</i> Adams, Lee <i>v.</i> .....	542
Florida <i>ex rel.</i> Jones <i>v.</i> Mayo.....	614
Florida <i>ex rel.</i> Lane Drug Stores, Simpson <i>v.</i> .....	543
Floridian, The, Roberts Brining & Co. <i>v.</i> .....	577
Fluid Packed Pump Co. <i>v.</i> El Dorado Co.....	560
Fort, Dixie Oil Co. <i>v.</i> .....	595
Fort, Hudson <i>v.</i> .....	595
Foss Co., Washington <i>ex rel.</i> , Kelly <i>v.</i> .....	539
Foster & Kleiser Co., Special Site Sign Co. <i>v.</i> .....	613
Founders General Corp. <i>v.</i> Hoey.....	534
Fourth National Bank <i>v.</i> United States.....	575
Foust <i>v.</i> Munson Steamship Lines.....	77
Fox <i>v.</i> Capital Co.....	105
Fox, Ickes <i>v.</i> .....	528
Fox, Wheeling Steel Corp. <i>v.</i> .....	619
Freeman <i>v.</i> Premier Machine Co.....	580
Freeman <i>v.</i> United States.....	616
Fried, Helvering <i>v.</i> .....	175, 529
Friedman, Singer <i>v.</i> .....	590
Friedman-Harry Marks Clothing Co., National Labor Board <i>v.</i> .....	535
Fruehauf Trailer Co., National Labor Board <i>v.</i> .....	534
Fuller, Jackson <i>v.</i> .....	608
Gage <i>v.</i> Brusselback.....	615
Gage, United States <i>v.</i> .....	571
Galveston-Houston Electric Co., United States <i>v.</i> ....	590
Gelbin, New York, N. H. & H. R. Co. <i>v.</i> .....	560
General Baking Co. <i>v.</i> Harr.....	539

## TABLE OF CASES REPORTED.

xv

	Page.
General Motors Corp., Pick Manufacturing Co. <i>v.</i>	3, 622
George, Barbour <i>v.</i>	579
George A. Breon & Co. <i>v.</i> Wisconsin Foundation	598
Giesy <i>v.</i> First National Bank	547
Giles, United States <i>v.</i>	531
Gillespie, Hartridge-Cannon Co. <i>v.</i>	606
Gillette Safety Razor Co., Essex Corp. <i>v.</i>	94
Gilmer, Chisholm <i>v.</i>	99, 623
Gimbel, Harriman National Bank & T. Co. <i>v.</i>	559
Girard Trust Co., U. S. <i>ex rel.</i> , <i>v.</i> Helvering	603
Gleason, <i>Ex parte</i>	514
Gliwa <i>v.</i> U. S. Steel Corp.	593
Globe Knitting Works <i>v.</i> Michigan Trust Co.	544
Glover <i>v.</i> Simpson	506
Golden, Citizens National Bank <i>v.</i>	563
Goldstein, New York City <i>v.</i>	522, 583, 618
Gold & Stock Telegraph Co. <i>v.</i> Commissioner	564
Good, Missouri-K.-T. R. Co. <i>v.</i>	605
Goodman, Rood <i>v.</i>	551
Goodyear Tire & Rubber Co., McLean <i>v.</i>	600
Gossnell, Spang <i>v.</i>	605
Grace Steamship Co. <i>v.</i> Anglo-Chilean Nitrate Corp	586, 587
Graham Department Stores Co., Valentine <i>v.</i>	32
Graham Production Co., Standley <i>v.</i>	593
Grand Rapids Trust Co. <i>v.</i> United Light & Power Co.	534, 618
Grand Rapids Trust Co., United Light & Power Co. <i>v.</i>	591
Graves, New York <i>ex rel.</i> Rogers <i>v.</i>	401
Graves, New York <i>ex rel.</i> Whitney <i>v.</i>	366
Graves, North American Cement Corp. <i>v.</i>	517
Great Atlantic & Pacific Tea Co., Valentine <i>v.</i>	32
Great Lakes Transit Corp., Mohr <i>v.</i>	557
Greenhaus <i>v.</i> United States	596
Greenwood County, Duke Power Co. <i>v.</i>	259
Guardian Trust Co. <i>v.</i> Jefferson Lake Oil Co.	610

	Page.
Gulf Bitulithic Co., Scanlon <i>v.</i> .....	582
Gulf, M. & N. R. Co. <i>v.</i> Commissioner.....	574
Gully <i>v.</i> First National Bank.....	109
Gustason <i>v.</i> Board of Osteopathic Examiners.....	545
Ham <i>v.</i> Equitable Life Assurance Society.....	505
Hamilton, <i>Ex parte</i> .....	509
Hammersmith <i>v.</i> Brophy.....	540
Hammerstrom, Iowa Land Bank <i>v.</i> .....	546
Hammerstrom, Live Stock National Bank <i>v.</i> .....	546
Hammerstrom, Toy National Bank <i>v.</i> .....	546
Hammond <i>v.</i> Burbank.....	519
Hammond Lumber Co. <i>v.</i> Broughton & Wiggins Co.	600
Hammond Lumber Co. <i>v.</i> Compton.....	578
Hancock (John) Mutual Life Ins. Co. <i>v.</i> Yates.	178, 525
Hardin, Central Fibre Products Co. <i>v.</i> .....	547, 620
Harr, General Baking Co. <i>v.</i> .....	539
Harrell, Berry <i>v.</i> .....	559
Harriman National Bank & Trust Co. <i>v.</i> Gimbel....	559
Harriman National Bank & Trust Co. <i>v.</i> Munroe..	601
Hartford-Connecticut Trust Co., Suisman <i>v.</i> ....	573, 621
Hartridge-Cannon Co. <i>v.</i> Gillespie.....	606
Haskins Bros. & Co. <i>v.</i> Morgenthau.....	588
Haskins Bros. & Co. <i>v.</i> O'Malley.....	594
Hauge <i>v.</i> Chicago.....	387
Hawley, Hazen <i>v.</i> .....	613
Haworth, Aetna Life Insurance Co. <i>v.</i> .....	536
Hazen, Cogger <i>v.</i> .....	598
Hazen <i>v.</i> Hawley.....	613
Hazen, Maryland & Virginia Milk Assn. <i>v.</i> .....	566
Heaney, P. J. Carlin Construction Co. <i>v.</i> .....	41
Heffron <i>v.</i> Western Loan & Bldg. Co.....	597
Heiner, Peerless Oil & Gas Co. <i>v.</i> .....	545, 620
Helvering <i>v.</i> Benedum.....	520, 529
Helvering <i>v.</i> East Coast Oil Co.....	608
Helvering <i>v.</i> Einhorn.....	175, 529
Helvering <i>v.</i> Fried.....	175, 529
Helvering <i>v.</i> Illinois Life Insurance Co....	88, 516, 622

## TABLE OF CASES REPORTED.

XVII

	Page.
Helvering <i>v.</i> Kelly.....	603
Helvering, Linderman <i>v.</i> ....	589
Helvering <i>v.</i> Midland Mutual Life Ins. Co.....	527
Helvering <i>v.</i> Parriott.....	520, 530
Helvering, Schafer <i>v.</i> .....	171, 514
Helvering <i>v.</i> Tex-Penn Oil Co.....	520, 529
Helvering, Tim <i>v.</i> .....	171
Helvering, U. S. <i>ex rel.</i> Girard Trust Co. <i>v.</i> .....	603
Helvering, U. S. <i>ex rel.</i> Rhodes <i>v.</i> .....	570
Helvering <i>v.</i> Vaughan.....	606
Henderson <i>v.</i> Kellahin.....	551
Hennepin County, M. W. Savage Factories, Inc. <i>v.</i> ..	555
Hernig <i>v.</i> Bell.....	577
Hicks <i>v.</i> Mutual Life Insurance Co.....	563
Hietala, Boston & Albany R. Co. <i>v.</i> .....	589
Hill <i>v.</i> U. S. <i>ex rel.</i> Weiner.....	526
Himelhoch Bros. & Co. <i>v.</i> Commissioner.....	572
Hipsh, Inc., Charlesworth <i>v.</i> .....	594
Hobart Iron Co. <i>v.</i> Commissioner.....	543
Hoeppel <i>v.</i> United States.....	557, 622
Hoey, Founders General Corp. <i>v.</i> .....	534
Hoey, Jacoby <i>v.</i> .....	613
Hofeller <i>v.</i> Federal Trade Comm'n.....	557
Hoffman <i>v.</i> Rauch.....	538
Holloway (M. J.) & Co. <i>v.</i> Federal Trade Comm'n..	590
Holyoke Water Power Co. <i>v.</i> Paper Co.....	526
Hornblower & Weeks, Mintz <i>v.</i> .....	561
Hotel Duluth Co., Bitker <i>v.</i> .....	577
Hotsenpiller, Phoenix Joint Stock Land Bank <i>v.</i> ..	555
Hudson <i>v.</i> Fort.....	595
Hudson, United States <i>v.</i> .....	498, 523
Huffman, Baldwin <i>v.</i> .....	550
Hughes, Johnson <i>v.</i> .....	601
Hulbert, O'Brien <i>v.</i> .....	542
Huntsville, American Bakeries Co. <i>v.</i> .....	514
Huston, Iowa Soap Co. <i>v.</i> .....	594
Ickes, Alabama Power Co. <i>v.</i> .....	583

	Page.
Ickes <i>v.</i> Fox.....	528
Ickes <i>v.</i> Ottmuller.....	528
Ickes <i>v.</i> Parks.....	528
Ickes, Texas Utilities Co. <i>v.</i> ....	583
Ickes, U. S. <i>ex rel.</i> Sierra Land & Water Co. <i>v.</i> ....	562
Idaho Gold Dredging Corp., Lumber Co. <i>v.</i> ....	577
Ideal Building & Loan Assn., Bateman <i>v.</i> ....	615
Igoe Bros., Inc. <i>v.</i> Wickwire Spencer Steel Co. ....	617
Illinois, Servilli <i>v.</i> ....	616
Illinois Central R. Co., Kentucky Whip Co. <i>v.</i> ...	334, 525
Illinois Life Insurance Co., Helvering <i>v.</i> ....	88, 516, 622
Indiana, Walter <i>v.</i> ....	513
Indiana Farmer's Guide Pub. Co., Prairie Co. <i>v.</i>	156, 524
Indian Territory Oil Co., Taber <i>v.</i> ....	528
Industrial Accident Comm'n, Columbia Casualty Co. <i>v.</i> ....	569, 570, 621
Interstate Trust & Banking Co. <i>v.</i> Standard Lumber Co. ....	545
<i>In the Matter of</i> 620 Church Street Bldg. Corp. ....	24
Iowa, Siegel <i>v.</i> ....	586
Iowa-Des Moines Nat. Bank & T. Co. <i>v.</i> Lowden..	584
Iowa Joint Stock Land Bank <i>v.</i> Hammerstrom. ....	546
Iowa Soap Co. <i>v.</i> Huston.....	594
Ira M. Petersime & Son <i>v.</i> Robbins.....	553
Irving Trust Co., City Bank Farmers Trust Co. <i>v.</i> ....	433, 532
Irving Trust Co., Otis Land Trust <i>v.</i> ....	535
Irving Trust Co., Kuehner <i>v.</i> ....	445
Irving Trust Co., Maryland Casualty Co. <i>v.</i> ....	571
Irving Trust Co., Meadows <i>v.</i> ....	464, 532, 624
Irving Trust Co. <i>v.</i> Metropolitan Life Ins. Co. ....	595
Irving Trust Co., Schwartz <i>v.</i> ....	456
Jackson <i>v.</i> Fuller.....	608
Jacoby <i>v.</i> Hoey.....	613
Jefferson & Clearfield Coal & I. Co. <i>v.</i> United States.	581
Jefferson Lake Oil Co., Guardian Trust Co. <i>v.</i> ....	610
Jefferson Standard Life Ins. Co., Dattel <i>v.</i> ....	567

TABLE OF CASES REPORTED.

XIX

	Page.
J. H. Cottman & Co. <i>v.</i> United States.....	566
Jiffy Lubricator Co., Stewart-Warner Corp. <i>v.</i> .....	554
Jobissy, <i>Ex parte</i> .....	520
John B. Stetson Co., Stephen L. Stetson Co. <i>v.</i> .....	605
John Hancock Mutual Life Ins. Co. <i>v.</i> Yates... 178,	525
Johnson <i>v.</i> Hughes.....	601
Johnson, S. H. Kress & Co. <i>v.</i> .....	511, 623
Johnson, Torinus <i>v.</i> .....	508, 622
Johnson <i>v.</i> United States.....	574
Jones <i>v.</i> Aderhold.....	611
Jones, Florida <i>ex rel.</i> , <i>v.</i> Mayo.....	614
Jones <i>v.</i> Louisiana.....	511
Jones <i>v.</i> Securities & Exchange Comm'n.....	581
Jones & Laughlin Steel Corp., Labor Board <i>v.</i> .....	534
Jordahl <i>v.</i> Egan.....	597
Joseph E. Otis Estate Land Trust <i>v.</i> Irving Trust Co.....	535
Joseph I. Shapiro, Inc., Allman & Olins, Inc. <i>v.</i> .....	587
Joseph Triner Corp., McNeil <i>v.</i> .....	183
Jose Rivera Soler & Co. <i>v.</i> United Firemen's Ins. Co.....	45
J. P. Morgan & Co. <i>v.</i> Missouri Pacific R. Co.....	604
J. V. Lane & Co. <i>v.</i> The Californian.....	620
Kammerer <i>v.</i> Kroeger.....	302
Kansas City Board of Trade <i>v.</i> Milligan.....	610
Kansas City Southern Ry., Meyer <i>v.</i> .....	607
Kansas City Southern Ry. <i>v.</i> Quin.....	590
Kellahin, Henderson <i>v.</i> .....	551
Kelly, Helvering <i>v.</i> .....	603
Kelly <i>v.</i> United States.....	528
Kelly <i>v.</i> Washington <i>ex rel.</i> Foss Co.....	539
Kelsey <i>v.</i> Kroeger.....	302
Kennedy, Abel <i>v.</i> .....	580, 622
Kennedy <i>v.</i> Boston-Continental National Bank.....	533
Kentucky Macaroni Co., London & Provincial Ins. Co. <i>v.</i> .....	579
Kentucky Macaroni Co., Royal Insurance Co. <i>v.</i> .....	579

	Page.
Kentucky Whip & Collar Co. v. Illinois Central R. Co.....	334, 525
Kessler, U. S. <i>ex rel.</i> , v. Mercur Corp.....	576
Kester v. Adams.....	608
Ketchum v. MacDonald.....	595
Kibadeaux, Standard Dredging Co. v.....	549
Kimmel v. Kroeger.....	302
King, Mutual Building & Loan Assn. v.....	565
Kishan Singh v. District Director of Immigration.	561
Knox National Farm Loan Assn. v. Phillips.....	533
Knox-Powell-Stockton Co. v. United States.....	573
Kranz, Ballf v.....	549, 621
Kress (S. H.) & Co. v. Johnson.....	511, 623
Kress (S. H.) & Co. v. Reaves.....	616
Krise v. United States.....	582, 622
Kroeger, Cotterill v.....	302
Kroeger, Fischer v.....	302
Kroeger, Kammerer v.....	302
Kroeger, Kelsey v.....	302
Kroeger, Kimmel v.....	302
Kroeger, Reichert v.....	302
Kroeger, Wuist v.....	302
Kroger Grocery & Baking Co. v. Lutz.....	300
Krueger v. United States.....	541
Kuehner v. Irving Trust Co.....	445
Kuehner v. Murphy.....	532
Kunsman v. Max Factor & Co.....	198
KVOS v. Associated Press.....	269
Landis v. American Water Works & E. Co....	248, 530
Landis v. North American Co.....	248, 530
Lane Drug Stores, Florida <i>ex rel.</i> , Simpson v.....	543
Lane (J. V.) & Co. v. The Californian.....	620
Lanza v. United States.....	609
Lauro v. Barker.....	521
Lavelly v. Young Women's Christian Assn.....	572, 621
LaVers v. Supreme Court.....	600, 624
Lawrence v. Shaw.....	537

TABLE OF CASES REPORTED.

XXI

	Page.
Leach (A. B.) & Co., United States <i>v.</i> .....	531
Lee <i>v.</i> Florida <i>ex rel.</i> Adams.....	542
Leibell, McCann <i>v.</i> .....	603
Lent, Underhill <i>v.</i> .....	546
Leopold, Wardman <i>v.</i> .....	570
Lesser, <i>Ex parte</i> .....	509
Leuthe, Erie R. Co. <i>v.</i> .....	570
Lewis, Ohio <i>ex rel.</i> , <i>v.</i> Zupnik.....	576
Liggett & Myers Tobacco Co. <i>v.</i> United States..	383, 525
Lilly, McNeill <i>v.</i> .....	550
Lincoln National Life Ins. Co. <i>v.</i> Means.....	578
Linderman <i>v.</i> Helvering.....	589
Lindway <i>v.</i> Ohio.....	506
Liverpool & London & G. Ins. Co. <i>v.</i> Crosby.....	587
Live Stock National Bank <i>v.</i> Hammerstrom.....	546
London & Provincial Marine & G. Ins. Co. <i>v.</i> Macaroni Co.....	579
Long, Binney <i>v.</i> .....	280
Long, Boston Safe Deposit & T. Co. <i>v.</i> .....	518
Loporto <i>v.</i> Druiss Co.....	617
Lorain Street Savings & Trust Co., Werk <i>v.</i> .....	512
Lorillard (P.) & Co. <i>v.</i> United States.....	586
Louisiana, Banner Cleaners & Dyers <i>v.</i> .....	505
Louisiana, Cannon <i>v.</i> .....	503
Louisiana, Eisenhardt <i>v.</i> .....	512, 621
Louisiana, Jones <i>v.</i> .....	511
Louisville & N. R. Co., W. P. Brown Co. <i>v.</i> ....	393, 524
Lowden, Iowa-Des Moines Nat. Bank & T. Co. <i>v.</i> ..	584
Lowden, Northwestern National Bank & T. Co. <i>v.</i> ..	583
Lowe, Candado Stevedoring Corp. <i>v.</i> .....	588
Luke <i>v.</i> United States.....	542
Lutz, Kroger Grocery & Baking Co. <i>v.</i> .....	300
MacDonald, Ketchum <i>v.</i> .....	595
Madigan, United States <i>v.</i> .....	538
Magill <i>v.</i> Starkey.....	609
Magnolia Petroleum Co. <i>v.</i> Blankenship.....	608, 624
Magurno <i>v.</i> O'Neil.....	571

	Page.
Manila Gas Corp <i>v.</i> Collector . . . . .	571
Maniloff, <i>Ex parte</i> . . . . .	510
Manufacturers Finance Co., Electric Co. <i>v.</i> . . . . .	549
Manufacturers Trust Co., Ojus Mining Co. <i>v.</i> . . . . .	557
Marcell, Engebretson <i>v.</i> . . . . .	566, 621
Marion Steam Shovel Co. <i>v.</i> Bertino . . . . .	556
Marion Steam Shovel Co., Feak <i>v.</i> . . . . .	604
Marion Steam Shovel Co., Mazingo <i>v.</i> . . . . .	620
Marks <i>v.</i> Moore . . . . .	542
Marret <i>v.</i> United States . . . . .	545, 620
Martin <i>v.</i> Coe . . . . .	558
Martin, Flat-Top Fuel Co. <i>v.</i> . . . . .	585
Martin <i>v.</i> National Surety Co. . . . .	536
Martin, Zurich General Accident & L. Ins. Co. <i>v.</i> . . . .	579
Marvel <i>v.</i> Zerbst . . . . .	518, 523
Maryland Casualty Co. <i>v.</i> First National Bank . . . . .	549
Maryland Casualty Co. <i>v.</i> Irving Trust Co. . . . .	571
Maryland Casualty Co., Morley Construction Co. <i>v.</i> . . . .	529
Maryland & Virginia Milk Producers Assn. <i>v.</i> Hazen . . . .	566
Mason, Pelkes <i>v.</i> . . . . .	615
Massachusetts <i>v.</i> United States . . . . .	383, 525
Massachusetts Bonding & Ins. Co. <i>v.</i> Anderegg . . . . .	567
Massman Construction Co. <i>v.</i> Nelson . . . . .	569, 621
Matos <i>v.</i> Alonso Hermanos . . . . .	527
Max Factor & Co., Kunsman <i>v.</i> . . . . .	198
Mayo, Florida <i>ex rel.</i> Jones <i>v.</i> . . . . .	614
Mayo, Polk Co. <i>v.</i> . . . . .	507
Mayor of Edgewater, Ross <i>v.</i> . . . . .	543
McCann, <i>Ex parte</i> . . . . .	516
McCann <i>v.</i> Leibell . . . . .	603
McCarter, Beckwith <i>v.</i> . . . . .	601
McCarthy <i>v.</i> Zerbst . . . . .	610
McCrary <i>v.</i> Commissioner . . . . .	617
McCurdy & Co., Six-Way Corp. <i>v.</i> . . . . .	592
McGraw, Southern Ry. Co. <i>v.</i> . . . . .	591
McGuire <i>v.</i> Commissioner . . . . .	591
McKee <i>v.</i> Paradise . . . . .	119

TABLE OF CASES REPORTED.

XXIII

	Page.
McLean <i>v.</i> Goodyear Tire & Rubber Co.....	600
McLean (A.) & Son <i>v.</i> Federal Trade Comm'n.....	590
McNamara <i>v.</i> New Jersey.....	568
McNeil <i>v.</i> Joseph Triner Corp.....	183
McNeill <i>v.</i> Lilly.....	550
Meadows <i>v.</i> Irving Trust Co.....	464, 532, 624
Means, Lincoln National Life Ins. Co. <i>v.</i> .....	578
Mechanics' Insurance Co., Damen & Jarvis Bldg. Corp. <i>v.</i> .....	556
Mechanics Universal Joint Co. <i>v.</i> Culhane.....	51
Mellon, Mertz <i>v.</i> .....	548
Merchants & Miners Transportation Co. <i>v.</i> The City of Chattanooga.....	599
Mercur Corp., U. S. <i>ex rel.</i> Kessler <i>v.</i> .....	576
Merinos Viesca y Compania <i>v.</i> Pan American Pet. Co.....	547
Merlaud <i>v.</i> National Metropolitan Bank.....	584
Merriam, <i>Ex parte</i> .....	509
Mertz <i>v.</i> Mellon.....	548
Metropolitan Life Ins. Co. <i>v.</i> Day.....	560
Metropolitan Life Ins. Co., Irving Trust Co. <i>v.</i> .....	595
Metropolitan Life Ins. Co., Wilson <i>v.</i> .....	599
Meyer <i>v.</i> Kansas City Southern Ry. Co.....	607
Miami Beach Jockey Club <i>v.</i> Dern.....	556
Michigan, Van Dyke <i>v.</i> .....	608, 624
Michigan Trust Co., Globe Knitting Works <i>v.</i> .....	544
Midland Bank <i>v.</i> Bishop & Co.....	587
Midland Mutual Life Ins. Co., Helvering <i>v.</i> .....	527
Mier, Shapleigh <i>v.</i> .....	468, 524
Miller <i>v.</i> Union Bank & Trust Co.....	612
Milligan, Kansas City Board of Trade <i>v.</i> .....	610
Mills, O'Connor <i>v.</i> .....	536
Mintz <i>v.</i> Hornblower & Weeks.....	561
Mirkowicz <i>v.</i> Reading Co.....	579
Mississippi, City Bus Co. <i>v.</i> .....	520
Mississippi Central R. Co. <i>v.</i> Smith.....	518
Missouri <i>v.</i> Ross.....	72

	Page.
Missouri-Kansas-Texas R. Co. <i>v.</i> Good.....	605
Missouri Pacific R. Co., J. P. Morgan & Co. <i>v.</i> .....	604
M. J. Holloway & Co. <i>v.</i> Federal Trade Comm'n....	590
Mohr <i>v.</i> Great Lakes Transit Corp.....	557
Montague <i>v.</i> New York Central R. Co.....	550
Moodey <i>v.</i> Dale Consolidated Mines.....	549
Moore <i>v.</i> Chicago Mercantile Exchange.....	606
Moore, Marks <i>v.</i> .....	542
Moore <i>v.</i> Ocean Accident & Guarantee Corp.....	609
Morehead <i>v.</i> New York <i>ex rel.</i> Tipaldo.....	619
Morf <i>v.</i> Bingham.....	619
Morgan (J. P.) & Co. <i>v.</i> Missouri Pacific R. Co....	604
Morgenthau, Haskins Bros. & Co. <i>v.</i> .....	588
Morgenthau, U. S. Savings Bank <i>v.</i> .....	605
Morley Construction Co. <i>v.</i> Maryland Casualty Co..	529
Morris <i>v.</i> Orcas Lime Co.....	559
Mountain States Power Co. <i>v.</i> Public Service Comm'n.....	167
Mozingo <i>v.</i> Marion Steam Shovel Co.....	620
Munkacsy, South Atlantic Steamship Co. <i>v.</i> .....	607
Munroe, Harriman National Bank & T. Co. <i>v.</i> .....	601
Munson Steamship Lines, Foust <i>v.</i> .....	77
Murphy, Fidelity-Phenix Fire Ins. Co. <i>v.</i> .....	557
Murphy, Kuehner <i>v.</i> .....	532
Murphy <i>v.</i> Murphy.....	596, 623
Murphy, Murphy <i>v.</i> .....	596, 623
Murphy <i>v.</i> Orlando.....	580
Musser <i>v.</i> Sheppard.....	513
Mutual Building & Loan Assn. <i>v.</i> King.....	565
Mutual Life Insurance Co., Hicks <i>v.</i> .....	563
M. W. Savage Factories, Inc. <i>v.</i> Hennepin County..	555
Naharkey, Sand Springs Home <i>v.</i> .....	588
National City Bank <i>v.</i> Fernandez.....	586
National City Bank, United States <i>v.</i> .....	563
National Foods, Inc. <i>v.</i> United States.....	544
National Home for Disabled Soldiers <i>v.</i> Wood..	211, 523
National Labor Relations Board, Associated Press <i>v.</i>	532

## TABLE OF CASES REPORTED.

xxv

National Labor Relations Board, Bradley Co. <i>v.</i> . . . .	559
National Labor Relations Board <i>v.</i> Friedman-Harry Marks Clothing Co. . . . .	535
National Labor Relations Board <i>v.</i> Fruehauf Trailer Co. . . . .	534
National Labor Relations Board <i>v.</i> Jones & Laughlin Steel Corp. . . . .	534
National Labor Relations Board, Washington, V. & M. Coach Co. <i>v.</i> . . . .	533
National Lock Co. <i>v.</i> Rosengard. . . . .	562
National Metropolitan Bank, Merlaud <i>v.</i> . . . .	584
National Surety Co., Martin <i>v.</i> . . . .	536
Nebraska <i>v.</i> Wyoming. . . . .	510
Nebraska <i>ex rel.</i> Sorensen, Southern Nebraska Power Co. <i>v.</i> . . . .	520
Needham <i>v.</i> Bickford. . . . .	560
Neidecker, U. S. <i>ex rel.</i> , Valentine <i>v.</i> . . . .	5
Nelson, Baldwin <i>v.</i> . . . .	550
Nelson, Massman Construction Co. <i>v.</i> . . . .	569, 621
New Hampshire, Vermont <i>v.</i> . . . .	519
Newhoff <i>v.</i> United States. . . . .	565
New Jersey, McNamara <i>v.</i> . . . .	568
New York, Sanacory <i>v.</i> . . . .	600, 624
New York, Scata <i>v.</i> . . . .	612
New York, Texas <i>v.</i> . . . .	519
New York Central R. Co., Montague <i>v.</i> . . . .	550
New York Central R. Co., Yannish <i>v.</i> . . . .	542
New York City <i>v.</i> Goldstein. . . . .	522, 583, 618
New York City, Sheeran <i>v.</i> . . . .	609
New York <i>ex rel.</i> Rogers <i>v.</i> Graves. . . . .	401
New York <i>ex rel.</i> Tipaldo, Morehead <i>v.</i> . . . .	619
New York <i>ex rel.</i> Whitney <i>v.</i> Graves. . . . .	366
New York Life Ins. Co. <i>v.</i> Weintrob. . . . .	599
New York Life Ins. Co. <i>v.</i> Wolf. . . . .	614
New York, N. H. & H. R. Co. <i>v.</i> Gelbin. . . . .	560
Nichols, Carpenter <i>v.</i> . . . .	598
Nichols, <i>Ex parte.</i> . . . .	510
North American Co., Landis <i>v.</i> . . . .	248, 530

	Page.
North American Cement Corp. <i>v.</i> Graves.....	517
Northern Pacific Ry. Co., Sauk River Lumber Co. <i>v.</i> .....	547
Northrop <i>v.</i> Beale.....	516, 624
Northwestern Mutual Life Ins. Co. <i>v.</i> O'Maley....	585
Northwestern National Bank & Trust Co. <i>v.</i> Lowden.	583
Northwestern Telegraph Co. <i>v.</i> United States.....	565
Norton <i>v.</i> Zerbst.....	541
O'Brien <i>v.</i> Hulbert.....	542
Ocean Accident & Guarantee Corp., Moore <i>v.</i> .....	609
Ocean City <i>v.</i> Federal Reserve Bank.....	584
O'Connor <i>v.</i> Mills.....	536
Ogilvie <i>v.</i> Dexter Horton Estate.....	615
Ohio, Eastman <i>v.</i> .....	505
Ohio, Lindway <i>v.</i> .....	506
Ohio Bell Telephone Co., Brookins <i>v.</i> .....	568
Ohio <i>ex rel.</i> Lewis <i>v.</i> Zupnik.....	576
Ohio <i>ex rel.</i> Van Schaick <i>v.</i> Bowen.....	597
Ohio <i>ex rel.</i> Warner, Capital Endowment Co. <i>v.</i> ....	561
Ojus Mining Co. <i>v.</i> Manufacturers Trust Co.....	557
O'Keefe, Brown <i>v.</i> .....	539
Old Dearborn Distributing Co. <i>v.</i> Seagram-Distillers Corp.....	183
Oliver Typewriter Co. <i>v.</i> United States.....	567
O'Maley, Northwestern Mutual Ins. Co. <i>v.</i> .....	585
O'Malley, Haskins Bros. & Co. <i>v.</i> .....	594
O'Neil, Magurno <i>v.</i> .....	571
Orcas Lime Co., Morris <i>v.</i> .....	559
Orcutt <i>v.</i> Crawford.....	594
Oregon, DeJonge <i>v.</i> .....	353
Orlando, Murphy <i>v.</i> .....	580
Osaka Shosen Kaisha Line <i>v.</i> United States.....	526
Otis (Joseph E.) Estate Land Trust <i>v.</i> Irving Trust Co.....	535
O'Toole, <i>Ex parte</i> .....	522
Ottmuller, Iekes <i>v.</i> .....	528
Owens <i>v.</i> United States.....	540

TABLE OF CASES REPORTED.

XXVII

	Page.
Owens-Illinois Glass Co., Wayne Gas Co. <i>v.</i> . . . . .	528
Pacific & Atlantic Telegraph Co. <i>v.</i> Commissioner. . . . .	564
Pacific Western Oil Co., Bourdieu <i>v.</i> . . . . .	65, 622
Paige <i>v.</i> Virginia. . . . .	541
Pallis <i>v.</i> United States. . . . .	606
Pan American Petroleum Co., Viesca Co. <i>v.</i> . . . . .	547
Papoose, The, United States <i>v.</i> . . . . .	603
Paradise, McKee <i>v.</i> . . . . .	119
Parks, Estate of, Pufahl <i>v.</i> . . . . .	217
Parks, Ickes <i>v.</i> . . . . .	528
Parriott, Helvering <i>v.</i> . . . . .	520, 530
Pastime Amusement Co., Southeastern Express Co. <i>v.</i> . . . . .	28
Payne, A. F. Anderson Estate <i>v.</i> . . . . .	575
Pease <i>v.</i> Commissioner. . . . .	562
Peerless Oil & Gas Co. <i>v.</i> Heiner. . . . .	545, 620
Pelkes <i>v.</i> Mason. . . . .	615
Pennsylvania R. Co. <i>v.</i> Pittsburgh, L. & W. R. Co.. . . . .	572
Pep Boys <i>v.</i> Pyroil Sales Co. . . . .	198
Perkins <i>v.</i> Commissioner. . . . .	592, 623
Perkins <i>v.</i> Supreme Court. . . . .	540
Petersime (Ira M.) & Son <i>v.</i> Robbins. . . . .	553
Peterson <i>v.</i> United States. . . . .	583
Petroleum Navigation Co., United States <i>v.</i> . . . . .	603
Philippine Islands, Unjieng <i>v.</i> . . . . .	543, 621
Phillips, Knox National Farm Loan Assn. <i>v.</i> . . . . .	533
Phoenix Joint Stock Land Bank <i>v.</i> Hotsenpiller. . . . .	555
Pick Manufacturing Co. <i>v.</i> General Motors Corp. . . . .	3, 622
Piergiovanni, <i>Ex parte.</i> . . . . .	520
Pigford, Citizens National Bank <i>v.</i> . . . . .	564
Pillsbury, Alaska Packers Assn. <i>v.</i> . . . . .	538
Piper <i>v.</i> Bingaman. . . . .	619
Pittsburgh, L. & W. R. Co., Pennsylvania R. Co. <i>v.</i> . . . . .	572
P. J. Carlin Construction Co. <i>v.</i> Heaney. . . . .	41
P. Lorillard & Co. <i>v.</i> United States. . . . .	586
Polk Co. <i>v.</i> Mayo. . . . .	507
Pope <i>v.</i> Blanton. . . . .	521

	Page.
Potomac Electric Power Co. <i>v.</i> United States.....	565
Prairie Farmer Pub. Co. <i>v.</i> Indiana Co.....	156, 524
Preble Corp. <i>v.</i> Wentworth.....	575
Preferred Stockholders Committee, Bush Terminal Co. <i>v.</i> .....	596
Premier Machine Co., Freeman <i>v.</i> .....	580
Provident Mutual Life Ins. Co., Denson <i>v.</i> .....	556, 622
Public Service Comm'n, Blackmore <i>v.</i> .....	617
Public Service Comm'n, Mountain States Power Co. <i>v.</i> .....	167
Pufahl <i>v.</i> Estate of Parks.....	217
Pyroil Sales Co., Pep Boys <i>v.</i> .....	198
Queen Anne Candy Co. <i>v.</i> Federal Trade Comm'n...	590
Quin, Kansas City Southern Ry. <i>v.</i> .....	590
Quintal <i>v.</i> Broderick.....	614
Rauch, Hoffman <i>v.</i> .....	538
Reading Co., Mirkowicz <i>v.</i> .....	579
Reaves, S. H. Kress & Co. <i>v.</i> .....	616
Reeves Bros. Co. <i>v.</i> United States.....	573
Rehmeyer <i>v.</i> First National Bank.....	541
Reichert <i>v.</i> Kroeger.....	302
Reid <i>v.</i> United States.....	544
Remco Steamship Co. <i>v.</i> Commissioner.....	555
Renkoff <i>v.</i> United States.....	589
Reschke, Winnetka <i>v.</i> .....	585
Resnick, United States <i>v.</i> .....	207
Rhodes, U. S. <i>ex rel.</i> , <i>v.</i> Helvering.....	570
Riley <i>v.</i> Worcester County Trust Co.....	567
Rindge Land & Navigation Co. <i>v.</i> Security-First Nat. Bank.....	613
Rizzo <i>v.</i> United States.....	584
R. & L., Inc. <i>v.</i> Commissioner.....	588
Robbins, Ira M. Petersime & Son <i>v.</i> .....	553
Roberts Brining & Co. <i>v.</i> The Floridian.....	577
Robinson <i>v.</i> Wilson.....	616
Rogan, Blue Ridge Oil Co. <i>v.</i> .....	574
Rogers, New York <i>ex rel.</i> , <i>v.</i> Graves.....	401

## TABLE OF CASES REPORTED.

XXIX

	Page.
Rood <i>v.</i> Goodman.....	551
Rooker, Alaska Steamship Co. <i>v.</i> ....	552
Rose, Bibb Manufacturing Co. <i>v.</i> .....	550
Rosengard, National Lock Co. <i>v.</i> .....	562
Ross <i>v.</i> Mayor of Edgewater.....	543
Ross, Missouri <i>v.</i> .....	72
Rothfeld <i>v.</i> 333 North Michigan Avenue Bldg. Corp..	602
Royal Insurance Co. <i>v.</i> Kentucky Macaroni Co. ....	579
Rumsey <i>v.</i> Commissioner.....	552
Sabine Towing Co., Brennan <i>v.</i> .....	599, 624
Sabine Towing Co., Van Beeck <i>v.</i> .....	535
Saenger (A. D.), Inc. <i>v.</i> Commissioner.....	577
St. Charles <i>v.</i> United States.....	611
Saltz, Saltz Bros., Inc. <i>v.</i> .....	567
Saltz Bros., Inc. <i>v.</i> Saltz.....	567
Sanacory <i>v.</i> New York.....	600, 624
Sand Springs Home <i>v.</i> Naharkey.....	588
Sauk River Lumber Co. <i>v.</i> Northern Pacific Ry. Co..	547
Savage (M. W.) Factories, Inc. <i>v.</i> Hennepin County.....	555
Saylesville Cheese Co., Wisconsin <i>ex rel.</i> , <i>v.</i> Zimmer- man .....	504
Scanlon <i>v.</i> Gulf Bitulithic Co.....	582
Scarlett, Atchison, T. & S. F. Ry. Co. <i>v.</i> .....	537
Scata <i>v.</i> New York.....	612
Schafer <i>v.</i> Helvering.....	171, 514
Scheible <i>v.</i> United States.....	615
Schiefelbein, Chicago, M., St. P. & P. R. Co. <i>v.</i> ....	558
Scholl <i>v.</i> United States.....	592
Schulten <i>v.</i> Day.....	584
Schumacher, Skipper <i>v.</i> .....	507
Schwartz <i>v.</i> Irving Trust Co.....	456
Schweitzer <i>v.</i> United States.....	576
Seagram-Distillers Corp., Old Dearborn Distributing Co. <i>v.</i> .....	183
Secretary of Justice, Bengzon <i>v.</i> .....	410, 526
Securities & Exchange Comm'n, Bracken <i>v.</i> .....	504

	Page.
Securities & Exchange Comm'n, Jones <i>v.</i> . . . . .	581
Security-First Nat. Bank, Rindge Land Co. <i>v.</i> . . . .	613
Security Savings Bank, Timmons <i>v.</i> . . . . .	503, 621
Security Trust Co. <i>v.</i> Baker . . . . .	568
Seminole Nation, United States <i>v.</i> . . . . .	417, 526
Servilli <i>v.</i> Illinois . . . . .	616
Severns Drilling Co. <i>v.</i> Superior Court . . . . .	592
Shapiro (Joseph I.), Inc., Allman & Olins, Inc. <i>v.</i> . .	587
Shapleigh <i>v.</i> Mier . . . . .	468, 524
Shaw, Lawrence <i>v.</i> . . . . .	537
Sheeran <i>v.</i> New York City . . . . .	609
Shell Petroleum Corp., Victor Gasoline Co. <i>v.</i> . . . .	610
Shell Petroleum Corp., Wolfe <i>v.</i> . . . . .	553
Sheppard, Barwise <i>v.</i> . . . . .	33, 622
Sheppard, Musser <i>v.</i> . . . . .	513
Shering & Glatz, Inc., American Pharmaceutical Co. <i>v.</i> . . . . .	594
Sherman <i>v.</i> 333 North Michigan Avenue Bldg. Corp..	602
S. H. Kress & Co. <i>v.</i> Johnson . . . . .	511, 623
S. H. Kress & Co. <i>v.</i> Reaves . . . . .	616
Shoshone Indians <i>v.</i> United States . . . . .	476, 530
Shoshone Indians, United States <i>v.</i> . . . . .	476, 530
Siegel <i>v.</i> Iowa . . . . .	586
Siemens & Halske Actiengesellschaft <i>v.</i> Central Bank . . . . .	585
Sierra Land & Water Co., U. S. <i>ex rel.</i> , <i>v.</i> Ickes . . .	562
Silk Center Building, Inc. <i>v.</i> Commissioner . . . . .	619
Simmons Co., Crew <i>v.</i> . . . . .	569
Simpson <i>v.</i> Florida <i>ex rel.</i> Lane Drug Stores . . . . .	543
Simpson, Glover <i>v.</i> . . . . .	506
Sims <i>v.</i> Douglass . . . . .	546
Singer <i>v.</i> Friedman . . . . .	590
Singh <i>v.</i> District Director of Immigration . . . . .	561
620 Church Street Bldg. Corp., <i>In the matter of</i> . . .	24, 530, 623
Six-Way Corp. <i>v.</i> McCurdy & Co. . . . .	592
Skipper <i>v.</i> Schumacher . . . . .	507

TABLE OF CASES REPORTED.

XXXI

	Page.
Smith, Dederick <i>v.</i> .....	506
Smith, Mississippi Central R. Co. <i>v.</i> .....	518
Snead, Beale <i>v.</i> .....	619
Soler (Jose Rivera) & Co. <i>v.</i> United Firemen's Ins. Co.....	45
Sorensen, Nebraska <i>ex rel.</i> , Southern Nebraska Power Co. <i>v.</i> .....	520
South Atlantic Steamship Co. <i>v.</i> Munkacsy.....	607
Southeastern Express Co. <i>v.</i> Pastime Amusement Co.	28
Southern Nebraska Power Co. <i>v.</i> Nebraska <i>ex rel.</i> Sorensen .....	520
Southern Ry. Co. <i>v.</i> McGraw.....	591
Spang <i>v.</i> Gossnell.....	605
Special Site Sign Co. <i>v.</i> Foster & Kleiser Co.....	613
Spero <i>v.</i> United States.....	601
Sperry Flour Co. <i>v.</i> Coastwise Steamship & B. Co..	612
Standard Dredging Co. <i>v.</i> Kibadeaux.....	549
Standard Lumber Co., Interstate Trust & Banking Co. <i>v.</i> .....	545
Standley <i>v.</i> Graham Production Co.....	593
Starkey, Magill <i>v.</i> .....	609
State Board of Equalization <i>v.</i> Young's Market Co.....	59, 623
Stearns (E. C.) & Co. <i>v.</i> Andrews.....	515
Stelman <i>v.</i> All Continent Corp.....	522
Steinberg <i>v.</i> Cummings.....	602
Stephen L. Stetson Co. <i>v.</i> John B. Stetson Co.....	605
Stetson (John B.) Co., Stephen L. Stetson Co. <i>v.</i> ..	605
Stetson (Stephen L.) Co. <i>v.</i> John B. Stetson Co...	605
Stewart, American Life Insurance Co. <i>v.</i> .....	536
Stewart-Warner Corp. <i>v.</i> Jiffy Lubricator Co.....	554
Stone <i>v.</i> White.....	622
Stover, Winston Bros. Co. <i>v.</i> .....	508
Stuart <i>v.</i> Commissioner.....	575
Suisman <i>v.</i> Hartford-Connecticut Trust Co....	573, 621
Sumi <i>v.</i> Young.....	534
Superior Court, Severns Drilling Co. <i>v.</i> .....	592

	Page.
Supreme Court, La Vers <i>v.</i> .....	600, 624
Supreme Court, Perkins <i>v.</i> .....	540
System Federation No. 40, Virginian Ry. Co. <i>v.</i> ...	529
Taber <i>v.</i> Indian Territory Oil Co.....	528
Tennessee Publishing Co. <i>v.</i> American Nat. Bank..	18
Tetzke <i>v.</i> Trust No. 2988.....	609
Texas <i>v.</i> New York.....	519
Texas Co., Weber <i>v.</i> .....	561
Texas Co., Wolfe <i>v.</i> .....	553
Texas Rubber Corp., D & M Machine Works <i>v.</i> ...	548
Texas Utilities Co. <i>v.</i> Ickes.....	583
Tex-Penn Oil Co., Helvering <i>v.</i> .....	520, 529
333 North Michigan Avenue Bldg. Corp., Brenner <i>v.</i>	602
333 North Michigan Avenue Bldg. Corp., Rothfeld <i>v.</i>	602
333 North Michigan Avenue Bldg. Corp., Sherman <i>v.</i>	602
Tim <i>v.</i> Helvering.....	171
Timmons <i>v.</i> Security Savings Bank.....	503, 621
Tinkoff <i>v.</i> Chicago Title & Trust Co.....	611
Tipaldo, New York <i>ex rel.</i> , Morehead <i>v.</i> .....	619
Torinus <i>v.</i> Johnson.....	508, 622
Toy National Bank <i>v.</i> Hammerstrom.....	546
Travelers Fire Ins. Co. <i>v.</i> Commissioner.....	566
Travelers Indemnity Co. <i>v.</i> Commissioner.....	566
Triner (Joseph) Corp., McNeil <i>v.</i> .....	183
Trollinger <i>v.</i> United States.....	617
Trust No. 2988, Tetzke <i>v.</i> .....	609
Turbeville <i>v.</i> Commissioner.....	581
Twining <i>v.</i> Commissioner.....	578
Underhill <i>v.</i> Lent.....	546
Union Bank & Trust Co., Miller <i>v.</i> .....	612
Union Building Corp. <i>v.</i> Conway.....	515
United Firemen's Insurance Co., Soler & Co. <i>v.</i> ...	45
United Light & Power Co. <i>v.</i> Grand Rapids Co...	591
United Light & Power Co., Grand Rapids Co. <i>v.</i> ..	534, 618
United States <i>v.</i> A. B. Leach & Co.....	531
United States <i>v.</i> Acme Can Co.....	207
United States, American Natural Gas Co. <i>v.</i> .....	547

TABLE OF CASES REPORTED.      xxxiii

	Page.
United States, American Telephone Co. <i>v.</i> . . . . .	232
United States <i>v.</i> Automatic Washer Co. . . . .	531
United States, Barnett <i>v.</i> . . . . .	546, 620
United States <i>v.</i> Belmont. . . . .	537
United States, Brower <i>v.</i> . . . . .	562
United States, Buie <i>v.</i> . . . . .	596
United States, Carolla <i>v.</i> . . . . .	573
United States <i>v.</i> Connolly. . . . .	598
United States, Continental Mills <i>v.</i> . . . . .	614
United States, Continental Oil Co. <i>v.</i> . . . . .	510
United States, Craig <i>v.</i> . . . . .	620
United States <i>v.</i> Curtiss-Wright Export Corp. . . . .	304
United States, DeBenque <i>v.</i> . . . . .	620
United States, DuPont <i>v.</i> . . . . .	531
United States, Eastern or Emigrant Cherokees <i>v.</i> . . . .	551, 552
United States, Eastman Kodak Co. <i>v.</i> . . . . .	581
United States <i>v.</i> Esnault-Pelterie. . . . .	201
United States, Fierman <i>v.</i> . . . . .	606
United States, Fourth National Bank <i>v.</i> . . . . .	575
United States, Freeman <i>v.</i> . . . . .	616
United States <i>v.</i> Gage. . . . .	571
United States <i>v.</i> Galveston-Houston Electric Co. . . . .	590
United States <i>v.</i> Giles. . . . .	531
United States, Greenhaus <i>v.</i> . . . . .	596
United States, Hoepfel <i>v.</i> . . . . .	557, 622
United States <i>v.</i> Hudson. . . . .	498, 523
United States, Jefferson & Clearfield Co. <i>v.</i> . . . . .	581
United States, J. H. Cottman & Co. <i>v.</i> . . . . .	566
United States, Johnson <i>v.</i> . . . . .	574
United States, Kelly <i>v.</i> . . . . .	528
United States, Knox-Powell-Stockton Co. <i>v.</i> . . . . .	573
United States, Krise <i>v.</i> . . . . .	582, 622
United States, Krueger <i>v.</i> . . . . .	541
United States, Lanza <i>v.</i> . . . . .	609
United States, Liggett & Myers Tobacco Co. <i>v.</i> . . . .	383, 525
United States, Luke <i>v.</i> . . . . .	542
United States <i>v.</i> Madigan. . . . .	538

## xxxiv TABLE OF CASES REPORTED.

	Page.
United States, Marret <i>v.</i> . . . . .	545, 620
United States, Massachusetts <i>v.</i> . . . . .	383, 525
United States <i>v.</i> National City Bank . . . . .	563
United States, National Foods, Inc. <i>v.</i> . . . . .	544
United States, Newhoff <i>v.</i> . . . . .	565
United States, Northwestern Telegraph Co. <i>v.</i> . . . . .	565
United States, Oliver Typewriter Co. <i>v.</i> . . . . .	567
United States, Osaka Shosen Kaisha Line <i>v.</i> . . . . .	526
United States, Owens <i>v.</i> . . . . .	540
United States, Pallis <i>v.</i> . . . . .	606
United States, Peterson <i>v.</i> . . . . .	583
United States <i>v.</i> Petroleum Navigation Co. . . . .	603
United States, P. Lorillard & Co. <i>v.</i> . . . . .	586
United States, Potomac Electric Power Co. <i>v.</i> . . . . .	565
United States, Reeves Bros. Co. <i>v.</i> . . . . .	573
United States, Reid <i>v.</i> . . . . .	544
United States, Renkoff <i>v.</i> . . . . .	589
United States <i>v.</i> Resnick . . . . .	207
United States, Rizzo <i>v.</i> . . . . .	584
United States, St. Charles <i>v.</i> . . . . .	611
United States, Scheible <i>v.</i> . . . . .	615
United States, Scholl <i>v.</i> . . . . .	592
United States, Schweitzer <i>v.</i> . . . . .	576
United States <i>v.</i> Seminole Nation . . . . .	417, 526
United States <i>v.</i> Shoshone Indians . . . . .	476, 530
United States, Shoshone Indians <i>v.</i> . . . . .	476, 530
United States, Spero <i>v.</i> . . . . .	601
United States <i>v.</i> The Papoose . . . . .	603
United States, Trollinger <i>v.</i> . . . . .	617
United States, Wainer <i>v.</i> . . . . .	92
United States, Weinblatt <i>v.</i> . . . . .	620
United States, Weisman <i>v.</i> . . . . .	560, 621
United States, Western Wheeled Scraper Co. <i>v.</i> . . . . .	569
United States, Whitney <i>v.</i> . . . . .	576
United States, Wolpa <i>v.</i> . . . . .	611
United States <i>v.</i> Wood . . . . .	123, 624
United States, Wood <i>v.</i> . . . . .	589, 623

TABLE OF CASES REPORTED. xxxv

	Page.
United States, Zager <i>v.</i> .....	558
U. S. <i>ex rel.</i> Girard Trust Co. <i>v.</i> Helvering.....	603
U. S. <i>ex rel.</i> Kessler <i>v.</i> Mercur Corp.....	576
U. S. <i>ex rel.</i> Neidecker, Valentine <i>v.</i> .....	5
U. S. <i>ex rel.</i> Rhodes <i>v.</i> Helvering.....	570
U. S. <i>ex rel.</i> Sierra Land & Water Co. <i>v.</i> Ickes.....	562
U. S. <i>ex rel.</i> Weiner, Hill <i>v.</i> .....	526
U. S. Fidelity & Guaranty Co. <i>v.</i> Bingaman.....	619
United States for the use of Wilhelm <i>v.</i> Chain.....	531
U. S. Savings Bank <i>v.</i> Morgenthau.....	605
U. S. Steel Corp., Gliwa <i>v.</i> .....	593
Unjieng <i>v.</i> Philippine Islands.....	543, 621
U S L Battery Corp. <i>v.</i> Commissioner.....	593
Valentine <i>v.</i> Graham Department Stores Co.....	32
Valentine <i>v.</i> Great Atlantic & Pacific Tea Co.....	32
Valentine <i>v.</i> U. S. <i>ex rel.</i> Neidecker.....	5
Valentine <i>v.</i> Walgreen Co.....	32
Van Beeck <i>v.</i> Sabine Towing Co.....	535
Van Derveer <i>v.</i> Delaware, L. & W. R. Co.....	595
Van Dyke, <i>Ex parte</i> .....	514
Van Dyke <i>v.</i> Michigan.....	608, 624
Van Horne, <i>Ex parte</i> .....	510
Van Schaick, Ohio <i>ex rel.</i> , <i>v.</i> Bowen.....	597
Van Schaick, Villa <i>v.</i> .....	152
Van Tassel Real Estate Co. <i>v.</i> Cheyenne.....	574
Vaughan, Helvering <i>v.</i> .....	606
Vawter <i>v.</i> Commissioner.....	578
Vermont <i>v.</i> New Hampshire.....	519
Vickers Petroleum Co., Doherty Research Co. <i>v.</i> ....	545
Victor Gasoline Co. <i>v.</i> Shell Petroleum Corp.....	610
Villa <i>v.</i> Van Schaick.....	152
Vinton Branch of the Mountain Trust Co., Wright <i>v.</i>	537
Virdone <i>v.</i> Dows Estate, Inc.....	604
Virginia, Paige <i>v.</i> .....	541
Virginian Railway Co. <i>v.</i> System Federation No. 40.	529
Wade <i>v.</i> Wade.....	548
Wade, Wade <i>v.</i> .....	548

xxxvi TABLE OF CASES REPORTED.

	Page.
Wainer <i>v.</i> United States.....	92
Walgreen Co., Valentine <i>v.</i> .....	32
Walter, <i>Ex parte</i> .....	515
Walter <i>v.</i> Indiana.....	513
Wardman <i>v.</i> Leopold.....	570
Warner, Ohio <i>ex rel.</i> , Capital Endowment Co. <i>v.</i> ....	561
Warner Bros. Pictures, Auditorium Conditioning Corp. <i>v.</i> .....	563
Washington <i>ex rel.</i> Foss Co., Kelly <i>v.</i> .....	539
Washington, V. & M. Coach Co. <i>v.</i> Labor Board...	533
Waxed Products Co., E. I. DuPont De Nemours & Co. <i>v.</i> .....	601
Wayne United Gas Co. <i>v.</i> Owens-Illinois Co.....	528
Weber <i>v.</i> Texas Co.....	561
Weil <i>v.</i> Commissioner.....	552
Weinblatt <i>v.</i> United States.....	620
Weiner, U. S. <i>ex rel.</i> , Hill <i>v.</i> .....	526
Weintrob, New York Life Ins. Co. <i>v.</i> .....	599
Weisman <i>v.</i> United States.....	560, 621
Wendell Phillips Co. <i>v.</i> Boston-Continental Bank..	533
Wentworth, Preble Corp. <i>v.</i> .....	575
Werk <i>v.</i> Lorain Street Savings Co.....	512
Western Loan & Bldg. Co., Heffron <i>v.</i> .....	597
Western Wheeled Scraper Co. <i>v.</i> United States.....	569
Wheeling Steel Corp. <i>v.</i> Fox.....	619
W. H. H. Chamberlin, Inc., <i>v.</i> Andrews.....	515
Whitaker, <i>Ex parte</i> .....	509
White, Stone <i>v.</i> .....	622
Whitney <i>v.</i> United States.....	576
Whitney, New York <i>ex rel.</i> , <i>v.</i> Graves.....	366
Wickwire Spencer Steel Co., Igoe Bros., Inc. <i>v.</i> ....	617
Wilhelm, United States for the use of, <i>v.</i> Chain....	531
Wilson <i>v.</i> Metropolitan Life Ins. Co.....	599
Wilson, Robinson <i>v.</i> .....	616
Wiltse, <i>Ex parte</i> .....	509
Winnetka <i>v.</i> Erickson.....	585
Winnetka <i>v.</i> Reschke.....	585

TABLE OF CASES REPORTED. xxxvii

	Page.
Winston Bros. Co. <i>v.</i> Stover.....	508
Wisconsin Alumni Research Foundation, Breon & Co. <i>v.</i> .....	598
Wisconsin <i>ex rel.</i> Saylesville Cheese Co. <i>v.</i> Zimmer- man .....	504
Wolf, New York Life Ins. Co. <i>v.</i> .....	614
Wolfe <i>v.</i> Shell Petroleum Corp. ....	553
Wolfe <i>v.</i> Texas Co. ....	553
Wolker <i>v.</i> Electric Ferries, Inc. ....	540
Wolpa <i>v.</i> United States. ....	611
Wood, National Home for Disabled Soldiers <i>v.</i> ..	211, 523
Wood <i>v.</i> United States. ....	589, 623
Wood, United States <i>v.</i> .....	123, 624
Woolsey <i>v.</i> Best. ....	1
Worcester County Trust Co., Riley <i>v.</i> .....	567
W. P. Brown & Sons Lumber Co. <i>v.</i> Louisville & N. R. Co. ....	393, 524
Wright <i>v.</i> Vinton Branch of the Mountain Trust Co.	537
Wuist <i>v.</i> Kroeger. ....	302
Wyatt, <i>Ex parte.</i> .....	509
Wyoming, Nebraska <i>v.</i> .....	510
Yannish <i>v.</i> New York Central R. Co. ....	542
Yates, John Hancock Life Ins. Co. <i>v.</i> .....	178, 525
York <i>v.</i> Baltimore & Ohio R. Co. ....	548
Young, Sumi <i>v.</i> .....	534
Young's Market Co., State Board of Equaliza- tion <i>v.</i> .....	59, 623
Young Women's Christian Assn., Lavelly <i>v.</i> ....	572, 621
Yount-Lee Oil Co., Federal Crude Oil Co. <i>v.</i> .....	554
Zager <i>v.</i> United States. ....	558
Zebec, Federal Life Insurance Co. <i>v.</i> .....	558
Zerbst, Marvel <i>v.</i> .....	518, 523
Zerbst, McCarthy <i>v.</i> .....	610
Zerbst, Norton <i>v.</i> .....	541
Zimmerman, Wisconsin <i>ex rel.</i> Saylesville Cheese Co. <i>v.</i> .....	504
Zupnik, Ohio <i>ex rel.</i> Lewis <i>v.</i> .....	576
Zurich General Accident & L. Ins. Co. <i>v.</i> Martin. . .	579

TABLE I - (continued)

Case No.	Age	Sex	Occupation	Duration of Illness	Onset	Course	Outcome
1	25	M	Teacher	3 months	Gradual	Chronic	Recovery
2	35	F	Homemaker	6 months	Acute	Chronic	Recovery
3	45	M	Engineer	1 year	Acute	Chronic	Recovery
4	55	F	Retired	18 months	Acute	Chronic	Recovery
5	65	M	Farmer	2 years	Acute	Chronic	Recovery
6	75	F	Widow	3 years	Acute	Chronic	Recovery
7	85	M	Retired	4 years	Acute	Chronic	Recovery
8	95	F	Widow	5 years	Acute	Chronic	Recovery

## TABLE OF CASES

### Cited in Opinions

	Page.		Page.
Aberdeen Bank <i>v.</i> Chehalis County, 166 U. S.	440 117	American Surety Co. <i>v.</i> Jackson, 24 F. (2d)	768 56
Adams <i>v.</i> Champion, 294 U. S.	231 123	American Surety Co. <i>v.</i> Marotta, 287 U. S.	513 82
Adams Express Co. <i>v.</i> Croninger, 226 U. S.	491 29	Ames <i>v.</i> Kansas, 111 U. S.	449 328
Adams Express Co. <i>v.</i> Kentucky, 214 U. S.	218 349	Amos <i>v.</i> Chadwick, L. R. 9 Ch. Div.	459 255
Addy Co. <i>v.</i> United States, 264 U. S.	239 241	Amy <i>v.</i> Watertown, 130 U. S.	301 102
Aero Transit Co. <i>v.</i> Georgia Commission, 295 U. S.	285 258	Anderson <i>v.</i> United States, 30 F. (2d)	485 93
Aetna Life Ins. Co. <i>v.</i> Dunken, 266 U. S.	389 182	Anglo-American Land Co. <i>v.</i> Lombard, 132 Fed.	721 206
Aldrich <i>v.</i> Aldrich, 287 Ill.	213 229	Arakawa, <i>In re</i> , 78 Colo.	193 2
Alejandrino <i>v.</i> Quezon, 271 U. S.	528 504	Arkansas <i>v.</i> Kansas & Texas Coal Co., 183 U. S.	185 115
Alexander <i>v.</i> United States, 201 U. S.	117 108	Armour & Co. <i>v.</i> North Dakota, 240 U. S.	510 392
Altman & Co. <i>v.</i> United States, 224 U. S.	583 318	Armour Packing Co. <i>v.</i> Lacy, 200 U. S.	226 298
American Banana Co. <i>v.</i> United Fruit Co., 213 U. S.	347 318, 471	Armstrong <i>v.</i> Trautman, 36 Fed.	275 225
American Construction Co. <i>v.</i> Jacksonville, T. & K. W. Ry. Co., 148 U. S.	372 26	Arnold <i>v.</i> Hanna, 276 U. S.	591 508
American Manufacturing Co. <i>v.</i> St. Louis, 250 U. S.	459 387	Ashwander <i>v.</i> Tennessee Valley Authority, 297 U. S.	288 408
American Railway Express Co. <i>v.</i> Daniel, 269 U. S.	40 30	Atherton Mills <i>v.</i> Johnston, 259 U. S.	13 267
American Railway Express Co. <i>v.</i> Kentucky, 273 U. S.	269 507	Atkin <i>v.</i> Kansas, 191 U. S.	207 508
American Sugar Rfg. Co. <i>v.</i> Louisiana, 179 U. S.	89 298, 505	Atlas Television Co., <i>In the matter of</i> , 273 N. Y.	51 522
		Bailey <i>v.</i> United States, 5 F. (2d)	437 93
		Bailey <i>v.</i> Williams, 6 Ore.	71 104
		Bain Peanut Co. <i>v.</i> Pinson, 282 U. S.	499 505

## TABLE OF CASES CITED.

Page.	Page.		
Baltimore & Carolina Line <i>v. Redman</i> , 295 U. S. 654	143	Bocock <i>v. Leet</i> , 210 Ill. App. 402	228
Baltimore National Bank <i>v.</i> Tax Commission, 297 U. S. 209	115	Bogle <i>v. White</i> , 61 F. (2d) 930	346
Baltimore & Ohio R. Co. <i>v.</i> Domestic Hardwoods, Inc., 62 App. D. C. 142	395	Boone <i>v. Chiles</i> , 10 Pet. 177	422
Baltimore & Ohio S. W. R. Co. <i>v. Carroll</i> , 280 U. S. 491	422	Boston Store <i>v. American</i> Graphophone Co., 246 U. S. 8	191
Bass, Ratcliff & Gretton <i>v.</i> State Tax Comm'n, 266 U. S. 271	517	Botany Mills <i>v. United</i> States, 278 U. S. 282	206
Battin <i>v. Taggart</i> , 17 How. 74	205	Bowerman <i>v. Hamner</i> , 250 U. S. 504	53, 57
Bauer & Cie <i>v. O'Donnell</i> , 229 U. S. 1	191	Bowman <i>v. Chicago &amp; N.</i> W. Ry., 125 U. S. 465	348
Beebe <i>v. Kirkpatrick</i> , 321 Ill. 612	229	Boyd, <i>Ex parte</i> , 105 U. S. 647	107
Beidler <i>v. Tax Commission</i> , 282 U. S. 1	372	Brabston <i>v. Louisville &amp;</i> N. R. Co., 176 I. C. C. 421	399
Bellingham Bay Co. <i>v. New</i> Whatecom, 172 U. S. 314	522	Bradford <i>v. Jones</i> , 17 Ill. 93	230
Bell's Gap R. Co. <i>v. Penn-</i> sylvania, 134 U. S. 232	297	Bradford Electric Light Co. <i>v. Clapper</i> , 286 U. S. 145	183
Belton <i>v. Hatch</i> , 109 N. Y. 593	371, 372	Bradwell <i>v. Wilson</i> , 158 Ill. 346	229
Bernheimer <i>v. Converse</i> , 206 U. S. 516	102	Brockett <i>v. Brockett</i> , 2 How. 238	421
Billings Utility Co. <i>v. Pub-</i> lic Service Comm'n, 62 Mont. 21	170	Brooks <i>v. United States</i> , 267 U. S. 432	346, 347, 348
Bird <i>v. St. Paul F. &amp; M.</i> Ins. Co., 224 N. Y. 47	118	Brooks-Scanlon Corp. <i>v.</i> United States, 265 U. S. 106	497
Black Diamond Co. <i>v. Ex-</i> celsior Co., 156 U. S. 611	205	Brothers <i>v. United States</i> , 250 U. S. 88	206
Blakey <i>v. Brinson</i> , 286 U. S. 254	123	Brown <i>v. Rouse</i> , 116 Ill. App. 513	228
Blanchard <i>v. Williamson</i> , 70 Ill. 647	231	Brown <i>v. Smith</i> , 88 Fed. 565	225
Block <i>v. State</i> , 100 Ind. 357	140, 141	Brown <i>v. State</i> , 62 N. J. L. 666	146
Blum (Philip) & Co. <i>v. Hen-</i> ry, E. D. Wis., decided March 28, 1926	60	Brown-Forman Co. <i>v. Ken-</i> tucky, 217 U. S. 563	64, 298
Board of Tax Comm'rs <i>v.</i> Jackson, 283 U. S. 527	298, 505, 515	Brownlow <i>v. Schwartz</i> , 261 U. S. 216	267, 504
Board of Trade <i>v. Ham-</i> mond Elevator Co., 198 U. S. 424	382	Brushaber <i>v. Union Pacific</i> R. Co., 240 U. S. 1	501
		Bucyrus Co. <i>v. McArthur</i> , 219 Fed. 266	277
		Bull <i>v. Harris</i> , 31 Ill. 487	230
		Burchinell <i>v. District Court</i> , 22 Colo. 422	2
		Burnet <i>v. Brooks</i> , 288 U. S. 378	318

TABLE OF CASES CITED.

XLI

Page.	Page.
Burns <i>v.</i> State, 12 Tex. App. 269	Chesapeake Insurance Co. <i>v.</i> Starke, 6 Cranch 268
Burns <i>v.</i> United States, 287 U. S. 216	Chetwood, <i>In re</i> , 165 U. S. 443
Burns <i>v.</i> United States, 274 U. S. 328	Chicago <i>v.</i> Wisconsin Lime Co., 312 Ill. 520
Burr <i>v.</i> Des Moines R. & N. Co., 1 Wall. 99	Chicago & Alton R. Co. <i>v.</i> Kirby, 225 U. S. 155
Burrow-Giles Lithographic Co. <i>v.</i> Sarony, 111 U. S. 53	Chicago Auditorium Assn. <i>v.</i> Central Trust Co., 240 U. S. 581
Byers <i>v.</i> McAuley, 149 U. S. 608	Chicago, M. & St. P. Ry. <i>v.</i> Coogan, 271 U. S. 472
Cain <i>v.</i> Commercial Publish- ing Co., 232 U. S. 124	Chicago T. & T. Co. <i>v.</i> Fine Arts Bldg., 288 Ill. 142
Caldwell <i>v.</i> Louisiana, 282 U. S. 801	228, 229
California <i>v.</i> Central Pacific R. Co., 127 U. S. 1	Chinese Exclusion Case, 130 U. S. 581
Callan <i>v.</i> Wilson, 127 U. S. 540	Choate <i>v.</i> Trapp, 224 U. S. 665
Caminetti <i>v.</i> United States, 242 U. S. 470	Christensen Engineering Co., <i>In re</i> , 194 U. S. 458
Campbell <i>v.</i> Wadsworth, 248 U. S. 169	Christopher <i>v.</i> Norvell, 201 U. S. 216
Cancellation Rule for Constructing Combination Rates on Lumber, 81 I. C. C. 745; 93 I. C. C. 614	Cincinnati <i>v.</i> Vester, 281 U. S. 439
Carter <i>v.</i> Carter Coal Co., 298 U. S. 238 194, 316, 318,	Cincinnati Street Ry. Co. <i>v.</i> Snell, 193 U. S. 30
Cates <i>v.</i> Allen, 149 U. S. 451	Citizens Bank <i>v.</i> Opperman, 249 U. S. 448
Champion <i>v.</i> Ames, 188 U. S. 321	Citizens National Bank <i>v.</i> Durr, 257 U. S. 99
Chanler <i>v.</i> Kelsey, 205 U. S. 466	City Bank Farmers Trust Co. <i>v.</i> Irving Trust Co., 299 U. S. 433
Chapman <i>v.</i> State, 66 Tex. Cr. Rep. 489	449, 453, 461, 467
Charles Warner Co. <i>v.</i> Inde- pendent Pier Co., 278 U. S. 85	Clark <i>v.</i> Williard, 294 U. S. 211
Charlton <i>v.</i> Kelly, 229 U. S. 447	Clark Distilling Co. <i>v.</i> West- ern Maryland Ry., 242 U. S. 311
Checker Cab Co. <i>v.</i> Checker Taxi Co., 26 F. (2d) 752	63, 346, 349, 350
Chemgas <i>v.</i> Tynan, 51 Colo. 35	Clement National Bank <i>v.</i> Vermont, 231 U. S. 120
Cherokee Nation <i>v.</i> Hitch- cock, 187 U. S. 294	Coal Co. <i>v.</i> Blatchford, 11 Wall. 172
	Coffey <i>v.</i> United States, 117 U. S. 233
	Coffin Brothers & Co. <i>v.</i> Bennett, 277 U. S. 29
	Cole Silver Mining Co. <i>v.</i> Virginia & G. H. W. Co., 1 Sawyer 685
	70

	Page.		Page.
Colgate v. Harvey, 296 U. S. 404	197, 291	Crowell v. Randell, 10 Pet. 368	512
Collins v. Miller, 252 U. S. 364	109	Crozier v. Krupp, 224 U. S. 290	473, 496
Columbus Gas & Fuel Co. v. Public Utilities Comm'n, 292 U. S. 398	247	Curry v. Hinman, 11 Ill. 420	104
Commissioner v. Charavay, 79 F. (2d) 406	172, 173	Curtis, Collins & Holbrook Co. v. United States, 262 U. S. 215	57
Commissioner v. Stevens, 78 F. (2d) 713	172, 173, 176, 177	Darling v. McDonald, 101 Ill. 370	229, 230
Commonwealth v. Reed, 1 Gray 472	147	Davis v. Elmira Savings Bank, 161 U. S. 275	56
Commonwealth Trust Co. v. Bradford, 297 U. S. 613	53	Davis v. Weed, 7 Fed. Cas. 186	223
Compania M. Y. R. R., S. A. v. Bartlesville Zinc Co., 115 Tex. 21	471	Dayton Power & Light Co. v. Public Utilities Comm'n, 292 U. S. 290	239, 246
Compania Transcontinental v. Mexican Gulf Oil Co., 292 Fed. 846	472	Defiance Water Co. v. Defiance, 191 U. S. 184	113
Condemnation Suits, <i>In re</i> , 234 Fed. 443	104	Delano, Matter of, 176 N. Y. 486	296
Connally v. General Construction Co., 269 U. S. 385	196	Denver v. New York Trust Co., 229 U. S. 123	113
Continental Bank v. Chicago, R. I. & P. Ry., 294 U. S. 648	4, 137, 142	Devine v. Los Angeles, 202 U. S. 313	113
Converse v. United States, 21 How. 463	166	Dimick v. Schiedt, 293 U. S. 474	84, 137, 142
Coolidge v. Long, 282 U. S. 582	287, 288, 295	District of Columbia, <i>In re</i> , 180 U. S. 250	421
Cooper v. United States, 280 U. S. 409	501	Diveny v. Elmira, 51 N. Y. 506	147
Cornell v. Coyne, 192 U. S. 418	386, 387	Dobbins v. County Commissioners, 16 Pet. 435	408
Corrington, Matter of, 124 Ill. 363	229	Dr. Miles Medical Co. v. Park & Sons Co., 220 U. S. 373	188, 191
Coupe v. Royer, 155 U. S. 565	205	Doey v. Howland Co., 224 N. Y. 30	44
Cox v. Colorado, 282 U. S. 807	2	Dolbeer v. Stout, 139 N. Y. 486	255
Craig v. Hecht, 263 U. S. 255	2	Domestic Hardwoods, Inc. v. Baltimore & Ohio R. Co., 168 I. C. C. 753	399
Crawford v. United States, 212 U. S. 183	132, 139, 140, 141, 151	Dorchy v. Kansas, 264 U. S. 286	156, 268
Crawley v. Howe, 223 Ill. App. 394	229	Doty v. Love, 295 U. S. 64	503, 512
Crocker v. United States, 240 U. S. 74	206	Downes v. Bidwell, 182 U. S. 244	329
		Dows, Matter of, 167 N. Y. 227	296

TABLE OF CASES CITED.

XLIII

Page.		Page.
	Doyle v. London Guarantee & Accident Co., 204 U. S. 599	107, 108
	Drain v. Stough, 61 F. (2d) 668	224
	Drake v. Dilatush, 16 F. Supp. 120	224
	Drew v. Anderson, (1797) 1 Call 51	102
	Dugger v. Oglesby, 99 Ill. 405	228
	Dunlap v. Bull Head Oil Co., 167 Okla. 277	104
	Dunnigan v. Stevens, 122 Ill. 396	228
	Durack v. National Home, 44 F. (2d) 516	212
	Durflinger v. Arnold, 329 Ill. 93	228, 229
	Dwight v. Merritt, 4 Fed. 614	105
	Dye v. Noel, 85 Ill. 290	230
	Dyer v. Hall, 201 Ill. App. 183	230
	Earn Line S. S. Co. v. Sutherland S. S. Co., 254 Fed. 126	471
	Eastman Kodak Co. v. Gray, 292 U. S. 332	469
	Easton v. Iowa, 188 U. S. 220	58
	Edisto National Bank v. Bryant, 72 F. (2d) 917	123
	Eiler (Edward) Lumber Co. v. Missouri Pacific R. Co., 161 I. C. C. 415	399
	Electric Co. v. Dow, 166 U. S. 489	521
	Eley v. Gamble, 75 F. (2d) 171	102, 104, 105
	Elmendorf v. Taylor, 10 Wheat. 152	70
	Emmons v. Shaw, 171 Mass. 410	296, 299
	Enelow v. New York Life Ins. Co., 293 U. S. 379	355
	Enterprise Irrigation District v. Canal Co., 243 U. S. 157	304, 506, 507, 511, 520
	Estate of Kinsey, <i>In re</i> , 261 Ill. App. 481	229
	Eubank v. Richmond, 226 U. S. 137	194
	Evans v. State, 13 Ga. App. 700	140
	Everard's Breweries v. Day, 265 U. S. 545	353
	Ex parte 74, 58 I. C. C. 220	400
	Factor v. Laubenheimer, 290 U. S. 276	10
	Fair, The, v. Kohler Die Co., 228 U. S. 22	113
	Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204	372, 373
	Fasulo v. United States, 272 U. S. 620	210
	Federal Trade Comm'n v. Beech-Nut Co., 257 U. S. 441	196
	Federal Trade Comm'n v. Gratz, 253 U. S. 421	196
	Federal Trade Comm'n v. Pacific States Paper Assn., 273 U. S. 52	59
	Federal Trade Comm'n v. Raladam Co., 283 U. S. 643	196
	Fellows' Case, 5 Maine 333	140
	Fidelity & Deposit Co. v. United States, 259 U. S. 296	207
	Field v. Clark, 143 U. S. 649	328
	Finn v. Brown, 142 U. S. 56	56
	Finn v. United States, 123 U. S. 227	421
	First National Bank v. Maine, 284 U. S. 312	372
	First National Bank v. Tax Commission, 289 U. S. 60	515
	First National Bank v. Williams, 252 U. S. 504	112, 114
	First Union Trust & Savings Bank v. Consumers Co., 290 U. S. 585	504
	Fisk, <i>Ex parte</i> , 113 U. S. 713	103
	Fiske v. Kansas, 274 U. S. 380	364
	Fitzpatrick v. International Ry. Co., 252 N. Y. 127	472

TABLE OF CASES CITED.

	Page.		Page.
Fleischmann Co. v. United States, 270 U. S. 349	469	General Sales & Liquor Co. v. Becker, 14 F. Supp. 348	60
Florida Central R. Co. v. Reynolds, 183 U. S. 471	509	Georgia, F. & A. Ry. Co. v. Blish Co., 241 U. S. 190	29
Flynn, Welch & Yates, Inc. v. State Tax Comm'n, 38 N. M. 131	38	Gianatasio v. Kaplan, 284 U. S. 595	508
Fong Yue Ting v. United States, 149 U. S. 698	318	Gibbes v. Zimmerman, 290 U. S. 326	503
Foreman Trust & Savings Bank v. Tauber, 348 Ill. 280	228	Gibbons v. Ogden, 9 Wheat. 1	345
Forrest v. Jack, 294 U. S. 158	222, 223, 226	Gilfillan v. Union Canal Co., 109 U. S. 401	522
Foster v. Kansas, 112 U. S. 201	349	Gillette Safety Razor Co. v. Clark Blade Co., 187 Fed. 149, aff'd, 194 Fed. 421	96
Foster v. Neilson, 2 Pet. 253	10	Gillette Safety Razor Co. v. Hawley Hardware Co., 64 F. (2d) 10	95
Fountain (A. E.), Inc., <i>In re</i> , 295 Fed. 873	75	Gilmer v. Bird, 15 Fla. 410	104
Fox Film Corp. v. Muller, 296 U. S. 207	517, 519	Gitlow v. New York, 268 U. S. 652	363, 364
Frelinghuysen v. Key, 110 U. S. 63	471	Glassinger v. State, 24 Oh. St. 206	141
Fremont v. United States, 17 How. 542	472	Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196	347
French v. Edwards, 21 Wall. 147	206	Gombert v. Lyon, 80 Fed. 305	382
Friedman v. Harrington, 56 Fed. 860	255	Gompers v. Bucks Stove & Range Co., 221 U. S. 418	108, 109
Fulmore v. Lane, 104 Tex. 499	413	Gooch v. United States, 297 U. S. 124	346, 347, 348
Funk v. United States, 290 U. S. 371	144	Goodrich v. Ferris, 214 U. S. 71	522
Gaff v. State, 155 Ind. 277	140	Graham v. Bayne, 18 How. 60	205
Galwey, <i>In re</i> , [1896], 1 Q. B. D. 230	17	Graham v. West Virginia, 224 U. S. 614	506
Gant v. Oklahoma City, 284 U. S. 594	513	Grant, Matter of, 132 App. Div. 739	372
Garland v. Davis, 4 How. 131	422	Graves v. Texas Co., 298 U. S. 393	386
Gasoline Products Co. v. Champlin Refining Co., 283 U. S. 494	143	Grayson v. Harris, 267 U. S. 352	32
Gasquet v. Lapeyre, 242 U. S. 367	304, 506	Great Northern Ry. v. Merchants Elevator Co., 259 U. S. 285	397
Gause v. Detroit Trust Co., 297 U. S. 695	521	Grosjean v. American Press Co., 297 U. S. 233	364
Gay v. Ruff, 292 U. S. 25	113, 379	Group No. 1 Oil Corp. v. Sheppard, 89 S. W. (2d) 1021	37
General Investment Co. v. Lake Shore & M. S. Ry., 260 U. S. 261	376		

TABLE OF CASES CITED.

XLV

Page.		Page.
Guaranty Trust Co. v. Blodgett, 287 U. S. 509		295, 299
Gulf, C. & S. F. Ry. v. Dennis 224 U. S. 503		156, 268
Gundling v. Chicago, 177 U. S. 183		508
Gunning v. Cooley, 281 U. S. 90		84, 205
Gunther (M. H.) & Co. v. Louisville & N. R. Co., 112 I. C. C. 387.....		399
Guy v. Gericks, 85 Ill. 428		230
Guzzardi, <i>In re</i> , 74 F. (2d) 671		108
Gypsy Oil Co. v. Escoe, 275 U. S. 498		421
Hadden v. Collector, 5 Wall. 107		416
Hadden v. Spader, 20 Johns. 554		107
Haines v. McLaughlin, 135 U. S. 584		205
Ham v. Equitable Life Assurance Society, 299 U. S. 505		511, 520
Hammer v. Dagenhart, 247 U. S. 251		350
Hammitt v. Commissioner, 79 F. (2d) 494		174
Hand v. Ortschreib Building Corp., 254 N. Y. 15		107
Hanley v. Donoghue, 116 U. S. 1		472
Hanna v. Russell, 12 Minn. 80		104
Hanover Milling Co. v. Metcalf, 240 U. S. 403		195
Hanover National Bank v. Moyses, 186 U. S. 181		451
Harlan v. McGourin, 218 U. S. 442		2
Harrison v. Nixon, 9 Pet. 483		422
Harvey Co. v. Malley, 288 U. S. 415		469
Hayes v. Fischer, 102 U. S. 121		108
Head Money Cases, 112 U. S. 580		10
Heald v. District of Columbia, 259 U. S. 114		27
Hebert v. Louisiana, 272 U. S. 312		364, 507, 511, 520
Heike v. United States, 217 U. S. 423		505
Heim v. McCall, 239 U. S. 175		508
Heisler v. Thomas Colliery Co., 260 U. S. 245		298
Held v. Cleveland, C., C. & St. L. Ry., 161 I. C. C. 413		399
Helvering v. Insurance Co., 294 U. S. 686		89
Henderson Bridge Co. v. Henderson City, 173 U. S. 592		40
Henderson Bridge Co. v. Henderson City, 141 U. S. 679		519
Herndon v. Georgia, 295 U. S. 441		511
Herndon v. Wakefield-Moore Realty Co., 143 La. 724		104
Hewitt v. Speyer, 250 Fed. 367		471, 472
Hicklin v. Coney, 290 U. S. 169		241
Hipolite Egg Co. v. United States, 220 U. S. 45		346, 347
Hohenberg v. Louisville & N. R. Co., 46 F. (2d) 952		398
Hoke v. United States, 227 U. S. 308		346, 347
Holy Trinity Church v. United States, 143 U. S. 457		416
Home Insurance Co. v. Dick, 281 U. S. 397		182
Home Savings Bank v. Des Moines, 205 U. S. 503		117
Hopkins v. Walker, 244 U. S. 486		114
Hopt v. Utah, 120 U. S. 430		147
Houtz v. Union Pacific R. Co., 33 Utah 175		206
Hoxie v. United States, 15 F. (2d) 762		145
Hurd v. Slaten, 43 Ill. 348		229
Hurley v. Kincaid, 285 U. S. 95		473, 497
Hyde v. Stone, 20 How. 170		225
Hyde v. Woods, 94 U. S. 523		372

	Page.		Page.
Hygrade Food Corp. v. Chicago, M., St. P. & P. R. Co., 85 F. (2d) 113	398	Kain v. Ashworth, 119 Va. 605	104
Hygrade Provision Co. v. Sherman, 266 U. S. 497	196, 245, 247	Kansas City Southern Ry. v. Carl, 227 U. S. 639	29
Illinois Central R. Co. v. Adams, 180 U. S. 28	381	Kansas City Southern Ry. v. United States, 282 U. S. 760	255
Indiana Farmer's Guide Co. v. Prairie Farmer Co., 293 U. S. 268	206	Kansas City Southern Ry. v. United States, 231 U. S. 423	237
Indian Motorcycle Co. v. United States, 283 U. S. 570	386, 387, 408	Kealing v. Vansickle, 74 Ind. 529	206
Insurance Co. v. Bangs, 103 U. S. 435	377	Kehrer v. Stewart, 197 U. S. 60	40
Insurance Co. v. Boon, 95 U. S. 117	118	Kendall v. American Automatic Loom Co., 198 U. S. 477	382
International Harvester Co. v. Kentucky, 234 U. S. 216	246	Kennedy v. Gibson, 8 Wall. 498	225
International News Service v. Associated Press, 248 U. S. 215	276, 279	Kepner v. United States, 195 U. S. 100	76
Interstate Commerce Comm'n v. Goodrich Transit Co., 224 U. S. 194	237	Keyes v. Grant, 118 U. S. 25	205
Iowa Central Ry. Co. v. Iowa, 160 U. S. 389	102, 304	Keyser v. Hitz, 133 U. S. 138	225
Isaacs v. Stock, 66 F. (2d) 928	56	Keystone Driller Co. v. General Excavator Co., 290 U. S. 240	86
Jackson v. State, 74 Ala. 26	140	Kidd v. Alabama, 188 U. S. 730	64
Jacobs v. United States, 290 U. S. 13	497	King v. Edmonds, (1821) 4 B. & Ald. 471	135
Jacobson v. Massachusetts, 197 U. S. 11	507	King v. Jenney, (1509) Keilw. 97	135
Jefferson Standard Life Ins. Co. v. Keeton, 292 Fed. 53	255	King County v. Seattle School District, 263 U. S. 361	112
Jennings v. U. S. Fidelity & G. Co., 294 U. S. 216	123	Kirby v. Tallmadge, 160 U. S. 379	86
Johnson v. Aetna Insurance Co., 123 Ga. 404	181	Kittredge v. Nicholes, 162 Ill. 410	230
Johnson v. Tryon, 78 Ill. App. 158	228	Knewel v. Egan, 268 U. S. 442	2
Jones v. United States, 137 U. S. 202	318	Knickerbocker Ice Co. v. Stewart, 253 U. S. 149	44
Jordan v. Tashiro, 278 U. S. 123	10	Knight v. Kerfoot, 184 Ind. 31	206
Joy v. St. Louis, 201 U. S. 332	113	Knights of Pythias v. Few, 138 Ga. 778	181
		Kothe v. R. C. Taylor Trust, 280 U. S. 224	451
		Kuehner v. Irving Trust Co., 299 U. S. 445	443, 457
		Kuehner v. Irving Trust Co., 85 F. (2d) 35	443

TABLE OF CASES CITED.

XLVII

Page.	Page.
KVOS <i>v.</i> Associated Press, 299 U. S. 269	Louisville Bank <i>v.</i> Radford, 295 U. S. 555
521	25, 450
Ladew <i>v.</i> Tennessee Copper Co., 179 Fed. 245	Louisville & N. R. Co. <i>v.</i> Cook Brewing Co., 223 U. S. 70
277	348, 349
Lake Superior Consolidated Iron Mines <i>v.</i> Lord, 271 U. S. 577	Louisville & N. R. Co. <i>v.</i> Mottley, 211 U. S. 149
40	113, 115, 116
Lamb <i>v.</i> Cramer, 285 U. S. 217	Louisville & N. R. Co. <i>v.</i> United States, 258 U. S. 374
108, 109	207
Lane <i>v.</i> Pueblo of Santa Rosa, 249 U. S. 110	Luckenbach S. S. Co. <i>v.</i> United States, 272 U. S. 533
497	205, 207
Langnes <i>v.</i> Green, 282 U. S. 531	Luxton <i>v.</i> North River Bridge Co., 153 U. S. 525
83, 86, 300	406
Laura, The, 114 U. S. 411	Lynch <i>v.</i> Hornby, 247 U. S. 339
328	501
Lawrence <i>v.</i> Nelson, 143 U. S. 215	Lynch <i>v.</i> New York, 293 U. S. 52
225	2
Leas & McVitty <i>v.</i> Merri- man, 132 Fed. 510	Mackenzie <i>v.</i> Hare, 239 U. S. 299
101, 103	322
Leisy <i>v.</i> Hardin, 135 U. S. 100	Mackin <i>v.</i> Haven, 187 Ill. 480
348	228
Leman <i>v.</i> Krentler-Arnold Hinge Last Co., 284 U. S. 448	Magnum Import Co. <i>v.</i> Coty, 262 U. S. 159
109	26
Lemmon <i>v.</i> Feitner, 167 N. Y. 1	Mahan <i>v.</i> United States, 14 Wall. 109
371	205
Leonard <i>v.</i> Vicksburg R. Co., 198 U. S. 416	Mammoth Oil Co. <i>v.</i> United States, 275 U. S. 13
508, 521	86
Le Roy <i>v.</i> Rogers, 3 Paige Ch. (N. Y.) 234	Manassas Park, Inc. <i>v.</i> Rob- ertson, 274 U. S. 716
107	514
Levell <i>v.</i> Simpson, 297 U. S. 695	Manhattan Properties, Inc. <i>v.</i> Irving Trust Co., 291 U. S. 320
506	438, 440, 442, 450
Leyland Shipping Co. <i>v.</i> Norwich Insurance So- ciety, (1918) A. C. 350	Mankin <i>v.</i> Aldridge, 127 Va. 761
118	104
Liberty Warehouse Co. <i>v.</i> Burley Tobacco Assn., 276 U. S. 71	Mansfield, C. & L. M. Ry. <i>v.</i> Swan, 111 U. S. 379
195	277
Lindgren <i>v.</i> United States, 281 U. S. 38	Martin <i>v.</i> District Court, 37 Colo. 110
79	2
Lindheimer <i>v.</i> Illinois Bell Telephone Co., 292 U. S. 151	Mason <i>v.</i> Tiffany, 45 Ill. 392
246	229
Liverpool, N. Y. & P. S. S. Co. <i>v.</i> Commissioners, 113 U. S. 33	Matteson <i>v.</i> Dent, 176 U. S. 521
22	223, 226
Lloyd Sabaudo Societa Anonima <i>v.</i> Elting, 287 U. S. 329	Matthews <i>v.</i> Kerfoot, 167 Ill. 313
59	229
Lone Wolf <i>v.</i> Hitchcock, 187 U. S. 553	Maxwell <i>v.</i> Bugbee, 250 U. S. 525
428, 497, 498	299
Loomis <i>v.</i> Lehigh Valley R. Co., 240 U. S. 43	McCabe, <i>Ex parte</i> , 4 Fed. 363
398	16

	Page.		Page.
McCaskill Co. v. United States, 216 U. S. 504	57	Miller v. Schoene, 276 U. S.	197
McClaine v. Rankin, 197 U. S. 154	222, 225, 226	Milliken v. United States, 283 U. S. 15	501
McCormick & Co. v. Brown, 286 U. S. 131	63, 346	Milne Lumber Co. v. New York Central R. Co., 152 I. C. C. 65	399
McCoy v. Shaw, 277 U. S. 302	508, 517, 519	Milwaukee & St. Paul Ry. v. Kellogg, 94 U. S. 469	118
McCulloch v. Maryland, 4 Wheat. 316	115, 329, 408	Mingo v. State, 61 Tex. Cr. Rep. 14	141
McDonald v. Chemical National Bank, 174 U. S. 610	56	Minneapolis, St. P. & S. S. M. Ry. v. Moquin, 283 U. S. 520	84
McDonald v. Massachusetts, 180 U. S. 311	506	Minsker v. Life Insurance Co., 254 N. Y. 333	180
McDonald v. Oregon Navigation Co., 233 U. S. 665	304	Mississippi Central R. Co. v. Aultman, 296 U. S. 537	508, 518
McDonald v. Thompson, 184 U. S. 71	222, 225, 226	Mississippi Central R. Co. v. Roberts, 296 U. S. 536	518
McDougal v. McKay, 237 U. S. 372	31	Missouri v. Nebraska, 196 U. S. 23	470
McGowin-Foshee Lumber Co. v. A., F. & G. Ry., 95 I. C. C. 451	399	Missouri ex rel. Wabash Ry. v. Public Service Comm'n, 273 U. S. 126	156
McKee v. United States, 164 U. S. 287	76	Missouri Ry. Co. v. Olathe, 222 U. S. 185	514
McKenna v. Cooper, 79 Kan. 847	104	Modern Woodmen v. Mixer, 267 U. S. 544	182
McLean v. Fleming, 96 U. S. 245	195	Moffitt v. Kelly, 218 U. S. 400	40
McNutt v. General Motors Acceptance Corp., 298 U. S. 178	277, 278, 280, 301, 521	Montana Power Co. v. Public Service Comm'n, 12 F. Supp. 946	170
Meadows v. Irving Trust Co., 299 U. S. 464	443	Moore v. Missouri, 159 U. S. 673	506
Mechanical Appliance Co. v. Castleman, 215 U. S. 437	376, 382	Moore-Marshall Lumber Co. v. New Orleans & N. E. R. Co., 112 I. C. C. 33	399
Merriam Co. v. Saalfield, 241 U. S. 22	382	Morehead v. Tipaldo, 298 U. S. 587	87
Metcalf & Eddy v. Mitchell, 269 U. S. 514	409	Morey v. Lockhart, 123 U. S. 56	380
Metropolis Theatre Co. v. Chicago, 228 U. S. 61	299	Morgan v. Hamlet, 113 U. S. 449	225
Metropolitan Life Ins. Co. v. Hale, 177 Ga. 632	181	Morse v. United States, 270 U. S. 151	421
Meyer v. Kenmore Hotel Co., 297 U. S. 160	25, 80, 462	Mortimer v. Potter, 213 Ill. 178	231
Michaelson v. United States, 266 U. S. 42	109	Mugler v. Kansas, 123 U. S. 623	349

TABLE OF CASES CITED.

XLIX

	Page.		Page.
Mulvey <i>v.</i> Johnson, 90 Ill.		Nottingham, <i>In re</i> , 84 Colo.	
457	230	123	2
Munter <i>v.</i> Weil Corset Co.,		O'Connor <i>v.</i> State, 9 Fla.	
261 U. S. 276	377	215	140
Nash <i>v.</i> United States, 229		Oetjen <i>v.</i> Central Leather	
U. S. 373	246	Co., 246 U. S. 297	471, 472
Nashville, C. & St. L. Ry.		Ohio Oil Co. <i>v.</i> Conway, 281	
<i>v.</i> Walters, 294 U. S. 405	392	U. S. 146	297
National Accident & Health		Old Company's Lehigh <i>v.</i>	
Ins. Co. <i>v.</i> Davis, 179 Ga.		Meeker, 294 U. S. 227	123
595	181	Old Dearborn Distributing	
National Bank <i>v.</i> Colby, 21		Co. <i>v.</i> Seagram-Distillers	
Wall. 609	55	Corp., 299 U. S. 183	200, 201
National Bank <i>v.</i> Common-		Oliver American Trading	
wealth, 9 Wall. 353	117	Co. <i>v.</i> Mexico, 5 F. (2d)	
National City Bank <i>v.</i>		659	471, 472
Hotchkiss, 231 U. S. 50	123	O'Mara <i>v.</i> Crampton, 267	
Near <i>v.</i> Minnesota, 283 U.		U. S. 575	514
S. 697	364	Oregon-Washington R. & N.	
Nebbia <i>v.</i> New York, 291		Co. <i>v.</i> Washington, 270	
U. S. 502	511	U. S. 87	346, 347
Nebraska <i>v.</i> Iowa, 143 U. S.		Orr <i>v.</i> Gilman, 183 U. S.	
359	470	278	296
Neely <i>v.</i> Henkel, 180 U. S.		Osborn <i>v.</i> U. S. Bank, 9	
109	9	Wheat. 738	83, 113
Nelson <i>v.</i> United States, 201		Otis <i>v.</i> Parker, 187 U. S. 606	353
U. S. 92	108	Owensboro National Bank	
New Jersey <i>v.</i> Anderson, 203		<i>v.</i> Owensboro, 173 U. S.	
U. S. 483	75	664	115
New Orleans <i>v.</i> Benjamin,		Pacific Fruit & Produce Co.	
153 U. S. 411	113	<i>v.</i> Martin, 16 F. Supp. 34	60
New State Ice Co. <i>v.</i> Lieb-		Pacific Railroad Removal	
mann, 285 U. S. 262	192	Cases, 115 U. S. 1	113
New York Edison Co. <i>v.</i>		Pacific States Box Co. <i>v.</i>	
Maltbie, 244 App. Div.		White, 296 U. S. 176	210
685	241	Pacific Tel. & Tel. Co. <i>v.</i>	
New York <i>ex rel.</i> Silz <i>v.</i>		Kuykendall, 265 U. S. 196	170
Hesterberg, 211 U. S. 31	353	Panama R. Co. <i>v.</i> Johnson,	
New York, P. & N. R. Co.		264 U. S. 375	79
<i>v.</i> Peninsula Exchange, 240		Panama Refining Co. <i>v.</i>	
U. S. 34	29, 30	Ryan, 293 U. S. 388	327
Norfolk & Western Ry. <i>v.</i>		Panhandle Oil Co. <i>v.</i> Missis-	
United States, 287 U. S.		sippi, 277 U. S. 218	386
134	237, 243	Pate <i>v.</i> State, 158 Ala. 1	140
Northern Pacific Ry. <i>v.</i> So-		Patten (C. M.) & Co. <i>v.</i>	
lolum, 247 U. S. 477	397, 398	United States, 289 U. S.	
North Missouri R. Co. <i>v.</i>		705	504
Maguire, 20 Wall. 46	40	Patterson <i>v.</i> Alabama, 294	
North Pacific S. S. Co. <i>v.</i>		U. S. 600	156, 258, 268
Hall Bros. Co., 249 U. S.		Patton <i>v.</i> Brady, 184 U. S.	
119	45	408	500

## TABLE OF CASES CITED.

	Page.		Page.
Patton <i>v.</i> United States, 281		Pollard <i>v.</i> Dwight, 4 Cranch	
U. S. 276	137, 142, 144	421	379, 382
Payne <i>v.</i> Kansas, 248 U. S.		Pollock <i>v.</i> Cantlin, 253 Ill.	
112	508	App. 229	229
Peacock <i>v.</i> Haven, 22 Ill. 23		Pond <i>v.</i> Sibley, 7 Fed. 129	382
	229, 230	Porter <i>v.</i> Investors Syndi-	
Pearson <i>v.</i> Durell, 77 F. (2d)		cate, 286 U. S. 461	169, 170
465	56	Porter <i>v.</i> Vandercook, 11	
Pearson <i>v.</i> McBean, 231 Ill.		Wis. 70	104
536	230	Post <i>v.</i> Burger & Gohlke,	
Peaslee <i>v.</i> Haberstro, 15		216 N. Y. 544	44
Blatchf. 472	104	Powell <i>v.</i> Alabama, 287 U.	
Peck <i>v.</i> Stevens, 10 Ill. 127	230	S. 45	364
Penhallow <i>v.</i> Doane, 3 Dall.		Powell <i>v.</i> Pennsylvania, 127	
54	317	U. S. 678	511
Pennsylvania Co., <i>In re</i> , 137		Premier-Pabst Sales Co. <i>v.</i>	
U. S. 451	380	Grosscup, 298 U. S. 226	60
Pensacola Telegraph Co. <i>v.</i>		Premier-Pabst Sales Corp. <i>v.</i>	
Western Union, 96 U. S. 1	406	Grosseup, 12 F. Supp. 970	60
People <i>v.</i> Lange, 90 Mich.		Premier-Pabst Sales Co. <i>v.</i>	
454	141	McNutt, D., Ind., decid-	
People <i>v.</i> Lee, 72 Colo. 598	104	ed Jan. 4, 1935 (unre-	
People <i>v.</i> Mancuso, 255		ported)	60
N. Y. 463	247	Prentice <i>v.</i> Zane's Adminis-	
People <i>v.</i> McLean, 2 Johns.		trator, 8 How. 470	205
381	145	Price <i>v.</i> Abbott, 17 Fed.	
People <i>v.</i> Small, 319 Ill. 437	229	506	225
Peters <i>v.</i> Equitable Life As-		Price <i>v.</i> Illinois, 238 U. S.	
surance Society, 149 Fed.		446	511
290	382	Providence Bank <i>v.</i> Billings,	
Peterson, <i>Ex parte</i> , 253 U. S.		4 Pet. 514	40
300	143	Provident Institution <i>v.</i> Jer-	
Petrie <i>v.</i> Nampa Irrigation		sey City, 113 U. S. 506	194
District, 248 U. S. 154	517	Prudence Bonds Corp., <i>In</i>	
Phelps <i>v.</i> United States, 274		<i>re</i> , 75 F. (2d) 262	83
U. S. 341	497	Public Service Comm'n <i>v.</i>	
Phillips <i>v.</i> Commissioner,		Great Northern Utilities	
283 U. S. 589	473	Co., 86 Mont. 442	170
Phillips <i>v.</i> Mobile, 208 U. S.		Puerto Rico <i>v.</i> Russell &	
472	63	Co., 288 U. S. 476	113,
Pick Manufacturing Co. <i>v.</i>			114, 116
General Motors Corp.,		Puget Sound Co. <i>v.</i> Seattle,	
299 U. S. 3	53	291 U. S. 619	515
Pierce <i>v.</i> Somerset Railway,		Purity Extract Co. <i>v.</i> Lynch,	
171 U. S. 641	508, 521	226 U. S. 192	392
Pim <i>v.</i> St. Louis, 165 U. S.		Quong Wing <i>v.</i> Kirkendall,	
673	511	223 U. S. 59	298, 505
Pine River Logging Co. <i>v.</i>		Radice <i>v.</i> New York, 264	
United States, 186 U. S.		U. S. 292	196, 197
279	496	Rahrer, <i>In re</i> , 140 U. S. 545	
Plymouth Coal Co. <i>v.</i> Penn-			63, 348, 349, 351
sylvania, 232 U. S. 531	27		

TABLE OF CASES CITED.

LI

	Page.		Page.
Railroad Commissioners v. District Court, 53 Mont.	170	Roberts v. Flatt, 142 Ill.	485
229			229, 230
Railroad Co. v. Husen, 95 U. S. 465	507	Robertson v. Labor Board, 268 U. S. 619	377
Railroad Co. v. Rock, 4 Wall. 177	512	Robison v. Harrington, 61 Ill. App. 543	228
Railroad Co. v. Wiswall, 23 Wall. 507	378	Roe v. Kansas, 278 U. S. 191	508
Rankin v. Herod, 140 Fed. 661	225	Rogers v. Hennepin County, 240 U. S. 184	373
Rankin v. Miller, 207 Fed. 602	224	Rosenberg v. Slotchin, 181 App. Div. 137	255
Rankin v. State, 11 Wall. 380	505	Rosenthal v. Magee, 41 Ill. 370	229, 230
Rast v. Van Deman & Lewis Co., 240 U. S. 342	392	Ross v. United States, 12 Ct. Cls. 565	206
Reddall v. Bryan, 24 How. 420	513	Rouse, Hazard & Co., <i>In re</i> , 91 Fed. 96	76
Regina v. Lacey, (1848) 3 Cox Cr. C. 517	135	Royer v. Schultz Belting Co., 135 U. S. 319	205
Regina v. Tutchin, 14 St. Tr. 1095	135	Rucker v. Kokrda, 68 F. (2d) 73	56
Regina v. Wilson, 3 Q. B. D. 42 (1877)	17	Runkle v. Burnham, 153 U. S. 216	86
Reid v. Colorado, 187 U. S. 137	346	Rupert v. United States, 181 Fed. 87	346
Remington v. Central Pacific R. Co., 198 U. S. 95	382	Russell v. Clarke's Executors, 7 Cranch 69	70
Republica v. Mesca, 1 Dall. 73	145	Russell v. Hubbard, 59 Ill. 335	229
Rex v. Genney, (1508) Keilw. 102a	135	St. Louis-San Francisco Ry. Co. v. Johnston, 133 U. S. 566	58
Rex v. Hampden, 9 St. Tr. 1054	135	St. Louis S. W. Ry. v. United States, 245 U. S. 136	395
Rex v. Kirwan, 31 St. Tr. 543	135	St. Paul Plow Works v. Starling, 140 U. S. 184	205
Rex v. Parkyns, 13 St. Tr. 163	135	Salinger v. Loisel, 265 U. S. 224	518
Rex v. Rowan, 22 St. Tr. 1034	135	Salomon v. State Tax Comm'n, 278 U. S. 484	299
Rhodes v. Iowa, 170 U. S. 412	349	Saloshin v. Houle, 85 N. H. 126	472
Ribnik v. McBride, 277 U. S. 350	192	Saltonstall v. Saltonstall, 276 U. S. 260	286, 295, 296, 519
Ricaud v. American Metal Co., 246 U. S. 304	471	Saltonstall v. Saltonstall, 256 Mass. 519	296
Riddle v. Dyche, 262 U. S. 333	2	Sawyer v. Kochersperger, 170 U. S. 303	115
Ripley v. United States, 220 U. S. 491	206	Schafer v. Commissioner, 299 U. S. 171	176
		Schick v. United States, 195 U. S. 65	138

	Page.		Page.
Schilling <i>v.</i> Sieroty, S. D. Cal., Cent. Div., decided Aug. 21, 1934	56	Singer Sewing Machine Co. <i>v.</i> Brickell, 233 U. S. 304	515
Schlesinger <i>v.</i> Wisconsin, 270 U. S. 230	291	Skinner & Eddy Corp. <i>v.</i> McCarl, 275 U. S. 1	404
Schofield <i>v.</i> Palmer, 134 Fed. 753	103	Slaker <i>v.</i> O'Connor, 278 U. S. 188	508
Schwartz <i>v.</i> Irving Trust Co., 299 U. S. 456	442, 465, 467	Slaughter-House Cases, 16 Wall. 36	63
Scott <i>v.</i> Donald, 165 U. S. 58	63	Sligh <i>v.</i> Kirkwood, 237 U. S. 52	508
Scoville <i>v.</i> Shed, 36 Hun 165	107	Slomka, <i>In re</i> , 122 Fed. 630	76
Seaboard Air Line Ry. <i>v.</i> North Carolina, 245 U. S. 298	63	Smith <i>v.</i> Baldwin, 63 App. D. C. 72	56
Seaboard Air Line Ry. <i>v.</i> United States, 261 U. S. 299	497	Smith <i>v.</i> Illinois Bell Telephone Co., 282 U. S. 133	239
Seabury <i>v.</i> Green, 294 U. S. 165	223, 226, 227	Smith <i>v.</i> Interstate Commerce Comm'n, 245 U. S. 33	246
Seattle, R. & S. Ry. <i>v.</i> Linhoff, 231 U. S. 568	506, 507, 519	Snydacker <i>v.</i> Swan Land Co., 154 Ill. 220	229
Seattle Trust Co. <i>v.</i> Roberge, 278 U. S. 116	194	Southern Express Co. <i>v.</i> Byers, 240 U. S. 612	30
Secor <i>v.</i> Fulton, 293 U. S. 517	507	Southern Pacific Co. <i>v.</i> Denton, 146 U. S. 202	103
Security Loan & Trust Co. <i>v.</i> Fields, 110 Va. 827	102	Southern Ry. Co. <i>v.</i> King, 217 U. S. 524	27
Security Trust Co. <i>v.</i> Black River National Bank, 187 U. S. 211	226	Southern Ry. Co. <i>v.</i> Prescott, 240 U. S. 632	30
Seeley <i>v.</i> Commissioner, 77 F. (2d) 323	174	Southwestern Oil Co. <i>v.</i> Texas, 217 U. S. 114	515
Sessions <i>v.</i> Romadka, 145 U. S. 29	75	Sparhawk <i>v.</i> Yerkes, 142 U. S. 1	372
Seven Cases <i>v.</i> United States, 239 U. S. 510	346, 347, 353	Spencer Kellogg & Sons <i>v.</i> Hicks, 285 U. S. 502	44
Shepard <i>v.</i> Adams, 168 U. S. 618	382	Spies <i>v.</i> Illinois, 123 U. S. 131	147
Shépard <i>v.</i> National Bank, 67 Ill. 292	229	Spittorff <i>v.</i> State, 108 Ind. 171	140
Shephard <i>v.</i> Rhodes, 60 Ill. 301	229	Standard Oil Co. <i>v.</i> Marysville, 279 U. S. 582	511
Shoshone Mining Co. <i>v.</i> Rutter, 177 U. S. 505	114	Standard Oil Co. <i>v.</i> Missouri, 224 U. S. 270	304
Shriver <i>v.</i> Woodbine Bank, 285 U. S. 467	102	Standard Oil Co. <i>v.</i> United States, 221 U. S. 1	197
Shulthis <i>v.</i> McDougal, 225 U. S. 561	114	Standard Oil Co. <i>v.</i> United States, 283 U. S. 235	398
		Standard Stock Food Co. <i>v.</i> Wright, 225 U. S. 540	27
		Starin <i>v.</i> New York, 115 U. S. 248	112

TABLE OF CASES CITED.

LIII

Page.		Page.
140	State <i>v.</i> Adams, 20 Iowa 486	164
140	State <i>v.</i> Carter, 106 La. 407	364
141	State <i>v.</i> Cosgrove, 16 R. I. 411	4
140	State <i>v.</i> Foster, 150 La. 971	328
140	State <i>v.</i> Golubski, 45 S. W. (2d) 873	83
415	State <i>v.</i> Holder, 76 Miss. 158	521
140	State <i>v.</i> McDonald, 59 Kan. 241	206
141	State <i>v.</i> Parker, 104 Vt. 494	225
140	State <i>v.</i> Petit, 119 La. 1013	473
104	State <i>v.</i> Superior Court, 142 Wash. 270	297
141	State <i>v.</i> Wright, 53 Maine 328	509
62	State Freight Tax, 15 Wall. 232	113
44	State Industrial Comm'n <i>v.</i> Nordenholt Corp., 259 U. S. 263	422
297	Stebbins <i>v.</i> Riley, 268 U. S. 137	113, 115
107	Steinman <i>v.</i> Conlon, 208 N. Y. 198	25
225	Stephens <i>v.</i> Bernays, 41 Fed. 401	4
332	Stevens <i>v.</i> Dimond, 6 N. H. 330	398
382	Stewart <i>v.</i> Ramsay, 242 U. S. 128	421
33	Stewart Dry Goods Co. <i>v.</i> Lewis, 294 U. S. 550	4
145	Stilson <i>v.</i> United States, 250 U. S. 583	382
205	Stilz <i>v.</i> United States, 269 U. S. 144	33
500	Stockdale <i>v.</i> Insurance Co., 20 Wall. 323	398
146, 147	Stokes <i>v.</i> People, 53 N. Y. 164	421
228	Stone <i>v.</i> Clarke's Administrators, 40 Ill. 411	338
206	Stone <i>v.</i> United States, 164 U. S. 380	4
231	Strauss <i>v.</i> Phillips, 189 Ill. 9	521
	Strawberry Valley Cattle Co. <i>v.</i> Chipman, 13 Utah 454	521
	Stromberg <i>v.</i> California, 283 U. S. 359	382
	Stuart <i>v.</i> Hayden, 169 U. S. 1	382
	Stuart <i>v.</i> Laird, 1 Cranch 299	141
	Styria, The, <i>v.</i> Morgan, 186 U. S. 1	141
	Sugarman <i>v.</i> United States, 249 U. S. 182	141
	Sun Mutual Ins. Co. <i>v.</i> Ocean Insurance Co., 107 U. S. 485	141
	Suydam <i>v.</i> Broadnax, 14 Pet. 67	141
	Sweet <i>v.</i> Rechel, 159 U. S. 380	141
	Swiss Oil Co. <i>v.</i> Shanks, 273 U. S. 407	141
	Tappan <i>v.</i> Merchants National Bank, 19 Wall. 490	141
	Taylor <i>v.</i> Anderson, 234 U. S. 74	141
	Taylor Co. <i>v.</i> Anderson, 275 U. S. 431	141
	Tennessee <i>v.</i> Union & Planters Bank, 152 U. S. 454	141
	Tennessee Publishing Co. <i>v.</i> American National Bank, 81 F. (2d) 463	141
	Texas & N. O. R. Co. <i>v.</i> Railway Clerks, 281 U. S. 548	141
	Texas & Pacific Ry. <i>v.</i> American T. & T. Co., 234 U. S. 138	141
	Texas & Pacific Ry. <i>v.</i> Murphy, 111 U. S. 488	141
	Texas & Pacific Ry. <i>v.</i> Railroad Comm'n, 232 U. S. 338	141
	Texas & Pacific Ry. <i>v.</i> Texas, 296 U. S. 552	141
	Texas Transportation Co. <i>v.</i> Seeligson, 122 U. S. 519	141
	Thompson <i>v.</i> Commonwealth, 88 Va. 45	141

	Page.		Page.
Thompson <i>v.</i> Utah, 170 U. S. 343	137	United States <i>v.</i> Chase, 135 U. S. 255	210
Thomson Welder Co. <i>v.</i> Ford Motor Co., 265 U. S. 445	205	United States <i>v.</i> Chaves, 159 U. S. 452	470, 472
Toland <i>v.</i> Sprague, 12 Pet. 300	377	United States <i>v.</i> Cohen Gro- cery Co., 255 U. S. 81	196, 247
Townsend <i>v.</i> Little, 109 U. S. 504	76	United States <i>v.</i> Commercial Credit Co., 286 U. S. 63	4
Travelers Insurance Co. <i>v.</i> Pomerantz, 246 N. Y. 63	180	United States <i>v.</i> Constane- tine, 296 U. S. 287	94
Trego <i>v.</i> Cunningham's Es- tate, 267 Ill. 367	229	United States <i>v.</i> Cook, 19 Wall. 591	496, 498
Triner Corp. <i>v.</i> Arundel, 11 F. Supp. 145	60	United States <i>v.</i> Creek Na- tion, 295 U. S. 103 495, 496, 497	497
Tucker <i>v.</i> Alexandroff, 183 U. S. 424	10	United States <i>v.</i> Cress, 243 U. S. 316	497
Twin City Power Co. <i>v.</i> Sa- vannah River Electric Co., 284 U. S. 574	513	United States <i>v.</i> Cruik- shank, 92 U. S. 542	364
Tynan <i>v.</i> United States, 297 Fed. 177	145	United States <i>v.</i> Delaware & Hudson Co., 213 U. S. 366	346, 347
Tyson & Bros. <i>v.</i> Banton, 273 U. S. 418	192	United States <i>v.</i> Diekelman, 92 U. S. 520	471
Underhill <i>v.</i> Hernandez, 168 U. S. 250	471, 472	United States <i>v.</i> Ellicott, 223 U. S. 524	421
Union Bank <i>v.</i> Vaiden, 18 How. 503	225	United States <i>v.</i> Esnault- Pelterie, 299 U. S. 201	422
Union Tool Co. <i>v.</i> Wilson, 259 U. S. 107	109	United States <i>v.</i> Freeman, 3 How. 556	166
Union Trust Co. <i>v.</i> Shoemaker, 258 Ill. 564	228, 229, 230	United States <i>v.</i> Freeman, 239 U. S. 117	353
United Cigar Stores, <i>In re</i> , 83 F. (2d) 202	459	United States <i>v.</i> Hamburg- American Co., 239 U. S. 466	267
United States <i>v.</i> Adams, 6 Wall. 101	206	United States <i>v.</i> Hastings, 296 U. S. 188	330
United States <i>v.</i> Adams, 9 Wall. 661	207	United States <i>v.</i> Hill, 248 U. S. 420	346, 350
United States <i>v.</i> Anchor Coal Co., 279 U. S. 812	267	United States <i>v.</i> Jefferson Electric Co., 291 U. S. 386	166, 207
United States <i>v.</i> Anciens Etablissements, 224 U. S. 309	205	United States <i>v.</i> Lacher, 134 U. S. 624	210
United States <i>v.</i> Beatty, 232 U. S. 463	26	United States <i>v.</i> Memphis Cotton Oil Co., 288 U. S. 62	117
United States <i>v.</i> Cartacho, Fed. Cas. No. 14,738	145	United States <i>v.</i> Mille Lac Band of Chippewa Indi- ans, 229 U. S. 498	493
United States <i>v.</i> Chandler- Dunbar Co., 229 U. S. 53	408	United States <i>v.</i> Mitchell, 223 Fed. 805	105

TABLE OF CASES CITED.

LV

Page.		Page.
245, 246	United States <i>v.</i> Murdock, 290 U. S. 389	255
497	United States <i>v.</i> North American Co., 253 U. S. 330	143
93	United States <i>v.</i> One Ford Coupe, 272 U. S. 321	511
496	United States <i>v.</i> Paine Lum- ber Co., 206 U. S. 467	205
470	United States <i>v.</i> Percheman, 7 Pet. 51	471
472	United States <i>v.</i> Perot, 98 U. S. 428	31
206	United States <i>v.</i> Pugh, 99 U. S. 265	75
8, 11	United States <i>v.</i> Rauscher, 119 U. S. 407	156, 259, 268
93	United States <i>v.</i> Remus, 260 U. S. 477	165
75	United States <i>v.</i> Ryan, 284 U. S. 167	228
93	United States <i>v.</i> Stafoff, 260 U. S. 477	239
225	United States <i>v.</i> Weitzel, 246 U. S. 533	279
206	United States <i>v.</i> Wells, 283 U. S. 102	353
348	United States <i>v.</i> Wheeler, 254 U. S. 281	230
209	United States <i>v.</i> Wiltberger, 5 Wheat. 76	229
247	United States <i>v.</i> Wurzbach, 280 U. S. 396	70
93	United States <i>v.</i> Yuginovich, 256 U. S. 450	239
63	Vance <i>v.</i> Vandercook Co., 170 U. S. 438	372
177	Vaughan <i>v.</i> Commissioner, 85 F. (2d) 497 173, 174,	386
381	Venner <i>v.</i> Great Northern Ry., 209 U. S. 24	372, 374
513	Verden <i>v.</i> Coleman, 18 How. 86	378
102	Virginia Hot Springs Co. <i>v.</i> Schreck, 131 Va. 581	509
400	Virginian Ry. Co. <i>v.</i> United States, 272 U. S. 658	350
194	Vreeland <i>v.</i> O'Neil, 36 N. J. Eq. 399	103
376	Wabash Western Ry. <i>v.</i> Brow, 164 U. S. 271	255
	Wadleigh <i>v.</i> Veazie, Fed. Cas. No. 17,031	143
	Walker <i>v.</i> New Mexico & So. Pac. R. Co., 165 U. S. 593	205
	Wall <i>v.</i> Chesapeake & Ohio Ry., 256 U. S. 125	471
	Ward <i>v.</i> Cochran, 150 U. S. 597	235
	Ware <i>v.</i> Hylton, 3 Dall. 199	31
	Washington <i>v.</i> Miller, 235 U. S. 422	75
	Waterman (A. J.) Mfg. Co., <i>In re</i> , 291 Fed. 589	248
	Watts, Watts & Co. <i>v.</i> Unione Austriaca, 248 U. S. 9	156, 259, 268
	Waughop <i>v.</i> Bartlett, 165 Ill. 124	228
	Wausau Southern Lumber Co. <i>v.</i> Alabama Great Southern R. Co., 142 I. C. C. 521	396
	Webster <i>v.</i> Fall, 266 U. S. 507	279
	Weeks <i>v.</i> United States, 245 U. S. 618	353
	Welch <i>v.</i> Wallace, 8 Ill. 490	230
	Wells <i>v.</i> Miller, 45 Ill. 33	229
	West <i>v.</i> Randall, 2 Mason 181	70
	Western Distributing Co. <i>v.</i> Public Service Comm'n, 285 U. S. 119	239
	Weston <i>v.</i> Ives, 97 N. Y. 222	372
	Wheeler Lumber B. & S. Co. <i>v.</i> United States, 281 U. S. 572	386
	Wheeling Steel Corp. <i>v.</i> Fox, 298 U. S. 193	372, 374
	Wheelock <i>v.</i> Walsh Clay Products Co., 60 F. (2d) 415	398
	White River Co. <i>v.</i> Arkan- sas, 279 U. S. 692	509
	Whitfield <i>v.</i> Ohio, 297 U. S. 431	350
	Whitford <i>v.</i> Clark County, 119 U. S. 522	103

## TABLE OF CASES CITED.

	Page.		Page.
Whitley <i>v.</i> Booker Brick Co., 113 Va.	434	104	
Whitney <i>v.</i> Blackburn, 17 Ore.	564	104	
Whitney <i>v.</i> California, U. S.	357	363, 512	
Whittemore <i>v.</i> Weber, Ill. App.	628	229	
Wick <i>v.</i> Chelan Electric Co., 280 U. S.	108	522	
Wilding <i>v.</i> Rhein, 12 Ill. App.	384	230	
Wile <i>v.</i> Cohn, 63 Fed.	759	104	
Willcuts <i>v.</i> Bunn, 282 U. S.	216	386	
Wm. Filene's Sons Co. <i>v.</i> Weed, 245 U. S.	597	440	
Williams <i>v.</i> Standard Oil Co., 278 U. S.	235	192	
Wilson <i>v.</i> Shaw, 204 U. S.	24	406	
Winton <i>v.</i> Amos, 255 U. S.	373	206, 207	
Witters <i>v.</i> Sowles, 32 Fed.	130	224	
Wolff Co. <i>v.</i> Industrial Court, 262 U. S.	522	192	
Wood <i>v.</i> Kane, 143 Va.	281	104	
Wood <i>v.</i> Stoddard, 2 Johns.	194	147	
Wood <i>v.</i> Underhill, 5 How.	1	205	
Woolsey <i>v.</i> People, 98 Colo.	62	2	
Worden <i>v.</i> Searls, 121 U. S.	14	108	
Wright <i>v.</i> Blakeslee, 101 U. S.	174	287	
Wyley Co., <i>In re</i> , 292 Fed.	900	75	
Yankton Sioux Tribe <i>v.</i> United States, 272 U. S.	351	497, 498	
Yates <i>v.</i> Jones National Bank, 206 U. S.	158	57	
Yonley <i>v.</i> Lavendar, 21 Wall.	276	226	
Young <i>v.</i> United States, U. S.	39	471	
Zahn <i>v.</i> Board of Public Works, 274 U. S.	325	196	
Zimmerman <i>v.</i> Carpenter, 84 Fed.	747	231	
Zimmerman <i>v.</i> State, Ind.	129	140	
Zucht <i>v.</i> King, 260 U. S.	174	507, 521	

# TABLE OF STATUTES

## Cited In Opinions

### (A) STATUTES OF THE UNITED STATES

	Page.		Page.
1794, May 7, 1 Stat. 401...	322	1864, June 11, c. 116, § 1,	
1794, June 4, c. 41, 1 Stat.		13 Stat. 121.....	326
372.....	322	1870, July 8, c. 230, § 25, 16	
1795, Mar. 3, c. 53, 1 Stat.		Stat. 198.....	204
444.....	322	1873, Mar. 1, c. 213, §§ 1, 2	
1798, June 13, c. 53, § 5, 1		17 Stat. 482.....	326
Stat. 566.....	323	1874, Mar. 23, c. 62, 18	
1799, Feb. 9, c. 2, § 4, 1		Stat. 23.....	326
Stat. 615.....	323	1874, Apr. 15, c. 96, 18	
1800, Feb. 7, c. 10, § 6, 2		Stat. 28.....	162
Stat. 9.....	323	1875, Mar. 3, c. 137, § 5, 18	
1805, Mar. 3, c. 41, § 5, 2		Stat. 470.....	277, 378
Stat. 341.....	323	1881, Feb. 26, c. 80, § 2,	
1806, Feb. 28, c. 9, § 5, 2		21 Stat. 350.....	213
Stat. 351.....	324	1882, Aug. 7, c. 433, 22	
1806, Dec. 19, c. 1, § 3, 2		Stat. 302, 322.....	213
Stat. 411.....	324	1883, Mar. 3, c. 130, § 4, 22	
1808, Apr. 22, c. 52, 2 Stat.		Stat. 564.....	214
490.....	325	1884, May 29, c. 60, 23 Stat.	
1809, Mar. 1, c. 24, § 11,		31.....	346
2 Stat. 528.....	324	1884, June 26, c. 121, § 14,	
1810, May 1, c. 39, § 4, 2		23 Stat. 53.....	325
Stat. 605.....	325	1886, June 19, c. 421, 24	
1815, Mar. 3, c. 77, 3 Stat.		Stat. 79.....	326
224.....	325	1886, June 19, c. 421, § 17,	
1817, Mar. 3, c. 39, § 2, 3		24 Stat. 79.....	325
Stat. 361.....	325	1887, Feb. 4, c. 104, § 6	
1824, Jan. 7, c. 4, § 4, 4		(1), 24 Stat. 379....	395
Stat. 3.....	325	1887, Feb. 4, c. 104, § 15	
1828, May 24, c. 111, 4		(3), 24 Stat. 379....	400
Stat. 308.....	325	1887, Feb. 4, c. 104, § 24	
1830, May 31, c. 219, § 2,		(b), 24 Stat. 379....	25
4 Stat. 425.....	325	1887, Mar. 3, c. 339, 24	
1832, July 13, c. 207, § 3, 4		Stat. 475.....	326
Stat. 578.....	325	1887, Mar. 3, c. 373, 24	
1851, Mar. 3, c. 20, § 2, 9		Stat. 552.....	326
Stat. 587.....	326	1887, Mar. 3, c. 373, § 6, 24	
1854, Aug. 5, c. 269, §§ 1, 2		Stat. 552.....	379
10 Stat. 587.....	326		

	Page.		Page.
1888, May 1, c. 213,	25	1906, Apr. 26, c. 1876, § 28,	
Stat. 113.....	162	34 Stat. 137.....	428
1888, Aug. 13, c. 866,	25	1906, June 29, c. 3591,	34
Stat. 433.....	379	Stat. 584.....	346
1890, Aug. 8, c. 728,	26	1906, June 30, c. 3915,	34
Stat. 313.....	349	Stat. 768.....	346
1891, Feb. 28, c. 383, § 3,		1907, Mar. 2, c. 2564,	34
26 Stat. 795.....	161,	Stat. 1246.....	314
	162, 163	1907, June 5, 35 Stat. 1863.	470
1892, July 26, c. 248,	27	1908, Apr. 30, c. 158,	35
Stat. 267.....	326	Stat. 70, 71.....	429
1893, Feb. 21, c. 150,	27	1910, June 25, c. 384,	36
Stat. 472.....	326	Stat. 703, 736... 212,	215
1895, Mar. 2, c. 191,	28	1910, June 25, c. 395,	36
Stat. 963.....	346	Stat. 825.....	346
1896, June 10, c. 398,	29	1910, June 25, c. 423,	36
Stat. 321.....	162	Stat. 851.....	202
1897, Mar. 3, c. 391, § 3,		1911, Mar. 3, c. 210, § 17,	
29 Stat. 692.....	204	36 Stat. 1058.....	429
1897, June 7, c. 3, 30 Stat.		1911, Mar. 3, c. 231, 36 Stat.	
62.....	489	1087, 1141.....	419
1897, July 24, c. 13,	30	1911, Aug. 22, 37 Stat. 44... 429	
Stat. 214.....	325	1912, Mar. 14, 37 Stat. 630.. 325	
1898, Apr. 22, 30 Stat. 739.. 325		1912, Aug. 24, c. 388,	37
1898, June 28, c. 517,	30	Stat. 518, 531.....	430
Stat. 495.....	422	1912, Aug. 24, c. 390, §§ 4,	
1898, July 1, c. 541, § 63 (a),		7, 37 Stat. 560.....	405
30 Stat. 544....	437, 441	1913, Mar. 1, c. 90, 37 Stat.	
1898, July 1, c. 541, § 64, 30		699.....	346, 349
Stat. 544.....	73	1913, June 30, c. 4, § 18, 38	
1898, July 1, c. 541, § 64 (b)		Stat. 77.....	429, 430
(6), 30 Stat. 544....	73	1913, Oct. 22, c. 32, 38 Stat.	
1898, July 1, c. 542, 30 Stat.		219, 220.....	236
567.....	427	1914, July 17, c. 142,	38
1900, May 25, c. 553,	31	Stat. 509.....	67, 68
Stat. 187.....	346	1914, Aug. 1, c. 222, 38 Stat.	
1900, June 6, c. 793,	31	582, 600.....	430
Stat. 656.....	9	1914, Sept. 26, c. 311, § 5,	
1902, June 28, c. 1302,	32	38 Stat. 717.....	196
Stat. 481.....	404	1914, Oct. 15, c. 323, § 3, 38	
1902, July 1, c. 1351,	32	Stat. 730.....	3
Stat. 552, 564... 212, 214		1915, Mar. 4, 38 Stat. 1228.	430
1903, Mar. 3, c. 994, § 8, 32		1916, May 18, c. 125, 39	
Stat. 982.....	428	Stat. 125, 148.....	430
1903, Mar. 3, c. 1019, § 1,		1916, Aug. 29, c. 416, § 19,	
32 Stat. 1225.....	204	39 Stat. 545.....	411
1903, Dec. 17, c. 1, § 1, 33		1916, Sept. 8, c. 463, 39 Stat.	
Stat. 3.....	326	756.....	326
1905, Mar. 3, c. 1452,	33	1916, Sept. 8, c. 463, §§ 804-	
Stat. 1016.....	490	806, 39 Stat. 756... 325	
1906, Mar. 2, 34 Stat. 822.. 428		1917, Mar. 2, c. 146, 39 Stat.	
1906, Apr. 26, c. 1876, §§		969, 985.....	430
15-17, 34 Stat. 137.. 429			

TABLE OF STATUTES CITED.

LIX

	Page.
1917, Mar. 2, c. 146, § 18, 39 Stat. 969.....	429
1917, Mar. 3, c. 162, 39 Stat. 1058, 1069.....	346, 350
1917, Mar. 4, c. 179, 39 Stat. 1134, 1165.....	346
1917, Oct. 3, c. 63, §§ 500, 502, 30 Stat. 300....	407
1918, May 25, c. 86, § 18, 40 Stat. 561.....	430
1918, July 1, c. 114, 40 Stat. 704, 705.....	202
1918, July 3, c. 128, 40 Stat. 755.....	346
1919, Feb. 24, c. 18, 40 Stat. 1057.....	407
1919, June 30, c. 4, 41 Stat. 3.....	165
1919, June 30, c. 4, § 18, 41 Stat. 3.....	430
1919, Oct. 28, c. 85, 41 Stat. 305.....	93
1919, Oct. 29, c. 89, 41 Stat. 324.....	346
1920, Feb. 14, c. 75, § 18, 41 Stat. 408.....	430
1920, Feb. 25, c. 85, § 20, 41 Stat. 437.....	66, 69
1921, Mar. 3, c. 119, 41 Stat. 1225, 1243.....	432
1921, Nov. 23, c. 134, § 5, 42 Stat. 222.....	93
1921, Nov. 23, c. 136, § 245 (a) (2), 42 Stat. 227.....	89
1922, Jan. 31, 42 Stat. 361..	325
1922, May 24, c. 199, 42 Stat. 552, 575.....	432
1922, Sept. 20, c. 347, 42 Stat. 857.....	165
1923, Jan. 24, c. 42, 42 Stat. 1174, 1196....	432
1924, Mar. 3, 43 Stat. 1730.	471
1924, May 20, c. 162, 43 Stat. 133.....	419
1924, May 29, c. 210, 43 Stat. 244....	161, 162, 163
1924, June 5, c. 264, 43 Stat. 390, 398.....	432
1925, Feb. 13, c. 229, 43 Stat. 936..	503, 504, 506, 507, 512, 513, 517, 518

	Page.
1925, Feb. 13, c. 229, § 3 (b), 43 Stat. 936....	203, 205
1925, Feb. 13, c. 229, § 8, 43 Stat. 936.....	504
1925, Feb. 13, c. 229, § 8 (a), 43 Stat. 936....	544
1925, Feb. 13, c. 229, § 12, 43 Stat. 936.....	113
1925, Mar. 3, c. 462, 43 Stat. 1141, 1148....	432
1926, Feb. 26, c. 27, §§ 401 (a), 1101, 44 Stat. 9..	384
1926, May 10, c. 277, 44 Stat. 453, 460.....	432
1926, May 16, 44 Stat. 568.	419
1927, Jan. 12, c. 27, 44 Stat. 934, 948.....	432
1927, Mar. 3, c. 299, 44 Stat. 1347.....	162
1927, Mar. 3, c. 302, 44 Stat. 1349.....	484
1928, Mar. 7, c. 137, 45 Stat. 200, 216.....	432
1928, May 21, c. 664, 45 Stat. 685.....	208
1928, May 29, c. 852, § 22 (c), 45 Stat. 791....	173
1928, May 29, c. 852, § 203 (a) (2), 45 Stat. 791.	89
1929, Jan. 19, c. 79, 45 Stat. 1084.....	350
1929, Feb. 19, 45 Stat. 1229.	419
1929, Mar. 4, c. 705, 45 Stat. 1562, 1577....	432
1930, June 17, c. 497, 46 Stat. 590.....	326, 351
1930, June 17, c. 497, § 388, 46 Stat. 590.....	325
1930, July 3, c. 863, § 5, 46 Stat. 1016.....	212
1932, June 22, c. 271, 47 Stat. 326.....	346
1934, May 14, c. 283, § 1, 48 Stat. 775.....	168
1934, May 18, c. 301, 48 Stat. 781.....	346
1934, May 28, c. 365, 48 Stat. 811.....	311-333
1934, May 28, 48 Stat. 1744.	312
1934, June 7, c. 424, § 77A, 48 Stat. 911.....	462

TABLE OF STATUTES CITED.

	Page.
1934, June 7, c. 424, § 77B, 48 Stat. 911..	19, 25, 79, 82, 434-444, 447-467
1934, June 7, c. 424, § 77B, (b) (5), 48 Stat. 911..	19
1934, June 7, c. 424, § 77B, (b) (10), 48 Stat. 911.....	447
1934, June 7, c. 424, § 77B, (c) (8), 48 Stat. 911..	23
1934, June 7, c. 424, § 77B, (c) (10), 48 Stat. 911.....	83, 87
1934, June 7, c. 424, § 77B, (f), 48 Stat. 911....	22
1934, June 7, c. 424, § 77B, (k), 48 Stat. 911....	25
1934, June 19, c. 652, 48 Stat. 1064.....	235
1934, June 19, c. 652, § 213 (c), 48 Stat. 1064...	244
1934, June 19, c. 652, § 220 (b), 48 Stat. 1064...	243
1934, June 19, c. 652, § 402 (a), 48 Stat. 1064..	236
1934, June 19, c. 652, §§ 501, 502, 48 Stat. 1064..	245
1934, June 19, c. 674, § 8, 48 Stat. 1178.....	499
1935, July 24, c. 412, 49 Stat. 494.....	343
1935, July 24, c. 412, §§ 1, 2, 49 Stat. 494.....	344
1935, Aug. 20, c. 577, 49 Stat. 664.....	434
1935, Aug. 22, c. 605, 49 Stat. 682.....	130-151
1935, Aug. 26, c. 687, 49 Stat. 803.....	249
1935, Aug. 29, c. 809, 49 Stat. 965.....	434
1935, Nov. 14, 49 Stat. 3480.	313
Constitution. See Index at end of volume.	
Judicial Code.	
§ 24 (1).....	112, 168
§ 28.....	112
§ 37.....	277
§ 155.....	202
§ 237 (a).....	503, 506, 512, 513, 518

	Page.
Judicial Code—Continued.	
§ 237 (c).....	503, 512, 513, 517, 518
§ 240.....	26
§ 240 (b) (c).....	504
§ 262.....	26
§ 721.....	225
Revised Statutes.	
§ 911.....	103, 104
§ 914.....	102
§ 1088.....	419
§ 2097.....	423
§ 3242.....	93
§ 4887.....	204
§ 4952.....	328
§ 5147.....	56
§ 5219.....	112, 115, 116
§ 5242.....	52, 56, 57
§ 5270.....	10
U. S. Code.	
Title 11,	
§ 29.....	83
§§ 93, 103.....	82
§ 104.....	74
§ 110.....	82
§ 207.....	79, 434
Title 12,	
§§ 64, 66.....	222
§ 73.....	56
§ 91.....	52, 56
§ 548.....	112, 115
Title 15,	
§ 14.....	3
§§ 257-257i.....	208
Title 18,	
§ 651.....	10
§ 652.....	9
§ 682.....	208, 314
Title 24,	
§ 52.....	214
§ 136.....	212
§ 138.....	213
Title 25, § 122.....	423
Title 26,	
§§ 700, 701, 1049, 1350.....	384
§ 1397.....	93
§ 1691.....	384
Title 27, § 3.....	93
Title 28,	
§ 41.....	112, 168
§ 41 (1), (16)....	53

TABLE OF STATUTES CITED.

LXI

	Page.
U. S. Code—Continued.	
Title 28—Continued.	
§§ 47, 47 (a).....	236
§ 71.....	112, 379, 380
§ 80.....	277,
377, 378, 380	
§ 261.....	202
§ 282.....	419, 420
§ 288.....	203, 205
§ 288 (b).....	419
§ 347.....	26
§ 350.....	419, 421, 544
§ 377.....	26
§ 380.....	33, 300
§ 387.....	108
§ 424.....	145
§ 721.....	103

	Page.
U. S. Code—Continued.	
Title 28—Continued.	
§ 724.....	102
§ 725.....	225
Title 35,	
§ 32.....	204
§ 68.....	202
Title 38, § 11 (d).....	212
Title 46, § 688.....	78
Title 47,	
§ 151.....	235
§ 402 (a).....	236
Title 48,	
Chapter 6.....	405
§§ 1305, 1307, 1310,	
1312, 1313, 1314.	405
Title 49, § 20 (11)....	28

(B) STATUTES OF THE STATES AND TERRITORIES

Alabama.	
Code, § 8610.....	147
Arkansas.	
Code, § 6334.....	147
California.	
Constitution, Art. XX,	
§ 2, as amended Nov.	
6, 1934.....	60
1931 Stats., p. 583.....	199
1933 Stats., p. 793.....	199
1935, Act of June 13,	
c. 330, §§ 2 (k); 3;	
5 (8), (13); 6 (d),	
(f); 7; 10; 11; 31;	
49.....	60
Fair Trade Act, §§ 1	
and 1½.....	199
Deering's Gen. L., 1931,	
Vol. 3, Act 8782....	199
Colorado.	
1913 Laws, c. 44, §§ 40,	
85.....	2
Comp. L., 1921, §§	
2676, 2740.....	2
District of Columbia.	
1901 Code,	
§ 215.....	139, 141
§ 217....	132, 139, 141
1929 Code,	
Title 6, § 366.....	145
Title 18, § 360....	132
Florida.	
Code, § 4359.....	147

Illinois.	
1935 Rev. Stats.,	
c. 3, § 70, par. 71..	227
c. 24, Art. V, §§ 54,	
55, 56, 91.....	388
1935 State Bar Act, c.	
140, §§ 8 <i>et seq.</i> ....	185
Fair Trade Act, §§ 1, 2.	185
Cahill's Stats. (1923),	
c. 3, par. 68.....	228
Cahill's Rev. Stats.	
(1929),	
c. 73, par. 331....	91
c. 73, par. 375,	
§ 5-c.....	91
Smith-Hurd Rev. Stats.,	
1935, c. 121½, §§ 188	
<i>et seq.</i> .....	185
Chicago, Rev. Code,	
1931, §§ 525, 526,	
2939, 2947, 2950,	
3612, 3623.....	388
Indiana.	
Code, § 9-1504-4.....	147
Iowa.	
1935 Code, c. 329 G-1.	33
Louisiana.	
Code, Art. 507 (1)....	147
Massachusetts.	
1891 Acts, c. 425.....	284
1907 Acts,	
c. 563.....	284, 295
c. 563, § 25.....	296

	Page.		Page.
Massachusetts—Continued.		New York—Continued.	
1909 Acts, c. 527, § 8. . . . .	284, 296	Workmen's Compensation Law, § 34. . . . .	153
1924 Acts, c. 128. . . . .	284	Ohio.	
Gen. L. (Ter. Ed.), c. 65,		115 Ohio Laws 3,	
1. . . . .	284, 285	§§ 1 <i>et seq.</i> . . . . .	303
2. . . . .	284, 285, 296	§§ 687-687-23. . . . .	303
7. . . . .	293	Oregon.	
36. . . . .	284, 286	1933 Laws, c. 459. . . . .	356
Mississippi.		1930 Code, §§ 14-3110-14-3112. . . . .	356
Constitution, § 73. . . . .	415	Philippines.	
Code, § 3138. . . . .	117	Act No. 4051, § 7. . . . .	411
Missouri.		Tennessee.	
1929 Rev. Stats., § 3152. . . . .	76	Code, § 10007. . . . .	147
Code, § 8771. . . . .	147	Texas.	
Montana.		1933 Acts, 1st Called Sess., c. 12. . . . .	35
1921 Rev. Code, § 3906. . . . .	169, 170	1933 Acts, Reg. Sess., c. 162, § 2. . . . .	35
New York.		Vernon's Ann. Stats., Art. 7071. . . . .	35
1906 Laws, c. 326, § 58. . . . .	180	Vermont.	
1935 Laws, c. 630. . . . .	106	Code, § 1237. . . . .	147
Civil Practice Act,		Virginia.	
§ 774. . . . .	106	Constitution, § 106. . . . .	104
§ 802 (1), (3). . . . .	107	1732 Acts, c. 10, § 8, 4 Va. Stats. (Hen- ing) 352. . . . .	101
Insurance Law,		1849 Code, c. 167, § 5. . . . .	101
§ 71. . . . .	155	1919 Code, § 6046. . . . .	101
§ 109. . . . .	79, 85, 87		
Tax Law,			
§ 214, Art. 9-A. . . . .	517		
§§ 351, 351a. . . . .	369		

(C) TREATIES

1794, Great Britain, 1 Malloy, p. 605. . . . .	7	1867, Dominican Republic, 1 Malloy, p. 413. . . . .	7
1842, Great Britain, 1 Malloy, p. 655. . . . .	7	1868, July 3, 15 Stat. 673, Indians. . . . .	485
1843, France, 1 Malloy, p. 526. . . . .	7	1868, Italy, 1 Malloy, p. 966. . . . .	7
1850, Switzerland, 2 Malloy, p. 1767. . . . .	7	1870, Nicaragua, 2 Malloy, p. 1287. . . . .	7
1851, Sept. 17, Indians, 2 Kappler Indian Affairs, 2d ed., p. 594. . . . .	162	1871, Orange Free State, 2 Malloy, p. 1312. . . . .	7
1852, Prussia, 2 Malloy, p. 1503. . . . .	13	1872, Ecuador, 1 Malloy, p. 436. . . . .	7
1855, Oct. 17, 11 Stat. 657, Indians. . . . .	162	1886, Japan, 1 Malloy, p. 1027. . . . .	12
1860, Venezuela, 2 Malloy, p. 1854. . . . .	2	1889, Great Britain, 1 Malloy, p. 740. . . . .	7
1861, Mexico, 1 Malloy, p. 1127. . . . .	13	1896, Argentine Republic, 1 Malloy, p. 26. . . . .	12

TABLE OF STATUTES CITED.

LXIII

	Page.		Page.
1896, Orange Free State, 2		1905, Uruguay, 2 Malloy, p.	
Malloy, p. 1316.....	12	1828.....	12, 13
1899, Mexico, 1 Malloy, p.		1909, Jan. 6, 37 Stat. 1526,	
1186.....	12, 13	France.....	6-18
1903, Guatemala, 1 Malloy,		1931, Dec. 22, 47 Stat. 2122,	
p. 881.....	12, 13	Great Britain.....	7
1905, Nicaragua, 2 Malloy,			
p. 1295.....	12, 13		

(D) FOREIGN STATUTES

England.		Mexico.	
22 Hen. VIII, c. 14....	145	Constitution, 1917, Art.	
32 & 33 Vict. c. 71, §		27.....	473
23.....	442	Chihuahua,	
46 & 47 Vict., c. 52, §		Agrarian Law. 473, 474	
55 (1), (3), (7).....	442		
4 & 5 Geo. V, c. 59, §			
54 (1), (3), (7).....	442		

STATE OF NEW YORK

IN SENATE  
January 15, 1907.

REPORT  
OF THE  
COMMISSIONERS OF THE LAND OFFICE  
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE  
MAY 15, 1906.

ALBANY: PUBLISHED BY THE STATE OF NEW YORK, 1907.

CASES ADJUDGED  
IN THE  
SUPREME COURT OF THE UNITED STATES  
AT  
OCTOBER TERM, 1936.

---

WOOLSEY *v.* BEST, WARDEN.

APPEAL FROM THE SUPREME COURT OF COLORADO.

No. 256. Jurisdictional statement distributed September 10, 1936.—  
Decided October 12, 1936.

1. Where there has been a trial for a statutory offense in a state court having jurisdiction, and conviction has been affirmed by the Supreme Court of the State, the party convicted has no federal right to attack the judgment collaterally in the state courts by raising in *habeas corpus* a federal question concerning the validity of the statute defining the offense, which was not raised, but could have been raised, in the earlier proceedings. P. 2.
2. An appeal from a state court will be dismissed if it does not appear that the decision complained of was not based upon an adequate non-federal ground. *Id.*

Appeal dismissed.

*Mr. Thomas H. Gibson* was on the brief for appellant.

*Mr. Byron Rogers*, Attorney General of Colorado, and *Messrs. Charles Roach, Walter F. Scherer, and Pierpont Fuller, Jr.*, Assistant Attorneys General, were on the brief for appellee.

PER CURIAM.

Appellant brought this proceeding in the Supreme Court of Colorado to obtain a writ of *habeas corpus*. His petition was denied without opinion. It appears that appellant was held pursuant to conviction for violation

of § 2676 C. L. 1921, being § 40, c. 44, Session Laws 1913, of the laws of Colorado (see also § 2740 C. L. 1921, being § 85, c. 44 of Session Laws of 1913), the judgment of conviction having been affirmed by the Supreme Court of the State. *Woolsey v. People*, 98 Colo. 62; 53 P. (2d) 596.

It is well established that the writ of *habeas corpus* cannot be used as a writ of error. This is the rule in Colorado as well as in this Court. The judgment of conviction was not subject to collateral attack. *People ex rel. Burchinell v. District Court*, 22 Colo. 422; 45 Pac. 402; *Martin v. District Court*, 37 Colo. 110, 115; 86 Pac. 82; *Chemgas v. Tynan*, 51 Colo. 35; 116 Pac. 1045; *In re Arakawa*, 78 Colo. 193, 196; 240 Pac. 940; *In re Nottingham*, 84 Colo. 123, 128; 268 Pac. 587. Compare *Harlan v. McGourin*, 218 U. S. 442; *Riddle v. Dyche*, 262 U. S. 333; *Craig v. Hecht*, 263 U. S. 255, 277; *Knewel v. Egan*, 268 U. S. 442, 445, 446; *Cox v. Colorado*, 282 U. S. 807. It is apparent from the record submitted that the state court had jurisdiction to try the appellant for violation of the statute in question and that any federal question properly raised as to the validity of the statute could have been heard and determined on appeal to this Court from the final judgment in that action. The Supreme Court of the State was not required by the Federal Constitution to entertain such questions on the subsequent petition for *habeas corpus*, and it does not appear that its denial of the petition did not rest upon an adequate non-federal ground. *Lynch v. New York*, 293 U. S. 52, and cases there cited. The appeal is dismissed for the want of jurisdiction.

*Dismissed.*

Opinion of the Court.

PICK MANUFACTURING CO. v. GENERAL  
MOTORS CORP. ET AL.

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

No. 12. Argued October 13, 14, 1936.—Decided October 26, 1936.

1. A form of contract by which dealers in automobiles agree with the manufacturers that they will not sell, offer for sale, or use in the repair of the vehicles, second hand or used parts or parts not manufactured or authorized by the manufacturer, is not violative of the Clayton Act if its effect has not been in any way substantially to lessen competition or to create a monopoly in any line of commerce. P. 4.
  2. Findings concurred in by the District Court and Circuit Court of Appeals are accepted by this Court unless clear error is shown. P. 4.
- 80 F. (2d) 641, affirmed.

*Mr. Carl B. Rix* for petitioner.

*Mr. John M. Zane*, with whom *Messrs. Franklin D. Trueblood, Thomas Francis Howe, and Henry S. Rademacher* were on the brief, for respondents.

PER CURIAM.

By this suit petitioner challenged the validity under § 3 of the Clayton Act (38 Stat. 730, 731, 15 U. S. C. 14) of a provision of the contracts made with dealers by selling organizations of the General Motors Corporation. The provision in the contract between the Chevrolet Motor Company and dealers is as follows:

“Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis second-hand or used parts or any part or parts not manufactured by or authorized by the Chevrolet Motor Company. It is agreed that Dealer is not granted any

exclusive selling rights in genuine new Chevrolet parts or accessories.”

There is a similar provision in contracts made by the Buick company.

The District Court dismissed the bill of complaint for want of equity and its decree was affirmed by the Circuit Court of Appeals. 80 F. (2d) 641. Upon the evidence adduced at the trial the District Court found that the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce. This finding was sustained by the Circuit Court of Appeals. *Id.*, p. 644.

Under the established rule, this Court accepts the findings in which two courts concur unless clear error is shown. *Stuart v. Hayden*, 169 U. S. 1, 14; *Texas & Pacific Ry. Co. v. Railroad Commission*, 232 U. S. 338; *Texas & N. O. R. Co. v. Railway Clerks*, 281 U. S. 548, 558; *United States v. Commercial Credit Co.*, 286 U. S. 63, 67; *Continental Bank v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648, 678. Applying this rule, the decree is

*Affirmed.*

MR. JUSTICE VAN DEVANTER, MR. JUSTICE STONE and MR. JUSTICE ROBERTS took no part in the consideration and decision of this cause.

Statement of the Case.

VALENTINE, POLICE COMMISSIONER OF NEW YORK CITY, ET AL. *v.* UNITED STATES EX REL. B. COLES NEIDECKER.\*

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

No. 6. Argued October 12, 13, 1936.—Decided November 9, 1936.

1. The Executive has no power to extradite fugitive criminals save such as is conferred by treaty or by Act of Congress. P. 7.
2. The Act of Congress defining the procedure in extradition cases confers no power on the Executive to surrender any person to a foreign government where no extradition treaty or convention provides for such surrender. P. 9.
3. By Article I of the extradition treaty (1909) with France, the two governments mutually agree to deliver up "persons" charged with any of the specified offenses. Article V declares that neither party "shall be bound" to deliver up its own citizens under the stipulations of the convention. *Held:*
  - (1) That citizens of the respective parties are thus excepted from the agreement to deliver. P. 10.
  - (2) No grant to our Executive of discretionary power to surrender citizens of the United States can be implied from anything in the treaty. *Id.*
  - (3) History and practice negative the existence of such implied discretionary power. P. 13.

81 F. (2d) 32, affirmed.

CERTIORARI, 298 U. S. 647, to review judgments which reversed judgments of the District Court dismissing writs of *habeas corpus* sued out by the respondents and remanding them to the custody in which they were held under preliminary warrants of extradition.

---

\* Together with No. 7, *Valentine, Police Commissioner, et al. v. U. S. ex rel. George W. Neidecker*; and No. 8, *Valentine, Police Commissioner, et al. v. U. S. ex rel. Aubrey Neidecker*. On writs of certiorari to the Circuit Court of Appeals for the Second Circuit.

*Mr. Porter R. Chandler* for petitioners.

*Mr. Frederic R. Coudert, Jr.*, with whom *Messrs. Frederic R. Coudert* and *Mahlon B. Doing* were on the brief, for respondents.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Respondents sued out writs of *habeas corpus* to prevent their extradition to France under the Treaty of 1909. 37 Stat. 1526. They are native-born citizens of the United States and are charged with the commission of crimes in France which are among the extraditable offenses specified in the treaty. Having fled to the United States, they were arrested in New York City, on the request of the French authorities, under a preliminary warrant issued by a United States Commissioner and were held for extradition proceedings. By the writs of *habeas corpus* the jurisdiction of the Commissioner was challenged upon the ground that because the treaty excepted citizens of the United States, the President had no constitutional authority to surrender the respondents to the French Republic.

The controlling provisions of the treaty are as follows:

“Article I. The Government of the United States and the Government of France mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes or offences specified in the following article, committed within the jurisdiction of one of the contracting Parties, shall seek an asylum or be found within the territories of the other: Provided That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her

apprehension and commitment for trial if the crime or offence had been there committed.

“Article V. Neither of the contracting Parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.”

The Circuit Court of Appeals, reversing the orders of the District Judge, sustained the contention of the respondents and directed their discharge. 81 F. (2d) 32. This Court granted certiorari.

*First.* The question is not one of policy, but of legal authority. The United States has favored the extradition of nationals of the asylum state and has sought—frequently without success—to negotiate treaties of extradition including them.<sup>1</sup> Several of our treaties have made no exception of nationals.<sup>2</sup> This is true of the treaties with Great Britain from the beginning, of the treaty with France of 1843, and of that with Italy of 1868. *Charlton v. Kelly*, 229 U. S. 447, 467. Where treaties have provided for the extradition of persons without exception, the United States has always construed its obligation as embracing its citizens. *Id.*, p. 468. In the opinion in *Charlton v. Kelly* we alluded to the fact that it had “come to be the practice with a preponderant number of nations to refuse to deliver its citizens” and it was observed that this exception was of modern origin. The

<sup>1</sup> Moore, Int. Law Dig., vol. IV, § 594; Moore on Extradition, vol. I, pp. 159-162.

<sup>2</sup> Great Britain, 1794, Art. XXVII, 1 Malloy, Treaties, p. 605; 1842, Art. X, *id.*, p. 655; 1889, *id.*, p. 740; 1931, 47 Stat. 2122; France, 1843, 1 Malloy, p. 526; Italy, 1868, *Id.*, p. 966. See, also, Switzerland, 1850, Art. XIII, 2 Malloy, p. 1767; Venezuela, 1860, Art. XXVII, 2 Malloy, p. 1854; Dominican Republic, 1867, Art. XXVII, 1 Malloy, p. 413; Nicaragua, 1870, 2 Malloy, p. 1287; Orange Free State, 1871, Article VIII, 2 Malloy, p. 1312; Ecuador, 1872, 1 Malloy, p. 436.

beginning of the exemption was traced to the practice between France and the Low Countries in the eighteenth century. And we found that owing "to the existence in the municipal law of many nations of provisions prohibiting the extradition of citizens, the United States has in several of its extradition treaties clauses exempting citizens from their obligation." Accordingly we divided the treaties in force into two classes, "those which expressly exempt citizens and those which do not." *Id.*, pp. 466, 467.

The effect of the exception of citizens in the treaty with France of 1909—now under consideration—must be determined in the light of the principles which inhere in our constitutional system. The desirability—frequently asserted by the representatives of our Government and demonstrated by their arguments and the discussions of jurists—of providing for the extradition of nationals of the asylum state is not a substitute for constitutional authority. The surrender of its citizens by the Government of the United States must find its sanction in our law.

It cannot be doubted that the power to provide for extradition is a national power; it pertains to the national government and not to the States. *United States v. Rauscher*, 119 U. S. 407, 412-414. But, albeit a national power, it is not confided to the Executive in the absence of treaty or legislative provision. At the very beginning, Mr. Jefferson, as Secretary of State, advised the President: "The laws of the United States, like those of England, receive every fugitive, and no authority has been given to their Executives to deliver them up."<sup>3</sup> As stated by John Bassett Moore in his treatise on Extradition—summarizing the precedents—"the general opinion

---

<sup>3</sup> Quoted in Moore on Extradition, vol. I, pp. 22, 23; Moore, *Int. Law Dig.*, vol. IV, p. 246.

has been, and practice has been in accordance with it, that in the absence of a conventional or legislative provision, there is no authority vested in any department of the government to seize a fugitive criminal and surrender him to a foreign power.”<sup>4</sup> Counsel for the petitioners do not challenge the soundness of this general opinion and practice. It rests upon the fundamental consideration that the Constitution creates no executive prerogative to dispose of the liberty of the individual. Proceedings against him must be authorized by law. There is no executive discretion to surrender him to a foreign government, unless that discretion is granted by law. It necessarily follows that as the legal authority does not exist save as it is given by act of Congress or by the terms of a treaty, it is not enough that statute or treaty does not deny the power to surrender. It must be found that statute or treaty confers the power.

*Second.* Whatever may be the power of the Congress to provide for extradition independent of treaty, that power has not been exercised save in relation to a foreign country or territory “occupied by or under the control of the United States.” Act of June 6, 1900, c. 793, 31 Stat. 656. 18 U. S. C. 652. See *Neely v. Henkel*, 180 U. S. 109, 122. Aside from that limited provision, the Act of Congress relating to extradition simply defines the procedure to carry out an existing extradition treaty or convention.<sup>5</sup>

The provision is that—“*Whenever there is a treaty or convention for extradition between the Government of the United States and any foreign government*”—a proceeding may be instituted to procure the surrender of a person charged with the commission of a crime specified in the treaty or convention. Upon the apprehension of

---

<sup>4</sup> Moore on Extradition, vol. I, p. 21.

<sup>5</sup> Moore on Extradition, vol. I, p. 50.

the accused, he is entitled to a hearing and, upon evidence deemed to be sufficient to sustain the charge "under the provisions of the proper treaty or convention," the charge with the evidence is to be certified to the Secretary of State to the end that a warrant may issue upon the requisition of the proper authorities of such foreign government, "for the surrender of such person, according to the stipulations of the treaty or convention." R. S. 5270; 18 U. S. C. 651.

It is manifest that the Act does not attempt to confer power upon the Executive to surrender any person, much less a citizen of the United States, to a foreign government where an extradition treaty or convention does not provide for such surrender. The question, then, is the narrow one whether the power to surrender the respondents in this instance is conferred by the treaty itself.

*Third.*—It is a familiar rule that the obligations of treaties should be liberally construed so as to give effect to the apparent intention of the parties. *Tucker v. Alexandroff*, 183 U. S. 424, 437; *Jordan v. Tashiro*, 278 U. S. 123, 127; *Factor v. Laubenheimer*, 290 U. S. 276, 293, 294. But, in this instance, there is no question for construction so far as the obligations of the treaty are concerned. The treaty is explicit in the denial of any obligation to surrender citizens of the asylum state—"Neither of the contracting Parties shall be bound to deliver up its own citizens."

Does the treaty, while denying an obligation in such case, contain a grant of power to surrender a citizen of the United States in the discretion of the Executive? The Constitution declares a treaty to be the law of the land. It is consequently, as Chief Justice Marshall said in *Foster v. Neilson*, 2 Pet. 253, 314, "to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." See, also, *Head Money Cases*, 112 U. S. 580, 598;

*United States v. Rauscher, supra*, p. 418. Examining the treaty in that aspect, it is our duty to interpret it according to its terms. These must be fairly construed, but we cannot add to or detract from them.

Obviously the treaty contains no express grant of the power now invoked. Petitioners point to Article I which states that the two governments "mutually agree to deliver up persons" who are charged with any of the specified offences. Petitioners urge that the word "persons" includes citizens of the asylum state as well as all others. But Article I is the agreement to deliver. It imposes the obligation of that agreement. Article I does not purport to grant any power to surrender save as the power is related to and derived from that obligation. The word "persons" in Article I describes those who fall within the agreement and with respect to whom the obligation is assumed. As Article V provides that there shall be no obligation on the part of either party to deliver up its own citizens, the latter are necessarily excepted from the agreement in Article I and from the "persons" there described. The fact that the exception is contained in a separate article does not alter its effect. That effect is precisely the same as though Article I had read that the two governments "mutually agree to deliver up persons except its own citizens or subjects."

May a grant to the Executive of discretionary power to surrender citizens of the United States be implied? Petitioners seek to find ground for this implication by comparing the expression in Article V "Neither of the contracting parties shall be bound," in relation to the surrender of citizens, with the phrase in Article VI that "A fugitive criminal shall not be surrendered" if the offence charged is of a political character, and the clause in Article VIII that extradition "shall not be granted" where prosecution is barred by limitation according to the laws of the asylum country. This difference in the phrasing

of denials of obligation would be at the best an extremely tenuous basis for implying a power which in order to exist must be affirmatively granted. Of far greater significance is the fact that a familiar clause—found in several of our treaties—which qualifies the exception of citizens by expressly conferring discretionary power to surrender them was omitted in the treaty with France.

The treaty with Japan of 1886 provided in Article VII <sup>6</sup>—

“Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention, but they shall have the power to deliver them up if in their discretion it be deemed proper to do so.”

A similar provision is found in the extradition treaties with the Argentine Republic, of 1896, and with the Orange Free State, of 1896.<sup>7</sup> The treaties with Mexico, of 1899, with Guatemala, of 1903, with Nicaragua, of 1905, and with Uruguay, of 1905, expressly lodge the discretionary power with the “executive authority.” Thus in the treaty with Mexico of 1899 we find the following article (Art. IV):

“Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this convention, but the executive authority of each shall have

---

<sup>6</sup> 1 Malloy, 1027. Quoted in *Charlton v. Kelly*, 229 U. S. 447, 467.

<sup>7</sup> The provision of the treaty with the Argentine Republic, 1896, Art. 3, 1 Malloy, 26, is as follows:

“In no case shall the nationality of the person accused be an impediment to his extradition, under the conditions stipulated by the present treaty, but neither Government shall be bound to deliver its own citizens for extradition under this convention; but either shall have the power to deliver them up, if, in its discretion it be deemed proper to do so.”

The same phraseology is used in the treaty with the Orange Free State, 1896, Art. V, 2 Malloy, 1316.

the power to deliver them up, if, in its discretion, it be deemed proper to do so.”<sup>8</sup>

We must assume that the representatives of the United States had these clauses before them when they negotiated the treaty with France and that the omission was deliberate. And the fact that our Government had favored extradition treaties without excepting citizens puts the omission of the qualifying grant of discretionary power in a strong light.

Historical background and administrative practice furnish no warrant for reading into the treaty with France a grant which the parties failed to insert. History and practice not only do not support, but they rather negative, the claim of an implied discretionary power. The language of Article V of the treaty with France first appears in our extradition treaty with Prussia in 1852,<sup>9</sup> and it was repeated in a number of later treaties including the Mexican treaty of 1861.<sup>10</sup> It seems that the question as to the effect of the provision first arose under the last-mentioned treaty. Mr. Moore reviews the cases.<sup>11</sup> In 1871 the United States requested the surrender of fugitives who had escaped to Mexico. It appeared that they were Mexican citizens. The Mexican Government refused surrender, stating that its action “should be in strict conformity with the stipulations of the treaty of extradition” and

<sup>8</sup> 1 Malloy, 1186. The treaties with Guatemala, 1903, Art. V, 1 Malloy, 881, and with Nicaragua, 1905, 2 Malloy, 1295, have the same provision.

The treaty with Uruguay, 1905, Art. X, 2 Malloy, 1828, provides: “The obligation to grant extradition shall not in any case extend to the citizens of the two parties, but the executive authority of each shall have power to deliver them up, if, in its discretion, it is deemed proper to do so.”

<sup>9</sup> 2 Malloy, 1503.

<sup>10</sup> 1 Malloy, 1127.

<sup>11</sup> Moore on Extradition, vol. 1, pp. 164-167; Moore, Int. Law. Dig., vol. IV, pp. 301-303.

with "the practice observed" by the Government of the United States toward the Mexican Government "in similar cases." In 1874, one Perez, a Mexican, committed a murder in Texas and escaped to Mexico. Our Secretary of State, Mr. Fish, instructed the American Ambassador that although the surrender could not be demanded as of right and would not be asked as a favor, or even accepted with an understanding that it would be reciprocated, the circumstances might be made known to the Mexican Government with a view to ascertain whether it would voluntarily surrender the fugitive. The Mexican Government declined the surrender. In another case, arising in 1877, the question of the power of the Mexican Government to surrender its citizens to the United States came before its federal supreme court. While it appeared that the fact of Mexican citizenship was not conclusively established, the court was of the view that the individual guarantees of the Mexican Constitution would not be violated by the surrender.

The question was elaborately considered in the case of Trimble in 1884. He was an American citizen whose extradition was demanded by the Mexican Government. Our Government refused surrender. Mr. Frelinghuysen, Secretary of State, took the ground that as the treaty negatived the obligation to surrender, the President was not invested with legal authority to act. While it is true that Secretary Frelinghuysen later concluded that the question was of such importance that it should receive judicial determination, the view he entertained as to the President's lack of power was cogently stated.<sup>12</sup> Re-

---

<sup>12</sup> Mr. Frelinghuysen's views appear in a report to the Senate. Sen. Ex. Doc. 98, 48th Cong., 1st sess. See Moore on Extradition, vol. 1, pp. 167, 168. Discussing the constitutional powers of the President, Mr. Frelinghuysen concluded:

"Thus it appears that, by the opinions of several Attorneys-General, by the decisions of our courts, and by the rulings of the Depart-

ferring to that view, Mr. Moore adds: "To this position the government of the United States has adhered."<sup>13</sup>

Secretary Bayard in the case of Hudson, in 1888, followed the ruling in the Trimble case. He said: "The treaty provision referred to, which is found similarly stated in

---

ment of State, the President has not, independent of treaty provision, the power of extraditing an American citizen; and the only question to be considered is whether the treaty with Mexico confers that power.

"By the treaty with Mexico proclaimed June 20, 1862, this country places itself under obligations to Mexico to surrender to justice persons accused of enumerated crimes committed within the jurisdiction of Mexico who shall be found within the territory of the United States; and further provides that that obligation shall not extend to the surrender of American citizens. The treaty confers upon the President no affirmative power to surrender an American citizen. The treaty between the United States and Mexico creates an obligation on the part of the respective governments, and does no more, and where the obligation ceases the power falls. It is true that treaties are the laws of the land, but a statute and a treaty are subject to different modes of construction. If a statute by the first section should say, The President of the United States shall surrender to any friendly power any person who has committed a crime against the laws of that power, but shall not be bound so to surrender American citizens, it might be argued, perhaps correctly, that the President had a discretion whether he would or would not surrender an American citizen. But a treaty is a contract, and must be so construed. It confers upon the President only the power to perform that contract. I understand the treaty with Mexico as reading thus: The President shall be bound to surrender any person guilty of crime, unless such person is a citizen of the United States.

"Such being the construction of the treaty, and believing that the time to prevent a violation of the law of extradition was before the citizens left the jurisdiction of the United States, I telegraphed the Governor of Texas that an American citizen could not legally be held under the treaty for extradition.

"It would be a great evil that those guilty of high crime, whether American citizens or not, should go unpunished; but even that result could not justify an usurpation of power."

<sup>13</sup> Moore on Extradition, vol. I, p. 167.

many of our extradition treaties, was held to negative any obligation to surrender, and thus to leave the authorities of this government without authority to act in such a case. After due consideration, the department is of opinion that the construction given to the treaty in the *Trimble Case* is correct." See *Ex parte McCabe*, 4 Fed. 363, 379. Secretary Blaine, in 1891, in refusing to ask for the surrender of Mexican citizens, took the same position, saying: "In view of this," (the Trimble case) "and several prior and subsequent cases in which a similar construction has been given to the treaty, the government is precluded from demanding the extradition of the fugitives in the present instance." *Id.*

In this situation, the question of the construction of the treaty with Mexico came before the District Court of the United States for the Western District of Texas in 1891. Mrs. McCabe, an American citizen who was held for extradition proceedings on the charge that she had committed the crime of murder in Mexico, sued out a writ of *habeas corpus*. In an elaborate opinion reviewing the precedents, Judge Maxey ruled that there was no authority to surrender and directed her discharge from custody. *Ex parte McCabe, supra*. The case was not appealed.

In the light of this concurrence of administrative and judicial views a new extradition treaty with Mexico was negotiated (1899). That treaty, as we have seen, repeated the exception with respect to citizens but, following the precedent of the treaties with Japan, the Argentine Republic and the Orange Free State,<sup>14</sup> added the qualifying words "but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so." And the same qualification was inserted in the later treaties above mentioned.<sup>15</sup>

<sup>14</sup> See Note 7.

<sup>15</sup> See Note 8.

Petitioners insist that the precedents fall short of showing a uniform course of practical construction favorable to the respondents. The argument is unavailing. What is more to the point is that administrative practice is not shown to be favorable to the petitioners. Strictly the question is not whether there had been a uniform practical construction denying the power, but whether the power had been so clearly recognized that the grant should be implied. The administrative rulings to which we have referred make the latter conclusion wholly inadmissible.

The treaty with France of 1843 made no exception of citizens. France, however, refused to recognize an obligation under that treaty to surrender her citizens.<sup>16</sup> In inserting the exception in the new treaty, a clause was chosen under which Secretaries of State and a federal court had held that the President had no discretionary power to surrender citizens of this country. Notwithstanding this, that excepting clause was inserted without qualification, and a familiar clause granting a discretionary power was omitted. No provision was inserted to confer such a power. It was upon that basis that the treaty was negotiated and ratified. In these circumstances we know of no rule of construction which would permit us to supply the omission.

Against these considerations, the inference sought to be drawn from the French "exposé des motifs" accompanying the treaty, and more particularly from the "exposé" accompanying the Franco-British treaty of 1908, is of slight weight.<sup>17</sup>

Petitioners strongly rely upon the decision in England in *In re Galwey* [1896], 1 Q. B. D. 230; compare *Reg. v. Wilson*, 3 Q. B. D. 42 (1877). But, as the Circuit Court

<sup>16</sup> Moore, Int. Law Dig., vol. IV, p. 298.

<sup>17</sup> Documents Parlementaires (1909), Chambre des Deputés, Annexe 2391; *Id.*, Sénat, Annexe 2338.

of Appeals points out, the Anglo-Belgian treaty there under consideration had its own history and background—quite different from that which we have here—upon which the case turned. It does not present a persuasive analogy.

Applying, as we must, our own law in determining the authority of the President, we are constrained to hold that his power, in the absence of statute conferring an independent power, must be found in the terms of the treaty and that, as the treaty with France fails to grant the necessary authority, the President is without power to surrender the respondents.

However regrettable such a lack of authority may be, the remedy lies with the Congress, or with the treaty-making power wherever the parties are willing to provide for the surrender of citizens, and not with the courts.

The decree of the Circuit Court of Appeals is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

TENNESSEE PUBLISHING CO. *v.* AMERICAN  
NATIONAL BANK ET AL.

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

No. 48. Argued October 22, 23, 1936.—Decided November 9, 1936.

1. Constitutional questions should not be decided, by anticipation, upon records not necessarily presenting them. P. 22.
2. Under § 77B of the Bankruptcy Act, if the plan of reorganization is neither fair nor feasible, the District Judge, upon so finding, can proceed no further with the plan and is authorized to dismiss the petition. *Id.*

81 F. (2d) 463, affirmed.

CERTIORARI, 298 U. S. 651, to review the affirmance of a decree of the District Court which dismissed the Publishing Company's petition for reorganization, filed under § 77B of the Bankruptcy Act.

*Messrs. A. H. Roberts and Lewis S. Pope* for petitioner.

*Mr. Cecil Sims* for respondents.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The Circuit Court of Appeals affirmed a decree of the District Court dismissing the petition of the debtor, Tennessee Publishing Company, and its plans of reorganization, in a proceeding under § 77 B of the Bankruptcy Act. The court held (1) that the debtor's proposal was not a workable one and hence had not been presented in good faith as that phrase was used in the statute; and (2) that sub-section (b) (5) of § 77 B, as applied to the adjustment of claims of non-assenting lienholders, was invalid under the due process clause of the Fifth Amendment.<sup>1</sup> 81 F. (2d) 463. We granted certiorari.

---

<sup>1</sup>The provision is as follows:

"(b) A plan of reorganization within the meaning of this section . . . (5) shall provide in respect of each class of creditors of which less than two thirds in amount shall accept such plan (unless the claims of such class of creditors will not be affected by the plan, or the plan makes provision for the payment of their claims in cash in full), provide adequate protection for the realization by them of the value of their interests, claims, or liens, if the property affected by such interests, claims, or liens is dealt with by the plan, either as provided in the plan (a) by the transfer or sale of such property subject to such interests, claims, or liens, or by the retention of such property by the debtor subject to such interests, claims, or liens, or (b) by a sale free of such interests, claims, or liens at not less than a fair upset price and the transfer of such interests, claims, or liens

At the beginning of the proceeding the District Judge approved the petition for reorganization as having been filed in good faith, but by an order to show cause reserved to all persons in interest the opportunity to present their objections. Answers and motions to dismiss were filed by bondholders. Three successive plans of reorganization were submitted and opposed. Several hearings were had. It appears that for more than two years prior to this proceeding, the affairs of the debtor had been in charge of a receiver appointed by the District Court upon a creditors' bill. An appraisal of the debtor's property showed assets worth about \$295,000. Outstanding bonds, secured by mortgage, were in default and amounted with interest to approximately \$900,000. There were unsecured claims of about \$300,000.

We shall not attempt to state the many details of the various plans. It may be said in a general way that the first plan, and the second presented "as a supplement to, or alternate of," the first, contemplated an appraisal of the property, the determination of the value of the bonds, and the issue of new bonds and the distribution of the proceeds of their sale, after payment of costs, expenses and preferred claims, among the secured and unsecured creditors and stockholders. By an amendment the debtor offered to pay in cash the amount of the appraised value of the property as it might be judicially determined, or to pay the "actual cash value of all valid interests, claims or liens" as fixed by the court. The third plan looked to

---

to the proceeds of such sale; or (c) by appraisal and payment either in cash of the value either of such interests, claims, or liens, or, at the objecting creditors' election, of the securities allotted to such interests, claims, or liens under the plan, if any shall be so allotted; or (d) by such method as will in the opinion of the judge, under and consistent with the circumstances of the particular case, equitably and fairly provide such protection; . . ." [48 Stat. 911, 913-914.]

the retention of the property by the debtor subject to the lien of the bonds scaled to 80 per cent. of their face value or, in the absence of assent, to an amount found by the court to be due. Provision was also made for the issue of preferred stock.

In his final opinion, upon the third plan, the District Judge said that it would "manifestly be unjust to the bondholders" to undo what had been done in the equity case; that "the validity and amount of the bonds outstanding" had been established in that case upon the report of the standing master, to which the debtor had not excepted; and that it was admitted that the debtor was "notoriously insolvent."

The District Judge was unable to see how the bondholders could realize the value of their bonds, or how that value could be ascertained "except by a public sale" of the mortgaged property. He thought that the effect of the last plan was to disregard what had been done in the equity suit and to delay a final administration of the debtor's estate indefinitely. He found that none of the bondholders were willing to adopt the plan, and that more than two-thirds of the bondholders and more than fifty per cent. of the unsecured creditors had affirmatively declined to accept it. He expressed the view that in such circumstances the adoption of the plan would deprive the secured creditors of their constitutional rights. While again ruling that the petition for reorganization was filed in "good faith," he saw no alternative "except to dismiss the petition and let the property be sold in the equity case."

The Circuit Court of Appeals considered that the District Judge in passing upon the issue of good faith was guided mainly by a consideration of the debtor's honesty of purpose. The court believed that more was required; that the statute had in view the submission of a practicable plan with a reasonable prospect for the rehabilita-

tion of the debtor, and that hence in the finding of good faith by the District Judge there was an erroneous application of the law. Despite that, the court recognized that the decree of the District Court should still be affirmed if right, however erroneous might be any given conclusion of law.

Although reaching the conclusion that the plan of reorganization was not a workable one and failed to meet the statutory test, the Court of Appeals proceeded to consider the constitutionality of sub-section (b) (5) and held it invalid. This ruling was premature. The constitutional question was not necessarily presented as with such a plan no case had been made for the application of sub-section (b) (5). It is a familiar rule that the court will not anticipate the decision of a constitutional question upon a record which does not appropriately present it. *Liverpool, N. Y. & P. S. S. Co. v. Commissioners*, 113 U. S. 33, 39; *Cincinnati v. Vester*, 281 U. S. 439, 448, 449; *Arizona v. California*, 283 U. S. 423, 463, 464.

Nor do we need to inquire as to the precise limits of the concept of "good faith" as required by § 77 B. Whatever these limits may be, the statute clearly contemplates the submission of a plan of reorganization which admits of being confirmed as "*fair and equitable*" and as "*feasible*." However honest in its efforts the debtor may be, and however sincere its motives, the District Court is not bound to clog its docket with visionary or impracticable schemes for resuscitation. Sub-section (f) of § 77 B provides for the confirmation of a plan only if the District Judge is satisfied "(1) that it is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible." These are prime conditions. Unless the District Judge finds that the plan has these qualities he need go no further. Unless he so finds, he has no authority to proceed. There is no occasion for the District Judge to consider the con-

stitutional validity of the application of the clauses of sub-section (b) (5) if the debtor's proposal is not found to be "fair" and "feasible." It was the duty of the District Judge in this instance to consider the debtor's proposal in that aspect. He did not find that proposal to be fair and feasible. On the contrary, he deemed it to be unjust to the bondholders to override what had been accomplished in the equity case. He found that it was impracticable to determine the value of their bonds except by a public sale and, in view of the financial condition of the debtor, he deemed a sale of its property to be "inevitable." And along with these considerations, the proposal encountered what he described as the almost unanimous opposition of the secured creditors and the refusal of assent by a majority of the general creditors. Where the debtor's plan of reorganization is not confirmed the District Judge is authorized to dismiss the proceeding. Sub-section (c) (8).

The question before the Circuit Court of Appeals was whether, upon the record, the District Court erred in refusing to confirm the plans and in dismissing the proceeding. The Court of Appeals examined the debtor's last proposal as its ultimate effort to repel attack upon the feasibility of reorganization. The court found that the plan was not understandable in all of its phases, even after diligent effort "to separate argument from concrete proposals" and "to reconcile apparently conflicting clauses." The provisions for a bond issue and for classes of preferred stock, out of the proceeds of which unsecured creditors and preferred stockholders were to be compensated, the court found to be "wholly incomprehensible." Certainly the District Court was not bound to consider such a plan as fair and feasible, or, in view of the situation which the record disclosed, to continue the proceeding.

That was an entirely adequate ground for sustaining the decree of the District Court without attempting to determine the constitutional validity of sub-section (b) (5). Quite apart from that question, upon which we express no opinion, the decree of the Circuit Court of Appeals, affirming that of the District Court, should in turn be

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

IN THE MATTER OF 620 CHURCH STREET  
BUILDING CORP. ET AL.

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

No. 271. Argued October 23, 1936.—Decided November 9, 1936.

1. A judgment of the Circuit Court of Appeals declining jurisdiction of an appeal from an order of the District Court confirming a plan of reorganization under § 77 B of the Bankruptcy Act, *held* reviewable by certiorari under § 262 of the Judicial Code. P. 26.
  2. Section 262, Jud. Code, permits the employment of the writ of certiorari in cases not covered by § 240 and affords ample authority for using the writ as an auxiliary process and as a means of giving full force and effect to existing appellate authority and of furthering justice in other kindred ways. *Id.*
  3. In reorganization proceedings under § 77 B of the Bankruptcy Act, only claims having some value are entitled to "adequate protection." P. 27.
  4. If no substantial question of law is presented, a refusal by the Circuit Court of Appeals to allow an appeal from an order confirming a plan of reorganization under § 77 B, *supra*, is not an abuse of discretion. *Id.*
  5. A constitutional argument with no showing of injury is unavailing. *Id.*
- 81 F. (2d) 463, affirmed.

CERTIORARI\* to review an order of the Circuit Court of Appeals which denied leave to appeal from an order confirming a plan of reorganization under § 77 B of the Bankruptcy Act.

*Messrs. Theodore E. Rein and Isaac M. Mills* for petitioners.

*Mr. Isaac E. Ferguson*, with whom *Messrs. Hugo Sonnenschein and Herbert M. Lautmann* were on the brief, for Louis M. Quitman et al., first mortgage trustees, respondents.

*Mr. George T. Buckingham*, with whom *Messrs. Don Kenneth Jones and Edwin L. Harding* were on the brief, for Chester R. Davis et al., members of the bondholders committee, respondents.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

In this proceeding under § 77B of the Bankruptcy Act, the District Court confirmed a plan of reorganization. Petitioners asked the Circuit Court of Appeals to allow an appeal upon the ground that the plan was unfair and inequitable and deprived them of their property without due process of law in violation of the Fifth Amendment. Bankruptcy Act, §§ 24 (b), 77B (k); *Meyer v. Kenmore Hotel Co.*, 297 U. S. 160, 165, 166. Leave to appeal was denied. In view of an asserted conflict with the decision of this Court in *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, and with that of the Circuit Court of Appeals of the Sixth Circuit in *Tennessee Publishing Co. v. American National Bank*, 81 F. (2d) 463, (*ante*, p. 18), this Court granted certiorari.

---

\*See Table of Cases Reported in this volume.

Although the Circuit Court of Appeals declined jurisdiction, its action may properly be reviewed upon a writ of certiorari under the general power conferred by Judicial Code, § 262. 28 U. S. C. 377. That provision contemplates the employment of this writ in instances not covered by § 240 of the Judicial Code (28 U. S. C. 347), and affords ample authority for using the writ as an auxiliary process and as a means "of giving full force and effect to existing appellate authority and of furthering justice in other kindred ways." *United States v. Beatty*, 232 U. S. 463, 467; *American Construction Co. v. Jacksonville, T. & K. W. Ry. Co.*, 148 U. S. 372, 379, 380; *In re Chetwood*, 165 U. S. 443, 461, 462; *Magnum Import Co. v. Coty*, 262 U. S. 159, 162.

The record presents the petition for appeal and the order confirming the plan of reorganization. It appears that the principal property of the debtor, the 620 Church Street Building Corporation, consists of certain leaseholds and improvements known as the Carlson Building Annex. The allowed claims include first mortgage bonds of \$445,500 upon which interest is due from January, 1931, second mortgage notes for \$40,250, with interest from December, 1929, and a third mortgage note for \$27,000, with interest from December, 1931. Petitioners are the debtor, the holders of the second and third mortgages, and stockholders.

The order of confirmation sets forth the findings of the District Court that the property in question has a fair market value of \$245,025 and that there is no equity over and above the \$445,500 of the first mortgage bonds; that the debtor is insolvent; that the claims of the junior lienors, the holders of the second and third mortgages, are of no value and hence that no securities or cash should be distributed under the plan in respect to their claims; that stockholders are not entitled to participate in the

plan; and that the plan is "fair, equitable, and feasible and does not discriminate unfairly in favor of any class or classes of creditors or stockholders."

The evidence before the District Court is not presented by the record. And as the Court of Appeals, if the appeal had been allowed, could have revised the ruling of the court below only in matter of law, it necessarily follows—and was conceded at the bar—that petitioners are bound by the findings of fact. Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded "adequate protection." But the adequate protection to which the statute refers is "for the realization of the value of the interests, claims or liens" affected. Here the controlling finding is not only that there was no equity in the property above the first mortgage but that petitioners' claims were appraised by the court as having "no value." There was no value to be protected. This finding embraces whatever interests petitioners may have as junior lienors under the Illinois law and, in the same aspect, the constitutional argument is unavailing as petitioners have not shown injury. *Southern Ry. Co. v. King*, 217 U. S. 524, 534; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 550; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544, 545; *Heald v. District of Columbia*, 259 U. S. 114, 123.

The Circuit Court of Appeals did not abuse its discretion in declining to allow an appeal.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

Opinion of the Court.

SOUTHEASTERN EXPRESS CO. *v.* PASTIME  
AMUSEMENT CO.

CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA.

No. 46. Submitted October 22, 1936.—Decided November 9, 1936.

Under the Carmack Amendment, a shipper can recover from a carrier as damages for interruption of the shipper's business through tardy delivery of the goods, no more than the declared value of the goods, made the limit of the carrier's liability by the contract of shipment in consideration of a lower rate allowed the shipper and in accordance with the carrier's tariffs.

181 S. C. 203; 186 S. E. 283, reversed.

*Mr. Harry L. Greene*, with whom *Messrs. Rembert Marshall* and *Nath B. Barnwell* were on the brief, submitted for petitioner.

No appearance for respondent.

PER CURIAM.

Respondent sued to recover damages for failure to deliver a moving picture film in time to be exhibited as advertised. The jury rendered a verdict for \$1500 and the judgment thereon was affirmed by the Supreme Court of South Carolina. 181 S. C. 203. The court overruled petitioner's contention based on the federal act known as the Carmack Amendment. 49 U. S. C. 20 (11). It appeared that the shipment was interstate, from Jacksonville, Florida, to Charleston, South Carolina. The applicable tariff filed by the carrier provided:

"In consideration of the rate charged for carrying said property, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less, and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees

that the company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds unless a greater value is stated herein. Unless a greater value is declared and stated herein the shipper agrees that the value of the shipment is as last above set out and that the liability of the company shall in no event exceed such value."

There was evidence that the value declared was fifty dollars and that the rate was fixed accordingly. The trial court ruled that as the suit was for damages for the interruption of plaintiff's business caused by the delay alleged to be due to negligence, the limitation of liability did not apply. The Supreme Court of the State sustained that view.

We hold that this was error. The federal statute controls. *Adams Express Co. v. Croninger*, 226 U. S. 491, 505, 506; *Kansas City Southern Ry. Co. v. Carl*, 227 U. S. 639, 650-652; *Georgia, Florida & Alabama Ry. Co. v. Blish Co.*, 241 U. S. 190, 196, 197. The words of the statute "are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination." The statute thus applies to damages caused by delay in making delivery. *New York, P. & N. R. Co. v. Peninsula Exchange*, 240 U. S. 34, 38; *Georgia, F. & A. Ry. Co. v. Blish Co.*, *supra*. The underlying principle is that the carrier is entitled to base rates upon value and that its compensation should bear a reasonable relation to the risk and responsibility assumed. *Kansas City Southern Ry. Co. v. Carl*, *supra*. The broad purpose of the federal act is to compel the establishment of reasonable rates and to provide for their uniform application. Special contracts are not permitted to give any advantage to a particular shipper. *Chicago & Alton R.*

*Co. v. Kirby*, 225 U. S. 155, 166. The liability in this instance is thus governed by the provisions of the applicable tariff and no recovery could be had in excess of the amount permitted by its terms. *New York, P. & N. R. Co. v. Peninsula Exchange*, *supra*, pp. 41, 42; *Southern Express Co. v. Byers*, 240 U. S. 612, 614; *Southern Ry. Co. v. Prescott*, 240 U. S. 632, 638; *American Railway Express Co. v. Daniel*, 269 U. S. 40, 42.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

CATE ET AL. *v.* BEASLEY ET AL.

CERTIORARI TO THE SUPREME COURT OF OKLAHOMA.

No. 30. Argued October 19, 1936.—Decided November 9, 1936.

By a construction of the Seminole Agreement (Act of June 2, 1900) long established as a rule of property in Oklahoma, which this Court accepts, land allotted to a Seminole Indian who died after selecting his allotment and before Oklahoma became a State, descended to his heirs in accordance with Arkansas laws of descent, without regard to whether heirs were Seminole citizens. 175 Okla. 494; 53 P. (2d) 549, affirmed.

*Mr. Richard W. Stoutz* submitted for petitioners.

*Mr. Lloyd G. Owen*, with whom *Messrs. James A. Veasey, Guy H. Woodward, and R. J. Roberts* were on the brief, for respondents.

PER CURIAM.

John Wadsworth, enrolled as a Seminole Indian, died on August 3, 1907, after selecting his allotment and prior

to the admission of Oklahoma to statehood. Surviving him were his mother, brothers and sisters, enrolled as Seminoles, and his wife and three children enrolled as Creeks. In an action to quiet title the Supreme Court of Oklahoma affirmed a judgment sustaining demurrers to the petition. 175 Okl. 494; 53 P. (2d) 549. The Court said [pp. 494-495]:

“For 25 years it has been the settled rule of law in this State, in reliance upon which the stability and dependability of titles has depended, that the allotted land of a Seminole Indian, who died (1) after selecting his allotment, and (2) before statehood, descended to his heirs, in accordance with the Arkansas laws of descent and distribution, without regard to the above limitation to tribal citizens. . . . There is some merit in the assertion of plaintiffs in error that the first pronouncement of that rule, in *Bruner v. Sanders*, 26 Okl. 673, 110 P. 730, decided in the year 1910, is dictum. Nevertheless, if it was dictum, it was repeatedly followed by subsequent decisions of this court wherein it emerged from the realm of dictum into the point actually decided. Those cases are *Heliker-Jarvis Seminole Co. v. Lincoln*, 33 Okl. 425, 126 P. 723, *Thorn v. Cone*, 47 Okl. 781, 150 P. 701, *Rentie v. Rentie*, 70 Okl. 103, 172 P. 1083, *Dickinson v. Abb*, 73 Okl. 322, 176 P. 523, *Lasiter v. Ferguson*, 79 Okl. 200, 192 P. 197, and *Stewart v. Billington*, 122 Okl. 9, 250 P. 84.”

In view of the long established rule in Oklahoma as to the descent of the allotted land of a Seminole Indian who died after selecting his allotment and before statehood, the judgment is affirmed.

This decision is not to be construed as impairing the authority of our earlier decisions under the agreements made with other Indian tribes or under the Seminole Agreement with respect to a Seminole who died before selecting his allotment. See *Washington v. Miller*, 235 U. S. 422; *McDougal v. McKay*, 237 U. S. 372; *Camp-*

Opinion of the Court.

299 U. S.

*bell v. Wadsworth*, 248 U. S. 169; *Grayson v. Harris*, 267 U. S. 352.

*Affirmed.*

MR. JUSTICE McREYNOLDS is of opinion that the challenged judgment should be reversed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

VALENTINE, CHAIRMAN OF THE IOWA STATE BOARD OF ASSESSMENT AND REVIEW, ET AL. *v.* GREAT ATLANTIC & PACIFIC TEA CO.\*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

No. 13. Argued October 14, 1936.—Decided November 9, 1936.

Iowa Chain Store Tax Act of 1935, § 4 (b), held unconstitutional. *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550.

*Mr. Frank F. Messer* and *Mr. Edward L. O'Connor*, Attorney General of Iowa, with whom *Mrs. W. E. Wallace* and *John Connolly, Jr.*, were on the brief, for appellants.

*Mr. Joseph G. Gamble*, with whom *Messrs. Ralph L. Read*, *Alden B. Howland*, and *Joseph F. Rosenfield* were on the brief, for appellees.

PER CURIAM.

Appellees brought these suits to restrain the enforcement of a statute of Iowa known as the "Chain Store

---

\* Together with No. 14, *Valentine, Chairman, et al. v. Graham Department Stores Co. et al.*; and No. 15, *Valentine, Chairman, et al. v. Walgreen Co. et al.* Appeals from the District Court of the United States for the Southern District of Iowa.

Tax Act of 1935" (Iowa Code of 1935, c. 329 G-1). The District Court, composed of three judges, held that the provision of § 4 (b) of the statute, imposing a tax based on gross receipts from sales according to an accumulative graduated scale, was invalid under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States as creating an arbitrary discrimination. 12 F. Supp. 760. The case comes here upon direct appeal from a final decree granting a permanent injunction. 28 U. S. C. 380.

The decree is affirmed upon the authority of *Stewart Dry Goods Co. v. Lewis*, 294 U. S. 550.

*Affirmed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE CARDOZO dissent.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

BARWISE ET AL., TRUSTEES, v. SHEPPARD, COMPTROLLER OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS, THIRD SUPREME JUDICIAL DISTRICT, OF TEXAS.

No. 10. Argued October 13, 1936.—Decided November 9, 1936.

1. A state excise on the production of oil which extends to the royalty interest of the lessor in the oil produced under an oil lease as well as to the interest of the lessee engaged in the active work of production, the tax being apportioned between these parties according to their respective interests in the common venture, *held* not arbitrary as regards the lessor, but consistent with due process. P. 36.
2. An oil lease imposing on the lessee the obligation of delivering to the credit of the lessor "free of cost" in the pipe line the equal  $\frac{1}{3}$  part of the oil produced by the lessee, though it may intend that the lessor shall be relieved of all taxes on production, is nevertheless

made in subordination to the power of the State to impose such taxes and to apportion them between the parties in proportion to their respective interests. P. 40.

3. The State's power thus to direct the incidence of the production tax and shift part of its burden from lessee to lessor is not affected by the fact that, by the law in force when the lease contract was made, and for some years thereafter, the entire tax was on the lessee. P. 41.

89 S. W. (2d) 1026, affirmed.

APPEAL from a judgment affirming a judgment in favor of the Comptroller and the Treasurer of the State of Texas, appellees herein, in a suit brought by the appellants to secure a refund of taxes paid under protest, together with an injunction against collection of further taxes in respect of the interests of the appellants, as lessors, in the production of oil under an oil lease. The Supreme Court of the State had declined to take the case on a writ of error before it was appealed to this Court.

*Mr. William R. Watkins* for appellants.

*Mr. William McCraw*, Attorney General of Texas, with whom *Mr. H. Grady Chandler*, Assistant Attorney General, was on the brief, for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

A statute of the State of Texas imposing a tax on the production of oil is here challenged as violating the contract clause of the Constitution of the United States and the due process of law clause of the Fourteenth Amendment.

The appellants own lands from which oil is produced under a lease given in 1925. The lease is in the usual form of an oil lease; invests the lessee with the right to explore for and produce oil; shows that the production is to be for the mutual benefit of the lessor and lessee;

fixes the lessor's proportion, or royalty interest, at "the equal  $\frac{1}{8}$  part of all oil produced"; and requires the lessee to deliver that proportion to the lessor's credit, "free of cost, in the pipe line" to which the wells are connected.

When the lease was given and up to 1933 a law of the State imposed on the lessee alone, as the active producer, a tax on all oil produced,<sup>1</sup> and that tax was paid and borne by the lessee so long as that law remained in force.

By an act of 1933<sup>2</sup> a substituted tax on oil production was imposed with an accompanying provision that the tax "shall be borne ratably by all interested parties including royalty interests" and with other provisions designed to secure prompt and certain payment of the full tax as by charging the active producer, or the purchaser of the oil where sold in the pipe line, with a primary duty to pay the full tax, and authorizing and requiring him to withhold from royalty or purchase money due interested parties the proportionate tax due from them.<sup>3</sup>

For about a year after the Act of 1933 became effective the purchaser of the oil produced under the lease paid the full tax and deducted the appellants' proportion from what was due to them on the purchase of their share of the oil. The payment of this part of the tax was accompanied by written protests of the appellants and the purchaser.

---

<sup>1</sup> Vernon's Ann. Tex. Stat., Art. 7071.

<sup>2</sup> Act 1933, Reg. Sess., c. 162, § 2, as amended by Act 1933, 1st Called Sess., c. 12.

<sup>3</sup> Section 2 (3) provides: "The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder. . . ."

And § 2 (6) further provides: "The tax herein levied shall be borne ratably by all interested parties, including royalty interests; and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due."

The present suit was brought by the appellants against the Comptroller and Treasurer of the State to secure a refund of the taxes paid under protest and an injunction against the collection of further taxes in respect of appellants' interest in the production. In the court of first instance there was a decree for the defendants, which the Court of Civil Appeals affirmed after sustaining the taxing act against appellants' before mentioned challenge to its validity.<sup>4</sup> The Supreme Court of the State declined to take the case on writ of error, and an appeal to this Court was sought and allowed.

We come first to the contention that, as applied to the appellants, who are not actively engaged in the production of oil but are lessors having a royalty interest, the act is an arbitrary fiat, in contravention of fundamental principles of private right and distributive justice, and therefore denies to appellants the due process of law guaranteed by the Fourteenth Amendment.

The taxing act calls the tax an "occupation tax" and a "gross production tax." The Court of Civil Appeals applies to it both of these designations, and also characterizes it as a "tax levied on the business or occupation of producing oil." In discussing appellants' claim that they are not engaged in such a business or occupation and that the act nevertheless includes them among those on whom the tax is laid, the court expresses the view that, for the purposes of such a tax, "the legislature may validly declare the owners of royalty or other interests in the oil produced to be engaged in the occupation or business of producing oil." The designations applied to the tax and the view just noticed are stressed by counsel for the appellants and relied upon as supporting the contention that the taxing act is essentially an arbitrary fiat.

But when mere characterizations of the tax are put aside and attention is given to the substance of the court's

---

<sup>4</sup> 89 S. W. (2d) 1026,

opinions in this and a companion case,<sup>5</sup> it unmistakably appears that the court regarded the tax as an excise laid on the production of oil, measured by the extent of the production, and charged ratably against all who have an interest in the oil produced. True, the court speaks of the tax as laid on the "occupation or business" of producing oil, but its opinions plainly show that these terms are used in the sense of a "planned undertaking" or "mining venture" and as comprehending all who have a direct and beneficial interest in the oil being produced, whether they be owners conducting oil operations on their own lands, or lessees operating under leases from owners and sharing the oil with the latter, or owners who have leased their lands for oil operations and share the oil with the lessees. As illustrating the actual decision and the reasons underlying it we quote from the opinions:

"The legislative intent to levy the tax ratably against all interested parties in the oil produced is also clearly evidenced by the language that 'the purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder,' and 'withhold from any payments due interested parties, the proportionate tax due.' These provisions do not levy the tax against the purchaser. He is merely made the agent of the State to collect from the producer or other interest holders the total amount of the tax due; and he is authorized to charge their respective accounts with 'the proportionate tax due.' That is, the purchaser withholds from the producer only as an interest holder and only to the extent of his interest. Likewise the purchaser withholds from other royalty or interest holders the amount of the tax due on their royalty or other interests. The Act, therefore, designates the parties against whom the tax is levied. The amount of the tax due by

---

<sup>5</sup> *Group No. 1 Oil Corp. v. Sheppard*, 89 S. W. (2d) 1021.

each is also defined or measured by the extent of interest in the oil produced, or the amount paid because it was produced.”

“It is also manifest that the tax is not dependent upon the character of title under which the producer produces the oil. Nor is the tax levied on the oil in place. The tax is levied on the business or occupation of producing the oil.”

“The ordinary form of oil lease has a dual character or purpose: (1) the conveyance of an estate in the land for development purposes; and (2) the future development and operation of the lease for oil in accordance with the terms, express and implied, of the contract for the mutual benefit of the parties, their respective benefit being measured by the extent of their interests in the oil produced, or its value. The law is settled that the primary objective or purpose of the oil lease is the production of oil for the mutual profit of the parties. The consideration moving to the lessor is an interest in the oil or its value in money. Thus he has a direct interest in the success of the business. As the holder of the royalty interest the lessor or royalty owner is not only entitled to share in the gross production of the oil, but may under the terms of the lease, expressed or implied, require proper, prudent and diligent management and development of the business, and has reserved and is entitled to both legal and equitable remedies necessary to enforce the obligations of the lease, and under some circumstances may forfeit the lease for nondevelopment.”

And the court quoted the following from a decision of the Supreme Court of New Mexico:<sup>6</sup>

<sup>6</sup> *Flynn, Welch & Yates, Inc. v. State Tax Comm'n*, 38 N. M. 131; 28 P. (2d) 889, 892.

“Our minds do not reject the idea that the lessee and the royalty owner, considered as participating in a joint enterprise, are both engaged in the business of producing or severing oil, and that the tax is therefore essentially occupational. Such a view, however, is not indispensable to sustaining the tax. For it may be considered occupational as to the lessee and another kind of tax to the royalty owner. Unless found as to one or the other to be a tax upon tangible property, it need not be levied *ad valorem*, and is an excise.”

In view of this exposition of the purpose and meaning of the act, we are of opinion that it is not an arbitrary fiat and does not infringe the due process of law clause of the Fourteenth Amendment.

While operations under the lease are carried on by the lessee and not by the lessors, they nevertheless are carried on in virtue of the lease, that is to say, under stipulations made between the lessors and the lessee. The lease shows that the parties to it are, in a very practical sense, committed to and engaged in a common venture for their mutual benefit. The lessors have put into the venture their right to explore for and to extract the oil under their lands, and the lessee has put into it various drilling and pumping appliances and much expense, labor, and time. All that has been put in is devoted to the common purpose of producing oil in which the lessors and the lessee are to have stated interests. It is this production that is taxed against the lessors and the lessee according to their respective interests.

Without question the State has power to lay an excise on the production of oil. Here it is laid, admissibly we think, on those having a direct and beneficial interest in the oil produced and is apportioned between them according to their interests. The apportionment is reasonable, not arbitrary; and is as reasonable to the lessors as to the lessee.

We come next to the contention that the act, in so far as it imposes the tax on the appellants, impairs the obligation of their contract with the lessee whereby he agrees to deliver to their credit, "free of cost," in the pipe line, the equal  $\frac{1}{8}$  part of the oil produced. The lease contains no mention of taxes or of their payment. It well may be that when rightly construed, the engagement to deliver, free of cost, refers to expenses incurred in producing the oil and conducting it to the pipe line, and is not intended to include governmental exactions, such as a tax. This would appear to be an admissible if not a necessary construction of that engagement. But, be this as it may, the lease was made in subordination to the power of the State to tax the production of oil and to apportion the tax between the lessors and the lessee. The taxing act does not purport to reach or affect any term of the lease. Plainly no stipulation in the lease can be of any avail as against the power of the State to impose the tax, prescribe who shall be under a duty to the State to pay it, and fix the time and mode of payment. And this is true even though it be assumed to be admissible for the lessors and lessee to stipulate as to who, as between themselves, shall ultimately bear the tax. These views are but a reiteration and application of what repeatedly has been held in respect of contracts and their subordination to the taxing power.<sup>7</sup>

It is true that the law in force when the lease was made and for some years thereafter laid a production tax on the lessee alone, and it is equally true that under the act

---

<sup>7</sup> *Providence Bank v. Billings*, 4 Pet. 514, 562; *North Missouri R. Co. v. Maguire*, 20 Wall. 46, 61; *Moffitt v. Kelly*, 218 U. S. 400, 403; *Henderson Bridge Co. v. Henderson City*, 173 U. S. 592, 619-620; *Chanler v. Kelsey*, 205 U. S. 466, 478-479; *Kehrer v. Stewart*, 197 U. S. 60, 70; *Clement National Bank v. Vermont*, 231 U. S. 120, 143; *Lake Superior Consolidated Iron Mines v. Lord*, 271 U. S. 577, 581.

of 1933 a part of the tax is imposed on the lessors and the part imposed on the lessee is less than what would fall on him under the earlier law. But the State's power in the matter was in no way circumscribed by the earlier law. That law was subject to change at any time through a further exertion of the taxing power; and the lease presented no obstacle to such a change.

It follows that appellants' reliance on the contract clause of the Constitution is ill-grounded.

*Decree affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

P. J. CARLIN CONSTRUCTION CO. ET AL. v.  
HEANEY ET AL.

CERTIORARI TO THE SUPREME COURT OF NEW YORK.

No. 9. Argued October 13, 1936.—Decided November 9, 1936.

A company constructing a building on an island in navigable waters in New York, engaged the owner of a steamboat to ferry its workmen to and from the island. The shipowner was to collect specified fares from the workmen ferried. If, in any day, the collections were less than a specified amount, the company would make up the difference to the shipowner; if they exceeded it, the excess would be paid over to the company up to the point of reimbursing it for its payments in meeting such deficiencies. One of the workmen, while being so ferried, was injured by an explosion on the ship.

*Held* that an award of compensation against the company and its insurance carrier under the New York Workmen's Compensation Act was not invalid as an intrusion upon the maritime jurisdiction. P. 44.

269 N. Y. 93, affirmed.

CERTIORARI, 298 U. S. 637, to review a judgment of the Court of Appeals of New York which affirmed a judgment

of the Supreme Court, Appellate Division, of the State (243 App. Div. 648, no opinion), sustaining an award of workmen's compensation.

*Mr. Elmer C. Sherwood* for petitioners.

*Mr. Henry Epstein*, Solicitor General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, and *Messrs. Joseph A. McLaughlin* and *Roy Wiedersum*, Assistant Attorneys General, were on the brief, for respondents.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Seeking an award for injuries received in the course of his employment respondent, Heaney, instituted this proceeding before the New York State Industrial Board against his employer, P. J. Carlin Construction Company, and its insurance carrier, The Travelers Insurance Company, petitioners here. The Board granted an award; the Appellate Division and the Court of Appeals approved.

In September, 1932, the Construction Company, general contractor with principal place of business in New York City, was engaged in building operations on Rikers Island in East River. Respondent and others employed about the work crossed daily from New York City on the "Observation," a steamboat owned by Captain Forsythe. They paid for this service.

The owner operated the vessel in pursuance of an agreement with the Construction Company which provided: "You are hereby licensed to operate a ferry service for the transportation of the men engaged upon the construction of the Rikers Island Penitentiary Building." "You are to be compensated therefor by collecting fares from the men at the rate of 10¢ a round trip. In the event that your fares do not reach the sum of \$60.00

upon any given day, we shall reimburse you for the difference. Where your fares exceed \$60.00 a day, you will pay the excess to us up to a point where we are reimbursed for any monies paid to you by us under this license." "We understand that your boat is warranted to be in first class condition, with all necessary permits to operate in this service."

September 9, 1932, while on her way to Rikers Island with Heaney on board, a violent explosion wrecked the "Observation." He and many others were seriously injured.

Counsel for petitioners challenged the Board's jurisdiction upon the ground that as the accident occurred on navigable waters the rights and obligations of the parties were fixed by the maritime law. They also maintained that Heaney was not employed when injured.

The Board found: "Heaney stepped into his employment the moment he stepped aboard the said steamboat." "Such transportation by means of the steamship 'Observation' was included within and was part of the contract of employment between P. J. Carlin Construction Co., the employer herein, and Edward Heaney, the claimant, and was an incident of the claimant's employment. At the time Edward Heaney sustained the accidental injuries . . . the status of the claimant and the employer herein was a matter of local concern, was subject to the regulation of the State and in no way worked prejudice to any characteristic feature of the General Maritime Law. The claim . . . is within the jurisdiction of the Industrial Board and not such a matter as is subject to the exclusive jurisdiction of the Admiralty Law. This claim comes within the provisions of the Workmen's Compensation Law."

Without contesting the Board's finding in respect of employment, petitioners maintain here that the rights and obligations of the parties must be determined under

the maritime law and the State Compensation Act has no application. *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, *Spencer Kellogg & Sons v. Hicks*, 285 U. S. 502, and kindred cases which hold that the rules of maritime law control rights and liabilities arising out of torts upon navigable waters are relied upon.

But as the Court of Appeals has pointed out: "No recovery is sought against the employer in this case because of any wrong alleged to have been done by the employer. A recovery is sought as the result of injuries for which the statute, read into the contract, gives a right to recovery." "An award under the Workmen's Compensation Law is not made on the theory that a tort has been committed; on the contrary, it is upon the theory that the statute giving the commission power to make an award is read into and becomes a part of the contract . . ." See *Post v. Burger & Gohlke*, 216 N. Y. 544; 111 N. E. 351; *Doey v. Howland Co.*, 224 N. Y. 30; 120 N. E. 53; also *State Industrial Comm'n v. Nordenholt Corporation*, 259 U. S. 263, 271.

This Court has often ruled that the maritime law cannot be modified by state enactments so as materially to interfere with its essential uniformity. *State Industrial Comm'n v. Nordenholt Corporation*, *supra*. But this doctrine, we think, has no application in the circumstances here presented. The present attempt is to enforce a liability assumed by employer and insurance carrier under a non-maritime contract. All parties, as well as the accident, were within the limits of New York State. The contract had no direct relation to navigation; to enforce it against the parties before us will not materially interfere with the uniformity of any maritime rule. There is no claim against the ship or her owner; their rights are not in issue.

*Spencer Kellogg & Sons v. Hicks*, *supra*, does not support petitioners' position. There the vessel's owner was

held liable for injuries received on navigable waters in consequence of the master's negligence. The respondent here seeks to enforce a contract of employment which had no direct and immediate relation to navigation, business or commerce of the sea. *North Pacific Steamship Co. v. Hall Bros. Marine Railway & Shipbuilding Co.*, 249 U. S. 119, 125; Benedict on Admiralty (5th ed.) § 63.

The court below reached the correct conclusion, and its judgment must be

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

JOSE RIVERA SOLER & CO. v. UNITED FIRE-  
MEN'S INSURANCE COMPANY OF PHILA-  
DELPHIA.

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

No. 31. Argued October 20, 1936.—Decided November 9, 1936.

The mere facts that the amount claimed in a proof of loss under a fire insurance policy greatly exceeded the amount allowed by the jury in the trial of the case and that one of the items claimed was not supported by any evidence do not give rise to a conclusive presumption of fraud. P. 49.

81 F. (2d) 385, reversed.

U. S. District Court for Puerto Rico affirmed.

CERTIORARI, 298 U. S. 651, to review a judgment reversing a recovery in the District Court of the United States for Puerto Rico on a policy of fire insurance. The court below had at first decided the other way. 77 F. (2d) 891.

*Mr. Francis H. Dexter* for petitioner.

*Mr. Henri Brown*, with whom *Mr. Carroll G. Walter* was on the brief, for respondent.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Respondent, the Insurance Company, issued to petitioner a \$30,000.00 fire policy covering certain personalty in Puerto Rico, distributed thus: \$15,000.00 on stock of merchandise, unembroidered, embroidered and in the process of being embroidered, or for repairs, and on cost of labor performed thereon, including, etc.; \$12,000.00 on machinery of every description, etc.; \$3,000.00 on furniture, fixtures, etc.

After a fire, petitioner presented sworn proof of loss exceeding \$35,000.00 and demanded payment of the full amount of the policy. This was refused. It then brought this action in the District Court of the United States for Puerto Rico to recover the sum demanded with interest. Claiming that the assured had acted fraudulently and had failed to comply with specified conditions, the Company denied any liability. There was a verdict for \$17,000.00 plus interest; an appropriate judgment followed. A bill of exceptions, also ten assignments of error, were filed, and the cause went to the Circuit Court of Appeals, First Circuit.

That court, having heard the matter, affirmed the challenged judgment—May 25, 1935. The supporting opinion of that date states: "The defenses now relied upon rest upon breaches of what are commonly referred to as 'conditions subsequent,' the real defense being that the plaintiff's claim was essentially fraudulent. The provisions of the policy relied on in defense are the so-called 'Iron Safe' clause and condition 12."

The "Iron Safe" clause requires the assured to keep "a complete itemized inventory of stock on hand," and "a set of books, which shall clearly and plainly present a complete record of business transacted, including all purchases, sales and shipments"; also that these shall be "securely locked in a fireproof safe at night" etc.

Condition 12 provides: "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this policy; . . . all benefit under this policy shall be forfeited."

The first seven assignments, relating to the failure of the trial judge to direct a verdict, also numbers eight and nine, were overruled.

The eighth assignment assailed the refusal to instruct that no evidence tended to support the \$2,524.50 item for cost of labor found in the proof of loss; the ninth challenged the failure to instruct that there was nothing from which the jury could determine the market value of certain merchandise said to have been sold to the assured by its president.

Concerning the tenth assignment the Court said, "The value of the destroyed property as claimed by the plaintiff was about \$34,000.00. The jury's verdict was for \$17,000.00. The defendant contends that the verdict, fixing the value of the property at only about one-half of what was claimed in the proof of loss, established as a matter of law that there was fraudulent over-valuation by the plaintiff in the proof of loss. Obviously, this question could not arise until after the verdict; it amounts to a contention that the verdict in favor of the plaintiff was inconsistent and contradictory to the finding on damages. Questions of this character should be presented in the first instance to the trial judge. He has never passed upon this point. No ruling of his upon it was excepted to; no exception relating to it appears in the record. We cannot consider it."

A rehearing was granted. A second judgment followed (January 7, 1936) which vacated the earlier one and remanded the cause to the trial court "with directions to enter an order in arrest of judgment, with costs to the

appellant in both courts." An opinion, from which the judge who wrote the original one dissented, pointed out the reasons for the action taken. This considered only the tenth assignment of error and the one based upon failure to direct a verdict because no evidence tended to support the \$2,524.50 item for "Labor on goods in process." Assignments based upon alleged violations of the "Iron Safe" clause were not discussed.

The court said: "Under the 10th assignment it is contended that the verdict and judgment are contrary to law, that the amount of the loss fixed by the verdict is so inconsistent with the proof of loss and the provisions of the policy, both of which are made a part of the pleadings, as to show that the plaintiff's sworn proof of loss was fraudulent as a matter of law." "Bills of exception are necessary to preserve exceptions to rulings made in the progress of the trial, but errors appearing on the face of the record proper need not be so preserved. In the court below the defendant could have made a motion in arrest of judgment, but no such motion was necessary." "In considering the question raised by the 10th assignment the evidence introduced at the trial and brought here by bill of exceptions is not to be considered, for that is no part of the record proper. The inquiry is confined to such matters as appear in the record proper. That record in this case includes the complaint, proof of loss and the policy (which are included in the complaint), the verdict and judgment." "It is perfectly plain that the verdict of the jury is entirely inconsistent with the allegations of the complaint and the proof of loss, and we think this disparity of nearly \$18,000.00 shows on its face and as a matter of law that the sworn proof of loss was fraudulent and, if so, then, under the 12th condition of the policy, all benefit thereunder was forfeited. The verdict should have been either for nothing or in the neighborhood of \$30,000.00."

Also: "Under the motion for a directed verdict the evidence introduced at the trial and included in the bill of exceptions is open for consideration. There is no evidence in the case and counsel for the plaintiff has pointed out none, though requested to do so, showing that the cost of labor 'on goods in process' was \$2,524.50, as stated in the sworn proof of loss. The only evidence in the record relating to that subject is that given by Soler himself (president of the plaintiff company) where he states that the sum of \$2,524.50 was the contract price which the company was to receive for manufacturing the goods of others. If the statement in the proof of loss, to which Soler made oath, did not represent the cost of labor, but was the contract price which the plaintiff was to receive from others for whom goods were being manufactured, no other conclusion can reasonably be drawn than that the statement in the proof of loss was knowingly made for the purpose of getting money from the insurance company that the plaintiff was not entitled to and was fraudulent. And, under Condition 12 of the policy, deprived the plaintiff of its benefits. Soler was the president of the plaintiff company and made oath to the proof of loss."

The second opinion holds in effect that fraud by the plaintiff conclusively appears on the face of the record without giving consideration to any evidence; also that fraud on its part with respect to the item "Labor on goods in process" included in the proof of loss so clearly appeared from the evidence that the defendant was entitled to a directed verdict.

We cannot accept the view that a conclusive presumption of fraud arose because the verdict was far less than the amount stated in the proof of loss. If the bill of exceptions be disregarded we must assume the jury was properly instructed—were told that condition 12 required a verdict for the insurer "if the claim be in any respect

fraudulent." The finding for the assured indicates that they discovered no fraud. Policy holders may present inaccurate proofs of loss without conscious dishonesty or intent to defraud; different views of values are common; memory is faulty; insurance company and assured often entertain widely different views concerning the policy; and evidence cannot always be produced to establish something declared to be true in entire good faith.

For like reasons we cannot say the trial judge, even if he thought there was complete failure to sustain the item for "Labor on goods in process," should have ruled that this alone was enough to show fraud and required a directed verdict for the Company. Condition number 12 was read to the jury and declared to be "legal and part of the conditions of the contract." He also charged clearly enough that any dishonest claim made with intent to defraud would render the policy inoperative. Nevertheless the jury found for the assured. In these circumstances we cannot say there was a conclusive presumption of purpose to defraud.

Although the court below, in its first opinion, clearly overruled assignments based upon the "Iron Safe" clause and said nothing about them in the second, counsel insist that they are before us and adequate to support the questioned judgment. If, in the circumstances they can be considered at all, it is enough to say that the jury was well instructed concerning the necessity of complying with that clause; the verdict negatives the notion of fraud. There was conflicting evidence; the weight to be given this was for them to determine.

The judgment of the Circuit Court of Appeals must be reversed. We find no material error in the action of the District Court, and its judgment is affirmed.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## Syllabus.

MECHANICS UNIVERSAL JOINT CO. ET AL. v.  
CULHANE, RECEIVER.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT.

No. 17. Argued October 14, 15, 1936.—Decided November 9, 1936.

1. One of the objects of the national bank system is to secure, in the event of insolvency, a just and equal distribution of the assets of national banks among unsecured creditors, and to prevent such banks from creating preferences in contemplation of their failure. To that end R. S., § 5242, 12 U. S. C. 91, prohibits preferential payments. P. 55.
2. Revised Statutes, § 5242, provides that payments made by national banks "in contemplation" of the commission of an act of insolvency, "with a view to the preference of one creditor to another," "shall be utterly null and void." *Held* that the duty thus imposed, not to defeat by preferential payments the just and equal distribution of assets, is not confined to the executive officers but extends to the individual directors of the bank and is covered by their oath, R. S. 5147. P. 56.
3. The president and manager of a manufacturing company, which had a deposit in a national bank of which he was a director, having learned in confidence, as director, that the condition of the bank was precarious, caused part of his company's deposit to be withdrawn by means of a check, executed by him on its behalf and passed through the clearing house. The bank at the time was doing business with its customers as usual, but it closed its doors on the following business day. *Held*:
  - (1) That the payment was a preference in violation of R. S., § 5242, and recoverable from the company by the bank's receiver. P. 56.
  - (2) The director also was liable jointly and severally. P. 57.
4. Claim that deposits were made when the bank was insolvent; that they were obtained fraudulently by impliedly representing, through keeping the bank open, that it was solvent; and that, hence, the title to so much of them as came into the hands of the bank's receiver remained in the depositor and could be followed as trust funds,—*held* properly dismissed in the absence of findings or evidence to show that the bank was in fact insolvent, and believed by

its officers or directors to be so at the times when the deposits were made. P. 57.

5. A respondent in certiorari who did not file a cross-petition, cannot question the decree of the court below. P. 58.  
80 F. (2d) 147, affirmed.

CERTIORARI, 298 U. S. 648, to review the affirmance of a judgment for the receiver of a national bank in an action to recover a preferential payment made to a depositor, one of the present petitioners, in contemplation of the bank's insolvency. A director of the bank was made co-defendant in the action, and joined in the petition for certiorari.

*Mr. Samuel R. Kenworthy* for petitioners.

*Messrs. Roy F. Hall and George P. Barse*, with whom *Mr. John F. Anderson* was on the brief, for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

Section 5242 of the Revised Statutes of the United States, 12 U. S. C. § 91 provides that payments made by a national bank "in contemplation" of the commission of an act of insolvency, "with a view to the preference of one creditor to another" "shall be utterly null and void."<sup>1</sup>

<sup>1</sup>The Section provides: "All transfers of the notes, bonds, bills of exchange, or other evidences of debt owing to any national banking association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its shareholders or creditors; and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this chapter, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void; and no attachment, injunction or execution, shall be issued

This suit was brought in the federal court<sup>2</sup> for northern Illinois by the receiver of the Manufacturers National Bank and Trust Company of Rockford, in that State, to recover, as such preference, the proceeds of a check for \$42,761.12 drawn on the bank by the Mechanics Universal Joint Company of that city and paid to it. The answer denied that the bank was then insolvent; that it was known by its officers and directors to be so; that they contemplated the imminent necessity of its closing; and that the payment was made with a view to a preference. On these issues much evidence was introduced. The District Court, making detailed findings of fact, found on all those issues for the plaintiff, and entered a decree accordingly. The Court of Appeals, accepting the findings made by the trial court, affirmed the decree. 80 F. (2d) 147. We granted certiorari, because of the importance of the question whether the relation of the parties was such as to render the payment unlawful. We accept the findings, as there was ample evidence to support them, and none of the objections to the admission of evidence is substantial. *Pick Manufacturing Co. v. General Motors Corp.*, ante, p. 3.

On Friday, June 12, the balance in the Company's account in the Manufacturers Bank was \$65,224.30. On that day the check for \$42,761.12 was drawn, payable to the Third National Bank of Rockford, where it also had a general checking account, and was sent for deposit in that account. On Saturday, the 13th, the check was paid through the clearing house. Never before had the Company transferred money from its checking account in the

---

against such association or its property before final judgment in any suit, action, or proceeding, in any State, county, or municipal court."

<sup>2</sup>See 28 U. S. C § 41, (1), (16); *Commonwealth Trust Co. v. Bradford*, 297 U. S. 613, 617. Compare *Bowerman v. Hamner*, 250 U. S. 504.

Manufacturers Bank to its general checking account in the Third National. On June 12 and 13, 1931, the Manufacturers Bank conducted its business as usual. It accepted deposits; honored all checks, whether presented through the clearing house or otherwise; and paid all demands upon it. It had not committed any "act of insolvency." But it was, in fact, insolvent; and was known by its officers to be so. On June 13, it closed its doors at the conclusion of regular banking hours and it did not thereafter open them. On June 16, the Comptroller of the Currency certified that the bank was insolvent and appointed a receiver.

The check was executed by Ekstrom, the president and manager of the Company, who then was, and for two years had been, a director of the Manufacturers Bank. He knew its precarious condition. He knew that for some time prior to June 12 the bank had been on the special list of the Comptroller of the Currency for frequent examination and report. As early as January 8, 1931, the Comptroller had called the bank's attention to its unsatisfactory condition. In a letter dated May 28, 1931, he pointed out "its present dangerous situation" and "potential losses that threaten its solvency." Ekstrom, as director, had examined the reports of the bank's condition made by the National Bank Examiner; had read the letters from the Comptroller; and had been present at an informal meeting of the board, held upon request of the Examiner, on June 12 between eleven and twelve o'clock in the morning. The Examiner attended the meeting; discussed the bank's condition; advised its officers and the directors that there would be a run on the Rockford banks on the following Monday; and told them "that the cash position of the Manufacturers Bank was so low that it could not stand a run of one business day." The directors authorized him "to talk over the affairs of the Manufacturers Bank with a view to having said bank

taken over by some other bank in Rockford"; and appointed a committee to that end. Ekstrom participated in that action. Shortly after leaving the meeting, he signed the check and caused it to be sent by mail for collection.

*First.* The Company contends that, even if Ekstrom's purpose was to obtain for his Company a preference over other creditors, the withdrawal of the deposit was not unlawful. The argument is (a) that in drawing the check, and thus causing its payment, Ekstrom acted not as director of the bank but as president of the Company; (b) that he was neither an employee of the bank, nor specifically authorized as a director to make payment of the check; (c) that this payment was but one with many others which the bank made on the days involved, in the ordinary course of business, and not in contemplation of the commission of an act of insolvency; (d) that the payment cannot be held to have been made by the bank in contemplation of insolvency "with a view to prefer one creditor to another," since this check was paid, like others, in the usual course, without intention on the part of the bank's managing officers to prefer the Company; (e) that the wrongful action, if any, was that of Ekstrom in using for his Company's benefit knowledge obtained in confidence as director of the bank; but (f) that such breach of duty of a director does not entitle the receiver to recover, because the liability sought to be enforced is wholly statutory, and the statute does not provide that payments to a depositor on withdrawal made pursuant to confidential information obtained as bank director shall be void. The contention is unsound.

One of the objects of the national bank system is to secure, in the event of insolvency, a just and equal distribution of the assets of national banks among unsecured creditors, and to prevent such banks from creating preferences in contemplation of their failure. Compare *Na-*

*tional Bank v. Colby*, 21 Wall. 609, 613-614; *Davis v. Elmira Savings Bank*, 161 U. S. 275, 284, 290. To that end R. S. § 5242, 12 U. S. C. § 91, prohibits preferential payments. That prohibition is not directed solely to managing officers. The duty not so to defeat the just and equal distribution of the assets commanded by the Act rests upon all who obtain such knowledge by reason of their connection with the bank—upon directors and employees as well as upon the executive officers.<sup>3</sup> By R. S. § 5147, 12 U. S. C. § 73, each director is required to take an oath that he “will not knowingly violate or willingly permit to be violated any of the provisions of this title.” *Finn v. Brown*, 142 U. S. 56, 68. Ekstrom violated his oath and the duty under R. S. § 5242 which it imposed, when he used knowledge of the bank’s perilous condition, gained in his position of trust, to cause the withdrawal of funds by his Company, with a view to assuring it a preference over other depositors who lacked that knowledge.

We have no occasion to decide whether a stranger would be liable as for a preference, if, without suggestion from any officer or employee of the bank, he withdrew his deposit because of rumor or suspicion of insolvency. It is true that ordinarily a payment made by a bank to a depositor in the usual course of business is not recoverable, even though the bank was then clearly insolvent. Compare *McDonald v. Chemical National Bank*, 174 U. S. 610. But the payment here in question was not made in the usual course of business; and the Company was not a stranger. Its president and manager was a director of the bank; as such acquired in confidence knowledge

---

<sup>3</sup> See *Smith v. Baldwin*, 63 App. D. C. 72; 69 F. (2d) 390; *Schilling v. Sieroty*, S. D. Cal., Cent. Div., August 21, 1934. Compare *American Surety Co. v. Jackson*, 24 F. (2d) 768; *Isaacs v. Stock*, 66 F. (2d) 928; *Rucker v. Kokrda*, 68 F. (2d) 73, 74; *Pearson v. Durell*, 77 F. (2d) 465, 467.

of its perilous condition; and, in violation of his statutory duty as director, used that knowledge for the purpose of preferring his Company. If the deposit withdrawn had been in Ekstrom's own name, he would, obviously, have been obliged to return it. The Company is in no better position. Compare *McCaskill Co. v. United States*, 216 U. S. 504; *Curtis, Collins & Holbrook Co. v. United States*, 262 U. S. 215. As it is liable under the statute, we have no occasion to decide whether it would be liable also on general principles of law or equity. Compare *Yates v. Jones National Bank*, 206 U. S. 158, 178; *Bowerman v. Hamner*, 250 U. S. 504, 510.

*Second.* Ekstrom was joined with the Company as co-defendant and was held liable with it, jointly and severally. For such personal liability there was ample basis. Knowing that the bank was in imminent danger of closing, it was Ekstrom's duty as director to conserve the assets for the benefit of all unsecured creditors—or specifically not to use that knowledge confidentially obtained to prefer his Company. He depleted the assets by causing the preference to be given; and thus violated the duty under R. S. § 5242, which he had sworn to perform. Compare *Bowerman v. Hamner*, 250 U. S. 504.<sup>4</sup>

*Third.* The Company sought by counterclaim to recover \$20,034.12, the balance remaining after deducting from the aggregate of its deposits between May 6, 1931, and June 13, 1931 the checks drawn and paid in that period, including the check for \$42,761.12 here in question. The claim is that when these deposits were made the bank was insolvent; that the deposits had been obtained fraudulently by impliedly representing (through keeping the bank open) that it was solvent; and that hence, the title to so much of them as came into the hands of the receiver

---

<sup>4</sup> Ekstrom having died January 12, 1936, his administratrix, Grace M. Ekstrom, was substituted as appellant.

remained in the Company, and could be followed as a trust fund. The Circuit Court of Appeals stated that it affirmed the action of the trial court dismissing the counterclaim on the ground that no fraud had been practiced by the bank on the Company and that "it was not an innocent depositor by reason of the acts of its president." The receiver gives additional reasons in support of that action. We have no occasion to enter far into the enquiry. Throughout the litigation the Company has insisted that the bank was still solvent on June 12 when the check in question was drawn, and on June 13 when it was paid. As to those dates the findings are to the contrary. But there is no finding that prior to June 12 the bank was insolvent, or that prior to the discussion at the informal directors' meeting its executive officers or directors believed it to be so. The evidence is clearly consistent with the conclusion that between May 6 and June 7 it was believed to be solvent. The counterclaim was properly dismissed. Compare *St. Louis & San Francisco Ry. Co. v. Johnston*, 133 U. S. 566, 576; *Easton v. Iowa*, 188 U. S. 220, 232.

*Fourth.* The decree entered was for \$25,216.45. That sum was arrived at by deducting from the \$42,761.12 withdrawn, the aggregate amount of the dividends which would have been paid by the receiver to the Company thereon if that sum had remained on deposit, adding interest at 5 per cent to both the debit and the credits. The receiver contends that the defendants were wrongly credited with interest on the dividends, because no dividend was payable until full restitution with interest had been made of the illegal preference; and then only after proof of the Company's claim. We have no occasion to consider this alleged error in the decree as the receiver did not file a cross-petition for certiorari. Compare *Federal Trade Comm'n v. Pacific States Paper Trade Assn.*,

273 U. S. 52, 66; *Charles Warner Co. v. Independent Pier Co.*, 278 U. S. 85, 91; *Lloyd Sabauo Societa Anonima v. Elting*, 287 U. S. 329, 331. Moreover, this claim was not made below in either court.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

STATE BOARD OF EQUALIZATION OF CALIFORNIA ET AL. *v.* YOUNG'S MARKET CO. ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 22. Argued October 19, 1936.—Decided November 9, 1936.

1. Under § 2 of the Twenty-first Amendment which provides: "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited," a State may exact a license fee for the privilege of importing beer from other States. P. 61.
  2. There is no ground (1) for the proposition that such a tax violates the commerce clause by discriminating against the wholesaler of imported beer in favor of the wholesaler of beer locally brewed, both paying the same wholesaler's license tax; or (2) for the proposition that the right conferred by the amendment to prohibit importation is conditional upon prohibition of local manufacture and sale. Pp. 61, 62.
  3. A California law imposing a fee of \$500 per annum for the privilege of importing beer, and \$750 per annum for the privilege of manufacturing beer,—*held* consistent with the equal protection clause of the Fourteenth Amendment, first, because a classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth; and second, because the classification rests on conditions requiring difference of treatment. P. 64.
- 12 F. Supp. 140, reversed.

APPEAL from a decree of a three-judge District Court enjoining officials of the State of California from enforcing a license fee for the privilege of importing beer.

*Mr. Walter L. Bowers*, with whom *Mr. U. S. Webb*, Attorney General of California, was on the brief, for appellants.

*Messrs. M. J. Donnelly* and *Frederick H. Wood*, with whom *Messrs. C. J. Lynch, Jr.*, and *William M. Dallas* were on the brief, for appellees.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This suit, brought in the federal court for southern California, challenges the validity, under the Twenty-first Amendment of the Federal Constitution, of the provisions of a statute of that State, and of the regulations thereunder, which impose a license-fee of \$500 for the privilege of importing beer to any place within its borders.<sup>1</sup> The license does not confer the privilege of selling.<sup>2</sup> Compare *Premier-Pabst Sales Co. v. Grosscup*, 298 U. S. 226.

The plaintiffs are domestic corporations and individual citizens of California who sue on behalf of themselves and of others similarly situated. Each is engaged in selling at wholesale at one or more places of business within the

---

<sup>1</sup> The lower courts have differed on this question. See *Triner Corporation v. Arundel*, 11 F. Supp. 145; *Premier-Pabst Sales Corp. v. Grosscup*, 12 F. Supp. 970; *General Sales & Liquor Co. v. Becker*, 14 F. Supp. 348; *Pacific Fruit & Produce Co. v. Martin*, 16 F. Supp. 34. See also the following unreported decisions: *Premier-Pabst Sales Co. v. McNutt*, D. Ind., January 4, 1935; *Philip Blum & Co. v. Henry*, E. D. Wis., March 28, 1936.

<sup>2</sup> Constitution of the State of California, Art. XX, § 22, as amended November 6, 1934; Alcoholic Beverage Control Act, June 13, 1935, c. 330, § 2, (k); § 3; § 5, (8), (13); § 6, (d), (f); § 7; § 49; §§ 10, 11; § 31; Rules of State Board of Equalization, Rule 9, (a), (e).

State beer imported from Missouri or Wisconsin; and has a wholesaler's license which entitles the holder to sell there to licensed dealers beer lawfully possessed, whether it be imported or is of domestic make. For that license the fee is \$50. Each plaintiff has refused to apply for an importer's license, claiming that the requirement discriminates against wholesalers of imported beer; and that, hence, the statute violates both the commerce clause and the equal protection clause. The bill alleges that heavy penalties are exacted for importing, or having in possession, imported beer without having secured an importer's license; that unless enjoined defendants will enforce the statute; that enforcement would subject each of the plaintiffs to irreparable injury; and that the matter in controversy exceeds \$3000.

The several state officials charged with the duty of enforcing the statute, were joined as defendants, and made return to an order to show cause. They assert that the challenged statutory provisions and regulations are valid because of the Twenty-first Amendment, ratified December 5, 1933, which provides, by § 2:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

*First.* The main contention of the plaintiffs is that the exaction of the importer's license fee violates the commerce clause by discriminating against the wholesaler of imported beer. But there is no discrimination against them *qua* wholesalers. Everyone holding a wholesaler's license who is lawfully possessed of any beer, may sell it. The fee exacted for the privilege of selling, and the conditions under which a sale may be made, are the same whether the beer to be sold is imported or domestic or is both. The difference in position charged as a discrimination is not in the terms under which beer may be sold.

It arises from the fact that no one may import beer without securing a license therefor. What the plaintiffs complain of is the refusal to let them import beer without paying for the privilege of importation. Prior to the Twenty-first Amendment it would obviously have been unconstitutional to have imposed any fee for that privilege. The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the commerce clause confers the right to import merchandise free into any state, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the Twenty-first Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business. Compare *Case of the State Freight Tax*, 15 Wall. 232, 274, 277. Thus, the case does not present a question of discrimination prohibited by the commerce clause.

The Amendment which "prohibited" the "transportation or importation" of intoxicating liquors into any state "in violation of the laws thereof," abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the Amendment as saying, in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a rewriting of it.

The plaintiffs argue that, despite the Amendment, a State may not regulate importations except for the purpose of protecting the public health, safety or morals; and that the importer's license fee was not imposed to that end. Surely the State may adopt a lesser degree of regulation than total prohibition. Can it be doubted that a State might establish a state monopoly of the manufacture and sale of beer, and either prohibit all competing importations, or discourage importation by laying a heavy impost, or channelize desired importations by confining them to a single consignee? Compare *Slaughter-House Cases*, 16 Wall. 36; *Vance v. W. A. Vandercook Co. (No. 1)*, 170 U. S. 438, 447. There is no basis for holding that it may prohibit, or so limit, importation only if it establishes monopoly of the liquor trade. It might permit the manufacture and sale of beer, while prohibiting hard liquors absolutely. If it may permit the domestic manufacture of beer and exclude all made without the State, may it not, instead of absolute exclusion, subject the foreign article to a heavy importation fee? Moreover, in the light of history, we cannot say that the exaction of a high license fee for importation may not, like the imposition of the high license fees exacted for the privilege of selling at retail, serve as an aid in policing the liquor traffic. Compare *Phillips v. Mobile*, 208 U. S. 472, 479.

The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment.<sup>3</sup> As we think the language of the Amendment is

<sup>3</sup> *E. g.*, *In re Rahrer*, 140 U. S. 545; *Scott v. Donald*, 165 U. S. 58; *Vance v. W. A. Vandercook Co. (No. 1)*, 170 U. S. 438; *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311; *Seaboard Air Line Ry. v. North Carolina*, 245 U. S. 298; *McCormick & Co. v. Brown*, 286 U. S. 131.

clear, we do not discuss these matters. The plaintiffs insist that to sustain the exaction of the importer's license-fee would involve a declaration that the Amendment has, in respect to liquor, freed the States from all restrictions upon the police power to be found in other provisions of the Constitution. The question for decision requires no such generalization.

*Second.* The claim that the statutory provisions and the regulations are void under the equal protection clause may be briefly disposed of. A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license-fee for the privilege of manufacturing it; and under the California statute is obliged to pay \$750 a year. Compare *Brown-Forman Co. v. Kentucky*, 217 U. S. 563. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license-fee of \$500. Compare *Kidd v. Alabama*, 188 U. S. 730, 732.

*Reversed.*

MR. JUSTICE BUTLER concurs in the result.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## Syllabus.

BOURDIEU *v.* PACIFIC WESTERN OIL CO. ET AL.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
NINTH CIRCUIT.

No. 2. Argued October 12, 1936.—Decided November 9, 1936.

1. Where land withdrawn for oil and gas was entered and patented as a homestead pursuant to the Act of July 17, 1914,—the oil and gas, together with the right to prospect for, mine and remove them, being reserved to the United States,—the patentee was not entitled, under § 20 of the Leasing Act of February 25, 1920, to a preference right to prospect for those minerals or to an oil and gas lease following their discovery. P. 69.

[Section 20 of the Leasing Act provides: "In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, . . . the entryman or patentee, or assigns, . . . if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; . . ."]

2. An Executive Order declared that described public lands were withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States. *Held* that whether or not a "classification" was thus effected, the lands were clearly "withdrawn lands" within the meaning of the Act of July 17, 1914, § 1, and the Leasing Act of February 25, 1920, § 20. Pp. 68, 70.
3. If the merits of the cause may be determined without prejudice to the rights of parties absent and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result. P. 70.
4. Where a bill entirely fails to state any cause of action in the plaintiff, the rights of absent parties are in no way threatened by it, and to enter upon a consideration of the question of their indispensability would be a waste of time. P. 71.
5. That the United States would be an indispensable party defendant if the bill were good, does not deprive the court of jurisdiction to dismiss on the merits a bill which states no cause of action against the private parties named as defendants. P. 71.

80 F. (2d) 774, reversed.

CERTIORARI, 298 U. S. 647, to review a decision that the suit must be dismissed upon the ground that neither the District Court nor the court below had jurisdiction, in as much as the United States was thought to be an indispensable party. The suit was to declare a trust on certain land with respect to the right to prospect for and remove oil and gas. The District Court decided the case on the merits and dismissed the bill.

*Mr. Archer B. Dorman*, with whom *Messrs. Jefferson P. Chandler* and *Howard W. Wright* were on the brief, for petitioner.

*Mr. Herbert W. Clark*, with whom *Messrs. Felix T. Smith*, *George W. Nilsson*, and *Herman Phleger* were on the brief, for respondents.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This is a suit brought by petitioner against respondents to have impressed in his favor a trust in respect of a portion of a lease, executed by the United States, of oil and gas lands in the State of California.

The bill alleges that petitioner, since March, 1919, has been the owner and in possession of certain legal subdivisions of section 30, Township 21 South, Range 17 East, Mount Diablo Meridian, Fresno County, California, embracing 322.89 acres; that by reason of such ownership, he has been at all times since February 25, 1920, entitled to a preference right for a permit to prospect on such land for oil and minerals and, in case of discovery thereon, to a lease under the provisions of § 20 of the Leasing Act of February 25, 1920, 41 Stat. 437, 445, which provides—  
“In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, . . . the entryman or patentee, or assigns, . . . if

the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; . . .” The bill further alleges that petitioner made a *bona fide* entry of the land in question as agricultural; that the land was not withdrawn or classified as mineral at the time of his entry; that the entry was patented to him with a reservation of oil and gas to the United States under the provisions of the Act of July 17, 1914, 38 Stat. 509. In May, 1921, it is alleged, one of the defendants illegally and wrongfully and with knowledge of petitioner’s rights, secured a purported permit to prospect for oil and gas on a large tract, which included the land described; that the issue of the permit was in violation of petitioner’s preference right and operated to deny his right to procure a United States oil-and-gas-prospecting permit to prospect thereon and to a lease in case of discovery, for the reason that no personal notice, as required by regulations of the Interior Department and the provisions of the Leasing Act, or notice of any kind, was given to petitioner, who had no notice of the issue of such purported permit until about the month of July, 1928. The bill further alleges that Pacific Western Oil Company acquired from the original permittee all his right, title and interest in and to the permit, and that by reason thereof a lease was executed by the Secretary of the Interior to that company, granting the exclusive right to drill and explore for oil and minerals in said land; that such company is now the legal owner of the lease, and wrongfully holds it in violation of petitioner’s prior and superior equitable rights; and that the other respondents named have or claim, adversely to petitioner, some interest in the lands in question and the lease covering the same.

An amendment to the bill, made by stipulation of the parties, alleges that petitioner’s entry was made on March

6, 1919, and patent issued to him on October 7, 1925. Copies of the entry, with Land Office endorsements, and of the patent are attached and made part of the bill. The entry is in usual form and concludes, over the signature of petitioner, with the words, "Subject to provisions and reservations and limitations of Act of July 17, 1914," and was stamped by the Land Office, "Application made in accordance with and subject to the provisions and reservations of the Act of July 17, 1914."

The patent expressly excepts and reserves to the United States all the oil and gas in the lands patented, and to it, or persons authorized by it, the right to prospect for, mine and remove therefrom such oil and gas upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914. Section 1 of that act provides that lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, etc., shall be subject to entry, if otherwise available, under the nonmineral land laws, when made with a view of obtaining title "with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified . . . together with the right to prospect for, mine, and remove the same; . . . *Provided*, That all applications to locate, select, enter, or purchase under this section shall state that the same are made in accordance with and subject to the provisions and reservations of this Act." C. 142, 38 Stat. 509.

There was also attached to the stipulation a copy of an order of withdrawal made by the President December 30, 1910, as follows:

"It is hereby ordered that the following described lands be, and the same are hereby withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation affecting the use and disposal of petroleum lands belonging to the United States, subject to all of the provisions, limitations, exceptions, and con-

ditions contained in the Act of Congress entitled 'An Act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910: . . ."

Among the lands described is the land here in question.

In the district court, respondents moved to dismiss the bill on the grounds, first, that it did not state facts sufficient to constitute a valid cause of action in equity or at law against them or either of them; second, that the United States was an indispensable party to a complete determination of the suit; third, that petitioner was guilty of laches and his cause of complaint was stale. The district court denied the motion without prejudice to a renewal later and, after answer by respondents, proceeded to a hearing on the merits. After such hearing it held that petitioner was not entitled to a preference right nor to a lease of the lands in question; that respondents Kettleman Oil Corporation and Pacific Western Oil Company were the owners in equal proportions of the oil and gas lease executed by the Secretary of the Interior to the latter company; and that petitioner be denied all relief.

An appeal followed to the court of appeals. That court, without passing upon the merits, held that the United States was an indispensable party, which could not be sued, for lack of its consent, for which reason that court and the district court were without jurisdiction; and upon that ground it dismissed the suit. 80 F. (2d) 774

The case presented by the bill comes to this: Petitioner asserts a preference right to prospect for oil and other minerals and, if successful, to obtain a lease under § 20 of the Leasing Act of 1920, in virtue of his homestead entry in 1919 and patent in 1925. It appears, however, from the allegations of his bill and the exhibits attached that the entry was subject to the provisions of the Act of July 17, 1914, among which is the limitation reserving

to the United States all oil and minerals in the lands entered on account of which the lands so entered had been withdrawn or classified "together with the right to prospect for, mine, and remove the same." The lands here in question when entered were within the terms of the Executive order of 1910, by which order they were "withdrawn from settlement, location, sale or entry, and reserved for classification . . ." Whether a "classification" of the lands was effected by the order we need not determine since it is clear that they were "withdrawn" by the definite and unambiguous words of the order; and, as shown by the bill, it is enough to exclude complainant from the privileges of the Act of 1920 that the lands were either withdrawn or classified. It follows that the motion to dismiss on the first ground stated was well taken and should have been granted and the case ended without a hearing, which the district court unnecessarily ordered—evidently out of abundance of caution.

Since, plainly, the bill of complaint did not state a cause of action, the United States could have no interest in the case requiring its presence as a party; and the inquiry as to whether it was an indispensable party, which would have been entirely proper under a good bill, was here wholly gratuitous.

The rule is that if the merits of the cause may be determined without prejudice to the rights of necessary parties, absent and beyond the jurisdiction of the court, it will be done; and a court of equity will strain hard to reach that result. *West v. Randall*, 2 Mason 181, 196 (opinion by Mr. Justice Story); *Cole Silver Mining Co. v. Virginia & G. H. W. Co.*, 1 Sawyer 685, 689 (opinion by Mr. Justice Field); Story's Equity Pleadings, 8th ed., §§ 77, 96. And see *Russell v. Clarke's Executors*, 7 Cranch 69, 98; *Elmendorf v. Taylor*, 10 Wheat. 152, 167-168. Cf. Equity Rule 39.

We refer to the rule established by these authorities because it illustrates the diligence with which courts of equity will seek a way to adjudicate the merits of a case in the absence of interested parties that cannot be brought in. While the rule as stated is intended for the benefit of a plaintiff whose bill sets forth a cause of action which he should, if possible, be given an opportunity to prove, the principle it embodies applies with equal, if not greater, reason to a case like this where the bill entirely fails to do so. In such a case, the obvious reply of the court to a suggestion that other parties are indispensable is that—since the bill states no cause of action against anyone, the rights of absent parties are in no way threatened by it, and to enter upon a consideration of the question of their indispensability would be a vain waste of time.

If it be urged that the United States is an indispensable party and, hence, that the court may not proceed even to inquire whether the bill states a cause of action, the answer is that good sense suggests precisely the contrary. For a mere inspection of the bill at once discloses that it states no cause of action and, therefore, the United States is not an indispensable party, since it cannot be prejudiced by, and has no interest requiring protection in, a proceeding which at the threshold is seen to be without substance. Nothing is to be gained by an inquiry into the status of absent parties when it is certain upon the face of complainant's bill that in no event will he be entitled to a decree in his favor.

We are of opinion that the court of appeals should have disposed of the case in accordance with that view; and that the district court should have dismissed the bill upon the first ground stated in respondent's motion. Upon the question whether, upon a good bill, the United States would be an indispensable party, we deem it unnecessary to express an opinion.

The decrees of both courts below must, therefore, be reversed, and the cause remanded to the district court with directions to enter a decree in accordance with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

MISSOURI *v.* ROSS, TRUSTEE, ET AL.

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

No. 3. Submitted October 12, 1936.—Decided November 9, 1936.

1. Under § 64 of the Bankruptcy Act, claims of a State and its municipality for taxes are of equal rank, and both are in the sixth of the orders of priority prescribed by paragraph (b) of that section. P. 74.
2. This Court will hesitate to disturb a long and uniform construction given to a federal statute by the lower federal courts; and the fact that the provision so construed has not been changed by Congress, although provisions closely related to it have been amended, imports a legislative adoption of such construction. P. 75.

80 F. (2d) 329, affirmed.

CERTIORARI, 297 U. S. 702, to review the affirmance of an order of the bankruptcy court which confirmed an order of the referee prorating available funds to claims of a State and a city for taxes, denying priority to the State.

*Mr. Gilbert Lamb*, with whom *Mr. Roy McKittrick*, Attorney General of Missouri, was on the brief, submitted for petitioner.

*Mr. Edgar H. Wayman* submitted for respondents.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The respondent Ross is a trustee in bankruptcy. The estate of the bankrupt was indebted to the State of Missouri for taxes in the sum of \$8,366.38, with interest, and to the City of St. Louis for taxes in the sum of \$8,972.30 and interest. The funds of the estate were insufficient to pay these taxes in full. The referee held that the claims of the state and city were of equal rank under § 64 of the Bankruptcy Act, and that the available funds should be prorated between the claims according to their respective amounts. He therefore denied the motion of the state for priority.

The order of the referee was approved and confirmed by the district court; and upon appeal to the circuit court of appeals, the order of the district court was affirmed. 80 F. (2d) 329.

The referee and both courts proceeded upon the theory that by § 64 b, ¶ 6, of the Bankruptcy Act, all taxes, whether of the United States, state, county, district or municipality, were placed on a parity. We agree with that view.

Section 64a requires the payment of all taxes "legally due and owing by the bankrupt to the United States, State, county, district, or municipality, in the order of priority as set forth in paragraph (b) hereof." Paragraph (b) prescribes the order of priority in which debts shall be paid in advance of the payment of dividends to creditors, the sixth order being "taxes payable under paragraph (a) hereof," and the seventh order being "debts owing to any person who by the laws of the States or the United States is entitled to priority." The text of paragraph (b) in full appears in the margin.<sup>1</sup>

<sup>1</sup>"(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates,

*First.* By this enumeration it is clear that Congress intended to establish seven distinct classes of indebtedness and establish their priority in respect of one another in the order set forth. When it came to the sixth paragraph, it embodied taxes payable under paragraph (a), there enumerated as taxes due the United States, state, county, district, or municipality. The intention clearly was to put these various governmental units in respect of their taxes in a single class upon terms of equality with one another. Since Congress was at pains to set forth the order of priority in distinct paragraphs under separate numerals, we

---

and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceeding, not to exceed \$600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: *Provided*, That the term 'person' as used in this section shall include corporations, the United States and the several States and Territories of the United States." [11 U. S. C. 104.]

are unable to reach any other conclusion. If it had been intended to establish priorities as among the governmental units named in the order in which they appear in the 6th paragraph, the very structure of § 64 b plainly suggests that each would have appeared under a separate numeral instead of all being grouped under a single numeral.

In *New Jersey v. Anderson*, 203 U. S. 483, 489, this court specifically said: "The requirement of the present law is a wide departure from the Act of 1867, and specifically obliges the trustee to pay all taxes legally due and owing, without distinction between the United States and the State, county, district, or municipality." It is true that this statement was not necessary to the decision; but it nevertheless correctly states our view as to the meaning of the clause under consideration, and is now definitely approved. The decision in that case was made nearly thirty years ago, since which time the lower federal courts have almost unanimously followed the rule there stated. We deem it unnecessary to review the decisions, since that has been carefully done by the referee in his certificate, and by the court in its opinion. Among the cases are the following: *In re A. E. Fountain, Inc.*, 295 Fed. 873, 874; *In re Wyley Co.*, 292 Fed. 900, 902; *In re A. J. Waterman Mfg. Co.*, 291 Fed. 589, 594. These decisions are plainly correct; but if they were doubtful, we should at this late day hesitate to disturb them. *United States v. Ryan*, 284 U. S. 167, 174. Moreover, Congress in the face of these decisions has permitted the clause as it now appears in paragraph (6) to stand for many years without change in its phraseology, although amending that portion of the Bankruptcy Act in other particulars. This is persuasive evidence of the adoption by that body of the judicial construction. *United States v. Ryan, supra*, at p. 175; *Sessions v. Romadka*, 145 U. S. 29, 41-42.

*Second.* The state urges that the question is controlled by paragraph (7), which gives priority in the seventh degree to "debts owing to any person who by the laws of the States . . . is entitled to priority." Section 3152, Rev. Stat. Missouri, 1929, provides that in cases of insolvency, debts due the state shall be first satisfied, and that this priority shall extend to cases in which an act of bankruptcy is committed. The contention is that unpaid taxes constitute debts, and therefore fall within the seventh paragraph. But this conclusion must be rejected; for conceding that taxes are debts, they are carved out of the general provisions of paragraph (7) and put in a special class under paragraph (6), and thus fall within the rule that special provisions prevail over general ones which, in the absence of the special provisions, would control. *Townsend v. Little*, 109 U. S. 504, 512; *McKee v. United States*, 164 U. S. 287, 294; *Kepner v. United States*, 195 U. S. 100, 125; *In re Rouse, Hazard & Co.*, 91 Fed. 96, 101; *In re Slomka*, 122 Fed. 630, 631.

*Decree affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## Syllabus.

FOUST, ADMINISTRATOR, *v.* MUNSON STEAMSHIP LINES.

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

No. 19. Argued October 15, 1936.—Decided November 9, 1936.

1. A claim against a steamship corporation under § 33 of the Merchant Marine Act is provable and dischargeable in a proceeding to reorganize the corporation under § 77 B of the Bankruptcy Act. P. 81.
2. In a proceeding to reorganize a steamship corporation under § 77 B of the Bankruptcy Act, the District Court has jurisdiction to enjoin the prosecution of an action at law instituted against the corporation before the petition for reorganization was filed, by the administrator of a deceased seaman, seeking to recover damages, under § 33 of the Merchant Marine Act, for alleged negligence of the corporation, assigned as the cause of the seaman's death. P. 82.
3. The granting of the injunction rests in the sound discretion of the court. P. 83.
4. Exercise of the power to stay suits against the debtor, conferred by § 77 B, (c) (10), of the Bankruptcy Act, must accord with the particular circumstances of the case and be guided by justice to the claimants, the debtor, and the estate. P. 83.
5. Reorganization proceedings under § 77 B of the Bankruptcy Act, are not inherently inconsistent with jury trial for the liquidation of claims under § 33 of the Merchant Marine Act. P. 84.
6. In support of an application for leave to prosecute an action at law which had been stayed by an injunction issued *ex parte* in a proceeding to reorganize the debtor corporation under § 77 B of the Bankruptcy Act, there was evidence tending to show that the estate would not be unjustly affected, because the debtor's liability in the action was covered by insurance and defense of the action would be borne by the insurer. *Held*:
  - (1) That the burden was upon the debtor and the trustees in reorganization to prove that the estate would be affected unjustly. P. 84.
  - (2) Definite evidence respecting the insurance being within the control of the debtor and trustees, their failure to produce it tends

strongly to discredit their opposition to the application and, by inference, to support it. P. 85.

(3) In the absence of a showing of facts sufficient to require a finding that liquidation of applicant's claim by jury trial would encumber the reorganization proceedings, the debtor and trustees were not entitled to have the injunction continued in force against applicant. P. 86.

(4) It was abuse of discretion to deny the application even if, as assumed by the court below, the insurance was less than the applicant's full claim—this partly in view of doubts whether, under the New York law, the insurer would be liable if the claim were liquidated through reference to a master in the reorganization proceeding, rather than through trial by jury. P. 87.  
82 F. (2d) 289, reversed.

CERTIORARI, 298 U. S. 649, to review the affirmance of an order of the District Court in reorganization proceedings under § 77 B of the Bankruptcy Act. The order denied leave to prosecute an action at law for death by negligence, and referred the claim to a special master. For an opinion of the court below earlier than the one cited above, see 80 F. (2d) 859.

*Mr. Simone N. Gazan* for petitioner.

*Mr. Arthur M. Boal*, with whom *Mr. Alfred N. Heuston* was on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Petitioner is the administrator of the estate of Coy E. Foust and, February 1, 1934, commenced an action at law under § 33 of the Merchant Marine Act of 1920<sup>1</sup> in

<sup>1</sup>" . . . in case of the death of any seaman as a result of any . . . personal injury [suffered in the course of his employment] the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury. . . . Jurisdiction in

the United States court for the southern district of New York against the Munson Steamship Lines. His complaint alleges that, February 27, 1930, while deceased was at work for defendant as seaman on its steamship *Mundelta*, his death was caused by defendant's negligence, and, for the benefit of petitioner as surviving father, prays damages in the sum of \$15,000. Defendant's answer denies the negligence charged against it and alleges decedent's death was caused by risks assumed and his own negligence.

June 11, 1934, defendant filed its petition for reorganization under § 77B of the Bankruptcy Act.<sup>2</sup> The petition did not refer to the administrator's claim or to the action brought for its enforcement. Two days after it was filed, the court entered a decree that approved the petition as properly filed, declared the debtor unable to meet its debts as they mature, determined it required relief under § 77B, appointed trustees to take and operate its property and, inter alia, enjoined the institution or prosecution of any action at law against the debtor.

January 26, 1935, petitioner applied for leave to prosecute his suit and supported his application by an affidavit of his attorney suggesting: The debtor is covered by liability insurance; if petitioner gets judgment, he will sue insurer to enforce its liability under § 109 of the Insurance Law of New York;<sup>3</sup> the stay is unjust to the sur-

---

such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." 46 U. S. C., § 688. *Panama R. Co. v. Johnson*, 264 U. S. 375, 391. *Lindgren v. United States*, 281 U. S. 38, 40.

<sup>2</sup>Added by § 1, Act of June 7, 1934, 48 Stat. 911, 11 U. S. C., § 207.

<sup>3</sup>"No policy of insurance against loss or damage resulting from accident to or injury suffered by an employee . . . shall be issued or delivered in this state . . . unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the

viving father, gives no advantage to the debtor and benefits only the insurer. The affidavit asserts that plaintiff is entitled to a jury trial and that prosecution of his action at law should not be stayed. The trustees by affidavit of one of their attorneys opposed petitioner's application but did not say that the debtor is not protected by insurance. The court denied petitioner's motion and ordered that a special master be appointed to report on the claim. Petitioner applied to the Circuit Court of Appeals for leave to appeal. After hearing the parties, it filed an opinion announcing that appeal would be granted but that the argument would be confined to the question whether the action can be stayed. Later the court entered an order unqualifiedly allowing the appeal. *Meyer v. Kenmore Hotel Co.*, 297 U. S. 160, 165.

After argument, limited as suggested, the court in its first opinion on the appeal held petitioner's claim provable and dischargeable and the district court empowered to stay prosecution of the suit. 80 F. (2d) 859. Then there remained for consideration the question—which had not been argued—whether in the exertion of that power the district court abused its discretion. The court suggested that, if petitioner would stipulate not to use as a claim against the estate any judgment he might recover, there could be no objection to allowing his action to proceed. It held the appeal should not be finally determined without giving the parties a chance to present their views as to whether the district court ought not to allow the action to proceed and directed that, if petitioner failed to file such a stipulation within a specified time, supplemental

---

person insured shall not release the insurance carrier . . . and stating that in case execution against the insured is returned unsatisfied . . . because of such insolvency or bankruptcy, then an action may be maintained by the injured person, or his or her personal representative," against the insurer for the amount of the judgment not exceeding the amount of the policy.

briefs would be received relating to the propriety of the exercise of the judicial discretion of the district court. Petitioner having declined so to stipulate, the parties submitted their briefs. In his, petitioner stated that under the insurance policy the first \$2,500 of petitioner's claim would be borne by the insured; that the value of the claim was not over \$5,000 and that such stipulation would mean that the administrator would relinquish a substantial part of his claim. Upon consideration of the additional briefs the court in its second opinion on the appeal held that the district court had not abused discretion, and affirmed the order. 82 F. (2d) 289.

As a reason in support of the stay, the first opinion states that jurors often return far larger verdicts in negligence cases than reason justifies, and that the trustees have a right to take that fact into account and not to accede to a method for the liquidation of tort claims that is unusual in bankruptcy unless the ordinary method of proof before a special master would imperil the claimant's rights. In its second opinion the court adopted and emphasized the fact stated in appellant's supplemental brief to the effect that the policy covered not over one-half the value of petitioner's claim. It decided that, as the debtor's estate had a substantial interest in the amount of the recovery, the district judge did not abuse his discretion. The court said: "That mode was more convenient and expeditious than any other and was plainly an advantage to the estate." It added: "If the claim had been fully covered by the insurance so that the carrier was primarily liable for the entire damage, we might have reached a different conclusion; but, under the circumstances, we think the determination of the court below was justified," and affirmed the order appealed from.

The Circuit Court of Appeals rightly held petitioner's claim provable and dischargeable and the district judge empowered to stay proceedings in the suit.

Section 77 B gives to the district judge power, to be exerted in accordance with its provisions, to alter the rights of creditors or any class of them. Subdivision (b) (10) declares the term "creditors" shall include, for all the purposes of the section, the holders of claims of whatever character and whether or not they would otherwise constitute provable claims under the Bankruptcy Act; that the term "claims" includes debts, securities, other than stock, liens, or other interests of whatever character. Subdivision (h) directs that the final decree shall discharge the debtor from its debts and liabilities. Subdivision (c) (8) provides that, if a plan is not proposed or accepted, or if proposed and accepted but not confirmed, the court may direct the estate to be liquidated. Subdivision (k) (4), upon order for liquidation, authorizes to be proved as provided in § 57 claims provable under § 63,<sup>4</sup> but declares that none of the sections mentioned in subd. (k) except subs. (g), (i), (j) and (m) of § 57<sup>5</sup> and subs. a and e of § 70<sup>6</sup> shall apply in proceedings under § 77 B unless and until an order has been made directing liquidation of the estate. Mere reading of pertinent parts of the above-mentioned provisions makes it plain that "creditors" and "claims" as used in proceedings under § 77 B are more comprehensive than in the Act before the addition of that section. See *American Surety Co. v. Marotta*, 287 U. S. 513, 517. Undoubtedly "creditors," "claims" and "liabilities" to

---

<sup>4</sup> 11 U. S. C., § 103.

<sup>5</sup> These subdivisions relate to claims: (g) of creditors who have received preferences; (i) secured by individual undertaking of another; (j) based on debts owing the United States, a State, etc., as a penalty or forfeiture, and (m) of any estate being administered in bankruptcy. 11 U. S. C., § 93.

<sup>6</sup> These declare: (a) That the trustee succeeds to the bankrupt's title as of date of adjudication; and (e) may avoid any transfer which any creditor of bankrupt might have avoided. 11 U. S. C., § 110.

be dealt with in the reorganization proceeding include petitioner, the cause of action he asserts and the judgment he seeks to recover.

Section 77 B (c) (10), enlarging power conferred by § 11,<sup>7</sup> broadly declares the judge "may enjoin or stay the commencement or continuation of suits against the debtor until after final decree." The exclusive jurisdiction given the court over the debtor and his property, subd. (a), does not imply that the commencement or the carrying on of suits against the debtor must be enjoined or that all claims must be referred to a master for consideration and report. Subd. (c) (11). See *In re Prudence Bonds Corp.*, 75 F. (2d) 262, 263. The power to stay does not imply that it is to be, or appropriately may be, exerted without regard to the facts. The granting or withholding of injunction is left to the discretion of the court.

Was the denial of petitioner's application for leave to prosecute his action at law an abuse of discretion?

The record contains no opinion or statement of the district judge to disclose the grounds on which he rested his denial. In reorganization proceedings neither the Act nor any rule of law entitles debtors or trustees as a matter of right to enjoin the trial of actions such as that brought by petitioner. The court is to exercise the power conferred by subd. (c) (10) according to the particular circumstances of the case and is to be guided by considerations that under the law make for the ascertainment of what is just to the claimants, the debtor and the estate. *Osborn v. U. S. Bank*, 9 Wheat. 738, 866. *The Styria v. Morgan*, 186 U. S. 1, 9. *Langnes v. Green*, 282 U. S. 531, 541. *Burns v. United States*, 287 U. S. 216, 222-223. By § 33 of the Merchant Marine Act, under which the petitioner sued, Congress ordained that upon claims for personal

<sup>7</sup> 11 U. S. C., § 29.

injuries or death suffered in the course of their employment seamen or their personal representatives may maintain actions at law for damages with the right of trial by jury. The reorganization proceedings are not inherently inconsistent with jury trial for the liquidation of such claims. Unless satisfactorily shown that prosecution of petitioner's action would embarrass the administration of the debtor's estate, the district court should have granted leave.

There is no support for the stay in the suggestion of the Circuit Court of Appeals to the effect that in negligence cases juries often give verdicts larger than reason justifies. It is to be remembered that if without support in the evidence or contrary to the law they may be set aside. *Chicago, M. & St. P. Ry. v. Coogan*, 271 U. S. 472, 478. *Gunning v. Cooley*, 281 U. S. 90. *Minneapolis, St. P. & S. S. M. Ry. v. Moquin*, 283 U. S. 520, 521. It must be assumed that the courts by appropriate exertion of their power will adequately safeguard against verdicts shown to be arbitrary and unjust. While § 33 of the Merchant Marine Act remains in force courts may not assume that claims there specified cannot be justly liquidated by jury trial. Even if shown generally to attend jury trials, the suggested danger would not warrant denial of petitioner's application. We have recently said: "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U. S. 474, 486.

The record does not sustain the statement that the mode of liquidation ordered is an advantage to the estate. On the contrary, the petitioner's verified application for leave to appeal states that the attorney for debtor in the action at law "represents the insurance carrier and consequently the defense of this case will impose no burden

whatsoever, either financial or otherwise, upon the trustees herein or their counsel." That statement has not been denied; nor has it been suggested by the debtor or trustees that the insurer is not bound under the policy at its own expense to defend the suit.

Respondent suggests that the record fails to show that the policy was issued in New York and insists that, unless it was, the insurance may not be taken into account in determining whether the district court abused its discretion. The point is without merit. The affidavit submitted by petitioner states in substance that the debtor is protected by liability insurance and that any judgment recovered by petitioner on his claim will have to be paid by the insurer; that if allowed to establish his claim by jury trial petitioner will then sue insurer under § 109 of the New York Insurance Law for the amount, if any, awarded to him and that the only party benefiting by the delay is the insurance company. It is true that the affidavit does not directly state that the policy is governed by § 109 or that it contains the provisions required by that section, but the affidavit is sufficient adequately to suggest that petitioner claimed that insurer's liability to the debtor is in accordance with the provisions of that section. The debtor and trustees had notice of his application for release from the stay; the trustees appeared to oppose it. They failed to produce the policy or to disclose any of its provisions or whether it was issued in New York.

The injunction was a comprehensive one plainly broad enough to cover petitioner's claim; it was entered without disclosure of the existence of that claim or the pending suit and before petitioner had opportunity to be heard on the propriety of making it apply to him. On his application for leave to bring his suit to trial petitioner was seeking to remove the stay; and under the circumstances the position of debtor and trustees opposing him

and insisting that the restraint be continued was not substantially unlike that of suitors for injunction; the issue was whether liquidation of his claim in that manner would unjustly affect the estate. The facts bearing on that question were known to, or within the control of, the debtor and trustees. They had, and readily could submit to the court, definite evidence in respect of the insurance. Their failure to bring it forward tends strongly to discredit their opposition to petitioner's motion. The circumstances warrant the inference that the facts are not more favorable to respondent than those indicated by the affidavit as the grounds on which the petitioner sought release from the stay, and that, if disclosed, the policy or other evidence as to the insurance would not tend to support injunction against petitioner. *Runkle v. Burnham*, 153 U. S. 216, 225. *Kirby v. Tallmadge*, 160 U. S. 379, 383. *Mammoth Oil Co. v. United States*, 275 U. S. 13, 52. The burden of frank disclosure was upon the debtor and trustees. *Keystone Driller Co. v. General Excavator Co.*, 290 U. S. 240, 244. Cf. 2 High on Injunctions, 4th ed., § 1474. In the absence of a showing of facts sufficient to require a finding that liquidation of petitioner's claim by jury trial would encumber the reorganization proceedings, the debtor and trustees were not entitled to have the injunction continued in force against petitioner. *Langnes v. Green*, 282 U. S. 531, 541.

The Circuit Court of Appeals dealt with the case according to the facts indicated in petitioner's supporting affidavit as modified by the statement taken from his supplemental brief to the effect that the policy did not cover the first \$2,500 of the debtor's liability. Petitioner emphasizes the fact that the record does not show the modification and says that his statement as to the amount deductible was made in explanation of his refusal

to stipulate that he would not file against the estate a claim based on the judgment, if any, obtained in the pending suit. 80 F. (2d) 861. He earnestly insists that the court erred in predicating its decision upon that statement. As in the view we take of the case the fact that debtor is only partially insured is not of controlling significance, we do not pass upon that assignment of error.

Assuming that the insurance did not extend to the first \$2,500 and the value of petitioner's claim was not more than \$5,000, we are of opinion that the order appealed from was an abuse of the discretion vested in the district court by § 77B (c) (10). If petitioner's claim shall be established upon report of a master, grave doubts will arise as to the liability of the insurer to the petitioner. The case would not be within the words of § 109 of the New York Insurance Law. Attempt by petitioner to recover from insurer would encounter difficult questions of construction of a state statute as to which federal courts are not the final authority. *Morehead v. Tipaldo*, 298 U. S. 587. The imposition of that method of establishing petitioner's claim is liable to expose him to serious peril of substantial loss. On the other hand, if petitioner is permitted to liquidate his claim by jury trial and shall get judgment, and execution thereon shall be returned unsatisfied because of the debtor's insolvency, his case would appear to be plainly within the words and intent of § 109. That section applying, petitioner would be entitled to maintain an action against the insurer for the amount of his judgment but not exceeding the amount of insurer's liability to the debtor under the policy.

There is nothing in the record to warrant a finding that liquidation of petitioner's claim by trial of his pending action at law would hinder, burden, delay or be at all inconsistent with the pending corporate reorganization

proceeding under § 77B. Injunction against that method of establishing the debtor's liability, if any there is, ought not to stand.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, *v.* ILLINOIS LIFE INSURANCE CO.

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

No. 27. Argued October 16, 1936.—Decided November 9, 1936.

1. "Reserve funds required by law,"—as intended by § 203 (a) (2) of the Revenue Act of 1928 permitting the deduction of a percent. of such funds from gross income in computing the net income of a life insurance company—are reserves which directly pertain to life insurance. *Helvering v. Insurance Co.*, 294 U. S. 686. P. 90.
  2. Such reserves do not include "survivorship investment funds," accumulated by setting aside part of the premiums paid the insurance company on 20-payment life policies, from which funds stipulated payments will be made to those of the policyholders who survive the 20 year period. *Id.*
- 80 F. (2d) 280, reversed.

CERTIORARI, 298 U. S. 650, to review the affirmance by the court below of a decision of the Board of Tax Appeals, 30 B. T. A. 1160-62, which sustained a deduction made by the insurance company in its income tax return.

*Mr. Thurman Arnold*, with whom *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key*, *Norman D. Keller*, and *Edward H. Horton* were on the brief, for petitioner.

*Mr. Samuel B. Kraus*, with whom *Mr. William M. Klein* was on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

In its income tax return for 1929, respondent made a deduction of \$133,755.71. The Board of Tax Appeals held the deduction rightly taken, 30 B. T. A. 1160, 1162; the Circuit Court of Appeals affirmed. 80 F. (2d) 280. Upon petitioner's insistence that the decision below conflicts with *Helvering v. Insurance Co.*, 294 U. S. 686, we granted this writ.

The case involves a construction of a clause of § 203 (a) (2), Revenue Act of 1928, 45 Stat. 842, which declares that, in case of a life insurance company, net income means gross income less, among other permissible deductions, an amount equal to four per cent of the mean of the reserve funds required by law and held at the beginning and end of the taxable year. That provision is a reenactment of § 245 (a) (2), Revenue Act of 1921, which in *Helvering v. Insurance Co.* we held not to apply to assets reserved by a life insurance company against matured, unsurrendered and unpaid coupons attached to its policies. That decision rests upon the ground that the reserves in respect of the coupon liability were not essentially insurance reserves which alone constitute the base on which deduction is computed. The question now for decision is whether respondent's assets reserved in 1929 in respect of its survivorship investment funds are included in that base.

The reserves in question conveniently may be described by reference to a typical policy. Applicable to age 35, it contains the company's agreement, upon death of the insured, to pay \$10,000 to the beneficiary; the annual premium is \$379.90, payable for 20 years. The company also agrees that, out of each year's premium after the first, \$64.60 will be placed in the survivorship investment fund applicable to policies on the survivorship investment plan issued in the same calendar year; that no

deduction shall be made from the fund; that all contributions to it shall be accumulated at three and a half per cent compound interest; that, if the insured shall survive the twentieth anniversary of the policy, the company will apportion to the policy as a survivorship investment a sum bearing the same proportion to the total in the fund as the contributions from premiums paid on that policy bear to the aggregate contributions from premiums paid on all policies in the same class in force at the end of 20 years. Thus, the entire fund is divided among the persistent surviving contributors. The policy provides for optional settlements at the end of 20 years: (A) The insured may continue the policy as one fully paid up and in addition receive either cash payment of the survivorship investment apportioned to it or, if then insurable, a fully paid up life insurance policy for such amount as would be purchased by the survivorship investment. (B) The insured may surrender the policy and receive payment of the cash value, \$6,100, and in addition the survivorship investment.

The mean of petitioner's liabilities in respect of the survivorship investment funds at the beginning and end of 1929 was \$3,343,982.67, four per cent of which is the item in controversy.

The phrase "required by law" includes only reserves that directly pertain to life insurance. Other reserves, even though required by state statutes regulatory of the business authorized to be carried on by life insurance companies, are not included. Under these policies the company's liabilities on account of the investment funds are independent of those attributable to life insurance risks. The right to participate in the investment funds is not dependent upon death of the insured. The company's liability is the total of contributions to the fund plus the interest agreed to be paid. It is bound to dis-

charge this liability at the end of 20 years. Its life insurance liability arises upon the death of the insured. Ascertainment of the reserves attributable to that liability involves consideration of the amount contributed to them out of premiums plus interest for a period estimated on the basis of mortality.<sup>1</sup> The survivorship investment fund feature of these policies has no relation to life insurance risks. Under our decision in *Helvering v. Insurance Co., supra*, reserves in respect of that feature are not covered.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>1</sup> The law of Illinois, under which respondent was organized, declares: "All valuations made by it [the Department of Trade and Commerce] or by its authority shall be made upon the net premium basis. The legal minimum standard for valuation of contracts . . . shall be the American Experience Table of Mortality with interest at 3½ per centum per annum." Cahill's Illinois Revised Statutes (1929), c. 73, par. 331.

It is also declared: ". . . that if any company shall issue any non-participating policy under the terms of which any stipulated part of premiums received is to be placed in a separate fund for subsequent apportionment, such company shall furnish the Department of Trade and Commerce each year . . . a statement" concerning the fund so provided for "and the amount of said fund at the end of the year; which shall be carried as a distinct and separate reserve liability of the company for the benefit of the classes of policies from the premium payments on which the sum was accumulated. No part of said fund prior to the time of distribution stipulated in the contract shall be considered in determining the loan and cash and other surrender values provided for by this Act. . . . No such policy shall be issued which by its terms shall provide that more than twenty-five per cent of the annual premium shall be placed in such fund. . . ." *Idem*, par. 375, § 5-c.

## WAINER ET AL. v. UNITED STATES.

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

No. 51. Argued October 12, 1936.—Decided November 9, 1936.

1. Federal statutes taxing the carrying on of the wholesale liquor business and imposing penalties for so doing without the payment of the tax were not in direct conflict with the National Prohibition Act and were reenacted by the Act of November 23, 1921,—the "Willis-Campbell Act." P. 93.
2. Such a tax is not a licensing of the liquor business, but is an excise upon the doing of it, whether lawfully or unlawfully. *Id.* 82 F. (2d) 305, affirmed.

CERTIORARI, 298 U. S. 652, to review the affirmance of a sentence for dealing in liquor without having paid the special tax.

*Mr. John E. Dougherty*, with whom *Messrs. Harry C. Heyl* and *Irwin S. Rubelle* were on the brief, for petitioners.

*Mr. Gordon Dean* argued the cause, and *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Mr. Mahlon D. Kiefer* filed a brief, for the United States.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The petitioners were convicted and sentenced in the District Court under an indictment, the second count of which charged them with conducting the business of wholesale liquor dealers without having paid the special tax imposed by the federal revenue laws. The judgment was affirmed by the Circuit Court of Appeals.<sup>1</sup> Certiorari was granted limited to the question whether the statute

<sup>1</sup> 82 F. (2d) 305.

upon which the second count of the indictment was based was repealed by the National Prohibition Act<sup>2</sup> and has not been reënacted.

Many of the existing revenue acts imposing taxes in respect of manufacture and sale of intoxicating liquors were superseded by the National Prohibition Act.<sup>3</sup> The effect of § 5 of the Willis-Campbell Act<sup>4</sup> was to reënact all such laws in existence when national prohibition became effective, save such as were in direct conflict with any provision of the National Prohibition Act or the Willis-Campbell Act.<sup>5</sup> The statutes taxing the business of conducting a wholesale liquor business and imposing the penalties for so doing without the payment of the tax<sup>6</sup> were not in direct conflict with the prohibition act and were, therefore, reënacted.<sup>7</sup> The difficulty of paying the excise upon the privilege of carrying on a business which is prohibited does not preclude the prescription of sanctions for non-payment.<sup>8</sup> Petitioners insist it is a contradiction in terms to say the laws of the United States at the same time prohibit and license an occupation. The contention is based on misconception of the nature of the exaction. The United States has not licensed the liquor business but, as is clearly within its power, has laid an

---

<sup>2</sup> Act of October 28, 1919, c. 85, 41 Stat. 305, U. S. C. Tit. 27, *passim*.

<sup>3</sup> *United States v. Yuginovich*, 256 U. S. 450.

<sup>4</sup> Nov. 23, 1921, c. 134, 42 Stat. 222, U. S. C. Tit. 27, § 3.

<sup>5</sup> *United States v. Stafoff*, 260 U. S. 477.

<sup>6</sup> R. S. 3242; U. S. C. Tit. 26, § 1397.

<sup>7</sup> *United States v. Remus*, 260 U. S. 477, 479, 480. The decision to the contrary by the Circuit Court of Appeals for the Fifth Circuit in *Bailey v. United States*, 5 F. (2d) 437, was not followed by the same court in the later case of *Anderson v. United States*, 30 F. (2d) 485.

<sup>8</sup> *United States v. One Ford Coupe*, 272 U. S. 321, 327.

excise upon the doing of the business whether lawfully or unlawfully conducted.<sup>9</sup>

The judgment is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

ESSEX RAZOR BLADE CORP. *v.* GILLETTE  
SAFETY RAZOR CO.

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

No. 21. Argued October 15, 16, 1936.—Decided November 9, 1936.

Patent No. 1,633,739, to Gaisman, Claims 1 and 2, for a safety-razor blade "having a non-circular opening substantially centrally disposed to retain the blade in shaving relation to a guard member, said blade having means spaced from said opening to coöperate with a clamping member to retain the latter in shaving relation to the blade independent of the guard member," held void for want of invention.

83 F. (2d) 541, reversed; 13 F. Supp. 505, affirmed.

CERTIORARI, 298 U. S. 649, to review the reversal of a decree dismissing a bill to enjoin alleged infringement of patent.

*Mr. George E. Middleton*, with whom *Mr. C. M. Palmer* was on the brief, for petitioner.

*Mr. Henry R. Ashton*, with whom *Mr. Charles Neave* was on the brief, for respondent.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The respondent makes and sells safety razors and blades. The petitioner makes and sells only blades. The

---

<sup>9</sup> *United States v. Constantine*, 296 U. S. 287, 293.

Gaisman patent No. 1,633,739, owned by the respondent, covers both safety razor blades and razors, and for the alleged infringement by petitioner of Claims 1 and 2 covering blades this suit was brought. The claims are so nearly alike that quotation of Claim 1 will suffice:

“A blade having a non-circular opening substantially centrally disposed to retain the blade in shaving relation to a guard member, said blade having means spaced from said opening to cooperate with a clamping member to retain the latter in shaving relation to the blade independent of the guard member.”

The novelty claimed for the patented article is that the blade acts as a positioning device or key to maintain the cap, the blade itself, and the guard, in proper relation to each other for shaving.

The District Court dismissed the bill on the ground that the patent was void for want of invention.<sup>1</sup> The Circuit Court of Appeals reversed, holding that the patent disclosed invention and was infringed by the petitioner's blade.<sup>2</sup> The Circuit Court of Appeals for the Second Circuit has decided that a blade like the petitioner's in all important features does not infringe.<sup>3</sup> In view of the conflict certiorari was granted.

Safety razors of the Gillette type combine these elements: A guard, a cap or backing member, a blade, a handle, and means to clamp the blade in shaving position between the cap and the guard. King C. Gillette accomplished a major advance in the art when he conceived a double-edged blade so thin and flexible as to require external support to give rigidity to its cutting edge and a safety razor embodying such a blade. In 1904 he was awarded a patent, No. 755,134, for this invention. He

<sup>1</sup> 13 F. Supp. 505.

<sup>2</sup> 83 F. (2d) 541.

<sup>3</sup> *Gillette Safety Razor Co. v. Hawley Hardware Co.*, 64 F. (2d)

claimed "as a new article of manufacture a detachable razor-blade of such thinness and flexibility as to require external support and give rigidity to its cutting edge." He made further claims of which the following may be taken as typical:

"In a razor, the combination with a perforated blade of a holder comprising a guard, a backing, a handle, and positioning and clamping means passing through the perforations in the blade."

His patent, which was sustained with respect to the claims both for the blade and for the razor,<sup>4</sup> expired years before the issue of that which is the subject of the present litigation. In Gillette's specifications and drawings the means disclosed for holding the blade in position between the guard and the cap are two metal arms secured to the base of the guard and turned upwards to pass through the guard near each end. The blade and the cap have slots through which these metal arms pass when the razor is assembled. The function of the arms is described thus: "To position the blade with respect to the guard and hold it against lateral movements." The patent also discloses that the cap and guard are to be clamped together upon the blade by a threaded post set in the centre of the cap passing through a hole in the centre of the blade and another in the centre of the guard and screwed into the end of the handle. In commercial practice Gillette substituted for the arms affixed to the guard two pins or posts set in the transverse median line of the cap equidistant from the centre. He then made his blade and guard with two corresponding holes so that in assembling the razor these posts or pins passed through the blade and the guard and held the blade in position when the handle was

---

<sup>4</sup> *Gillette Safety Razor Co. v. Clark Blade & Razor Co.*, 187 Fed. 149; affirmed in *Clark Blade & Razor Co. v. Gillette Safety Razor Co.*, 194 Fed. 421.

screwed upon the centre post of the cap to clamp the blade in shaving position. After the granting of the Gillette patent many others having to do with safety razors of a similar type were issued. These exhibited various means for fixing and holding a blade in position between cap and guard, although invention apparently was not claimed to consist in any such positioning device. In some, a protuberance was placed on the guard to fit into a slot in the blade and pass through that into an appropriate recess in the cap. In others pins were set in the guard to pass through holes in the blade and thence into sockets in the cap. Still others showed the same device as Gillette used commercially. Several showed slots cut in the end of the blade and cap to be engaged by pins or springs extending from the guard. In others, the procedure was reversed, the slots being in the end of the blade and guard to be engaged by pins or lugs set in the ends of the cap. In most of these patents, as in Gillette's combination, the device adopted locked together all three members, guard, blade, and cap. In Gaisman's construction the guard carries a non-circular protuberance and the blade has a hole cut into it to fit snugly over this protuberance. The blade also has notches in its ends or corners and the cap is provided with corresponding pins or lugs to engage these notches. The protuberance on the guard, although passing through and fixing the blade in position with reference to the guard, has no functional connection with the cap. On the other hand, the lugs on the cap which position the blade with respect to it do not engage the guard or have any functional connection with the latter. The advantages claimed for this method are that it renders assembly of the razor easier and also makes possible a more accurate location of the shaving edge of the blade relative to the edges of cap and guard, because, in the

old pin or post type, greater tolerances had to be allowed with consequent possibility of excessive shifting of the blade in relation to the other two members; or such tolerances had to be overcome in the manufacture of the parts, greatly increasing the cost of production. Thus it is said that, with the same manufacturing routine, the respondent's new so-called Goodwill razor, embodying the Gaisman construction, permits a possible shifting of the blade of not over three one-thousandths of an inch as compared with five one-thousandths of an inch in the old design.

Though the petitioner's blade closely resembles the Gaisman blade furnished by the respondent for use in its Goodwill razor, we lay to one side the inquiry whether the similitude is such as to constitute infringement, since we hold the patent invalid for lack of invention.

As already suggested, every safety razor consisting of a combination of guard, cap, blade, and clamping means must also provide means to keep the blade in position relative to the cap and guard. The means adopted have been various. Gillette resorted to the device of square rods or round pins fixed either to the guard or to the cap and slots or holes in the blade and the other member through which the rods or pins should pass to fix the blade in position. Gaisman fixed the blade relative to the guard by one set of lugs and slots and fixed it in relation to the cap by another set of lugs and slots. The choice was one between alternative means obvious to any mechanic; it did not have the quality of invention.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court affirmed.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

Counsel for Parties.

## CHISHOLM ET AL. v. GILMER, RECEIVER.

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

No. 11. Argued October 13, 1936.—Decided November 9, 1936.

1. The Virginia practice, whereby a notice of motion for judgment is accepted as a substitute for a writ or other process issued from court, is valid in law actions in federal courts in Virginia. P. 101.
  2. How a suit shall be begun, whether by writ or by informal notice, is a question of "practice" or of "forms and modes of proceeding," within the meaning of the Conformity Act, R. S., § 914; 28 U. S. C. 724. P. 102.
  3. The Constitution does not prescribe the method of beginning civil causes at law, beyond requiring reasonable notice and a fair opportunity to be heard before issues are determined. *Id.*
  4. A federal court, adhering to the Constitution, is bound in such causes by the Conformity Act to follow the local practice, except where some other Act of Congress has declared a special rule. *Id.*
  5. Revised Statutes, § 911 (28 U. S. C. 721), which provides that "All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof," does not apply to a notice of motion for judgment in Virginia, which, if process at all, is not process issuing from a court, and assuredly is not a writ. P. 103.
  6. A rule of the District Court inconsistent with the Conformity Act would be invalid. P. 105.
- 80 F. (2d) 120, affirmed.

CERTIORARI, 298 U. S. 648, to review the affirmance of a judgment recovered by the receiver of a national bank in an action against shareholders to collect an assessment on their shares.

*Mr. Minitree J. Fulton*, with whom *Messrs. Homan W. Walsh* and *Lyttelton Waddell* were on the brief, for petitioners.

*Mr. George Gilmer*, with whom *Messrs. John S. Eggleston* and *George P. Barse* were on the brief, for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The controversy is one as to the jurisdiction of a United States District Court in Virginia to apply the Virginia practice whereby a notice of motion for judgment is accepted as a substitute for a writ or other process issued from a court.

Petitioners, shareholders in a national bank, have been charged by the Comptroller of the Currency with an assessment in the amount of the par value of their shares. To enforce that assessment, respondent, the receiver of the bank, gave notice of motion that he would apply for judgment at a given time, incorporating in the notice a statement of the facts making up the claim. There is no question that the practice was in conformity with the statutes of Virginia. The notice, which was signed by the receiver, was served upon the shareholders by the marshal, though it would have been equally efficacious if served by someone else. It did not issue out of the court, did not bear the court seal, and was not signed by the clerk. Upon the return day of the motion the objection was made in behalf of the petitioners that the "process" was unavailing to bring them into court. The objection was overruled and later, after trial, a judgment on the merits went in favor of the receiver. Upon appeal to the Court of Appeals for the Fourth Circuit, the judgment was affirmed. 81 F. (2d) 120. To set at rest a controversy as to an important question of procedure, this Court granted certiorari "limited to the question of the jurisdiction of the District Court."

The remedy by notice of motion in Virginia is governed by § 6046 of the Virginia Code. "Any person entitled to maintain an action at law may, in lieu of such action at law, proceed by motion." The remedy is an ancient one. It goes back to 1732, though at first it was limited to claims for public moneys payable by sheriffs. Acts of May, 1732, c. 10, § 8, 4 Va. Stat. (Hening) 352. Gradually it was extended to other situations. As early as 1849 it was made applicable to claims on contract generally. Virginia Code (1849), c. 167, § 5. From contracts it spread to torts (Virginia Acts [1912] 15), and to statutory penalties. *Ibid.* 651. A revision of the Code in 1919 made the remedy even broader. Virginia Code, 1919, § 6046. The history of the development has been traced with painstaking precision by students of procedure.<sup>1</sup>

There is trustworthy evidence that in the practice of the Virginia courts the remedy by motion has almost superseded the common law forms of action.<sup>2</sup> Even in the federal courts held in the same territory the new procedure has succeeded to a large extent in crowding out the old. An opinion of a federal District Judge (McDowell, J.), announced in 1904, shows the remedy by motion then accepted by the bar. *Leas & McVitty v. Merriman*, 132 Fed. 510. About thirty years later (January, 1935), the Court of Appeals for the fourth circuit with supervisory powers over courts in the same area made a study of the

---

<sup>1</sup> Burks, Pleading and Practice in Actions at Common Law (1st ed., 1913) 164; Millar, Three American Ventures in Summary Civil Procedure, (1928) 38 Yale Law Journal 193; Clark and Samenow, The Summary Judgment, (1929) 38 Yale Law Journal 423; Report of the College of Law of West Virginia to the Bar Association, (1929) 36 West Virginia Law Quarterly 5, 70.

<sup>2</sup> E. C. Burks, Note to *Hanks v. Lyons*, (1895) 1 Va. Law Register 441; Millar, The Summary Judgment, *supra*, at p. 221; Report of the College of Law of West Virginia, *supra*, at p. 70.

intermediate growth. By that time it appeared that the procedure by notice of motion was followed in ninety-five per cent. of the common law actions begun in a federal court at Richmond, thirty-three-and-a-third per cent. of those begun at Norfolk, and fourteen per cent. of those begun at Alexandria. *Eley v. Gamble*, 75 F. (2d) 171, 173.

Under the Conformity Act (R. S. § 914; 28 U. S. C. § 724), "The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the State within which such district courts are held, any rule of court to the contrary notwithstanding." How a suit shall be begun, whether by writ or by informal notice, is a question of the practice of the state or of its forms and modes of proceeding. *Amy v. Watertown, No. 1*, 130 U. S. 301, 304. The Constitution of the United States does not attempt to make a choice between one method and another, provided only that the method employed "gives reasonable notice and affords fair opportunity to be heard before the issues are determined." *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 389, 393. The remedy by notice of motion has had repeated approval by the highest court of Virginia. *Virginia Hot Springs Co. v. Schreck*, 131 Va. 581; 109 S. E. 595; *Security Loan & Trust Co. v. Fields*, 110 Va. 827; 67 S. E. 342; *Drew v. Anderson*, (1797) 1 Call 51, 53. It is here sought to be applied, not in equity or admiralty (*Coffey v. United States*, 117 U. S. 233), but in a common law cause, a quasi-contractual obligation being the source of liability. *Shriver v. Woodbine Bank*, 285 U. S. 467, 477; *Coffin Brothers & Co. v. Bennett*, 277 U. S. 29, 31; *Bernheimer v. Converse*, 206 U. S. 516, 529; *Christopher v. Norvell*, 201 U. S. 216, 225, 226. A fed-

eral court, adhering to the Conformity Act, must follow the local practice, unless some other act of Congress, creating an exception to the general duty of conformity, has declared a special rule. *Ex parte Fisk*, 113 U. S. 713; *Whitford v. Clark County*, 119 U. S. 522; *Southern Pacific Co. v. Denton*, 146 U. S. 202, 209.

Petitioners profess to find the necessary exception in § 911 of the Revised Statutes (28 U. S. C. § 721), which provides: "All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the Supreme Court shall bear teste of the Chief Justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof." We do not essay a definition of the word process in every context. It may take on varying shades of meaning in varying surroundings. For present purposes it is enough to say that a notice of motion, if process at all, is not process issuing from a court, and assuredly is not a writ.<sup>3</sup> Only writs or processes so issuing are governed by the statute. This is the view expressed more than thirty years ago by Judge McDowell in two cases (*Leas & McVitty v. Merriman*, *supra*, and *Schofield v. Palmer*, 134 Fed. 753), which did much, we may be confident, to guide the conduct of the federal bar in adhering to the Virginia practice. It is the view expressed by Judge (later Mr. Justice) Sanford in the District Court of Tennessee. "In any proceeding which may be properly instituted and proceeded with upon mere notice to the parties in inter-

---

<sup>3</sup> Pollock & Maitland, *History of English Law*, 2nd ed., vol. I, p. 150; Radin, *Anglo-American Legal History*, p. 179; Holdsworth, *History of English Law*, vol. II, p. 193.

est, without process from the court itself, the requirements of section 911 have no application." *In re Condemnation Suits by United States*, 234 Fed. 443, 445. It is the view accepted by the Court of Appeals for the Fourth Circuit in *Eley v. Gamble*, *supra*, and again in the case at hand. Cf. *Wile v. Cohn*, 63 Fed. 759.

There is instruction also in many state decisions dealing with cognate questions. The Constitution of Virginia prescribes (§ 106) that "writs shall run in the name of the 'Commonwealth of Virginia,' and be attested by the clerks of the several courts." The Virginia courts have perceived nothing in that mandate at war with the validity of a summary notice of motion signed and issued by the parties. *Whitley v. Booker Brick Co.*, 113 Va. 434, 436; 74 S. E. 160; *Kain v. Ashworth*, 119 Va. 605; 89 S. E. 857; *Mankin v. Aldridge*, 127 Va. 761, 767; 105 S. E. 459; *Wood v. Kane*, 143 Va. 281; 129 S. E. 327. In many other states constitutional or statutory provisions as to the form of writs and other "process" have received a like construction. *People v. Lee*, 72 Colo. 598; 213 Pac. 583; *Gilmer v. Bird*, 15 Fla. 410; *Curry v. Hinman*, 11 Ill. 420, 424; *McKenna v. Cooper*, 79 Kan. 847; 101 Pac. 662; *Herndon v. Wakefield-Moore Realty Co.*, 143 La. 724; 79 So. 318; *Hanna v. Russell*, 12 Minn. 80; *Dunlap v. Bull Head Oil Co.*, 167 Okla. 277; 29 P. (2d) 108; *Bailey v. Williams*, 6 Ore. 71; *Whitney v. Blackburn*, 17 Ore. 564, 571; 21 Pac. 874; *State v. Superior Court*, 142 Wash. 270; 253 Pac. 115; *Porter v. Vandercook*, 11 Wis. 70. The analogy is apt and the reasoning persuasive.

Petitioners lean heavily upon early decisions in the District and Circuit Courts for New York wherein the requirements of R. S. § 911 were held to be applicable to the New York form of summons. *Peaslee v. Habestro*, (1879) Fed. Cas. No. 10,884, 15 Blatchf. 472;

*Dwight v. Merritt*, (1880) 4 Fed. 614. In so far as these decisions and others following them (*United States v. Mitchell*, 223 Fed. 805) extend the rule of the statute to notices or forms of process not issuing from a court, they do not have our approval.

Petitioners suggest that the use of a notice of motion as a substitute for a summons is forbidden by Rule 14 adopted by the District Court for the Eastern District of Virginia. The same objection was adequately answered in *Eley v. Gamble*, *supra*, pp. 173, 174. If the rule has such a meaning it is inconsistent with the Conformity Act which governs practice in the district courts, "any rule of court to the contrary notwithstanding."

The judgment is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

FOX v. CAPITAL COMPANY.

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

No. 23. Argued October 16, 1936.—Decided November 9, 1936.

An order of the District Court, in New York, fining a judgment debtor for contempt in failing to respond to a subpoena in supplementary proceedings (Civ. Pr. Act, N. Y., § 774, as amended by L. 1935, c. 630), the fine being imposed not by way of criminal punishment but in aid of the judgment creditor, is not a final order and is not appealable to the Circuit Court of Appeals. P. 107.

85 F. (2d) 97, affirmed.

CERTIORARI, 298 U. S. 649, to review a judgment of the Circuit Court of Appeals dismissing an appeal for want of jurisdiction.

*Mr. Benjamin Reass* for petitioner.

*Mr. William D. Whitney*, with whom *Messrs. Frederick H. Wood* and *Samuel B. Stewart, Jr.*, were on the brief, for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The question in this case is whether there is jurisdiction in the Circuit Court of Appeals to review upon appeal an order fining a judgment debtor for contempt in refusing to submit to an examination in proceedings supplementary to judgment.

Respondent had a judgment against petitioner for \$297,412.91 in the United States District Court for the Southern District of New York. Upon default in payment, the creditor began a proceeding, supplementary to the judgment, for the examination of the debtor. By the Civil Practice Act of New York (§ 774 as amended by L. 1935, c. 630) such a proceeding may be instituted by order of the Court, by subpoena, or by warrant. Respondent resorted to the second of these methods. The judgment debtor having failed to respond to the subpoena, an application was made to punish him for contempt. The Court made an order adjudging the contempt with leave to the debtor to purge himself thereof. Thereafter, upon evidence that the contempt continued, the court made a second order fining the debtor for his contempt in the amount of \$235,082.03, then unpaid upon the judgment, and an additional amount of \$10,000 to be paid to the attorneys of the judgment creditors for the costs of the proceeding. A warrant was issued to the Marshal whereby the debtor was to be confined in jail until payment of the fine, with the proviso, in substance, that except for the costs of the proceeding, \$10,000, the fine would be remitted upon submission to

the subpoena. From the two orders so made the debtor appealed to the Circuit Court of Appeals for the Second Circuit, where the appeal was dismissed. To settle the practice in a situation likely to recur, this Court granted certiorari, the review to be "limited to the question of the jurisdiction of the Circuit Court of Appeals."

A proceeding for the examination of a debtor as a supplement to judgment or execution is a summary substitute for a suit in equity by a creditor for the discovery of assets. *Ex parte Boyd*, 105 U. S. 647, 651-653; *Le Roy v. Rogers*, 3 Paige Ch. (N. Y.) 234; *Hadden v. Spader*, 20 Johns. (N. Y.) 554, 565; *Scoville v. Shed*, 36 Hun (N. Y.) 165, 167. It continues "until closed or discontinued by consent or discontinued, dismissed or closed by order of the court." New York Civil Practice Act, § 802 (1); *Steinman v. Conlon*, 208 N. Y. 198; 101 N. E. 863; *Hand v. Ortschaft Building Corp.*, 254 N. Y. 15; 171 N. E. 889. It "shall be deemed closed two years from the service of the order, subpoena or warrant" initiating it, unless extended by order for a definite period. § 802 (1). It may be closed within that time upon a showing by the debtor of unreasonable delay. § 802 (3). The relief appropriate to the proceeding includes the appointment of a receiver, or a decree for the payment of money or the delivery of property. *Steinman v. Conlon*, *supra*, p. 202. The imposition of a fine for the refusal of the debtor to appear or answer is not a substitute for such relief or for adequate discovery. Despite the contempt or the penalties therefor, the proceeding may continue until its aim has been achieved.

The rule is settled in this Court that except in connection with an appeal from a final judgment or decree, a party to a suit may not review upon appeal an order fining or imprisoning him for the commission of a civil contempt. *Doyle v. London Guarantee & Accident Co.*, 204 U. S. 599; *In re Christensen Engineering Co.*, 194 U. S.

458; *Hayes v. Fischer*, 102 U. S. 121; *Worden v. Searls*, 121 U. S. 14, 25. The appellant in the court below, the petitioner before us here, was a party to a suit or proceeding for the discovery of assets. There is no occasion to consider how far his rights and remedies would be different if he had been a stranger to the record, a witness or an adverse claimant. *Nelson v. United States*, 201 U. S. 92, 115; *Alexander v. United States*, 201 U. S. 117, 122. Not only was he a party; he was a party to a proceeding then in its initial stages. Discovery was in abeyance, and what the final relief would be was still a subject for conjecture. This sufficiently appears from the statement already made as to the function and duration of a proceeding supplementary to judgment. Finally, the contempt charged and adjudicated was not criminal, but civil; reparation to an obstructed creditor, not vindication of the public justice, was the purpose of the fine, and of the fine in all its parts. *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 441; *Doyle v. London Guarantee & Accident Co.*, *supra*, p. 606; *Lamb v. Cramer*, 285 U. S. 217, 220; *In re Guzzardi*, 74 F. (2d) 671, 672. If this could otherwise be doubtful, it is made clear beyond cavil by the recitals of the order.

Petitioner does not question the compensatory or civil quality of so much of the fine as may be avoided at any time by obeying the subpoena. He takes the ground, however, that the fine of \$10,000 which was imposed unconditionally, is in excess of any damage suffered by force of the contempt (*Cf.* 28 U. S. C. § 387), and from this he moves to the conclusion that the penalty was inflicted as retribution for a crime. But the conclusion does not follow though the premise be accepted. The court may have erred in its assessment of the costs required for reparation. As to that we do not intimate an opinion either one way or the other. What is very plain is the fact that the assessment was made in a genuine

endeavor to reimburse a harassed creditor for the damages occasioned by obstruction and delay. Errors, if there were any, did not split the controversy into parts, one civil and one criminal. Cf. *Collins v. Miller*, 252 U. S. 364, 370. It retained from first to last its unitary quality. In levying the fine, the court was not acting *sua sponte*, or at the instance of the government through a prosecuting officer. *Gompers v. Bucks Stove & Range Co.*, *supra*; *Lamb v. Cramer*, *supra*; *Union Tool Co. v. Wilson*, 259 U. S. 107, 112; *Michaelson v. United States*, 266 U. S. 42, 64; *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U. S. 448, 452. It lent a helping hand to a suppliant for aid.

The order is not final, and there is no error in the ruling that it is not subject to appeal.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

GULLY, STATE TAX COLLECTOR FOR MISSISSIPPI, v. FIRST NATIONAL BANK IN MERIDIAN.

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

No. 29. Argued October 19, 1936.—Decided November 9, 1936.

1. To constitute a case arising under the Constitution or laws of the United States, within the meaning of the removal statute, Jud. Code, § 28, 28 U. S. C. 71, a right or immunity created by the Constitution or laws of the United States must be an essential element of the plaintiff's cause of action; the right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another; a genuine and present controversy, not merely a possible or conjectural one, must exist with

reference thereto, and the controversy must be disclosed upon the face of the complaint, unaided by the answer, by the petition for removal, or by allegations in the complaint itself which go beyond a statement of the plaintiff's cause of action and anticipate or reply to a probable defense. P. 112.

2. A suit brought upon a state statute does not arise under an Act of Congress or the Constitution of the United States because prohibited thereby, or because permitted thereby. P. 116.
3. In a suit in a state court brought by a state tax collector against a national bank which, in acquiring assets of another national bank, had assumed and covenanted to pay the debts and liabilities of the latter, the complaint alleged that among the debts so assumed were moneys owing by the insolvent bank for taxes assessed upon its shares or capital stock, its surplus and undivided profits, exclusive of the value of its real estate; that in law, all taxes thus assessed were debts owing by the shareholders of the insolvent bank which that bank was under a duty to pay as their agent out of moneys then in its possession; and that the defendant bank, in violation of its covenant, failed to pay the taxes of the insolvent one, which it had thus assumed and made its own liability. *Held* not removable as a case arising under the Constitution or laws of the United States because

(1) The suit is upon a contract having its genesis in the law of the State, enforcement of which has no necessary connection with the existence of a controversy arising under federal law. P. 114.

(2) While the tax sought to be recovered, to be valid and therefore within the contract sued upon, must be consistent with the federal statute permitting state taxation of national bank shareholders (R. S. § 5219; 12 U. S. C. 548), just as it must be consistent with the Federal Constitution, its basis is a statute of the State. Furthermore, the state statute in this case (Code, Miss., § 3138), is in apparent harmony with the permissive federal Act. If not in accord with the state statute, the tax would be void for that reason; and if, on evidence, it were shown that that statute had been obeyed, there might be no room to contend that the federal law had been infringed. That a federal question may lurk in the background is not enough to warrant removal. P. 115.

81 F. (2d) 502, reversed.

CERTIORARI, 298 U. S. 650, to review the affirmance of a judgment dismissing a suit to recover state taxes. The suit had been removed from a state court.

*Mr. J. C. Floyd* for petitioner.

*Mr. R. E. Wilbourn*, with whom *Mr. A. S. Bozeman* was on the brief, for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

Whether a federal court has jurisdiction of this suit as one arising under the Constitution and laws of the United States is the single question here.

Petitioner, plaintiff in the court below, sued the respondent in a state court in Mississippi to recover a money judgment. The following facts appear on the face of the complaint: In June, 1931, the assets of the First National Bank of Meridian, a national banking association, were conveyed to the respondent, the First National Bank in Meridian, under a contract whereby the debts and liabilities of the grantor, insolvent at the time and in the hands of a receiver, were assumed by the grantee, which covenanted to pay them. Among the debts and liabilities so assumed were moneys owing to the petitioner, the state Collector of Taxes, or now claimed to be owing to him, for state, county, city, and school district taxes. In form the assessment was imposed upon the shares or capital stock of the bank, its surplus and undivided profits, exclusive of the value of the real estate. In law, so the pleader states, all taxes thus assessed were debts owing by the shareholders, which the bank was under a duty to pay as their agent out of moneys belonging to them, then in its possession.

The new bank, in violation of its covenant, failed to pay the taxes of the old bank, which it had thus assumed and made its own. Judgment is demanded for the moneys due under the contract.

A petition was filed by the respondent for the removal of the cause to the federal court upon the ground that the suit was one arising "under the Constitution or laws of the United States." Judicial Code § 28, 28 U. S. C. § 71; cf. Judicial Code § 24 (1) (a), 28 U. S. C. § 41. The state court made an order accordingly, and the federal District Court denied a motion to remand. Later, after a trial upon the merits, the complaint was dismissed. The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of dismissal, overruling the objection that the cause was one triable in the courts of Mississippi. 81 F. (2d) 502. The decision was put upon the ground that the power to lay a tax upon the shares of national banks has its origin and measure in the provisions of a federal statute (R. S. § 5219, 12 U. S. C. § 548), and that by necessary implication a plaintiff counts upon the statute in suing for the tax. Because of the importance of the ruling, this Court granted certiorari, "limited to the question of the jurisdiction of the District Court."

✓ [How and when a case arises "under the Constitution or laws of the United States" has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. *Starin v. New York*, 115 U. S. 248, 257; *First National Bank v. Williams*, 252 U. S. 504, 512.] The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. *Ibid*; *King County v. Seattle School District*, 263

U. S. 361, 363, 364. A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto (*New Orleans v. Benjamin*, 153 U. S. 411, 424; *Defiance Water Co. v. Defiance*, 191 U. S. 184, 191; *Joy v. St. Louis*, 201 U. S. 332; *Denver v. New York Trust Co.*, 229 U. S. 123, 133), and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. *Tennessee v. Union & Planters Bank*, 152 U. S. 454; *Louisville & Nashville R. Co. v. Mottley*, 211 U. S. 149; *The Fair v. Kohler Die & Specialty Co.*, 228 U. S. 22, 25; *Taylor v. Anderson*, 234 U. S. 74. Indeed, the complaint itself will not avail as a basis of jurisdiction in so far as it goes beyond a statement of the plaintiff's cause of action and anticipates or replies to a probable defense. *Devine v. Los Angeles*, 202 U. S. 313, 334; *The Fair v. Kohler Die & Specialty Co.*, *supra*.

Looking backward we can see that the early cases were less exacting than the recent ones in respect of some of these conditions. If a federal right was pleaded, the question was not always asked whether it was likely to be disputed. This is seen particularly in suits by or against a corporation deriving its charter from an act of Congress. *Osborn v. Bank of the United States*, 9 Wheat. 738, 817-828; *Pacific Railroad Removal Cases*, 115 U. S. 1, 11. Modern statutes have greatly diminished the importance of those decisions by narrowing their scope. *Gay v. Ruff*, 292 U. S. 25, 35; *Puerto Rico v. Russell & Co.*, 288 U. S. 476, 483. Federal incorporation is now abolished as a ground of federal jurisdiction except where the United States holds more than one-half the stock. Act of February 13, 1925, c. 229, § 12, 43 Stat. 936, 941. Partly under the influence of statutes disclosing a new legislative policy, partly under the influence of more liberal decisions, the probable course

of the trial, the real substance of the controversy, has taken on a new significance. "A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." *Shulthis v. McDougal*, 225 U. S. 561, 569. Cf. *First National Bank v. Williams*, *supra*; *Hopkins v. Walker*, 244 U. S. 486, 489; *Shoshone Mining Co. v. Rutter*, 177 U. S. 505, 507. Only recently we said after full consideration that the doctrine of the charter cases was to be treated as exceptional, though within their special field there was no thought to disturb them. *Puerto Rico v. Russell & Co.*, *supra*. "We should fly in the face of this legislative policy and disregard precedents which we think controlling were we to extend the doctrine now." *Ibid*. Today, even more clearly than in the past, "the federal nature of the right to be established is decisive—not the source of the authority to establish it." *Ibid*.

Viewing the case at hand against this background of established principle, we do not find in it the elements of federal jurisdiction.

1. The suit is built upon a contract which in point of obligation has its genesis in the law of Mississippi. A covenant for a valuable consideration to pay another's debts is valid and enforceable without reference to a federal law. For all that the complaint informs us, the failure to make payment was owing to lack of funds or to a belief that a stranger to the contract had no standing as a suitor or to other objections non-federal in their nature. There is no necessary connection between the enforcement of such a contract according to its terms and the existence of a controversy arising under federal law.

2. The obligation of the contract being a creation of the state, the question remains whether the plaintiff counts upon a federal right in support of his claim that the contract has been broken. The performance owing by the defendant was payment of the valid debts, and taxes are not valid debts unless lawfully imposed. From this defendant argues that a federal controversy exists, the tax being laid upon a national bank or upon the shareholders therein, and for that reason being void unless permitted by the federal law.

Not every question of federal law emerging in a suit is proof that a federal law is the basis of the suit. The tax here in controversy if valid as a tax at all, was imposed under the authority of a statute of Mississippi. The federal law did not attempt to impose it or to confer upon the tax collector authority to sue for it. True, the tax, though assessed through the action of the state, must be consistent with the federal statute consenting, subject to restrictions, that such assessments may be made. R. S. § 5219, 12 U. S. C. § 548. It must also be consistent with the Constitution of the United States. *McCulloch v. Maryland*, 4 Wheat. 316; *Owensboro National Bank v. Owensboro*, 173 U. S. 664; *Baltimore National Bank v. Tax Commission*, 297 U. S. 209. If there were no federal law permitting the taxation of shares in national banks, a suit to recover such a tax would not be one arising under the Constitution of the United States, though the bank would have the aid of the Constitution when it came to its defense. *Tennessee v. Union & Planters Bank*, *supra*; *Sawyer v. Kochersperger*, 170 U. S. 303; *Arkansas v. Kansas & Texas Coal Co.*, 183 U. S. 185; *Louisville & Nashville R. Co. v. Mottley*, *supra*. That there is a federal law permitting such taxation does not change the basis of the suit, which is still the statute of the state, though the federal law is evidence to prove the statute valid.

The argument for the respondent proceeds on the assumption that because permission at times is preliminary to action the two are to be classed as one. But the assumption will not stand. A suit does not arise under a law renouncing a defense, though the result of the renunciation is an extension of the area of legislative power which will cause the suitor to prevail. Let us suppose an amendment of the Constitution by which the states are left at liberty to levy taxes on the income derived from federal securities, or to lay imposts and duties at their pleasure upon imports and exports. If such an amendment were adopted, a suit to recover taxes or duties imposed by the state law would not be one arising under the Constitution of the United States, though in the absence of the amendment the duty or the tax would fail. We recur to the test announced in *Puerto Rico v. Russell & Co.*, *supra*: "The federal nature of the right to be established is decisive—not the source of the authority to establish it." Here the right to be established is one created by the state. If that is so, it is unimportant that federal consent is the source of state authority. To reach the underlying law we do not travel back so far. By unimpeachable authority, a suit brought upon a state statute does not arise under an act of Congress or the Constitution of the United States because prohibited thereby. *Louisville & Nashville R. Co. v. Mottley*, *supra*. With no greater reason can it be said to arise thereunder because permitted thereby.

Another line of reasoning will lead us to the same conclusion. The Mississippi law provides, in harmony with the act of Congress (R. S. § 5219), that a tax upon the shares of national banks shall be assessed upon the shareholders, though the bank may be liable to pay it as their agent, charging their account with moneys thus ex-

pended. Code of Mississippi, § 3138. Cf. *Home Savings Bank v. Des Moines*, 205 U. S. 503, 518; *Aberdeen Bank v. Chehalis County*, 166 U. S. 440; *National Bank v. Commonwealth*, 9 Wall. 353. Petitioner will have to prove that the state law has been obeyed before the question will be reached whether anything in its provisions or in administrative conduct under it is inconsistent with the federal rule. If what was done by the taxing officers in levying the tax in suit did not amount in substance under the law of Mississippi to an assessment of the shareholders, but in substance as well as in form was an assessment of the bank alone, the conclusion will be inescapable that there was neither tax nor debt, apart from any barriers that Congress may have built. On the other hand, a finding upon evidence that the Mississippi law has been obeyed may compose the controversy altogether, leaving no room for a contention that the federal law has been infringed. The most one can say is that a question of federal law is lurking in the background, just as farther in the background there lurks a question of constitutional law, the question of state power in our federal form of government. A dispute so doubtful and conjectural, so far removed from plain necessity, is unavailing to extinguish the jurisdiction of the states.

This Court has had occasion to point out how futile is the attempt to define a "cause of action" without reference to the context. *United States v. Memphis Cotton Oil Co.*, 288 U. S. 62, 67, 68. To define broadly and in the abstract "a case arising under the Constitution or laws of the United States" has hazards of a kindred order. What is needed is something of that common-sense accommodation of judgment to kaleidoscopic situations which characterizes the law in its treatment of problems of causation. One could carry the search for causes backward, almost without end. *Bird v. St. Paul F. & M. In-*

*insurance Co.*, 224 N. Y. 47, 51; 120 N. E. 86; *Leyland Shipping Co. v. Norwich Fire Insurance Society*, (1918) A. C. 350, 369; *Insurance Co. v. Boon*, 95 U. S. 117, 130; *Milwaukee & St. Paul Ry. Co. v. Kellogg*, 94 U. S. 469, 474. Instead, there has been a selective process which picks the substantial causes out of the web and lays the other ones aside. As in problems of causation, so here in the search for the underlying law. If we follow the ascent far enough, countless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral, between disputes that are necessary and those that are merely possible. We shall be lost in a maze if we put that compass by.

The judgment should be reversed and the cause remitted to the District Court with instructions to remand it to the court in Mississippi from which it was removed.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

Counsel for Parties.

McKEE, TRUSTEE IN BANKRUPTCY, v. PARADISE, TRUSTEE.

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

Nos. 4 and 5. Argued October 12, 1936.—Decided December 7, 1936.

1. An agreement whereby an employer undertook to make specified deductions from the wages of its employees as they accrued and to pay over the amounts deducted to a welfare association maintained on their behalf, *held* to have created the relation of debtor and creditor between the employer and the association as to amounts which the employer had charged to the employees and credited to the association but had not paid over to the association as the agreement contemplated nor placed in any special fund. P. 121.
2. Upon the bankruptcy of an employer owing money under an agreement of this kind, *held* that the mere failure to pay as stipulated afforded no ground for fastening a constructive trust upon the bankrupt's general assets in favor of the association. P. 122. 80 F. (2d) 478, reversed. District Court affirmed.

CERTIORARI, 298 U. S. 647, to review the reversal of an order disallowing a preferential claim in a bankruptcy case. Two appeals were taken to the Circuit Court of Appeals, one under § 47 and the other under § 48, Title 11, U. S. C., these resulting in two decrees of that court, to review which two writs of certiorari were granted here.

*Mr. William E. Leahy*, with whom *Messrs. William J. Hughes, Jr., A. L. Schapiro, and B. C. Schiff* were on the brief, for petitioner.

*Mr. Stanford Clinton*, with whom *Mr. Jack N. Pritzker* was on the brief, for respondent.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The question relates to the propriety of a preference allowed in a bankruptcy proceeding upon the ground of a constructive trust.

The facts were stipulated. The bankrupt, Grigsby-Grunow, Inc., maintained an unincorporated welfare association, known as the Majestic Employees Welfare Association, to provide life, health and accident insurance for its employees. The association was governed by its own officers and had its own bank account. The funds of the association were invested in United States securities and the earnings and increment of these investments were used for the contemplated insurance benefits. The initial membership fee of one dollar and weekly dues of twenty-five cents were "automatically deducted" from the wages of each employee who had been employed for the required period. Before February 4, 1933, the bankrupt regularly paid to the association the accumulations of each payroll deduction, less such expenses of the association as were paid by the bankrupt. From the date above-mentioned, the bankrupt fell into arrears and until November 24, 1933, when receivers in equity were appointed, there was always an unpaid balance to the credit of the association. That balance at the time of the receivership amounted to \$14,607.51. The deductions from wages were made by charging the employee's account on the payroll records of the bankrupt and crediting the aggregate of all such deductions to the account of the association on the books of the bankrupt. "No actual money was taken from the pay envelopes of the employees and deposited in any account of the bankrupt, but to the contrary the matter was handled as a mere bookkeeping entry" and at no time did the bankrupt "segregate" any money due the association or "deposit any money in any separate trust account

or bank account." The practice of the bankrupt was to deposit all its incoming revenue in its general bank account, from which it would from time to time withdraw moneys and establish various special accounts. The bankrupt was accustomed to withdraw from its general account or special accounts as the convenience of the situation required, and the payroll was drawn from the various accounts, both general and special, indiscriminately.

In August, 1933, the association was formally dissolved and, after setting up a fund to cover certain contingent obligations, all the other assets were conveyed to another unincorporated association, known as the Majestic Works Council, in which the bankrupt and its employees had equal representation. The Works Council appointed the respondent, Maurice Paradise, as trustee and authorized him to take proceedings to enforce its claim. It also appeared that subsequent to February 4, 1933, payment of the sums due the association had been demanded, and that payment had been requested from the equity receivers and refused.

The bankruptcy proceeding was begun in February, 1934, and respondent petitioned for the allowance of a preferential claim against the bankrupt's estate. The referee allowed the claim, but his decision was reversed by the District Judge upon the ground that there was no trust and that, even if there was, the trust funds had not been traced into the hands of the trustee in bankruptcy. This ruling was reversed by the Circuit Court of Appeals, which held that a trust had been created and that the preference should be allowed. 80 F. (2d) 478. In view of the contention of the petitioner that the decision was in conflict with applicable decisions of this Court, we granted certiorari.

We think that the facts afford no adequate basis for the conclusion that a trust existed. The underlying rela-

tion was that of employer and employee. With respect to wages that the employee earned, the relation was that of debtor and creditor. By agreement, a part of the amounts thus becoming due as wages was to be paid to the association. What would otherwise be a debt to the employee was to become a debt to the association. Whether the agreement be viewed as an assignment by the employee to the association of the claim to the part of the wages as the latter became due, or as a novation, the result was that the bankrupt owed the association the agreed sums. The book entries of debits on the payroll records and credits to the association evidenced that understanding.

It does not appear that it was contemplated that the bankrupt should accumulate or hold any fund. On the contrary, the practice prior to February, 1933, was that the bankrupt regularly paid to the association the agreed amounts. The later failure to pay did not alter the nature of the transaction. The bankrupt was a debtor which had failed to pay its debt. We know of no principle upon which that failure can be treated as a conversion of property held in trust. At no time throughout the whole period was there a trust fund or *res*. No fund was segregated or set up by special deposit or in any manner. When the wages became due, there was no such fund but only the general assets of the employer and its obligation to pay a debt. The agreement of the employer to pay the association instead of the employee did not give to the employee or the association equitable title to or lien upon any part of the employer's property. The assets of the employer remained, as they were before, general assets. It would be impossible to state all the circumstances in which equity will fasten a constructive trust upon property in order to frustrate a violation of fiduciary duty. See 3 Pomeroy, *Equity Jurisprudence*, §§ 1044 *et seq.* But the mere failure to pay a debt does

not belong in that category. We do not find that the record shows anything more than that in this instance. Our observations in *Adams v. Champion*, 294 U. S. 231, 238, to which the Court of Appeals refers, have no relation to such a case. See *National City Bank v. Hotchkiss*, 231 U. S. 50; *Blakey v. Brinson*, 286 U. S. 254; *Jennings v. U. S. F. & G. Co.*, 294 U. S. 216; *Old Company's Lehigh v. Meeker*, 294 U. S. 227; *Edisto National Bank v. Bryant*, 72 F. (2d) 917, 920. The fact that the failure to pay the association was an acute disappointment and was especially regrettable as the claimant was an association of employees, cannot avail to change the debtor into a trustee or enable the creditor to obtain a preference over other claims against a bankrupt estate.

The decree of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

UNITED STATES *v.* WOOD.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA.

No. 34. Argued October 20, 1936.—Decided December 7, 1936.

1. Bias of a prospective juror may be actual or implied; i. e., bias in fact or bias conclusively presumed as a matter of law. P. 133.
2. The Act of August 22, 1935, concerning qualifications of jurors in the District of Columbia, leaves all prospective jurors subject to examination and rejection for actual bias. *Id.*
3. In dealing with an employee of the Government, summoned to jury service in a criminal case, the court should be solicitous to discover whether, in view of the nature or circumstances of his employment, or of the relation of his particular governmental activity to the matters involved in the prosecution, he has actual bias. P. 134.

4. The provision of the Sixth Amendment declaring that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury," does not imply that employees of the Government are absolutely and as a matter of law disqualified from sitting in criminal cases prosecuted by the Government, regardless of actual partiality. Pp. 134, 141.
5. By the English common law, at the time of the adoption of the Sixth Amendment and long before, servants of the King were permitted to sit as jurors in crown cases, if free from actual bias. P. 134.
6. In the absence of any settled practice under the English law establishing an absolute disqualification of governmental employees to serve as jurors in criminal cases, and in the absence of evidence that such a disqualification existed in the American Colonies or in the States, at the time of the adoption of the Sixth Amendment, there is no ground for treating such a disqualification as embedded in that Amendment by the common law. *Crawford v. United States*, 121 U. S. 183, distinguished and in part disapproved. P. 141.
7. The constitutional requirement of an impartial jury respects substance and essence. Impartiality is not a technical conception, but a state of mind. For the ascertainment of this mental attitude of the prospective juror, the Constitution lays down no particular tests; and procedure is not chained to any ancient and artificial formula, but is subject to regulation by Congress. Pp. 141, 145.
8. An absolute disqualification of governmental employees and pensioners to serve as jurors in criminal cases is not essential to the impartiality of the jury. P. 147.
9. The Act of August 22, 1935, in qualifying governmental employees and pensioners for service as jurors to try criminal cases in the District of Columbia, subject to challenge for actual bias, is consistent with the Sixth Amendment and the due process clause of the Fifth Amendment. Pp. 147, 151.

---

The respondent in this case was convicted of theft from the store of a private corporation in the District of Columbia. Three of the jurors who sat, notwithstanding challenges for cause, based upon the ground of interest in the United States Government, were the recipient of a Civil War pension and two clerks employed in the Treasury Department and the Navy Yard, respectively. There was no proof of actual bias.

65 App. D. C. 330; 83 F. (2d) 587, reversed.

CERTIORARI, 298 U. S. 652, to review a judgment reversing a conviction of theft in the District of Columbia. This Court reverses in turn and affirms the trial court.

*Assistant Attorney General McMahon*, with whom *Solicitor General Reed* and *Messrs. William W. Barron* and *Warner W. Gardner* were on the brief, for the United States.

*Mr. William E. Leahy*, with whom *Messrs. Robert I. Miller* and *William J. Hughes, Jr.*, were on the brief, for respondent.

As over 75% of government employees in the District of Columbia maintain legal or voting residences elsewhere, they are in practice ineligible for jury service, and the argument based upon convenience has no great weight.

From an analysis of the Government's authorities on the right to challenge a King's Servant, it seems that nineteen hold that there is no principal cause; and twelve hold that there is not even any challenge for favor. *Fitzherbert*; *Coke*; and *Rex v. Hampden*, 9 St. Tr. 1054, 1057, 1061, allow challenges for favor in respect of menial servants. Actual malice as distinguished from favor was allowed as a challenge by *Staunforde*; *Lord Hale*; *Duncombe*; *Hawkins*; *Matthew Bacon*; Year Book 19 Ass. 62 Pl. 639; *Rex v. Genney*, Keilw. 102a; and *Regina v. Blakeman*, 175 Eng. Rpt. 479. *Brooke* allowed no challenge of any kind for the defendant, but challenge of either kind for the King's side.

The reasons why Crown Servants were not challengeable are given as follows: *Staunforde*: "Because he should favor the King by reason of his obedience." *Coke* and *Duncombe*: "Because in respect of his allegiance he ought to favor the King more." *Rolle*: "He ought to favor the King more by reason of his obedience." *Hawkins* and *Bacon*: "Because everyone is bound by his obedience to favor the King."

Based on this alleged exception at common law, the Government argues that the Sixth Amendment, guaranteeing an impartial jury, includes a like exception. To sustain this position, the Government must affirmatively show that the Colonists recognized the exception at the time the Sixth Amendment was formulated. No authorities to this effect have been cited. Further, what constituted a jury trial at common law is only a partial guide to what was intended by the constitutional guarantee. The guarantee of the Sixth Amendment does not stop at guaranteeing a jury trial; this was already guaranteed by Art. III, § 2, cl. 3, of the Constitution. The guarantee of the Sixth Amendment was that the accused should be entitled to trial by an *impartial* jury. The word "impartial" is entitled to some weight. At common law there was no such express guarantee. If the government authorities are correct, it might well be that at common law Crown Servants could not be challenged, like other servants, on the ground that they owed obedience to their master. The common law reasoning, from the Government's authorities, seems to be that, naturally, Crown Servants owed obedience to their master, the King, and that this was no ground for holding them disqualified. But this is not proof that juries thus composed are impartial juries within the meaning of the Sixth Amendment; it simply means that, rightly or wrongly, common law juries in England could be composed of Crown Servants and a defendant must take them willy-nilly.

No authority is pointed to by the Government showing that the alleged exception was generally recognized in this country when the Constitution was adopted. Blackstone, cited by this Court in the *Crawford* case as authority for holding that the relationship of master and servant operated as an absolute disqualification, makes no exception whatever with respect to Crown Servants. Nor do the other authorities submitted to this Court by counsel

for the defendant in the *Crawford* case contain any such distinction, viz: 1 Chitty, *Crim. Law*, 541, 542; 1 Bishop, *New Crim. Pro.*, § 902; *Block v. State*, 100 Ind. 357; *Central R. Co. v. Mitchell*, 63 Ga. 173; *Hubbard v. Rutledge*, 57 Miss. 6; *Louisville N. O. & T. Co. v. Mask*, 64 Miss. 738; *Pearce v. Quincy Min. Co.*, 149 Mich. 112.

It is not in any embalmed mummy of common law doctrine, unearthed today by legal archaeologists, that our liberties under the Bill of Rights are preserved; it is by the living and breathing common law known to the Colonists. If so, we know of no better guide than the authority of Blackstone, cited by this Court in the *Crawford* case. In *Schick v. United States*, 195 U. S. 68, it is said that, for constitutional construction, Blackstone's Commentaries are accepted as the most satisfactory exposition of the common law of England, the reason being that their wide circulation in the United States prior to the Revolution familiarized Colonists with Blackstone's statement of the common law. In attempting to ascertain the meaning of common law terms in the Constitution, it would be a curious way to resort, not to the authority from whom the Colonists had derived for the most part their knowledge of that law, but to authorities they had never heard of, such as Year Books published in Norman French, centuries before, Latin abridgements, or little known commentaries.

If, in spite of the evident importance of impartiality, the Government's authorities are correct and a defendant was compelled to take the King's Servants, good, bad or indifferent, and could not challenge them in principal because of their position, or even for favor, as some of the authorities appear to hold, we can only say that the common law fell short of the desired ideal. Let us not, by adopting this mistake, accept as an "impartial jury" one made up of the King's Servants in the King's cases but in which a servant of a private party is disqualified to sit.

It is unlikely that the American Colonists, recently emerged from a civil war devoted to assailing the royal prerogatives and privileges, would, in framing a Constitution, protect in their law one of the silliest and most baseless of all royal privileges, namely, the royal right (if the Government's authorities are correct) to have friends at court on any jury trying a criminal case.

The silence of the records of the Constitutional Convention, and of other sources like the *Federalist*, is an indication that the Colonists did not intend to put the new American Government in any favored position in any struggle at law with its citizens. It seems a curious thing to rely upon a practice which, the Government's own authorities show, was grounded upon a medieval notion of *lése-majesté* in even hinting that loyalty of a Crown Servant to his King was something less than slavery of mind and will. It would be better "not to go too far back into antiquity for the best securities for our 'ancient liberties.'" *Hurtado v. California*, 110 U. S. 516.

Constitutional guarantees are formulated, not for cases where they are obviously unnecessary, but for the exceptional cases, where, without the guarantee, injustice will be done. A government employee may favor the Government, not necessarily from fear or hope of reward, but imperceptibly, because of his mode of life and of thought. No way exists on the *voir dire* to explore the juror's inclination.

This Court's decision in the *Crawford* case represents an effort to preserve the right to an impartial jury. Constitutional guarantees, this Court has frequently intimated, are to be guarded against erosion as well as against open assault. A jury containing from one to twelve government employees would always, we feel, be suspect. The right of the accused to a trial by a constitutional jury must "be jealously preserved"; and the maintenance of the jury as a fact finding body is "of much importance in our traditions." *Patton v. United States*, 281 U. S. 276. Any

diminution of the respect due that institution is akin to a diminution of the constitutional right itself. It lessens the prestige of the jury system.

The decision in the *Crawford* case was followed in *United States v. Griffith*, 55 App. D. C. 123, and *Miller v. United States*, 38 *id.* 361. Accord: *Bickell v. State*, 41 Okla. Cr. Rep. 35; *Lockhart v. State*, 145 Md. 502; *State v. Dushman*, 79 W. Va. 747.

The basis of the *Crawford* decision is not in the fact of the juror's bias or lack of bias, or what the juror thinks is the fact. The Court says that the juror is an entirely unreliable witness because he may be prejudiced without knowing it. Therefore, the Court states that the law excludes him as a juror because he must not be permitted to occupy a position to the possible injury of a defendant, no matter how he may surmise his own state of mind.

We think the Government concedes itself out of Court when it argues that, under the present statute, a challenge for cause still exists with respect to a government employee who is employed in the prosecuting branch of the Government. Laws tending to diminish constitutional guarantees concerned with human rights should deal with moral certainties, clear beyond misgiving. The present law is in no such classification. Government employees cannot be beyond the imputation of interest on the side of the Government. The so-called test question, "Do you think you can give the defendant a fair trial?" amounts to nothing and would if applied allow anyone and everyone to serve upon a jury provided he answered "yes." Only the doctrine of the *Crawford* case affords protection to the defendant. Government employees must be eliminated as prospective jurors on the common-sense theory of "safety first."

The desire for impartiality of jurors even in civil cases is so great that a very insignificant interest in the result of an action, and frequently a very trifling relationship to one of the parties, is sufficient to disqualify.

The rule should be even stricter in criminal cases. It is interesting to note that in most, if not all, of the cases reported the reason for the rule is not that the juror is in fact prejudiced, but the likelihood that in some contingency of the case he might become so. The fact that the juror might say on oath that he would not be prejudiced is taken as of little account, the court rightly concluding that his testimony on this point, being more or less of a prediction, is not entitled to be deemed conclusive, and hence, in fairness, the interested juror must be excluded.

The argument based on various changes in the jury system, such as changes respecting peremptory challenges; service of women as jurors; conduct of examination on *voir dire* by the Judge; abolition of common law jury *de medietate lingue*, etc., is not persuasive here. Such changes do not involve the essential feature of impartiality.

If a statute destroys a defendant's right to challenge a servant of the Government, as this one does, the Government's right to challenge a servant of the defendant should likewise be destroyed. The present statute removes the one but preserves the other, and thus possibly is in violation not only of the Sixth Amendment but of the Fifth also, as constituting an unreasonable discrimination or classification.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

This case presents the question of the constitutional validity of the Act of Congress of August 22, 1935, c. 605, 49 Stat. 682, prescribing qualifications for service as jurors in the District of Columbia, as applied to criminal prosecutions.

The respondent was convicted of petit larceny in the Police Court of the District and was sentenced to imprisonment for 240 days. The larceny was from a private

corporation. On his trial twelve prospective jurors were called. Their examination showed that one was the holder of a "bonus certificate"; others were employed as clerks in governmental departments, one in the United States Weather Bureau, another in the Federal Emergency Administration, a third in the Treasury Department, and a fourth in the Navy Yard. Another prospective juror was a housewife who received a civil war pension. Each of these persons was challenged for cause upon the ground of interest in the United States Government. The challenge was disallowed. Counsel for defendant then exhausted his three peremptory challenges; and when the jury was finally selected there remained as jurors, despite a reiterated challenge for cause, the recipient of the civil war pension and the two clerks employed in the Treasury Department and the Navy Yard respectively.

The action of the trial court was taken under the Act of August 22, 1935, which provides that persons of this description shall be eligible for jury service.<sup>1</sup> On appeal,

---

<sup>1</sup>The provision is as follows:

"All executive and judicial officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the Army, Navy, Marine Corps, and Coast Guard of the United States in active service, those connected with the police and fire departments of the United States and of the District of Columbia, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District of Columbia, captains and masters and other persons employed on vessels navigating the waters of the District of Columbia shall be exempt from jury duty, and their names shall not be placed on the jury lists.

"All other persons, otherwise qualified according to law whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired,

the Court of Appeals thus stated the occasion for the statute, its purport, and the question it raises:

"Prior to the passage of this statute the provision with relation to the qualifications of a juror was that he should be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and understand the English language, and a person who had never been convicted of a felony or misdemeanor involving moral turpitude. In 1908 the Supreme Court held in *Crawford v. United States*, 212 U. S. 183, that an employee of the United

all officers and enlisted men of the Military, Naval, Marine, and Coast Guard Reserve Corps of the United States, all notaries public, all postmasters and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service: *Provided*, That employees of the Government of the United States or of the District of Columbia in active service who are called upon to sit on juries shall not be paid for such jury service but their salary shall not be diminished during their term of service by virtue of such service, nor shall such period of service be deducted from any leave of absence authorized by law."

This Act amended the prior provision known as § 217 of the Code of Law for the District of Columbia approved March 3, 1901 (Code D. C. 1929, Tit. 18, § 360) which provided:

*"Exemption from jury service.*—All executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia, all officers and enlisted men of the National Guard for the District of Columbia, both active and retired, and those connected with the police or fire departments, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District, captains and masters and other persons employed on vessels navigating the waters of the District shall be exempt from jury duty, and their names shall not be placed on the jury lists."

States was not qualified to serve as a member of a petit jury in the District of Columbia in the trial of a criminal case. The effect of the decision and of others of like nature which followed, resulted, it is said, in narrowing the eligible list of jurors in the District to the point where it sometimes became difficult to secure jurors possessing the necessary qualifications. To correct this, Congress extended the list of eligibles to include employees of the United States and of the District of Columbia, officers and enlisted men of the National Guard and of the Military, Naval, Marine, and Coast Guard Reserve Corps, notaries public, postmasters, and recipients of pensions and gratuities from the United States or the District, as well as those having contracts with the United States or the District; and the question we have to decide is whether this statute, when applied in a criminal case like the present, is in violation of the provisions of the Sixth Amendment guaranteeing to the accused in all criminal prosecutions the right of trial by an impartial jury."

Dealing particularly with the qualification of governmental employees, the court answered this question in the affirmative and reversed the judgment of conviction. 65 App. D. C. 330; 83 F. (2d) 587. Because of the importance of the question we granted certiorari.

*First.*—The Sixth Amendment requires that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." The Amendment prescribes no specific tests. The bias of a prospective juror may be actual or implied; that is, it may be bias in fact or bias conclusively presumed as matter of law. There is no ground for a contention—and we do not find that such a contention is made—that Congress has undertaken to preclude the ascertainment of actual bias. All persons otherwise qualified for jury service are subject to examination as to actual bias. All the resources of appropriate judicial inquiry remain avail-

able in this instance as in others to ascertain whether a prospective juror, although not exempted from service, has any bias in fact which would prevent his serving as an impartial juror. In dealing with an employee of the Government, the court would properly be solicitous to discover whether, in view of the nature or circumstances of his employment, or of the relation of the particular governmental activity to the matters involved in the prosecution, or otherwise, he had actual bias, and, if he had, to disqualify him. No bias of that sort is shown in the instant case.

The question here is as to implied bias, a bias attributable in law to the prospective juror regardless of actual partiality. The contention of the defendant is that there must be read into the constitutional requirement an absolute disqualification in criminal cases of a person employed by the Government,—a disqualification which Congress is powerless to remove or modify. This contention gives rise to two inquiries—(1) whether, in the practice in England prior to the adoption of the Amendment, or in the colonies, there was an absolute disqualification of governmental employees to serve on juries in criminal cases, and (2) whether, either because of that practice, or in reason, such a disqualification should be regarded as essential to the impartiality of the jury and hence beyond the reach of the legislative power. The Government insists that both questions should be answered in the negative.

*Second.*—The Government has presented the result of elaborate research to show that throughout the long period from the development of the jury system to modern times, the English common law permitted a servant of the king to serve as a juror in crown cases, provided he had no actual bias.

Challenges at common law were to the array, that is, with respect to the constitution of the panel, or to the

polls, for disqualification of a juror. Challenges to the polls were either "principal" or "to the favor," the former being upon grounds of absolute disqualification, the latter for actual bias. The Government quotes the statements of early commentators from Fitzherbert to Hargrave, indicating that a principal challenge was not allowed in crown cases upon the ground that the prospective juror was a servant of the crown, and that a challenge for that reason, if permitted at all, was to the favor.<sup>2</sup> The Government reviews the early cases in support of this conclusion.<sup>3</sup> It is not necessary to set forth these authorities in detail as there seems to be no controversy as to their purport. We give in the margin the analysis presented by respondent's counsel.<sup>4</sup> Their resumé is as follows:

<sup>2</sup> Fitzherbert, Abridgement, Challenge, §§ 17, 63, 65, folios 172, 173 (1577 ed.); Brooke, Abridgement, Challenge, §§ 154, 155, folio 126; Staunforde, Pleas of the Crown, 162; Coke upon Littleton, I, 156a-156b; Hale, Pleas of the Crown, II, 271; Rolle, Abridgment, II, 645-646; Duncombe, Trials per Pais (9th ed.) pp. 166-167, 175, 189, 196, 203; Hawkins, Pleas of the Crown, II, c. 43, §§ 32, 33; Bacon, Abridgment, V, Juries, 355; Viner, Abridgments, XXI, Trial, 243; Hargraves Coke upon Littleton I, 156; Chitty, Criminal Law, I, 539.

<sup>3</sup> Year Books, 19 Ass. 62, pl. 6, 4 Henry VII, 8, P. pl. 6; 4 Henry VII, 3, H. pl. 5; *King v. Jenney* (1509) Keilw. 97, 72 Eng. Rpt. 261; *Rex v. Genney* (1508) Keilw. 102a, 72 Eng. Rpt. 266; *Reg. v. Tutchin*, 14 St. Tr. 1095, 1101 (1816 ed.); *Rex v. Hampden* (1683) 9 St. Tr. 1054, 1057-1061; *Rex v. Parkyns* (1695) 13 St. Tr. 163; *Rex v. Rowan* (1793) 22 St. Tr. 1034, 1037-1039; *Rex v. Kirwan* (1812) 31 St. Tr. 543; *The King v. Edmonds* (1821) 4 B. & Ald. 471, 106 Eng. Rpt. 1009; *Reg. v. Lacey* (1848) 3 Cox Cr. C. 517, 519.

<sup>4</sup> Respondent's brief states: "The following gives a rough analysis of the Government's authorities on the right to challenge a King's Servant:

<i>Author:</i>	<i>Challenge In Principal</i>	<i>Challenge To Favor</i>
Fitzherbert.....	No	Yes
Chief Justice Brooke.....	No	No
Staunforde.....	No	Yes
Coke.....	No	No
Lord Hale.....	No	Yes

"From the above it seems that nineteen authorities hold that there is no principal cause of challenge against a Crown Servant; that twelve authorities hold that there is not even any challenge for favor. *Fitzherbert, Coke,* and *Rex v. Hampden*, 9 St. Tr. 1054, 1057, 1061, allow challenges for favor in respect of menial servants. Actual malice as distinguished from favor was allowed as a challenge by: Staunforde, Lord Hale, Duncombe, Hawkins, Matthew Bacon, Year Book 19 Ass. 62 Pl. 639, *Rex v. Genney*, Keilw. 102 a, *Reg. v. Blakeman*, 175 Eng. Rpt. 479. Brooke allowed no challenge of any kind for the defendant but challenge of either kind for the king's side."

Respondent's counsel quote from the commentators their statements of the reason why a crown servant was

"*Author*—Continued.

	<i>Challenge In Principal</i>	<i>Challenge To Favor</i>
Chief Justice Rolle.....	No	Yes
Duncombe .....	No	No
Hawkins.....	Doubtful	Doubtful
Matthew Bacon.....	Doubtful	Doubtful
Viner.....	No	Yes
Hargrave .....	No	No
Chitty.....	Doubtful	Yes

*The Cases:*

Year Book (1346) 19 Ass. 62, pl. 6.....	No	No
Year Book, 4 Henry VII 8, P. pl. 7.....	No	No
Year Book, 4 Henry VII, 3 H. pl. 5.....	No	No
<i>Rex v. Genney</i> , (1508) Keilw. 102a.....	No	No
<i>Reg. v. Tutchin</i> , 14 St. Tr. 1095, 1101 (1816).....	Doubtful	No
<i>Rex v. Hampden</i> , (1683) 9 St. Tr., 1054, 1057-1061.....	No	Not decided
<i>Rex v. Parkyns</i> (1695) 13 St. Tr. No. 163.	No	No
<i>Rex v. Rowan</i> (1793) 22 St. Tr. 1034, 1037-1039.....	No	No
<i>Rex v. Kirwan</i> , (1812) 31 St. Tr. 543....	No	Not decided
<i>King v. Edmonds</i> , (1821) 4 B. & Ald. 471, 106 Eng. Rpt. 1009.....	No	No
<i>Reg. v. Lacey</i> , (1848) 3 Cox Cr. C. 517- 519.....	No	Not decided"

not challengeable,—as that “he should favor the King by reason of his obedience”;<sup>5</sup> or, as put by Lord Coke—“because in respect of his allegiance he ought to favor the king more.”<sup>6</sup> Hargrave, expressing dissatisfaction with the reason assigned by Lord Coke, observed: “But a better principle to found the rule upon was not unobvious; namely, that from the extensive variety of the king’s connections with his subjects through tenures and offices, if favour to him was to prevail as an exception to a juror, it might lead to an infinitude of objections, and so operate as a serious obstruction to justice in suits in which he is a party.”<sup>7</sup> The discussion of the reason for the rule affirms its existence.

Whatever the reason, it is manifest, to say the least, that there was no settled practice under the English law establishing an absolute disqualification of governmental employees to serve as jurors in criminal cases. And such a disqualification cannot, upon the ground of such a practice, be treated as embedded in the Sixth Amendment. See *Callan v. Wilson*, 127 U. S. 540, 549; *Thompson v. Utah*, 170 U. S. 343, 350; *Patton v. United States*, 281 U. S. 276, 288; *Dimick v. Schiedt*, 293 U. S. 474, 476, 487; *Continental Bank v. Chicago R. I. & P. Ry.*, 294 U. S. 648, 669; 2 Story on the Constitution, § 1791.

We turn to the question whether in the colonies, or in the States at the time of the adoption of the Sixth Amendment, there was such a disqualification. We find no satisfactory evidence to that effect. Counsel for the Government say that the practice in the colonies prior to the adoption of the Federal Constitution “apparently cannot be ascertained.” They say that they have searched “the available reports and authorities without finding anything of relevance.” The researches of respondent’s counsel

<sup>5</sup> Fitzherbert, *op. cit.* § 63.

<sup>6</sup> Coke, *op. cit.* I, 156a.

<sup>7</sup> Hargrave, *op. cit.* I, 156.

have not supplied the lack. They urge that, to make the exception applicable, the Government must affirmatively show that the colonists recognized the exception in favor of the king's servants at the time the Sixth Amendment was formulated. But before we can read an absolute disqualification into the Amendment because of a rule obtaining in the colonies different from that obtaining in England we must have proof that there was a different rule. Respondent's contention is based upon a supposed acceptance of Blackstone's statement of the grounds of a principal challenge:

"A *principal* challenge is such where the cause assigned carries with it *prima facie* evident marks of suspicion either of malice or favour; as, that a juror is of kin to either party within the ninth degree; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he has formerly been a juror in the same cause; that he is the party's master, servant, counsellor, steward, or attorney, or of the same society or corporation with him: all these are principal causes of challenge; which, if true, cannot be overruled, for jurors must be *omni exceptione majores*." 3 Bl. Com. 363.

Undoubtedly, as we have frequently said, the framers of the Constitution were familiar with Blackstone's Commentaries. Many copies of the work had been sold here and it was generally regarded as the most satisfactory exposition of the common law of England. *Schick v. United States*, 195 U. S. 65, 69. But in this instance we think the point is pressed too far. It will be observed that Blackstone does not refer specifically to the subject now under discussion. His statement has relation to masters and servants of private parties. And, while at another place he makes the general statement that challenges in criminal cases may be made "for the very same

reasons that they may be made in civil causes" (4 Bl. Com. 352), he makes no mention in either instance of the practice in crown cases with respect to servants of the crown. Blackstone's failure to refer to that historic exception is obviously not enough to refute the proof of its existence as shown by the affirmative statements of other commentators and the decided cases. We think that his omission to mention the case of crown servants cannot be regarded as a sufficient basis for holding, in the absence of other evidence, that the common law rule was different in the colonies from that in England,—much less that the Congress which proposed the Sixth Amendment, or the state legislatures which ratified it, undertook to establish an absolute disqualification of all governmental employees beyond the control of the congressional power.

Respondent relies upon our decision in *Crawford v. United States*, 212 U. S. 183. That was a prosecution in the District of Columbia for conspiracy to defraud the United States in relation to a contract with the Post Office Department. One of the grounds of reversal of the judgment of conviction was the overruling by the trial court of a challenge to a juror who was a clerk in charge of a subpostal station located in a drug store. The Court referred to the qualifications for jurors prescribed by § 215 of the Code of Laws for the District and to the provision of § 217 exempting from jury duty "salaried officers of the Government." Assuming the contention to be sound that the mere fact that a proposed juror was such a salaried officer could be ground only for his own claim of exemption, the Court expressed the opinion that the provisions of the sections of the Code did not embrace the entire subject of the qualifications of jurors; that by the common law there was a further qualification, and that under that law in force in Maryland, and applicable to the district, the court should have held the juror disqualified by reason of his employment. *Id.*, pp. 195, 196.

It will be observed that the employment was in the very department to the affairs of which the alleged conspiracy related. But the decision took a broader range and did not rest upon that possible distinction. The Court was not aided by a careful or comprehensive presentation of the English precedents and it was not shown that the courts of Maryland had passed upon the point. The above-mentioned statement of Blackstone was cited for the proposition "that one is not a competent juror in a case if he is master, servant, steward, counsellor or attorney of either party." The Court also cited the decision in *Block v. State*, 100 Ind. 357, 362, which was said to follow that rule of the common law. In that case the juror was a deputy of the prosecuting attorney. The latter, as the state court said, "was by analogy and for all practical purposes, the plaintiff in the prosecution" and the deputy "had become and was the employee and subordinate of the prosecuting attorney" and therefore "impliedly biased" (*Id.*, p. 364).<sup>8</sup> In the *Crawford* case this Court also referred to the decisions cited in the dissenting opinion in the court below (30 App. D. C., p. 33) to the effect that "a clerk or employé of a private party or of a corporation is not qualified to sit as a juror," and it was said that while the cases cited were civil cases, the rule applied to criminal cases as well.<sup>9</sup> The rule

<sup>8</sup> See, also, *Zimmerman v. State*, 115 Ind. 129, 17 N. E. 258; *Gaff v. State*, 155 Ind. 277, 58 N. E. 74; *Evans v. State*, 13 Ga. App. 700, 79 S. E. 916; *State v. Golubski*, 45 S. W. (2d) 873.

<sup>9</sup> But see as to various officers held to be qualified, when not found to have actual bias: *Jackson v. State*, 74 Ala. 26, 29 (coroner); *Pate v. State*, 158 Ala. 1, 3, 48 So. 388 (deputy sheriff); *Spittorff v. State*, 108 Ind. 171, 172, 8 N. E. 911 (bailiff); *O'Connor v. State*, 9 Fla. 215, 221, 222 (coroner); *State v. Adams*, 20 Iowa 486 (county supervisor); *State v. McDonald*, 59 Kan. 241, 244, 52 Pac. 453 (school district officers); *State v. Carter*, 106 La. 407, 30 So. 895 (constable); *State v. Petit*, 119 La. 1013, 44 So. 848 (deputy sheriff); *State v. Foster*, 150 La. 971, 985, 986, 91 So. 411 (deputy sheriff); *Fellows'*

which had obtained in England with respect to the qualifications of servants of the crown to serve as jurors in crown cases was not mentioned, and the authorities to which we have referred in that relation were not brought to the attention of the Court.

In the light of the English precedents, and in the absence of any satisfactory showing of a different practice in the colonies, we are unable to accept the ruling in the *Crawford* case as determinative here or to reach the conclusion that it was a settled rule of the common law prior to the adoption of the Sixth Amendment that the mere fact of a governmental employment, unrelated to the particular issues or circumstances of a criminal prosecution, created an absolute disqualification to serve as a juror in a criminal case.

*Third.*—Even if it could be said that at common law such a disqualification existed, we are of the opinion that Congress had power to remove it. That point was not touched in the *Crawford* case. Indeed it was said, referring to the Code of Laws of the District of Columbia, that if the provision of § 215, together with § 217, “were alone to be considered, it might be that the juror was qualified.” And, further, in referring to *Block v. State*, *supra*, the ruling there was summarized as being to the effect “that the Indiana statute upon the qualification of jurors did not strike out the rule of the common law on the subject, when not inconsistent with the statute.”

---

*Case*, 5 Maine 333, 334 (constable); *State v. Wright*, 53 Maine 328, 344, 345 (coroner); *People v. Lange*, 90 Mich. 454, 455, 51 N. W. 534 (justices of the peace); *Glassinger v. State*, 24 Ohio St. 206 (justice of the peace); *State v. Cosgrove*, 16 R. I. 411, 16 Atl. 900 (constable); *Burns v. State*, 12 Tex. App. 269, 277–8 (deputy sheriff); *Mingo v. State*, 61 Tex. Cr. Rep. 14, 15, 133 S. W. 882 (deputy sheriff); compare *Chapman v. State*, 66 Tex. Cr. Rep. 489, 491, 147 S. W. 580; *State v. Parker*, 104 Vt. 494, 497, 498, 162 Atl. 696 (deputy sheriff); *Thompson v. Commonwealth*, 88 Va. 45, 46, 13 S. E. 304 (city treasurer and councilman).

The observations of the Court in the *Crawford* case, in the absence of such an act of Congress as that now under consideration, should not be taken as attempting to set up an absolute rule to be applied in the face of specific legislation. The question of legislative power was neither presented nor passed upon.

Whether a clause in the Constitution is to be restricted by a rule of the common law as it existed when the Constitution was adopted depends upon the terms or nature of the particular clause. *Continental Bank v. Chicago, R. I. & P. Ry.*, *supra*. We have frequently adverted to the firm place which the jury as a fact-finding body holds in our history and jurisprudence. *Dimick v. Schiedt*, *supra*, pp. 485, 486. The Constitution would have been "justly obnoxious to the most conclusive objection" if the right of trial by jury, as the bulwark of civil and political liberties, had not been recognized and confirmed "in the most solemn terms." *Id.*; 2 Story on the Constitution, § 1779. And the importance of safeguarding the complete integrity of the jury in the full sense of the Constitution is not to be gainsaid.

We have described the essential elements of "trial by jury." In *Patton v. United States*, *supra*, we said that these elements as recognized in this country and England when the Constitution was adopted were "(1) the jury should consist of twelve men, neither more nor less; (2) that the trial should be in the presence and under the superintendence of a judge having power to instruct them as to the law and advise them in respect of the facts; and (3) that the verdict should be unanimous." None of these elements is involved here.

The Sixth Amendment was not needed to require trial by jury in cases of crimes. That requirement is provided by Article III, § 2, paragraph 3. The Sixth Amendment provided further assurances. It added that in all criminal prosecutions the accused shall enjoy the right "to a

speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." These requirements as to speed, publicity, impartiality, information as to the charge, confrontation with witnesses, compulsory process and assistance of counsel are all of first importance. But it would hardly be contended that in all these matters regard must be had to the particular forms and procedure used at common law. These requirements relate to matters of substance and not of form. And the true purpose of the Amendment can be achieved only by applying them in that sense.

In construing the Seventh Amendment providing for the preservation of trial by jury in suits at common law, and that no fact tried by a jury shall be otherwise re-examined "than according to the rules of the common law," we have said that the aim of the Amendment was "to preserve the substance of the common law right of trial by jury as distinguished from mere matters of form or procedure." *Baltimore & Carolina Line v. Redman*, 295 U. S. 654, 657. See, also, *Walker v. New Mexico & Southern Pacific R. Co.*, 165 U. S. 593, 596; *Gasoline Products Co. v. Champlin Refining Co.*, 283 U. S. 494, 498. We held in *Ex parte Peterson*, 253 U. S. 300, that there was no constitutional obstacle to the appointment by a federal court of an auditor in aid of jury trials although the practice in question had not obtained prior to the adoption of the Constitution either in England or in the colonies in connection with trial by jury. The ruling rested upon the fundamental consideration that "New devices may be used to adapt the ancient institution to present needs and to make of it an efficient instrument

in the administration of justice. Indeed, such changes are essential to the preservation of the right." *Id.*, pp. 309, 310.

This principle of construction has also had notable application to the requirement of trial by jury in criminal prosecutions. In the recent case of *Funk v. United States*, 290 U. S. 371, 372, this Court, without the aid of legislative enactment, held that the wife of the defendant on trial for a criminal offence in a federal court was a competent witness in his behalf. The Court overruled cases to the contrary, sustaining the power of the federal courts "to declare and effectuate, upon common law principles, what is the present rule upon a given subject in the light of fundamentally altered conditions, without regard to what has previously been declared and practiced." It was deemed to be axiomatic "that the common law is not immutable but flexible, and by its own principles adapts itself to varying conditions." *Id.*, p. 383. And what courts can thus do to assure the appropriate growth and adaptation of the law *a fortiori* can be achieved by the action of a competent legislature.

In *Patton v. United States*, *supra*, the Court answered in the affirmative a question certified by the Circuit Court of Appeals, whether, in case a juror became incapacitated during a trial upon indictment, the defendant and the Government could consent "to the trial proceeding to a finality with eleven jurors" and the defendant could "thus waive the right to a trial and verdict by a constitutional jury of twelve men." The Court said that "it might be conceded, at least generally, that under the rule of the common law the accused was not permitted to waive trial by jury." But the Court did not think it necessary to consider that phase of the matter as "the rule of the common law, whether exclusive or subject to exceptions, was justified by conditions which no longer exist." *Id.*, p. 306. And the Court found no convincing ground for holding that a waiver of a jury trial was not

as effective in the case of felonies as in that of misdemeanors. *Id.*, p. 309.

The Sixth Amendment does not preclude legislation making women qualified to serve as jurors in criminal prosecutions, although that was not permitted at common law. *Tynan v. United States*, 297 Fed. 177, 178, 179; *Hoxie v. United States*, 15 F. (2d) 762. Although aliens are within the protection of the Sixth Amendment, the ancient rule under which an alien might have a trial by jury *de medietate linguae*, "one half denizens and the other aliens,"—in order to insure impartiality—no longer obtains.<sup>10</sup> Congress has reduced the number of peremptory challenges of the accused. This number, which was "settled by the common law" at thirty-five and fixed by the statute 22 Hen. VIII, c. 14, at twenty (4 Bl. Com. 354), has been reduced in the case of felonies, other than treason or capital offences, to ten. 28 U. S. C. 424; Code D. C., Tit. 6, § 366. In *Stilson v. United States*, 250 U. S. 583, 586, we said on this point: "There is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges to defendants in criminal cases; trial by an impartial jury is all that is secured. The number of challenges is left to be regulated by the common law or the enactments of Congress." And the same was held to be true of the authority of Congress to treat several defendants, for this purpose, as one party. It is not necessary to multiply illustrations of the familiar principle which, while safeguarding the essence of the constitutional requirements, permits readjustments of procedure consistent with their spirit and purpose.

Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental atti-

---

<sup>10</sup> See *United States v. Cartacho*, Fed. Cas. 14,738; *Respublica v. Mesca*, 1 Dall. 73; *People v. McLean*, 2 Johns. 381; *Thompson & Merriam on Juries*, §§ 16, 17, and cases and statutes there cited.

tude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula. State courts enforcing similar requirements of state constitutions as to trial by jury have held that legislatures enjoy a reasonable freedom in establishing qualifications for jury service, although these involve a departure from common law rules. This principle was thus stated by the Court of Appeals of New York in *Stokes v. People*, 53 N. Y. 164, 173: "While the Constitution secures the right of trial by an impartial jury, the mode of procuring and impaneling such jury is regulated by law, either common or statutory, principally the latter, and it is within the power of the legislature to make, from time to time, such changes in the law as it may deem expedient, taking care to preserve the right of trial by an impartial jury." And in *Brown v. State*, 62 N. J. L. 666, 678; 42 Atl. 811, the Court of Errors and Appeals of New Jersey enunciated the same doctrine: "The provision in our constitution (paragraph 8), that the accused should have a right to a speedy and public trial by an impartial jury, secured to the accused a right to a trial by an impartial jury by an express constitutional provision. The means by which an impartial jury should be obtained are not defined. In neither of the constitutional provisions on this subject is there any requirement with respect to challenges, or to the qualifications of jurors, or the mode in which the jury shall be selected. These subjects were left in the discretion of the legislature, with no restriction or limitation, except that the accused should have the right to be tried by an impartial jury."

One of the grounds of principal challenge at common law was that a juror was "related to either party within the ninth degree, though it is only by marriage."<sup>11</sup> It appears that this restriction has been reduced in a num-

---

<sup>11</sup> Chitty, *op. cit.* I, 541; Coke, *op. cit.* 157a; 3 Bl. Com. 363.

ber of States to degrees from the third to the sixth.<sup>12</sup> The common law rule with respect to jurors who have formed an opinion upon the subject of the controversy has been liberalized by legislation which meets the essential condition of impartiality while taking account of modern conditions.<sup>13</sup> The disqualification of taxpayers in cases where a municipality is interested has been removed by statute in many States.<sup>14</sup> In *Commonwealth v. Reed*, 1 Gray 472, the court held that action of that sort was not a violation of the Massachusetts Declaration of Rights securing to every citizen "the right to be tried by judges as free, impartial and independent, as the lot of humanity will admit." The court thought that an exemption "from an interest which is only theoretic or imaginary, or which is so remote and trifling and insignificant, that it may fairly be supposed to be incapable of affecting the judgment or of influencing the conduct of an individual, is not essential." And referring to the particular contention as to the interest of a taxpayer of a town in the penalties demanded, the court added: "Such an interest as arises from that cause is remote and minute; and it may well devolve upon the legislature to determine if it ought to disable an otherwise impartial citizen from serving in the capacity of a juror. The rule established by such authority must, in general, be the guide by which courts of law will be controlled."

The ultimate question is not whether Congress has changed a common law rule, but whether, in reason, an

---

<sup>12</sup> See, for example, the provisions of state codes or general laws in Alabama, § 8610; Arkansas, § 6334; Florida, § 4359; Indiana, § 9-1504-4; Louisiana, Art. 507 (1); Missouri, § 8771; Tennessee, § 10007; Vermont, § 1237.

<sup>13</sup> See *Stokes v. People*, *supra*; *Spies v. Illinois*, 123 U. S. 131, 167-169; *Hopt v. Utah*, 120 U. S. 430, 433-435.

<sup>14</sup> *Coke*, op. cit. I, 157a, 157b; *Wood v. Stoddard*, 2 Johns. 194; *Diveny v. Elmira*, 51 N. Y. 506, 509, 510; *Thompson and Merriam*, op. cit. § 179.

absolute disqualification of governmental employees to serve as jurors in criminal cases is essential to the impartiality of the jury. The Government stresses the factual situation in the District of Columbia before the enactment of the statute before us. Respondent replies that a large proportion of governmental employees are in any event disqualified because of legal residence elsewhere. But after making every allowance for that class, it is still true that in the District of Columbia there is a numerous body of persons<sup>15</sup> who, except for the fact of governmental employment, would be eligible for service as jurors and whose service, by reason of their intelligence and character, would be highly desirable. That fact is emphasized by the congressional committees which recommended the passage of the Act.<sup>16</sup> They stated, after referring to the exemptions then existing: "These exemptions take from those who would otherwise be qualified some of the best jurymen available and make the empanelling of a jury much more difficult." The bill was recommended by the bar association of the District, by the district commissioners and by the corporation counsel.<sup>17</sup> It is manifest that the Act was passed to meet a public need and that no interference with the actual impartiality of the jury was contemplated. The enactment itself is tantamount to a legislative declaration that

---

<sup>15</sup> The court below estimates that "In the District of Columbia more than a hundred thousand government employees will be qualified as jurors if the statute is valid." 65 App. D. C. 330; 83 F. (2d) p. 592.

<sup>16</sup> H. R. Rep. No. 1421; Sen. Rep. No. 1297; 74th Cong., 1st sess.

<sup>17</sup> Cong. Rec., 74th Cong., 1st sess., Vol. 79, pt. 12, p. 13401. The bill was drafted by a committee consisting of the president of the district bar association, the president of the Federation of Citizens' Associations, the chairman of the Traffic Committee of the Board of Trade, the president of the Federation of Civic Associations, a member of the Public Utilities Commission, and representatives of the district government. Sen. Rep. No. 1347.

the prior disqualification was artificial and not necessary to secure impartiality.

Why should it be assumed that a juror, merely because of employment by the Government, would be biased against the accused? In criminal prosecutions the Government is acting simply as the instrument of the public in enforcing penal laws for the protection of society. In that enforcement all citizens are interested. It is difficult to see why a governmental employee, merely by virtue of his employment, is interested in that enforcement either more or less than any good citizen is or should be. The instant case is a good illustration. The accused was on trial for theft from a store of a private corporation. Can it be seriously urged that to assure an impartial jury for his trial it is necessary to segregate governmental employees from other citizens of the District upon the theory that the former are biased against him? What possible interest in such a case has a governmental employee different from that of any citizen who wishes to see crime properly punished but is free from any actual bias against the alleged offender? And what appears to be so obviously true in this case of larceny would be true also in criminal prosecutions in general, running the gamut of offences from murder, burglary and robbery to cheats and disturbances of the peace. We think that the imputation of bias simply by virtue of governmental employment, without regard to any actual partiality growing out of the nature and circumstances of particular cases, rests on an assumption without any rational foundation.

It is said that particular crimes might be of special interest to employees in certain governmental departments, as, for example, the crime of counterfeiting, to employees of the treasury. But when we consider the range of offenses and the general run of criminal prosecutions, it is apparent that such cases of special interest

would be exceptional. The law permits full inquiry as to actual bias in any such instances. We repeat, that we are not dealing with actual bias and, until the contrary appears, we must assume that the courts of the District, with power fully adequate to the occasion, will be most careful in those special instances, where circumstances suggest that any actual partiality may exist, to safeguard the just interests of the accused. While bias, as has been said, is "an elusive condition of the mind," that consideration affords no ground for extreme and fanciful tests. To impute bias as matter of law to the jurors in question here would be no more sensible than to impute bias to all storeowners and householders in cases of larceny or burglary.

It is suggested that an employee of the Government may be apprehensive of the termination of his employment in case he decides in favor of the accused in a criminal case. Unless the suggestion be taken to have reference to some special and exceptional case, it seems to us far-fetched and chimerical. It does not rise to the dignity of an argument to be addressed to the power of Congress to provide a reasonable scheme with respect to the qualifications of jurors. It belongs in the category of "theoretic or imaginary" interests—"remote" and "insignificant" as described in the Massachusetts case above cited.

Nor are we impressed with the contention that the qualification of governmental employees for jury service in criminal cases in the District of Columbia will impair the public respect in which the processes of the law should be held. On the contrary, we think that the spectacle of the exclusion *en masse* from that service of a body of citizens otherwise highly desirable in point of intelligence and character—solely by reason of their employment by the Government—and the imposition in consequence of a heavier burden upon other citizens, whether that exclusion would be in deference to a supposed an-

cient rule or because of a conclusive presumption of bias against an accused, would constitute a serious reproach to the competency and efficiency of the administration of the system of jury trials.

What has been said applies with equal force to the provisions of the statute qualifying those who receive governmental pensions and gratuities.

*Fourth.* Respondent also raises the question of the validity of the statute under the due process clause of the Fifth Amendment. For the reasons already given, we find nothing arbitrary or capricious in the legislative action.

The judgment of the Court of Appeals is reversed and the judgment of conviction is affirmed.

*Reversed.*

MR. JUSTICE McREYNOLDS, MR. JUSTICE SUTHERLAND, and MR. JUSTICE BUTLER are of opinion that the case is controlled by our decision in *Crawford v. United States*, 212 U. S. 183, and that the rule there laid down should not now be departed from. They think the opinion of the court below is sound, and that its judgment should be affirmed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

VILLA ET AL. v. VAN SCHAICK, SUPERINTENDENT OF INSURANCE OF NEW YORK.

APPEAL FROM THE SUPREME COURT OF NEW YORK.

No. 54. Argued October 23, 1936.—Decided December 7, 1936.

Upon review of the judgment of a state court, when the record before this Court does not adequately show the facts underlying the state court's decision of a federal question, this Court may set aside the judgment and remand the cause, to the end that those facts may be presented either through amendment of the record or by further proof as the state court may be advised. P. 155.

---

The case involved the question whether, in the liquidation in New York of a New York surety company, which in the course of its business had acted as insurance carrier for employees in relation to claims under the workmen's compensation laws of New York and other States, New York claims could, consistently with the Federal Constitution, be preferred, as directed by the New York law, over awards made in Minnesota. The record did not clearly reveal whether the court below had determined that, upon a segregation, there would be sufficient assets derived from the business done within New York to pay the preferred claims, or whether that preference was to be satisfied out of assets resulting from operations in other States. Nor did it appear whether assets derived from business in Minnesota would be sufficient to discharge the Minnesota claims.

266 N. Y. 589; judgment vacated.

APPEAL from a judgment which affirmed an order of the Supreme Court of New York for the distribution of assets in a liquidation proceeding. See also 296 U. S. 544.

*Mr. Hartwell Cabell*, with whom *Mr. Asa B. Kellogg* was on the brief, for appellants.

*Mr. Walter B. Herendeen*, with whom *Messrs. Louis H. Pink* and *Benjamin Potoker* were on the brief, for appellee.

By leave of Court, *Mr. John J. Bennett, Jr.*, Attorney General of New York, *Mr. Henry Epstein*, Solicitor General, and *Messrs. Joseph A. McLaughlin* and *Paul Balsam*, Assistant Attorneys General, filed a brief on behalf of the Industrial Commissioner of New York, as *amicus curiae*, in support of the constitutionality of the Act involved.

## PER CURIAM.

The Southern Surety Company, an insurance company organized under the laws of New York and doing business there and in other States, is being liquidated by the state superintendent of insurance. In the course of its business, the Company acted as an insurance carrier for employers in relation to claims under the compensation laws of New York and other States. Upon his first report, the liquidator sought the direction of the state court to pay in full, as preferred under § 34 of the Workmen's Compensation Law of New York, all compensation claimants who had filed preferred claims under the New York Law and whose claims the liquidator had allowed.

Appellants are holders of awards of compensation against the Company under the laws of Minnesota. They appeared in the proceedings for liquidation and objected to the preference of the New York claimants. The Supreme Court of the State sustained the preference and ordered distribution accordingly. The Court of Appeals affirmed the order. 266 N. Y. 589; 195 N. E. 213. Appeal to this Court was dismissed. 296 U. S. 544. The Court of Appeals amended its remittitur so as to recite that a federal question was presented and necessarily passed upon, in that the court held that § 34 of the Workmen's Compensation Law of New York was not repugnant to § 2 of Article IV and § 1 of the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals thereupon vacated the judgment

previously entered and directed the entry of a new judgment which, after a further amendment of the remittitur, was entered on April 1, 1936, and from which this appeal was taken within the time allowed by law.

It appears from the record that the business had its origin with the Southern Surety Company of Oklahoma which was incorporated in that State in 1907; that the Oklahoma company took over the business of other companies in Missouri, Michigan, Indiana and New Mexico; that in 1918 the Southern Surety Company of Iowa was organized and took over the business of the Oklahoma company; that in 1928 the Southern Surety Company of New York was incorporated, assuming the liabilities and receiving most of the assets of the Iowa company; that the business of the New York company grew rapidly but that in March, 1932, it was found to be insolvent and the liquidator took charge.

The Court of Appeals stated in its order that "In this case the New York assets are concededly more than sufficient for the payment of the preferences allowed. (See *Clark v. Williard*, 294 U. S. 211.) We pass on no other situation." The record discloses that when the liquidator took possession of the assets in March, 1932, the aggregate "was sufficient to pay the New York compensation claims in full without resorting to any assets received by the liquidator thereafter from sources outside the State of New York," but that the assets so taken over" had been derived from the general conduct of the insurance business during the preceding years throughout the United States."

Appellants contend that "the New York assets" to which the Court of Appeals referred were the commingled assets owned by the Company at the time the liquidator took possession and derived from the operations of the company throughout the country, and not simply assets which had been derived from the business of the Company in the State of New York. The liquidator appar-

ently contends that while the preference does not apply to assets from other States brought to New York after the liquidation proceeding was instituted, it does apply to all the assets, however derived, which were in the State of New York at the time of the liquidation order, aside from the statutory deposit held in trust for the policyholders under § 71 of the state insurance law.

The condensed statement in the record leaves doubt as to the determination of the state court upon points bearing upon the federal question which that court has decided in upholding the preference. It does not clearly appear whether the court has determined that upon a segregation of assets there would be sufficient assets derived from the business done within the State of New York to pay the preferred claims, or whether that preference is to be satisfied out of assets resulting from operations in other States. Nor does it appear whether assets derived from business in Minnesota will be sufficient to discharge appellants' claims.

We express no opinion as to the merits of the federal question and we think that the facts should be more fully elucidated before that question is decided here. We have frequently said that in the exercise of our appellate jurisdiction we have power not only to correct errors in the judgment under review but to make such disposition of the case as justice requires. In determining what justice does require, we have considered changes, either in fact or law, supervening since the judgment was entered; and in such cases we have set aside the judgment and remanded the cause so that the state court might be free to act. We think that the fundamental principle involved in such action applies as well to cases where the record before us does not adequately show the facts underlying the decision of the state court of the federal question, and opportunity should be given for their appropriate presentation either through amendment of the record or by further proof as the state

court may be advised. See *Gulf, C. & S. F. Ry. Co. v. Dennis*, 224 U. S. 503, 506-509; *Watts, Watts & Co. v. Unione Austriaca*, 248 U. S. 9, 21; *Dorchy v. Kansas*, 264 U. S. 286, 289; *Missouri ex rel. Wabash Ry. Co. v. Public Service Comm'n*, 273 U. S. 126, 131; *Patterson v. Alabama*, 294 U. S. 600, 607. To afford this opportunity we vacate the judgment and remand the cause for further proceedings.

*It is so ordered.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

PRAIRIE FARMER PUBLISHING CO. ET AL. v.  
INDIANA FARMER'S GUIDE PUBLISHING CO.

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

No. 104. Argued November 18, 1936.—Decided December 7, 1936.

Upon the former hearing of this case, 293 U. S. 268, this Court, while deciding that a restraint or monopoly of a business may violate the Sherman Anti-Trust Act although confined to that part of it which is carried on in a particular section of the country, intimated no opinion as to whether the evidence in the case, upon the issues of restraint or monopoly and of injury to petitioner, was sufficient to go to the jury. P. 158.

82 F. (2d) 704, reversed.

CERTIORARI\* to review the affirmance of a judgment for the plaintiff (respondent here) in an action for triple damages under the Sherman Anti-Trust Act.

*Mr. Maxwell v. Beghtol*, with whom *Messrs. Burke G. Slaymaker, Thomas E. Murphy, and J. L. Parrish, Jr.*, were on the brief, for petitioners.

*Messrs. U. S. Lesh and Eben Lesh* for respondent.

---

\*See Table of Cases Reported in this volume.

## PER CURIAM.

Respondent brought this action against petitioners for damages caused by alleged violation of the Sherman Anti-Trust Act. On the first trial, the court directed a verdict in petitioners' favor and entered judgment accordingly, which the Circuit Court of Appeals affirmed. 70 F. (2d) 3. We reversed the judgment and directed a new trial. 293 U. S. 268. That trial resulted in a verdict against petitioners, and the judgment thereon was affirmed by the Circuit Court of Appeals. 82 F. (2d) 704. In view of petitioners' contention that the Circuit Court of Appeals had misapplied our former opinion, we granted certiorari.

In its opinion the Circuit Court of Appeals stated that the evidence on the former trial "differed little in essential respects" from that in the present record. The court then gave the grounds of its decision as follows:

"On the former appeal we sustained the District Court's dismissal of the action on the ground that the evidence failed to establish a violation of the sections relied upon. The Supreme Court reversed the judgment, and a new trial followed. On retrial, the duty of the District Court to follow the instructions of the Supreme Court was, of course, clear. It attempted so to do and submitted the case to the jury with the results above stated.

"The parties disagree as to the construction of the Supreme Court decision. Both agree that it controls this appeal.

"Appellants earnestly contend that the evidence in the case fails to show either a conspiracy to restrain interstate commerce or the adoption of unfair or unlawful trade practices by the appellants. This court adopted this view on the previous trial, and the Supreme Court differed with us and reversed the judgment. Appellants

also argue that the evidence in this case fails to show any recoverable damages suffered by appellee.

"We deem it unnecessary to elaborate the questions so fully discussed in the previous opinions. As we view the question before us it is merely a matter of applying the Supreme Court's decision.

"We accept appellee's version which is that the complaint stated a good cause of action, and, if the facts which the evidence on the trial tended to establish be accepted by the jury as true, then it was justified in finding for appellee. In other words, the arguments which appellants advance do not establish a bar to recovery, but merely challenge the facts and the inferences which support appellee's fact contentions. The result is that a jury question on the issue of damages, restraint of trade, and unfair methods, existed, and the jury settled the fact issues by its verdict. As we construe the decision of the Supreme Court, this conclusion is unavoidable.

"It follows, therefore, that the judgment should be and is hereby affirmed."

We are unable to escape the conclusion that in holding the evidence sufficient to sustain a verdict for respondent upon the issue of unlawful restraint or practices and consequent injury to respondent, the Circuit Court of Appeals felt itself controlled by our decision. That was a misinterpretation. We expressed no opinion upon that question. On the contrary, after dealing with the question of interstate commerce and holding that it was not necessary that the restraint or monopoly should affect all the business of the kind throughout the country, but might relate to the part of it carried on in a particular section, we said:

"We intimate no opinion whether, upon the question of restraint or monopoly, or upon the question of injury to petitioner [respondent here] or its business, the evidence is sufficient to warrant a verdict in its favor." 293 U. S., p. 281.

That question as raised by the present record should have been determined by the Circuit Court of Appeals upon a consideration of the evidence adduced, untrammelled by any supposed expression upon that point by this Court.

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

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

BRITISH-AMERICAN OIL PRODUCING CO. v.  
BOARD OF EQUALIZATION OF MONTANA  
ET AL.

CERTIORARI TO THE SUPREME COURT OF MONTANA.

No. 37. Argued November 11, 1936.—Decided December 7, 1936.

1. The Blackfeet Indian Reservation, as existing in recent years, was created by legislation and not by Executive Order. P. 162.

The Reservation rests upon agreements or conventions which were ratified and given effect by Acts of Congress, c. 213, 25 Stat. 113; c. 398, 29 Stat. 321, 353, superseding earlier, temporary Executive Orders.

2. The proviso to § 3 of the Act of February 28, 1891, authorizing the leasing for mining purposes of lands occupied by Indians "who have bought and paid for the same," is not confined to lands acquired by Indians through the payment of a consideration in money, but includes lands reserved for Indians in return for a cession or surrender by them of other lands, possessions, or rights. Pp. 163, 164.
3. The issue of "trust patents" to Blackfeet Indian allottees, containing, as the Act of June 30, 1919, requires, a reservation for the benefit of the tribe of all minerals, including oil and gas, in or under the allotted land, operates to carve out of such land and create a distinct estate consisting of the minerals. This estate is in itself land, and, being reserved for the benefit of the tribe, it is tribal land, and is unallotted lands within the meaning of the Acts

of February 28, 1891, *supra*, and May 29, 1924, which authorize leasing for mining purposes. P. 164.

4. With respect to the leasing of unallotted Indian lands for minerals, including oil and gas, the special provisions of the Acts of June 30, 1919, and September 20, 1922, which relate to the Blackfeet Reservation, are to be read with the general provisions of the Acts of February 28, 1891, and May 29, 1924, *supra*. P. 165.
5. Therefore, where a lease was given under the special provisions of the Act of June 30, 1919, *supra*, taken in connection with the general provisions of the Acts of February 28, 1891, and May 29, 1924, *supra*, the production of oil and gas was subject to state taxation by virtue of the assent of Congress in the Act last mentioned. P. 166.

101 Mont. 293; 54 P. (2d) 129, affirmed.

CERTIORARI, 298 U. S. 652, to review a judgment sustaining taxes on the production of oil and gas, under a lease of lands of the Blackfeet Indians.

*Mr. H. C. Hall*, with whom *Messrs. E. K. Cheadle, Jr.*, and *E. J. McCabe* were on the brief, for petitioner.

*Mr. Oscar A. Provost* argued the cause, and *Mr. Raymond T. Nagle*, Attorney General of Montana, filed a brief, for respondents.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

A judgment of the Supreme Court of Montana sustaining state taxes on the production of oil and gas under a lease covering such minerals in certain lands of the Blackfeet Indians (101 Mont. 293; 54 P. (2d) 129) is here under review.

These Indians are wards of the United States and have been occupying a reservation in Montana. During recent years they have received allotments in severalty from lands in the reservation, and they now hold the allotments under so-called trust patents, whereby the United States declares that it will retain the title for a period of twenty-

five years in trust for the use and benefit of the several allottees, and at the expiration of that period will convey the same by patent to them or their heirs. Under the terms of the controlling statute, as also under the terms of the patents, all minerals, including coal, oil and gas, in or under the allotted lands are reserved to the United States for the benefit of the tribe "until Congress shall otherwise direct."

The petitioner holds a mining lease covering "all the oil and gas deposits in or under" certain of these allotted lands, a stated share of the gross production being reserved to the United States for the benefit of the Indian tribe as the lessor's royalty. The lease was authorized by a resolution of the tribal council, was recommended by the United States agent in charge of the reservation, was given for a term of five years from the date of its approval, was approved by the Secretary of the Interior October 5, 1934, and recites that it was given in accordance with § 3 of the Act of February 28, 1891, c. 383, 26 Stat. 795, as amended by Act of May 29, 1924, c. 210, 43 Stat. 244.

The taxes in question are a gross production tax and a net proceeds tax, and it is conceded that the State is without power to apply either to the production under this lease, save and except as Congress may have given its assent. Whether Congress has given its assent is the ultimate question, and this turns on the subordinate questions (a) which of several statutes controls the leasing of tribal lands in this reservation for mining oil and gas, and (b) whether the reserved oil and gas deposits underlying allotted lands in this reservation constitute unallotted lands in the sense of these statutes.

There have been two related but distinct lines of legislation respecting the leasing of tribal Indian lands for mining purposes. The older and more general line has been regarded uniformly as including lands in reserva-

tions created by legislation, such as a treaty or congressional enactment; and has also been regarded at times as including, and at other times as excluding, lands in a reservation created by executive order. The proviso to § 3 of the Act of February 28, 1891, and the Act of May 29, 1924, both before mentioned, belong to the first line. The later and narrower line, which doubtless was prompted by diverse administrative interpretations of the other, is in terms confined to lands in reservations created by executive order. The Act of March 3, 1927, c. 299, 44 Stat. 1347, belongs to this line.

We are of opinion, as was the state court, that the Blackfeet reservation, as existing in recent years, was created by legislation and not by executive order.

The original territory of the Blackfeet and other Indians associated with them included a large area, as is shown by a treaty of September 17, 1851, 2 Kappler Indian Affairs, 2d ed., 594, and a treaty of October 17, 1855, 11 Stat. 657. Under executive orders of 1873 and 1874, an Act of Congress of April 15, 1874, c. 96, 18 Stat. 28, and executive orders of 1875 and 1880, the Blackfeet and certain of the other Indians associated with them came to occupy a large part of this original territory as a reservation specially set apart for them.

By an agreement or convention, ratified by Congress May 1, 1888, c. 213, 25 Stat. 113, which recited various considerations moving from the Blackfeet to the United States and the reverse, and from the Blackfeet to their associates and the reverse, much of the earlier reservation was ceded to the United States, and three separate reservations, all within the limits of the earlier reservation, were created, one of these being set apart for the Blackfeet and the other two for the other Indians. By another agreement or convention, ratified by Congress June 10, 1896, c. 398, 29 Stat. 321, 353, which disclosed various considerations moving from the Indians to the Government and the reverse, part of the separate Blackfeet

reservation was ceded to the United States, and the remainder was set apart as the tribe's future reservation. This last reservation is the one with which we now are concerned. It rests entirely on the agreements or conventions which were ratified and given effect by Congress. The executive orders before mentioned, evidently designed to be temporary, have been superseded by congressional action and no longer are of any force.

We turn, therefore, to the legislation bearing on the leasing for mining purposes of tribal lands in such a reservation. We say "tribal lands" because (1) here the mineral deposits did not pass to the allottees but were reserved for the benefit of the tribe, and (2) other and distinct legislation controls the leasing for mining purposes of lands of individual allottees where there is no reservation of the mineral deposits.

The proviso to § 3 of the Act of February 28, 1891, reads:

"Where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the Council speaking for such Indians, for a period not to exceed . . . ten years for mining purposes in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior."

The Act of May 29, 1924, provides that "unallotted land on Indian reservations," other than lands of the Five Civilized Tribes and of the Osage Reservation, which are subject to lease for mining purposes under the above quoted proviso,

"may be leased at public auction by the Secretary of the Interior, with the consent of the Council speaking for such Indians, for oil and gas mining purposes for a period of not to exceed ten years, and as much longer

thereafter as oil or gas shall be found in paying quantities . . . : *Provided*, That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is hereby authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands; *Provided, however*, that such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner."

The present lease recites that it was given under these general provisions, and the state court regarded them as both applicable and controlling.

The petitioner does not question that the reservation, as existing and occupied by the tribe in recent years, comes within the terms of the proviso in the Act of 1891 as lands which the Indians "have bought and paid for." Doubtless this is because the petitioner recognizes that by uniform administrative practice and by judicial decision this part of the proviso has been construed as not confined to lands acquired by Indians through the payment of a consideration in money, but equally including lands reserved for Indians in return for a cession or surrender by them of other lands, possessions or rights.<sup>1</sup> Further comment in this regard is not necessary.

Obviously the mineral deposits which are the subject of the lease are not needed for farming or agricultural purposes and are not desired for individual allotments.

The issue of the trust patents containing, as the statute requires, a reservation for the benefit of the tribe of all minerals, including oil and gas, in or under the allotted land, operates to carve out of such land and create a distinct estate consisting of the minerals. This estate is in

---

<sup>1</sup> 25 Land Dec. 408; *Strawberry Valley Cattle Co. v. Chipman*, 13 Utah 454, 462, *et seq.*; 45 Pac. 348,

itself land, and, being reserved for the benefit of the tribe, it is tribal land, and is unallotted.

What has been said, unless deflected by matters which remain to be noticed, shows, we think, that the reserved mineral estate which is the subject of the lease comes in all particulars within the terms of the general provisions before quoted, and that the lease should be regarded as authorized by that legislation and given under it.

But it is urged that there are other provisions specifically dealing with the leasing of the Blackfeet lands for mining purposes and that these provisions fully cover that field and therefore render the general legislation inapplicable. There are provisions expressly relating to such leasing of these lands, and therefore it becomes necessary to consider their scope and effect.

The Act of June 30, 1919, c. 4, 41 Stat. 3, 16, 17, contains the following:

“ . . . the Secretary of the Interior is authorized to make allotments under existing laws within the said Reservation to any Indians of said Blackfeet Tribe not heretofore allotted . . .

“*Provided further*, That any and all minerals, including coal, oil, and gas, are hereby reserved for the benefit of the Blackfeet Tribe of Indians until Congress shall otherwise direct, and patents hereafter issued shall contain a reservation accordingly: *Provided*, That the lands containing said minerals may be leased under such rules and regulations and upon such terms and conditions as the Secretary of the Interior may prescribe.”

The Act of September 20, 1922, c. 347, 42 Stat. 857, also provides:

“That lands reserved for school and agency purposes and all other unallotted lands on the Fort Peck and Blackfeet Reservations, in the State of Montana, reserved from allotment or other disposition, may be leased for mining purposes under regulations prescribed by the Secretary of the Interior.”

It is to be observed that the administration of these special provisions and of the general provisions is committed to the supervision of the same officer—the Secretary of the Interior—and that in the exercise of this supervision he approved the present lease containing a recital that it was given in accordance with the general provisions. Not only so, but the agent in charge of the reservation recommended the lease, and the lessee accepted it, with that recital of its statutory foundation. In other words, all proceeded with the view that the general provisions are applicable, and not excluded by the special provisions.

We are of opinion that this view is right. The special provisions relate to the same subject that is dealt with in the general provisions and are to be read in the light of the latter. All were in force when the lease was given and all should be treated as one law so far as this reasonably can be done.<sup>2</sup> The general provisions are more comprehensive than the special. The latter are meager and wanting in detail. The general provisions supply what is thus wanting. And, so far as is here material, there is no conflict, nor anything to prevent all from being carried into effect as if they were one law.

We conclude that the lease was given under the special provision in the Act of June 30, 1919, taken in connection with the general provisions. The Act of May 29, 1924, is one of the general provisions, and in it Congress assents to taxation by the State of the production of oil and gas through a lease given under its provisions.

*Judgment affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>2</sup> *United States v. Freeman*, 3 How. 556, 564; *Converse v. United States*, 21 How. 463, 467. And see *United States v. Jefferson Electric Co.*, 291 U. S. 386, 396, and cases cited.

Counsel for Parties.

MOUNTAIN STATES POWER CO. v. PUBLIC SERVICE COMMISSION OF MONTANA ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

Nos. 38 and 39. Argued November 11, 1936.—Decided December 7, 1936.

1. The Act of May 14, 1934, amending par. 1, § 24, Jud. Code, denies jurisdiction to the District Court of any suit to restrain the enforcement of any order of a state commission, etc., "where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

*Held* inapplicable to a suit in Montana, in view of Rev. Code of Montana, 1921, § 3906, which purports to deny all preliminary relief in such cases in the state courts. P. 168.

2. A "plain, speedy and efficient remedy" in the state courts cannot be said to exist in the presence of a state statute which denies it and which has not been authoritatively declared unconstitutional by the courts of the State. P. 170.

Reversed.

APPEALS from decrees of a three-judge District Court which dismissed, for lack of jurisdiction, two suits to set aside orders requiring the appellant to reduce its charges for electricity.

*Mr. Hance H. Cleland*, with whom *Messrs. Raymond W. Clifford, E. G. Toomey, Elisha Hanson, and Joseph A. Cantrel* were on the brief, for appellant.

*Mr. Albert H. Angstman*, counsel for Montana Railroad Commission, with whom *Mr. Raymond T. Nagle*, Attorney General of Montana, was on the brief, for appellees.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Each of these causes presents the same point of law.

Appellee, Public Service Commission of Montana, issued an order requiring the appellant Company to reduce its charges for electricity in Baker—No. 38; also another requiring reduction in Forsyth—No. 39. They were attacked as confiscatory by separate bills in the U. S. District Court. That court, three judges sitting, granted motions to dismiss for lack of jurisdiction. These direct appeals question its action.

Prior to May 14, 1934, paragraph one, § 24, Judicial Code, as amended (U. S. C., Tit. 28, § 41), provided:

“The district courts shall have original jurisdiction as follows:

“First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects. . . .”

On that day the so-called Johnson Act (48 Stat. c. 283, p. 775) became effective. Section one directs:

“That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: ‘Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or

to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State.' ”

Section 3906 Revised Codes of Montana, 1921,—

“Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within ninety days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. . . .

“No injunction shall issue suspending or staying any order of the commission except upon application to the court or judge thereof, notice to the commission having been first given and hearing having been had thereon; provided, that all rates fixed by the commission shall be deemed reasonable and just, and shall remain in full force and effect until final determination by the courts having jurisdiction. . . .”

Appellees maintain that under *Porter v. Investors Syndicate*, 286 U. S. 461, the inhibition of the Montana statute, against stay or injunction prior to final determination, plainly conflicts with the Federal Constitution and should be disregarded. Further, that when this is eliminated there are other statutory provisions which per-

mit the state courts to issue appropriate preliminary relief. Following *Montana Power Co. v. Public Service Comm'n*, 12 F. Supp. 946, the court below sustained this view.

While the inhibition has not been definitely sustained by the Supreme Court of the State against an attack based upon unconstitutionality, it was recognized without suggestion of disapproval in *Billings Utility Co. v. Public Service Comm'n*, 62 Mont. 21, 32; 203 Pac. 366; *State ex rel. Public Service Comm'n v. Great Northern Utilities Co.*, 86 Mont. 442, 446; 284 Pac. 772. And see *State ex rel. Board of Railroad Comm'rs v. District Court*, 53 Mont. 229, 233; 163 Pac. 115.

Except for the Johnson Act, appellant's bills of complaint would state causes of action within the jurisdiction of the Federal court. Obviously, also, the amendment relied upon has no application unless there is "a plain, speedy and efficient remedy" in the state courts. And we cannot conclude that such remedy exists where, as here, a state statute definitely denying it has not been authoritatively condemned. In the circumstances it is impossible to know what position the courts of the State would take. A "plain, speedy, and efficient remedy" cannot be predicated upon the problematical outcome of future consideration.

*Porter v. Investors Syndicate*, *supra*, is not controlling. Section 3906 Montana Codes was not there in question. And while the opinion may suggest reasons for challenging its validity, the Montana courts have not spoken; until they do we cannot treat the statute as non-existent. The essential remedy in the state courts does not emerge from the probability that the statute expressly prohibiting it may hereafter be declared ineffective. *Pacific Telephone & Telegraph Co. v. Kuykendall*, 265 U. S. 196, 203-205.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

Opinion of the Court.

ALGERNON S. SCHAFFER v. HELVERING, COMMISSIONER OF INTERNAL REVENUE.\*

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

No. 24. Argued November 17, 1936.—Decided December 7, 1936.

1. Consideration of the case is confined to the issue tendered by the petition for certiorari. P. 172.
  2. A stock broker in purchasing shares for his own account in expectation of a rise in the market, for resale to any buyer at a profit, is not a "dealer in securities," entitled under Art. 105 of Treasury Regulations 74 to use inventories of securities at market value in computing income for taxation. P. 173.
- 65 App. D. C. 292; 83 F. (2d) 317, affirmed.

CERTIORARI, 298 U. S. 650, to review the affirmance of a decision of the Board of Tax Appeals, 32 B. T. A. 289, sustaining a deficiency income tax assessment.

*Mr. Eugene Untermeyer*, with whom *Mr. Edgar J. Goodrich* was on the brief, for petitioners.

*Assistant Attorney General Jackson*, with whom *Solicitor General Reed* and *Messrs. Sewall Key, Carlton Fox, and Charles A. Horsky* were on the brief, for respondent.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Petitioners in these three causes were partners in Schafer Brothers, brokers at 120 Broadway, and member of the New York Stock Exchange. The firm traded for others; also bought and sold securities for itself. The

---

\* Together with No. 25, *Edward Schafer v. Helvering, Commissioner of Internal Revenue*; and No. 26, *Tim et al., Executors, v. Helvering, Commissioner of Internal Revenue*. On writs of certiorari to the United States Court of Appeals for the District of Columbia.

latter were carried on its books in the so-called "Error Account."

In order to ascertain the partners' taxable profits during 1929 the Commissioner held that securities in that account should be valued at their cost price; that as to them the partnership was not a dealer permitted to use inventories under Article 105, Treasury Regulations 74. Accordingly he found material deficiencies against each of the petitioners. The Board of Tax Appeals sustained his action; the court below affirmed.

The petition, upon which we granted the writs, states this as the "question presented": "Was the partnership of which these petitioners were members a 'dealer in securities' as to securities bought and sold for its own account, and as such entitled to inventory such securities at cost or market, whichever was lower, in computing its income for 1929? . . . Determination of the amount thus to be included in the income of each petitioner depends upon the basis upon which the partnership income is computed."

And as "reasons for granting the writs" it averred: "(1) The decision of the Court of Appeals of the District of Columbia is in irreconcilable conflict on a matter of statutory interpretation with the decision of the Court of Appeals for the Second Circuit in *Commissioner v. Stevens*, 78 F. (2d) 713, and with the decision of the Court of Appeals for the Third Circuit in *Commissioner v. Charavay*, 79 F. (2d) 406. (2) The precise question of statutory construction here presented is one of general public importance which has never been settled, and should be determined by this Court because of the number of pending cases involving the question, as well as the frequent occasions that the question is bound to arise in the future."

Our consideration is confined to the issue so tendered by the petition.

*Commissioner v. Stevens* and *Commissioner v. Charavay, supra*, turned on the question whether Stevens and Legg, a "Specialist" on the New York Stock Exchange, was a dealer whose profits should be determined upon inventories under Article 105, Treasury Regulations 74. The Board of Tax Appeals held it was, and the Circuit Court of Appeals in both the Second and Third Circuits approved that view. Considering the differing circumstances, we find no real conflict between the holdings in those cases and the ruling below. See *Vaughan v. Commissioner*, 85 F. (2d) 497.

Pertinent provisions, Revenue Act of 1928, c. 852, 45 Stat. 791, and Treasury Regulations 74, are in the margin.\*

\* Revenue Act of 1928, c. 852, 45 Stat. 791:

"Sec. 22. GROSS INCOME.

"

"(c) *Inventories*.—Whenever in the opinion of the Commissioner the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the Commissioner, with the approval of the Secretary, may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income."

Treasury Regulations 74:

"Art. 101. *Need of Inventories*.—In order to reflect the net income correctly, inventories at the beginning and end of each year are necessary in every case in which the production, purchase, or sale of merchandise is an income-producing factor. . . .

"Art. 105. *Inventories by dealers in securities*.—A dealer in securities, who in his books of account regularly inventories unsold securities on hand either—

- (a) At cost;
- (b) At cost or market, whichever is lower; or
- (c) At market value,

may make his return upon the basis upon which his accounts are kept; provided that a description of the method employed shall be included in or attached to the return, that all the securities must be inventoried by the same method, and that such method must be

Schafer Brothers was not a "Specialist" in the stocks entered in its "Error Account." The Board of Tax Appeals found: "The stocks in dispute were purchased for the firm's own account solely in expectation of a rise in the market, for sale to anyone at a profit 'as distinguished from a purchase to create a stock of securities to take care of future buying orders in excess of selling orders.'" "They were purchased solely in expectation of a rise in the market, for the partnership's own account for resale, to any buyer, at a profit. The meaning of 'dealer in securities,' as defined in the controlling regulation, has been considered many times by the courts, and this Board. It is limited to one who, as a merchant, buys and sells securities to customers for the profit thereon."

The evidence adequately supports these findings.

*Seeley v. Commissioner*, 77 F. (2d) 323, *Hammitt v. Commissioner*, 79 F. (2d) 494, and *Vaughan v. Commissioner*, *supra*, are in harmony with our conclusion.

We find no adequate reason for disturbing the challenged judgment, and it is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

---

adhered to in subsequent years, unless another be authorized by the Commissioner. For the purpose of this rule a dealer in securities is a merchant of securities, whether an individual, partnership, or corporation, with an established place of business, regularly engaged in the purchase of securities and their resale to customers; that is, one who as a merchant buys securities and sells them to customers with a view to the gains and profits that may be derived therefrom. If such business is simply a branch of the activities carried on by such person, the securities inventoried as here provided may include only those held for purposes of resale and not for investment. Taxpayers who buy and sell or hold securities for investment or speculation and not in the course of an established business, and officers of corporations and members of partnerships who in their individual capacities buy and sell securities, are not dealers in securities within the meaning of this rule."

Opinion of the Court.

HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, *v.* FRIED.\*

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

No. 186. Argued November 17, 1936.—Decided December 7, 1936.

A "Specialist" on the floor of the New York Stock Exchange held, on the facts stipulated, to be a "dealer in securities" within the meaning of Art. 105, Treasury Regulations 74, entitled to inventory securities for income tax purposes at market value. P. 176.

83 F. (2d) 193, affirmed.

CERTIORARI † to review the reversal of a decision of the Board of Tax Appeals, 31 B. T. A. 638, sustaining deficiency income tax assessments.

*Assistant Attorney General Jackson*, with whom *Solicitor General Reed* and *Messrs. Sewall Key, Carlton Fox, and Charles A. Horsky* were on the brief, for petitioner.

*Mr. John J. Curtin* for respondents.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Respondents in these two causes were partners as Albert Fried & Company, brokers, member of the New York Stock Exchange, with offices at 120 Broadway. When he undertook to determine their individual taxable profits during 1931, the Commissioner denied their claim that the firm's operations on the Exchange as a "Specialist" in thirteen stocks gave it the status of dealer therein, entitled to the privilege of inventorying such securities for tax purposes at market value under Article 105, Treasury Regulations 74, Revenue Act 1928.

---

\* Together with No. 187, *Helvering, Commissioner of Internal Revenue, v. Einhorn*. Certiorari to the Circuit Court of Appeals for the Second Circuit.

† See Table of Cases Reported in this volume.

Upon stipulated facts the Board of Tax Appeals, although sharply divided, sustained his action. The Court below held the firm was a dealer within the Regulations, regarded *Commissioner v. Stevens*, 78 F. (2d) 713 as controlling, and reversed the Board's decision. Certiorari was granted here upon the Commissioner's petition, which affirms that the question presented is "Whether the respondents were dealers in certain securities in which they specialized so as to entitle them to inventory the securities at market value in determining income."

Pertinent provisions of the Revenue Act and Treasury Regulations are set out in the opinion in *Schafer v. Commissioner*, this day announced, *ante*, p. 171.

The stipulated facts show—

Alfred Fried and Benjamin Einhorn composed the firm, Alfred Fried & Company, 120 Broadway, organized in 1929, and member of New York Stock Exchange. It is a "Specialist" in thirteen specified stocks there bought and sold. A "Specialist" is a qualified member who accepts orders in selected securities from other members for execution.

As such "Specialist" the firm filled orders either by buying or selling its own securities or by matching like orders of buyer and seller. It leased space on the Exchange floor at an annual rental of \$2,000.00, and there carried on business in the thirteen stocks. The firm was known to all members as a "Specialist" and was regularly and consistently engaged in purchases and resales. It is the practice for a member who desires to buy or sell a stock to place his order with the "Specialist" therein. The firm always had on hand the securities in which it specialized. The number (from 10,300 to 62,300) of shares of these owned by the firm at the end of each month in the year under review is stated. In one month—for example—of the 126,200 shares Air Reduction stock sold on the Exchange, 59% was sold by Fried & Company.

All stocks bought and sold by the firm were actually received and delivered. During the tax year it sold 1,762,100 shares of the thirteen stocks. Of other stocks it sold 119,600 shares.

Since its inception the firm has regularly inventoried unsold securities at the market and computed tax liability on that basis. On numerous occasions it purchased and sold in order to maintain fair and equitable markets and, as far as possible, has tried to prevent wide fluctuation in prices. During the year the partnership sold to 431 customers in amounts ranging from 100 to 5,700 shares. These customers were other members of the Stock Exchange acting for themselves or their principals.

We think the facts stipulated adequately establish that Fried & Company had an established place of business; that it regularly engaged in the purchase of certain specified securities and their resale to customers; that as a merchant it bought securities and sold them to customers with a view to the gains and profits that might be derived therefrom. Also that the evidence afforded no adequate basis for a contrary finding by the Board of Tax Appeals.

The Board's conclusion was announced (1934) prior to the decision (1935) of *Commissioner v. Stevens, supra*. In that cause, also in *Vaughan v. Commissioner*, 85 F. (2d) 497, the Circuit Court of Appeals, Second Circuit, describes the activities of "Specialists" on the Stock Exchange and concludes that they are dealers or merchants, in respect of the securities wherein they specialize, entitled to the benefit of Article 105 of Treasury Regulations 74.

We accept the conclusions reached below and need not repeat the adequate arguments advanced to support them.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

JOHN HANCOCK MUTUAL LIFE INSURANCE CO.  
*v.* YATES.

CERTIORARI TO THE SUPREME COURT OF GEORGIA.

No. 146. Submitted November 18, 1936.—Decided December 7, 1936.

By statute of the State in which a contract of life insurance was made and where the insured died, the policy, with application annexed, constituted the entire contract of the parties, and a false statement in the application, that the applicant had not received medical advice within a specified time preceding the application, must be taken as a material misrepresentation avoiding the policy even though, in the making of the application, a truthful answer on the subject was orally given the company's agent, but not recorded by him. *Held:*

1. The right of the Insurance Company to escape liability under the policy because of the falsity of the written representation, without regard to oral statements made by the insured to the Company's examiner at the time when the application was made, was a substantive right conferred by the statute. P. 182.

2. Recognition of this right in an action on the policy in another State would not give the statute extra-territorial effect but would merely be a recognition that the parties by their contract had subjected themselves to the statutory conditions. *Id.*

3. Refusal by the courts of another State to recognize the right thus arising under the statute, was a failure to give full faith and credit to a "public act" of the State in which the contract was made and the cause of action accrued. Const., Art. IV, § 1. P. 183.

4. Such refusal could not be justified as a matter appertaining to the local remedy. P. 182.

5. Where a contract of life insurance is made wholly in and subject to the laws of one State, the law of another State can not determine the substantive rights created by the contract. *Id.*

182 Ga. 213; 185 S. E. 268, reversed.

CERTIORARI\* to review a judgment sustaining a recovery on a policy of life insurance. The decision of the inter-

\*See Table of Cases Reported in this volume.

mediate state court is reported in 50 Ga. App. 713; 179 S. E. 239.

*Messrs. Alex W. Smith, Jr., and Byron K. Elliott* submitted for petitioner.

*Mr. Edgar Watkins* submitted for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

In May, 1932, the John Hancock Mutual Life Insurance Company, a Massachusetts corporation, insured the life of Harmon H. Yates, agreeing to pay upon his death \$2,000 to his wife. The policy was applied for, issued and delivered, in New York, where he and his wife resided; and they remained there until his death of cancer in the following month. Then his widow removed to Georgia, and brought, in a court of that State, this suit on the policy. The case was tried before a jury.

The Company contended that since the contract was made in New York, the existence of liability thereon is governed by the statutes of that State. It denied liability, upon the ground that answers in the application to the questions whether the applicant was then in good health, so far as he knew, whether he had ever been treated for cancer or indigestion, and whether he had had medical advice for any other disease or disorder during the period of five years prior to making the application, were false; and that these were material misrepresentations.

The Company proved, and it was undisputed, that the applicant had received medical treatment five times within the month preceding the application. It proved, also, that under the law of New York the misstatement made is a material misrepresentation which avoids the

policy, introducing § 58 of the New York Insurance Law,<sup>1</sup> which, as construed and applied in *Travelers Insurance Co. v. Pomerantz*, 246 N. Y. 63; 158 N. E. 21 and *Minsker v. John Hancock Mutual Life Insurance Co.*, 254 N. Y. 333; 173 N. E. 4, provides that the entire contract between the parties must be embodied in the policy, to which a copy of the application must be physically attached; that when the insured receives a policy, it is his duty to read it or have it read; that if an application incorporated therein does not contain correct answers to questions asked, it is his duty to have the answers corrected; that in case a false answer to a material question is not so corrected, there can be no recovery even on proof that he gave to the examiner the true answer; that the agent of the Company is without power to waive this requirement of the policy; and that the false statement in the application that the applicant had not received medical advice constitutes a material misrepresentation which avoids the policy. It was not denied that such is the law of New York.

The trial court overruled the Company's contention; permitted the plaintiff to testify, in effect, that true answers had been given orally by the applicant to the Company's agent, and that the agent had said that the answers as recorded in the application were correct; submitted to the jury the determination of the question whether the false statement in the application was a material misrepresentation; and, among other things charged that "if a policy is issued with knowledge by the agent of a fact or condition which, by the terms of the contract, would render it void, the insurer will be held to have waived the existence of such fact or condition, and the policy will not be voided thereby." The jury rendered a verdict for the plaintiff; judgment was entered

---

<sup>1</sup>Laws of New York, 1906, c. 326. Cahill's Consolidated Laws of New York (1930), c. 30, § 58.

thereon in the sum of \$2,000; that judgment was affirmed by the Court of Appeals of Georgia (50 Ga. App. 713; 179 S. E. 239); and again by the Supreme Court of that State, two judges dissenting (182 Ga. 213; 185 S. E. 268). We granted certiorari because of the claim that the state courts had refused to give to the public acts of New York full faith and credit as required by § 1 of Article IV of the Federal Constitution.

The reason assigned by the Supreme Court of Georgia for its decision appears to be this: Under the law of that State, as elsewhere, the validity, form and effect of contracts are to be determined generally by the law of the place where made, but the character and extent of the remedies and the mode of procedure by the law of the forum. Under its law, false answers to questions in an application furnish ground for avoiding a policy, if the matters involved are material to the risk; but whether the statements are material is a matter of fact to be decided by the jury. And, if the agent of the insurance company incorrectly records answers after the applicant has truthfully replied to the questions, the agent's actual knowledge of the facts will be imputed to the insurer, and the question for the jury then is as to the materiality of the misstatements on the face of the application, viewed in the light of the knowledge imputed to the insurer.<sup>2</sup> The manner in which this question of materiality shall be determined, and the effect of the disclosure made orally by the applicant to the agent, are matters affecting the remedy only, and not the validity, form or effect of the contract. Hence, the full faith and credit clause of the Federal Constitution does not compel the application by

---

<sup>2</sup> Compare *Johnson v. Aetna Insurance Co.*, 123 Ga. 404; 51 S. E. 339; *Knights of Pythias v. Few*, 138 Ga. 778, 76 S. E. 91; *id.*, 142 Ga. 240, 82 S. E. 627; *Metropolitan Life Insurance Co. v. Hale*, 177 Ga. 632; 170 S. E. 875; *National Accident & Health Insurance Co. v. Davis*, 179 Ga. 595; 176 S. E. 387.

Georgia of the New York statute in this case. Such is the argument.

The reasoning of the Georgia Court, and the conclusion reached by it, are not sound. No question of remedy is presented. The Company sets up as a defense a substantive right conferred by a statute of New York. The contract of insurance was made, and the death of the insured occurred in that State. In respect to the accrual of the right asserted under the contract, or liability denied, there was no occurrence, nothing done, to which the law of Georgia could apply. Compare *Home Insurance Co. v. Dick*, 281 U. S. 397, 408. To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their contract made in New York subjected themselves to certain conditions prescribed by its statute. Such recognition does not give to the New York statute extra-territorial effect. The statute of New York prescribes, or limits, the things which will be effective to create binding contracts of insurance, or terms in them. As construed by the highest court of the State, the statute makes the policy with the application annexed the entire contract between the parties. And it declares that a false answer in the application to the precise question here involved is a material misrepresentation which avoids the policy; and that the fact that a truthful answer was orally given to the agent but not recorded is without legal significance. In so declaring, the statute enacts a rule of substantive law<sup>3</sup> which became a term of the contract, as much so as the amount of the premium to be paid or the time for its payment. The declaration by the statute as construed and applied by the highest Court of New York that the false answer here involved is a material misrepresentation which avoids the policy determines the substantive rights of the parties as fully as if a provision

---

<sup>3</sup> Compare *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389, 393; *Modern Woodmen of America v. Mixer*, 267 U. S. 544.

to that effect had been embodied in writing in the policy. To refuse to give that defense effect would irremediably subject the Company to liability. Compare *Bradford Electric Light Co. v. Clapper*, 286 U. S. 145, 160. Because the statute is a "public act," faith and credit must be given to its provisions as fully as if the materiality of this specific misrepresentation in the application, and the consequent non-existence of liability, had been declared by a judgment of a New York court. *Bradford Electric Light Co. v. Clapper*, *supra*, at page 155.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

OLD DEARBORN DISTRIBUTING CO. v. SEAGRAM-DISTILLERS CORP.\*

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 226. Argued November 12, 13, 1936.—Decided December 7, 1936.

1. Section 1 of the Fair Trade Act of Illinois sanctions contracts of sale or resale of commodities identified by the trade-mark, brand or name of the producer or owner, which are in fair competition with commodities of the same general class produced by others, notwithstanding that such contracts stipulate (a) that the buyer will not resell except at the price stipulated by the vendor; and (b) that the producer or vendee of such a commodity shall require, upon the sale to another, that he agree in turn not to resell except at the price stipulated by such producer or vendee. Section 2 provides that wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract made consistently with § 1, whether the person doing so is or is not a party to the contract, shall constitute unfair competition, giving rise to a right of action in favor of anyone damaged thereby. As applied to a dealer who, with full knowledge of an existing price restriction imposed by contract between a producer

---

\* Together with No. 372, *McNeil v. Joseph Triner Corp.* Appeal from the Supreme Court of Illinois.

and other dealers, acquired a stock of the commodity covered by such restriction and resold the same without regard thereto, thus subjecting himself to liability under § 2 of the Act, *held*:

(1) The Act does not infringe the doctrine of previous decisions of this Court dealing with legislative price fixing; those decisions constitute no authority for holding that prices in respect of "identified" goods may not be fixed under legislative leave by contract between the parties. P. 192.

(2) The Act does not violate the due process of law clause of the Fourteenth Amendment as an unlawful delegation of power to private persons to control the disposition of the property of others. Distinguishing: *Eubank v. Richmond*, 226 U. S. 137; *Seattle Trust Co. v. Roberge*, 278 U. S. 116; and *Carter v. Carter Coal Co.*, 298 U. S. 238. Pp. 193-194.

(3) The Act is not arbitrary, unfair, or unreasonable. P. 194.

(4) The essence of the statutory prohibition is not the mere disposal of the commodity, but the use of the trade-mark, brand or name in accomplishing such disposition. There is nothing in the Act to preclude the purchaser from removing the mark or brand from the commodity—thus separating the physical property, which he owns, from the good will, which is the property of another—and then selling the commodity at his own price, provided he can do so without utilizing the good will as an aid to that end. Pp. 194-195.

(5) The Act does not deny the equal protection of the laws in violation of the Fourteenth Amendment, by conferring a privilege upon the producers and owners of goods identified by trade-mark, brand or name, which it denies in the case of unidentified goods. The classification is reasonable. P. 197.

2. Considering the statute as a whole, the phrases "fair and open competition" in § 1, and "any commodity" and "any contract entered into pursuant to the provisions of § 1" in § 2, are not fatally vague and uncertain. P. 196.

3. Where, in determining whether the factual background justifies the particular legislation, the question as to what the facts establish is a fairly debatable one, this Court accepts the legislative determination in that respect. P. 195.

363 Ill. 559, 2 N. E. (2d) 929; 363 Ill. 610, 2 N. E. (2d) 940, affirmed.

APPEALS from decrees of the state supreme court in two cases, sustaining the validity under the Federal Constitution of provisions of the Fair Trade Act of Illinois.

*Messrs. Irving Breakstone and Nicholas J. Pritzker* for appellant in No. 226.

*Mr. Richard Mayer*, with whom *Messrs. Isaac H. Mayer and Carl Meyer* were on the brief, for appellee in No. 226.

*Messrs. Stanford Clinton and J. Herzl Segal*, with whom *Mr. Nicholas J. Pritzker* was on the brief, for appellant in No. 372.

*Mr. Hamilton Moses*, with whom *Messrs. Walter Bachrach, Stanley Morris, and Miss R. Weyand* were on the brief, for appellee in No. 372.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These appeals bring here for decision the question of the constitutional validity of §§ 1 and 2 of the Fair Trade Act of Illinois (Smith-Hurd Rev. Stat., 1935, c. 121-1/2, § 188 *et seq.*; Illinois State Bar Stat., 1935, c. 140, § 8 *et seq.*), providing as follows:

"Section 1. No contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trade mark, brand or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the State of Illinois by reason of any of the following provisions which may be contained in such contract:

"(1) That the buyer will not resell such commodity except at the price stipulated by the vendor.

"(2) That the producer or vendee of a commodity require upon the sale of such commodity to another, that such purchaser agree that he will not, in turn, resell except at the price stipulated by such producer or vendee.

"Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

"(1) In closing out the owner's stock for the purpose of discontinuing delivery of any such commodity: provided, however, that such stock is first offered to the manufacturer of such stock at the original invoice price, at least ten (10) days before such stock shall be offered for sale to the public.

"(2) When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

"(3) By any officer acting under the orders of any court.

"Section 2. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of section 1 of this Act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby."

Section 3 of the act provides that it shall not apply to contracts or agreements between producers or between wholesalers or between retailers as to sale or resale prices.

No. 226 is a suit brought by appellee against appellant to enjoin the latter from wilfully and knowingly advertising, offering for sale or selling, certain brands of whisky at less than prices stipulated by appellee in accordance with contracts, made in pursuance of the Fair Trade Act, between appellee and distributors or retailers of such whisky. The facts set forth by the court below follow.

Appellee is a dealer in alcoholic beverages at wholesale. It buys the products here in question from the producers. The whiskies bear labels and trade-marks, and are in fair and open competition with commodities of the same general class produced by others. Appellant is a corporation operating four retail liquor stores in Chicago,

and selling at both wholesale and retail. Appellee's sales in Chicago are made to wholesale distributors. It has not sold any of the whiskies in controversy to appellant, but has sold other liquors. Contracts in pursuance of the Fair Trade Act have been executed between appellee and certain distributors, and numerous Illinois retailers. Appellee does not sell directly to any retailer. Appellant sold the products in question at cut prices—that is to say, at prices below those stipulated—and continued to do so after appellee's demand that it cease such practice. The result of such price cutting was a diminution of sales during the price-cutting period suffered by appellee and retailers other than appellant. Some dealers ceased to display the products, and notified appellee that they could not compete with appellant and would discontinue handling the products unless the price cutting was stopped. Appellant was also a party to breaches of other fair-trade contracts between appellee and certain distributors, and continued the price cutting throughout the trial of the case in the Illinois state court of first instance.

The record shows that one of the retailer's contracts drawn in pursuance of the act was signed by appellant's secretary and treasurer prior to the commission of the acts complained of. This contract, among other things provided that the product in question should not be sold, advertised or offered for sale in Illinois below the prices to be stipulated by appellee. The contract was assailed by appellant below as ineffective, and for present purposes we accept that view. It is plain enough, however, that appellant had knowledge of the original contractual restrictions and that they constituted conditions upon which sales thereafter were to be made.

No. 372 is a suit of the same character as No. 226, seeking the same relief by injunction. The facts set forth in the complaint were admitted by a motion to dismiss. These facts, fully stated in the opinion of the court below,

*infra*, we find it unnecessary to repeat. It is enough to say that while they differ in detail from those appearing in No. 226, they are sufficiently the same in substance as to be controlled by the same principles of law.

Both appellants attack the validity of the act upon the grounds that it denies due process of law and the equal protection of the laws in violation of the Fourteenth Amendment in the particulars which hereafter appear. The state courts of first instance in which the suits were brought sustained the validity of the act and entered decrees as prayed for in the bills of complaint. These decrees were affirmed upon appeal by the court below. 363 Ill. 559, 2 N. E. (2d) 929; 363 Ill. 611, 2 N. E. (2d) 940.

The Illinois statute constitutes a legislative recognition of a rule which had been accepted by many of the state courts as valid at common law. This rule was based upon the distinction found to exist between articles of trade put out by the manufacturer or producer under, and identified by, patent, copyright, trade-mark, brand, or similar device, and articles of like character put out by others and not so identified. The same rule was followed for a time by some of the lower federal courts; but their decisions were upset by this court in a series of cases, of which *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S. 373 is an example. In that case this court held that a system of contracts between manufacturers and wholesale and retail merchants which sought to control the prices for sales by all such dealers by fixing the amount which the consumer should pay, amounted to an unlawful restraint of trade, invalid at common law and, so far as interstate commerce was affected, invalid under the Sherman Anti-trust Act of July 2, 1890; and it was held that the rule applied to such agreements notwithstanding the fact that they related to proprietary medicines made under a secret process and identified by dis-

tinctive packages, labels and trade-marks. The argument that since the manufacturer might make and sell or not as he chose, he could lawfully condition the price at which subsequent sales could be made by the purchaser, was rejected.

"If there be an advantage to a manufacturer in the maintenance of fixed retail prices," this court said at pages 407-409, "the question remains whether it is one which he is entitled to secure by agreements restricting the freedom of trade on the part of dealers who own what they sell. As to this, the complainant can fare no better with its plan of identical contracts than could the dealers themselves if they formed a combination and endeavored to establish the same restrictions, and thus to achieve the same result, by agreement with each other. If the immediate advantage they would thus obtain would not be sufficient to sustain such a direct agreement, the asserted ulterior benefit to the complainant cannot be regarded as sufficient to support its system. . . . The complainant's plan falls within the principle which condemns contracts of this class. It, in effect, creates a combination for the prohibited purposes. No distinction can properly be made by reason of the particular character of the commodity in question. It is not entitled to special privilege or immunity. It is an article of commerce and the rules concerning the freedom of trade must be held to apply to it. . . . The complainant having sold its product at prices satisfactory to itself, the public is entitled to whatever advantage may be derived from competition in the subsequent traffic."

It is unnecessary to review the contrary state decisions. It is enough, for present purposes, to say that, generally speaking, they sustained contracts standardizing the price at which "identified" commodities subsequently might be sold, where the price standardization is primarily effected to protect the good will created or enlarged by the identi-

fyng mark or brand. Where a manufacturer puts out an article of general production identified by a special trade-mark or brand, the result of an agreement fixing the subsequent sales price affects competition between the identified articles alone, leaving competition between articles so identified by a given manufacturer and all other articles of like kind to have full play. In other words, such restraint upon competition as there may be is strictly limited to that portion of the entire product put out and plainly identified by a particular manufacturer or producer.

The ground upon which the opposing view of this court proceeds is that such an agreement, nevertheless, constitutes an unlawful restraint of trade at common law and, in respect of interstate commerce, a violation of the Sherman Anti-trust Act. A careful reading of the decisions discloses no other ground.

Following these decisions, bills were introduced in Congress from time to time authorizing standardization-of-price agreements in respect of identified goods, upon which extensive hearings were held by the appropriate Congressional committees. These bills are in all essential respects like the Illinois act. The hearings disclose exhaustive legal briefs, and testimony and arguments for and against the economic value of the proposed laws. See, for example, Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives, on H. R. 13305 (63d Cong., 2d and 3d Sess.); H. R. 13568 (64th Cong., 1st and 2d Sess.); compare Report of the Federal Trade Commission on Resale Price Maintenance, 70th Cong., 2d Sess., H. Doc. No. 546.

It is not without significance that while the proposed legislation was vigorously assailed in other respects, we do not find that any constitutional objection was urged. And the decisions of this court, far from suggesting any constitutional infirmity in such proposed legislation, con-

tain implications to the contrary. In the *Dr. Miles Medical Co.* case (p. 405), the court said, "Nor can the manufacturer by rule and notice, *in the absence of contract or statutory right*, even though the restriction be known to purchasers, fix prices for future sales." (Italics supplied.) In *Boston Store v. American Graphophone Co.*, 246 U. S. 8, where this court struck down a stipulation that patented articles should not be resold at prices other than those fixed presently and from time to time by the patent owner, it was suggested (p. 26) that if this view resulted in damage to the holders of patent rights or the law afforded insufficient protection to the inventor, the remedy lay within the scope of legislative (that is to say, Congressional) action. And in a concurring opinion (p. 28), it was said, "If the rule so declared is believed to be harmful in its operation, the remedy may be found, as it has been sought, through application to the Congress . . ." The words "as it has been sought" quite evidently referred to the bills of which we have just spoken, since they had theretofore been introduced and made the subject of the hearings. See, also *Bauer & Cie v. O'Donnell*, 229 U. S. 1, 12. While these observations of the court cannot, of course, be regarded as decisive of the question, they plainly imply that the court at the time foresaw no valid constitutional objection to such legislation, for it cannot be supposed that the court would suggest a legislative remedy the validity of which might seem open to doubt.

In the light of the foregoing brief résumé of the question with respect to the standardization of selling prices of identified goods in the absence of statutory authority, we proceed to a consideration of the specific objections to the constitutionality of the act here under review.

*First.* In respect of the due process of law clause, it is contended that the statute is a price-fixing law, which has the effect of denying to the owner of property the right

to determine for himself the price at which he will sell. Appellants invoke the well-settled general principle that the right of the owner of property to fix the price at which he will sell it is an inherent attribute of the property itself, and as such is within the protection of the Fifth and Fourteenth Amendments. *Tyson & Brother v. Banton*, 273 U. S. 418, 429; *Wolff Co. v. Industrial Court*, 262 U. S. 522, 537; *Ribnik v. McBride*, 277 U. S. 350; *Williams v. Standard Oil Co.*, 278 U. S. 235; *New State Ice Co. v. Liebmann*, 285 U. S. 262. These cases hold that, with certain exceptions, which need not now be set forth, this right of the owner cannot be denied by legislative enactment fixing prices and compelling such owner to adhere to them. But the decisions referred to deal only with legislative price fixing. They constitute no authority for holding that prices in respect of "identified" goods may not be fixed under legislative leave by contract between the parties. The Illinois Fair Trade Act does not infringe the doctrine of these cases.

Section 1 affirms the validity of contracts of sale or resale of commodities identified by the trade-mark, brand or name of the producer or owner, which are in fair and open competition with commodities of the same general class produced by others, notwithstanding that such contracts stipulate (1) that the buyer will not resell except at the price stipulated by the vendor; and (2) that the producer or vendee of such a commodity shall require, upon the sale to another, that he agree in turn not to resell except at the price stipulated by such producer or vendee. It is clear that this section does not attempt to fix prices, nor does it delegate such power to private persons. It *permits* the designated private persons to contract with respect thereto. It contains no element of compulsion but simply legalizes their acts, leaving them free to enter into the authorized contract or not as they may see fit. Thus far, the act plainly is not open to objection; and none seems to be made.

The challenge is directed against § 2, which provides that wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract made under § 1, whether the person doing so is or is not a party to the contract, shall constitute unfair competition, giving rise to a right of action in favor of anyone damaged thereby.

It is first to be observed that § 2 reaches not the *mere* advertising, offering for sale or selling at less than the stipulated price, but the doing of any of these things *wilfully* and *knowingly*. We are not called upon to determine the case of one who has made his purchase in ignorance of the contractual restriction upon the selling price, but of a purchaser who has had definite information respecting such contractual restriction and who, with such knowledge, nevertheless proceeds wilfully to resell in disregard of it.

In the second place, § 2 does not deal with the restriction upon the sale of the commodity *qua* commodity, but with that restriction because the commodity is identified by the trade-mark, brand or name of the producer or owner. The essence of the statutory violation then consists not in the bare disposition of the commodity, but in a forbidden use of the trade-mark, brand or name in accomplishing such disposition. The primary aim of the law is to protect the property—namely, the good will—of the producer, which he still owns. The price restriction is adopted as an appropriate means to that perfectly legitimate end, and not as an end in itself.

Appellants here acquired the commodity in question with full knowledge of the then-existing restriction in respect of price which the producer and wholesale dealer had imposed, and, of course, with presumptive if not actual knowledge of the law which authorized the restriction. Appellants were not obliged to buy; and their voluntary acquisition of the property with such knowledge carried

with it, upon every principle of fair dealing, assent to the protective restriction, with consequent liability under § 2 of the law by which such acquisition was conditioned. Cf. *Provident Institution v. Jersey City*, 113 U. S. 506, 514-515; *Vreeland v. O'Neil*, 36 N. J. Eq. 399, 402; same case on appeal, 37 N. J. Eq. 574, 577.

We find nothing in this situation to justify the contention that there is an unlawful delegation of power to private persons to control the disposition of the property of others, such as was condemned in *Eubank v. Richmond*, 226 U. S. 137, 143; *Seattle Trust Co. v. Roberge*, 278 U. S. 116, 121-122; and *Carter v. Carter Coal Co.*, 298 U. S. 238, 311. In those cases the property affected had been acquired without any preëxisting restriction in respect of its use or disposition. The imposition of the restriction *in invitum* was authorized after complete and unrestricted ownership had vested in the persons affected. Here, the restriction, already imposed with the knowledge of appellants, ran with the acquisition and conditioned it.

Nor is § 2 so arbitrary, unfair or wanting in reason as to result in a denial of due process. We are here dealing not with a commodity alone, but with a commodity plus the brand or trade-mark which it bears as evidence of its origin and of the quality of the commodity for which the brand or trade-mark stands. Appellants own the commodity; they do not own the mark or the good will that the mark symbolizes. And good will is property in a very real sense, injury to which, like injury to any other species of property, is a proper subject for legislation. Good will is a valuable contributing aid to business—sometimes the most valuable contributing asset of the producer or distributor of commodities. And distinctive trade-marks, labels and brands, are legitimate aids to the creation or enlargement of such good will. It is well settled that the proprietor of the good will “is entitled to protection as against one who attempts to deprive him

of the benefits resulting from the same, by using his labels and trade-mark without his consent and authority." *McLean v. Fleming*, 96 U. S. 245, 252. "Courts afford redress or relief upon the ground that a party has a valuable interest in the good-will of his trade or business, and in the trade-marks adopted to maintain and extend it." *Hanover Milling Co. v. Metcalf*, 240 U. S. 403, 412. The ownership of the good will, we repeat, remains unchanged, notwithstanding the commodity has been parted with. Section 2 of the act does not prevent a purchaser of the commodity bearing the mark from selling the commodity alone at any price he pleases. It interferes only when he sells with the aid of the good will of the vendor; and it interferes then only to protect that good will against injury. It proceeds upon the theory that the sale of identified goods at less than the price fixed by the owner of the mark or brand is an assault upon the good will, and constitutes what the statute denominates "unfair competition." See *Liberty Warehouse Co. v. Burley Tobacco Growers' Assn.*, 276 U. S. 71, 91-92, 96-97. There is nothing in the act to preclude the purchaser from removing the mark or brand from the commodity—thus separating the physical property, which he owns, from the good will, which is the property of another—and then selling the commodity at his own price, provided he can do so without utilizing the good will of the latter as an aid to that end.

There is a great body of fact and opinion tending to show that price cutting by retail dealers is not only injurious to the good will and business of the producer and distributor of identified goods, but injurious to the general public as well. The evidence to that effect is voluminous; but it would serve no useful purpose to review the evidence or to enlarge further upon the subject. True, there is evidence, opinion and argument to the contrary; but it does not concern us to determine where the

weight lies. We need say no more than that the question may be regarded as fairly open to differences of opinion. The legislation here in question proceeds upon the former and not the latter view; and the legislative determination in that respect, in the circumstances here disclosed, is conclusive so far as this court is concerned. Where the question of what the facts establish is a fairly-debatable one, we accept and carry into effect the opinion of the legislature. *Radice v. New York*, 264 U. S. 292, 294; *Zahn v. Board of Public Works*, 274 U. S. 325, 328, and cases cited.

Certain terms contained in the act are said to be fatally vague and indefinite, and therefore to deny due process of law under our decisions in *Connally v. General Construction Co.*, 269 U. S. 385, 390 *et seq.*, and other cases. The contention is directed in the main against the phrase in § 1 of the act, "fair and open competition," and "any commodity" and "any contract entered into pursuant to the provisions of section 1" contained in § 2. The point is shown to be lacking in substance by the reasoning in the *Connally* case at pp. 391-392 and the cases there cited. See particularly *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 501-503; *United States v. Cohen Grocery Co.*, 255 U. S. 81, 92, where it is said "that, for reasons found to result either from the text of the statutes involved or the subjects with which they dealt, a standard of some sort was afforded." Certainly, the phrase "fair and open competition" is as definite as the phrase contained in § 5 of the Federal Trade Commission Act, "unfair methods of competition," which this court has never regarded as being fatally uncertain. *Federal Trade Comm'n v. Gratz*, 253 U. S. 421, 427; *Federal Trade Comm'n v. Beech-Nut Co.*, 257 U. S. 441, 453; *Federal Trade Comm'n v. Raladam Co.*, 283 U. S. 643, 648. We think the phrases complained of are sufficiently definite, considering the whole statute; and that no one need be misled as to their meaning, or need suffer by reason of

any supposed uncertainty. Cf. *Miller v. Schoene*, 276 U. S. 272, 281; *Standard Oil Co. v. United States*, 221 U. S. 1, 69.

*Second.* The contention that § 2 of the act denies the equal protection of the laws in violation of the Fourteenth Amendment proceeds upon the view that it confers a privilege upon the producers and owners of goods identified by trade-mark, brand or name, which it denies in the case of unidentified goods. As this court many times has said, the equal-protection clause does not preclude the states from resorting to classification for the purposes of legislation. It only requires that the classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Colgate v. Harvey*, 296 U. S. 404, 422, 423, and cases cited.

Clearly, the challenged section of the Illinois act satisfies this test. Enough appears already in this opinion to show the essential difference between trade-marked goods and others not so identified. The entire struggle to bring about legislation such as the Illinois act embodies has been based upon this essential difference. In *Radice v. New York*, 264 U. S. 292, 296-297, we sustained a statute prohibiting night employment of women in restaurants in large cities, against the claim that it denied equal protection of the laws in that it did not apply to small cities, or to women employed as singers and performers, or to attendants in ladies' cloak rooms and parlors, or employees in hotel dining rooms and kitchens or in lunch rooms and restaurants conducted by employers for the benefit of their employees. Former decisions of the court were cited sustaining classifications based upon differences between fire insurance and other kinds of insurance; between railroads and other corporations; between barber-shop employment and other kinds of labor; between

"immigrant agents" engaged in hiring laborers to be employed beyond the limits of a state and persons engaged in the business of hiring for labor within the state; between sugar refiners who produce the sugar and those who purchase it. Other illustrations of a similar character might be cited.

But it is unnecessary to pursue the subject further; for, since the sole purpose of the present law is to afford a legitimate remedy for an injury to the good will which results from the use of trade-marks, brands or names, it is obvious that its provisions would be wholly inapplicable to goods which are unmarked.

*Decrees affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

---

THE PEP BOYS, MANNY, MOE & JACK OF CALIFORNIA, INC. *v.* PYROIL SALES CO., INC.\*

APPEAL FROM THE SUPREME COURT OF CALIFORNIA.

No. 55. Argued November 12, 1936.—Decided December 7, 1936.

Constitutionality of Fair Trade Act of California upheld upon the authority of *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, *ante*, p. 183.

5 Cal. (2d) 784, 55 P. (2d) 194; 5 Cal. (2d) 446, 55 P. (2d) 177, affirmed.

APPEALS from decrees of the state supreme court in two cases sustaining the validity under the Federal Constitution of the Fair Trade Act of California.

*Mr. John W. Davis*, with whom *Mr. Irving M. Walker* was on the brief, for appellant in No. 55.

---

\*Together with No. 79, *Kunzman v. Max Factor & Co. et al.* Appeal from the Supreme Court of California.

*Mr. Edward S. Rogers*, with whom *Messrs. Stanley A. Weigel* and *Karl D. Loos* were on the brief, for appellee in No. 55.

In No. 55, briefs of *amici curiae* were filed by leave of Court by *Mr. W. H. Crichton Clarke*, on behalf of the American Booksellers' Association, urging affirmance of the judgment below; and by *Messrs. Leon Lauterstein* and *Melbourne Bergerman*, on behalf of R. H. Macy & Co., urging reversal of the judgment below.

*Mr. Jules C. Goldstone* submitted for appellant in No. 79.

*Messrs. Edward S. Rogers, Stanley A. Weigel, and Karl D. Loos* submitted for appellees in No. 79.

In No. 79, briefs of *amici curiae* were filed by leave of Court by *Mr. Herbert Levy*, on behalf of the National Association of Retail Druggists; *Mr. Fred C. Rector*, on behalf of the Ohio State Pharmaceutical Association; and *Mr. W. H. Crichton Clarke*, on behalf of the American Booksellers' Association, all urging affirmance of the judgment below.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

These appeals involve the question of the constitutionality of §§ 1 and 1½ of the California Fair Trade Act, as amended, Cal. Stat. 1931, p. 583, Cal. Stat. 1933, p. 793; Deering's Gen. Laws of California, 1931, vol. 3, Act 8782, printed in the margin.\* It will be seen upon

---

\* "Section 1. No contract relating to the sale or resale of a commodity which bears, or the label or content of which bears, the trademark, brand, or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation

comparison that they are substantially identical with §§ 1 and 2 of the Illinois act, which we have just sustained in *Old Dearborn Distributing Co. v. Seagram-Dis-tillers Corp.*, ante p. 183.

In the present cases suits were brought by appellees against appellants to enjoin the latter from alleged violations of § 1½. The sufficiency of the complaints was challenged by demurrer, the facts alleged being, therefore, admitted. The trial courts, upon these facts, held the section invalid, and appeals were taken to the state supreme court. In that court, No. 79 was first heard; the view of the trial courts was rejected; and the section held to be constitutionally valid. 5 Cal. (2d) 446; 55 P. (2d) 177. Upon the authority of that decision, No. 55 was also reversed. 5 Cal. (2d) 784; 55 P. (2d) 194, 1186. The decrees of the trial courts entered on the orders sustaining demurrers without leave to amend were re-

of any law of the State of California by reason of any of the following provisions which may be contained in such contract:

1. That the buyer will not resell such commodity except at the price stipulated by the vendor.

2. That the vendee or producer require in delivery to whom he may resell such commodity to agree [*sic*] that he will not, in turn, resell except at the price stipulated by such vendor or by such vendee.

Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

1. In closing out the owners' stock for the purpose of discontinuing delivering any such commodity.

2. When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

3. By any officer acting under the orders of any court.

Sec. 1½. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provision of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby."

versed; and respondents (appellants here), having elected to stand on their demurrers, the trial courts were ordered to enter judgment in favor of appellants (appellees here), as prayed for in their complaints.

The questions presented and the facts involved are substantially the same as those which were present in the two suits involved in the *Old Dearborn Distributing Company* case; and upon that authority, the decrees entered in the court below are

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

---

UNITED STATES v. ESNAULT-PELTERIE.

CERTIORARI TO THE COURT OF CLAIMS.

No. 41. Argued October 22, 1936.—Decided December 7, 1936.

1. In a suit in the Court of Claims to recover damages under the Act of June 25, 1910, for alleged infringement of the plaintiff's patent, the validity of the patent and infringement of it are ultimate facts upon which depends the question of liability. P. 205.
2. Where in such a suit the Court of Claims makes findings of circumstantial facts, but fails to find specifically that the patent was valid or that it was infringed, its judgment for the plaintiff cannot be sustained unless, upon inspection of the findings of fact made, it is plain that they suffice to compel decision of those ultimate issues—validity and infringement—in favor of the plaintiff. P. 206.
3. The failure of the Court of Claims to make specific findings upon the main issues of validity and infringement does not lay upon this Court the duty of examining, analyzing and comparing the circumstantial facts found, to ascertain whether, as a matter of law, they establish validity and infringement. P. 206.
4. Special findings of fact may not be aided by statements in the conclusions of law or the opinion of the Court of Claims to the effect that the patent is valid and infringed. P. 206.

81 Ct. Cls. 785, reversed.

CERTIORARI, 298 U. S. 653, to review an interlocutory judgment of the Court of Claims in favor of the plaintiff in a suit against the United States for infringement of a patent.

*Mr. Drury W. Cooper*, with whom *Solicitor General Reed*, *Assistant Attorney General Morris*, and *Messrs. Alexander Holtzoff* and *Lee A. Jackson* were on the brief, for the United States.

*Mr. Eugene V. Myers*, with whom *Messrs. Edwin J. Prindle* and *R. Keith Kane* were on the brief, for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Respondent is a citizen and resident of the French Republic and authorized to sue the United States in the Court of Claims.<sup>1</sup> His amended complaint alleges a cause of action under the Act of June 25, 1910, as amended,<sup>2</sup> for the use and manufacture by or for the United States of a device covered by his patent No. 1,115,795, dated November 3, 1914, which describes means for the control of the equilibrium of airplanes by the simple oscillation of a single lever moving in all directions and operated by one hand. Defendant filed a general traverse. After taking evidence, the court made special findings and stated as its conclusion of law that the plaintiff was entitled to recover. It did not specifically find the patent valid or that defendant infringed it. The record does not show whether at first the conclusion of law contained any statement as to validity or infringement. Pursuant

<sup>1</sup> Judicial Code, § 155, 28 U. S. C., § 261.

<sup>2</sup> Act of June 25, 1910, 36 Stat. 851, as amended by Act of July 1, 1918, 40 Stat. 705. 35 U. S. C., § 68.

to stipulation and in accordance with its rule, the court postponed entry of final judgment pending the taking of testimony upon the question of compensation.<sup>3</sup> On defendant's motion, the court amended its conclusion of law to read: "Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff's patent is valid and has been infringed by the United States and that he is entitled to compensation therefor under the act of June 25, 1910 . . ." It filed an opinion in which it states: "In conclusion we hold that the patent in suit is valid and has been infringed by the defendant." The court entered judgment in accordance with the amended conclusion of law. We granted writ of certiorari.<sup>4</sup>

Plaintiff's contentions are based on claims 2 and 5 to 9. Claim 2 is: "An aeroplane having distortable wings for maintaining transverse stability, a rudder for maintaining longitudinal stability, a lever controlling said wings and said rudder, a steering rudder, and a separate lever controlling said steering rudder." Claim 5 is: "In an aeroplane, the combination of means for producing

---

<sup>3</sup>"In any patent suit it shall be competent for the parties to stipulate that the hearing in the first instance be limited to the issues of validity and infringement and when no such stipulation can be reached by the parties the court may order such procedure to be followed.

"If the patent is held valid and infringed by the United States the court shall so adjudge and the case shall thereafter proceed according to law." Court of Claims Rule 39.

<sup>4</sup>"In any case in the Court of Claims . . . it shall be competent for the Supreme Court, upon the petition of either party, . . . to require, by certiorari, that the cause, including the findings of fact and the judgment or decree, but omitting the evidence, be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought there by appeal." § 3 (b), Act of February 13, 1925, 43 Stat. 939. 28 U. S. C., § 288.

lateral stability, means for producing longitudinal stability, and a single vertical lever movable in every direction for operating both said means for producing lateral stability and said means for producing longitudinal stability." Each of the other claims relied on contains the substance of claim 5 with variations and additions not here important.

On the facts found the petitioner contends: Respondent's patent is invalid as claiming a device not patentable over prior disclosures. No element of invention is found in the asserted instinctive character of the operation of the control lever. The patent, if held valid in any respect, should be limited to a combination comprising a pair of vertical control levers with a single integral or unitary tail surface of an airplane, and so construed is not infringed. The vertical control lever did not constitute invention over the structure disclosed in the respondent's 1906 French patent, application for which was filed more than one year before that for the patent in suit.<sup>5</sup> The claims are not supported by the disclosure. Plaintiff's patent is invalid because the claims on the control lever were not inserted in the application until five and one-half years after filing, while the device came into general use in the United States prior to that time.

---

<sup>5</sup> "No person otherwise entitled thereto shall be debarred from receiving a patent for his invention or discovery, nor shall any patent be declared invalid by reason of its having been first patented or caused to be patented by the inventor or his legal representatives or assigns in a foreign country, unless the application for said foreign patent was filed more than twelve months, in cases within the provisions of section 31 of this title, . . . prior to the filing of the application in this country, in which case no patent shall be granted in this country. . . ." R. S., § 4887, (§ 25, Act of July 8, 1870, 16 Stat. 201) as amended by § 3, Act of March 3, 1897, 29 Stat. 693 and § 1, Act of March 3, 1903, 32 Stat. 1225. 35 U. S. C., § 32.

Validity and infringement are ultimate facts on which depends the question of liability.<sup>6</sup> In actions at law they are to be decided by the jury. If the evidence is not sufficient to establish validity and infringement, it is the duty of the trial court to direct a verdict for defendant.<sup>7</sup> Similarly a judgment upon a special verdict cannot be sustained unless the findings extend to all material issues.<sup>8</sup> The same principle governs in cases brought here from the Court of Claims.<sup>9</sup> On writ of certiorari to that court, the record is required to include the pleadings, findings of fact and the judgment. The opinion, if any, is also included. The findings are required to be in the nature of a special verdict and specifically to set forth the ultimate facts; the evidence is not brought up.<sup>10</sup> As by its general traverse defendant put in issue all allegations of the complaint, the findings in order to be sufficient to sustain judgment for plaintiff must specifically decide questions of validity and infringement, and also include circumstantial facts sufficient to warrant the court's conclu-

---

<sup>6</sup> *Wood v. Underhill*, 5 How. 1, 5-6. *Battin v. Taggart*, 17 How. 74, 85. *Bischoff v. Wethered*, 9 Wall. 812, 814. *Keyes v. Grant*, 118 U. S. 25, 37. *Haines v. McLaughlin*, 135 U. S. 584, 597. *St. Paul Plow Works v. Starling*, 140 U. S. 184, 196-197. *Coupe v. Royer*, 155 U. S. 565, 577, et seq. *United States v. Anciens Etablissements*, 224 U. S. 309, 322. *Thomson Welder Co. v. Ford Motor Co.*, 265 U. S. 445, 446. *Stilz v. United States*, 269 U. S. 144, 147.

<sup>7</sup> *Black Diamond Co. v. Excelsior Co.*, 156 U. S. 611, 618. *Gunning v. Cooley*, 281 U. S. 90, 93-95. Cf. *Keyes v. Grant*, 118 U. S. 25, 36-37. *Royer v. Schultz Belting Co.*, 135 U. S. 319, 325.

<sup>8</sup> *Chesapeake Insurance Co. v. Starke*, 6 Cranch 268, 273. *Prentice v. Zane's Administrator*, 8 How. 470, 484. *Graham v. Bayne*, 18 How. 60, 63. *Burr v. Des Moines R. & N. Co.*, 1 Wall. 99, 102. *Ward v. Cochran*, 150 U. S. 597, 608. *Luckenbach S. S. Co. v. United States*, 272 U. S. 533, 539. *Clementson, Special Verdicts*, p. 204.

<sup>9</sup> *Mahan v. United States*, 14 Wall. 109, 111-112. *Luckenbach S. S. Co. v. United States*, 272 U. S. 533, 539.

<sup>10</sup> § 3 (b), Act of February 13, 1925, 43 Stat. 939. 28 U. S. C., § 288. Rule 41, pars. (3), (4).

sion in respect of the main issues.<sup>11</sup> The special findings may not be aided by statements in the conclusions of law<sup>12</sup> or the opinion of the court<sup>13</sup> to the effect that the patent is valid and infringed.

The court having failed to find that the patent was valid or had been infringed, the judgment cannot be sustained unless upon inspection of the findings of fact it is plain that they are sufficient to compel decision of those issues in favor of plaintiff.<sup>14</sup> The contentions of the parties—briefly above indicated—raise complicated and difficult questions affecting validity and infringement. There are 47 findings of fact covering more than 32 pages of the record and by reference including 28 exhibits on 266 pages. The failure of the lower court to make specific findings upon the main issues does not lay upon this court the duty of examining, analyzing and comparing the circumstantial facts found to ascertain whether as a matter of law they establish validity and infringement.<sup>15</sup>

The judgment will be vacated, the case will be remanded to the Court of Claims for such proceedings in harmony with this opinion as that court may determine,

---

<sup>11</sup> *Anglo-American Land, M. & A. Co. v. Lombard*, 132 Fed. 721, 734. See *Ross v. United States*, 12 Ct. Cls. 565, 571, 572. Clementson, Special Verdicts, pp. 209, 215.

<sup>12</sup> *French v. Edwards*, 21 Wall. 147, 151. *Sun Mutual Ins. Co. v. Ocean Ins. Co.*, 107 U. S. 485, 501-503. *Kealing v. Vansickle*, 74 Ind. 529, 536. *Knight v. Kerfoot*, 184 Ind. 31, 39; 110 N. E. 206; *Houtz v. Union Pacific R. Co.*, 33 Utah 175, 195; 93 Pac. 439.

<sup>13</sup> *Stone v. United States*, 164 U. S. 380, 383. *Crocker v. United States*, 240 U. S. 74, 78. *Brothers v. United States*, 250 U. S. 88, 93. *United States v. Wells*, 283 U. S. 102, 120.

<sup>14</sup> *United States v. Pugh*, 99 U. S. 265, 270. *Ripley v. United States*, 220 U. S. 491, 496. *Winton v. Amos*, 255 U. S. 373, 395. *Botany Mills v. United States*, 278 U. S. 282, 290. *United States v. Wells*, 283 U. S. 102, 120.

<sup>15</sup> *United States v. Adams*, 6 Wall. 101, 110, 111. Cf. *Indiana Farmer's Guide Co. v. Prairie Farmer Co.*, 293 U. S. 268, 281.

and with instructions that it specifically find whether plaintiff's patent in suit was valid and, if found valid, whether it was infringed by the defendant.<sup>16</sup>

*It is so ordered.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

UNITED STATES *v.* RESNICK ET AL.\*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 62. Argued November 13, 1936.—Decided December 7, 1936.

1. The Act of May 21, 1928, 45 Stat. 685, 15 U. S. C., §§ 257-257i, prescribing standard capacities of containers for fruits and vegetables, refers specifically to nine sizes of hampers ranging from one-eighth of a bushel to two bushels, and makes it unlawful to manufacture or sell hampers that do not comply with the Act. *Held* inapplicable to the manufacture and sale of two-quart hampers for fruits and vegetables. Pp. 209-210.
2. Criminal statutes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. P. 209.

Affirmed.

APPEALS under the Criminal Appeals Act from judgments of the District Court which sustained, in each of these cases, demurrers to indictments for violations of the Standard Container Act of 1928.

---

<sup>16</sup> *United States v. Adams*, 9 Wall. 661, 663. *Winton v. Amos*, 255 U. S. 373, 395-396. *Louisville & Nashville R. Co. v. United States*, 258 U. S. 374, 377. *Fidelity & Deposit Co. v. United States*, 259 U. S. 296, 303. *Luckenbach S. S. Co. v. United States*, 272 U. S. 533, 539. *United States v. Jefferson Electric Co.*, 291 U. S. 386, 406.

\* Together with No. 63, *United States v. Acme Can Co.* Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

*Mr. Wm. W. Barron*, with whom *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *W. Marvin Smith* were on the brief, for the United States.

*Mr. D. Alexander Wieland*, with whom *Messrs. John Arthur Brown* and *Joseph J. Brown* were on the brief, for the *Acme Can Co.*, appellee in No. 63. *Mr. Samuel L. Einhorn*, counsel for appellees in No. 62, joined in the brief of the *Acme Can Co.*

MR. JUSTICE BUTLER delivered the opinion of the Court.

Appellees were indicted for violations of the Act of May 21, 1928, 45 Stat. 685, 15 U. S. C. §§ 257-257i. In No. 62, the indictment is in four counts, each of which charges that defendants sold for fruits and vegetables two-quart metal hampers which did not comply with the Act in that they were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture. In No. 63, the indictment is in two counts. The first charges that defendant manufactured two-quart metal hampers that were not of any authorized size or within prescribed tolerances, without having submitted dimension specifications to the Secretary. The second charges sale of them. In each case, the accused demurred upon the ground that the facts alleged are not sufficient to constitute a violation of the Act. The court sustained the demurrers and discharged the defendants. The United States appealed. 18 U. S. C., § 682.

Section 1 of the Act declares: "That the standard hampers . . . for fruits and vegetables shall be of the following capacities," and specifies nine sizes based upon a bushel of 2150.42 cubic inches. The sizes so defined are one-eighth, one-fourth, one-half, five-eighths, three-fourths, one bushel, one and one-fourth, one and one-half, and two bushels. Computed according to the standard

fixed, the capacity of a two-quart hamper is 134.4 cubic inches. Section 3 directs the Secretary of Agriculture to prescribe such tolerances as he may find necessary to allow in the capacities set forth in § 1. Section 4 commands: "That no manufacturer shall manufacture hampers . . . unless the dimension specifications . . . shall have been submitted to and approved by the Secretary of Agriculture, who is hereby directed to approve such specifications if he finds that hampers . . . made in accordance therewith would not be deceptive in appearance and would comply with" section 1. Section 5 makes it "unlawful to manufacture for sale . . . [or] to sell . . . hampers . . . for fruits or vegetables . . . that do not comply with this Act . . ." Anyone "that violates this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding \$500."

The question is whether the provisions of the Act are effective to make the manufacture or sale of two-quart hampers punishable as a crime. The nine sizes standardized in § 1 are the only ones within § 4. The Secretary was not authorized by § 3 to prescribe tolerances in respect of two-quart hampers, and has not attempted to do so. The indictments must be construed to charge merely manufacture and sale of hampers each of capacity of two quarts, one-sixteenth of a bushel, 134.4 cubic inches. They do not charge that any such hamper purported to be of any size defined by § 1, or was in any respect likely to deceive. It follows that, unless the clause of § 5 which forbids manufacture or sale of containers "that do not comply with this Act" makes criminal the manufacture or sale of two-quart hampers, the facts alleged do not constitute any offense.

Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. *United States v.*

*Wiltberger*, 5 Wheat. 76, 95. *Fasulo v. United States*, 272 U. S. 620, 628. The clause just quoted is crucial; its words are plain and, having regard to the connection in which they are used, must be given the meaning naturally attributable to them. It is obvious that they do not extend to hampers other than the nine classes defined in § 1. The Act applies to none of capacity less than four quarts. *Pacific States Box Co. v. White*, 296 U. S. 176, 183. It expresses no condemnation of two-quart hampers. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States v. Lacher*, 134 U. S. 624, 628. *United States v. Chase*, 135 U. S. 255, 261. *Fasulo v. United States*, *supra*, 629. As in absence of governmental regulation the making and selling of containers is untrammelled, failure expressly to permit is not to prohibit. Mere standardization of a bushel container at 2150.42 cubic inches would not make criminal the manufacture or sale of a half-bushel container having capacity of 1075.21 cubic inches. The prescribing of capacities of containers described in § 1 does not prohibit manufacture or sale of the two-quart hampers described in these indictments.

The judgments sustaining the demurrers and discharging the accused must be

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

Counsel for Parties.

NATIONAL HOME FOR DISABLED VOLUNTEER  
SOLDIERS *ET AL.* *v.* WOOD, ADMINISTRATOR.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT.

No. 70. Argued November 13, 16, 1936.—Decided December 7, 1936.

1. The Act of June 25, 1910, providing for the disposition of the personal property of deceased members of the National Home for Disabled Volunteer Soldiers, embraces "all personal property owned . . . at the time of [the member's] death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived," and applies to a balance of pension money remaining in the hands of the treasurer of the Home to the credit of a decedent. Pp. 215-216.
  2. Under the Act of 1910, during the five-year reclamation period, a child of a decedent, though over 21 years of age at the time of the death, is entitled to such pension money, as against the board of managers of the Home. Pp. 212, 216.
  3. By the Act of 1910 Congress intended to vest in the board of managers, for the post fund, the property of a deceased member only when such property otherwise would escheat to the State. P. 215.
  4. To the extent that, in respect of the disposition of the pension money in the hands of the treasurer at the time of the member's death, the Act of 1910 is inconsistent with the Act of July 1, 1902, the latter is superseded. P. 216.
- 81 F. (2d) 963, affirmed.

CERTIORARI\* to review a judgment which affirmed (except as to costs) a judgment in favor of the administrator of the estate of a deceased member of the National Home for Disabled Volunteer Soldiers in an action to recover pension money in the hands of the treasurer of the Home.

*Assistant Attorney General Morris*, with whom *Solicitor General Reed* and *Messrs. Paul A. Sweeney* and *Charles A. Horsky* were on the brief, for petitioners.

*Mr. Ray M. Foreman*, with whom *Mr. Lawrence T. Allen* was on the brief, for respondent.

---

\* See Table of Cases Reported in this volume.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Decedent was an honorably discharged volunteer soldier of the Civil War. In 1904, he was allowed a pension. October 19, 1924, having made application and signed an agreement in accordance with the Act of June 25, 1910,<sup>1</sup> he was enrolled as a member and admitted to the Danville branch of the National Home for Disabled Volunteer Soldiers, and continued to be an inmate until he died, September 16, 1926. During that period the United States paid his pension, in instalments of \$72 per month, to the treasurer of the branch. He died intestate, leaving as his sole heir at law, a son over 21 years old. Respondent brought this action to recover \$1546.47 of his pension money remaining in the hands of the treasurer after deductions as to which no question has been raised. The District Court gave judgment for that amount with interest and costs. 9 F. Supp. 403. The Circuit Court of Appeals affirmed except as to costs.<sup>2</sup> 81 F. (2d) 963. That decision, being in conflict with one of the Circuit Court of Appeals for the First Circuit, *Durack v. National Home*, 44 F. (2d) 516, this court granted a writ of certiorari.

Petitioners raise a single question. They maintain that, since the decedent did not leave a widow, minor child or dependent mother or father, the accumulated pension fund became payable at his death to the post fund of the Danville branch. If the Act of July 1, 1902,<sup>3</sup> governs, the balance belongs to the post fund. If, as held below, the Act of 1910 and the agreement made in

<sup>1</sup> 36 Stat. 736. 24 U. S. C., § 136.

<sup>2</sup> The Circuit Court of Appeals held: Although governmental agencies are named defendants, the suit is in fact one against the United States; § 5, Act of July 3, 1930, 46 Stat. 1017, 38 U. S. C., § 11d, permits allowance of interest against the United States, but costs should not have been allowed.

<sup>3</sup> 32 Stat. 564. 24 U. S. C., § 139.

accordance with its control, the administrator is entitled to recover.

Section 2 of the Act of February 26, 1881, provides: "All pensions payable . . . under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurer . . . of said home . . . to be disbursed for the benefit of the pensioners . . . Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the home, the same shall be paid to the widow, or children or, in default of either, to his legal representatives."<sup>4</sup>

Applicable to the pension money held by the branch were rules and regulations declaring: A pensioner, not classed as incompetent, may direct that all or any portion of his pension money be sent to his wife, minor child or dependent relative; the governor of a branch may prevent hurtful, wasteful or extravagant use of the pension money by retaining a sufficient amount until the danger has passed; pension money standing to the credit of a member sick in hospital will be paid directly to him in such amounts only as are necessary for his personal use; in the case of members classed as incompetent, payment of pension money may be made as follows: (a) to the surgeon in such sums as may be

---

<sup>4</sup>21 Stat. 350. Section 2 is contained in an Act making appropriations to pay pensions for the fiscal year ending June 30, 1882. It was applicable only to pensions paid out of the money so appropriated. The Act of August 7, 1882, 22 Stat. 322, provided: "That all pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurers of said home, to be applied by such treasurers as provided by law, under the rules and regulations of said home. . . . And section two of the act . . . approved February twenty-sixth, eighteen hundred and eighty-one, is hereby revived and continued in force." Cf. 24 U. S. C., § 138.

necessary for the personal expenses of the member (b) to a wife, minor child or dependent relative upon the authority of the president of the board of managers (c) to pay taxes, etc., when necessary to protect the interests of the member.<sup>5</sup>

The Act of July 1, 1902, provides:

"Hereafter any balance of pension money due a member of the National Home . . . at the time of his death shall be paid to his widow, minor children or dependent mother or father in the order named, and should" none "be discovered within one year from the time of the death . . . said balance shall be paid to the post fund of the Branch . . . of which the pensioner was a member at the time of his death . . . subject to future reclamation by the relatives hereinbefore designated, upon application filed . . . within five years after the pensioner's death."<sup>6</sup>

Petitioners maintain, and for the purposes of this decision we assume without deciding, that the Act of 1902 relates to pension money paid to the treasurer of a national home for the use and benefit of a member and held by him at the time of the member's death. But it contains nothing that relates to use or disposition of the fund while the pensioner is alive. It relates exclusively

---

<sup>5</sup> Par. 253, Regulations of the National Home for Disabled Volunteer Soldiers, 1918, as amended.

<sup>6</sup> Cf. § 4, Act of March 3, 1883, 22 Stat. 564, 24 U. S. C., § 52, prescribing regulations for the Soldiers' Home, Washington, D. C. It provides: ". . . The pensions of all who . . . are . . . inmates of the Home . . . shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner . . . and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. . . . In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home."

to disposition of the balance in the hands of the treasurer at the time of death. In that respect alone, it conflicts with and supersedes the corresponding provisions of the Act of 1881.

The scope and effect of the Act of June 25, 1910, remain to be considered. It provides:

“Hereafter the application of any person for membership in the National Home . . . and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member . . . leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Board . . . for the sole use and benefit of the post fund of said home . . . and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Board . . . subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. . . .”

Before that enactment, it was disclosed that in the National Home a substantial number of inmates died intestate and without heirs, leaving not only the balance of their pension money remaining in the hands of the branch treasurer but also money on deposit in banks. The Act directs the disposition of personal property left by members dying intestate and without heirs. Congress intended to vest in the board of managers for the post fund only that which, for lack of testamentary disposition and heirs at law, would be liable to escheat to the State. Whether the Act extends to the balance of decedent's pension money accumulated in the hands of the branch

treasurer depends upon the meaning to be given to the words "all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived." The words "all personal property" are broad enough to include his beneficial interest in the trust fund created by payments of his pension to the treasurer. The words "including money or choses in action" obviously do not exclude that money. There is nothing to suggest that the phrase "whether such property be the proceeds of pensions or otherwise derived" was intended to eliminate the pension money. It indicates purpose to extend not to restrict. Even if "proceeds of pensions" might be held to refer to something other than pension money, that meaning would have no tendency to exclude funds in the hands of the treasurer. The measure leaves the member free to dispose by will and safeguards to the legatees and heirs the right within five years to reclaim "all the property" that belonged to him at the time of his death. As to that, there is no ambiguity and therefore nothing to construe. To the extent that, in respect of disposition of the pension money in the hands of the treasurer at the time of the member's death, the Act of 1910 is inconsistent with the Act of 1902, the latter is superseded. It follows that respondent is entitled to the fund in question.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## Syllabus.

PUFAHL, RECEIVER, *v.* ESTATE OF ELVIRA J. PARKS, DECEASED.

CERTIORARI TO THE APPELLATE COURT, FIRST DISTRICT, OF ILLINOIS.

No. 18. Argued October 15, 1936.—Decided December 7, 1936.

1. Section 66, Title 12, U. S. C., declares that a person holding stock in a national banking association as executor shall not be personally subject to any liability as stockholder, but that the estate and funds in his hands shall be liable in like manner and to the same extent as the testator would be if living and competent to act and hold the stock in his own name. *Held* that the purpose of the latter clause is to make plain that, although the executor is exonerated personally, the estate is not; but the statute evinces no intent to prefer the assessments of stockholders' liability over other claims against the estate, or to exempt the receiver of the bank, in the collection of assessments, from pursuing the remedy prescribed by the local law for the collection of like claims. P. 222.
2. Section 64, Title 12, U. S. C., imposes no lien for the amount of an assessment against a living stockholder, and § 66 imposes none against the estate of a deceased stockholder. P. 224.
3. The statute creates an unsecured and unpreferred claim against a decedent's estate. Where the assessment has been made in the decedent's lifetime, an accrued and provable debt exists against his estate; if made after his death, a claim against the funds and assets of the estate accrues as of the date of assessment. P. 224.
4. The receiver of the bank may enforce his claim based on the assessment only in conformity to the law of the forum governing recovery of debts of like nature. If he elect to proceed in a federal court, the judgment or decree will determine the validity and amount of the claim; but if payment is desired from assets under the control of a state probate court, the marshalling of the claim with others, its priority, if any, in distribution, and all similar questions, are for the probate court upon presentation to it of the judgment or decree of the federal court. P. 225.
5. If the receiver prosecute his claim in a state court, the litigation will be governed (at least in the absence of federal legislation to the contrary) by the common and statutory law of the State. P. 226.

6. If the State does not discriminate against the receiver's claim, in favor of others of equal dignity and like character, there is no warrant for exempting the claim from the effect of local statutes governing procedure or limiting the time for prosecution of action. P. 227.
7. By the law of Illinois, claims against a decedent's estate, not exhibited to the court within one year from the granting of letters, are barred as to property and estate of the deceased which has been inventoried or accounted for by the executor or administrator, and claims may not be proved while they remain contingent; but opportunity is allowed to collect claims not presented within the year from assets subsequently discovered, whether the failure to present them earlier was due to negligence or to their contingent character; and if the claim is contingent, and the liability of the estate does not become absolute until after the expiration of the year, the creditor may recover from the distributees to the extent of the assets received by them respectively.

*Held* that a claim of a national bank's receiver against a decedent's estate, based upon an assessment of shares, was not entitled to satisfaction out of assets inventoried within one year after the granting of letters testamentary, where the insolvency of the bank, the levying of the assessment and the presentation of the claim to the Illinois probate court, all occurred after that year had expired. P. 227.

283 Ill. App. 95, affirmed.

CERTIORARI, 298 U. S. 649, to review a judgment affirming the rejection, by the Probate Court and by the Circuit Court of Cook County, Illinois, of a claim by the receiver of a national bank. The judgment here under review was not reviewable by the Supreme Court of Illinois, for want of a "certificate of importance."

*Mr. George P. Barse*, with whom *Mr. Otis F. Glenn* was on the brief, for petitioner.

The estate remained liable after the stockholder's death. The contingent assessment liability became absolute when the assessment was levied. The estate was then still in process of administration and undistributed, inventoried assets of value far in excess of the assessment claim were and are in the hands of the executors. R. S.,

§ 5152, 12 U. S. C. 66, expressly provides that the estates and funds in the hands of persons holding stock as executors shall be liable for stock assessment in like manner and to the same extent as the testator would be, if living and competent to act and hold the stock in his own name. This provision shows a clear intent on the part of Congress that the liability, as limited and defined by § 66, shall extend to the estate of a deceased shareholder for the benefit of the creditors of an insolvent national bank. The fiduciaries are exempt, but the property belonging to the estate in their hands is liable, as would be the deceased, if living.

This obligation of the estate continues unimpaired until valid assignment of the shares by final distribution of the estate. *Forrest v. Jack*, 294 U. S. 158, 162; *Seabury v. Green*, 294 U. S. 165, 169. See also *Matteson v. Dent*, 176 U. S. 521, 524; *Richmond v. Irons*, 121 U. S. 27, 55, 56; *Zimmerman v. Carpenter*, 84 Fed. 747, 751; *Drain v. Stough*, 61 F. (2d) 668, 669.

The non-claim statute of Illinois, providing that claims of any class not exhibited to the court within one year from the granting of letters of administration shall be forever barred from sharing in the distribution of the inventoried assets, does not relieve the estate and the undistributed inventoried assets in the hands of the executors from the obligation and liability for stock assessment imposed by the federal law.

The estate being still open and in process of administration, with an excess of undistributed, inventoried assets in the hands of the executors, *Forrest v. Jack*, *supra*, is distinguishable. The federal act specifically and directly imposes the liability on the undistributed assets.

See *Zimmerman v. Carpenter*, 84 Fed. 747 (cited with approval by this Court in *Forrest v. Jack*, *supra*, and *Seabury v. Green*, *supra*); *Drain v. Stough*, 61 F. (2d) 668; *Below, Receiver, v. First National Bank of Danville*,

Dist. Ct. U. S., East. Dist. Ill., 17 F. Supp. 703; *Drake v. Dilatush*, 16 F. Supp. 120; *Matteson v. Dent*, 176 U. S. 521, 524; *Parker v. Robinson*, 71 Fed. 256, 257; *Rankin v. Miller*, 207 Fed. 602, 612; *Luce v. Thompson*, 36 F. (2d) 183, 184, 185; *Gilbertson v. McCarthy*, 32 F. (2d) 665, 667, 668; *Davis v. Weed*, 7 Fed. Cas. 186, 190, 191; *Mann v. Kleisdorf*, 16 F. (2d) 997.

The contingent assessment liability was an equitable lien upon the estate.

The laws of the States will not be permitted to discriminate against or interfere with the operative effect of the national banking laws. *Mortimer v. Potter*, 213 Ill. 178; *Kingston v. Old National Bank*, 359 Ill. 192.

A claim which is not only contingent, but which, from its very nature, is incapable of being presented earlier in pending probate proceedings, cannot reasonably be considered to be within the scope and purpose of a non-claim statute. See *Hantzch v. Massolt*, 62 Minn. 361; *Miller & Lux v. Katz*, 10 Cal. App. 576; *Springhorn v. Dirks*, 72 Mont. 121; *Zimmerman v. Carpenter*, 84 Fed. 747, 750-751; *Allen v. Hanover Trust Co.*, 247 Mass. 347; *Tierney v. Shakespeare*, 34 N. Mex. 501; *Baird v. McMillan*, 53 N. D. 257; *Johnson v. Libby*, 111 Me. 204.

From the standpoint of enforcing the assessment liability imposed by the federal statute, it is obvious that the problem created by the expiration of the period for filing claims under the non-claim statute is not adequately or reasonably met by the fact that, under the state law, the receiver may possibly be able to satisfy the assessment out of property subsequently discovered and inventoried or, in the alternative, may proceed against the heirs, devisees, legatees, or distributees receiving the inventoried property from the estate.

As far back as *Kennedy v. Gibson*, 8 Wall. 498, this Court has recognized the plain purpose of the National Bank Act to wind up insolvent national banks speedily.

*Mr. Franz W. Castle*, with whom *Messrs. Emmett J. McCarthy* and *Robert F. Carey* were on the brief, for respondent.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

In this case we are concerned with the bearing of state law upon the enforcement of an assessment against the estate of a stockholder of a national bank.

Elvira J. Parks died March 20, 1928, owning twelve shares of the capital stock of the Austin National Bank of Chicago. May 17, 1928, the Probate Court of Cook County, Illinois, granted letters testamentary to the executors named in her will, who filed an inventory and supplemental inventory in the probate court within one year of the date of the letters. March 30, 1931, the Comptroller of the Currency declared the bank insolvent, closed it, and appointed the petitioner receiver, and May 21, 1931, assessed all stockholders, including the executors of Elvira J. Parks, one hundred per cent. of the par value of their stock. The executors refused to honor the receiver's demand for payment, and on September 1, 1933, he filed his claim in the Probate Court for \$1,327.17, the amount of the assessment with interest to the date of filing. January 13, 1934, the court disallowed the claim. The receiver appealed to the Circuit Court, where the case was tried *de novo*. That court, applying a state statute, disallowed the claim as against undistributed assets in the hands of executors inventoried within one year from the date of the grant of letters, because the claim did not accrue and was not presented to the Probate Court within that period, but allowed it as to assets not inventoried within the year. (From a stipulation filed in this court it appears that there are in the executors' possession inventoried assets in excess of the amount of petitioner's claim; that the estate is solvent; and that

there are no assets not inventoried within one year from the granting of the letters, or discovered after the expiration of that period.) The Appellate Court of the First District of Illinois affirmed the judgment. A certificate of importance, requisite for a review by the Supreme Court of the State, was refused. Certiorari was granted to resolve a conflict respecting the construction of relevant federal statutes.

U. S. C. Tit. 12, § 64 is in part:

“The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof, in addition to the amount invested in such stock. . . .”

Section 66 is:

“Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name.”

The petitioner asserts these sections give his claim a quality so superior to that of other contingent claims against a decedent's estate that it must be recognized by state tribunals without regard to limitations upon allowance imposed by state laws.

The liability is imposed by the statute.<sup>1</sup> The original subscriber and likewise an immediate or remote vendee of the shares assumes a status,—that of stockholder. The assumption of this status involves whatever conditions or burdens the federal statutes have imposed as incident to the holding of national bank shares. The contingent

---

<sup>1</sup> *McClaine v. Rankin*, 197 U. S. 154, 161; *Christopher v. Norvell*, 201 U. S. 216, 225; *McDonald v. Thompson*, 184 U. S. 71, 73, 74; *Forrest v. Jack*, 294 U. S. 158, 162.

obligation to pay an assessment is rendered absolute by the Comptroller's action in ordering one; whether that action be taken during the stockholder's life or after his death. From the moment of the Comptroller's order for assessment the bank's receiver has a claim which would support an action of debt at common law against a living stockholder, or the executor of a deceased stockholder. And if assessment be made after the estate of a deceased stockholder has been distributed the receiver may proceed to recover the amount from distributees or heirs, if, and to the extent, they are liable for debts of the estate under the law of the domicile.<sup>2</sup>

The first clause of § 66 obviously was intended to exempt from personal liability the executor, administrator, guardian or trustee who holds stock as such fiduciary whether standing of record in his name or in that of the decedent, ward, or settlor. The second declares that the estate and funds in the hands of an executor shall be liable as the testator would have been if living, competent, and a stockholder of record. The question is whether this clause adds anything to the obligation of the decedent which is cast upon his estate by operation of law irrespective of § 66.<sup>3</sup> Does it impose upon the estate a liability differing from that which the law fastens upon the personal representative to discharge out of the estate, debts accruing before or after the decedent's death? We think that, as the first clause exonerates the fiduciary from personal liability, the second negatives the inference that the exoneration is to extend to the decedent's estate. This was the view taken by Judge Shipman in *Davis v. Weed*, 7 Fed. Cas. 186 (44 Conn. 569):

"I do not think that section 5152 [§ 66] was intended to affect the liability for assessments of estates in process

---

<sup>2</sup> *Matteson v. Dent*, 176 U. S. 521; *Forrest v. Jack*, *supra*; *Seabury v. Green*, 294 U. S. 165.

<sup>3</sup> *Matteson v. Dent*, *supra*.

of settlement. The principal object of the section was to prevent a personal liability from running against executors, administrators, trustees or guardians, who had purchased as trustees, or to whom had been transferred in their names as trustees national bank stocks for the benefit of the trust estates. Having by such purchase voluntarily entered into a contingent liability for assessments, it might be claimed that a judgment *de bonis propriis* could be rendered against them. The main object of the section was to prevent personal judgments being rendered against such persons in whom the stock stood on the books of the bank as trustees."

The statute evidences no intent to prefer the assessment over other claims against the estate, or to exempt the receiver from the pursuit of the remedy prescribed by the local law for collection of claims of the same sort.

Section 64 gives the receiver no lien for the amount of the assessment against the property of a living stockholder. The claim may only be recovered by suit or action. The judgment obtained is collectible like any other; it has no preference in distribution if the debtor's property be in the hands of a receiver, if he has made an assignment for the benefit of creditors, or become bankrupt. Section 66 makes a deceased stockholder's estate liable in like manner, and to the same extent, as he would have been if living. As no lien is created against the property of a living stockholder by § 64, § 66 imposes none against his estate.<sup>4</sup>

The statute creates an unsecured and unpreferred claim against a decedent's estate. Where the assessment has

---

<sup>4</sup> In *Witters v. Sowles*, 32 Fed. 130, 140, and in *Drain v. Stough*, 61 F. (2d) 668 there are statements that the statute imposes a lien on estate assets. In *Rankin v. Miller*, 207 Fed. 602, 611 one ground of decision was that such a lien existed. So in *Drake v. Dilatush*, 16 F. Supp. 120, the District Court for Eastern Illinois by decree imposed a lien upon the assets of a decedent's estate held by the executor, under circumstances like those presented in the instant case.

been made in the decedent's lifetime an accrued and provable debt exists against his estate; if made after his death a claim against the funds and assets of the estate accrues as of the date of assessment.

Although the petitioner's demand is based upon a federal statute, he may enforce it only in conformity to the law of the forum governing the recovery of debts of like nature. He might have sued in a federal court. Notwithstanding the statute providing that the citizenship of a national bank, for purposes of federal jurisdiction, shall be as if it were a corporation of the state where it has its place of business, the receiver is an officer of the United States and, as such, entitled to sue for assessments in a federal court, irrespective of the citizenship of the parties or the amount in controversy.<sup>5</sup> If he elect so to do, R. S. 721 (28 U. S. C. § 725) governs the trial:

"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

In such a proceeding the state statute of limitations will be applied;<sup>6</sup> and it seems that the local substantive law governing property rights in stock will be observed.<sup>7</sup> Nor does the principle that the jurisdiction of courts of the United States cannot be defeated by a state's laws limiting redress of its own citizens to certain tribunals<sup>8</sup>

---

<sup>5</sup> *Kennedy v. Gibson*, 8 Wall. 498; *Price v. Abbott*, 17 Fed. 506; *Armstrong v. Trautman*, 36 Fed. 275; *Brown v. Smith*, 88 Fed. 565; *Stephens v. Bernays*, 41 Fed. 401, affirmed by C. C., 44 Fed. 642; *Rankin v. Herod*, 140 Fed. 661. See also *United States v. Weitzel*, 246 U. S. 533, 541.

<sup>6</sup> *McDonald v. Thompson*, *supra*; *McClaine v. Rankin*, *supra*; *Morgan v. Hamlet*, 113 U. S. 449.

<sup>7</sup> *Keyser v. Hitz*, 133 U. S. 138; *Christopher v. Norvell*, *supra*.

<sup>8</sup> *Suydam v. Broadnax*, 14 Pet. 67; *Union Bank v. Vaiden*, 18 How. 503; *Hyde v. Stone*, 20 How. 170; *Lawrence v. Nelson*, 143 U. S. 215.

create such inconsistency or conflict as to require the overriding of the law of the state with respect to distribution of the estate of a decedent. Where, as here, a *res* has come into the possession and under the control of a state court, one having a right to go into the federal court, either by reason of diversity of citizenship, or because he is a federal officer, cannot obtain a judgment or decree entitling him to interfere with the administration of the *res* by the court having its possession. While he may not be denied his right to prosecute an action to judgment or a suit to final decree in the federal court, such judgment or decree can do no more than adjudicate the validity and amount of his claim. The marshalling of that claim with others, its priority, if any, in distribution, and all similar questions, are for the probate court upon presentation to it of the judgment or decree of the federal court.<sup>9</sup> Thus, though a receiver should resort to the United States District Court, he would need to present, in a probate court, any judgment obtained, if he desired payment from the assets under the control of the latter.

The receiver may, as petitioner elected to do, prosecute his claim in a state court. If he does, at least in the absence of Congressional declaration to the contrary, the litigation will be governed by the common and statutory law of the state. Thus the local statute of limitations applies;<sup>10</sup> and the local law as to the extinguishment of the estate and the liability *vel non* of distributees controls.<sup>11</sup>

If the state law requires a claim for an assessment to be prosecuted in an action of debt, the receiver cannot elect to bring some other form of action or to sue in equity;

---

<sup>9</sup> *Yonley v. Lavender*, 21 Wall. 276; *Byers v. McAuley*, 149 U. S. 608; *Security Trust Co. v. Black River National Bank*, 187 U. S. 211, 227.

<sup>10</sup> *McDonald v. Thompson*, *supra*; *McClaine v. Rankin*, *supra*.

<sup>11</sup> *Matteson v. Dent*, *supra*; *Forrest v. Jack*, *supra*; *Seabury v. Green*, *supra*.

conversely, if the law prescribes a suit in equity, the receiver cannot bring an action at law. And if under the state statutes demands against a decedent's estate must be proved in a probate court, the receiver cannot pursue some other form of action. This is not to say that a state may deny all remedy for the substantive right arising out of the federal statute (see *Seabury v. Green, supra*); [it is merely to say that if the state does not discriminate against the receiver's claim in favor of others of equal dignity and like character, there is no warrant for exempting the claim from the effect of local statutes governing procedure or limiting the time for prosecution of action.

The petitioner, having elected to prove his claim in the appropriate state court, is bound by the laws of Illinois as to the enforcement of such claims, provided those laws are nondiscriminatory and operate equally upon all claims of the class in which his belongs.

The relevant statute is § 70 of the Illinois Administration Act<sup>12</sup> which provides that five classes of claims against decedents' estates shall be preferred in the order named, e. g., funeral expenses, costs of administration, widow's share, etc. The sixth class is:

"Sixth. All other debts and demands of whatever kind without regard to quality or dignity, which shall be exhibited to the court within one year from granting of letters as aforesaid.

"All claims and demands of whatever class not exhibited to the court within one year<sup>13</sup> from the granting of letters as aforesaid shall be forever barred as to property and estate of the deceased which has been inventoried or accounted for by the executor or administrator; and if the executor or administrator shall thereafter file any inventory listing other estate not previously inventoried or

<sup>12</sup> Chapter 3, ¶71 § 70 Ill. Rev. Stats., 1935.

<sup>13</sup> An earlier statute fixed the time at two years. Many of the Illinois cases cited arose under the prior law.

accounted for, and shall cause notice to be published in the manner provided by Section 60 of this Act, or give such other notice as the court may direct, of a day fixed upon, which shall be not less than three months after the date of such first publication, for the filing and exhibiting of further claims against said decedent, all claims not exhibited to the court prior to the date so fixed shall be forever barred as to the property and estate listed in such inventory, and the amount remaining due on all claims exhibited to the court on or prior to the day so fixed upon as aforesaid, including those filed within one year from the granting of letters, shall be paid *pro rata* out of such subsequently inventoried estate, saving, however, to infants, persons of unsound mind and persons in the employment of the United States or of this State and residing outside of the United States, the term of one year after their respective disabilities are removed to exhibit their claims."

In Illinois a creditor whose claim against a decedent's estate is not due may present it for allowance and settlement provided the liability of the decedent was absolute.<sup>14</sup> Contingent claims may not be proved.<sup>15</sup> Section 70 is not a general statute of limitations but a specific provision intended to facilitate the early settlement of estates.<sup>16</sup> It results that a claim not presented within the year, though not entitled to be paid from assets inventoried within the year, is not barred, but may be collected out

<sup>14</sup> Cahill's Ill. Stat. 1923, Ch. 3 ¶ 68; *Johnson v. Tryon*, 78 Ill. App. 158; *Dunnigan v. Stevens*, 122 Ill. 396; 13 N. E. 651; *Foreman Trust & Savings Bank v. Tauber*, 348 Ill. 280; 180 N. E. 827.

<sup>15</sup> *Stone v. Clarke's Administrators*, 40 Ill. 411; *Dugger v. Oglesby*, 99 Ill. 405; *Mackin v. Haven*, 187 Ill. 480; 58 N. E. 448; *Union Trust Co. v. Shoemaker*, 258 Ill. 564; 101 N. E. 1050; *Chicago T. & T. Co. v. Fine Arts Bldg.*, 288 Ill. 142; 123 N. E. 300; *Robison v. Harrington*, 61 Ill. App. 543; *Brown v. Rouse*, 116 Ill. App. 513; *Bocock v. Leet*, 210 Ill. App. 402.

<sup>16</sup> *Waughop v. Bartlett*, 165 Ill. 124; 46 N. E. 197; *Durfinger v. Arnold*, 329 Ill. 93; 160 N. E. 172.

of assets subsequently discovered; and this is so whether the failure timely to present the claim was due to the creditor's negligence, or to the fact that the claim was contingent in character and did not become absolute by the happening of the contingency during the year.<sup>17</sup> If the claim is contingent, and the liability of the estate does not become absolute until after the expiration of the year, the creditor may recover from the distributees to the extent of the assets received by them respectively.<sup>18</sup>

The claimant has only to present and prosecute his demand in the probate court, which has jurisdiction both of legal demands and those cognizable in equity.<sup>19</sup> While, therefore, the creditor need not resort to a court of law or equity to establish his claim, he may do so, since the jurisdiction of those courts over such claims has not been abolished.<sup>20</sup> He may present his claim to the probate court and, at the same time, proceed in equity in the circuit court for specific performance of the contract out of which the claim arises; <sup>21</sup> or present a mortgage note to

---

<sup>17</sup> *Peacock v. Haven*, 22 Ill. 23; *Russell v. Hubbard*, 59 Ill. 335; *Shepard v. Rhodes*, 60 Ill. 301; *Shepard v. National Bank*, 67 Ill. 292; *Snydacker v. Swan Land Co.*, 154 Ill. 220; 40 N. E. 466; *Union Trust Co. v. Shoemaker*, 258 Ill. 564; 101 N. E. 1050; *Chicago T. & T. Co. v. Fine Arts Bldg.*, 288 Ill. 142; 123 N. E. 300; *People v. Small*, 319 Ill. 437; 150 N. E. 435.

<sup>18</sup> *Snydacker v. Swan Land Co.*, 154 Ill. 220; 40 N. E. 466; *Union Trust Co. v. Shoemaker*, 258 Ill. 564; 101 N. E. 1050; *Beebe v. Kirkpatrick*, 321 Ill. 612; 152 N. E. 539; *Durflinger v. Arnold*, 329 Ill. 93; 160 N. E. 172; *Whittemore v. Weber*, 217 Ill. App. 628.

<sup>19</sup> *Hurd v. Slaten*, 43 Ill. 348; *Matter of Corrington*, 124 Ill. 363; 16 N. E. 252; *Mattheus v. Kerfoot*, 167 Ill. 313; 47 N. E. 859; *Trego v. Cunningham's Estate*, 267 Ill. 367; 108 N. E. 350; *Pollock v. Cantlin*, 253 Ill. App. 229; *In re Estate of Kinsey*, 261 Ill. App. 481.

<sup>20</sup> *Rosenthal v. Magee*, 41 Ill. 370; *Wells v. Miller*, 45 Ill. 33; *Mason v. Tiffany*, 45 Ill. 392; *Darling v. McDonald*, 101 Ill. 370; *Roberts v. Flatt*, 142 Ill. 485; 32 N. E. 854; *Bradwell v. Wilson*, 158 Ill. 346; 42 N. E. 145.

<sup>21</sup> *Aldrich v. Aldrich*, 287 Ill. 213, 224; 122 N. E. 472; *Crawley v. Howe*, 223 Ill. App. 394, 398.

the probate court and bring suit in equity to foreclose the deed of trust securing it so as to share in estate assets for any deficiency in his security.<sup>22</sup> But whatever the forum in which he prosecutes his demand, no execution is issued upon the judgment or decree obtained. Whether the claim is presented to the probate court or litigated in some other, within the year, the judgment is that the claim be paid "in due course of administration,"—that is, by an order of distribution out of the proceeds of inventoried assets.<sup>23</sup> If judgment is recovered upon a demand, presented to the probate court or prosecuted at law or in equity after the expiration of the year, the judgment is special, that the claim be paid out of assets inventoried or discovered after the lapse of the year, like the common law judgment *quando acciderint*;<sup>24</sup> or that it be enforced against distributees.<sup>25</sup> The only bar to the recovery of such a judgment is the general statute of limitations.<sup>26</sup>

A creditor cannot subject inventoried assets, undistributed and held by the administrator, to the payment of his claim by instituting, after the expiration of the year, and prosecuting to judgment, an action of debt against the administrator.<sup>27</sup> Nor can one who has failed to present his claim to the probate court, or to institute suit or action on it, within the year, resort to a court of equity

---

<sup>22</sup> *Kittredge v. Nicholes*, 162 Ill. 410, 412; 44 N. E. 742; *Dyer v. Hall*, 201 Ill. App. 183.

<sup>23</sup> See the cases in Note 19. *Welch v. Wallace*, 8 Ill. 490; *Peck v. Stevens*, 10 Ill. 127; *Bull v. Harris*, 31 Ill. 487; *Dye v. Noel*, 85 Ill. 290.

<sup>24</sup> *Bradford v. Jones*, 17 Ill. 93; *Peacock v. Haven*, 22 Ill. 23; *Rosenthal v. Magee*, 41 Ill. 370; *Mulvey v. Johnson*, 90 Ill. 457; *Darling v. McDonald*, 101 Ill. 370, 374.

<sup>25</sup> *Roberts v. Flatt*, 142 Ill. 485; 32 N. E. 484; *Union Trust Co. v. Shoemaker*, 258 Ill. 564; 101 N. E. 1050.

<sup>26</sup> *Guy v. Gericks*, 85 Ill. 428; *Wilding v. Rhein*, 12 Ill. App. 384.

<sup>27</sup> *Pearson v. McBean*, 231 Ill. 536; 83 N. E. 173.

to have his demands paid out of undistributed inventoried assets.<sup>28</sup>

It is apparent that the decision under review enforces the policy of the state evidenced by § 70 of the Administration Act as it has been uniformly applied to claims of like character.

The petitioner relies on *Mortimer v. Potter*, 213 Ill. 178; 72 N. E. 817, but it is not in point. The claim of the receiver for an assessment in that case accrued after the estate had been fully administered and while the stock with respect to which assessment was levied was in the hands of a trustee to whom it was devised by the testator. Under the principles of Illinois law, as has been shown, such a devisee who received assets from the decedent's estate is liable for the assessment to the extent of those assets.

The petitioner also cites *Zimmerman v. Carpenter*, 84 Fed. 747, as authority in his favor. In that case a circuit court of the United States entered a decree charging the assets in the hands of an executor with the amount of an assessment levied after the decedent's death. It is not clear from the opinion whether the court thought that § 66 creates a lien on estate assets from the date of the bank's failure or construed the section as creating a claim *sui generis* enforceable directly against assets in the possession of the executor and under the control of a state court of competent jurisdiction. As we have shown above, either theory is wrong.

---

<sup>28</sup> *Strauss v. Phillips*, 189 Ill. 9, 23; 59 N. E. 560; compare *Blanchard v. Williamson*, 70 Ill. 647. The petitioner cites cases to the effect that probate courts in Illinois act upon equitable principles. Some of these are collected in Note 13, *supra*, but they go only to the point that in probating claims against an estate those courts recognize equitable doctrines, and do not remit a creditor to a court of equity if his claim is equitable rather than legal. No statute or case has been found indicating that these tribunals have independent equity jurisdiction.

In the absence of federal legislation giving priority to a claim for an assessment of stockholders' liability over other debts, or a lien upon the assets of a deceased stockholder's estate, or a special remedy, the claim is not entitled to distribution otherwise than as specified in a nondiscriminatory statute of the domicile. The judgment is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

AMERICAN TELEPHONE & TELEGRAPH CO. ET AL.  
v. UNITED STATES ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 74. Argued November 16, 17, 1936.—Decided December 7, 1936.

1. A court cannot substitute its own discretion for that of administrative officers acting within their powers. Mere error or unwisdom is not equivalent to abuse of discretion. P. 236.
2. Statements made in argument by counsel for the Government in behalf of the Federal Communications Commission, which were reduced to writing and filed in the case at the suggestion of the Court, and which declared the meaning of certain of the regulations prescribed by the Commission as part of a uniform system of accounts for telephone companies, under the Communications Act of 1934,—held an administrative construction binding upon the Commission in its future dealings with the companies. P. 241.
3. Rules in a uniform system of accounts for telephone companies subject to the Communications Act of 1934, require that the property investments of an accounting company shall be entered in balance sheet accounts, under the general title of "Investments," at "original cost," a term which, as applied to plant, franchise, patent rights, etc., is defined to mean the cost, actual or estimated, of the property at the time when it was first dedicated to the public use, whether by the accounting company or a predecessor public utility; the differences between the amounts actually paid by the accounting company in acquiring property from predecessor utili-

ties and this "original cost" (actual or estimated) of the property shall be recorded in another account entitled "Telephone Plant Acquisition Adjustment," and shall be disposed of, written off, or amortized in such manner as the Commission may direct. *Held:*

(1) That, in the light of administrative construction, the regulation does not mean that the differences entered in the Adjustment Account must be written off completely; on the contrary, amounts in the Adjustment Account which represent investment by the accounting company in assets of continuing value are to be retained in the account until such assets cease to exist or are retired, and provision is to be made for their amortization. Pp. 237, 240.

(2) Reservation of ultimate disposition of items in this Adjustment Account to await further inquiry and direction by the Commission does not render the classification arbitrary or amount to a departure from the statutory power to prescribe the "forms" of accounts for classes of carriers rather than for individuals. P. 242.

(3) As to property acquired from other utilities, the companies are not prevented from recovering depreciation expense which they actually incur, on their actual investment, nor required to base depreciation charges on cost to prior owners. The provisions of the regulations as to depreciation or amortization comply with § 220 (b) of the Act. P. 242.

(4) The requirement that an estimate of the original cost to a predecessor utility shall be recorded when the actual cost is unknown, is not arbitrary; nor does it expose the accounting company to the hazard of criminal prosecution. P. 244.

(5) To subject an accounting company or its officers to criminal prosecution for violation of the Act, the violation must have been knowing and wilful. Communications Act, §§ 501, 502. P. 245.

(6) Should duties imposed by the rules on an accounting company be uncertain, it may obtain clarifying instructions from the Commission. P. 245.

4. Another of the instructions in the system of accounts above mentioned declares: "All charges to the accounts prescribed in this classification for telephone plant, income, operating revenues, and operating expenses shall be just and reasonable and any payments by the company in excess of such just and reasonable charges shall be included in account 323, 'Miscellaneous income charges.'" *Held:*

(1) The purpose of this requirement is to prevent the padding of the accounts by charges knowingly and wilfully entered in excess of what is just and reasonable. Only if knowingly and wilfully so entered is any penalty prescribed by the Act. P. 246.

(2) The requirement is not arbitrary. P. 246.

(3) The standard "just and reasonable" is not unduly vague.

*Id.*

5. The rules require that property "used in telephone service at the date of the balance-sheet" go into one account; property "held for imminent use in telephone service" under a definite plan for such use into another; and other property held for future use not imminent or definite into a third account which covers "miscellaneous physical property." Held not open to objection on the ground of vagueness. Property held for imminent use in telephone service and under a definite plan will include spare plants kept in reserve as a measure of prudent administration. Property held in present telephone use comes very near to defining itself. If particular situations shall develop ambiguity or doubt, the Commission will be available for clarifying instructions. P. 247.

6. The evidence does not show that the order of the Commission, by requiring revision of accounts, lays an unreasonable burden of expense upon the telephone companies. *Id.*

14 F. Supp. 121, affirmed.

APPEAL from a decree which dismissed, in part, a bill brought against the United States and the Federal Communications Commission by numerous telephone companies to set aside an order of the Commission prescribing a uniform system of accounts. Other telephone companies intervened as plaintiffs and the National Association of Railroad and Utilities Commissioners intervened as defendant. There was no cross-appeal from that part of the decree which was favorable to the plaintiffs.

*Mr. William D. Mitchell*, with whom *Messrs. C. M. Bracelen, Alan J. McBean, Charles T. Russell, and Edward L. Blackman* were on the brief, for American Telephone & Telegraph Co. et al., appellants.

*Mr. Allen T. Klots*, with whom *Mr. G. Schuyler Tarbell, Jr.*, was on the brief, for Ohio Associated Telephone Co. et al., appellants.

*Assistant Attorney General Dickinson*, with whom *Solicitor General Reed* and *Mr. Charles H. Weston* were on the brief, for the United States, appellee.

*Messrs. Hampson Gary, Frank Roberson, and W. D. Humphrey* submitted for the Federal Communications Commission, appellee.

*Mr. John E. Benton*, with whom *Mr. Clyde S. Bailey* was on the brief, for the National Association of Railroad and Utilities Commissioners, appellee.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

This suit was brought in the United States District Court for the Southern District of New York to set aside an order of the Federal Communications Commission prescribing a uniform system of accounts for telephone companies subject to the Communications Act of 1934. Act of June 19, 1934, c. 652, 48 Stat. 1064; 47 U. S. C. § 151. The plaintiffs are forty-four telephone companies, thirty-seven of them members of the Bell System, and seven of them members of another group. The defendants are the United States and the Federal Communications Commission, with whom the National Association of Railroad and Utilities Commissioners was afterwards joined, intervening as the representative of the regulatory commissions of forty-six states in support of the contested order.

The Communications Act of 1934 provides (§ 220) that "the Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda" to be kept by carriers subject to the Act, "including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys." This is a power that had previously been lodged with the Interstate Commerce Commission—Interstate Commerce Act, § 20 (5)—which framed a set of rules for telephone companies to take effect January 1, 1913, and a revised set of rules effective January 1, 1933.

After the transfer of jurisdiction over telephone companies from the Interstate Commerce Commission to the Federal Communications Commission in 1934, the new Commission prepared a "draft of a Uniform System of Accounts," which was considered at a conference with representatives of the companies and of the state commissions. The outcome of the conference was the order of June 19, 1935, to take effect January 1, 1936, which is the subject of this suit.

The plaintiffs having moved for an interlocutory injunction, the cause was heard, in accordance with the requirement of the statute—47 U. S. C. § 402 (a); 28 U. S. C. § 47—by a District Court of three judges, the affidavits in support of the motion and against it being also submitted for and against the final decree. Five provisions of the order were attacked as arbitrary. The District Court sustained two objections of minor importance, which are not in controversy now, and overruled the others. One of these was directed to the "original cost" rule; the second to a provision as to "just and reasonable" charges; the third to a classification dividing plants in present use from those held for use thereafter. The court dismissed the bill as to the objections overruled, stating in an opinion the reasons for its action. 14 F. Supp. 121. The case is here upon appeal. 48 Stat. 1064, 1093, § 402 (a); 47 U. S. C. § 402 (a); 38 Stat. 219, 220; 28 U. S. C. §§ 47, 47 (a).

This court is not at liberty to substitute its own discretion for that of administrative officers who have kept within the bounds of their administrative powers. To show that these have been exceeded in the field of action here involved, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another. Error or un wisdom is not equivalent to abuse. What has been ordered must appear to be "so entirely at odds with fundamental principles of cor-

rect accounting" (*Kansas City Southern Ry. Co. v. United States*, 231 U. S. 423, 444) as to be the expression of a whim rather than an exercise of judgment. *Norfolk & Western Ry. Co. v. United States*, 287 U. S. 134, 141; *Kansas City Southern Ry. Co. v. United States*, *supra*, p. 456. Then too, in gauging rationality, regard must steadily be had to the ends that a uniform system of accounts is intended to promote. "The object of requiring such accounts to be kept in a uniform way and to be open to the inspection of the Commission is not to enable it to regulate the affairs of the corporations not within its jurisdiction, but to be informed concerning the business methods of the corporations subject to the act that it may properly regulate such matters as are really within its jurisdiction." *Interstate Commerce Comm'n v. Goodrich Transit Co.*, 224 U. S. 194, 211; *cf. Kansas City Southern Ry. Co. v. United States*, *supra*, p. 445. With these principles in mind, we proceed to consider separately the regulations and instructions now challenged as unlawful.

First: *The Original Cost Provisions.*

Four new balance sheet accounts, each of them a subtitle of the general title of "Investments," must be kept under the new system. The first (100.1) is described as Telephone Plant in Service; the second (100.2), Telephone Plant under Construction; the third (100.3), Property held for Future Telephone Use; and the fourth (100.4), Telephone Plant Acquisition Adjustment. Account 100.1 "shall include the original cost [defined by Instruction 3 (S. 1)] of the company's property used in telephone service at the date of the balance sheet." Account 100.2 "shall include the original cost [as so defined] of construction of telephone plant not completed ready for service" at such date. Account 100.3 "shall include the original cost [so defined] of property owned and held for imminent use in telephone service under a definite plan for such use." The term "original cost" as

appearing in these rules receives, under Instruction 3 (S. 1), a special definition. "‘Original cost’ or ‘cost,’ as applied to telephone plant, franchises, patent rights, and right-of-way, means the actual money cost of (or the current money value of any consideration other than money exchanged for) property at the time when it was first dedicated to the public use, whether by the accounting company or by a predecessor public utility." If actual costs are unknown, estimates are to take their place. Instruction 21 (B). From all this it follows that the sum of the three accounts which represent the original cost of property acquired by the accounting company from other telephone utilities, may be less or greater than the investment in such property by the accounting company itself. The difference is taken care of by account 100.4, Telephone Plant Acquisition Adjustment.\* The same rule provides in a subdivision designated (C) that "the amounts recorded in this account [i. e. 100.4] with respect to each property acquisition shall be disposed of, written off, or provision shall be made for the amortization thereof in such manner as this Commission may direct."

Before explaining the appellants' objections to these provisions as to cost, we may pause to indicate the reasons that led to their adoption. To a great extent, the telephone business as conducted in the United States is

---

\* "This account shall include the difference between (a) the amount of money actually paid (or the current money value of any consideration other than money exchanged) for telephone plant acquired, plus preliminary expenses incurred in connection with the acquisition; and (b) the original cost (note instruction 3-S. 1) of such plant, governmental franchises and similar rights acquired, less the amounts of reserve requirements for depreciation and amortization of the property acquired, and amounts of contributions to the predecessor company or companies for construction and acquisition of such property. If the actual original cost is not known, the entries in this account shall be based upon an estimate of such cost."

that of a far flung system of parent, subsidiary and affiliated companies. The Bell system is represented in this case by thirty-seven companies, the American Telephone and Telegraph Company at their head. Seven other companies, intervening as a group, represent a second and smaller system. Purchases are frequently made by a member or members of a system from affiliates or subsidiaries, and with comparative infrequency from strangers. At times obscurity or confusion has been born of such relations. There is widespread belief that transfers between affiliates or subsidiaries complicate the task of rate-making for regulatory commissions and impede the search for truth. Buyer and seller in such circumstances may not be dealing at arm's length, and the price agreed upon between them may be a poor criterion of value. *Dayton Power & Light Co. v. Public Utilities Comm'n of Ohio*, 292 U. S. 290, 295; *Western Distributing Co. v. Public Service Comm'n of Kansas*, 285 U. S. 119; *Smith v. Illinois Bell Telephone Co.*, 282 U. S. 133. Even if the property has been acquired by treaty with an independent utility or a member of a rival system, there is always a possibility that it is nuisance value only—and not market or intrinsic value for the uses of the business—that has dictated the price paid. Accordingly the work of the Commission may be facilitated by spreading on the face of the accounts a statement of the cost as of the time when the property to be valued was first acquired by a utility or dedicated to the public use. The same considerations show why the regulations do not direct that the inquiry as to original cost shall be carried even farther back, so as to cover, for illustration, the cost to manufacturers who may have sold to the first utility. In the process of analysis, inquiry is halted at the point where it ceases to be fruitful.

With this explanatory background we can now go forward with understanding to a statement of the objections to the order and a determination of their weight.

(a) The companies object that by the "original cost" provisions of the order they are prevented "from recording their actual investment in their accounts" with the result that the accounts do not fairly exhibit their financial situation to shareholders, investors, tax collectors and others.

The argument is that account 100.4, representing the difference between original and present cost, is not to be reckoned, either wholly or in part, as a statement of existing assets, but must be written off completely. The Commission is charged, we are told, with a mandatory duty to extinguish the entire balance recorded in that account, its presence under the title of "investments" having the effect of a misleading label. To give support to that conception of official duty, they rely on subdivision (C), which provides, as we have seen, that "the amounts recorded in this account with respect to each property acquisition shall be disposed of, written off, or provision shall be made for the amortization thereof in such manner as this Commission may direct."

If subdivision (C) had the meaning thus imputed to it, there would be force in the contention that the effect of the order is to distort in an arbitrary fashion the value of the assets. But the imputed meaning is not the true one. The Commission is not under a duty to write off the whole or any part of the balance in 100.4, if the difference between original and present cost is a true increment of value. On the contrary, only such amount will be written off as appears, upon an application for appropriate directions, to be a fictitious or paper increment. This is made clear, if it might otherwise be doubtful, by administrative construction. Thus, the Commission's chief-accountant testified that by the proper interpretation of account 100.4, amounts therein "would be disposed of, after the character of the item had been determined, in a manner consistent with the general rules underlying the uniform

system of accounts for the distribution of expenditures, according to their character, to operating expenses, income, surplus, or remain an investment." Other witnesses gave testimony in substance to the same effect. But even more decisive are statements made by counsel, appearing for the Government and arguing the case before us. To avoid the chance of misunderstanding and to give adequate assurance to the companies as to the practice to be followed, we requested the Assistant Attorney-General to reduce his statements in that regard to writing in behalf of the Commission. He did this and informs us that "the Federal Communications Commission construes the provisions of Telephone Division Order No. 7-C, issued June 19, 1935, pertaining to account 100.4" as meaning "that amounts included in account 100.4 that are deemed, after a fair consideration of all the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with paragraph (C) of account 100.4, provision will be made for their amortization."

We accept this declaration as an administrative construction binding upon the Commission in its future dealings with the companies. *Hicklin v. Coney*, 290 U. S. 169, 175; *Addy Co. v. United States*, 264 U. S. 239, 245. The case in that respect is sharply distinguished from *New York Edison Co. v. Maltbie*, 244 App. Div. 685, 281 N. Y. S. 223; *id.*, 271 N. Y. 103, 2 N. E. (2d) 277, where under rules prescribed by the Public Service Commission of New York, there was an inflexible requirement that an account similar in some aspects to 100.4 be written off in its entirety out of surplus, whether the value there recorded was genuine or false. The administrative construction now affixed to the contested order devitalizes the objection that the difference between

present value and original cost is withdrawn from recognition as a legitimate investment.

We are not impressed by the argument that the classification is to be viewed as arbitrary because the fate of any item, its ultimate disposition, remains in some degree uncertain until the Commission has given particular directions with reference thereto. By being included in the adjustment account, it is classified as provisionally a true investment, subject to be taken out of that account and given a different character if investigation by the Commission shows it to be deserving of that treatment. Such a reservation does not amount to a departure from the statutory power to fix the forms of accounts for "classes" of carriers rather than for individuals. The forms of the accounts *are* fixed, and fixed by regulations of adequate generality. What disposition of their content may afterwards be suitable upon discovery that particular items have been carried at an excessive figure must depend upon evidentiary circumstances, difficult to define or catalogue in advance of the event. If once there was any need for explanation more precise than that afforded by the order, it is now supplied, we think, by an administrative construction, which must be read into the order as supplementary thereto.

(b) The companies object that by the provisions as to "original cost" they are prevented "from recovering depreciation expense, which they actually incur, on their actual investment," and are required "to base depreciation charges on the cost to a prior owner."

This objection, like the one last considered, has its origin in the belief that what is recorded in "telephone plant acquisition adjustment" must inevitably be written off, and is not subject to the treatment appropriate to genuine assets.

Here again the construction of the regulations by the Commission itself is enough to dispel the fear that in their practical operation they will become instruments

of hardship. Without dwelling on the testimony, we content ourselves with a quotation from the statement filed by counsel at the conclusion of the argument. The Commission there informs us that "when amounts included in account 100.4 are deemed, after a fair consideration of all the circumstances, to be definitely attributable to depreciable telephone plant, provision will be made for amortization of such amounts through operating expenses, through the medium of either account 613 [which covers the amortization of intangible property] or account 675 [which includes all operating expenses not properly chargeable to other accounts]."

Obviously account 675 was inserted as a catch-all to cover previous omissions. We do not need to inquire whether under an ideal system of accounting the amounts to be amortized would be chargeable to an account entitled in some other way. It is enough that by the ruling of the Commission they will find a lodgement here, with an appropriate entry betokening their meaning. A system of accounts may be awkward or imperfect, and yet not so "arbitrary and outrageous" (*Norfolk & Western Ry. Co. v. United States, supra*, p. 143) as to justify a court in restraining its enforcement.

Appellants insist that amortization is an afterthought as applied to the account in controversy, and that there must be an amendment of the rules, if the Commission is to resort to such a process. We read the record otherwise. In setting up the amortization reserve account (172), the rules expressly provide that "it shall also be credited with any amounts which the Commission may authorize under a plan to amortize the balance in account 100.4, Telephone Plant Acquisition Adjustment."

In the same connection, the point is made that § 220 (b) of the Act requires more specific directions as to depreciation or amortization than the Commission has supplied. By that section, "the Commission shall, as soon as practicable, prescribe . . . the classes of property for

which depreciation charges may be properly included under operating expenses." No objection is made that the directions are not sufficiently specific as to account 100.1, Telephone Plant in Service. The objection is confined to account 100.4. But one of the very reasons for establishing that account is that in advance of inquiry by the Commission as to the property there included it is impracticable to determine what portion of it may properly be subjected to charges of this nature. When that inquiry has been completed, the Commission will be in possession of the necessary data. Provision will then be made for amortization of any amounts in the account that may properly be classified as investment in depreciable property. The label is unimportant, whether depreciation or amortization, if the substance of allowance is adequately preserved.

(c) The companies object that by the "original cost" provisions of the order they are required, where the actual cost is unknown, to record an estimate of cost, and that this requirement is an arbitrary one, mutilating their accounts and exposing them to the hazard of criminal prosecution.

What was ordered by the Commission in that behalf is expressly authorized by the statute with the result that to invalidate the order will be to invalidate the statute also. By § 213 (c) of the Communications Act of 1934 it is provided that "if any part of such cost cannot be determined from accounting or other records, the portion of the property for which such cost cannot be determined shall be reported to the Commission; and, if the Commission shall so direct, the original cost thereof shall be estimated in such manner as the Commission may prescribe."

In the vast majority of cases, original cost will be ascertainable from the records of the previous owners. If these have been lost or are not available or trustworthy, the order makes provision for the substitution of an estimate. Difficulties in the making of such an estimate are

indicated by the companies. We doubt whether in any instance they will be found to be insuperable, but if they shall ever prove to be so, means will be at hand whereby an avenue of escape from injustice will be opened without resort to the drastic remedy of declaring the order void. Estimates are at times inevitable in any system of accounts. Even under the system previously in vogue, the total purchase price, which was entered in an account known as "telephone plant," was subdivided into a series of accounts covering respectively pole lines, cable, aerial wire, and other classes, and distributed among them. If the price was a lump sum, there was need to resort to estimates in the process of subdivision. So, also, estimates were always necessary upon the retirement of plant or equipment acquired at varying dates, unless the articles retired were so clearly identified that the dates of acquisition and the prices then paid for each of them were susceptible of ascertainment upon the face of the accounts themselves. All that can be said of the present regulations is that they make the occasion for estimates more frequent than in former years and the process more involved. The difference in degree is not proved to be so great as to drag nullity in its train. If instances shall occur in which a company is unable to make an intelligent estimate with even approximate correctness, that exceptional event will justify resort to the Commission for particular instructions. In no event is there a substantial hazard of criminal prosecution. To subject the company or its officers to prosecution for a crime the violation of the Act must have been knowing and wilful. Communications Act of 1934, §§ 501, 502; *Hygrade Provision Co. v. Sherman*, 266 U. S. 497, 502, 503; *United States v. Murdock*, 290 U. S. 389. Penalties do not follow upon innocent mistakes.

(d) The companies object also that even when property recorded in the adjustment account (100.4) is recognized by the Commission as a continuing investment,

there will be difficulty in determining the amount to be written out of that account when the property is withdrawn. No reason is apparent why this difficulty should be any greater than it would be if the same property had been recorded in a single plant account without separation of the original cost from the cost at later dates. However that may be, there is ample provision in the rules for clarifying instructions whenever duty is uncertain.

Second: *The provisions for just and reasonable charges.*

The companies object to the following instructions, described as 2 (B. 1): "All charges to the accounts prescribed in this classification for telephone plant, income, operating revenues, and operating expenses shall be just and reasonable and any payments by the company in excess of such just and reasonable charges shall be included in account 323, 'Miscellaneous income charges.'"

The purpose of this requirement is to prevent the padding of the accounts by charges knowingly and wilfully entered in excess of what is just and reasonable. Only if knowingly and wilfully so entered is any penalty prescribed therefor. *United States v. Murdock, supra.* There is surely nothing arbitrary in establishing a standard of behavior so consistent with good morals. On the contrary, the need for such a standard has been made manifest for years as the result of intercorporate relations that are matters of common knowledge. *Dayton Power & Light Co. v. Public Utilities Comm'n of Ohio, supra; Lindheimer v. Illinois Bell Telephone Co.,* 292 U. S. 151. "The Commission must have power to prevent evasion of its orders and detect in any formal compliance or in the assignment of expenses a 'possible concealment of forbidden practices.'" *Smith v. Interstate Commerce Commission,* 245 U. S. 33, 45. In such a context the standard of the "just and reasonable" is not unduly vague. *Nash v. United States,* 229 U. S. 373, 377; *International Harvester Co. v. Kentucky,* 234 U. S. 216,

223; *United States v. Cohen Grocery Co.*, 255 U. S. 81, 92; *United States v. Wurzbach*, 280 U. S. 396, 399; *People v. Mancuso*, 255 N. Y. 463, 470; 175 N. E. 177. "Moreover . . . since the statutes require a specific intent to defraud in order to encounter their prohibitions, the hazard of prosecution which appellants fear loses whatever substantial foundation it might have in the absence of such a requirement." *Hygrade Provision Co. v. Sherman*, *supra*.

Third: *The classification of plant as used in present service or held for use thereafter.*

Property "used in telephone service at the date of the balance-sheet" goes into account 100.1; property "held for imminent use in telephone service" under a definite plan for such use goes into account 100.3; and other property held for future use not imminent or definite goes into still another account, 103, which covers "miscellaneous physical property."

The companies object that this classification is so vague as to be arbitrary. We do not look at it that way. Property held for imminent use in telephone service and under a definite plan will include spare plants kept in reserve as a measure of prudent administration. Such uses had consideration by this court in a recent opinion. *Columbus Gas & Fuel Co. v. Public Utilities Comm'n of Ohio*, 292 U. S. 398. Property held in present telephone use comes very near to defining itself. If particular situations shall develop ambiguity or doubt, the Commission will be available for clarifying instructions.

Fourth: The evidence does not show that the expense of revising the accounts will lay so heavy a burden upon the companies as to overpass the bounds of reason.

The decree should be affirmed, and it is so ordered.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## LANDIS ET AL. v. NORTH AMERICAN CO.\*

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA.

No. 221. Argued November 9, 1936.—Decided December 7, 1936.

1. The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance. P. 254.
2. There is power, applicable especially in cases of extraordinary public interest, to stay one suit to abide proceedings in another, although in the two the parties are not the same and the issues not identical; the burden of making out the wisdom and justice of a stay in such cases lies heavily on him who seeks the stay, and discretion is abused if the stay is not kept within the bounds of moderation. P. 254.
3. Suits brought in the District of Columbia by two holding companies, to restrain the Securities & Exchange Commission and other officials from enforcing the Holding Company Act, were stayed to await decision of a like suit brought by the Commission and still pending in another District Court. *Held*:
  - (1) That to grant the stay until decision of the other case by this Court on appeal, was abuse of discretion. P. 256.
  - (2) The question whether the stay would have been proper under the conditions which existed when it was granted, had it been granted to continue only until decision of the other case by the District Court, is a question which this Court will not decide, because the conditions have changed. P. 258.
  - (3) The cause is remanded to the court which granted the stay for a rehearing, at which it will determine, in the light of the situation then existing and developed, and of the principles laid down in this opinion, what, if any, stay should be ordered, not to extend beyond the time when the other case shall be decided by the other District Court. P. 258.

66 App. D. C. 141; 85 F. (2d) 398, reversed.

---

\*Together with No. 222, *Landis et al. v. American Water Works & Electric Co., Inc.* Certiorari to the United States Court of Appeals for the District of Columbia.

CERTIORARI\* to review a decision on special appeal which reversed orders of the District Court of the United States for the District of Columbia granting a stay of proceedings in two cases.

*Solicitor General Reed* and *Assistant Attorney General Jackson*, with whom *Attorney General Cummings*, *Mr. John J. Burns*, General Counsel, Securities & Exchange Commission, and *Messrs. Benjamin V. Cohen* and *Thomas G. Corcoran* were on the brief, for petitioners.

*Mr. John C. Higgins*, with whom *Messrs. John S. Flannery* and *Joseph P. Tumulty* were on the brief, for respondents.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The controversy hinges upon the power of a court to stay proceedings in one suit until the decision of another, and upon the propriety of using such a power in a given situation.

Respondents, non-registered holding companies brought suit in the District Court for the District of Columbia to enjoin enforcement of the Public Utility Holding Company Act of 1935 (c. 687, 49 Stat. 803) on the ground that the Act in its entirety is unconstitutional and void. The complaint in No. 221 (the suit by the North American Company) was filed November 26, 1935; the complaint in No. 222 (the suit by the American Water Works & Electric Company) was filed the next day. By concession the two plaintiffs are holding companies within the meaning of the Act, and must register thereunder if the Act is valid as to them. One plaintiff, the North American Company, is at the apex of a pyramid which includes subsidiary holding companies as well as

---

\*See Table of Cases Reported in this volume.

subsidiary operating companies, these last being engaged as public utilities in supplying gas and electricity to consumers in different States. The other plaintiff, American Water Works & Electric Company, is at the apex of another pyramid including like subsidiaries. The defendants in both suits (petitioners in this court) are the members of the Securities and Exchange Commission, the Attorney General of the United States, and the Postmaster General.

On November 26, 1935, the Commission filed a bill of complaint in the District Court of the United States for the Southern District of New York to compel other holding companies, members of a different public utility system, to register with the Commission in accordance with the statute. At the beginning, the defendants were the Electric Bond & Share Company, the parent holding company, and five intermediate holding company subsidiaries. Sixteen other holding company subsidiaries were later added as defendants with the Government's consent. All the twenty-two defendants, parties to that suit, appeared and answered the complaint. All joined in a cross-bill contesting the validity of the Act and praying a decree restraining its enforcement. To give opportunity for full relief, the present petitioners appeared as cross-defendants, answering the cross-bill and opposing an injunction.

On December 7, 1935, the Attorney General filed a notice of motion in behalf of the petitioners for a stay of proceedings in Nos. 221 and 222, pending at that time in the District of Columbia. The petitioners had not yet submitted their answer to the bills, but their position as supporters of the statute in its application to respondents was made abundantly apparent. By the notice of motion it was shown that other suits to restrain the enforcement of the Act had been filed by other plaintiffs in the District of Columbia, and many more in other districts. The Government professed its anxiety to secure an early

determination of its rights, and to that end pledged itself to proceed with all due diligence to prosecute the suit which it had chosen as a test. There were representations that the trial of a multitude of suits would have a tendency "to clog the courts, overtax the facilities of the Government, and make against that orderly and economical disposition of the controversy that is the Government's aim." Accordingly the court was asked to stay proceedings in the suits at bar "until the validity of said Act has been determined by the Supreme Court of the United States" in the Electric Bond and Share case, "or until that case is otherwise terminated." To that motion the plaintiffs filed an answer on December 12, 1935, contesting the power of the court to grant the requested stay, asserting that the questions to be passed upon in their suits were not identical with the questions presented in the test one, pointing out that the Act, even if valid as applied to some companies, might be invalid as applied to others, and dwelling upon the loss that they were suffering day by day while the menace of the Act obstructed their business and cast a cloud on its legality.

Upon the argument of the motion the Attorney General and the Securities and Exchange Commission announced that until the validity of the Act had been determined by this court in a civil suit which would be diligently prosecuted, neither the Attorney General nor the Commission would seek to enforce the criminal penalties of the Act, and that even after such determination they would not seek to exact penalties for earlier offenses. Written notice to that effect was given to all prosecuting officers. At the same time the Postmaster General announced that even if he had authority, he would not exclude any company from using the mails because of any violation of the Act pending the judicial determination of its validity by this court. Also, the Commission issued a regulation permitting a holding company, when register-

ing, to reserve any legal or constitutional right and to stipulate that its registration should be void and of no effect in the event that such a reservation should be adjudged invalid or ineffective. Finally, the Attorney General offered to submit to a temporary injunction restraining the enforcement of the Act until the Electric Bond and Share case should be determined by this court. On the other side, the plaintiffs offered to consolidate their cases and thus dispose of them as one. They also offered, as we were informed upon the argument, to select a group of suits, not more than three or four, to be tried at the same time, with the understanding that any others would then be held in abeyance. These offers were rejected, and the Government stood upon its motion.

How many suits for like relief were pending in the same and other districts was the subject of oral representations when the motion was submitted. By consent, however, an affidavit by the Attorney General was afterwards supplied with a stipulation of counsel supplementary thereto. The affidavit and stipulation were accepted by the Court, and give precision to representations that would otherwise be vague. From the affidavit it appeared that, in addition to the suits at bar, forty-seven suits had been brought in thirteen districts, five of them, afterwards reduced to four, in the District of Columbia, the others elsewhere. From the stipulation it appeared, however, that none of the cases in other districts would be heard or determined on the merits. The bills were to be dismissed or process was to be quashed in so far as relief was demanded against any officials who are parties to the present suits, and this for the reason that as to all such defendants the venue was improper. In a few suits there were to be decrees *pro confesso* against local officials who had been instructed by the Attorney General not to offer a defense. The number of pending suits was thus reduced to those in the District of Columbia, though there

was a possibility, more or less uncertain, that there would be a renewal in that district of the suits begun elsewhere and discontinued or dismissed. Along with the affidavit and stipulation the Government submitted a copy of the complaint and the cross-bill in the suit against the Bond and Share Company.

Upon this showing the District Judge reached the conclusion that the motion should be granted, stating his reasons in an opinion. "A decision," he said, "by the Supreme Court in the Electric Bond and Share case, even if it should not dispose of all the questions involved, would certainly narrow the issues in the pending cases and assist in the determination of the questions of law involved." However, the granting of the motion would be conditioned upon diligent and active prosecution of the Government's suit. An order was made on January 9, 1936, staying all proceedings upon the terms and conditions stated in the opinion. From that order the Court of Appeals for the District of Columbia allowed a special appeal, which was heard in April, 1936 (four judges sitting), and decided in June. There were three opinions: an opinion by Mr. Justice Van Orsdel, concurred in by the Chief Justice; a separate opinion by Mr. Justice Groner; and a dissenting opinion by Mr. Justice Stephens. 85 F. (2d) 398. The first opinion states the question before the court to be whether or not the District Court had "abused its discretionary power in the control of its docket." Standing alone, this statement would seem to concede that there was power, the inquiry being merely whether the power had been discreetly exercised. The concession, if made, was speedily withdrawn. A few sentences later we are told that the power is confined to cases where the issues and the parties are the same. The separate opinion of Groner, J., treats the subject with greater flexibility. He suggests that after joinder of issue there may be a postponement of the trial if the court

in the control of its own docket shall find that course expedient. He couples this with a statement that a stay so indefinite as the one before him would be too broad in any case. None the less, much latitude of judgment would have been left to the trial judge if the standards of that opinion had been adopted as a guide. But plainly they were not. The order of the Court of Appeals in each of the two suits reverses the stay order and remands the cause "for further proceedings not inconsistent with the opinion of this court." Evidently the trial judge was expected to conform to doctrine expounded for his instruction in the course of an opinion, yet he would have difficulty in knowing which opinion to select. He might believe that comity or deference constrained him to submit to the opinion approved by two members of the reviewing court, since none had been accepted by the vote of a majority. At the very least there was a likelihood, and indeed almost a certainty, of confusion and embarrassment. In such circumstances the call is plain for a decision that will mark with greater clearness the bounds of power and discretion. We granted certiorari that this result might be attained.

Viewing the problem as one of power, and of power only, we find ourselves unable to assent to the suggestion that before proceedings in one suit may be stayed to abide the proceedings in another, the parties to the two causes must be shown to be the same and the issues identical. Indeed, counsel for the respondents, if we understand his argument aright, is at one with us in that regard, whatever may have been his attitude at the hearing in the courts below. Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must

weigh competing interests and maintain an even balance. *Kansas City Southern Ry. v. United States*, 282 U. S. 760, 763; *Enelow v. New York Life Ins. Co.*, 293 U. S. 379, 382. True, the suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both. Considerations such as these, however, are counsels of moderation rather than limitations upon power. There are indeed opinions, though none of them in this court, that give color to a stricter rule. Impressed with the likelihood or danger of abuse, some courts have stated broadly that, irrespective of particular conditions, there is no power by a stay to compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger. *Dolbeer v. Stout*, 139 N. Y. 486, 489; 34 N. E. 1102; *Rosenberg v. Slotchin*, 181 App. Div. 137, 138; 168 N. Y. S. 101; cf. *Wadleigh v. Veazie*, Fed. Cas. No. 17,031; *Checker Cab Mfg. Co. v. Checker Taxi Co.*, 26 F. (2d) 752; *Jefferson Standard Life Ins. Co. v. Keeton*, 292 Fed. 53. Such a formula, as we view it, is too mechanical and narrow. *Kansas City Southern Ry. v. United States*, *supra*; *Friedman v. Harrington*, 56 Fed. 860; *Amos v. Chadwick*, L. R. 9 Ch. Div. 459; 4 *id.* 869, 872. All the cases advancing it could have been adequately disposed of on the ground that discretion was abused by a stay of indefinite duration in the absence of a pressing need. If they stand for more than this, we are unwilling to accept them. Occasions may arise when it would be "a scandal to the administration of justice" in the phrase of Jessel, M. R. (*Amos v. Chadwick*, L. R. 9 Ch. Div. 459, 462), if power to coördinate the business of the court efficiently and sensibly were lacking altogether.

We must be on our guard against depriving the processes of justice of their suppleness of adaptation to varying conditions. Especially in cases of extraordinary public moment, the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted. In these Holding Company Act cases great issues are involved, great in their complexity, great in their significance. On the facts there will be need for the minute investigation of intercorporate relations, linked in a web of baffling intricacy. On the law there will be novel problems of far-reaching importance to the parties and the public. An application for a stay in suits so weighty and unusual will not always fit within the mould appropriate to an application for such relief in a suit upon a bill of goods. True, a decision in the cause then pending in New York may not settle every question of fact and law in suits by other companies, but in all likelihood it will settle many and simplify them all. Even so, the burden of making out the justice and wisdom of a departure from the beaten track lay heavily on the petitioners, suppliants for relief, and discretion was abused if the stay was not kept within the bounds of moderation.

We are satisfied that the limits of a fair discretion are exceeded in so far as the stay is to continue in effect after the decision by the District Court in the suit against the Bond and Share Company, and until the determination by this court of any appeal therefrom. Already the proceedings in the District Court have continued more than a year. With the possibility of an intermediate appeal to the Circuit Court of Appeals, a second year or even more may go by before this court will be able to pass upon the Act. Whether the stay would have been proper if more narrowly confined will be considered later on. For the moment we fix the uttermost limit as the date of the first

decision in the suit selected as a test, laying to one side the question whether it should even go so far. How the District Court in New York will decide the issues in that case is not to be predicted now. The Act may be held valid altogether, or valid in parts and invalid in others, or void in its entirety. Whatever the decision, the respondents are to be stayed by the terms of the challenged order until this court has had its say. They are not even at liberty, in case of an adjudication of partial invalidity, to bring themselves within the class adjudged to be exempt, though their membership in such a class may be uncertain or contested. Relief so drastic and unusual overpasses the limits of any reasonable need, at least upon the showing made when the motion was submitted.

We think the answer is inadequate that in the contingencies suggested the respondents will be at liberty to move to vacate the stay, and will prevail upon that motion if they can satisfy the court that its restraints are then oppressive. To drive them to that course is to make them shoulder a burden that should be carried by the Government. The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible of prevision and description. When once those limits have been reached, the fetters should fall off. To put the thought in other words, an order which is to continue by its terms for an immoderate stretch of time is not to be upheld as moderate because conceivably the court that made it may be persuaded at a later time to undo what it has done. Disapproval of the very terms that have already been approved as reasonable is at best a doubtful outcome of an application for revision. If a second stay is necessary during the course of an appeal, the petitioners must bear the burden, when that stage shall have arrived, of making obvious the need. Enough for present purposes that they have not done so yet.

From the stay in its operation during the course of an appeal, we pass to the stay in its operation while the test suit is undetermined. That aspect of the order is subject to separate considerations and calls for separate treatment. The Government contends that a stay thus limited in duration is not unreasonably long, and that the respondents have been sufficiently protected against substantial loss or prejudice. The respondents deny that this is so, and insist that loss or prejudice, substantial in degree, is possible and even probable. We do not find it necessary to determine whether a stay to continue until the decision by the District Judge, and then ending automatically, would be moderate or excessive if viewed as of the time when the order differently conditioned was placed upon the files. Almost a year has gone by since the entry of that order, and in the intervening months many things have happened. All the parties have united in bringing these happenings to our notice and in inviting us to consider them. In the suit against the Bond and Share Company the facts have now been settled by stipulation; the briefs have been prepared; the case has been argued on the merits; and a decision may be expected within a reasonable time. With these happenings disclosed, a decision by this court, if directed to the fairness of the stay order as of the date of its entry and if based upon a record made up substantially a year ago, would have little relation to present day realities. "This court is a court of review and limits the exercise of its jurisdiction in accordance with its function." *Aero Transit Co. v. Georgia Public Service Comm'n*, 295 U. S. 285, 294. To bring about a fitting correspondence between rulings and realities, there must be a new appraisal of the facts by the court whose function it is to exercise discretion, and an appraisal in the light of the situation existing and developed at the time of the rehearing. *Patterson v. Alabama*, 294 U. S. 600, 607; *Watts, Watts*

& Co. v. *Unione Austriaca*, 248 U. S. 9, 21. Benefit and hardship will be set off, the one against the other, and upon an ascertainment of the balance discretionary judgment will be exercised anew.

In each suit, the decree of the Court of Appeals is reversed, the order of the District Court vacated, and the cause remanded to the District Court to determine the motion for a stay in accordance with the principles laid down in this opinion.

*Reversed.*

MR. JUSTICE McREYNOLDS concurs in the result.

MR. JUSTICE STONE took no part in the consideration or decision of these cases.

---

DUKE POWER CO. ET AL. v. GREENWOOD COUNTY  
ET AL.

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

No. 32. Argued November 10, 1936. Decided December 14, 1936.

1. A decree of the Circuit Court of Appeals remanding the cause to the District Court to be considered and determined anew, must vacate the decree appealed from. P. 262.
2. Where it appears upon appeal that supervening facts require a retrial in the light of a changed situation, the appellate court should vacate the decree and reconstitute the court below with jurisdiction of the cause, to the end that issues may be properly framed and the retrial had. P. 267.
3. Upon an appeal from a decree of the District Court enjoining the performance of a contract it was suggested to the Circuit Court of Appeals that a new contract had been made superseding the old one, and upon that ground the court was requested to remand the cause with leave to amend the pleadings and for a trial or other disposition on such amended pleadings. The cause

was thereupon remanded, but, in consequence of the ambiguity of the remanding order, the District Court considered that it was not re-vested with jurisdiction of the entire cause but that its former decree was still effective. It therefore deemed the competent evidence on the new trial to be restricted to the effect of the new contract and the extent, if any, to which its provisions might require a reversal of the former determination, and ended with a decree simply adjudging that the former decree should not be set aside. Upon a certification of these proceedings, including the new evidence that had been received or rejected, the Circuit Court of Appeals treated its order as having reopened the entire cause, and ignoring the facts that the District Court had not so regarded it and that the pleadings had not been amended and the case properly retried, proceeded then to pass upon the merits, reversed the decree appealed from, and directed a dismissal of the bill for want of equity. *Held* that both courts had failed to act in accordance with the standards of proper procedure, and that the decree of the Circuit Court of Appeals should be reversed and the cause remanded with directions that the decrees entered by the District Court be vacated, and that the parties be permitted to amend their pleadings in the light of the existing facts, and that the cause be retried upon the issues thus presented. Pp. 267-268. 81 F. (2d) 986, reversed. 10 F. Supp. 854; 12 *id.* 70, reversed.

CERTIORARI, 298 U. S. 651, to review a decree of the Circuit Court of Appeals reversing a decree of injunction, and directing that the bill be dismissed, in a suit brought by two electric power companies to prevent a county from constructing and operating a local electric power plant with the aid of federal funds, and to prevent Ickes, intervenor-defendant, from lending the funds as Federal Emergency Administrator of Public Works.

*Messrs. W. S. O'B. Robinson, Jr., and Newton D. Baker, with whom Messrs. R. T. Jackson, W. R. Perkins, H. J. Haynsworth, J. H. Marion, and W. B. McGuire, Jr., were on the brief, for petitioners.*

*Messrs. W. H. Nicholson and D. W. Robinson, Jr., for Greenwood County et al., respondents.*

*Mr. Jerome N. Frank and Solicitor General Reed, with whom Attorney General Cummings, Assistant Attorney General Morris, and Messrs. Alexander Holtzoff, John W. Scott, Edward H. Foley, Jr., Robert E. Sher, and William J. Dempsey were on the brief, for Harold L. Ickes, Federal Emergency Administrator of Public Works, respondent.*

## PER CURIAM.

This case presents irregularities in practice which we think should not be overlooked.

The suit was brought by electric utility corporations to restrain the defendants, Greenwood County, South Carolina, and its officials, from constructing and operating a local electric power plant and from issuing bonds and making contracts for that purpose. Harold L. Ickes, as Federal Emergency Administrator of Public Works, was permitted to intervene. He filed an answer showing an agreement dated December 8, 1934 (after the commencement of the suit) between the Government and Greenwood County for the making of a loan by the Government to aid the County in financing its project upon stated terms and conditions. By amended and supplemental bill, plaintiffs challenged the constitutional authority of the Federal Government to make the loan. Defendants' motion to dismiss for want of equity was denied. 10 F. Supp. 854. Defendants answered, evidence was taken and a final decree was entered permanently enjoining defendants from carrying out the contract of December 8, 1934, and the defendant Ickes from advancing to the County, and the County from receiving, any federal funds in furtherance of the project. 12 F. Supp. 70. Defendants appealed to the Circuit Court of Appeals.

Appellant Ickes informed the appellate court that, since the taking of the appeal, the contract of December 8, 1934, had been terminated and a new agreement substi-

tuted, and that the terms and conditions of the earlier contract, which had been held by the District Court to be in excess of the authority of the County, had been eliminated. Mr. Ickes asked that the cause be remanded to the District Court, with leave to the parties to amend their pleadings in accordance with the facts "and for a trial or other disposition of the cause on such amended pleadings." The Circuit Court of Appeals heard argument upon that motion and made the following order:

"The above entitled cause coming on to be heard on the motion of Harold L. Ickes, Federal Emergency Administrator of Public Works, one of the appellants, that the said cause be remanded to the District Court for the Western District of South Carolina to the end that that court may reconsider its decision in the light of the contract entered into between the United States and the County of Greenwood, South Carolina, dated November 30, 1935:

"It is ordered that said cause be remanded to the said District Court to the end that that court may reconsider its decision in the light of the said contract and may take such further action as may be appropriate in the premises.

"The court below is requested to hear the cause thus remanded with all convenient dispatch and to certify his findings of fact and conclusions of law to this court as soon as possible, to the end that the cause may be heard by this court upon appeal on the first Monday in January 1936 in accordance with the agreement of counsel this day made in open court to the effect that they would press for a speedy hearing of the cause and docket the appeal from the decision of the court below for hearing on the date aforesaid without reference to the rules regulating appeals, filing and printing of briefs, etc."

The order was ambiguous. While without a vacatur of the final decree the District Court could not reconsider the cause and determine it anew, the Circuit Court of Appeals

did not in terms vacate the decree. In consequence the order was not understood either by the parties or by the District Court, and the subsequent proceedings were extraordinary. The pleadings were not amended. The District Court was in doubt as to the extent to which testimony should be taken. Counsel for defendant Ickes took the position that they should not be limited to proof of the new contract, but should be permitted to have "a rehearing of the issues raised by the pleadings in this case filed prior to the entry of the final decree in so far as those issues concern the power policy of the Administrator." They added that there was not time "to file supplemental pleadings, as would be done were this case to proceed in the usual course." Plaintiffs' counsel insisted that as the term at which the original decree was entered had expired, there could be no rehearing and accordingly objected to the reception of evidence. They further objected to any evidence not relating to new matter which had arisen since the original decree. The District Court stated that it would take all the evidence offered, but subject to plaintiffs' objections, reserving its ruling as to admissibility. Evidence was then taken. Mr. Ickes was examined and cross-examined. Plaintiffs moved to strike out statements made by him relating to matters not arising since the decree. At plaintiffs' instance, a press release of the Public Works Administration was placed in the record as a part of the cross-examination. A letter from the Deputy Administrator of the bureau was introduced by plaintiffs subject to defendants' objection. This paper was deemed by the court to be irrelevant "to any issue presented by the order remanding the case" and was placed in the record to show plaintiffs' offer of proof "in event that the Court of Appeals should rule that defendants are entitled to a rehearing of the original issues which were passed upon and determined by the final decree heretofore entered in this case." A book entitled

"Back to Work," published by Mr. Ickes, was offered by defendants and admitted subject to plaintiffs' objections. Greenwood County, and its finance board, offered witnesses and resolutions to show the action taken by the County.

Defendants then moved that the record on appeal be supplemented by adding all the testimony "offered, heard or excluded by the court," together with the exhibits. The motion was granted. Defendants further moved that their answers "be taken as amended and supplemented in accordance with the above mentioned proof and evidence." That motion was denied. Defendants then moved that the answers of the defendant "be taken as supplemented and/or amended by adding thereto the contract of November 30, 1935," between the United States and Greenwood County. That motion was also denied.

The court filed its decision entitled "Report to Circuit Court of Appeals of findings of fact and conclusions of law pursuant to order of remand." The court recited the proceedings and in particular adverted to the fact that plaintiffs' counsel prior to the introduction of testimony had stated that the only pleadings and issues before the court were the pleadings and issues "prior to the entry of the final decree," that no supplemental pleadings had been filed, and that defendants' counsel had admitted that the issues were those "formed by the present pleadings, and that under the terms of the order of remand there was not time to file supplemental pleadings." The court said that it was pursuant to that understanding that the testimony had been heard. After reciting the final motions of the parties and its rulings, the court explained that it had overruled the motion to amend the pleadings because the court thought that it did not come "within the scope of the order" and that it had no right "to allow an amendment under the status of this case, and, particularly, that it would be an abuse of discretion

for the amendment to come now." Ruling on the testimony, the court held "that all evidence relating to the formal execution of the new contract, and the contract itself as admitted in evidence, has been properly admitted under the terms of the order of the Circuit Court of Appeals" but that for the reasons stated "the oral evidence of Mr. Ickes, and documentary evidence relating to other matters such as rates and purposes and policies of the Administration, are incompetent, and must be excluded from consideration. The only documentary evidence admissible is such as related to the execution of the new contract, and authority therefor."

The court then made findings of fact the first of which embraced the statement: "No motion was made in the trial court after the filing of the final decree and prior to the end of the term when the Court had lost jurisdiction, nor has any since been made before it to reopen the case because of after-discovered evidence, or because of a change of the law, or because of its overlooking any material point of law or fact." Following its findings of fact as to the new contract, the court presented its views of the "legal issues," saying: "As thorough an investigation of the authorities as has been possible under the circumstances since the order of remand was issued, taken in connection with considerable previous investigation on the issues involved, has convinced me that the law does not permit a reopening of the evidence in this case as to the aims and purposes of the Public Works Administration, nor as to the reasonableness of the rates charged by plaintiffs, as to the adequacy of plaintiffs' service, and other issues about which evidence was taken, and which were fully determined upon that evidence, at the former trial. Furthermore, the promptness required for the rehearing by this Court, and its determination, indicates conclusively to my mind that the Circuit Court of Appeals did not intend by its order that the pleadings should be amended and the evidence reopened to allow the pres-

entation and consideration of any facts other than the force and effect of the new contract, and to what extent, if any, its provisions might require a reversal or modification of my former determinations." After citing authorities and referring to the proceedings at the former hearing the court said: "To permit the excluded testimony of Secretary Ickes would not only reopen the trial of all issues regarding rates, reasonableness of service, and the policies of the Public Works Administration, but would be in contradiction of the Government's own witness, and this after the lapse of several months after he was advised of the general result of the decision and his counsel was advised of all the details of the trial."

The District Court then set forth its conclusion of law that the substitution of the new contract did not call for a modification of its former conclusions. The court added that it was its judgment that if the excluded testimony at the last hearing should have been admitted, "it would be insufficient, as a matter of law, to furnish a basis for any modification of my former conclusions of law"; that "whatever might be the purposes, policies, and practices of the Public Works Administration in reference to competitors, in financing the instant enterprise the result to the plaintiffs would be the same" and that the lower rates which the enterprise might be able to charge because of Government aid through its loan and grant "would effectively establish a 'yardstick' or rate of charge which plaintiffs must inevitably meet, or have their business *pro tanto* destroyed."

The climax of misunderstanding was reached in the court's decree. It recited the application of defendant Ickes "that the court reconsider" its former decree in the light of the new contract "and set aside and vacate said decree," and thereupon adjudged that "the application to set aside and vacate the decree for injunction entered and filed herein under date of August 26, 1935, be, and the same is hereby, denied."

Thus the District Court instead of considering the order of the Circuit Court of Appeals as tantamount to a vacatur of the former decree, and as operating to revest the court with jurisdiction of the entire cause and imposing the duty to permit proper amendment of the pleadings and a retrial and complete determination of the cause, considered its former decree as still effective, deemed the competent evidence on the new hearing to be restricted to a narrow point, and ended the proceeding with a decree simply adjudging that the original decree should not be set aside.

On a certification of these proceedings, the Circuit Court of Appeals interpreted its order of remand. The court said that it thought that "in view of the changed situation, the lower court should be revested with jurisdiction of the entire cause with power to enter such decree as might be deemed appropriate." Ignoring the fact that the District Court had not so regarded the order, that the pleadings had not been amended and the case properly retried, the Court of Appeals proceeded to pass upon the question of the validity of the Act of Congress under which the federal loan was to be made, and of the action of the Public Works Administrator, reversed the decree appealed from and directed the dismissal of the bill for want of equity. 81 F. (2d) 986. We granted certiorari.

We thus have a situation in which both courts below have failed to act in accordance with the standards of proper procedure. Where it appears upon appeal that the controversy has become entirely moot, it is the duty of the appellate court to set aside the decree below and to remand the cause with directions to dismiss. See *United States v. Hamburg-American Co.*, 239 U. S. 466, 475, 478; *Atherton Mills v. Johnston*, 259 U. S. 13, 16; *Brownlow v. Schwartz*, 261 U. S. 216, 218; *United States v. Anchor Coal Co.*, 279 U. S. 812. If it appears that supervening facts require a retrial in the light of a

changed situation, the appropriate action of the appellate court is to vacate the decree which has been entered and reconstitute the court below with jurisdiction of the cause to the end that issues may be properly framed and the retrial had. See *Gulf, C. & S. F. Ry. Co. v. Dennis*, 224 U. S. 503, 507, 509; *Watts, Watts & Co. v. Unione Austriaca*, 248 U. S. 9, 21, 22; *Dorchy v. Kansas*, 264 U. S. 286, 289, 291; *Patterson v. Alabama*, 294 U. S. 600, 607. In this instance, the Circuit Court of Appeals could not leave in effective operation the final decree of the District Court and at the same time reconstitute that court with jurisdiction to retry the cause. The appellate court failed to make its ruling with proper clarity and definiteness. For that reason the District Court failed to understand the essential purport of the order to remand. The District Court did not understand that it was reconstituted with complete jurisdiction and its proceedings were not taken and its decision was not rendered with a consciousness of its power and its duty.

Delusive interests of haste should not be permitted to obscure substantial requirements of orderly procedure. There is no exigency here which demands that these requirements should not be enforced. The cause was heard in the Circuit Court of Appeals upon a record improperly made up. That the cause may be properly heard and determined, we reverse the decree of the Circuit Court of Appeals and remand the cause with directions that the decrees entered by the District Court be vacated, that the parties be permitted to amend their pleadings in the light of the existing facts, and that the cause be retried upon the issues thus presented.

We express no opinion on the relevancy or effect of the evidence, or otherwise upon the merits.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

Syllabus.

KVOS, INC. v. ASSOCIATED PRESS.

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

No. 28. Argued November 11, 1936.—Decided December 14, 1936.

1. In a suit in the District Court, where the plaintiff's allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof. P. 277.
2. Allegations of the bill as to jurisdictional amount may be appropriately challenged by motion to dismiss for want of jurisdiction, made when plaintiff moves for a preliminary injunction, and before time for answer. P. 278.
3. A motion to dismiss a bill of complaint for want of jurisdiction, made before time for answer, which traverses the allegations in the bill as to the amount in controversy, and in support of the denial alleges facts *dehors* the bill, does not operate merely as a demurrer admitting the plaintiff's allegations, but requires the trial court to inquire as to its jurisdiction before considering the merits of the prayer for preliminary injunction. P. 278.
4. In a suit by an incorporated association to enjoin alleged pirating and broadcasting by radio of the news it furnished to newspapers of its membership which were published and circulated to subscribers in the area covered by the broadcasted messages,— *held* that proof on the part of the plaintiff that payments much larger than the jurisdictional amount were made to it each month by those newspapers, did not serve to establish that the jurisdictional amount was in controversy, it being conceded by the plaintiff that it took no profit from furnishing news to its members but divided the expenses equitably among them, and it being evident that asserted danger of loss of members due to the acts complained of was a mere conclusion, no threat of withdrawal being even suggested; nor was any showing made of what damage would result from withdrawal. P. 278.
5. It is the damage threatened to a business, by the acts sought to be enjoined, and not the value of the business, that constitutes the value in controversy. P. 279.
6. Adjudication of the merits in a case where jurisdiction was not challenged, does not constitute the case a precedent for upholding jurisdiction in a similar case in which jurisdiction is in issue.

Argument for Respondent.

299 U. S.

Cf. *International News Service v. Associated Press*, 248 U. S. 215. P. 279.

7. The plaintiff's allegation of the amount in controversy in this suit having been suitably challenged, and no sufficient evidence to support it having been offered, the bill should have been dismissed. P. 280.

80 F. (2d) 575, reversed.

CERTIORARI, 298 U. S. 650, to review the reversal of a decree of the District Court (9 F. Supp. 279) which dismissed, for want of equity, a bill to enjoin the appropriation and broadcasting by radio of news furnished by the plaintiff press association to newspapers circulating in the area affected.

*Mr. William H. Pemberton*, with whom *Mr. Clarence C. Dill* was on the brief, for petitioner.

*Mr. John W. Davis*, with whom *Messrs. William C. Cannon, Harold W. Bissell, and Clinton W. Howard* were on the brief, for respondent.

The bill of complaint adequately alleges that the requisite jurisdictional amount is involved. It alleges that the amount involved in the controversy, exclusive of interest and costs, is in excess of \$3,000. This allegation is controlling for the purpose of the motion to dismiss the bill. Opinion of the District Court herein, 9 F. Supp. 279, 284; *Montgomery, Federal Jurisdiction & Procedure*, 3d ed., §§ 207, 210.

Petitioner suggests that the lack of the requisite jurisdictional amount is shown by the trifling amount of pirating disclosed in the affidavits submitted on the motion for a preliminary injunction. It is sufficient under the present point to note that the affidavits cannot be considered upon the motion to dismiss the bill.

Petitioner further suggests that the lack of the requisite jurisdictional amount appears upon the face of the bill, since the complainant's business is shown to be of a non-profit nature. It is true that the Associated Press

makes no profit. It is a membership corporation which meets its expenses by assessments upon its members. But the fact that a corporation does not make a profit does not mean that it cannot be damaged. Furthermore, the Associated Press is a proper party to sue on behalf of its members; and it is apparent that the value of the right and interest of the members, properly to be protected in this action, is in excess of \$3,000 as alleged in the complaint. The real interest of the respondent and its members, as outlined in the complaint, is unquestionably in excess of \$3,000 under the principle that the jurisdictional amount is to be tested, in such a case as the present, by the value of the right sought to be protected and not by the immediate pecuniary amount involved. The respondent seeks to protect news in the collection of which it expends many millions of dollars.

The bill adequately discloses that the Associated Press is the proper party to bring this suit.

The bill states facts sufficient to constitute a cause of action for a permanent injunction; and the Circuit Court of Appeals properly reversed the decree of the District Court dismissing the bill.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

This suit was brought to enjoin petitioner, the proprietor of a radio station at Bellingham, Washington, from appropriating, using, or disseminating news gathered by the respondent or its members during the period such news has commercial value to respondent and its members. The prayers were for temporary and permanent relief. The district court directed the petitioner to show cause why an injunction should not be granted and entered a temporary restraining order.

In summary, the allegations of the bill follow.

Respondent is a New York corporation and petitioner a Washington corporation; "the damage to which com-

plainant is being subjected . . . is in excess of the sum of Three Thousand (\$3000.00) Dollars, exclusive of interest and costs, and the amount involved herein and in controversy herein is in excess of said sum of Three Thousand (\$3000.00) Dollars, exclusive of interest and costs."

The respondent, a membership corporation, is composed of proprietors or representatives of newspapers published throughout the United States whose business is the gathering, by its own instrumentalities, and by exchange with members, and other means, news, intelligence, and information from all over the world for the benefit of its members, and distribution of the material so gathered amongst them for newspaper publication, conformably to the by-laws.

The respondent has representatives in every important capital and city in the world and has reciprocal arrangements for interchange of news with many important agencies in foreign countries; has more than twelve hundred members, each owning or representing a daily newspaper, each supplying respondent, as required by the by-laws, with the news gathered locally by the newspaper he represents; the cost of respondent's transactions, amounting yearly to many millions of dollars, is equitably divided among the members; the association's service to members is of financial and business importance to them, due to its promptness, accuracy, and impartiality; the by-laws require that the news furnished shall remain confidential until publication has been fully accomplished by all members.

The petitioner conducts a radio station at Bellingham, Washington, and, as part of its daily broadcast, sends out, three times a day, morning, noon, and evening, what is styled "The Newspaper of the Air" in which petitioner announces what it claims to be, and what usually is, the leading and most interesting news of the day. The Bellingham Herald, published at Bellingham, is a member of

the association and, under the by-laws, the respondent is entitled to be furnished by the Herald with all the news from the territory served by that paper; the Seattle Post Intelligencer and the Seattle Daily Times are published at Seattle, Washington, and are represented by memberships in the association which has the same rights to news gathered by those papers.

The petitioner broadcasts news as part of its business and, by so doing, enhances the profits obtained from advertising broadcasts; the newspapers affiliated with the respondent derive a large portion of their revenues from the sale of advertising space, the value of which depends in great measure upon the freshness and interest of the news furnished by them. The petitioner, in the conduct of its station, has become, and is, a competitor of respondent and its members in the obtaining and early distribution of news, for the purpose of popularizing advertising.

The petitioner has no organization of its own for gathering news, but adopts the practice of "pirating" news gathered by the respondent and its members. This practice consists in procuring copies of the Herald, the Post Intelligencer, and the Daily Times and broadcasting parts, or all, of items therein published, whether gathered by these newspapers or received by them from the respondent, the repetition being sometimes verbatim and sometimes a rearrangement of the wording. The copies of the three newspapers do not reach their subscribers for some time (in some cases as much as twenty-four hours) after publication; whereas petitioner, promptly obtaining the papers, is able to pirate and broadcast their contents and to anticipate the receipt of the news by the newspapers' subscribers. This practice constitutes unfair competition with the respondent; wrongfully deprives the respondent of the just benefits of its labors and expenditures; similarly injures respondent's members; and prejudices the respondent with its members.

The petitioner, though repeatedly requested to desist from the practice, has refused so to do, although neither the association nor any member has granted permission to make use of the news gathered by them; and the continuance by the petitioner of its practice will increasingly cause irreparable injury and damage to the respondent because the effort and expenditures to gather and obtain news will be rendered largely without reward or value so far as concerns the territory served by petitioner's station.

Prior to the return day of the order to show cause why a temporary injunction should not issue, the petitioner filed a motion to dismiss, assigning the following grounds, amongst others: the bill fails to recite facts entitling the plaintiff to the relief prayed and is without equity; there is a non-joinder of parties plaintiff since the bill discloses that the Bellingham Herald, Seattle Post Intelligencer, and Seattle Daily Times are necessary parties; the court is without jurisdiction because the matter in controversy does not exceed three thousand dollars, exclusive of interest and costs, and an inspection of the allegations of the complaint shows the complainant cannot recover any amount in excess of three thousand dollars or any other amount and the sum named in the ad damnum clause of the complaint is not a true statement of complainant's damages and is not alleged in good faith, the facts being that the amount paid to the complainant for furnishing the Associated Press news in the city of Bellingham, to any of its members, is fixed and determined by the size of the city's population, and is not affected by any other condition and complainant has not lost any amount and never will lose any amount by reason of this controversy, and defendant is not a competitor of complainant in any sense of the word; the Bellingham Herald is the real party in interest and the Associated Press has no interest in the cause.

Affidavits were presented in support of and in opposition to the granting of an injunction, and counsel were

heard upon the prayer for preliminary injunction and upon the motion to dismiss. The court found the allegations as to citizenship of the parties were true; found "the amount in controversy herein, by reason of defendant's motion to dismiss, must be construed to be in excess of \$3,000.00, exclusive of interest and costs"; found the facts as to the business and conduct of the parties substantially as alleged in the complaint; but found that the petitioner had not interfered with the normal operation of respondent's business or diverted any of respondent's profit.

As conclusions of law the court held that it had jurisdiction of the parties and the subject matter "since defendant's motion to dismiss admits for the purpose of pleading all facts well pleaded in the bill of complaint and particularly the necessary diverse citizenship between complainant and defendant and the allegation that there is involved in the controversy herein more than \$3,000.00, exclusive of interest and costs" and that "the complainant is a proper party to prosecute this action on its own behalf and on behalf of its members." Based upon certain of the findings of fact the court concluded the acts of the petitioner did not amount to unfair competition with respondent or any of its members and did not violate their property rights; held, therefore, that the complaint failed to state facts sufficient to constitute a cause of action; vacated the temporary restraining order, refused a preliminary injunction, and granted the petitioner's motion to dismiss with prejudice.<sup>1</sup>

The Circuit Court of Appeals reversed<sup>2</sup> and ordered that a preliminary injunction issue restraining the petitioner from appropriating and broadcasting any of the news gathered by the respondent for the period following publication in respondent's newspapers during which

<sup>1</sup> 9 F. Supp. 279.

<sup>2</sup> 80 F. (2d) 575.

the broadcasting of the pirated news to petitioner's most remote auditors may damage the business of respondent's papers in procuring and maintaining their subscriptions and advertising. On the merits the court thought the case controlled by *International News Service v. Associated Press*, 248 U. S. 215. Dealing with the petitioner's insistence that the amount in controversy was not shown to exceed three thousand dollars the court held that the *International News Service* case required the conclusion that the respondent was in competition with the petitioner because the decision in that case indicated that the profit seeking business of the constituent newspapers is an integral part of the corporate purpose of the respondent; and that "The several millions of dollars here alleged to be invested in the Association's business [the bill contains no such allegation] may well be damaged to the extent of \$3,000 by the pirating practices described." After referring to the character and scope of the respondent's activities the court states:

"It is obvious that the business of gathering and distributing to members, *before* profitable publication, could conceivably be damaged to the extent of \$3,000 by the misappropriation and premature publication of the news material. To hold otherwise would warrant the inference that no corporation could be damaged by a wrongful attack on its business, when that business happened to be run at no profit or at a loss. Also, we are unable to hold irrational the claim that the piracy caused a \$3,000 damage to the Association's quasi property right in the news."

Although the decision with respect to the amount in controversy was assigned as error in this court, the parties have in the main directed their arguments to the merits; the respondent insisting that *International News Service v. Associated Press* fully sustains the decree below; the petitioner contending this cause may be distinguished from the one there adjudicated, or, if not, that

decision should be modified. We have no occasion to consider the soundness of these conflicting contentions, for we hold that in the circumstances the respondent had the burden of showing that the case was within the District Court's jurisdiction, and failed to carry it.

The bill seeks redress for damage to the respondent's business and for damage to the business of some or all of its members. The right for which the suit seeks protection is, therefore, the right to conduct those enterprises free of the alleged unlawful interference by the petitioner. No facts are pleaded which tend to show the value of that right. The complaint contains nothing to the purpose save the general statement that the damage to which the respondent is being subjected is in excess of three thousand dollars and the amount involved is in excess of that sum. Such a formal allegation is sufficient, unless the bill contains others which qualify or detract from it in such measure that when all are considered together it cannot fairly be said that jurisdiction appears on the face of the complaint, in which case the suit should be dismissed by the court *sua sponte*<sup>3</sup> or upon the defendant's motion.<sup>4</sup> In this case the formal allegation is not reinforced or strengthened by other portions of the complaint; neither is it neutralized or weakened by qualifying or detracting allegations. In effect it stands alone. Therefore the court would not have been bound to dismiss upon a motion based solely on alleged insufficient pleading of the amount in controversy; though it might, of its own motion, have entered upon an inquiry to ascertain whether the cause was one over which it had jurisdiction.<sup>5</sup> But

<sup>3</sup> *Mansfield, C. & L. M. Ry. v. Swan*, 111 U. S. 379, 382, 383; *Bucyrus Co. v. McArthur*, 219 Fed. 266.

<sup>4</sup> *Coal Co. v. Blatchford*, 11 Wall. 172; *Ladew v. Tennessee Copper Co.*, 179 Fed. 245; affirmed 218 U. S. 357.

<sup>5</sup> Act of March 3, 1875, § 5, c. 137, 18 Stat. 470, 472; Jud. Code, § 37, 28 U. S. C. § 80; *McNutt v. General Motors Acceptance Corp.*, 298 U. S. 178, 182, 184.

where the allegations as to the amount in controversy are challenged by the defendant in an appropriate manner, the plaintiff must support them by competent proof.<sup>6</sup> The petitioner's motion was an appropriate method of challenging the jurisdictional allegations of the complaint. It did not operate merely as a demurrer, for it did not assume the truth of the bill's averments and assert that in spite of their truth the complaint failed to state a case within the court's jurisdiction. On the contrary the motion traversed the truth of the allegations as to amount in controversy and in support of the denial recited facts *dehors* the complaint. This could have been done by answer, but the time for answer had not arrived when the rule to show cause was issued, and petitioner was faced with the possibility of an injunction. The motion required the trial court to inquire as to its jurisdiction before considering the merits of the prayer for preliminary injunction. And in such inquiry complainant had the burden of proof.<sup>7</sup> The only attempt to meet that burden is a reply affidavit filed on behalf of respondent, wherein it is deposed "that the payments made by newspapers for said news sold to them by complainant in the territory served by said radio station is upwards of \$8,000 per month, which is being imperilled and jeopardized by the acts of defendant . . . by its unlawful and wrongful appropriation of complainant's news, and said sum greatly exceeds the sum of Three Thousand Dollars, exclusive of interest and costs, and complainant is in danger of losing said memberships and payments if defendant's practices in respect to pirating said news is not enjoined." This deposition must be read in connection with the statement in the bill that the respondent makes no profit from furnishing news to its members but equitably divides the expense amongst them. The association

---

<sup>6</sup> *McNutt v. General Motors Acceptance Corp.*, *supra*, p. 189.

<sup>7</sup> *McNutt v. General Motors Acceptance Corp.*, *supra*, p. 189.

cannot therefore lose the \$8,000 in question. If the three newspapers in the affected territory cease to pay the sum, they will save it, not lose it, and, as to any other damage they may suffer from petitioner's competition, the affiant is silent. Assuming, without deciding, that in the circumstances disclosed the respondent has standing to maintain a suit to redress or prevent damage caused its members by petitioner's conduct, the allegation of possible damage to them is wholly inadequate, because the asserted danger of loss of members is a mere conclusion unsupported by even a suggestion that withdrawal has been threatened by any newspaper, and no intimation is given of the character or extent of the damage they would suffer by such withdrawal. The respondent having failed to support the allegations as to amount in controversy the District Court should have dismissed the bill.

The suggestion is made in the respondent's argument, and in the opinion below, that, as the allegations in the *International News Service* case, *supra*, were substantially like those of the bill now before us, this court must have been of opinion that the District Court had jurisdiction in the *International* case or it would not have considered the merits. But in that case the answer did not challenge the jurisdiction, there was no assignment of error raising the question and no argument on the subject was presented to this court. "The most that can be said is that the point was in the case if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster v. Fall*, 266 U. S. 507, 511.

The Circuit Court of Appeals sustained the District Court's jurisdiction on the ground that the finding upon that point was not without support, and the appellate tribunal could not say it was wrong, in view of the magni-

tude of the respondent's operations and expenditures. As pointed out in *McNutt v. General Motors Acceptance Corporation, supra*, at pages 180 and 181, these factors are irrelevant upon the issue of the value of the right for which protection is here sought.

Since the allegation as to amount in controversy was challenged in appropriate manner, and no sufficient evidence was offered in support thereof, the bill should have been dismissed. *McNutt v. General Motors Acceptance Corp., supra*, p. 190. The Circuit Court of Appeals had jurisdiction of the appeal and as the District Court lacked jurisdiction its decree dismissing the bill should have been affirmed on that ground.

The decree of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court with directions to dismiss the bill of complaint for want of jurisdiction.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

BINNEY ET AL. v. LONG, COMMISSIONER OF  
CORPORATIONS AND TAXATION.

APPEAL FROM THE PROBATE COURT, COUNTY OF NORFOLK, OF  
MASSACHUSETTS.

No. 77. Argued November 17, 1936.—Decided December 14, 1936.

1. Massachusetts succession tax (Gen. Laws, Ter. Ed., c. 65, § 1), on transfers made to take effect in possession and enjoyment after the donor's death, *held* consistent with the contract clause of the Federal Constitution and the due process clause of the Fourteenth Amendment, as applied upon the death, intestate, of a life tenant, to remainders then vesting but theretofore contingent, under a trust *inter vivos* antedating the taxing legislation. *Coolidge v. Long*, 282 U. S. 582, distinguished. P. 286.

2. In assessing a graduated succession tax there is no constitutional objection to aggregating various interests passing and accruing to the same beneficiary from or on account of the death of the same decedent and thus increasing the rate over that which would be applicable if the interests were assessed separately. P. 288.
  3. Under the Massachusetts succession tax law (§ 2, *supra*), succession to property through the failure of an intestate to exercise a power of appointment under a non-testamentary conveyance of the property by deed of trust, made after September 1, 1907, is not taxed; whereas if the conveyance was made before that date, the succession is not only taxable but the rate of tax may be greatly increased by aggregating the value of that succession with other interests derived by the transferee by inheritance from the donee of the power. *Held* repugnant to the equal protection clause of the Fourteenth Amendment. P. 288.
  4. Under the Massachusetts succession tax law (§ 2, *supra*), where property passes to a lineal descendant as remainderman under his ancestor's will through the failure of a deceased life tenant to exercise a power of appointment, the property is treated as coming from the donee of the power if the bequest antedated September 1, 1907; otherwise, as coming from the testator; with the result that, in the one case, the rate of tax being graduated, the tax may be increased by aggregating with the bequest the value of other interests inherited by the same beneficiary from the donee of the power, whereas, in the other case there is not such aggregation and increase. *Held* repugnant to the equal protection clause of the Fourteenth Amendment. P. 292.
- 199 N. E. 528, reversed.

APPEAL from a judgment of a Probate Court in Massachusetts entered in pursuance of a rescript from the Supreme Judicial Court of the Commonwealth. The judgment was on a petition of trustees and an administrator for abatement of succession taxes.

*Mr. Talcott M. Banks, Jr.*, with whom *Mr. R. Ammi Cutter* was on the brief, for appellants.

*Mr. James J. Ronan*, Assistant Attorney General of Massachusetts, with whom *Mr. Paul A. Dever*, Attorney General, was on the brief, for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

This appeal is from an order denying abatement of succession taxes assessed in respect of the estate of Hetty S. L. Cunningham, late a resident of Brookline, Massachusetts. Mrs. Cunningham died intestate in August, 1931, leaving as her sole heirs four children, who, with the trustees and certain beneficiaries of three trusts wherein she had life estates, were the petitioners below and are the appellants here. She left a substantial estate of her own which descended to her four children. Their succession to this estate was taxed, the tax was paid, and its legality is not questioned. Pursuant to the terms of the three trusts, her four children succeeded, upon her death, to the ownership and possession of certain property whereof she had been life tenant with power of appointment of principal; and succeeded to the enjoyment as life beneficiaries of other property as to which she had preceded them as life tenant. The appellee held the succession to the trust property taxable, and added the value of the corpus of Mrs. Cunningham's own estate and that of the interests to which the appellants succeeded upon her death, with the result that the trust interests took a higher rate. The taxes assessed upon the three trust interests were paid, and a petition was filed in the probate court for abatement in the view that the exaction was forbidden by Article I, § 10, and the Fourteenth Amendment of the Federal Constitution. The probate court reserved the questions, the Supreme Judicial Court decided them adversely to appellants,<sup>1</sup> and upon its rescript the petition was denied.

In 1877 Mrs. Cunningham (then Hetty Sullivan Lawrence) conveyed property in trust reserving a life estate in the income but no power to revoke, alter or amend.

<sup>1</sup> Mass. Adv. Sheets, 1936, p. 153; 199 N. E. 528.

The income was to be paid for twenty years after her death "to and among such of" her children as "may be living at the time of payment," living issue of a deceased child to take by right of representation. If, at her death, or at any time during the twenty years thereafter, no child or issue of hers should be living the trustees were to transfer the principal to the heirs of her father, if he were then dead; otherwise, to her own heirs. She married and had five children, one of whom, born in 1892, died in 1923, without issue. The others, born between 1885 and 1890, are appellants.

In 1862 Amos A. Lawrence, the intestate's father, paid a sum of money to an insurance company which agreed to pay the income to the intestate and, upon her death, to distribute the principal and any unpaid income, to such persons as she might, by will, appoint, and in default of appointment, to her surviving children.

Sarah E. Lawrence, the intestate's mother, died May 27, 1891. Her will bequeathed property in trust to pay the income to each of her six children, two of whom still survive, and to the issue, *per stirpes*, of any deceased child so long as any of her children should live. For twenty years after the death of the last survivor of her children the income was to be paid to her grandchildren and their issue, *per stirpes*, and, at the expiration of that period, the principal was to be divided between the grandchildren, *per capita*, descendants of a deceased grandchild to divide his or her share *per stirpes*. Each child of Sarah E. Lawrence was empowered to "appoint the shares in which" the income given to his or her children and issue "shall be apportioned among such children and issue" and further to appoint the proportions in which the principal "shall be divided among such children and issue." Under this provision the four children of Mrs. Cunningham, who are appellants, succeeded to equal life estates in their mother's share, she having failed to exercise her power.

When the trusts were created Massachusetts imposed no inheritance or succession tax. The first statute imposing such a tax<sup>2</sup> applied only to collateral inheritance and excluded devolution to lineal descendants. In 1907 a law was enacted taxing testamentary devolution of property to lineal descendants;<sup>3</sup> this made no mention of powers of appointment; the tax was graduated according to amounts and relationships, but there was no requirement of aggregation of various interests passing and accruing to a single beneficiary from or on account of the death of a decedent to ascertain the rate of tax. Such a provision for uniting interests was enacted in 1924,<sup>4</sup> and incorporated with the first section of the act of 1907 as amended into a single section.<sup>5</sup>

The act of 1907 and its amendments were prospective in operation and exempted estates of those who had died prior to its effective date.<sup>6</sup> This exemption has extended to all interests which passed or accrued upon the death of Sarah E. Lawrence, the intestate's mother.

In 1909 provision was made for a succession tax upon the occasion of the exercise of, or nonexercise of, powers of appointment.<sup>7</sup> This, in its present form, is § 2 of chapter 65 of the General Laws.<sup>8</sup> The effective date of this provision was declared to be September 1, 1907, which was the effective date of the 1907 act, and was twenty-one months prior to the effective date of the 1909 act in which the provision is embodied. It is conceded that there are no other statutes purporting to tax succession under nontestamentary gifts.

<sup>2</sup> Acts 1891, c. 425.

<sup>3</sup> Acts 1907, c. 563, effective Sept. 1, 1907.

<sup>4</sup> Acts 1924, c. 128.

<sup>5</sup> General Laws (Ter. ed.) c. 65, § 1.

<sup>6</sup> General Laws (Ter. ed.) c. 65, § 36.

<sup>7</sup> Acts of 1909, c. 527, § 8.

<sup>8</sup> General Laws (Ter. ed.) c. 65, § 2.

The acts are compiled in the General Laws of the Commonwealth, and, so far as material to the present controversy, are:

General Laws (Ter. ed.) c. 65:

“Section 1. All property within the jurisdiction of the commonwealth, corporeal or incorporeal, and any interest therein, belonging to inhabitants of the commonwealth . . . , which shall pass by will, or by laws regulating intestate succession, or by deed, grant or gift, except in cases of a bona fide purchase for full consideration in money or money’s worth, made in contemplation of the death of the grantor or donor or made or intended to take effect in possession or enjoyment after his death . . . to any person, absolutely or in trust . . . shall be subject to a tax at the percentage rates fixed by the following table:

[A table of graduated rates here appears.]

“Provided, however, that no property or interest therein, which shall pass or accrue to or for the use of a person in Class A, except a grandchild of the deceased, unless its value exceeds ten thousand dollars, and no other property or interest therein, unless its value exceeds one thousand dollars, shall be subject to the tax imposed by this chapter, and no tax shall be exacted upon any property or interest so passing or accruing which shall reduce the value of such property or interest below said amounts.

“All property and interests therein which shall pass from a decedent to the same beneficiary by any one or more of the methods hereinbefore specified and all beneficial interests which shall accrue in the manner hereinbefore provided to such beneficiary on account of the death of such decedent shall be united and treated as a single interest for the purpose of determining the tax hereunder.

“Section 2. Whenever any person shall exercise a power of appointment, derived from any disposition of property made prior to September first, nineteen hundred and

seven, such appointment when made shall be deemed a disposition of property by the person exercising such power, taxable under section one, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by the donee by will; and whenever any person possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a disposition of property taxable under section one shall be deemed to take place to the extent of such omission or failure in the same manner as though the persons thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure."

"Section 36. This chapter shall apply only to property or interests therein passing or accruing upon the death of persons dying on or after May fourth, nineteen hundred and twenty, and as to all property and interests therein passing or accruing upon the death of persons who have died prior to said date the laws theretofore applicable shall remain in force; but so much of this chapter as relates to property or interests therein passing by deed, grant or gift completed *inter vivos* in contemplation of death shall apply only to such deeds, grants or gifts made on or after May twenty-seventh, nineteen hundred and twenty."

THE 1877 TRUST.

The trust created by the intestate in 1877, by deed *inter vivos*, reserved no power of revocation or alteration and, in this respect, differed from that under consideration in *Saltonstall v. Saltonstall*, 276 U. S. 260. The appel-

lants insist that the invalidity of § 1, *supra*, as applied to their succession is established by *Coolidge v. Long*, 282 U. S. 582, since to tax them would under the doctrine of that case impair the obligation of the intestate's contract, and deprive them of property without due process. The court below thought that case not controlling because, there, the remainders were vested from the date of the gift, whereas, here, the interests of appellants were executory or, at the best, contingent remainders which never vested until the intestate's death. In *Coolidge v. Long* this court concluded that the tax laid by the act of 1907 offended the contract and due process clauses of the Federal Constitution because the interests of the remaindermen had vested at the date of the creation of the trust many years prior to the passage of the taxing act. It was held that the mere taking possession of that which had been vested in the beneficiaries for many years did not amount to a taxable occasion and constitutionally could not be so designated by the Commonwealth in view of the complete vesting of the beneficiaries' estates in remainder at the date of the execution of the deed.

The Supreme Judicial Court, following an unbroken line of authority in Massachusetts, and in accordance with the common law<sup>9</sup> and the law as declared by this court<sup>10</sup> holds that the appellants' estates, under the trust instrument of 1877, were, at most, contingent remainders which did not vest until after the intestate's death, and hence the transfers to them fell clearly within the statutory definition as made to take effect in possession or enjoyment after the donor's death. The appellants urge that, in imposing a succession tax, the state should disregard technical rules relating to the vesting of interests and look to the substance; and they insist that for many

<sup>9</sup> 1 Fearne, Contingent Remainders, (10 ed.) 397, 398; Gray, Perpetuities (3 ed.) 86.

<sup>10</sup> *Wright v. Blakeslee*, 101 U. S. 174, 177.

years prior to 1907 those who were to take in succession to the intestate were ascertained, subject only to the contingency that, as in *Coolidge v. Long*, some of them might fall out of the class by death. The contention was made and rejected in *Coolidge v. Long*. The fact that the remainders were vested from the date of the deed, and the interests of those who took in remainder were merely subject to be defeated by a condition subsequent, was the basis for the conclusion that the tax could not constitutionally be laid upon the occasion of their acquiring physical possession of what had, in the eye of the law, long been their property. Having relied on legal rather than practical considerations to invalidate the tax in *Coolidge v. Long*, it would be inconsistent here to rely on practical rather than legal considerations to invalidate the same tax. The Commonwealth was not prevented by the constitutional provisions which the appellants invoke from taxing the succession under the 1877 trust upon the occasion of the intestate's death since the appellants' estates never vested until that event.

As Mrs. Cunningham's death was the occasion for a tax upon the succession of those who take in remainder after her life estate, we can conceive of no constitutional objection to the statutory provisions for uniting the interest thus derived with that which the appellants acquired in Mrs. Cunningham's own property at her death, and calculating the rate on the total according to a sliding scale.

#### THE 1862 TRUST.

The act of 1907, (§ 1, *supra*) does not purport to tax complete and irrevocable transfers *inter vivos*, not in contemplation of the donor's death, made subsequent to the effective date of the act. The 1862 contract was not made in contemplation of the grantor's death; it became effective when executed. Such a transfer made to-day would result in no tax upon the interest acquired by the

life tenant or upon those interests resulting from her exercise or non-exercise of her power of appointment. By the act of 1909, however, (§ 2, *supra*) the legislature, while not attempting to tax the interests of the appellants as derived in succession to Amos A. Lawrence, does essay to tax those interests as derived from the intestate as the holder of a power of appointment under Amos A. Lawrence's contract. But the statutes do not tax similar interests the enjoyment of which depends upon the exercise or nonexercise of a power embodied in a deed effective after September 1, 1907. The law, therefore, creates two classes,—the one composed of beneficiaries who take at the death of the donee of a power created by an instrument antedating 1907, who are taxed,—and the other of beneficiaries who take in succession to the donee of a power conferred by a deed executed subsequent to 1907, who are not taxed. Upon its face the statute arbitrarily selects a past date, taxing the beneficiaries of an act if done prior to, and leaving untaxed beneficiaries of a precisely similar act if done subsequent to that date. In justification of the discrimination the court below suggests that any change in the state's policy of taxation must take effect at some point of time. The truth of this statement is obvious, but the appellants' complaint is not directed at the fact that inheritances occurring prior to the effective date of the act of 1907 have escaped taxation while those happening thereafter are subjected to the exaction. The claim that the statutes deny equal protection is based upon quite another sort of discrimination. Succession consequent upon testamentary gifts (that is those made by will, or in contemplation of death or to take effect in possession or enjoyment after death) made or to take effect after the date of the act is the subject of the excise. The succession to non-testamentary gifts made subsequent to the effective date of the act of 1907 is not taxed whether the

person coming into ownership and enjoyment of property does so by virtue of the direct gift of the former owner or by virtue of the exercise or non-exercise of a power of appointment vested by the former owner in a third party. Thus the future policy of the Commonwealth is declared to be that those who benefit by a testamentary gift are to be taxed while those who benefit, either immediately or remotely, from a complete and irrevocable gift *inter vivos* are not to be taxed. On the other hand, the statutes declare that one who benefits remotely through the exercise or non-exercise of a power under an absolute gift long since completed is to bear the burden of the exaction. This is not the declaration of a new policy effective after the promulgation of the legislation. On the contrary the statutes declare the policy to be the exemption for the future of a well-known type of succession, while at the same time imposing a tax on the identical type if resulting from a past gift.

Neither the appellee nor the Supreme Judicial Court advances any satisfactory reason for this difference in treatment of persons similarly circumstanced.

The Supreme Judicial Court states:

“The legislative intent possibly was to tax succession under St. 1907, c. 563, not as from the donee but from the donor of the power. Whatever the reason, the classification cannot be pronounced arbitrary or unreasonable. The tax operates equally and uniformly as to all within this class. It may fairly have been deemed by the General Court to be founded in the ‘purposes and policy of taxation.’”

Instead of assigning any reason for the discrimination the statement merely points out that two classes are created, those who are taxed and those who are not, and since all who are taxed are treated alike and all who are exempt are treated alike the statute is uniform in opera-

tion upon each class; and thus falls short of meeting the question for decision.

As we have noted, the only basis for the classification is the time when the estate was created. This court has said that a tax on gifts *inter vivos*, so laid as to hit those made within a given period prior to the donor's death and exempting all others, would be wholly arbitrary. *Schlesinger v. Wisconsin*, 270 U. S. 230. And we have also said that a discrimination in the taxation of loans based solely upon the time when the loan was made would clearly be arbitrary and capricious. *Colgate v. Harvey*, 296 U. S. 404, 425.

It is said that prior to the passage of the act of 1909, succession derived through a power granted by an instrument effective before September 1, 1907, escaped taxation although the interest of the beneficiary really had its origin subsequent to that date; and thereby the Commonwealth unfairly lost taxes which were its due, and discrimination resulted between beneficiaries under trusts created before and after September 1, 1907. The argument, however, overlooks the fact that a transfer through a power created after September 1, 1907, is, notwithstanding the act of 1909, still wholly untaxed where, as in the case of the trust under consideration, the power is to be exercised by a third party and the gift is not made in contemplation of the settlor's death. We fail to see how fairness, either to the Commonwealth or its citizens, is promoted by taxing the appellants, the beneficiaries of a trust made many years before the succession tax laws were adopted, while exempting beneficiaries similarly situated in all respects save only that the trust was created after September 1, 1907. The discrimination becomes the more glaring when it is remembered that the tax is increased by the aggregation of the interest passing to the beneficiaries under the 1862 contract with that which they derive by inheritance from the intestate. Thus, a

beneficiary taking through a power under an *inter vivos* non-testamentary trust, created after September 1, 1907, would not have to aggregate the interest so derived with property inherited from the donee of the power, whereas one taking, as do the appellants, under a power in a deed executed in 1862 is compelled, by aggregation of the interests, to pay at a much higher rate on the property derived through the power.

In view of the hostile discrimination against a class of remaindermen arbitrarily singled out for taxation from all those similarly situated, we are bound to hold the statutes deny the equal protection of the laws in contravention of the Fourteenth Amendment.

#### THE 1891 TRUST.

In their operation upon the trust created in 1891 by the will of Sarah E. Lawrence, the statutes discriminate between the appellants and others similarly situated. The discrimination differs in kind from that exhibited in the case of the 1862 trust, but is equally hostile and arbitrary.

When Mrs. Lawrence died in 1891, the interests created in her lineal descendants were wholly exempt from taxation. When, in 1907, the Commonwealth adopted a policy of taxing succession by lineals, the statute said nothing of powers of appointment. Nevertheless, under that act, had it been in force when Mrs. Lawrence died, the intestate, her daughter, would have paid a tax upon the value of the life estate given her by her mother's will, and the appellants when they came into possession of remainder interests, upon the intestate's death, would likewise have been compelled to pay a tax upon their succession to Mrs. Lawrence's estate. The act of 1909 (§ 2, *supra*) recognizing that the act of 1907 (§ 1, *supra*) does not apply to the succession generated at the death of Mrs. Lawrence, nevertheless pitches upon the fact that under her will the intestate had a power of appointment and

makes the takers of Mrs. Lawrence's property in succession to the intestate liable for a tax as if the property had descended from the intestate. As directed by § 1 the appellee aggregated the interest falling to the appellants under their grandmother's will with that coming to them from their mother under the intestate law. Thus, the interest derived under the 1891 trust is taxed in the higher brackets at four per cent. whereas had it been created by a will effective after September 1, 1907, the tax would be computed as upon a succession to Mrs. Lawrence's estate alone, and at a rate of one per cent.

The same considerations which have been stated in respect of the 1862 trust are controlling as to this one. We think it an arbitrary and unreasonable discrimination that the beneficiary of a power must aggregate the interest so derived with that enjoyed by inheritance of property owned in fee by the donee of the power, if the instrument creating the power antedates 1907, but need not so aggregate the interests for the purpose of taxation if the creation of the power be subsequent to 1907. The consequence that the one must pay at a higher rate on the interest falling in at the death of the donee of the power than the other who takes by reason of an exactly similar event, denies the equal protection of the law to the former.

The argument that the act of 1909 tends to render collection of taxes more certain by accelerating the time of payment and making the executors the collectors of the tax is answered by the provisions of § 7 of c. 65 of the General Laws (Ter. ed.). Remaindermen become liable for the tax, not at the death of the donor, but when they come into possession and enjoyment of the property at the expiration of a life estate or term of years. The tax on their succession is then payable by any fiduciary who then holds the property, and, if none is in office, by the beneficiaries themselves. It cannot

therefore successfully be contended that the act of 1909 was adopted with a view to earlier or more certain collection of the tax.

The Commonwealth seeks to support the statutes upon well known principles: that the guaranty of equal protection does not compel adoption of an iron rule of equal taxation, preclude variety in taxation, or forbid classification of subjects if the discrimination is founded upon a reasonable distinction or if any state of facts reasonably can be conceived to sustain it; and that where the evident purpose is to deal fairly and equitably in classifying the subjects of taxation, a statute will not be condemned because of minor and incidental hardships or inequalities due not to a hostile purpose but to inherent difficulties or inadvertence. The claim is that the discrimination against the appellants is justified by either or both of these principles. While this court always accords great weight to the judgment of a state legislature, we cannot agree that there is here a fair basis for difference of treatment. All that is said in defense of the statute is that it treats alike all those who take under instruments executed prior to an arbitrary past date, and treats alike all those who take under instruments made subsequently to the same arbitrary date, and that the legislature may have found some reason for the discrimination in the state's policy of taxation. But this is merely to say that arbitrary classification which is the result of the exercise of the legislative will must be sustained. The alternative and inconsistent contention that the discrimination is the result of inadvertence, cannot prevail. The act of 1907 was prospective in its operation. Knowing that that act did not reach successions under deeds or wills effective prior to September 1, 1907, the legislature adopted the acts of 1909 and 1924 to put those who succeeded to remainder interests created prior to September 1, 1907, into a taxable class while

leaving wholly exempt or taxing on a different basis and at a different rate remaindermen taking under instruments effective subsequent to September 1, 1907. To suggest that this was an attempt to bring about equality which failed through inadvertence is to be blind to the obvious purpose and intent of the legislature. Action could not have been more deliberate.

The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

MR. JUSTICE CARDOZO, dissenting in part.

I am unable to concur in so much of the opinion of the court as invalidates the tax upon the interests passing to the appellants under the deed of 1862 and reduces the amount of the tax under the will of 1891.

On September 1, 1907, the Commonwealth of Massachusetts laid a tax upon the subject of any transfer to take effect in possession or enjoyment after the death of a donor, whether the succession was brought about by will or intestacy or gift *inter vivos*. Acts 1907, c. 563. This court held in *Coolidge v. Long*, 282 U. S. 582, that as to remainders already vested, but dependent upon an estate for life, the tax so imposed is a denial of due process, though the life estate did not end until after the passage of the statute. In 1909 the legislature of the Commonwealth enacted another statute providing in substance that where the transfer becomes complete through the exercise or non-exercise of a power of appointment (cf. *Saltonstall v. Saltonstall*, 276 U. S. 260, 270, 271; *Guaranty Trust Co. v. Blodgett*, 287 U. S. 509, 511) the succession shall be deemed to have been derived from the donee of the power, if the power had its origin in a disposition of property made before September 1, 1907, and

if made after that date, from the donor of the power. Acts 1909, c. 527, § 8: G. L. (Tercentenary Ed.) c. 65, § 2. Is the result of that amendment an unlawful discrimination when applied to the deed of 1862 and the exercise or non-exercise of the power there created?

If succession must be treated as derived from the donor, irrespective of the date when the power was created, many interests will go free that in fairness should contribute their quota to the fisc. "Whatever be the technical source of title of a grantee under a power of appointment, it cannot be denied that in reality and substance it is the execution of the power that gives to the grantee the property passing under it." *Matter of Dows*, 167 N. Y. 227, 231; 60 N. E. 439; aff'd *sub nom. Orr v. Gilman*, 183 U. S. 278, 287; *Matter of Delano*, 176 N. Y. 486; 68 N. E. 871; aff'd *sub nom. Chanler v. Kelsey*, 205 U. S. 466, 478. This court has held that a legislature does not violate the Fourteenth Amendment by giving heed to these realities when taxing a succession. *Orr v. Gilman*, *supra*; *Chanler v. Kelsey*, *supra*. The cases that have been cited had their origin in New York. For a time the tax laws of Massachusetts were drawn along stricter lines. *Emmons v. Shaw*, 171 Mass. 410, 413; 50 N. E. 1033. Until the Act of 1909, a transfer through a power, if made under an instrument effective before September, 1907, escaped taxation altogether, though the gift in substance and reality may have had its origin thereafter. Acts 1907, c. 563, § 25; cf. *Saltonstall v. Saltonstall*, *supra*; also *Saltonstall v. Saltonstall*, 256 Mass. 519, 522, 525; 153 N. E. 4. This was unfair to the Commonwealth. It was perhaps unfair to legatees who were taxable under gifts of later date. But the evil, however patent, was not subject to correction through the medium of a uniform rule taxing the succession under every power of appointment exercised thereafter, and taxing it as derived from the primary donor. Such a method of assessment would be adequate in its application to instruments to be executed in the

future, but quite inadequate as to instruments executed in the past. There was need for a distinction based on difference in time.

One may take for illustration a will made in 1914, seven years after the Act of 1907, and another made in 1900, seven years before. Each, let it be assumed, provides for a life estate, with power to the life tenant to appoint the remainder, and with a gift over to children in default of an appointment. The life tenants die in 1921. If an assessment is made upon the right of succession under the will of later date, there will be no difficulty in collecting the tax, economically and swiftly, out of the estate of the donor. The power having been created after 1907, the executors will be under a duty to retain so much of the estate as may be necessary to pay the tax in full. But in respect of the 1900 will, the situation is very different. The probability is that before the adoption of the statute the executors under that instrument will have been given their discharge. In that event the probate court will no longer have control of the estate, and the Commonwealth will be left to a precarious remedy against remaindermen deriving their possession through the non-exercise of the power, if perchance the failure to exercise it becomes known at all. Estates of subsequent donors will thus be made to bear the burden while those of earlier donors are left substantially immune. The amendment of 1909 corrects that inequality. Has it substituted another to be condemned as more offensive?

The rule is elementary that a state in adopting a system of taxation is not confined to a formula of rigid uniformity. *Swiss Oil Co. v. Shanks*, 273 U. S. 407, 413. It may tax some kinds of property at one rate, and others at another, and exempt others altogether. *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232; *Stebbins v. Riley*, 268 U. S. 137, 142; *Ohio Oil Co. v. Conway*, 281 U. S. 146, 150. It may lay an excise on the operations of a

particular kind of business, and exempt some other kind of business closely akin thereto. *Quong Wing v. Kirken-dall*, 223 U. S. 59, 62; *American Sugar Refining Co. v. Louisiana*, 179 U. S. 89, 94; *Armour Packing Co. v. Lacy*, 200 U. S. 226, 235; *Brown-Forman Co. v. Kentucky*, 217 U. S. 563, 573; *Heisler v. Thomas Colliery Co.*, 260 U. S. 245, 255; *State Board of Tax Comm'rs v. Jackson*, 283 U. S. 527, 537, 538. What is true of division into classes according to subject matter must be true of division into classes dependent upon time. The temporal arrangement must have its origin, to be sure, in something more than whim or fantasy, a tyrannical exhibition of arbitrary power. If that reproach has been avoided, the classification does not fail because the burdens before and after are not always and everywhere in perfect equilibrium.

From all this it follows that a distinction between wills or deeds effective before 1907 and those effective afterwards—the exercise or non-exercise of powers under instruments of the first class giving rise to a succession to be taxed as a bequest from the donee, and the exercise or non-exercise of powers under instruments of the second class to be taxed as a bequest from the donor—is not rooted in caprice. The point of time which separates the classes is not interjected arbitrarily or by an exertion of brute force, but corresponds to the behests of a rational taxonomy. This being so, the division ought not to fail because the deed of 1862 was framed in such a way that succession thereunder would not have been taxable to any one, either the estate of the donor or that of the donee, if a like deed had been executed after the passage of the statute. A legislature cannot be expected in drafting legislation to think out every conceivable situation in which the members of one class will bear a heavier burden than the members of another. Under the statute challenged as invalid many deeds *inter vivos* continue to be taxable irrespective of their date. An interest in re-

remainder to take effect in possession or enjoyment through the exercise or non-exercise of a power of appointment after the death of the donor (*Guaranty Trust Co. v. Blodgett, supra*) will gain nothing from the fact that a non-testamentary conveyance brought the power into being. The only reason why this particular interest would be exempt if the deed of 1862 had been made after August, 1907, is because the remainder was so limited that the power might be exercised while the donor was yet alive. Such untoward accidents do not take a method of division out of the domain of the rational into the land of whim and fantasy. Eccentricities of incidence are common, and perhaps inevitable, in every system of taxation. The future would have to be scanned with microscopical powers of vision to foresee and forestall every possible diversity. For present purposes it is enough that the order of events removes the stigma of caprice from a system of classification whereby donees of a power before the passage of the act are treated as grantors, the tax to be laid upon that basis, whereas donors of a power are recognized as the source of the succession in respect of transfers afterwards. *Emmons v. Shaw, supra*. "And inequalities that result not from hostile discrimination, but occasionally and incidentally in the application of a system that is not arbitrary in its classification, are not sufficient to defeat the law." *Maxwell v. Bugbee*, 250 U. S. 525, 543. Cf. *Metropolis Theatre Co. v. Chicago*, 228 U. S. 61, 69, 70; *Salomon v. State Tax Comm'n*, 278 U. S. 484, 491.

What has been said as to the deed of 1862 and the power there created applies with equal force to the will of 1891 and to the quantum of the tax payable by the legatees thereunder.

For these reasons I dissent from the modification of the decree and vote to affirm it.

MR. JUSTICE BRANDEIS joins in this opinion.

Opinion of the Court.

KROGER GROCERY & BAKING CO. *v.* LUTZ,  
ATTORNEY GENERAL OF INDIANA, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF INDIANA.

No. 501. Argued December 7, 1936.—Decided December 21, 1936.

In a suit to enjoin regulation of a business which does not prevent carrying it on, the amount or value in controversy is not the value or net worth of the business, but the value of the right to be free of the regulation, measurable by the loss, if any, that would follow the enforcement of the regulation. P. 301.

Capitalization of earnings *held* not suitable as a basis of determining the loss attributable to temporary regulation of a business, it not appearing that the loss would exceed that which would be sustained in a short time to elapse before the regulatory statute and the order made upon it were to expire by limitation. Affirmed.

*Mr. Robert S. Marx*, with whom *Messrs. Frank E. Wood* and *Harry Kasfir* were on the brief, for appellant.

*Mr. Philip Lutz, Jr.*, Attorney General of Indiana, *Mr. Joseph W. Hutchinson*, Assistant Attorney General, and *Mr. Urban C. Stover*, First Deputy Attorney General, were on the brief for appellees.

PER CURIAM.

Complainant brought this suit to restrain the enforcement of an order of the Milk Control Board of the State of Indiana, made June 12, 1936, fixing selling prices of milk in the Fort Wayne Marketing Area. Upon the hearing by three judges (28 U. S. C. 380) of a motion for a preliminary injunction, the District Court dismissed the cause for the want of jurisdiction upon the ground that the requisite jurisdictional amount was not involved. The court made the following findings:

"2. That complainant owns and operates a chain of grocery stores in and out of Indiana, forty-four (44) of

which are located in the City of Fort Wayne, and within a radius of seven (7) Miles thereof, and has invested in said stores in said Fort Wayne marketing area approximately Four Hundred Fifty Thousand (\$450,000.00) Dollars, making an [*sic*] annual sales of approximately Two Million (\$2,000,000.00) Dollars, of which said sales milk and dairy products amount to approximately Forty-five thousand (\$45,000.00) Dollars. That the number of quarts of milk sold by said stores in one year period are less than 550,000 in said area, in that complainant's profits per quart on its milk sold are .00398. That complainant's total loss in profits for a one-year period on a complete loss of its milk business would be Two Thousand Eighty-nine (\$2089.00) Dollars, on the basis of 550,000 quarts. That if complainant be required by Official Order No. 14 of the Milk Control Board of Indiana to sell its milk at a level price with other dairies and distributors in said territory, its loss in the sales of milk would not exceed twenty-five percent, and its loss in profits would not exceed Five Hundred (\$500.00) Dollars.

"3. That on March 12th, 1935 Chapter 281 of the acts of the General Assembly of the State of Indiana, commonly known as the Milk Control Law, became effective, and that said Act expires by limitation on July 1st, 1937."

In granting a temporary stay pending appeal to this Court, the District Court found that the enforcement of the order would "cause immediate and irreparable injury to the business of the complainant."

In determining whether the requisite jurisdictional amount is in controversy, where it does not appear that the complainant is deprived of its license or is prevented by the regulation from prosecuting its business, the question is not the value or net worth of the business but the value of the right to be free from the regulation, and this may be measured by the loss, if any, that would follow the enforcement of the rule prescribed. *McNutt v. General Motors Acceptance Corp.*, 298 U. S. 178.

In order to support its contention, complainant seeks to capitalize its earnings and thus to arrive at the value of the part of the business affected by the order. But that basis of ascertaining a capital loss is not available to complainant here, as the statute, and with it the order, expire by limitation on July 1, 1937. The hurt by reason of the regulation does not appear to be greater than the loss sustained while the statute is in operation. The decree of the District Court is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

KAMMERER ET AL. *v.* KROEGER, SUPERINTENDENT OF BUILDING AND LOAN ASSOCIATIONS OF OHIO, ET AL.\*

APPEAL FROM THE SUPREME COURT OF OHIO.

No. 522. Motion to dismiss distributed November 28, 1936.—  
Decided December 21, 1936.

The question whether the Court of Common Pleas, of Ohio, in a proceeding to liquidate a building and loan association, had jurisdiction under the laws of that State, to entertain applications by shareholders for reimbursement out of the assets of the association for counsel fees and expenses incurred by them in litigation which they had successfully conducted for the protection of the assets in behalf of themselves and the other shareholders,—*held* a question of state practice and remedy not involving any right under the Federal Constitution.

Appeals from 131 Ohio St. 330; 2 N. E. (2d) 823, dismissed.

---

\* Together with No. 523, *Wuist et al. v. Kroeger et al.*; No. 524, *Fischer et al. v. Kroeger et al.*; No. 525, *Cotterill et al. v. Kroeger et al.*; No. 526, *Kelsey et al. v. Kroeger et al.*; No. 527, *Kimmel et al. v. Kroeger et al.*; and No. 528, *Reichert et al. v. Kroeger et al.* Appeals from the Supreme Court of Ohio.

*Mr. John W. Bricker*, Attorney General of Ohio, filed a brief in support of the motion to dismiss.

*Messrs. Gilbert Bettman* and *W. S. McConnaughey* were on the brief for appellants in opposition to the motion to dismiss.

PER CURIAM.

These seven appeals present the same question. Under §§ 687 to 687-23, 115 Ohio Laws 3, § 1, *et seq.*, effective February 27, 1933, the Superintendent of Building and Loan Associations of the State of Ohio took possession of the assets of the above-mentioned associations, respectively, for the purpose of liquidation. The Superintendent sought authority to borrow money from the Reconstruction Finance Corporation to pay off claims alleged to be prior to the shareholders' claims against such associations and to pledge the assets as security. Appellant shareholders, on behalf of all the shareholders of the respective associations, through their counsel, successfully opposed the Superintendent's applications. Thereupon appellants filed applications for the allowance of their counsel fees and expenses out of the assets of the associations. The Common Pleas Court of Montgomery County, on motion of the Superintendent, struck these applications from the files upon the ground that under the Ohio statutes the court did not have jurisdiction to consider or allow such fees. Motions for new trial and rehearing were overruled. The Court of Appeals of Montgomery County sustained the ruling of the Court of Common Pleas. Appellants then appealed as of right to the Supreme Court of Ohio and that court dismissed the appeals on the ground that "no debatable constitutional question" was involved. 131 O. S. 330; 2 N. E. (2d) 823.

We find no basis for the contention that in denying appellants' claim to be paid their counsel fees and ex-

penses out of the assets in the hands of the liquidator, upon the ground that the court was without jurisdiction to make such an allowance, any right of the appellants under the Federal Constitution has been infringed. The question is one of state practice and remedy. The motions to dismiss the appeals are granted and the appeals are dismissed for the want of a substantial federal question. *Iowa Central Ry. Co. v. Iowa*, 160 U. S. 389, 393; *Standard Oil Co. v. Missouri*, 224 U. S. 270, 280, 281; *McDonald v. Oregon Navigation Co.*, 233 U. S. 665, 669, 670; *Gasquet v. Lapeyre*, 242 U. S. 367, 369, 370; *Enterprise Irrigation District v. Canal Co.*, 243 U. S. 157, 166.

*Dismissed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

UNITED STATES *v.* CURTISS-WRIGHT EXPORT  
CORP. ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 98. Argued November 19, 20, 1936.—Decided December 21, 1936.

1. A Joint Resolution of May 28, 1934, provided: "That if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and if after consultation with the governments of other American Republics and with their coöperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress." Violation was made punishable as a

crime. The President issued two proclamations, one on the date of the Resolution, putting it into operation; the other on November 14, 1935, revoking the first proclamation. *Held:*

(1) The Joint Resolution is not an unconstitutional delegation of legislative power to the Executive. Pp. 314, 329.

(2) The powers of the Federal Government over foreign or external affairs differ in nature and origin from those over domestic or internal affairs. P. 315.

(3) The broad statement that the Federal Government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the States such portions as it was thought desirable to vest in the Federal Government, leaving those not included in the enumeration still in the States. *Id.*

(4) The States severally never possessed international powers. P. 316.

(5) As a result of the separation from Great Britain by the Colonies, acting as a unit, the powers of external sovereignty passed from the Crown, not to the Colonies severally, but to the Colonies in their collective and corporate capacity as the United States of America. *Id.*

(6) The Constitution was ordained and established, among other things, to form "a more perfect Union." Prior to that event, the Union, declared by the Articles of Confederation to be "perpetual," was the sole possessor of external sovereignty, and in the Union it remained without change save in so far as the Constitution in express terms qualified its exercise. Though the States were several their people in respect of foreign affairs were one. P. 317.

(7) The investment of the Federal Government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution. P. 318.

(8) In the international field, the sovereignty of the United States is complete. *Id.*

(9) In international relations the President is the sole organ of the Federal Government. P. 319.

(10) In view of the delicacy of foreign relations and of the power peculiar to the President in this regard, Congressional legislation which is to be made effective in the international field must

often accord to him a degree of discretion and freedom which would not be admissible were domestic affairs alone involved. P. 319.

(11) The marked difference between foreign and domestic affairs, in this respect, is recognized in the dealings of the houses of Congress with executive departments. P. 321.

(12) Unbroken legislative practice from the inception almost of the national government supports the conclusion that the Joint Resolution, *supra*, is not an unconstitutional delegation of power. P. 322.

(13) Findings of jurisdictional facts in the first proclamation, following the language of the Joint Resolution, were sufficient. P. 330.

(14) The revocation of the first proclamation by the second did not have the effect of abrogating the Resolution or of precluding its enforcement by prosecution and punishment of offenses committed during the life of the first proclamation. P. 331.

2. Upon an appeal by the United States under the Criminal Appeals Act from a decision holding an indictment bad on demurrer, this Court has jurisdiction of questions involving the validity of the statute on which the indictment was founded which were decided by the District Court in favor of the United States. P. 329.
- 14 F. Supp. 230, reversed.

APPEAL, under the Criminal Appeals Act, from a judgment quashing an indictment for conspiracy.

*Mr. Martin Conboy*, with whom *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Messrs. William W. Barron* and *Charles A. Horsky* were on the brief, for the United States.

There is no unconstitutional delegation of legislative power. From the beginning of the Government like delegations have been customary in the field of foreign relations.

The policy of Congress is clearly stated; the standards are simple and definite; and a finding by the President is required. The case is controlled by *Hampton & Co. v. United States*, 276 U. S. 394, and *Field v. Clark*, 143 U. S. 649.

The objection that the President is allowed to make simply an estimate of the future efficacy of the law rather than a finding of present facts rests upon a misconstruction of the Resolution, which requires the finding of a present fact, viz., whether the prohibition on arms will contribute to reëstablishment of peace in the Chaco now.

Delegations of power to make present determinations of future effect are commonly upheld, e. g., in rate-cases.

The other grounds urged below in support of the demurrer, and overruled by the District Court, are not properly before this Court under the Criminal Appeals Act. In any event, they are without merit. By his proclamation the President complied with every requirement of the Resolution, making all findings of fact that were necessary.

Nor did the second proclamation, revoking the first, terminate liability for offenses committed in the interim. The authority for the prosecution is the Resolution, not repealed. Moreover, even if the proclamation can be considered as a repeal of the Resolution, the prosecution is authorized by R. S., § 13.

*Mr. George Z. Medalie*, with whom *Messrs. J. Edward Lumbard, Jr.*, and *Theodore S. Hope, Jr.*, were on the brief, for John S. Allard et al., appellees.

The Joint Resolution attempts an invalid delegation in at least four respects. First, its going into operation is made dependent upon the President's determination whether it may have the capacity to bring about the result desired by the Congress, to-wit, the reëstablishment of peace in the Chaco. Second, its going into operation is further conditioned upon the President's uncontrolled discretion. Third, it delegates to the President a power to repeal the Resolution which is coördinate with that of the Congress itself. Fourth, it grants to the President the power to except from and limit the statutory prohibi-

tion, as he may see fit, guided by no rule or standard whatsoever.

The proclamation which was designed to put the Resolution into operation was ineffectual, because of the President's failure to find essential jurisdictional facts.

The acts charged in the indictment are no longer an offense against the laws of the United States. The prosecution is not saved by R. S., § 13 and there is no other saving clause.

This Court may consider all grounds urged in support of the judgment which go to the validity or construction of the Joint Resolution.

*Mr. William Wallace*, with whom *Mr. Robert D. Shea* was on the brief, for the Curtiss-Wright Export Corp. et al., appellees.

The Criminal Appeals Act permits consideration on this appeal of any ground of invalidity in addition to the one upon which the court below sustained the demurrers. *United States v. Bitty*, 208 U. S. 398, 400; *United States v. Biggs*, 211 U. S. 507, 522; *United States v. Keitel*, 211 U. S. 370, 398; *United States v. Kissel*, 218 U. S. 606; *United States v. American Railway Express Co.*, 265 U. S. 425, 435; *Langnes v. Green*, 282 U. S. 531, 538; *United States v. Hastings*, 296 U. S. 188; *United States v. Nixon*, 235 U. S. 231; *United States v. Shreveport Grain Co.*, 287 U. S. 77; *United States v. Mescall*, 215 U. S. 26, 31.

The Joint Resolution was invalid because it was not to go into operation until after an optional proclamation which the President might never make. Making or refusing to make a law is essentially a legislative function which may not be delegated or surrendered by the Congress. *Mutual Film Corp. v. Ohio Industrial Comm'n*, 236 U. S. 245; *Panama Refining Co. v. Ryan*, 293 U. S. 388; *Schechter Poultry Corp. v. United States*, 295 U. S. 495, 538.

Some of the cases relied on by the Government, like *Hampton & Co. v. United States*, 276 U. S. 394; *Field v. Clark*, 143 U. S. 649, are under tariff acts. Others deal with powers confided to the Interstate Commerce Commission on rate regulations, etc. (*Louisville & N. R. Co. v. Garrett*, 231 U. S. 298; *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362; *New York Central Securities Co. v. United States*, 287 U. S. 12; see also, *Knoxville v. Knoxville Water Co.*, 212 U. S. 1). Still others have to do with control of the radio, film and similar industries. (*Federal Radio Comm'n v. Nelson Bros. Co.*, 289 U. S. 266; *Mutual Film Corp. v. Ohio Industrial Comm'n*, 236 U. S. 245; see also, *Pacific States Box & Basket Co. v. White*, 296 U. S. 176.) One deals with the functions of the Secretary of War, confided to him under the constitutional power to control navigable waters. (*Union Bridge Co. v. United States*, 204 U. S. 364.)

In all those cases the question arose under legislation already in operation and with respect to delegation of power over administrative details incident to its enforcement. No one of them involved a determination of a condition upon the happening of which a law not yet in effect was or was not to be put into operation.

Distinguishing also: *The Aurora*, 7 Cranch 382; *United States v. Chavez*, 228 U. S. 525; *United States v. Mesa*, 228 U. S. 533; *Talbott v. United States*, 208 Fed. 144, cert. den., 232 U. S. 722; and *United States v. Lucas*, 6 F. (2d) 327. Cf. *Langworth v. Kadel*, 141 Kan. 256.

In the present case, the President was under no compulsion to issue his Proclamation unless he should choose to do so. It seems clear that under the principle of the *Field* and *Panama* cases, such lack of explicit directions and mandatory force is fatal to the validity of the Resolution.

The Resolution is invalid because its duration, if ever it went into operation, was left likewise to the uncontrolled discretion of the President.

The power to prescribe limitations and exceptions invalidates the Resolution.

The prohibition of the sale of arms and munitions never went into effect because the President failed to comply with the conditions prescribed by the Joint Resolution. While the courts will not investigate the manner in which the President or any other high official has carried out an executive or administrative function (*Philadelphia & Trenton Ry. v. Stimpson*, 14 Pet. 448), the rule has no application where a delegation of legislative power is involved. *Panama Refining Co. v. Ryan*, 293 U. S. 388, 433.

The rule is well established (*Wichita Railroad & Light Co. v. Public Utilities Comm'n*, 260 U. S. 48, 59; *Mahler v. Eby*, 264 U. S. 32, 44) that, where legislative power has been delegated, not only a substantial compliance with the conditions laid down by the legislative body is required, but also an affirmative showing that this has been done.

From the proclamation it appears that the President consulted with the Governments of other American Republics and that he secured assurances of the coöperation of such Governments as he deemed necessary. There is no express declaration—no affirmative statement—that “such Governments as I have deemed necessary” included any American Republic.

The phrase “as contemplated by the said Joint Resolution” is not sufficient to indicate unequivocally that the President was asserting a full compliance.

But even if the proclamation be construed as asserting such compliance in general terms, or as a conclusion of the President, this would not resolve the difficulty. The broader underlying question would still remain, whether such a general phrase amounts to an affirmative showing of compliance. This Court has held otherwise in *Mahler v. Eby*, *supra*.

The Joint Resolution is not presently valid, or alive for the purpose of sustaining prosecution for offenses heretofore committed thereunder.

The Joint Resolution was intended as a temporary provision, to be in force during the period between the first proclamation putting the prohibition into effect, and the later proclamation removing it. It was to be effective "until otherwise ordered by the President or by Congress." That time limit was reached when the revoking proclamation was issued. Having then expired, no further judicial proceedings could be had thereunder, unless competent authority had kept it alive for that purpose. *Yeaton v. United States*, 5 Cranch 281, 283-4; *United States v. Chambers*, 291 U. S. 207; *The Rachel*, 6 Cranch 329.

Revised Statutes, § 13, by its terms, is applicable only where a statute has been "repealed." The word "repeal" means the abrogation of one statute by another statute.

*Mr. Neil P. Cullom* was on the brief for Barr Shipping Corp. et al., appellees.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

On January 27, 1936, an indictment was returned in the court below, the first count of which charges that appellees, beginning with the 29th day of May, 1934, conspired to sell in the United States certain arms of war, namely fifteen machine guns, to Bolivia, a country then engaged in armed conflict in the Chaco, in violation of the Joint Resolution of Congress approved May 28, 1934, and the provisions of a proclamation issued on the same day by the President of the United States pursuant to authority conferred by § 1 of the resolution. In pursuance of the conspiracy, the commission of certain overt acts was alleged, details of which need not be stated. The Joint Resolution (c. 365, 48 Stat. 811) follows:

*“Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That if the President finds that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and if after consultation with the governments of other American Republics and with their coöperation, as well as that of such other governments as he may deem necessary, he makes proclamation to that effect, it shall be unlawful to sell, except under such limitations and exceptions as the President prescribes, any arms or munitions of war in any place in the United States to the countries now engaged in that armed conflict, or to any person, company, or association acting in the interest of either country, until otherwise ordered by the President or by Congress.

“Sec. 2. Whoever sells any arms or munitions of war in violation of section 1 shall, on conviction, be punished by a fine not exceeding \$10,000 or by imprisonment not exceeding two years, or both.”

The President's proclamation (48 Stat. 1744), after reciting the terms of the Joint Resolution, declares:

“Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, acting under and by virtue of the authority conferred in me by the said joint resolution of Congress, do hereby declare and proclaim that I have found that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reestablishment of peace between those countries, and that I have consulted with the governments of other American Republics and have been assured of the coöperation of such governments as I have deemed necessary as contemplated by the said joint resolution; and I do hereby admonish all citizens of the

United States and every person to abstain from every violation of the provisions of the joint resolution above set forth, hereby made applicable to Bolivia and Paraguay, and I do hereby warn them that all violations of such provisions will be rigorously prosecuted.

“And I do hereby enjoin upon all officers of the United States charged with the execution of the laws thereof, the utmost diligence in preventing violations of the said joint resolution and this my proclamation issued thereunder, and in bringing to trial and punishment any offenders against the same.

“And I do hereby delegate to the Secretary of State the power of prescribing exceptions and limitations to the application of the said joint resolution of May 28, 1934, as made effective by this my proclamation issued thereunder.”

On November 14, 1935, this proclamation was revoked (49 Stat. 3480), in the following terms:

“Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby declare and proclaim that I have found that the prohibition of the sale of arms and munitions of war in the United States to Bolivia or Paraguay will no longer be necessary as a contribution to the reestablishment of peace between those countries, and the above-mentioned Proclamation of May 28, 1934, is hereby revoked as to the sale of arms and munitions of war to Bolivia or Paraguay from and after November 29, 1935, provided, however, that this action shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under the aforesaid Proclamation of May 28, 1934, or the Joint Resolution of Congress approved by the President on the same date; and that the said Proclamation and Joint Resolution shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.”

Appellees severally demurred to the first count of the indictment on the grounds (1) that it did not charge facts sufficient to show the commission by appellees of any offense against any law of the United States; (2) that this count of the indictment charges a conspiracy to violate the joint resolution and the Presidential proclamation, both of which had expired according to the terms of the joint resolution by reason of the revocation contained in the Presidential proclamation of November 14, 1935, and were not in force at the time when the indictment was found. The points urged in support of the demurrers were, first, that the joint resolution effects an invalid delegation of legislative power to the executive; second, that the joint resolution never became effective because of the failure of the President to find essential jurisdictional facts; and third, that the second proclamation operated to put an end to the alleged liability under the joint resolution.

The court below sustained the demurrers upon the first point, but overruled them on the second and third points. 14 F. Supp. 230. The government appealed to this court under the provisions of the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, as amended, U. S. C. Title 18, § 682. That act authorizes the United States to appeal from a district court direct to this court in criminal cases where, among other things, the decision sustaining a demurrer to the indictment or any count thereof is based upon the invalidity or construction of the statute upon which the indictment is founded.

*First.* It is contended that by the Joint Resolution, the going into effect and continued operation of the resolution was conditioned (a) upon the President's judgment as to its beneficial effect upon the reestablishment of peace between the countries engaged in armed conflict in the Chaco; (b) upon the making of a proclama-

tion, which was left to his unfettered discretion, thus constituting an attempted substitution of the President's will for that of Congress; (c) upon the making of a proclamation putting an end to the operation of the resolution, which again was left to the President's unfettered discretion; and (d) further, that the extent of its operation in particular cases was subject to limitation and exception by the President, controlled by no standard. In each of these particulars, appellees urge that Congress abdicated its essential functions and delegated them to the Executive.

Whether, if the Joint Resolution had related solely to internal affairs it would be open to the challenge that it constituted an unlawful delegation of legislative power to the Executive, we find it unnecessary to determine. The whole aim of the resolution is to affect a situation entirely external to the United States, and falling within the category of foreign affairs. The determination which we are called to make, therefore, is whether the Joint Resolution, as applied to that situation, is vulnerable to attack under the rule that forbids a delegation of the law-making power. In other words, assuming (but not deciding) that the challenged delegation, if it were confined to internal affairs, would be invalid, may it nevertheless be sustained on the ground that its exclusive aim is to afford a remedy for a hurtful condition within foreign territory?

It will contribute to the elucidation of the question if we first consider the differences between the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs. That there are differences between them, and that these differences are fundamental, may not be doubted.

The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the federal government can exercise no powers except

those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers *then possessed by the states* such portions as it was thought desirable to vest in the federal government, leaving those not included in the enumeration still in the states. *Carter v. Carter Coal Co.*, 298 U. S. 238, 294. That this doctrine applies only to powers which the states had, is self evident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declaration of Independence, "the Representatives of the United States of America" declared the United [not the several] Colonies to be free and independent states, and as such to have "full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do."

As a result of the separation from Great Britain by the colonies acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency—namely the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure

without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow v. Doane*, 3 Dall. 54, 80-81. That fact was given practical application almost at once. The treaty of peace, made on September 23, 1783, was concluded between his Britannic Majesty and the "United States of America." 8 Stat.—European Treaties—80.

The Union existed before the Constitution, which was ordained and established among other things to form "a more perfect Union." Prior to that event, it is clear that the Union, declared by the Articles of Confederation to be "perpetual," was the sole possessor of external sovereignty and in the Union it remained without change save in so far as the Constitution in express terms qualified its exercise. The Framers' Convention was called and exerted its powers upon the irrefutable postulate that though the states were several their people in respect of foreign affairs were one. Compare *The Chinese Exclusion Case*, 130 U. S. 581, 604, 606. In that convention, the entire absence of state power to deal with those affairs was thus forcefully stated by Rufus King:

"The states were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political beings, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war." 5 Elliott's Debates 212.<sup>1</sup>

<sup>1</sup> In general confirmation of the foregoing views, see 1 Story on the Constitution, 4th ed., §§ 198-217, and especially §§ 210, 211, 213, 214, 215 (p. 153), 216.

It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution. The powers to declare and wage war, to conclude peace, to make treaties, to maintain diplomatic relations with other sovereignties, if they had never been mentioned in the Constitution, would have vested in the federal government as necessary concomitants of nationality. Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens (see *American Banana Co. v. United Fruit Co.*, 213 U. S. 347, 356); and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law. As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. Otherwise, the United States is not completely sovereign. The power to acquire territory by discovery and occupation (*Jones v. United States*, 137 U. S. 202, 212), the power to expel undesirable aliens (*Fong Yue Ting v. United States*, 149 U. S. 698, 705 *et seq.*), the power to make such international agreements as do not constitute treaties in the constitutional sense (*Altman & Co. v. United States*, 224 U. S. 583, 600-601; Crandall, *Treaties, Their Making and Enforcement*, 2d ed., p. 102 and note 1), none of which is expressly affirmed by the Constitution, nevertheless exist as inherently inseparable from the conception of nationality. This the court recognized, and in each of the cases cited found the warrant for its conclusions not in the provisions of the Constitution, but in the law of nations.

In *Burnet v. Brooks*, 288 U. S. 378, 396, we said, "As a nation with all the attributes of sovereignty, the United States is vested with all the powers of government necessary to maintain an effective control of international relations." Cf. *Carter v. Carter Coal Co.*, *supra*, p. 295.

Not only, as we have shown, is the federal power over external affairs in origin and essential character different from that over internal affairs, but participation in the exercise of the power is significantly limited. In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He *makes* treaties with the advice and consent of the Senate; but he alone negotiates. Into the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it. As Marshall said in his great argument of March 7, 1800, in the House of Representatives, "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." *Annals*, 6th Cong., col. 613. The Senate Committee on Foreign Relations at a very early day in our history (February 15, 1816), reported to the Senate, among other things, as follows:

"The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success. For his conduct he is responsible to the Constitution. The committee consider this responsibility the surest pledge for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign negotiations calculated to diminish that responsibility and thereby to impair the best security for the national safety. The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch." *U. S. Senate, Reports, Committee on Foreign Relations*, vol. 8, p. 24.

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an

exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution. It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. Indeed, so clearly is this true that the first President refused to accede to a request to lay before the House of Representatives the instructions, correspondence and documents relating to the negotiation of the Jay Treaty—a refusal the wisdom of which was recognized by the House itself and has never since been doubted. In his reply to the request, President Washington said:

“The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely

impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand and to have as a matter of course all the papers respecting a negotiation with a foreign power would be to establish a dangerous precedent." 1 Messages and Papers of the Presidents, p. 194.

The marked difference between foreign affairs and domestic affairs in this respect is recognized by both houses of Congress in the very form of their requisitions for information from the executive departments. In the case of every department except the Department of State, the resolution *directs* the official to furnish the information. In the case of the State Department, dealing with foreign affairs, the President is *requested* to furnish the information "if not incompatible with the public interest." A statement that to furnish the information is not compatible with the public interest rarely, if ever, is questioned.

When the President is to be authorized by legislation to act in respect of a matter intended to affect a situation in foreign territory, the legislator properly bears in mind the important consideration that the form of the President's action—or, indeed, whether he shall act at all—may well depend, among other things, upon the nature of the confidential information which he has or may thereafter receive, or upon the effect which his action may have upon our foreign relations. This consideration, in connection with what we have already said on the subject, discloses the unwisdom of requiring Congress in this field

of governmental power to lay down narrowly definite standards by which the President is to be governed. As this court said in *Mackenzie v. Hare*, 239 U. S. 299, 311, "As a government, the United States is invested with all the attributes of sovereignty. As it has the character of nationality it has the powers of nationality, especially those which concern its relations and intercourse with other countries. *We should hesitate long before limiting or embarrassing such powers.*" (Italics supplied.)

In the light of the foregoing observations, it is evident that this court should not be in haste to apply a general rule which will have the effect of condemning legislation like that under review as constituting an unlawful delegation of legislative power. The principles which justify such legislation find overwhelming support in the unbroken legislative practice which has prevailed almost from the inception of the national government to the present day.

Let us examine, in chronological order, the acts of legislation which warrant this conclusion:

The Act of June 4, 1794, authorized the President to lay, regulate and revoke embargoes. He was "authorized" "whenever, in his opinion, the public safety shall so require" to lay the embargo upon all ships and vessels in the ports of the United States, including those of foreign nations "under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper." C. 41, 1 Stat. 372. A prior joint resolution of May 7, 1794 (1 Stat. 401), had conferred *unqualified* power on the President to grant clearances, notwithstanding an existing embargo, to ships or vessels belonging to citizens of the United States bound to any port beyond the Cape of Good Hope.

The Act of March 3, 1795 (c. 53, 1 Stat. 444), gave the President authority to permit the exportation of arms, cannon and military stores, the law prohibiting such ex-

ports to the contrary notwithstanding, the only prescribed guide for his action being that such exports should be in "cases connected with the security of the commercial interest of the United States, and for public purposes only."

By the Act of June 13, 1798 (c. 53, § 5, 1 Stat. 566), it was provided that if the government of France "shall clearly disavow, and shall be found to refrain from the aggressions, depredations and hostilities" theretofore maintained against vessels and property of the citizens of the United States, "in violation of the faith of treaties, and the laws of nations, and shall thereby acknowledge the just claims of the United States to be considered as in all respects neutral, . . . it shall be lawful for the President of the United States, being well ascertained of the premises, to remit and discontinue the prohibitions and restraints hereby enacted and declared; and he shall be, and is hereby authorized to make proclamation thereof accordingly."

By § 4 of the Act of February 9, 1799 (c. 2, 1 Stat. 615), it was made "lawful" for the President, "if he shall deem it expedient and consistent with the interest of the United States," by order to remit certain restraints and prohibitions imposed by the act with respect to the French Republic, and also to revoke any such order "whenever, in his opinion, the interest of the United States shall require."

Similar authority, qualified in the same way, was conferred by § 6 of the Act of February 7, 1800, c. 10, 2 Stat. 9.

Section 5 of the Act of March 3, 1805 (c. 41, 2 Stat. 341), made it lawful for the President, whenever an armed vessel entering the harbors or waters within the jurisdiction of the United States and required to depart therefrom should fail to do so, not only to employ the land and naval forces to compel obedience, but "if he

shall think it proper, it shall be lawful for him to forbid, by proclamation, all intercourse with such vessel, and with every armed vessel of the same nation, and the officers and crew thereof; to prohibit all supplies and aid from being furnished them" and to do various other things connected therewith. Violation of the President's proclamation was penalized.

On February 28, 1806, an act was passed (c. 9, 2 Stat. 351) to suspend commercial intercourse between the United States and certain parts of the Island of St. Domingo. A penalty was prescribed for its violation. Notwithstanding the positive provisions of the act, it was by § 5 made "lawful" for the President to remit and discontinue the restraints and prohibitions imposed by the act at any time "if he shall deem it expedient and consistent with the interests of the United States" to do so. Likewise in respect of the Non-intercourse Act of March 1, 1809, (c. 24, 2 Stat. 528); the President was "authorized" (§ 11, p. 530), in case either of the countries affected should so revoke or modify her edicts "as that they shall cease to violate the neutral commerce of the United States," to proclaim the fact, after which the suspended trade might be renewed with the nation so doing.

Practically every volume of the United States Statutes contains one or more acts or joint resolutions of Congress authorizing action by the President in respect of subjects affecting foreign relations, which either leave the exercise of the power to his unrestricted judgment, or provide a standard far more general than that which has always been considered requisite with regard to domestic affairs. Many, though not all, of these acts are designated in the footnote.<sup>2</sup>

---

<sup>2</sup> Thus, the President has been broadly "authorized" to suspend embargo acts passed by Congress, "if in his judgment the public interest should require it" (Act of December 19, 1806, c. 1, § 3, 2 Stat. 411), or if, "in the judgment of the President," there has been such suspen-

It well may be assumed that these legislative precedents were in mind when Congress passed the joint resolutions of April 22, 1898, 30 Stat. 739; March 14, 1912, 37 Stat. 630; and January 31, 1922, 42 Stat. 361, to prohibit the export of coal or other war material. The resolution of 1898 authorized the President "in his discretion, and with such limitations and exceptions as shall seem to him expedient" to prohibit such exportations. The striking identity of language found in the second resolution mentioned above and in the one now under review will be

---

sion of hostilities abroad as may render commerce of the United States sufficiently safe. Act of April 22, 1808, c. 52, 2 Stat. 490. See, also, Act of March 3, 1817, c. 39, § 2, 3 Stat. 361. Compare, but as to reviving an embargo act, the Act of May 1, 1810, c. 39, § 4, 2 Stat. 605.

Likewise, Congress has passed numerous acts laying tonnage and other duties on foreign ships, in retaliation for duties enforced on United States vessels, but providing that if the President should be satisfied that the countervailing duties were repealed or abolished, then he might by proclamation suspend the duties as to vessels of the nation so acting. Thus, the President has been "authorized" to proclaim the suspension. Act of January 7, 1824, c. 4, § 4, 4 Stat. 3; Act of May 24, 1828, c. 111, 4 Stat. 308; Act of July 24, 1897, c. 13, 30 Stat. 214. Or it has been provided that the suspension should take effect whenever the President "shall be satisfied" that the discriminating duties have been abolished. Act of March 3, 1815, c. 77, 3 Stat. 224; Act of May 31, 1830, c. 219, § 2, 4 Stat. 425. Or that the President "may direct" that the tonnage duty shall cease to be levied in such circumstances. Act of July 13, 1832, c. 207, § 3, 4 Stat. 578. And compare Act of June 26, 1884, c. 121, § 14, 23 Stat. 53, 57.

Other acts, for retaliation against discriminations as to United States commerce, have placed broad powers in the hands of the President, "authorizing" even the total exclusion of vessels of any foreign country so offending (Act of June 19, 1886, c. 421, § 17, 24 Stat. 79, 83), or the increase of duties on its goods or their total exclusion from the United States (Act of June 17, 1930, c. 497, § 388, 46 Stat. 590, 704), or the exclusion of its goods or the detention, in certain circumstances, of its vessels, or the exclusion of its vessels or nationals from privileges similar to those which it has denied to citizens of the United States (Act of September 8, 1916, c. 463, §§ 804-806, 39 Stat.

seen upon comparison. The resolution of March 14, 1912, provides:

“That whenever the President shall find that in any American country conditions of domestic violence exist which are promoted by the use of arms or munitions of war procured from the United States, and shall make proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the Presi-

756, 799-800). As to discriminations by particular countries, it has been made lawful for the President, by proclamation, which he “may in his discretion, apply . . . to any part or all” of the subjects named, to exclude certain goods of the offending country, or its vessels. Act of March 3, 1887, c. 339, 24 Stat. 475. And compare Act of July 26, 1892, c. 248, 27 Stat. 267. Compare, also, authority given the Postmaster General to reduce or enlarge rates of foreign postage, among other things, for the purpose of counteracting any adverse measures affecting our postal intercourse with foreign countries. Act of March 3, 1851, c. 20, § 2, 9 Stat. 587, 589.

The President has been “authorized” to suspend an act providing for the exercise of judicial functions by ministers, consuls and other officers of the United States in the Ottoman dominions and Egypt whenever he “shall receive satisfactory information” that the governments concerned have organized tribunals likely to secure to United States citizens the same impartial justice enjoyed under the judicial functions exercised by the United States officials. Act of March 23, 1874, c. 62, 18 Stat. 23.

Congress has also passed acts for the enforcement of treaties or conventions, to be effective only upon proclamation of the President. Some of them may be noted which “authorize” the President to make proclamation when he shall be “satisfied” or shall receive “satisfactory evidence” that the other nation has complied: Act of August 5, 1854, c. 269, §§ 1, 2, 10 Stat. 587; Act of March 1, 1873, c. 213, §§ 1, 2, 17 Stat. 482; Act of August 15, 1876, c. 290, 19 Stat. 200; Act of December 17, 1903, c. 1, § 1, 33 Stat. 3. Cf. Act of June 11, 1864, c. 116, § 1, 13 Stat. 121; Act of February 21, 1893, c. 150, 27 Stat. 472.

Where appropriate, Congress has provided that violation of the President’s proclamations authorized by the foregoing acts shall be penalized. See, *e. g.*, Act of June 19, 1886; Act of March 3, 1887; Act of September 8, 1916; Act of June 17, 1930—all *supra*.

dent shall prescribe any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress.

"SEC. 2. That any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both."

The third resolution is in substantially the same terms, but extends to any country in which the United States exercises extraterritorial jurisdiction, and provides for the President's action not only when conditions of domestic violence exist which *are* promoted, but also when such conditions *may be* promoted, by the use of such arms or munitions of war.

We had occasion to review these embargo and kindred acts in connection with an exhaustive discussion of the general subject of delegation of legislative power in a recent case, *Panama Refining Co. v. Ryan*, 293 U. S. 388, 421-422, and in justifying such acts, pointed out that they confided to the President "an authority which was cognate to the conduct by him of the foreign relations of the government."

The result of holding that the joint resolution here under attack is void and unenforceable as constituting an unlawful delegation of legislative power would be to stamp this multitude of comparable acts and resolutions as likewise invalid. And while this court may not, and should not, hesitate to declare acts of Congress, however many times repeated, to be unconstitutional if beyond all rational doubt it finds them to be so, an impressive array of legislation such as we have just set forth, enacted by nearly every Congress from the beginning of our national existence to the present day, must be given unusual weight in the process of reaching a correct determination of the problem. A legislative practice such as we have here, evidenced not by only occasional instances,

but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined.

In *The Laura*, 114 U. S. 411, 416, this court answered a challenge to the constitutionality of a statute authorizing the Secretary of the Treasury to remit or mitigate fines and penalties in certain cases, by repeating the language of a very early case (*Stuart v. Laird*, 1 Cranch 299, 309) that the long practice and acquiescence under the statute was a "practical exposition . . . too strong and obstinate to be shaken or controlled. Of course, the question is at rest, and ought not now to be disturbed." In *Burrow-Giles Lithographic Co. v. Sarony*, 111 U. S. 53, 57, the constitutionality of R. S. § 4952, conferring upon the author, inventor, designer or proprietor of a photograph certain rights, was involved. Mr. Justice Miller, speaking for the court, disposed of the point by saying: "The construction placed upon the Constitution by the first act of 1790, and the act of 1802, by the men who were contemporary with its formation, many of whom were members of the convention which framed it, is of itself entitled to very great weight, and when it is remembered that the rights thus established have not been disputed during a period of nearly a century, it is almost conclusive."

In *Field v. Clark*, 143 U. S. 649, 691, this court declared that ". . . the practical construction of the Constitution, as given by so many acts of Congress, and embracing almost the entire period of our national existence, should not be overruled, unless upon a conviction that such legislation was clearly incompatible with the supreme law of the land." The rule is one which has been stated and applied many times by this court. As examples, see

*Ames v. Kansas*, 111 U. S. 449, 469; *McCulloch v. Maryland*, 4 Wheat. 316, 401; *Downes v. Bidwell*, 182 U. S. 244, 286.

The uniform, long-continued and undisputed legislative practice just disclosed rests upon an admissible view of the Constitution which, even if the practice found far less support in principle than we think it does, we should not feel at liberty at this late day to disturb.

We deem it unnecessary to consider, *seriatim*, the several clauses which are said to evidence the unconstitutionality of the Joint Resolution as involving an unlawful delegation of legislative power. It is enough to summarize by saying that, both upon principle and in accordance with precedent, we conclude there is sufficient warrant for the broad discretion vested in the President to determine whether the enforcement of the statute will have a beneficial effect upon the reestablishment of peace in the affected countries; whether he shall make proclamation to bring the resolution into operation; whether and when the resolution shall cease to operate and to make proclamation accordingly; and to prescribe limitations and exceptions to which the enforcement of the resolution shall be subject.

*Second.* The second point raised by the demurrer was that the Joint Resolution never became effective because the President failed to find essential jurisdictional facts; and the third point was that the second proclamation of the President operated to put an end to the alleged liability of appellees under the Joint Resolution. In respect of both points, the court below overruled the demurrer, and thus far sustained the government.

The government contends that upon an appeal by the United States under the Criminal Appeals Act from a decision holding an indictment bad, the jurisdiction of the court does not extend to questions decided in favor of the United States, but that such questions may only be re-

viewed in the usual way after conviction. We find nothing in the words of the statute or in its purposes which justifies this conclusion. The demurrer in the present case challenges the validity of the statute upon three separate and distinct grounds. If the court below had sustained the demurrer without more, an appeal by the government necessarily would have brought here for our determination all of these grounds, since in that case the record would not have disclosed whether the court considered the statute invalid upon one particular ground or upon all of the grounds alleged. The judgment of the lower court is that the statute is invalid. Having held that this judgment cannot be sustained upon the particular ground which that court assigned, it is now open to this court to inquire whether or not the judgment can be sustained upon the rejected grounds which also challenge the validity of the statute and, therefore, constitute a proper subject of review by this court under the Criminal Appeals Act. *United States v. Hastings*, 296 U. S. 188, 192.

In *Langnes v. Green*, 282 U. S. 531, where the decree of a district court had been assailed upon two grounds and the circuit court of appeals had sustained the attack upon one of such grounds only, we held that a respondent in certiorari might nevertheless urge in this court in support of the decree the ground which the intermediate appellate court had rejected. That principle is applicable here.

We proceed, then, to a consideration of the second and third grounds of the demurrers which, as we have said, the court below rejected.

1. The Executive proclamation recites, "I have found that the prohibition of the sale of arms and munitions of war in the United States to those countries now engaged in armed conflict in the Chaco may contribute to the reëstablishment of peace between those countries,

and that I have consulted with the governments of other American Republics *and have been assured of the coöperation of such governments as I have deemed necessary as contemplated by the said joint resolution.*" This finding satisfies every requirement of the Joint Resolution. There is no suggestion that the resolution is fatally uncertain or indefinite; and a finding which follows its language, as this finding does, cannot well be challenged as insufficient.

But appellees, referring to the words which we have italicized above, contend that the finding is insufficient because the President does not declare that the coöperation of such governments as he deemed necessary included any American republic and, therefore, the recital contains no affirmative showing of compliance in this respect with the Joint Resolution. The criticism seems to us wholly wanting in substance. The President recites that he has consulted with the governments of other American republics, and that he has been assured of the coöperation of such governments as he deemed necessary *as contemplated by the joint resolution.* These recitals, construed together, fairly include within their meaning American republics.

2. The second proclamation of the President, revoking the first proclamation, it is urged, had the effect of putting an end to the Joint Resolution, and in accordance with a well-settled rule, no penalty could be enforced or punishment inflicted thereafter for an offense committed during the life of the Joint Resolution in the absence of a provision in the resolution to that effect. There is no doubt as to the general rule or as to the absence of a saving clause in the Joint Resolution. But is the case presented one which makes the rule applicable?

It was not within the power of the President to repeal the Joint Resolution; and his second proclamation did not

purport to do so. It "revoked" the first proclamation; and the question is, did the revocation of the proclamation have the effect of abrogating the resolution or of precluding its enforcement in so far as that involved the prosecution and punishment of offenses committed during the life of the first proclamation? We are of opinion that it did not.

Prior to the first proclamation, the Joint Resolution was an existing law, but dormant, awaiting the creation of a particular situation to render it active. No action or lack of action on the part of the President could destroy its potentiality. Congress alone could do that. The happening of the designated events—namely, the finding of certain conditions and the proclamation by the President—did not call the law into being. It created the occasion for it to function. The second proclamation did not put an end to the law or affect what had been done in violation of the law. The effect of the proclamation was simply to remove for the future, a condition of affairs which admitted of its exercise.

We should have had a different case if the Joint Resolution had expired by its own terms upon the issue of the second proclamation. Its operative force, it is true, was limited to the period of time covered by the first proclamation. And when the second proclamation was issued, the resolution ceased to be a rule for the future. It did not cease to be the law for the antecedent period of time. The distinction is clearly pointed out by the Superior Court of Judicature of New Hampshire in *Stevens v. Diamond*, 6 N. H. 330, 332, 333. There, a town by-law provided that if certain animals should be found going at large between the first day of April and the last day of October, etc., the owner would incur a prescribed penalty. The trial court directed the jury that the by-law, being in force for a year only, had expired so that the defendant could not be called upon to answer for a violation which

occurred during the designated period. The state appellate court reversed, saying that when laws "expire by their own limitation, or are repealed, they cease to be the law in relation to the past, as well as the future, and can no longer be enforced in any case. No case is, however, to be found in which it was ever held before that they thus ceased to be law, unless they expired by express limitation in themselves, or were repealed. It has never been decided that they cease to be law, merely because the time they were intended to regulate had expired. . . . A very little consideration of the subject will convince any one that a limitation of the time to which a statute is to apply, is a very different thing from the limitation of the time a statute is to continue in force."

The first proclamation of the President was in force from the 28th day of May, 1934, to the 14th day of November, 1935. If the Joint Resolution had in no way depended upon Presidential action, but had provided explicitly that, at any time between May 28, 1934, and November 14, 1935, it should be unlawful to sell arms or munitions of war to the countries engaged in armed conflict in the Chaco, it certainly could not be successfully contended that the law would expire with the passing of the time fixed in respect of offenses committed during the period.

The judgment of the court below must be reversed and the cause remanded for further proceedings in accordance with the foregoing opinion.

*Reversed.*

MR. JUSTICE McREYNOLDS does not agree. He is of opinion that the court below reached the right conclusion and its judgment ought to be affirmed.

MR. JUSTICE STONE took no part in the consideration or decision of this case.

KENTUCKY WHIP & COLLAR CO. v. ILLINOIS  
CENTRAL RAILROAD CO.

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

No. 138. Argued November 20, 1936.—Decided January 4, 1937.

1. The power of Congress to regulate interstate commerce is plenary and subject to no limitations other than are prescribed in the Constitution. P. 345.
2. Congress may prevent interstate transportation from being used to bring into a State articles which are innocuous in themselves, but the local traffic in which, because of its harmful consequences, has been constitutionally forbidden by the State. *Hammer v. Dagenhart*, 247 U. S. 251, distinguished. P. 348.
3. While the power to regulate interstate commerce resides in the Congress, which must determine its own policy, the Congress may shape that policy in the light of the fact that the transportation in interstate commerce, if permitted, would aid in the frustration of valid state laws for the protection of persons and property. P. 347.
4. In the exercise of its control over interstate commerce, the means employed by the Congress may have the quality of police regulations. P. 346.
5. The Act of July 24, 1935, known as the Ashurst-Sumners Act, makes it unlawful to transport in interstate or foreign commerce goods made by convict labor into any State where the goods are intended to be received, possessed, sold, or used in violation of its laws, and requires that packages containing convict-made goods shipped in interstate commerce shall be plainly labeled so as to show the names and addresses of shipper and consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced. Violation is punished by fine and forfeiture. *Held*:
  - (1) Within the federal power over commerce and consistent with due process of law; not an attempt to delegate authority to the State, nor an usurpation of state power, nor an assumption of power enlarged by state action. P. 351.
  - (2) Where the subject of commerce is one as to which the power of the State may constitutionally be exerted by restriction or prohibition in order to prevent harmful consequences, the Con-

gress may, if it sees fit, put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy. P. 352.

(3) The requirement of labels was appropriate to the prohibition against transportation. P. 352.

(4) The fact that the labeling was required in all shipments of convict-made goods, regardless of the law of the State of destination, does not invalidate the provision, as its scope could reasonably be deemed to be necessary to accomplish the legitimate purpose of the Act. P. 354.

84 F. (2d) 168, affirmed.

CERTIORARI\* to review the affirmance of a decree of the District Court, 12 F. Supp. 37, which dismissed a bill brought by the present petitioner to compel the respondent railroad company to accept numerous shipments of convict-made goods.

*Mr. Charles I. Dawson*, with whom *Mr. A. Shelby Winstead* was on the brief, for petitioner.

Congress cannot prohibit the movement in interstate commerce of useful and harmless articles of commerce made by convict labor. *Hammer v. Dagenhart*, 247 U. S. 251, 269.

This Court, in a long line of cases, has recognized that the regulation of interstate commerce in certain articles and as to certain practices, which are inimical to the health, safety, morals, or general welfare of the public, can only be accomplished by prohibiting the use of the instrumentalities of interstate commerce in the transportation of such articles, or in facilitating and making effective such practices.

In every one of those cases the prohibition was justified by the Court, not because of any power in Congress to prohibit movement of ordinary articles of commerce, but as an exercise of the power to regulate,—prohibition in those cases being necessary in order to accomplish regu-

\*See Table of Cases Reported in this volume.

lation. As to useful and harmless articles, no regulation will be sustained where the regulation has no reasonable relation to facilitating or protecting interstate commerce.

Thus it is clear that Congress cannot, as an exercise of its independent will or in order to accommodate its regulations to state laws, prohibit interstate commerce in useful and harmless articles. *Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311. In the exercise of its power to regulate commerce Congress is subject to the Fifth Amendment. *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555.

Congress has no power to look beyond the article itself. It can consider only the inherently evil or harmful uses for which it is designed. It has no power under the commerce clause, to consider the evils, if any there be, in the manufacture and production of the article. If any power resides anywhere to regulate manufacture or production, that power is in the State. It has been so held by this Court in an unbroken line of decisions almost from the beginning of the Republic down to and including the very recent opinions dealing with so-called New Deal legislation, purporting to have been enacted under the commerce clause.

Congress was seeking the same end in the Child Labor Act as was sought in the Act here under consideration,—the protection of presumably adequately compensated labor from competition with cheaper labor. If Congress cannot close the channels of interstate commerce to goods manufactured by child labor, how is it so empowered against goods made by convict labor?

*Whitfield v. Ohio*, 297 U. S. 431, involved the power of Congress to divest shipments of their interstate character after receipt by the consignee. *In re Rahrer*, 140 U. S. 545; *Rhodes v. Iowa*, 170 U. S. 412.

This power of Congress was not considered by the Court to be confined to those articles which are fit subjects for the exercise of the State police power. The *Rahrer* case contains no language indicating such a limitation. Cf. *Rhodes v. Iowa*, 170 U. S. 412.

The two cases last cited clearly establish: First, that Congress, without being guilty of delegating any of its power under the commerce clause, may divest an article shipped in interstate commerce of its interstate character after its delivery to the consignee and before sale in the original package; and, second, that the character of the article has nothing to do with the exercise of the power, and that therefore the power may be exercised with reference to useful and harmless articles of commerce, as well as with reference to articles which are commonly considered as fit subjects for the exercise of the police power. It is very doubtful if there is any really sound basis for the proposition that interstate commerce was intended by the framers of the Constitution to protect the consignee of an interstate article in the sale thereof in the original package. Logically, it would appear that an interstate transaction involving the sale of merchandise is concluded when the article had been delivered to the consignee. State regulation of the sale or the use of the article after its receipt by the consignee can, at most, only indirectly and incidentally affect interstate commerce in its fundamental essentials. The idea that interstate commerce protects the consignee in original package sales apparently grew out of the opinion of this Court in *Brown v. Maryland*, 12 Wheat. 419, 446, 447. In that case, however, the Court was not dealing with commerce among the States. See *Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*, 8 Wall. 148; *Sonneborn Bros. v. Cureton*, 262 U. S. 506. The power of Congress to enact the Hawes-Cooper Act is clear under the *Rahrer* and *Rhodes* cases;

it was unnecessary in the *Whitfield* case to enter into any consideration of the nature of convict-made goods or the effect of their competition with the products of free labor; and we respectfully submit that the discussion of these questions in the *Whitfield* case should not be permitted to weigh against our contentions here. This is especially true, because if what we consider to be *dicta* in the *Whitfield* case is accepted as binding in this case, then this Court must wholly disregard its well-considered opinions in *Clark Distilling Co. v. Western Maryland Ry.*, 242 U. S. 311, and *Hammer v. Dagenhart*, 247 U. S. 251.

The opinion in the *Clark Distilling Company* case shows that the Webb-Kenyon Act was sustained solely because of the nature of the article (intoxicating liquor) therein dealt with.

*Weber v. Freed*, 239 U. S. 325; *Scharrenberg v. Dollar Steamship Co.*, 245 U. S. 122, and *Church of the Holy Trinity v. United States*, 143 U. S. 457, involved the power of Congress to regulate commerce with foreign countries—a much broader power than that over commerce among the States.

Wild animals or birds taken, killed, possessed or shipped in violation of state law are, of course, contraband, and Congress (as by the Lacey Act) may forbid interstate shipment of them, just as it may forbid interstate movement of stolen or other illegally possessed goods. *Griswold v. President*, 82 F. (2d) 922, distinguished.

Congress has no power to exclude from interstate commerce convict-made goods because not labeled as such. The fallacy of the argument that such a label tends to protect against fraud and imposition is thoroughly exposed in the case of *People v. Hawkins*, 157 N. Y. 1. See *Opinion of the Justices*, 211 Mass. 605; *People v. Raynes*, 120 N. Y. S. 1053, aff'd, 198 N. Y. 539; *Ex parte Hayden*, 147 Cal. 649; *Matter of Foley*, 172 Cal. 744; *Matei v. Hecke*, 99 Cal. 747. Distinguishing: *Pacific States Box*

& *Basket Co. v. White*, 296 U. S. 176; *Detweiler v. Welch*, 46 F. (2d) 75.

Section 1 of the Act is invalid even if Congress possesses power to require labeling. The Act not only operates to require labeling where the laws of the State to which the goods are shipped require it, but it also operates absolutely to prohibit shipment in interstate commerce to those States which prohibit the sale of convict-made goods, if intended to be used in violation of the laws of such States.

Section 2 must fall, 1st, because Congress is without power to require the containers to be labeled; and, 2d, because it is not separable from the other provisions of the Act.

*Mr. Blakey Helm*, with whom *Messrs. John C. Doolan, E. C. Craig*, and *Charles N. Burch* were on the brief, for respondent.

*Assistant Attorney General Dickinson*, with whom *Solicitor General Reed* and *Mr. Hugh B. Cox* were on the brief, for the United States, as *amicus curiae*, by special leave of Court.

The history of congressional legislation with respect to interstate commerce in goods made by convict labor parallels the history of congressional legislation with respect to interstate commerce in intoxicating liquors. The Hawes-Cooper Act is similar to the Wilson Act, sustained in *In re Rahrer*, 140 U. S. 545; and the Ashurst-Sumners Act is similar to the Webb-Kenyon Act, sustained in *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311.

The constitutionality of § 1 of the Ashurst-Sumners Act follows from *Whitfield v. Ohio*, 297 U. S. 431, and *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311. Two conclusions follow from the opinion in the *Whitfield* case: (1) a State may prohibit sale within

its boundaries of goods made by convict labor if that prohibition does not illegally discriminate against the citizens of other States, and subject to the paramount power of Congress to regulate interstate commerce; (2) in the exercise of its power to regulate interstate commerce Congress can divest goods made by convict labor of their immunity as objects of interstate commerce and subject them to state regulation at an earlier point of time than would be the case in the absence of congressional legislation. In sustaining the constitutionality of the Hawes-Cooper Act this Court relied on the authority of *In re Rahrer*, 140 U. S. 545. If, as this Court said in *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, the constitutionality of the Webb-Kenyon Act inevitably followed from the decision in *In re Rahrer*, then the conclusion is inescapable that the constitutionality of the Ashurst-Sumners Act follows from the decision in *Whitfield v. Ohio*, 297 U. S. 431.

Petitioners' argument assumes without warrant that the use of the instrumentalities of interstate commerce for the purpose of violating state laws is legitimate and proper. There is no merit in petitioner's insistence upon the harmless and useful qualities of prison-made goods. It is the character of the traffic and not the character of the goods which is important, as is indicated by the fact that stolen motor cars, which do not differ in their inherent characteristics as objects from motor cars not stolen, may validly be barred from the channels of interstate commerce. *Brooks v. United States*, 267 U. S. 432. Whatever the intrinsic character of goods may be, their transportation in interstate commerce with intent to sell or to use them in violation of state laws is not harmless and innocent.

In the exercise of its power to regulate interstate commerce, Congress can restrict or prohibit any use of the instrumentalities of that commerce for an evil or im-

proper purpose; and its power in that respect is not limited to restricting or prohibiting commerce in objects which are inherently deleterious or dangerous. This Court has sustained prohibitions of interstate commerce in objects which were not intrinsically evil, deleterious, or dangerous. *Champion v. Ames*, 188 U. S. 321; *Brooks v. United States*, 267 U. S. 432; *Weeks v. United States*, 245 U. S. 618; *Seven Cases v. United States*, 239 U. S. 510; *Caminetti v. United States*, 242 U. S. 470; *Hoke v. United States*, 227 U. S. 308; *Gooch v. United States*, 82 F. (2d) 534, cert. den., 298 U. S. 658. These decisions are not consistent with petitioner's contention that there is in the nature of the commerce power itself, quite apart from any question of due process of law, a limitation which prevents that power from operating upon an article of commerce unless the article is inherently evil or deleterious as an article.

This Court has often recognized that the use of the instrumentalities of interstate commerce for the purpose of evading or violating state laws is an evil which the power of Congress over interstate commerce may be invoked to destroy. *Gibbons v. Ogden*, 9 Wheat. 1, 205, and cases *supra*. The language in *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, upon which petitioner relies, shows that the Court considered the qualities of the object regulated not as determinative of the scope of the commerce power but as relevant to the question of due process of law. This Court could not have taken the view in that case that intoxicating liquor was so intrinsically evil or deleterious that it was not a legitimate object of commerce, without overruling previous decisions. Both before and after *In re Rahrer*, 140 U. S. 545, this Court held that intoxicating liquor was a legitimate object of commerce. See *Leisy v. Hardin*, 135 U. S. 100, and *Louisville & Nashville R. Co. v. Cook Brewing Co.*, 223 U. S. 70. It was only because liquor was a legiti-

mate object of commerce that such legislation as the Wilson Act and the Webb-Kenyon Act was necessary, in order to enable the several States to enforce their domestic policies. See *Plumley v. Massachusetts*, 155 U. S. 461, 474; *Peirce v. New Hampshire*, 5 How. 504, 599-600. Cf. *Schollenberger v. Pennsylvania*, 171 U. S. 1.

Section 1 of the Ashurst-Sumners Act is a regulation of an evil which inheres in interstate commerce; it is not an attempt to regulate a matter of local concern; hence *Hammer v. Dagenhart*, 247 U. S. 251, has no application.

Section 1 does not violate the due process clause of the Fifth Amendment. Its provisions are not unreasonable, arbitrary, or capricious unless it be assumed that the state legislation which calls those provisions into operation is itself unreasonable, arbitrary, or capricious. See *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 332. The constitutionality of such state legislation was established by the decision of this Court in *Whitfield v. Ohio*, 297 U. S. 431, 439-440. Nothing in the Fourteenth or Fifth Amendment prevents a State or the Federal Government, when it acts within the scope of one of its granted powers, from regulating even harmless objects and occupations for the broad purpose of promoting the general welfare. *Nebbia v. New York*, 291 U. S. 502, 524. See also *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Mugler v. Kansas*, 123 U. S. 623, 633; *Murphy v. California*, 225 U. S. 623, 628.

Section 2 of the Act is valid. Congress may require the labeling of goods moving in interstate commerce. *Seven Cases v. United States*, 239 U. S. 510; *Weeks v. United States*, 245 U. S. 618. Cf. *United States v. Freeman*, 239 U. S. 117. The provisions of § 2 are intended to aid in the enforcement of § 1; and they are reasonable and appropriate means to that end. It is true that § 2 requires all packages containing goods

made by convict labor to be labeled, regardless of the law of the State of their destination, but "it does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential, in the legislative judgment, to accomplish a purpose within the admitted power of the Government." *Purity Extract Co. v. Lynch*, 226 U. S. 192, 201. See *Ruppert v. Caffey*, 251 U. S. 264, and *Everard's Breweries v. Day*, 265 U. S. 545.

By leave of Court, briefs of *amici curiae* were filed by Messrs. *John J. Bennett, Jr.*, Attorney General of New York, and *Henry Epstein*, Solicitor General, on behalf of the State of New York; Messrs. *Harry B. Hawes*, *Raymond A. Walsh*, and *Bon Geaslin*, on behalf of the Cordage Institute and the American Federation of Labor; and *Mr. Harry H. Peterson*, Attorney General of Minnesota, on behalf of the State of Minnesota, all in support of the validity of the Ashurst-Sumners Act.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

This controversy relates to the constitutional validity of the Act of Congress of July 24, 1935, known as the Ashurst-Sumners Act. 49 Stat. 494.

The Act makes it unlawful knowingly to transport in interstate or foreign commerce goods made by convict labor into any State where the goods are intended to be received, possessed, sold, or used in violation of its laws. Goods made by convicts on parole or probation, or made in federal penal and correctional institutions for use by the Federal Government, are excepted. Packages containing convict-made goods must be plainly labeled so as to show the names and addresses of shipper and consignee, the nature of the contents, and the name and

location of the penal or reformatory institution where produced.<sup>1</sup> Violation is punished by fine and forfeiture.<sup>2</sup>

Petitioner manufactures in Kentucky, with convict labor, horse collars, harness and strap goods which it markets in various States. It tendered to respondent, a common carrier, twenty-five separate shipments for transportation in interstate commerce, of which ten were consigned to customers in States whose laws prohibited the

---

<sup>1</sup> Sections 1 and 2 are as follows:

"That it shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners (except convicts or prisoners on parole or probation), or in any penal or reformatory institution, from one State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, where said goods, wares, and merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise in violation of any law of such State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof. Nothing herein shall apply to commodities manufactured in Federal penal and correctional institutions for use by the Federal Government.

"Sec. 2. All packages containing any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, when shipped or transported in interstate or foreign commerce shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the penal or reformatory institution where produced wholly or in part may be readily ascertained on an inspection of the outside of such package."

<sup>2</sup> *Id.*, §§ 3 and 4.

sale of convict-made goods within their respective borders, five to States whose laws did not prohibit such sale but required that the goods should be plainly marked so as to show that they were made by convicts, and the remaining ten to States whose laws imposed no restriction upon sale or possession. None of the packages were labeled as required by the Act of Congress and, in obedience to the Act, respondent refused to accept the shipments.

Petitioner then brought this suit for a mandatory injunction to compel the transportation. The District Court dismissed the bill and the Circuit Court of Appeals affirmed the decree. The District Court declared the Act to be invalid so far as it prohibited transportation of convict-made goods into States which proscribed sale or possession, but sustained the provision which required labeling. 12 F. Supp. 37. The Circuit Court of Appeals sustained the Act in its entirety. 84 F. (2d) 168. This Court granted certiorari.

Petitioner contends (1) that the Congress is without constitutional authority to prohibit the movement in interstate commerce of useful and harmless articles made by convict labor and (2) that the Congress has no power to exclude from interstate commerce convict-made goods which are not labeled as such.

*First.* The commerce clause (Art. I, § 8, par. 3) confers upon the Congress "the power to regulate, that is, to prescribe the rule by which commerce is to be governed." This power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons v. Ogden*, 9 Wheat. 1, 196. By the Act now before us, the Congress purports to establish a rule governing interstate transportation, which is unquestionably interstate commerce. The question is whether this rule goes beyond the authority to "regulate."

Petitioner's argument necessarily recognizes that in certain circumstances an absolute prohibition of interstate transportation is constitutional regulation. The power to prohibit interstate transportation has been upheld by this Court in relation to diseased livestock,<sup>3</sup> lottery tickets,<sup>4</sup> commodities owned by the interstate carrier transporting them, except such as may be required in the conduct of its business as a common carrier,<sup>5</sup> adulterated and misbranded articles, under the Pure Food and Drugs Act,<sup>6</sup> women, for immoral purposes,<sup>7</sup> intoxicating liquors,<sup>8</sup> diseased plants,<sup>9</sup> stolen motor vehicles,<sup>10</sup> and kidnaped persons.<sup>11</sup>

The decisions sustaining this variety of statutes disclose the principles deemed to be applicable. We have frequently said that in the exercise of its control over interstate commerce, the means employed by the Con-

<sup>3</sup> Act of May 29, 1884, 23 Stat. 31; *Reid v. Colorado*, 187 U. S. 137. See *Champion v. Ames*, 188 U. S. 321, 358, 359.

<sup>4</sup> Act of March 2, 1895, 28 Stat. 963; *Champion v. Ames*, 188 U. S. 321.

<sup>5</sup> Act of June 29, 1906, 34 Stat. 584; *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 415.

<sup>6</sup> Act of June 30, 1906, 34 Stat. 768; *Hipolite Egg Co. v. United States*, 220 U. S. 45; *Seven Cases v. United States*, 239 U. S. 510.

<sup>7</sup> Act of June 25, 1910, 36 Stat. 825; *Hoke v. United States*, 227 U. S. 308; *Caminetti v. United States*, 242 U. S. 470.

<sup>8</sup> Act of March 1, 1913, 37 Stat. 699; Act of March 3, 1917, 39 Stat. 1069; *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311; *United States v. Hill*, 248 U. S. 420; *McCormack & Co. v. Brown*, 286 U. S. 131.

<sup>9</sup> Act of March 4, 1917, 39 Stat. 1165; *Oregon-Washington R. & N. Co. v. Washington*, 270 U. S. 87.

<sup>10</sup> Act of October 29, 1919, 41 Stat. 324; *Brooks v. United States*, 267 U. S. 432.

<sup>11</sup> Act of June 22, 1932, 47 Stat. 326; Act of May 18, 1934, 48 Stat. 781; *Gooch v. United States*, 297 U. S. 124.

See, also, Act of May 25, 1900, 31 Stat. 187; *Rupert v. United States*, 181 Fed. 87; Act of July 3, 1918, 40 Stat. 755; *Bogle v. White*, 61 F. (2d) 930.

gress may have the quality of police regulations. *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 215; *Hoke v. United States*, 227 U. S. 308, 323; *Seven Cases v. United States*, 239 U. S. 510, 515. The power was defined in broad terms in *Brooks v. United States*, 267 U. S. 432, 436, 437: "Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty or the spread of any evil or harm to the people of other States from the State of origin. In doing this it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce."

The anticipated evil or harm may proceed from something inherent in the subject of transportation as in the case of diseased or noxious articles, which are unfit for commerce. *Hipolite Egg Co. v. United States*, 220 U. S. 45; *Oregon-Washington R. & N. Co. v. Washington*, 270 U. S. 87, 99. Or the evil may lie in the purpose of the transportation, as in the case of lottery tickets, or the transportation of women for immoral purposes. *Champion v. Ames*, 188 U. S. 321, 358; *Hoke v. United States*, *supra*; *Caminetti v. United States*, 242 U. S. 470, 486. The prohibition may be designed to give effect to the policies of the Congress in relation to the instrumentalities of interstate commerce, as in the case of commodities owned by interstate carriers. *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 415. And, while the power to regulate interstate commerce resides in the Congress, which must determine its own policy, the Congress may shape that policy in the light of the fact that the transportation in interstate commerce, if permitted, would aid in the frustration of valid state laws for the protection of persons and property. *Brooks v. United States*, *supra*; *Gooch v. United States*, 297 U. S. 124.

The contention is inadmissible that the Act of Congress is invalid merely because the horse collars and harness

which petitioner manufactures and sells are useful and harmless articles. The motor vehicles, which are the subject of the transportation prohibited in the National Motor Vehicle Theft Act,<sup>12</sup> are in themselves useful and proper subjects of commerce, but their transportation by one who knows they have been stolen is "a gross misuse of interstate commerce" and the Congress may properly punish it "because of its harmful result and its defeat of the property rights of those whose machines against their will are taken into other jurisdictions." *Brooks v. United States, supra*, p. 439. Similarly, the object of the Federal Kidnaping Act<sup>13</sup> is to aid in the protection of the personal liberty of one who has been unlawfully seized or carried away. *Gooch v. United States, supra*; compare *United States v. Wheeler*, 254 U. S. 281.

On the same general principle, the Congress may prevent interstate transportation from being used to bring into a State articles the traffic in which the State has constitutional authority to forbid, and has forbidden, in its internal commerce. In that view, we sustained the acts of Congress designed to prevent the use of interstate transportation to hamper the execution of state policy with respect to traffic in intoxicating liquors. This was not because intoxicating liquors were not otherwise legitimate articles of commerce. On the contrary they were recognized as such "by the usages of the commercial world, the laws of Congress and the decisions of courts." *Leisy v. Hardin*, 135 U. S. 100, 110; *In re Rahrer*, 140 U. S. 545, 556; *Louisville & Nashville R. Co. v. Cook Brewing Co.*, 223 U. S. 70, 82. It was because intoxicating liquors were legitimate subjects of commercial intercourse that the States were powerless to interfere with their transportation in interstate commerce. *Bowman v. Chicago & Northwestern Ry. Co.*, 125 U. S. 465, 489; *Leisy v. Hardin*,

<sup>12</sup> See Note 10.

<sup>13</sup> See Note 11.

*supra*, pp. 110, 113; *Rhodes v. Iowa*, 170 U. S. 412; *Vance v. W. A. Vandercook Co.* (No. 1), 170 U. S. 438; *Louisville & Nashville R. Co. v. Cook Brewing Co.*, *supra*. But because of the effects ascribed to the traffic in intoxicating liquors, the States in the exercise of their police power in relation to their internal commerce could restrict or interdict that traffic without violating the Federal Constitution. *Foster v. Kansas*, 112 U. S. 201, 206; *Mugler v. Kansas*, 123 U. S. 623, 657-659. To aid the States in securing the full protection they desired, Congress brought into play its power to regulate interstate commerce.

By the Wilson Act of August 8, 1890,<sup>14</sup> intoxicating liquors transported into any State were subjected upon arrival to the operation of state laws to the same extent as though they had been produced within the State, although still in the original packages. This act was upheld in *In re Rahrer*, *supra*. But the statute did not apply until the transportation was completed by actual delivery to the consignee. *Rhodes v. Iowa*, *supra*, p. 426; *Adams Express Co. v. Kentucky*, 214 U. S. 218, 222; *Louisville & Nashville R. Co. v. Cook Brewing Co.*, *supra*. As "the right to receive" was not affected by the Wilson Act, "such receipt and the possession following from it and the resulting right to use" remained protected by the commerce clause. *Clark Distilling Co. v. Western Maryland Ry. Co.*, 242 U. S. 311, 323. In this situation the Congress passed the Webb-Kenyon Act of March 1, 1913,<sup>15</sup> which prohibited the transportation of intoxicating liquors into any State when it was intended that they should be "received, possessed, sold, or in any manner used," in violation of its laws. The Court upheld the constitutional validity of this Act as a regulation of interstate commerce. *Clark Distilling Co. v. Western Maryland Ry. Co.*, *supra*. It was

<sup>14</sup> 26 Stat. 313.

<sup>15</sup> 37 Stat. 699.

supplemented by the Act of March 3, 1917, known as the Reed Amendment.<sup>16</sup> *United States v. Hill*, 248 U. S. 420, 424.

The ruling in *Hammer v. Dagenhart*, 247 U. S. 251, upon which petitioner relies, in no way contravenes or limits the principle of these decisions. In the *Hammer* case, the Court concluded that the Act of Congress there under consideration had as its aim the placing of local production under federal control. *Id.*, pp. 271, 272. Far from disapproving the decisions we have cited, the Court expressly recognized their authority. "In each of these instances," the Court said, "the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended." *Id.* And within a few months after the *Hammer* case, the Court in *United States v. Hill*, *supra*, emphatically reiterated the doctrine of these cases and, in particular, that of *Clark Distilling Co. v. Western Maryland Ry. Co.*, sustaining the Webb-Kenyon Act.

The course of congressional legislation with respect to convict-made goods has followed closely the precedents as to intoxicating liquors. By the Hawes-Cooper Act of January 19, 1929,<sup>17</sup> the Congress provided that convict-made goods (with certain exceptions) transported into any State should be subject upon arrival, whether in the original packages or otherwise, to the operation of state laws as if produced within the State. In *Whitfield v. Ohio*, 297 U. S. 431, petitioner was charged in the state court in Ohio with selling convict-made goods in violation of the state law. It appeared that the goods had been sold in the original packages as shipped in interstate com-

<sup>16</sup> 39 Stat. 1069.

<sup>17</sup> 45 Stat. 1084.

merce and that there was "nothing harmful, injurious or deleterious" about them. But this Court said that the view of the State of Ohio, that the sale of convict-made goods in competition with the products of free labor was an evil, found ample support in fact and in the similar legislation of a preponderant number of other States. The Court observed that the Congress had prohibited the importation of the products of convict labor.<sup>18</sup> All such legislation, state and federal, proceeded upon the view "that free labor, properly compensated, cannot compete successfully with the enforced and unpaid or underpaid convict labor of the prison." The Court upheld the power of the State, so far as the Federal Constitution is concerned, to base nondiscriminatory legislation upon that conception, and as it appeared that the Ohio statute would be unassailable if made to take effect after sale in the original package, the statute was held to be equally unassailable in the light of the provisions of the Hawes-Cooper Act. As to the validity of the latter Act, the Court followed the decision in *In re Rahrer, supra*, in relation to the Wilson Act.

The Ashurst-Sumners Act as to interstate transportation of convict-made goods has substantially the same provisions as the Webb-Kenyon Act as to intoxicating liquors and finds support in similar considerations. The subject of the prohibited traffic is different, the effects of the traffic are different, but the underlying principle is the same. The pertinent point is that where the subject of commerce is one as to which the power of the State may constitutionally be exerted by restriction or prohibition in order to prevent harmful consequences, the Congress may, if it sees fit, put forth its power to regulate interstate commerce so as to prevent that commerce from being used to impede the carrying out of the state policy.

---

<sup>18</sup> Act of June 17, 1930, 46 Stat. 689.

In the congressional action there is nothing arbitrary or capricious bringing the statute into collision with the requirements of due process of law. The Congress in exercising the power confided to it by the Constitution is as free as the States to recognize the fundamental interests of free labor.<sup>19</sup> Nor has the Congress attempted to delegate its authority to the States. The Congress has not sought to exercise a power not granted or to usurp the police powers of the States. It has not acted on any assumption of a power enlarged by virtue of state action. The Congress has exercised its plenary power, which is subject to no limitation other than that which is found in the Constitution itself. The Congress has formulated its own policy and established its own rule. The fact that it has adopted its rule in order to aid the enforcement of valid state laws affords no ground for constitutional objection.

*Second.* As the Congress could prohibit the interstate transportation of convict-made goods as provided in section one of the Act, the Congress could require packages

---

<sup>19</sup> In the report of the Committee on the Judiciary of the Senate, recommending the passage of the Ashurst-Sumners Act, the Committee said (Sen. Rep. No. 906, 74th Cong., 1st sess.):

“For many years the Congress has considered bills relating to the sale of prison-made goods. Extensive hearings have been held on these measures which have thoroughly revealed the evils attending the sale of such goods, in the open market, in competition with goods manufactured and produced by free labor. These evils impelled the Congress in 1929 to enact the Hawes-Cooper law, by virtue of which prison-made goods, upon their entry and delivery into a State, became subject to the laws of that State.

“At present 21 States, with a population in excess of 75 millions, have enacted laws prohibiting the sale, in the open market, of prison-made goods. This bill is designed to prohibit the transportation of such goods into the States which have thus legislated, in cases in which such goods are to be received or used in violation of the State law. The principle involved in this bill has been frequently sustained by the Supreme Court of the United States.”

containing convict-made goods to be labeled as required by section two. The requirement of labels, disclosing the nature of the contents, the name and location of the penal institution where the goods were produced, and the names and addresses of shippers and consignees, was manifestly reasonable and appropriate for the carrying out of the prohibition. *Seven Cases v. United States, supra; United States v. Freeman*, 239 U. S. 117; *Weeks v. United States*, 245 U. S. 618, 622. The fact that the labeling was required in all shipments of convict-made goods, regardless of the law of the State of destination, does not invalidate the provision, as its scope could reasonably be deemed to be necessary to accomplish the legitimate purpose of the Act. *Otis v. Parker*, 187 U. S. 606, 609; *New York ex rel. Silz v. Hesterberg*, 211 U. S. 31, 40; *Purity Extract Co. v. Lynch*, 226 U. S. 192, 201; *Everard's Breweries v. Day*, 265 U. S. 545, 560.

The decree is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

## DE JONGE v. OREGON.

### APPEAL FROM THE SUPREME COURT OF OREGON.

No. 123. Argued December 9, 1936.—Decided January 4, 1937.

1. The practice of substituting for the evidence a stipulation of facts not shown to have received the approval of the court below, is disapproved. P. 358.
2. Upon appeal from a judgment of a state supreme court sustaining a conviction, this Court in this case takes the indictment as construed by the court below. P. 360.
3. Criminal punishment under a state statute for participation in the conduct of a public meeting, otherwise lawful, merely because the meeting was held under the auspices of an organization which teaches or advocates the use of violence, or other unlawful acts

or methods to effect industrial or political change or revolution, though no such teaching or advocacy attended the meeting in question, violates the constitutional principles of free speech and assembly. P. 362.

The Criminal Syndicalism Law of Oregon, as applied in this case, is invalid.

4. The rights of free speech and peaceable assembly are fundamental rights which are safeguarded against state interference by the due process clause of the Fourteenth Amendment. P. 364.
  5. The fact that these rights are guaranteed specifically by the First Amendment against abridgment by Congress, does not argue their exclusion from the due process clause of the Fourteenth Amendment. *Id.*
  6. The legislature may protect against abuses of the rights of free speech and assembly by dealing with the abuses; the rights themselves must not be curtailed. *Id.*
- 152 Ore. 315; 51 P. (2d) 674, reversed.

APPEAL from the affirmance of a conviction under the Criminal Syndicalism Law of Oregon.

*Mr. Osmond K. Fraenkel*, with whom *Mr. Gus J. Solomon* was on the brief, for appellant.

*Mr. Maurice E. Tarshis*, Deputy District Attorney, Multnomah County, with whom *Mr. James R. Bain*, District Attorney, and *Mr. Willis S. Moore*, Assistant Attorney General of Oregon, were on the brief, for appellee.

The Act as applied to this case is definite and certain and is constitutional. *Whitney v. California*, 274 U. S. 357, 368; *Connally v. General Construction Co.*, 269 U. S. 385, 391; *Miller v. Strahl*, 239 U. S. 426, 434; *Nash v. United States*, 229 U. S. 373, 377; *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86, 108; *State v. Hennessy*, 114 Wash. 351; *State v. Laundry*, 103 Ore. 443, 463; *People v. Ruthenberg*, 229 Mich. 315; *People v. Steelik*, 187 Cal. 361, 373; *People v. Lloyd*, 304 Ill. 23, 35; *State v. Dingman*, 37 Idaho 253, 265; *Berg v. State*, 29 Okla. Cr. Rep. 112,

121; *State v. Worker's Socialist Publishing Co.*, 150 Minn. 406, 407.

The statute explicitly informs every person subject to the jurisdiction of the courts of Oregon that he commits the crime of criminal syndicalism if he presides at, conducts, or assists in conducting a meeting of an organization or group which teaches or advocates criminal syndicalism or sabotage.

The statute does not prohibit peaceful and orderly opposition to government, but only such conduct as may tend to incite to crime, disturb the public peace, or endanger the foundation of organized government and threaten its overthrow by unlawful means.

The right of free speech and assembly is not absolute. A State, in the exercise of its police power, may punish those who abuse this freedom by utterances of the kind aimed at by this statute.

The case is ruled by *Gitlow v. New York*, 268 U. S. 652; and *Whitney v. California*, 274 U. S. 357.

See *Herndon v. Georgia*, 295 U. S. 441; *Carr v. Georgia*, 176 Ga. 747.

The State has determined, through its legislative body, that to preside at, conduct, or assist in conducting a meeting of an organization which has as its objective the advocacy, teaching or affirmative suggestion of crime, sabotage or violence as a means of affecting a change or revolution in industry or government, involves such dangers to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of validity. *Whitney v. California*, *supra*; *Mugler v. Kansas*, 123 U. S. 623, 661. To be unconstitutional, the Act must be arbitrary or unreasonable. *Whitney v. California*, *supra*; *Great Northern Ry. Co. v. Clara City*, 246

U. S. 434, 439. Its wisdom is not for the courts. *Fox v. Washington*, 236 U. S. 273, 278; *State v. Boloff*, 138 Ore. 568, 611.

The sole purpose of the Act is to prevent the advocacy or use of violence by forbidding anyone to preside at, conduct or assist in conducting a meeting of an organization which teaches it. Laws of this type are founded upon the principle that morons, especially those who are class conscious, and who believe that men in high places got there through imposition upon the toilers, are likely to translate into action the words of their voluble leaders. The will of the schemer is often carried out by the acts of the unthinking. *State v. Boloff, supra*, p. 622.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

Appellant, Dirk De Jonge, was indicted in Multnomah County, Oregon, for violation of the Criminal Syndicalism Law of that State.<sup>1</sup> The Act, which we set forth in

---

<sup>1</sup> Oregon Code, 1930, §§ 14-3110-3112—as amended by chapter 459, Oregon Laws, 1933:

“Section 14-3110. Criminal syndicalism hereby is defined to be the doctrine which advocates crime, physical violence, sabotage, or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution.

“Section 14-3111. Sabotage hereby is defined to be intentional and unlawful damage, injury or destruction of real or personal property.

“Section 14-3112. Any person who, by word of mouth or writing, advocates or teaches the doctrine of criminal syndicalism, or sabotage, or who prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any books, pamphlets, paper, hand-bill, poster, document or written or printed matter in any form whatsoever, containing matter advocating criminal syndicalism, or sabotage, or who shall organize or help to organize, or solicit or accept any person to become a member of any society or assemblage of persons which teaches or advocates the doctrine of criminal syndicalism, or sabotage, or any person who shall orally or by writing or by printed matter call together or who shall distribute or circulate

the margin, defines "criminal syndicalism" as "the doctrine which advocates crime, physical violence, sabotage or any unlawful acts or methods as a means of accomplishing or effecting industrial or political change or revolution." With this preliminary definition the Act proceeds to describe a number of offenses, embracing the teaching of criminal syndicalism, the printing or distribution of books, pamphlets, etc., advocating that doctrine, the organization of a society or assemblage which advocates it, and presiding at or assisting in conducting a meeting of such an organization, society or group. The prohibited acts are made felonies, punishable by imprisonment for not less than one year nor more than ten years, or by a fine of not more than \$1,000, or by both.

We are concerned with but one of the described offenses and with the validity of the statute in this particular application. The charge is that appellant assisted in the conduct of a meeting which was called under the auspices of the Communist Party, an organization advocating criminal syndicalism. The defense was that the meeting was public and orderly and was held for a lawful purpose; that while it was held under the auspices of the Communist Party, neither criminal syndicalism nor any unlawful conduct was taught or advocated at the meeting either by appellant or by others. Appellant moved for a direction of acquittal, contending that the statute as applied to him, for merely assisting at a meeting called by the Communist Party at which nothing unlawful was done or advocated, violated the due process clause of the

---

written or printed matter calling together or who shall preside at or conduct or assist in conducting any assemblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndicalism or sabotage is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years, or by a fine of not more than \$1,000, or by both such imprisonment and fine."

Fourteenth Amendment of the Constitution of the United States.

This contention was overruled. Appellant was found guilty as charged and was sentenced to imprisonment for seven years. The judgment was affirmed by the Supreme Court of the State, which considered the constitutional question and sustained the statute as thus applied. 152 Ore. 315; 51 P. (2d) 674. The case comes here on appeal.

The record does not present the evidence adduced at the trial. The parties have substituted a stipulation of facts, which was made and filed after the decision of the Supreme Court of the State and after the Chief Justice of that court had allowed the appeal and had directed transmission here of a certified transcript of the record. We do not approve of that practice, where it does not appear that the stipulation has received the approval of the court, as we think that adherence to our rule as to the preparation of records is important for the protection of the court whose decision is under review as well as of this Court. See Rule 10. But as the question presented in this instance does not turn upon an appreciation of the facts on any disputed point, we turn to the merits.

The stipulation, after setting forth the charging part of the indictment, recites in substance the following: That on July 27, 1934, there was held in Portland, a meeting which had been advertised by handbills issued by the Portland section of the Communist Party; that the number of persons in attendance was variously estimated at from 150 to 300; that some of those present, who were members of the Communist Party, estimated that not to exceed ten to fifteen per cent. of those in attendance were such members; that the meeting was open to the public without charge and no questions were asked of those entering, with respect to their relation to the Communist Party; that the notice of the meeting advertised it as a

protest against illegal raids on workers' halls and homes and against the shooting of striking longshoremen by Portland police; that the chairman stated that it was a meeting held by the Communist Party; that the first speaker dwelt on the activities of the Young Communist League; that the defendant De Jonge, the second speaker, was a member of the Communist Party and went to the meeting to speak in its name; that in his talk he protested against conditions in the county jail, the action of city police in relation to the maritime strike then in progress in Portland and numerous other matters; that he discussed the reason for the raids on the Communist headquarters and workers' halls and offices; that he told the workers that these attacks were due to efforts on the part of the steamship companies and stevedoring companies to break the maritime longshoremen's and seamen's strike; that they hoped to break the strike by pitting the longshoremen and seamen against the Communist movement; that there was also testimony to the effect that defendant asked those present to do more work in obtaining members for the Communist Party and requested all to be at the meeting of the party to be held in Portland on the following evening and to bring their friends to show their defiance to local police authority and to assist them in their revolutionary tactics; that there was also testimony that defendant urged the purchase of certain communist literature which was sold at the meeting; that while the meeting was still in progress it was raided by the police; that the meeting was conducted in an orderly manner; that defendant and several others who were actively conducting the meeting were arrested by the police and that on searching the hall the police found a quantity of communist literature.

The stipulation then set forth various extracts from the literature of the Communist Party to show its advocacy of criminal syndicalism. The stipulation does not disclose

any activity by the defendant as a basis for his prosecution other than his participation in the meeting in question. Nor does the stipulation show that the communist literature distributed at the meeting contained any advocacy of criminal syndicalism or of any unlawful conduct. It was admitted by the Attorney General of the State in his argument at the bar of this Court that the literature distributed in the meeting was not of that sort and that the extracts contained in the stipulation were taken from communist literature found elsewhere. Its introduction in evidence was for the purpose of showing that the Communist Party as such did advocate the doctrine of criminal syndicalism, a fact which is not disputed on this appeal.

While the stipulation of facts is but a condensed statement, still much of it is irrelevant in the light of the particular charge of the indictment as construed by the Supreme Court. The indictment charged as follows:

"The said Dirk De Jonge, Don Cluster, Edward R. Denny and Earl Stewart on the 27th day of July, A. D., 1934, in the county of Multnomah and State of Oregon, then and there being, did then and there unlawfully and feloniously preside at, conduct and assist in conducting an assemblage of persons, organization, society and group, to-wit: The Communist Party, a more particular description of which said assemblage of persons, organization, society and group is to this grand jury unknown, which said assemblage of persons, organization, society and group did then and there unlawfully and feloniously teach and advocate the doctrine of criminal syndicalism and sabotage, contrary to the statutes in such cases made and provided, and against the peace and dignity of the State of Oregon."

On the theory that this was a charge that criminal syndicalism and sabotage were advocated at the meeting in question, defendant moved for acquittal insisting that the evidence was insufficient to warrant his conviction.

The trial court denied his motion and error in this respect was assigned on appeal. The Supreme Court of the State put aside that contention by ruling that the indictment did not charge that criminal syndicalism or sabotage was advocated at the meeting described in the evidence, either by defendant or by anyone else. The words of the indictment that "said assemblage of persons, organization, society and group did then and there unlawfully and feloniously teach and advocate the doctrine of criminal syndicalism and sabotage," referred not to the meeting in question, or to anything then and there said or done by defendant or others, but to the advocacy of criminal syndicalism and sabotage by the Communist Party in Multnomah County. The ruling of the state court upon this point was precise. The court said (152 Ore. p. 330):

"Turning now to the grounds for a directed verdict set forth in defendant's motion therefor, we note that he asserts and argues that the indictment charges the assemblage at which he spoke with unlawfully and feloniously teaching and advocating the doctrine of criminal syndicalism and sabotage, and elsewhere in the same motion he contends that the indictment charges the defendant with unlawfully and feloniously teaching and advocating said doctrine at said meeting. The indictment does not, however, charge the defendant, nor the assemblage at which he spoke, with teaching or advocating at said meeting at 68 Southwest Alder street, in the city of Portland, the doctrine of criminal syndicalism or sabotage. What the indictment does charge, in plain and concise language, is that the defendant presided at, conducted and assisted in conducting an assemblage of persons, organization, society and group, to-wit, the Communist party, which said assemblage of persons, organization, society and group was unlawfully teaching and advocating in Multnomah county the doctrine of criminal syndicalism and sabotage."

In this view, lack of sufficient evidence as to illegal advocacy or action at the meeting became immaterial.

Having limited the charge to defendant's participation in a meeting called by the Communist Party, the state court sustained the conviction upon that basis regardless of what was said or done at the meeting.

We must take the indictment as thus construed. Conviction upon a charge not made would be sheer denial of due process. It thus appears that, while defendant was a member of the Communist Party, he was not indicted for participating in its organization, or for joining it, or for soliciting members or for distributing its literature. He was not charged with teaching or advocating criminal syndicalism or sabotage or any unlawful acts, either at the meeting or elsewhere. He was accordingly deprived of the benefit of evidence as to the orderly and lawful conduct of the meeting and that it was not called or used for the advocacy of criminal syndicalism or sabotage or any unlawful action. His sole offense as charged, and for which he was convicted and sentenced to imprisonment for seven years, was that he had assisted in the conduct of a public meeting, albeit otherwise lawful, which was held under the auspices of the Communist Party.

The broad reach of the statute as thus applied is plain. While defendant was a member of the Communist Party, that membership was not necessary to conviction on such a charge. A like fate might have attended any speaker, although not a member, who "assisted in the conduct" of the meeting. However innocuous the object of the meeting, however lawful the subjects and tenor of the addresses, however reasonable and timely the discussion, all those assisting in the conduct of the meeting would be subject to imprisonment as felons if the meeting were held by the Communist Party. This manifest result was brought out sharply at this bar by the concessions which the Attorney General made, and could not avoid, in the light of the decision of the state court.

Thus if the Communist Party had called a public meeting in Portland to discuss the tariff, or the foreign policy of the Government, or taxation, or relief, or candidacies for the offices of President, members of Congress, Governor, or state legislators, every speaker who assisted in the conduct of the meeting would be equally guilty with the defendant in this case, upon the charge as here defined and sustained. The list of illustrations might be indefinitely extended to every variety of meetings under the auspices of the Communist Party although held for the discussion of political issues or to adopt protests and pass resolutions of an entirely innocent and proper character.

While the States are entitled to protect themselves from the abuse of the privileges of our institutions through an attempted substitution of force and violence in the place of peaceful political action in order to effect revolutionary changes in government, none of our decisions go to the length of sustaining such a curtailment of the right of free speech and assembly as the Oregon statute demands in its present application. In *Gitlow v. New York*, 268 U. S. 652, under the New York statute defining criminal anarchy, the defendant was found to be responsible for a "manifesto" advocating the overthrow of the government by violence and unlawful means. *Id.*, pp. 656, 662, 663. In *Whitney v. California*, 274 U. S. 357, under the California statute relating to criminal syndicalism, the defendant was found guilty of wilfully and deliberately assisting in the forming of an organization for the purpose of carrying on a revolutionary class struggle by criminal methods. The defendant was convicted of participation in what amounted to a conspiracy to commit serious crimes. *Id.*, pp. 363, 364, 367, 379. The case of *Burns v. United States*, 274 U. S. 328, involved a similar ruling under the California statute as

extended to the Yosemite National Park. *Id.*, pp. 330, 331. On the other hand, in *Fiske v. Kansas*, 274 U. S. 380, the criminal syndicalism act of that State was held to have been applied unconstitutionally and the judgment of conviction was reversed, where it was not shown that unlawful methods had been advocated. *Id.*, p. 387. See, also, *Stromberg v. California*, 283 U. S. 359.

Freedom of speech and of the press are fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution. *Gitlow v. New York*, *supra*, p. 666; *Stromberg v. California*, *supra*, p. 368; *Near v. Minnesota*, 283 U. S. 697, 707; *Grosjean v. American Press Co.*, 297 U. S. 233, 243, 244. The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental. As this Court said in *United States v. Cruikshank*, 92 U. S. 542, 552: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions,—principles which the Fourteenth Amendment embodies in the general terms of its due process clause. *Hebert v. Louisiana*, 272 U. S. 312, 316; *Powell v. Alabama*, 287 U. S. 45, 67; *Grosjean v. American Press Co.*, *supra*.

These rights may be abused by using speech or press or assembly in order to incite to violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the

abuse. The rights themselves must not be curtailed. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government.

It follows from these considerations that, consistently with the Federal Constitution, peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

We are not called upon to review the findings of the state court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceable assembly having a lawful purpose, although

called by that Party. The defendant was none the less entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. That was of the essence of his guaranteed personal liberty.

We hold that the Oregon statute as applied to the particular charge as defined by the state court is repugnant to the due process clause of the Fourteenth Amendment. The judgment of conviction is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

NEW YORK EX REL. WHITNEY *v.* GRAVES ET AL.

APPEAL FROM THE SUPREME COURT OF NEW YORK.

No. 218. Argued December 18, 1936.—Decided January 4, 1937.

1. An intangible property right may have a "business situs" in a State for tax purposes either because the right grows out of the actual transactions of a business there localized, or because its exercise is fixed there, exclusively or dominantly. P. 371.
  2. A non-resident of New York, owning a seat in the New York Stock Exchange, who, by its rules, is privileged personally to buy and sell securities in the market it affords only by going upon the floor of the Exchange in New York, is taxable in New York upon the profits derived by him from the sale of a "right" in a new membership appurtenant to his old one, although he may have no office or abode in New York and may fill all the orders of his customers for purchase or sale of securities by sending the orders to New York for execution on the floor of the Exchange by fellow members. P. 372.
- 271 N. Y. 594; 3 N. E. (2d) 201; 271 N. Y. 618, 3 N. E. (2d) 213, affirmed.

APPEAL from the affirmance of a judgment, 246 App. Div. 652; 283 N. Y. S. 219, in a proceeding by certiorari, which sustained a tax assessed by the New York Tax Commission.

*Mr. Marcien Jenckes*, with whom *Messrs. John L. Hall, Claude R. Branch, and Richard Wait* were on the brief, for appellant.

The appellant's membership had not acquired a "business situs" in New York.

There can not be a "business situs" where no business is carried on. *Rogers v. Hennepin County*, 240 U. S. 184, when analyzed, particularly in the light of subsequent decisions, does not govern this case. There is no reason or decision supporting a "business situs" in New York for the appellant's membership. *Bank of America v. Whitney Bank*, 261 U. S. 171. Distinguishing: *New Orleans v. Stempel*, 175 U. S. 309; *Bristol v. Washington County*, 177 U. S. 133; *State Board of Assessors v. Comptoir National*, 191 U. S. 388; *Metropolitan Life Ins. Co. v. New Orleans*, 205 U. S. 395; *Scottish Union & National Ins. Co. v. Bowland*, 196 U. S. 611; *Liverpool & L. & G. Ins. Co. v. Orleans Assessors*, 221 U. S. 346.

New York has definitely not fixed the situs of memberships for the purpose of taxation at the place where the Exchange was located. In fact, New York Stock Exchange memberships are not subject to a personal property tax even to resident owners, because the Personal Property Tax Law does not attempt to reach them. New York Tax Law, c. 60, Art. 1, §§ 2 (8) and 4-a; *People ex rel. Lemmon v. Feitner*, 167 N. Y. 1, 7; *Matter of Hellman*, 174 N. Y. 254, 256. In the *Rogers* case a local statute had determined a situs for property taxation to both resident and nonresident owners. In that case there was personal use by the taxpayer of his membership, to

execute orders, and it did not appear that the membership was involved only in connection with orders for non-resident customers.

Since the decision in the *Rogers* case, this Court has ruled that two States cannot tax the same thing at the same time on inconsistent legal theories. In so far as the *Rogers* case stands for the general proposition that, irrespective of statute determining situs for all concerned, Minnesota can tax as property owned there an Exchange membership owned elsewhere, it, like *Blackstone v. Miller*, 188 U. S. 189, is limited by *First National Bank v. Maine*, 284 U. S. 312; *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, and *Baldwin v. Missouri*, 281 U. S. 586.

In the situation at bar the real estate and business of the Exchange are taxed in New York to the New York corporation which owns the market place. As one of the persons for whose benefit are held the shares of this corporation, the appellant bears part of the burden of taxation by New York. The actual business of executing orders and carrying securities on margin there is taxed to the New York correspondents of the appellant's firm, who have the offices and do the business there. The appellant owned no property in New York and carried on no business there. There is no reason or occasion whatever to make him share directly in the cost of government there.

Having the orders of nonresident customers executed in New York by other independent Exchange members at less than what the customers were charged is not "business" for taxation, service of process or any other purpose. It is inconceivable, for instance, that a Massachusetts business man can be said to be doing business in New York on the sole ground that he had and exercised the rights given him by a contract with a New York business man for preferential rates for services rendered in New York by that New York man in the name and with the capital of that New York man. *Wheeling Steel Corp. v. Fox*, 298 U. S. 193.

*Mr. Joseph M. Mesnig*, Assistant Attorney General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, and *Mr. Henry Epstein*, Solicitor General, were on the brief, for appellees.

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

The question here presented relates to the constitutional validity of a tax imposed by the State of New York upon the profits realized by a non-resident upon the sale of a right appurtenant to membership in the New York Stock Exchange.

The relator, C. Handasyde Whitney, is a resident of the Commonwealth of Massachusetts and a member of a firm doing business in Boston. He and his copartners own a membership in the New York Stock Exchange. The membership stands in the relator's name. In 1929, by virtue of an increase in the number of members of the Exchange, each member became entitled to a "right" to one-fourth of a new membership. The relator sold that right for \$108,000. The Tax Commission of New York, under §§ 351 and 351-a of the Tax Law of that State, assessed a tax upon the profits derived from the sale, which were calculated at the difference between original cost, together with contributions paid in the form of dues, and the proceeds of the sale. The tax was paid under protest and the relator sought revision under the pertinent provision of the state law. The Tax Commission denied the application. The relator then obtained a writ of certiorari from the state court to review the commission's action and the commission made return embracing the record of its proceedings. In accordance with the state practice, the matter was heard by the Appellate Division of the Supreme Court which sustained the determination of the commission. 246 App. Div. 652; 283 N. Y. S. 219. That ruling was affirmed by the Court of

Appeals, without opinion. Subsequently that court amended its remittitur by reciting that upon the appeal the relator contended that the assessment of the tax under the provisions of the state act "contravenes the Fourteenth Amendment of the Federal Constitution as an extraterritorial tax, and such question was presented and necessarily passed upon but not sustained by the court." 271 N. Y. 594, 3 N. E. (2d) 201; 271 N. Y. 618, 3 N. E. (2d) 213. The case comes here on appeal.

Aside from a brief statement of facts, the state courts have not aided us by a discussion or analysis of the nature of the right involved or the grounds for the assertion of the authority to lay the tax. From the record it appears that the New York Stock Exchange is an unincorporated voluntary association, limited as to membership and governed by its own constitution, by-laws and rules; that it holds the beneficial ownership of the entire capital stock of a New York corporation which owns the building in which the business of the Exchange is transacted, with the land upon which it stands, situated in the city of New York; that membership or seat in the Exchange carries with it valuable privileges and has a market value for the purpose of sale; that the Exchange is supported by dues and charges paid by its members and that contributions are also made to a "gratuity fund" which is in substance an insurance fund for the benefit of the widow and descendants of deceased members; that membership is evidenced by a certificate in the form of a letter signed by the secretary of the Exchange; that the membership can be transferred only through the Exchange and with its approval; that a member may personally buy or sell only in the Exchange building; that a member may buy or sell for the account of other members at a commission substantially less than that charged to a nonmember; and that such rights and privileges are valuable and are exer-

cisable only in transactions conducted at the Exchange building in the city of New York.<sup>1</sup>

The relator, in challenging the jurisdiction of the State of New York to lay the tax, stresses the points that the relator and his copartners have always been domiciled in Massachusetts; that they have never had an office or abode in New York and have never carried on business there; that while they advertise themselves in Boston as members of the New York Stock Exchange and accept orders from customers at their Boston office for execution on the New York Stock Exchange, none of that business is conducted by the relator or his copartners on the floor of that Exchange; that they do not buy and sell securities on the Exchange for their firm account; that orders requiring execution on the Exchange are telegraphed to members of the Exchange who have business offices in New York and who execute their orders on the Exchange in their own names, acting as correspondents, lending money on the security of the stock purchased and other collateral delivered to them. This business of relator's firm in 1929 involved approximately \$150,000,000 worth of securities. And it appears that by reason of relator's membership in the Exchange, his firm was able to have their New York correspondents execute orders at forty per cent. of the commission fixed for non-members. Relator's firm charges its customers the fixed minimum commissions which they would have to pay any stock exchange house, and these commissions are divided with their New York correspondents by mutual agreement.

The relator's argument is that the membership in the Exchange is intangible personal property, that as a gen-

---

<sup>1</sup> See *Belton v. Hatch*, 109 N. Y. 593, 595, 596; 17 N. E. 225; *People ex rel. Lemmon v. Feitner*, 167 N. Y. 1, 4, 11, 13; 60 N. E. 265; Meyer, "The Law of Stock Brokers and Stock Exchanges," pp. 13-16, 75-79.

eral rule property of that sort is taxable only at the domicile of the owner, and that unless the membership has a "business situs" in New York it is not taxable there. *Farmers Loan & Trust Co. v. Minnesota*, 280 U. S. 204, 213; *Beidler v. South Carolina Tax Comm'n*, 282 U. S. 1, 8; *First National Bank v. Maine*, 284 U. S. 312, 329, 331; *Wheeling Steel Corp. v. Fox*, 298 U. S. 193, 209-211. He contends that the membership cannot be said to have a business situs in New York because he and his copartners reside and transact all their business in Massachusetts.

We think that the argument fails to give adequate consideration to the nature and incidents of the membership. When we speak of a "business situs" of intangible property in the taxing State we are indulging in a metaphor. We express the idea of localization by virtue of the attributes of the intangible right in relation to the conduct of affairs at a particular place. The right may grow out of the actual transactions of a localized business or the right may be identified with a particular place because the exercise of the right is fixed exclusively or dominantly at that place. In the latter case the localization for the purpose of transacting business may constitute a business situs quite as clearly as the conduct of the business itself.

Here, we are dealing with an intangible right of a peculiar nature. It embraces the privilege of a member to transact business on the Exchange as well as a valuable right of property which is the subject of transfer with the approval of the Exchange and may survive resignation, expulsion or death.<sup>2</sup> In both aspects the right is held and can be exercised only in subjection to the constitution, by-laws and rules of the Exchange. The Exchange is a market place. The privilege which inheres in the mem-

<sup>2</sup> *Weston v. Ives*, 97 N. Y. 222; *Belton v. Hatch*, 109 N. Y. 593; 17 N. E. 225; *Matter of Grant*, 132 App. Div. 739, 742; 116 N. Y. S. 767, 1152; *Hyde v. Woods*, 94 U. S. 523; *Sparhawk v. Yerkes*, 142 U. S. 1, 12; Meyer, *op. cit.*, pp. 115-117.

bership is the right to conduct transactions at that market place. That privilege of conducting the business of the buying and selling of securities on the floor of the Exchange is the dominant feature of the membership or "seat." Its very nature localizes it at the Exchange. It is a privilege which can be exercised nowhere else. The nature of that right is not altered by the failure to exercise it. Wherever the owner may reside he must go to the Exchange to exercise his privilege to trade upon its floor. If he prefers to have his customers' orders executed through other members, still they must execute these orders on the Exchange under its rules. Such orders are executed on his behalf, and by virtue of his membership and of the execution of his orders upon the Exchange he becomes entitled to the concession in commissions for which the rules provide.

Our decisions do not support the relator's contention. In *Rogers v. Hennepin County*, 240 U. S. 184, the question related to memberships in the Chamber of Commerce of the city of Minneapolis. It was urged on behalf of the citizens of other States that their memberships were intangible rights held at their domicile. But we decided that they were taxable in Minnesota. While it was said that the memberships represented rights and privileges which appeared to have been actually exercised at the Exchange in Minneapolis, the underlying consideration was the nature of the right and privilege which made those transactions possible. In *Citizens National Bank v. Durr*, 257 U. S. 99, a membership in the New York Stock Exchange, owned by a resident of Ohio, was held to be subject to taxation at his domicile. But the Court was careful not to question the jurisdiction of the State of New York to tax "the membership privileges exercisable locally" in that State (*Id.*, pp. 109, 111) and what the Court said with respect to double taxation must be read in the light of the decisions in *Farmers Loan & Trust Co. v. Minne-*

*sota, supra*, and later cases upon that point. See *Wheeling Steel Corp. v. Fox, supra*.

We think that the dominant attribute of relator's membership in the New York Stock Exchange so links it to the situs of the Exchange as to localize it at that place and hence to bring it within the taxing power of New York. Accordingly we hold that in laying the tax upon the profits derived by the relator from the sale of the right appurtenant to his membership the State did not exceed the bounds of its jurisdiction. The judgment is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

EMPLOYERS REINSURANCE CORP. *v.* BRYANT,  
U. S. DISTRICT JUDGE.

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

No. 155. Argued November 20, 1936.—Decided January 4, 1937.

1. Obtaining removal of a case from a state to a federal court does not operate as a general appearance by the defendant. P. 376.
2. Where a suit in the District Court is *in personam* and not within any exceptional provision extending the reach of its process, service on the defendant, to be effective, must be made within the district. P. 377.
3. An order of the District Court remanding a cause to a state court is not reviewable by mandamus. P. 378.
4. That part of the Judiciary Act of 1875, § 5, now in § 80, Title 28, U. S. Code, which provides that if a District Court shall be satisfied at any time during the pendency of any suit brought therein or removed thereto from a state court that the suit does not really or substantially involve a dispute or controversy properly within its jurisdiction, the court shall proceed no further therein but shall "dismiss the suit or remand it to the court from which it was removed, as justice may require," and that part of the Judiciary Act of March 3, 1887, § 6, now part of § 71, Title 28, U. S. Code,

which provides that an order remanding a cause to a state court shall be "immediately carried into execution" and no appeal or writ of error from the order shall be allowed, are *in pari materia* and, construed together, are intended to reach and include all cases removed from a state court into a federal court and remanded by the latter. P. 378.

5. Where in an ordinary action for money *in personam*, removed from a state court, the defendant cannot be served within the district and will not voluntarily appear, the court is without federal jurisdiction to proceed with the cause, and, under the provisions above mentioned, should either dismiss it or remand it to the state court "as justice may require." P. 381.
6. Whether justice will be better served by remand or by dismissal is determined by exercise of judicial discretion. P. 382.
7. In a removed cause, if the federal court cannot proceed because service cannot be made upon the defendant within the district, and the state court upon a remand could obtain personal jurisdiction because of the wider reach of its process, and if dismissal by the federal court would deprive the plaintiff of all remedy because the time allowed for filing a new suit in the state court has expired, discretion is wisely exercised to remand rather than dismiss the case. P. 387.

82 F. (2d) 373, affirmed.

CERTIORARI\* to review a judgment of the Circuit Court of Appeals denying a petition for writs of mandamus and prohibition directed to the judges of a district court for the purpose of vacating an order of remand.

*Mr. Jacques P. Adoue*, with whom *Mr. John D. Watkins* was on the brief, for petitioner.

No appearance for respondent.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This case involves an effort to obtain by mandamus and prohibition a reëxamination and vacation of an order of a federal district court remanding to a state court a suit theretofore removed into the former from the latter.

---

\*See Table of Cases Reported in this volume.

A citizen of Texas sued a corporate citizen of Missouri in a state court of Gregg County, Texas, to recover a sum in excess of three thousand dollars, exclusive of interest and costs, upon a policy of workmen's compensation insurance, and caused process to be issued out of that court and served upon an alleged agent of the defendant. Without otherwise appearing in the state court, the defendant in due time and mode caused the suit to be removed, by reason of the diverse citizenship of the parties, into the federal court for the eastern district of Texas, which includes Gregg County.

After the removal the defendant, appearing specially, showed that the alleged agent upon whom process had been served prior to the removal was not in fact its agent, and the federal court set aside the service. At the plaintiff's instance further process was issued out of that court and served upon an agent of the defendant within the western—not eastern—district of Texas. Again appearing specially, the defendant challenged this service because made outside the court's territorial jurisdiction, and the service was set aside.

Obtaining the removal from the state court into the federal court did not operate as a general appearance by the defendant,<sup>1</sup> and, as the service of process against it proved invalid and it declined to appear voluntarily, the federal court plainly was without personal jurisdiction of the defendant, although in other respects having jurisdiction of the suit.

The defendant had been admitted to do, and was doing, business in Texas, had an agent within the western district upon whom process could be served in that district, but had no agent within the eastern district where the suit was pending.

<sup>1</sup> *Wabash Western Ry. Co. v. Brow*, 164 U. S. 271; *Mechanical Appliance Co. v. Castleman*, 215 U. S. 437; *Cain v. Commercial Publishing Co.*, 232 U. S. 124; *General Investment Co. v. Lake Shore & M. S. Ry. Co.*, 260 U. S. 261.

The suit was *in personam* and not within any exceptional provision empowering the federal court to send its process outside its district. Therefore that court's process could be effectively served only within the district.<sup>2</sup> But the state court was not subject to such a limitation and could send its process to any part of the State.

In these circumstances the plaintiff moved that the suit be remanded to the state court because the federal court was without, and unable to obtain, personal jurisdiction of the defendant; and in support of the motion the plaintiff asserted that the defendant had not been effectively served with process, had not voluntarily appeared and had no agent within the district upon whom process could be served. Coming to act upon this motion, the federal court construed § 80, Title 28, U. S. Code, as authorizing it either to dismiss the suit or to remand the same to the state court, as justice might require; concluded that justice required a remanding order because "an order of dismissal would prevent the plaintiff from refileing [beginning anew] his suit within the time permitted by the statutes of Texas and would amount to a complete denial of his right to litigate his claim"; and accordingly entered an order remanding the suit to the state court.

The defendant, conceiving that the remanding order was wrongly made, petitioned the circuit court of appeals for writs of mandamus and prohibition commanding the judge of the district court to vacate that order and prohibiting him from giving any effect to it. The court of appeals entertained the petition, ordered the judge to show cause why the requested writs should not issue, received and considered his return disclosing the proceedings and matters already recited, and denied the petition. 82 F. (2d) 373. The case is here on certiorari.

<sup>2</sup> *Toland v. Sprague*, 12 Pet. 300, 328-330; *Insurance Co. v. Bangs*, 103 U. S. 435, 439-440; *Munter v. Weil Corset Co.*, 261 U. S. 276, 279; *Robertson v. Labor Board*, 268 U. S. 619, 622-623.

We are of opinion the petition was rightly denied, first, because the remanding order was not subject to appellate reëxamination on petition for mandamus or otherwise, and, secondly, because even if open to reëxamination on petition for mandamus, the order was made in the exercise of lawful authority and was appropriate to the situation in which it was made.

1. For a long period an order of a federal court remanding a cause to the state court whence it had been removed could not be reëxamined on writ of error or appeal, because not a final judgment or decree in the sense of the controlling statute.<sup>3</sup> But in occasional instances such an order was reëxamined in effect on petition for mandamus, and this on the theory that the order, if erroneous, amounted to a wrongful refusal to proceed with the cause and that in the absence of other adequate remedy mandamus was appropriate to compel the inferior court to exercise its authority.<sup>4</sup>

By the Act of March 3, 1875, c. 137, 18 Stat. 472, dealing with the jurisdiction of the circuit (now district) courts, Congress provided, in § 5, that if a circuit court should be satisfied at any time during the pendency of a suit brought therein, or removed thereto from a state court, that "such suit does not really or substantially involve a dispute or controversy properly within" its "jurisdiction," the court should proceed no further therein, but should "dismiss the suit or remand it to the court from which it was removed, as justice may require."<sup>5</sup> Thus far this section did little more than to make mandatory a practice theretofore largely followed, but sometimes neg-

<sup>3</sup> *Railroad Co. v. Wiswall*, 23 Wall. 507.

<sup>4</sup> *Railroad Co. v. Wiswall*, *supra*.

<sup>5</sup> This provision is still in force as part of § 80, Title 28, U. S. Code.

lected, in the circuit courts.<sup>6</sup> But the section also contained a concluding paragraph, wholly new, providing that the order "dismissing or remanding the said cause to the state court" should be reviewable on writ of error or appeal. This provision for an appellate review continued in force until it was expressly repealed by the Act of March 3, 1887, c. 373, § 6, 24 Stat. 552,<sup>7</sup> which also provided that an order remanding a cause to a state court should be "immediately carried into execution" and "no appeal or writ of error" from the order should be allowed.<sup>8</sup>

The question soon arose whether the provisions just noticed in the Act of March 3, 1887, should be taken broadly as excluding remanding orders from all appellate review, regardless of how invoked, or only as forbidding their review on writ of error or appeal. The question was considered and answered by this Court in several cases, the uniform ruling being that the provisions should be construed and applied broadly as prohibiting appellate re-examination of such an order, where made by a circuit (now district) court, regardless of the mode in which the re-examination is sought.<sup>9</sup> A leading case on the subject

<sup>6</sup> Dillon Removal of Causes, 3d ed., § 82; Conkling's Treatise, 5th ed., p. 170; *Pollard v. Dwight*, 4 Cranch 421, 428-429.

<sup>7</sup> The Act of March 3, 1887, was corrected in particulars not here material, and as corrected was reënacted, by the Act of August 13, 1888, c. 866, 25 Stat. 433.

<sup>8</sup> This provision is still in force as part of § 71, Title 28, U. S. Code.

<sup>9</sup> The cases are collected and their effect is stated in *Gay v. Ruff*, 292 U. S. 25, 28-29. It was there also pointed out and definitely held that, under the general statute controlling review on certiorari by the Supreme Court, it is admissible for that court to review a decision of a circuit court of appeals directing a district court to remand a cause to a state court. p. 30. Therefore the general rule as stated above is limited to remanding orders made by the district (formerly circuit) courts.

is *In re Pennsylvania Co.*, 137 U. S. 451, which dealt with a petition for mandamus requiring the judges of a circuit court to reinstate, try and adjudicate a suit which they, in the circuit court, had remanded to the state court whence it had been removed. After referring to the earlier statutes and practice and coming to the Act of March 3, 1887, this Court said (p. 454):

“In terms, it only abolishes appeals and writs of error, it is true, and does not mention writs of mandamus; and it is unquestionably a general rule, that the abrogation of one remedy does not affect another. But in this case, we think it was the intention of Congress to make the judgment of the Circuit Court remanding a cause to the state court final and conclusive. The general object of the act is to contract the jurisdiction of the federal courts. The abrogation of the writ of error and appeal would have had little effect in putting an end to the question of removal, if the writ of mandamus could still have been sued out in this court. It is true that the general supervisory power of this court over inferior jurisdictions is of great moment in a public point of view, and should not, upon light grounds, be deemed to be taken away in any case. Still, although the writ of mandamus is not mentioned in the section, yet the use of the words ‘such remand shall be immediately carried into execution,’ in addition to the prohibition of appeal and writ of error, is strongly indicative of an intent to suppress further prolongation of the controversy by whatever process. We are, therefore, of opinion that the act has the effect of taking away the remedy by mandamus as well as that of appeal and writ of error.”

The provisions in the Act of 1887 on which that decision and others to the same effect were based are still in force as parts of §§ 71 and 80, Title 28, U. S. Code. They are *in pari materia*, are to be construed accordingly rather than as distinct enactments, and, when so construed, show, as was held in *Morey v. Lockhart*, 123 U. S.

56, 58, that they are intended to reach and include all cases removed from a state court into a federal court and remanded by the latter.

It follows that the remanding order of the district court was not subject to reëxamination by the circuit court of appeals on the petition for mandamus.

2. It is conceded, and rightly so, that the district court was without personal jurisdiction of the defendant, and that in the absence of such jurisdiction the court was without power to proceed to an adjudication. The statute, § 80, *supra*, requires that a district court, when satisfied that a suit removed into it from a state court does not really and substantially involve a dispute or controversy "properly" within its jurisdiction, shall dismiss the suit or remand it to the state court, as justice may require. In this instance the dispute or controversy was not properly within the jurisdiction of the district court unless (1) the parties were citizens of different States; (2) the value or amount involved exceeded \$3,000, exclusive of interest and costs; and (3) the defendant was before the court by reason of a general appearance or a valid service of process.<sup>10</sup> Each of these elements of jurisdiction was essential, and if any was wanting there was an absence of proper jurisdiction. The defendant was not before the court, and therefore it was without jurisdiction to proceed with the suit. Counsel for the petitioner assume that the presence of the defendant was not

---

<sup>10</sup> In *Illinois Central R. Co. v. Adams*, 180 U. S. 28, 34, and again in *Venmer v. Great Northern Ry. Co.*, 209 U. S. 24, 34, this Court defined the federal jurisdiction of the circuit court as follows:

"Jurisdiction is the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence. It exists in the Circuit Courts of the United States under the express terms of the act of August 13, 1888, if the plaintiff be a citizen of one State, the defendant a citizen of another, if the amount in controversy exceed \$2000 [afterwards changed to \$3000] and the defendant be properly served with process within the district."

an element of the court's jurisdiction as a federal court; but the assumption is a mistaken one. By repeated decisions in this Court it has been adjudged that the presence of the defendant in a suit *in personam*, such as the one now under discussion, is an essential element of the jurisdiction of a district (formerly circuit) court as a federal court,<sup>11</sup> and that in the absence of this element the court is powerless to proceed to an adjudication.

In the circumstances already recited the district court was required to dismiss the suit for want of jurisdiction or to remand it to the state court from which it had been removed, and in selecting between these alternatives the court was required to act "as justice may require." The statute assumes that justice will be better served in some instances by a dismissal and in others by a remand. Making the required selection involves discretion—judicial discretion, not mere choice. Plainly the circumstances in which the court acted pointed to a remand as being, in justice, the more appropriate of the alternatives.<sup>12</sup>

It follows that, even if a remanding order were open to reëxamination on a petition for mandamus, the petition was in this instance rightly denied.

*Judgment affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

<sup>11</sup> *Shepard v. Adams*, 168 U. S. 618; *Remington v. Central Pacific R. Co.*, 198 U. S. 95; *Board of Trade v. Hammond Elevator Co.*, 198 U. S. 424; *Kendall v. American Automatic Loom Co.*, 198 U. S. 477; *Mechanical Appliance Co. v. Castleman*, 215 U. S. 437; *Merriam Co. v. Saalfield*, 241 U. S. 22; *Stewart v. Ramsay*, 242 U. S. 128.

<sup>12</sup> *Pollard v. Dwight*, 4 Cranch 421, 428-429; *Texas Transportation Co. v. Seeligson*, 122 U. S. 519, 522; *Cates v. Allen*, 149 U. S. 451, 460-461; *Pond v. Sibley*, 7 Fed. 129, 138; *Gombert v. Lyon*, 80 Fed. 305; *Peters v. Equitable Life Assurance Society*, 149 Fed. 290, 294.

Opinion of the Court.

LIGGETT & MYERS TOBACCO CO. v. UNITED STATES.\*

CERTIORARI TO THE COURT OF CLAIMS.

No. 161. Argued December 11, 14, 1936.—Decided January 4, 1937.

1. The tax imposed by § 401 (a) of the Revenue Act of 1926 is a tax upon the *manufacture*, not upon the sale, of tobacco. P. 386.
  2. As applied to tobacco purchased by a State for use in a hospital owned and maintained by the State, the effect is indirect and imposes no prohibited burden. P. 386.
  3. It is unnecessary in this case to decide whether in the operation of the hospital the State is exerting a governmental function. P. 386.
- 13 F. Supp. 143; 14 F. Supp. 543, affirmed.

CERTIORARI† to review a judgment of the Court of Claims dismissing, in three cases, suits to recover refunds of taxes.

*Mr. Henry F. Long*, with whom *Mr. Paul A. Dever*, Attorney General of Massachusetts, was on the brief, for petitioners.

*Mr. J. P. Jackson*, with whom *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and *Charles A. Horsky* were on the brief, for the United States.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

These test suits, brought in the Court of Claims and based upon the same facts, seek to establish the right of some petitioner to recover the value of Internal Revenue stamps—\$17.28—affixed by Liggett and Myers Tobacco

\*Together with No. 162, *Massachusetts v. United States*; and No. 163, *Liggett & Myers Tobacco Co. on behalf of Massachusetts v. United States*. On writs of certiorari to the Court of Claims.

†See Table of Cases Reported in this volume.

Company to four boxes containing ninety-six pounds of tobacco, which it manufactured and sold to Massachusetts for free distribution to patients in Boston State Hospital, an institution maintained by the Commonwealth and alleged to be a government instrumentality immune from Federal taxation.

During January, 1932, federal statutes directed—

“Upon all tobacco and snuff manufactured in or imported into the United States, and hereafter sold by the manufacturer or importer, or removed for consumption or sale, there shall be levied, collected, and paid . . . a tax of 18 cents per pound, to be paid by the manufacturer or importer thereof.” “The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this Act.” Revenue Act 1926, 44 Stat. 9, c. 27, §§ 401 (a), 1101; U. S. C., Tit. 26, §§ 700, 701, 1049, 1350, 1691.

Treasury Regulations No. 8 (1928 ed.) in force at the same time provided:

Art. 43. “The rate of tax on tobacco and snuff now in force is 18 cents per pound. . . . Such tax is imposed on all chewing and smoking tobacco. . . . The tax accrues on such manufactures upon removal from the factory or place where they were made, or upon sale prior to such removal, and is to be paid by the manufacturer thereof by the affixing of stamps before removal. . . .”

Art. 52. “Each package containing a statutory quantity of tobacco or snuff (see article 45) shall, before removal from the bonded factory premises where made, have affixed thereto the proper internal-revenue stamp or stamps of such denomination as will cover fully the tax on the net weight of the contents. . . .” Art. 94. “No manufacturer of tobacco, snuff, cigars, or cigarettes will be permitted to close his factory with material or finished product unstamped on hand. . . .” Art. 152. “Every person who removes from any manufactory, or from any

place where tobacco or snuff is made, any manufactured tobacco or snuff without the same being put up in proper packages, or without the proper stamp for the amount of tax thereon being affixed and canceled as required by law; or if the same be intended for export, without the proper export stamp being affixed; shall for each such offense, respectively, be fined not less than \$1,000 nor more than \$5,000, and be imprisoned not less than six months nor more than two years."

The Court of Claims found—

Liggett and Myers Tobacco Company is engaged in the business of manufacturing and dealing in tobacco. It maintains a bonded warehouse for storing such products. The established Internal Revenue procedure was to affix the required stamps upon manufactured tobacco before removal from the factory. In January, 1932, the Company received from Massachusetts an order to deliver ninety-six pounds of tobacco to the Boston State Hospital, an institution owned and maintained by the Commonwealth. The Company complied by shipping from its bonded warehouse four packages to which Revenue stamps amounting to \$17.28 had theretofore been affixed. This was distributed to patients without charge. Hospital patients, when able, pay for treatment. The Hospital performs useful public service. A bill for \$30.62—price of the tobacco including tax—was paid by the Commonwealth.

And the Court held that operation of the Hospital by the Commonwealth is not the performance of an essential governmental function; that such operation is not of a strictly governmental character since it does not "embody some kind of control over persons or things which can be exercised only by a sovereign power." And for that reason the conclusion was that no immunity from Federal taxation had been shown. All of the petitions were dismissed.

Here counsel for the Commonwealth submit that the maintenance of the Hospital is a true governmental function entitled to immunity; also that the tax in question was laid upon the sale of the tobacco and amounted to an imposition upon the Commonwealth. They rely upon the principle approved in *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U. S. 218, 222; *Indian Motorcycle Co. v. United States*, 283 U. S. 570, 578; and *Graves v. Texas Co.*, 298 U. S. 393.

For the United States it is said the tax was upon the manufacture of the tobacco with duty of payment postponed until removal or sale, whichever first occurred; consequently, there was no direct burden imposed upon the State; the effect was incidental, indirect, and permissible within the doctrine approved by *Cornell v. Coyne*, 192 U. S. 418, and *Wheeler Lumber B. & S. Co. v. United States*, 281 U. S. 572, 579.

If, in reality, the tax was upon the manufacture of tobacco, then, as adequately pointed out by *Cornell v. Coyne, supra*, the effect upon the purchaser was indirect and imposed no prohibited burden. See *Willcuts v. Bunn*, 282 U. S. 216, 230, 234. We think that was the true nature of the exaction, and this renders unnecessary any consideration of the theory accepted by the Court below.

The tax is laid upon each pound of manufactured tobacco irrespective of intrinsic value or price obtained upon sale. The goods may be disposed of at any price without affecting the amount of the tax; that does not vary. Always the manufacturer must pay 18 cents upon each pound—no more, no less. True the limit of time for making payment is when the product is sold or removed, but this is a privilege designed to mitigate the burden; it indicates no purpose to impose the tax upon either sale or removal. Apparently the practice is to affix the required stamps without regard to sale or removal.

See *Cornell v. Coyne, supra*; *American Mfg. Co. v. St. Louis*, 250 U. S. 459; *Wheeler Lumber B. & S. Co. v. United States, supra*.

*Indian Motorcycle Co. v. United States, supra*, much relied upon by petitioner, considered a tax of five per centum of the price obtained upon sale of the article; it rose or fell according to the amount received by the seller. From the outset the excise there under scrutiny had been considered by Congressional Committees and the administrative bureau as a sales tax. Here the administrative provisions of the taxing Act indicate that Congress regarded it as an excise on manufacture. And this view is strengthened by provisions of the Treasury Regulations designed to carry the statute into effect.

For the reasons indicated, the judgment below must be  
*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

### HAUGE v. CHICAGO.

#### APPEAL FROM THE SUPREME COURT OF ILLINOIS.

No. 175. Argued December 11, 1936.—Decided January 4, 1937.

An ordinance of Chicago requires that commodities sold in load lots by weight and delivered within the city be weighed by a public weighmaster, and that a certificate of weight, issued by such weighmaster, be delivered to the purchaser or consignee by the driver or person in charge of the load, before any of the commodity is removed from the vehicle. It was conceded that the ordinance was not unreasonable as applied to dealers operating coal yards within the city. As construed and applied to one delivering within the city coal brought by truck from mines outside, however, the ordinance necessitated unloading and reweighing within the city, even though the coal had been weighed at the mines on state-tested scales. *Held*, not repugnant to the Fourteenth Amendment. P. 392.

363 Ill. 125; 1 N. E. (2d) 396, affirmed.

APPEAL from a judgment of the state supreme court which affirmed a judgment of the trial court finding the appellant guilty of violating a city ordinance.

*Mr. Owen Rall*, with whom *Messrs. Thomas C. McConnell* and *Irwin T. Gilruth* were on the brief, for appellant.

*Mr. Martin Foss*, with whom *Mr. Barnet Hodes* was on the brief, for appellee.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Appellant, while residing at Morris, Illinois, engaged in trucking coal for hire from a mine near that place sixty-two miles over public roads to Chicago where he delivered it to consumers. He both owned and drove the truck.

The Revised Statutes of Illinois, (1935) c. 24, Art. V, §§ 54, 55, 56, 91, give cities power to regulate inspection, weighing and measuring of coal, inspection and sealing of weights, measures, etc. Chapter 147 provides for inspecting and sealing scales by State officers; but no law permits designation of State weighmasters.

Chicago by ordinance has authorized the appointment of weighmasters and prescribed their duties. Rev. Code (1931) §§ 525, 526, 2939, 2947, 2950, 3612, 3623.

Section 2947<sup>1</sup> requires that merchandise "sold in load

---

<sup>1</sup>Section 2947:

"Every load of any commodity, produce or other article or articles of merchandise sold in load lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster; a certificate of weight for each such load, issued by such public weighmaster, shall be delivered by the driver or person in charge of the wagon, truck, or other vehicle used in the delivery, to the purchaser or consignee of such load, or to his or their agent at the time of the delivery and before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle, or such certificates shall be delivered to the inspector of

lots by weight, delivered by wagon, truck or other vehicle within the city, shall be weighed by a public weighmaster” and that his certificate showing weights shall be delivered to the purchaser or consignee. Section 3612 permits appointment, as weighmaster, of anyone owning scales under prescribed conditions; and § 3621<sup>2</sup> fixes permissible charges. Section 3623<sup>3</sup> directs: “In no case shall any public weighmaster state in his certificate the tare weight

weights and measures, or any of his deputies upon his or their demand. When delivery is made, in case no person is present to receive such commodity, produce or other article or articles of merchandise, and if the purchaser or consignee, or his or their agent, cannot be located, then the memorandum or certificate of weight hereinbefore provided for shall be posted conspicuously at the place of delivery before any of the commodity, produce or other article or articles of merchandise is removed from the vehicle.”

<sup>2</sup>Section 3621:

“Public weighmasters, when not the owners or sellers of the articles, commodities or produce weighed by them, shall be entitled to charge and receive a sum not in excess of twenty-five cents for each and every load or part of load (or lesser quantity when not contained in any wagon, truck or other vehicle), of any commodity, produce, article or articles of merchandise weighed by them over the scales of such public weighmasters.”

<sup>3</sup>Section 3623:

“Each public weighmaster shall issue a weight certificate, signed by him or his deputy, under his official seal, which certificate shall state thereon the following: The commodity, produce, article or articles weighed; the date; the name of the weighmaster or deputy weighmaster who did the weighing; the name and address of the person, firm or corporation for whom the weighing was done; the name of the driver of the vehicle bringing such commodity, produce, article or articles to the scales, or, if the same is not contained in a vehicle, the name and address of the person bringing the same to the scales; where contained in a vehicle, the kind of vehicle and the name and address of the purchaser or consignee of the commodity weighed; when the commodity is loaded in a vehicle, the total or gross weight of the commodity weighed and the conveyance in which it is loaded, together with the driver and any other person who may be on the vehicle when weighed, and of the horses, if a horse-drawn

of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein . . .”

The Chicago Municipal Court adjudged appellant guilty of violating § 2947 by delivering coal trucked directly from the mine at Morris to a consumer in Chicago without having obtained a weighmaster's certificate showing the gross, tare, and net weights. The coal had been weighed at the mine upon scales duly tested by the State. He claimed the ordinance, as applied to his business, unreasonably required rehandling of coal already properly weighed and therefore offended the Fourteenth Amendment.

The Supreme Court of Illinois affirmed the judgment of conviction. It upheld the view that under §§ 2947 and 3623 coal brought by truck directly from the mine to the consumer in Chicago, although weighed at the mine on State tested scales, must be unloaded within the city, in order to permit a public weighmaster there to weigh the

---

vehicle and the horses are weighed; the tare weight or the weight of the vehicle, including driver and any other person who may have been on the vehicle when weighed while loading and including the horses if they were weighed when the loaded vehicle was weighed; the net weight of the commodity, produce, article or articles contained in such vehicle, or the net weight of the commodity, produce, article or articles when not contained in a vehicle at the time of weighing. In no case shall any public weighmaster state in his certificate the tare weight of any vehicle until after he shall have weighed the vehicle in such manner as to secure the weight as specified herein; provided, however, that in the case of a divided load, by which is meant a load containing more than one order for the same or different purchasers or consignees, no penalty shall be imposed under this chapter by reason of the fact that the tare weight shown on the weight certificates is only the original tare weight of the vehicle and equipment before loading if in such case each order has been weighed separately and the net weight of each separate order or delivery is correctly shown on the weight certificate and such correct net weight is delivered.”

empty truck, and then reloaded so that both truck and load may be weighed by the same official. The prescribed certificate can issue only after such double weighing.

The Court declared that so construed the ordinance did not conflict with the Fourteenth Amendment; and that ruling is the basis for the only question presented for our determination. Violation of the ordinance as written is admitted. Also that it is not unreasonable as applied to dealers operating coal yards within Chicago.

Counsel maintain that appellant's business differs materially from the business of those who operate local coal yards; that the questioned ordinance is unreasonable in requiring coal weighed upon State inspected scales to be unloaded and reweighed before delivery, since weights could be adequately verified by practical methods not involving this expensive and burdensome proceeding; also that the ordinance unduly discriminates between those who truck coal directly from the mine and dealers with yards within the city.

In *Chicago v. Wisconsin Lime Co.*, (1924) 312 Ill. 520; 144 N. E. 3, the Supreme Court affirmed the power of Chicago to enact the challenged ordinance and pointed out that it "was designed to protect the purchasing public against what has been universally regarded as a widespread evil in the selling of commodities in load lots by weight and it contained effective means for the prevention of the evil."

Below, that Court said: "The opportunity to defraud the consumer in the sale of coal in load lots is great and the consumer has no adequate way to protect himself against being cheated. The delivery of true weights of coal to the consumer is a matter clearly related to the public welfare and the city has the right to adopt reasonable ordinances therefor." "The defendants, non-residents of the city of Chicago, are asking for a practice of weighing, as applied to the business done by them in the

city, which under the ordinance here would not apply to those truckers living in the city and delivering coal from the local yards or local dealers in the city to the consumer." "Where a city has enacted an ordinance within its charter or granted powers regulating a business, the non-residents who desire to follow such business within such municipality must conform to the requirements of the ordinance."

For many years, by admission, Chicago has rightly required local truckmen to comply with the ordinance. Since the evil to be prevented is no less imminent when coal comes by truck from without the city, a like requirement as to this seems equally important. The ordinance makes no discrimination of which appellant can complain; and no adequate reason has been suggested for concluding that although valid as to local truckers it violates rights guaranteed to him by the Fourteenth Amendment.

That the coal delivered by appellant was weighed at the mine on tested scales is stressed; but this is not really material. Chicago had no control there and such weighing afforded no adequate protection against fraud. The opportunities for manipulation thereafter are obvious. Invalidity of the ordinance cannot be established by suggesting some other less burdensome procedure, which possibly might accomplish the end in view—honest delivery weights. The city may act with proper legislative discretion. Here there is nothing to show action so arbitrary, unreasonable or discriminatory as to require us to overthrow its deliberate effort to meet a plain evil. *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357; *Armour & Co. v. North Dakota*, 240 U. S. 510, 513, 515; *Nashville, C. & St. L. Ry. Co. v. Walters*, 294 U. S. 405, 415.

The challenged judgment must be

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

Syllabus.

W. P. BROWN & SONS LUMBER CO. ET AL. v. LOUISVILLE & NASHVILLE RAILROAD CO. ET AL.

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

No. 100. Argued December 8, 1936.—Decided January 4, 1937.

1. Where the language of a railroad freight tariff is non-technical, clear and unambiguous, its construction presents a question of law, not differing in character from that presented when the construction of any other document is in dispute. P. 397.
2. The so-called "combination rule" in railroad freight tariffs provides that, "where no published through rates are in effect from point of origin to destination" on certain commodities in carload lots, and two or more commodity rate factors are used in arriving at the through rate for a continuous rail shipment thereof, such through rate will be arrived at by a formula therein prescribed. *Held*, inapplicable where there was available some through route from point of origin to destination, for which joint through rates had been published, although there was no joint through rate from point of origin to destination over the route used. P. 397.
3. A contrary construction given to the rule by the Interstate Commerce Commission is not conclusive. P. 397.
4. Shippers whose claim of reparation for alleged overcharges depends solely upon the non-technical, unambiguous language of a tariff, may sue at law without first applying to the Commission for a reparation order. P. 398.
5. The fact that the carriers, in an earlier proceeding before the Commission, sought unsuccessfully to have the rule modified so as to overcome the interpretation given it by the Commission, and were thus left remediless by administrative action, does not estop them from insisting in the courts upon the construction for which they had contended. P. 399.
6. The fact that the Commission has long construed the combination rule as it did in the case at bar, and that that construction was acquiesced in by many carriers, is not controlling,—it appearing that other carriers had protested vigorously and persistently. P. 399.
7. That many existing routes may be commercially closed if application of the combination rule is denied, because the combination

rates unaffected by the rule would be prohibitively high, held irrelevant to the question for decision in this case. P. 400.  
82 F. (2d) 94, affirmed.

CERTIORARI\* to review a judgment which affirmed a judgment, 7 F. Supp. 593, dismissing upon demurrer a suit against numerous railroad companies upon an award of reparation of the Interstate Commerce Commission.

*Mr. J. V. Norman* for petitioners.

*Mr. Elmer A. Smith*, with whom *Mr. J. Blakey Helm* was on the brief, for respondents.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

W. P. Brown & Sons Lumber Co. and other shippers brought in the Interstate Commerce Commission a complaint under § 16 of the Interstate Commerce Act, seeking reparation for alleged overcharges on shipments of lumber and other forest products taking lumber rates. They were awarded damages in the proceedings known as *Wausau Southern Lumber Co. v. Alabama Great Southern R. Co.*, 142 I. C. C. 521; 182 I. C. C. 731. The Louisville & Nashville Railroad and some other carriers refused to comply with the order. Then this suit was brought in the federal court for western Kentucky to recover the amounts awarded against them. The case was heard on demurrers to the amended petition and to certain paragraphs of the amended answer. The demurrer to the petition was sustained, and that to the answer overruled, on the ground that the award was founded upon an erroneous construction of the so-called "Jones" or "Combination Rule" in the tariffs. The parties declining to plead further, judgment was entered dismissing the petition, 7 F. Supp. 593.

---

\* See Table of Cases Reported in this volume.

That judgment was affirmed by the Circuit Court of Appeals, 82 F. (2d) 94. We granted certiorari because of conflict with the decision of the Court of Appeals of the District of Columbia in *Baltimore & Ohio R. Co. v. Domestic Hardwoods, Inc.*, 62 App. D. C. 142; 65 F. (2d) 488.

The shipments involved were from points in the South and Southwest to points North. For such shipments there have long been commonly available over connecting lines more than one, and often many, through routes from each point of origin to destination. The Interstate Commerce Act does not require that the rates on all routes shall be the same. Nor does it require that there be on each route a joint through rate. Sometimes, none of the tariffs for the several available routes specifies a joint through rate. Where no joint rate is specified, the tariffs for the through routes commonly provide that the through rate shall be the sum of the local rates of the several carriers contributing to the movement.<sup>1</sup> In 1918, the Director General of Railroads made, by General Order No. 28, a percentage increase of lumber rates in southern territory, limited to 5 cents per 100 pounds. Thus, a joint through rate could not be increased more than 5 cents. But when the lumber moved on a combination through rate, the 5-cent limit was applied to each factor in the combination. The result was that on combination through routes the increase was often doubled, or tripled. To avoid such a result, the so-called "Jones"

---

<sup>1</sup>Section 6, (1) of the Interstate Commerce Act provides: "If no joint rate over the through route has been established, the several [connecting] carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares, and charges applied to the through transportation." Concerning through rates, see *St. Louis Southwestern Ry. Co. v. United States*, 245 U. S. 136, 139, 140, note 2.

or "Combination Rule" was devised in February, 1919. Ever since, it has been commonly incorporated in tariffs.<sup>2</sup>

The question for decision is whether the "Combination Rule" applies to the shipments here involved. If it does not, there is no cause of action. If it does, the award was correct. The rule provides:

"Where no published through rates are in effect from point of origin to destination on lumber . . . , carloads, and two or more commodity rate factors . . . are used in arriving at the through rate for a continuous rail shipment thereof, such through rate will be arrived at in the following manner: . . ." [Then follows a formula.]

When applied to the combination rate specified in the tariff, the formula effects a reduction thereof. While the combination rate itself is ordinarily, if not always, higher than the joint through rate, the effect of applying to it the Combination Rule would not necessarily produce equality in rates on the several routes. It might make the combination through rate lower than the published joint through rate. This is true as to many of the shipments here involved. The amended answer gave an example: Laurel, Mississippi, is a typical lumber shipping point; and Columbus, Ohio, a typical destination. The published through joint rate from Laurel to Columbus, applying via each of the several originating carriers at that point, was 43 cents per 100 pounds. A combination

---

<sup>2</sup> *B. T. Jones' Tariff* 228, I. C. C. U. S. 1, § 4. In *Wausau Southern Lumber Co. v. Alabama Great Southern R. Co.*, 142 I. C. C. 521, 524, the Commission states: "The combination rule was originally published by the director general about seven months after the issuance of General Order No. 28, as an emergency tariff provision to avoid a double increase on certain commodities moving on combination rates, the separate factors of which had been increased by specific amounts. Shortly after the general increase of 1920 the rule was amended substantially to reflect the increases then authorized. It was subsequently further amended to reflect the general reduction of 1922, and is still in effect."

rate for the movement over other routes, unaffected by the Combination Rule, was 43½ cents. If the combination rate were subjected to the Combination Rule, the rate over the combination route would be 40½ cents. Thus the combination rate would be much less than the published joint through rate.

Each of these shipments here involved might have been made over a route for which a joint through rate from point of origin to destination had been published. Instead, the shipment was made over a route for which the rate specified in the tariff was a combination rate. In some instances the route had been designated by the shipper.<sup>3</sup> The carriers exacted the full combination rate. The shippers made reclamation, on the ground that the Combination Rule applies in every case where no joint through rate has been published over the route selected for the movement. The Commission sustained the shippers' claim.

*First.* The rule declares that the prescribed formula is to be applied "where no published through rates are in effect from point of origin to destination." The language used is not technical. The meaning of the words is clear. There is no ambiguity. The construction of these railroad tariffs presents, therefore, a question of law, not differing in character from those presented when the construction of any other document is in dispute. *Great Northern Ry. Co. v. Merchants Elevator Co.*, 259 U. S. 285, 291. As, in each instance, there was available some through route from point of origin to destination for

---

<sup>3</sup> In some instances the claim rests upon a charge of misrouting. That is, the route not having been designated by the shipper, it was the duty of the initial carrier to select the route over which the rate was lowest. Compare *Northern Pacific Ry. Co. v. Solum*, 247 U. S. 477, 482. The carrier did not fail in that duty unless the Combination Rule applied. That is, there was no misrouting if the Commission's construction was erroneous.

which joint through rates had been published, the rule, by its terms, has no application. We so hold despite the construction given to the rule by the Commission.

*Second.* The shippers contend that the construction given to the rule by the Commission is conclusive, because preliminary resort to the Commission was necessary. *Texas & Pacific Ry. Co. v. American Tie & Timber Co.*, 234 U. S. 138; *Loomis v. Lehigh Valley R. Co.*, 240 U. S. 43; *Northern Pacific Ry. Co. v. Solum*, 247 U. S. 477. They argue that such preliminary resort was necessary, since the interpretation and application of the rule involved (a) the exercise of sound administrative discretion as to technical and intricate matters of tariff application and the relation of tariffs one to another; (b) the reasonableness of a practice of routing as between higher and lower-rated routes, and (c) uniformity in the application of rates, which is the paramount purpose of the Interstate Commerce Act. But the argument is not sound. To determine whether the rule was applicable to the several shipments does not call for, or indeed permit, the consideration of any of these matters. The simple question for decision, as to each shipment, is whether there existed "published through rates" "in effect from point of origin to destination." The determination of that question requires ordinarily merely the examination of the tariffs.<sup>4</sup> The enquiry would, in all respects, be like that commonly made by courts when called upon to construe and apply any other document. This is not a case like *Standard Oil Co. (Indiana) v. United States*, 283 U. S. 235, 238, 239, where there was required "consideration of matters of fact and the application of expert knowledge for the ascertainment of the technical meaning of the words and a correct

<sup>4</sup> Compare *Hohenberg v. Louisville & Nashville R. Co.*, 46 F. (2d) 952, 955; *Wheelock v. Walsh Fire Clay Products Co.*, 60 F. (2d) 415, 418; *Hygrade Food Products Corp. v. Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 85 F. (2d) 113, 116.

appreciation of a variety of incidents affecting their use." Here, the shippers might have brought their action at law without resort to the Commission.

*Third.* The shippers urge that the carriers are estopped from contesting the interpretation given by the Commission to the Combination Rule, because in Cancellation Rule for Constructing Combination Rates on Lumber, 81 I. C. C. 745, decided by Division 3 in August, 1923, and affirmed on reargument before the full Commission December 2, 1924, in 93 I. C. C. 614, the carriers vainly sought to have the rule modified so as to overcome the construction given by the Commission. The denial of their application left them remediless by administrative action; but that action in no way prejudiced their right to insist in the courts upon the construction of the rule for which they had contended.

*Fourth.* The shippers urge that the interpretation given by the Commission should be followed by the Court, because it embodies the settled administrative construction acquiesced in by carriers and shippers. It is true that the Commission has repeatedly declared its adherence to the construction for which the shippers contend. Many carriers acquiesced in that construction, in part possibly, because they preferred to take the lesser amount rather than risk losing the traffic. But the cases cited show that other carriers protested vigorously; and their protests have been persistent.<sup>5</sup>

<sup>5</sup> Compare Cancellation Rule for Constructing Combination Rates on Lumber, 81 I. C. C. 745; 93 I. C. C. 614; McGowin-Foshee Lumber Co. v. A., F. & G. Ry. Co., 95 I. C. C. 451; Moore-Marshall Lumber Co. v. New Orleans & Northeastern R. Co., 112 I. C. C. 33; M. H. Gunther & Co. v. Louisville & Nashville R. Co., 112 I. C. C. 387; Milne Lumber Co. v. New York Central R. Co., 152 I. C. C. 65; Held v. Cleveland, C., C. & St. L. Ry. Co., 161 I. C. C. 413; Edward Eiler Lumber Co. v. Missouri Pacific R. Co., 161 I. C. C. 415; Domestic Hardwoods, Inc. v. Baltimore & Ohio R. Co., 168 I. C. C. 753; Brabston v. Louisville & Nashville R. Co., 176 I. C. C. 421.

*Fifth.* The shippers urge, in support of the Commission's construction, that if application of the Combination Rule is denied, many existing routes, although remaining legally open, will be commercially closed, (compare *Virginian Ry. Co. v. United States*, 272 U. S. 658, 661), because the combination rates, if not reduced by the Combination Rule would be prohibitively high. Such considerations have no place here, where the sole question for decision is whether there exists a joint through rate over some route between the point of origin and destination. If the route to which alone the joint through rate applies is deemed inadequate, there is ample power in the Commission to establish by proceedings under Paragraph 3 of § 15 of the Act other through routes with joint rates.<sup>6</sup> Likewise, if the rates on the combination routes are deemed excessive, or discriminatory, there is ample power in the Commission, under other provisions of the Act, to reduce the rates.

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>6</sup> The rule had little application until 1920 when large rate increases were authorized by Ex parte 74, 58 I. C. C. 220.

Syllabus.

NEW YORK EX REL. ROGERS *v.* GRAVES ET AL.

APPEAL FROM THE SUPREME COURT OF NEW YORK.

No. 139. Argued December 9, 10, 1936.—Decided January 4, 1937.

1. The construction, management and operation of the Panama Canal are governmental functions, and within the constitutional power of Congress to regulate commerce and to provide for the national defense. P. 406.
2. Such being the status of the Canal, it follows that all auxiliaries primarily designed and used to aid in its management and operation, and which have that effect, partake of its nature, and constitute, with the Canal, a single great regulator of national and international commerce. P. 406.
3. The interrelation of its activities with the management and operation of the Panama Canal is such as to constitute the Panama Rail Road Company a governmental instrumentality of the United States. P. 406.
4. This conclusion is supported by the contemporaneous and long-continued administrative practice; and the correctness of it is recognized by relevant federal legislation. Pp. 406-407.
5. The character of the Railroad Company as a governmental instrumentality is not altered by the fact that its ships and railroad are used to some extent to carry private freight and passengers. The primary purpose of the enterprise being legitimately governmental, its incidental use for private purposes does not change its character. P. 407.
6. Even if it be assumed that the dairy, hotels, and other enterprises, built and maintained by the Company, are not governmental instrumentalities, this would not alter the fact that the railroad itself, in connection with the Canal, is a governmental instrumentality. P. 408.
7. It is well settled that the federal government may employ a corporation as a means to carry into effect the substantive powers granted by the Constitution. *McCulloch v. Maryland*, 4 Wheat. 316. P. 408.
8. The Railroad Company being immune from state taxation, it necessarily results that fixed salaries and compensation paid to its officers and employees in their capacities as such are likewise immune. P. 408.
9. The salary of the general counsel of the Panama Railroad Company *held* exempt from payment of a state income tax. Pp. 402, 408.

10. The evidence in this case sufficiently negatives the suggestion that the relator—since 1906 the general counsel of the Railroad Company, at a fixed annual salary, and in the same category in respect of the Company as the secretary and treasurer—may have been an independent contractor and not an officer. P. 409.  
271 N. Y. 543, reversed.

APPEAL from a judgment affirming a judgment sustaining a state income tax. The taxpayer had claimed that the salary on which the tax was imposed was exempt from state income tax.

*Mr. Richard Reid Rogers* for appellant.

*Mr. Joseph M. Mesnig*, Assistant Attorney General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, and *Mr. Henry Epstein*, Solicitor General, were on the brief, for appellees.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The relator, Richard Reid Rogers, is general counsel for the Panama Rail Road Company, a corporation created by an old statute of the State of New York for the purpose of constructing and operating a railroad across the Isthmus of Panama. In making his state income-tax return for the years 1927, 1928, and 1929, he reported the receipt of salary from the corporation during those years, but, upon the claim that the salary was exempt, paid no tax. The State Tax Commission, however, sustained the tax, and it then was paid under protest. The Appellate Division of the Supreme Court of New York, to which the case was taken by certiorari, upheld the view of the Tax Commission, 245 App. Div. 452; 283 N. Y. S. 538, and the decision was affirmed by the Court of Appeals, without opinion. 271 N. Y. 543; 2 N. E. (2d) 686.

The ground upon which the relator claimed the exemption was that the Panama Rail Road Company was a

wholly-owned instrumentality of the United States, engaged in maintaining, operating and protecting the Panama Canal; that as such, the railroad company was exempt from state taxation and, in consequence, the fixed salaries paid to its officers and employees were also exempt. The Appellate Division held that the railroad company was a government-controlled corporate agency engaged in a commercial proprietary function, and was not immune from state taxation since, it said, such taxation did not hinder or restrain "functions which are unquestionably, properly and usually governmental in their character."

*First.* The corporation was privately owned and operated for many years; but in 1904, the United States acquired the entire capital stock of the corporation, and ever since has been, and now is, the sole owner thereof. The company operates a railroad across the Isthmus, conducts a commissary establishment for the benefit of the personnel of the Panama Canal, the railroad company, and the armed forces of the United States upon the Isthmus, and operates a dairy and two hotels in connection therewith. It also operates a line of steamships between New York and the Canal Zone, which ships afford the personnel of the canal and of the railroad company transportation at a nominal rate, and carry freight for the government of the United States to the Canal Zone at 25% less than the customary tariff rates.

The acquisition by the United States of the Panama Rail Road Company was coincident with its acquisition of the control of the Panama Canal Zone and the right to construct and maintain a ship canal across it. Since the acquisition of the railroad company by the government, the directors, thirteen in number, have been elected by the Secretary of War, as sole stockholder of record of the corporate stock with the exception of thirteen qualifying shares held by the directors.

During the construction of the canal, the railroad was almost exclusively employed as an adjunct of such construction, although it was incidentally used also for commercial transportation across the Isthmus. In *United States ex rel. Skinner & Eddy Corp. v. McCarl*, 275 U. S. 1, 6, we said, "For many years before the War, the Government had employed the Panama Railroad Company as its instrumentality in connection with the Canal." In a footnote following that statement, we pointed out that the stock in the railroad company was acquired in order that the railroad might be used in the manner most helpful to the government in constructing the canal, and cited public documents which sustained that view.

In order to reach a correct determination of the question whether the railroad company is exercising functions of a governmental character, the railroad and ships are to be considered not as things apart, but in their relation to the Panama Canal; and it is clear that the railroad and ships, after the completion of the canal, continued to be used chiefly as adjuncts to its management and operation. The question, therefore, to be answered is whether the canal is such an instrumentality of the federal government as to be immune from state taxation; and, if so, are the operations of the railroad company so connected with the canal as to confer upon the company a like immunity?

The authority for the construction of the canal and the acquisition of rights in connection therewith is found in the Act of Congress of June 28, 1902, c. 1302, 32 Stat. 481. By that act, the President was authorized to acquire for the United States all the rights and property of the New Panama Canal Company, of France, on the Isthmus of Panama, including the capital stock of the Panama Rail Road Company "owned by or held for the use of said canal company"; to acquire from the Republic of Colombia perpetual control of the Panama Canal Zone, a strip of land six miles in width and extending across the Isth-

mus; and to construct and perpetually maintain, operate, and protect thereon a ship canal, including "the right to perpetually maintain and operate the Panama Railroad." The acquisition was to include jurisdiction over the Zone and the ports at the ends thereof, and the power to make police and sanitary rules and regulations necessary to preserve order and preserve the public health thereon; and to establish judicial tribunals necessary to enforce such rules and regulations.

Section 7 of the act created a commission to carry out the purpose of the act, and authorized the employment of engineers necessary for the prosecution of the work. The commission was to be subject to the direction and control of the President, and was to make full reports of their doings, to be transmitted to Congress by the President. Section 8 authorized the Secretary of the Treasury to borrow, on the credit of the United States, such sums as might be required to defray expenditures authorized by the act, not to exceed \$130,000,000, and to issue bonds of the United States as security therefor.

The Act of August 24, 1912, c. 390, § 4, 37 Stat. 560, 561; 48 U. S. C. § 1305, authorized the President to govern and operate the Panama Canal and the Canal Zone through a Governor of the "Panama Canal" and other persons. The Governor was to be appointed by and with the advice and consent of the Senate, commissioned for a term of four years, with an annual salary of \$10,000. The Governor was to have control and jurisdiction over the Zone, which was to be held, treated and governed as an adjunct of the canal. 37 Stat. 564, § 7; 48 U. S. C. § 1307. Later legislation authorizes the President to make rules and regulations in matters of health, etc., and imposes penalties for their violation. 48 U. S. C. § 1310. The President is also given broad powers of police within the Zone. 48 U. S. C. §§ 1312, 1313, 1314. We need not particularize further. Chapter 6, Title 48 U. S. C., dis-

closes a large body of laws passed by Congress for the government and control of the canal, and of both the Canal Zone and the railroad company as necessary adjuncts of the canal.

That under these laws, the creation, management and operation of the canal are all governmental functions and the laws well within the constitutional power of Congress to provide for the national defense and to regulate commerce under the commerce clause of the Constitution, does not admit of doubt. *California v. Central Pacific Railroad Co.*, 127 U. S. 1, 39; *Luxton v. North River Bridge Co.*, 153 U. S. 525.

The building and operation of a bridge or a road or a canal is not commerce in the substantive sense, but is the creation and use of a physical thing as a medium by and through which commerce is regulated, since such creation and use condition and facilitate transportation. *Luxton v. North River Bridge Co.*, *supra*, pp. 533-534; *Pensacola Telegraph Co. v. Western Union*, 96 U. S. 1, 9, 10; cf. *Carter v. Carter Coal Co.*, 298 U. S. 238, 297. In recognition of the principle established by these and other decisions, this court in *Wilson v. Shaw*, 204 U. S. 24, 33, sustained the acquisition, construction and maintenance of the canal as within the commerce power of the federal government.

Such being the status of the canal, it requires no argument to demonstrate that all auxiliaries primarily designed and used to aid in its management and operation, and which have that effect, partake of its nature and are themselves coöperating regulators—or, perhaps more accurately speaking, constitute, with the canal, a single great regulator—of national and international commerce. And this, we think, is the effect of the interrelation of the railroad company's activities with the management and operation of the canal.

If support for this view were thought necessary, it could be found in the contemporaneous and long-

continued administrative practice. On April 27, 1928, the Secretary of War, in a letter to the President, said: "The [steamship] Line is an integral part of the Panama Canal and indispensable in its discharge of its normal responsibilities. The successful operation of this great enterprise, which is of vital importance to the United States, demands absolute security as to its line of supply to this country."

Section 500 of the War Revenue Act of 1917 (40 Stat. 314), levied a tax upon sums paid for transportation by rail and water, but exempted (§ 502) therefrom payments received for services rendered to the United States, etc. The Commissioner of Internal Revenue held that transportation services performed for the Panama Rail Road Company fell within the exemption, on the ground that they were "in substance payments for services rendered the United States."

Article 96, Department Regulations No. 49, revision of June, 1921, declares that transportation services rendered to agencies of the United States are exempt from the tax, and enumerates as among such agencies the Panama Rail Road Company. The commissioner had likewise held that the railroad company was not subject to the capital stock tax imposed by the Revenue Act of 1918 (40 Stat. 1126), because the company was a government agency. Again, on September 20, 1926, the Commissioner of Internal Revenue advised the company that inasmuch as it was a governmental agency, it was not required to file federal income-tax returns or to pay federal income taxes. No act of Congress suggests any different view, but all such legislation, so far as it deals with the subject, recognizes its correctness.

We attach no importance to the fact that the railroad company has utilized both its ships and railroad to carry private freight and passengers. The record shows that this is done to a limited extent compared with the government business; and that it is only incidental to the

governmental operations. The primary purpose of the enterprise being legitimately governmental, its incidental use for private purposes affords no ground for objection. *United States v. Chandler-Dunbar Co.*, 229 U. S. 53, 73; *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 333. The first of these two cases dealt with the disposition of excess water power developed by a project to improve navigation; and the second with the disposition of surplus electric energy developed by a like project. But the principle is equally applicable to the situation here.

It is suggested that the dairy, hotels, and other enterprises, built and maintained by the company, are not governmental instrumentalities. Even if we accept that conclusion—which, in view of their use for the personnel of the railroad and canal, we are far from doing—it would not alter the fact that the railroad itself, in connection with the canal, is a federal instrumentality.

*Second.* The power of the federal government to use a corporation as a means to carry into effect the substantive powers granted by the Constitution has never been doubted since *McCulloch v. Maryland*, 4 Wheat. 316. The Panama Rail Road Company was acquired and has been utilized in virtue of that power. The railroad company being immune from state taxation, it necessarily results that fixed salaries and compensation paid to its officers and employees in their capacity as such are likewise immune.

In *Dobbins v. Commissioners of Erie County*, 16 Pet. 435, 448-449, this court held that a state was without authority to tax the instruments, or compensation of persons, which the United States may use and employ as necessary and proper means to execute its sovereign power. The rule is well established; and the reasons upon which it is based and the authorities sustaining it have been so recently reviewed by this Court, *Indian*

*Motocycle Co. v. United States*, 283 U. S. 570, 575, *et seq.*, that further discussion is unnecessary.

The rule itself is not denied; but it was suggested in the court below by counsel for the state, and the suggestion was repeated here, albeit faintly, that the record does not establish whether relator was an officer or employee of the railroad company or an independent contractor. The point was not made or suggested either before the State Tax Commission or in the Appellate Division of the Supreme Court. The whole question there was whether the company was subject to taxation; and it quite evidently was taken for granted that a negative answer to that question would carry with it an exemption of relator's salary. It is conceded that the point was raised by counsel for the state for the first time in the Court of Appeals; and that in reply to a question from that bench whether he wished the case decided upon that point, counsel answered in the negative and declared that the state wanted a decision upon the merits.

Under these circumstances, it is not surprising that the obligation of the relator to prove his case in this regard was somewhat perfunctorily discharged. The record, however, does show that relator was, and had been ever since the year 1906, general counsel for the railroad company with a fixed annual salary, in the same category in respect of the railroad company as the secretary and treasurer. We think this evidence sufficiently negatives the belated suggestion that relator may have been an independent contractor and not an officer, within the rule stated and discussed in *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 524-526.

*Reversed and remanded for further proceedings not inconsistent with this opinion.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

BENGZON *v.* SECRETARY OF JUSTICE OF THE  
PHILIPPINE ISLANDS *ET AL.*

CERTIORARI TO THE SUPREME COURT OF THE COMMON-  
WEALTH OF THE PHILIPPINES.

No. 214. Argued December 18, 1936.—Decided January 4, 1937.

1. An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury. P. 413.
2. The bill which became Act 4051, Laws of the Philippines (Retirement Gratuity Law), provided for the payment of retirement gratuities to officers and employees of the Insular Government who were retired as a result of the reorganization or reduction in personnel thereof. The provisions of the bill dealt largely with matters relating to the right to, and the amount of, the gratuity. Section 10 provided for an appropriation of funds from the public treasury for carrying out the purposes of the Act. Section 7 made eligible for the gratuity justices of the peace who, under the provisions of another Act, were required to relinquish office in 1933. *Held*, the Governor General was without authority to veto § 7 of the bill under § 19 of the Organic Act, which permits a veto of part of a bill only in the case of an "item of an appropriation bill." P. 414.
3. This conclusion is not affected by a clause in the Gratuity Law declaring that if any of its provisions be disapproved by the Governor General or be held invalid, other provisions shall not be affected thereby. P. 415.
4. The title of an Act may be resorted to as an aid to its meaning in cases of doubt. P. 416.

Reversed.

CERTIORARI \* to review a judgment of the Supreme Court of the Commonwealth of the Philippines, which affirmed a decision of the trial court dismissing upon demurrer a petition for a writ of mandamus.

*Mr. Pedro Y. Ylagan* submitted for petitioner.

---

\* See Table of Cases Reported in this volume.

*Mr. Eugene M. Caffey*, with whom *Mr. Lowell W. Bassett* was on the brief, for respondents.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

This suit was brought by petitioner against respondents in the Court of First Instance of Manila, for a writ of mandamus commanding respondents to approve and order payment of a gratuity awarded to him by § 7 of the Retirement Gratuity Law (Act 4051, Laws of the Philippines), notwithstanding the veto of that section by the Governor-General. The Court of First Instance, upon respondents' demurrer, dismissed the action. Upon appeal, the Supreme Court of the Commonwealth of the Philippines affirmed that decision, holding that the veto by the Governor-General of § 7 was authorized by § 19 of the Organic Act of August 29, 1916, 39 Stat. 545, 551. Because of the importance of the question, we granted certiorari.

The Retirement Gratuity Law contains twelve sections. It is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act numbered Thirty-eight Hundred and Ninety-nine, and for other purposes."

Section 1 classifies the officers and employees, separated or retired from the service, who shall be entitled to a gratuity, and provides a method for ascertaining the amount. Section 2 accords preferences in the case of certain officers and employees; § 3 fixes the basis for the computation of the gratuity; § 4 allows an officer or employee to choose between the gratuity granted by the act and

gratuities conferred by other acts; § 5 provides for succession in respect of unpaid gratuities in case of death; and § 6 authorizes a conditional reappointment of persons separated or retired under the act.

Section 8—passing for the present § 7—abolishes the offices and positions vacated by the separation or retirement of officers and employees, with certain exceptions. Section 9 excepts from the benefits of the act designated officers and employees. Section 10 provides, "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." Section 11 fixes the effective date of the act; and § 12 provides that if any provision of the act be disapproved by the Governor-General or be held unconstitutional or invalid by a competent court, none of the other sections or provisions of the act shall be affected thereby.

The Governor-General returned the act with the endorsement, "Approved, section 7 excepted, February 21, 1933." Section 7, thus vetoed, reads:

"The Justices of the Peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act."

Section 19 of the Organic Act, *supra*, confers upon the Governor-General the usual and general veto power. That is to say, it authorizes him, if he does not approve a bill or joint resolution passed by both houses of the legislature, to "return it with his objections to that house in which it shall have originated"; and it then can become law only if upon reconsideration two-thirds of the members elected to each house shall agree to pass it. This general power requires the veto to include the whole bill. But the section contains an exception, namely—

"The Governor General shall have the power to veto any particular item or items of an appropriation bill, but

the veto shall not affect the item or items to which he does not object."

This exceptional power, it will be seen, is limited to appropriation bills; any other kind of legislation being controlled by the general rule. And its exercise is restricted to the disapproval of a particular item or particular items of such a bill. The precise question for consideration, therefore, is—did the bill which became Act 4051 constitute an appropriation bill; and, if so, was § 7, within the meaning of the foregoing provision of the Organic Act, an item of such bill?

It first is to be observed that the title of the act in no wise suggests that what follows is an appropriation bill; and an examination of the act itself discloses that, with the exception of § 10, the bill itself proposed only general legislation. Eliminating § 10, the remaining eleven sections could stand as a generic act of legislation, leaving the specific matter of appropriation to be dealt with by later enactment. The term "appropriation act" obviously would not include an act of general legislation; and a bill proposing such an act is not converted into an appropriation bill simply because it has had engrafted upon it a section making an appropriation. An appropriation bill is one the primary and specific aim of which is to make appropriations of money from the public treasury. To say otherwise would be to confuse an appropriation bill proposing sundry appropriations of money with a bill proposing sundry provisions of general law and carrying an appropriation as an incident. The Supreme Court of Texas in *Fulmore v. Lane*, 104 Tex. 499, 512; 140 S. W. 405, 1082, clearly pointed out the distinction between the veto power in respect of a bill in the general sense and an appropriation bill. "Nowhere in the Constitution," the court said, "is the authority given the Governor to approve in part and disapprove in part a bill. The only additional authority to disapproving a bill in whole is

that given to object to an item or items where a bill contains several items of appropriation. It follows conclusively that where the veto power is attempted to be exercised to object to a paragraph or portion of a bill other than an item or items, or to language qualifying an appropriation or directing the method of its uses, he exceeds the constitutional authority vested in him, and his objection to such paragraph, or portion of a bill, or language qualifying an appropriation, or directing the method of its use, becomes non-effective."

If the Governor-General had power under the foregoing clause of § 19 of the Organic Act to veto § 7 of the gratuities bill, he had like power to veto § 2, granting preferences to certain classes of officers and employees; or § 4, allowing a choice between the gratuity granted by the act under review and a gratuity granted by some other act; or § 5, according a right of succession to unpaid gratuities in case of death; or § 6, providing for conditional reappointment of persons separated or retired under the act; or to veto as many of them as he saw fit. No more than any of the designated sections, does § 7 constitute an item of appropriation. All of them are distinct parts of an act of general legislation. The elimination of any by an exercise of the veto power, with the going into effect of the remaining portions of the bill as a consequence (if the veto be not overruled by a two-thirds vote of each house), would result in the enactment of a general law in an emasculated form not intended by the legislature and against the will, perhaps, of a majority of each house. This would not be negation of an item or items of appropriation by veto but, in effect, affirmative legislation by executive edict.

So, even if it be conceded that the bill could be characterized as an appropriation bill, § 7 is not an "item" within the meaning of § 19 of the Organic Act. An item of an appropriation bill obviously means an item which in itself is a specific appropriation of money, not some gen-

eral provision of law which happens to be put into an appropriation bill. Provisions granting power to the executive to veto an item or items of an appropriation bill are to be found, in various forms of expression, in many of the state constitutions. Their object is to safeguard the public treasury against the pernicious effect of what is called "log-rolling"—by which, in order to secure the requisite majority to carry necessary and proper items of appropriation, unnecessary or even indefensible items are sometimes included.

Section 73 of the Constitution of Mississippi provides that the Governor may veto parts of any appropriation bill; and although "parts" would seem to be a word of wider application than the words "item or items," the Supreme Court of that state, *State v. Holder*, 76 Miss. 158, 180-181; 23 So. 643, held that it was not designed to enable the Governor to veto legislation carried in an appropriation bill. "Section 73," the court said, "was framed with a view of guarding against the evils of omnibus appropriation bills, securing unrighteous support from diverse interests, and to enable the governor to approve and make law some appropriations, and to put others to the test of securing a two-thirds vote of the legislature as the condition of becoming law. Thus viewed, section 73 is eminently wise, and will prove useful in practice as corrective of an evil, but if a single bill, making one whole of its constituent parts, 'fitly jointed together,' and all necessary in legislative contemplation, may be dissevered by the governor, and certain parts torn from their connection may be approved, and thereby become law, while the other parts, unable to secure a two-thirds vote in both houses, will not be law, we shall have a condition of things never contemplated, and appalling in its possible consequences."

The court below attached importance to § 12 of the act under review, which provides that if any section or pro-

vision of the act *be disapproved by the Governor-General* or held to be unconstitutional or invalid by a competent court, none of the other sections or provisions should be affected thereby. That court viewed the italicized clause of this provision as indicating that the legislature intended the act "to be an appropriation measure with various items," since it anticipated the possibility of a partial veto. Just why this clause was inserted by the legislature does not appear. It may have been merely formal, or inserted out of abundance of caution. Certainly it could not have such force as to convert what plainly was a proffer of general legislation into an appropriation bill. Although the title is only a formal part of an act, and may be resorted to as an aid to the meaning of a statute only in cases of doubt, *Hadden v. Collector*, 5 Wall. 107, 110, the title of the present act, at least, has the effect of overcoming such extrinsic aid as the clause relied upon otherwise might afford to the construction of the act by the court below. If the Philippine Legislature regarded the bill as an appropriation bill, it is strange that the words by which that body described and characterized its own proposed act afford no hint to that effect. Compare *Holy Trinity Church v. United States*, 143 U. S. 457, 462-463.

We conclude that the Governor-General was without power to separately veto § 7 of the Retirement Gratuities Act. The judgment of the lower court must be reversed, and the cause remanded for further proceedings not inconsistent with the foregoing opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

## Syllabus.

## UNITED STATES v. THE SEMINOLE NATION.

## CERTIORARI TO THE COURT OF CLAIMS.

No. 172. Argued December 10, 1936.—Decided January 4, 1937.

1. A second motion for new trial made by the United States, by leave of the Court of Claims, *held* to have been filed under Rule 91 of the Court of Claims, requiring leave of court, and not under 28 U. S. C., § 282; Jud. Code, § 175. P. 419.
2. The time within which application may be made to this Court for review by certiorari does not commence to run until after disposition of motion for a new trial seasonably filed and entertained. P. 421.
3. The Court of Claims is without jurisdiction to adjudicate causes of action against the United States which were introduced into the claimant's petition by amendment after the expiration of the time for beginning suit as limited by the jurisdictional statute. P. 421.
4. A judgment of the Court of Claims may not be sustained as to any item that was not included in a cause of action set up in a petition filed within the time allowed by statute, or that was, by the findings or otherwise, put upon a ground not alleged in a petition so filed. P. 422.
5. A judgment of the Court of Claims may not be upheld as to any item that is not supported by definite findings of fact extending to all essential issues and which, unaided by statements in the court's conclusions of law or its opinion, are clearly sufficient to entitle plaintiff to recover. P. 422.
6. Under Acts of Congress authorizing suit in the Court of Claims, to be commenced before a day prescribed, the Seminole Nation filed, in time, a petition seeking recovery, with interest, of tribal funds alleged to have been spent by the Government since July 1, 1898, without authority from Congress and in violation of its duty as trustee and of treaties and agreements with the tribe. The petition was amended after the limitation period had expired. *Held* (pp. 422 *et seq.*):
  - (1) That a judgment for the plaintiff could not be sustained in so far as it included:
    - (a) Various items outside of the period alleged in the original petition, or not shown by the findings to be included in any cause of action alleged in the original petition to have accrued in that period. Pp. 425 *et seq.*

(b) Interest on a tribal fund, appropriated by Congress for the purpose of making per capita payments, and alleged not to have been disbursed to members or paid to the tribal treasurer, but not found to have been disbursed or spent illegally. P. 426.

(c) An amount, which was disbursed as per capita payments from capital previously set apart as a permanent school fund.

(d) Amounts disbursed out of the principal of that fund, for education. Pp. 430, 431.

(2) Payments out of the Seminole school fund for equalization of allotments not otherwise "authorized by law" were not permitted by the Indian Appropriation Act of February 14, 1920; and their amount was properly included in the judgment in this case. P. 431.

7. In the process of liquidating the affairs of the Seminole Nation, Congress, by § 18 of the Indian Appropriation Act of May 25, 1918, authorized the Secretary of the Interior to make per capita payments to enrolled Seminoles, or their lawful heirs, out of the Seminole school fund; and the authority was not confined to the particular fiscal year. P. 428.

8. The Indian Appropriation Acts for the years 1922-1930, authorizing the Secretary of the Interior to continue Seminole schools with tribal funds, were passed by Congress with knowledge that the fund in pursuance of its authority had been so depleted that interest on the amount remaining in it would not meet even the lessened requirements; and are to be construed as contemplating the use of not merely the interest on the diminished school fund but of the principal also. P. 431.

82 Ct. Cls. 135, reversed.

CERTIORARI\* to review a judgment allowing various claims of the Seminole Nation in a suit against the United States.

*Mr. Charles E. Wyzanski, Jr.*, with whom *Solicitor General Reed*, *Assistant Attorney General Blair*, *Messrs. George T. Stormont*, *Charles H. Small*, and *Wilfred Hearn*, and *Miss Anne E. Freeling* were on the brief, for the United States.

*Mr. Paul M. Niebell*, with whom *Mr. W. W. Pryor* was on the brief, for respondent.

\*See Table of Cases Reported in this volume.

MR. JUSTICE BUTLER delivered the opinion of the Court.

An Act of Congress approved May 20, 1924, 43 Stat. 133, authorized the above named court to adjudicate claims of the Seminole Nation against the United States, declared all forever barred unless suit be brought within five years, directed adjudication of claims of the United States against that nation and gave right of review in this court. A Joint Resolution of May 19, 1926, 44 Stat. 568, permitted plaintiff to bring separate suits on one or more causes of action. Joint Resolution of February 19, 1929, 45 Stat. 1229, extended time for commencing suits to June 30, 1930. February 24, 1930, plaintiff filed its petition praying judgment in respect of causes of action alleged to have arisen after July 1, 1898. Plaintiff obtained leave and, September 19, 1934, filed an amended complaint containing allegations in respect of the claims alluded to in the original petition and attempted to set up other causes of action. But the period within which defendant permitted suit had long since expired. On December 2, 1935, the court filed its special findings of fact, conclusions of law and opinion and entered judgment in favor of plaintiff for \$1,317,087.27.

1. Plaintiff contends that the petition for the writ of certiorari came too late and that therefore this court is without jurisdiction. The petition was filed under 28 U. S. C., § 288 (b). Section 350 limits the time to three months after entry of judgment. Defendant filed timely motion for new trial which was overruled March 2, 1936. May 13 it applied for leave to file a second motion for new trial. The application stated that it was made pursuant to 28 U. S. C., § 282,<sup>1</sup> and that the motion was attached to the application. The court granted leave and defendant, May 18, filed its second motion for a new trial. The record does not include the motion. After hearing argument the

---

<sup>1</sup>R. S., § 1088; Judicial Code, § 175; Act of March 3, 1911, 36 Stat. 1141.

court, June 8, overruled the motion. July 8, defendant filed petition for certiorari.

Plaintiff assumes that defendant's second motion for a new trial was made under § 282 and argues that the running of time allowed for filing petition for certiorari was not postponed until the court disposed of that motion. But it does not appear that the motion was in fact one authorized by § 282. Aside from mere recital in the application for leave, there is nothing to indicate that it was not one made under Rule 91 of the Court of Claims.

That rule declares: "Whenever either party desires to question the correctness or the sufficiency of the court's conclusions on its findings of fact or to amend the same, the complaining party shall file a motion which shall be known as a motion for a new trial. All grounds relied upon for any or all of said objections shall be included in one motion. After the court has announced its decision upon such motion no other motion for a new trial, except that provided by United States Code, title 28, section 282, shall be filed by the same party unless by leave of court. Motions for new trial, except as provided by section 175 of the Judicial Code (U. S. Code, title 28, sec. 282), shall be filed within 60 days from the time the judgment of the court is announced."

Section 282 provides: "The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; . . ."

The rule expressly excepts motions under § 282 from those for the filing of which leave of court must be obtained. The statute plainly implies that in accordance

with its terms defendant may as of right apply for a new trial. The record does not contain anything to indicate that it was one made upon evidence or otherwise in accordance with statute. Cf. *In re District of Columbia*, 180 U. S. 250, 253. In the absence of definite showing to that effect, it will not be held that the United States applied for or that the court entertained and granted an application for leave so expressly shown to be unnecessary. On this record, it is reasonably to be inferred, and we find, that the second motion was one filed in accordance with the rule under which application for leave was necessary and not one authorized by the statute for the filing of which permission of the court was not needed. It is clear that the three months' period, § 350, did not commence to run until the court disposed of that motion and did not expire until long after the defendant had filed its petition for this writ. It is well settled that the time within which application may be made for review in this court does not commence to run until after disposition of motion for a new trial seasonably filed and entertained. *Brockett v. Brockett*, 2 How. 238, 240. *Texas & Pacific Ry. Co. v. Murphy*, 111 U. S. 488, 489. *United States v. Ellicott*, 223 U. S. 524, 539. *Citizens Bank v. Opperman*, 249 U. S. 448, 450. *Morse v. United States*, 270 U. S. 151, 153-154. *Gypsy Oil Co. v. Escoe*, 275 U. S. 498. This court has jurisdiction.

2. The jurisdiction of the lower court was limited to claims sued on before the expiration of the period within which the United States consented to be sued. It did not extend to any cause of action which was not alleged in plaintiff's original petition. As the United States may not be sued without its consent, causes of action not alleged within the period allowed may not be enforced. *Finn v. United States*, 123 U. S. 227, 232. The amended petition was not filed within the time allowed; no cause of action was by it brought within the power of

the court. *Taylor Co. v. Anderson*, 275 U. S. 431, 438-439. *B. & O. S. W. R. Co. v. Carroll*, 280 U. S. 491, 495. The judgment may not be sustained as to any item that is not included in a cause of action set up in the original petition or that was by the findings of the lower court or otherwise put upon a ground not there alleged. *Harrison v. Nixon*, 9 Pet. 483, 503. *Boone v. Chiles*, 10 Pet. 177, 209. *Garland v. Davis*, 4 How. 131, 148. It may not be upheld as to any item that is not supported by definite findings of fact extending to all essential issues and which, unaided by statements in the court's conclusions of law or its opinion, are clearly sufficient to entitle plaintiff to recover. *United States v. Esnault-Pelterie*, 299 U. S. 201, 205.

The original petition is in paragraphs designated by roman numerals; the substance of each may be briefly shown:

I. Reference is made to the Act conferring jurisdiction. II. Plaintiff for many years was the owner of funds held in trust by defendant; there existed various treaties and agreements between plaintiff and defendant whereby the trust funds were to be managed and invested by defendant and the interest thereon paid over to the national treasurer of plaintiff. III. From and after passage of the act of June 28, 1898, 30 Stat. 495 (called the Curtis Act) defendant impounded all funds of plaintiff, refused to further pay them to plaintiff's national treasurer and proceeded to disburse them for various purposes. IV. The only authority given by that Act for the disbursement of plaintiff's funds is § 19.<sup>2</sup> After that Act, Congress passed others giving authority for the expenditure of plaintiff's funds, but no subsequent act gave authority for the ex-

<sup>2</sup> "That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of

penditure of the funds hereinafter mentioned. VI. From "July 1st, 1898, until the present time, defendant, in violation of its duty as trustee of the funds of plaintiff, in violation of the rights of plaintiff under its various treaties and agreements with defendant, and without authority of Congress, has spent large sums of the trust funds of plaintiff." VII. At all times mentioned in the petition R. S., § 2097, was in force.<sup>3</sup> VIII. "Defendant has thus spent, in violation of law, a large amount of the trust funds of plaintiff." The exact amount will be shown by the books and records of defendant.

The prayer of the petition is that defendant be required to file in this cause a statement showing its expenditures of plaintiff's funds "during said period," the purposes for which, and dates when, such expenditures were made, and the authority of law, if any, which authorized defendant to make such expenditures; "that, if necessary thereafter, plaintiff be permitted to amend this petition" and that plaintiff have judgment against the defendant in such sum or sums as shall appear to the court to have been expended without authority of law, with interest at six per cent.

This petition does not include any cause of action that accrued prior to July 1, 1898. Nor is recovery sought on mere failure of defendant to pay plaintiff's funds to its national treasurer or to the Seminoles per capita. The gist of the petition is that defendant disbursed funds of plaintiff for "various purposes" (par. III); and in viola-

the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation." 30 Stat. 502.

<sup>3</sup>"No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law." 25 U. S. C., § 122.

tion of its duty as trustee and of plaintiff's rights under "treaties and agreements" and "without authority of Congress, has spent large sums of the trust funds of plaintiff" (par. VI). The petition extends to no amount not "thus spent" (par. VIII). It prays statement by defendant only as to "expenditures" of plaintiff's funds "during said period," and seeks judgment only for such sums as appear to the court to have been "expended."

While the amended petition came too late to bring in any additional cause of action or to change grounds on which plaintiff rested its suit, it will be taken into account to the extent that it usefully gives plaintiff's statement of details of causes of action alleged in the original petition and for comparison with the court's special findings of fact. It describes 13 claims; ten of these are in whole or in part included in the judgment. The following statement shows: (1) Paragraphs of the amended petition; (2) Amounts claimed in each; (3) Items identified by arabic numbers used in the opinion below; (4) Amounts of items considered; (5) Findings identified by roman numerals; (6) Amounts included in the judgment; (7) Amounts excluded below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
III	\$63,353.42					
		1	\$61,563.42	IV	\$61,563.42	
		4	1,790.00	VII	1,790.00	
IV	304,551.28					
		2	150,000.00	V		\$150,000.00
		3	154,551.28	VI	154,551.28	
V	90,597.20					
		5	3,097.20	IX	3,097.20	
			750.00		750.00	
			57,500.00		57,500.00	
			*[29,250.00]			*29,250.00
VI	15,000.00					
		6	15,000.00	X		15,000.00
VII	10,000.00					
		7	10,000.00	XI	9,068.24	931.76

\*Not dealt with in the opinion. This amount is made up of a duplication of \$26,750, interest for 1899-1909 excluded from consideration because considered in item 8, plus seeming error of \$2,500 in calculation of judgment allowed.

Cont'd

(1)	(2)	(3)	(4)	(5)	(6)	(7)
VIII	864,702.58					
		8	864,702.58	XII	864,702.58	
IX	154,455.30					
		9	154,455.30	XIII	154,455.30	
X	66,247.37					
		10	51,460.08	XIV		51,460.08
		11	3,909.96	XIV	3,909.96	
		12	4,348.74	XV	4,348.74	
			†[6,528.59]			†6,528.59
XI	178,533.42					
		13	178,533.42	XVI	1,350.55	177,182.87
	\$1,747,440.57		\$1,747,440.57		\$1,317,087.27	\$430,353.30

†Not dealt with in the opinion. This amount apparently was not claimed in proposed findings of fact, although claimed in amended petition, i. e., included in claim for \$66,247.37.

The lower court disallowed all of items 2, 6 and 10 and parts of 5, 7 and 13. Plaintiff has not asked review. Defendant's prayer for reversal does not extend to any part of items 11, 12 or 13.

Items 1, 4 and 7 are by the amended petition indicated to be outside the period alleged in the original petition—from July 1, 1898, to the time of the commencement of the suit. The findings fail to show that any part of these amounts is included in any cause of action alleged in the original petition to have accrued in that period. All of these items must be deducted from the judgment.

Item 3, \$154,551.28, is a part of \$304,551.28 first described in the amended petition. Of that amount \$150,000 (item 2) was disallowed. The amount included in the judgment rests on special finding VI which is to the effect that commencing with the Act of July 26, 1866 (14 Stat. 263-264) up to and including the Act of April 30, 1908 (35 Stat. 91) Congress annually appropriated \$25,000 being the interest at 5% on the \$500,000 fund provided in the eighth article of the Treaty of 1856 for the purpose of making per capita payments, and that the United States disbursed the sums thus appropriated for the years involved, either by direct payment per capita to members

of the tribe, or by cash payment to the treasurer of the Seminole Nation, *except* interest in years between 1867 and 1879 inclusive, the total of which is \$92,051.28, and interest in the years 1907 to 1909 inclusive, amounting to \$62,500; and that these items of interest were neither disbursed to members of the tribe nor paid to the treasurer.

But defendant's retention or other disposition of the amounts of interest in years between 1867 and 1879 is not shown by the findings to have been within the period covered by the original petition. For that reason \$92,051.28 must be deducted. And for another reason all of item 3 must be eliminated from the judgment. The finding merely shows that defendant did not pay or disburse the amount included in that item to the national treasurer or to members of the tribe. That is not enough. The suit is not to recover money withheld but only for that illegally disbursed or spent by defendant.

Item 5—\$90,597.20—as described in the amended petition is interest on the permanent school fund provided for in the third article of the Treaty of 1866. The judgment includes \$3,097.20 of that item on account of interest for the years 1867–1874. But it is not shown that any cause of action accrued in respect of that sum after July 1, 1898. The item also includes \$750, a part of the interest for 1907 found not to have been paid by defendant to the tribal treasurer. But, as shown above, mere failure so to pay is not sufficient to constitute any cause of action alleged in the original petition. The balance of item 5 includes \$57,500, payments to the tribal treasurer before the passage of the Curtis Act and before commencement of the period covered by the original petition. They must be excluded. The remainder of this item is also a part of item 8 about to be considered. See opinion below, p. 154.

Item 8—\$864,702.58—is based on a claim which is described in the amended petition, in substance as follows:

After the passage of the Curtis Act, defendant impounded all the funds of plaintiff, and assumed full administrative control over the disbursement of same. Notwithstanding "the plain inhibition in said Section 19 that no payments thereafter should be made to 'the tribal governments or to any officer thereof for disbursement,' yet in violation of said section the defendant illegally disbursed the amounts hereinafter set forth, derived from" stated sources.<sup>4</sup> "Therefore, the defendant is liable to the plaintiff in the amount of \$864,702.58 for the violation of said Section 19 of said Act of June 28, 1898."

This claim is not included in the original petition. It states defendant refused to make payments to the tribal treasurer. Finding XII shows that defendant did pay to the treasurer all the amounts included in the item. The original petition not only failed to lay foundation for the claim but in effect excluded every part of it. The item is included in the judgment on a basis of fact directly opposed to the allegations of the original petition relied on by plaintiff until long after the expiration of the period within which the United States permitted suit in respect of it. The plaintiff is not entitled to recover any part of the item.

3. Item 9 is \$154,455.30. Unlike the items considered above, it may be held sufficiently alleged in the original petition. The amended petition, par. IX, gives details as follows: The Original Seminole Agreement ratified by Act of July 1, 1898, 30 Stat. 567, provides that \$500,000

---

"Treaty of August 7, 1856, Funds.....	\$212, 500. 00
Treaty of March 21, 1866, Funds.....	29, 750. 00
Act of March 2nd, 1899, Funds.....	622, 156. 87
Indian Moneys, Proceeds of Labor Fund.....	295. 71
	<hr/>
	\$864, 702. 58"

of the funds belonging to the Seminoles shall be set apart as a permanent school fund and be held by the United States at five per cent interest. The school fund was established March 6, 1906. Defendant, in violation of the agreement and without authority of law "disbursed from the principal thereof the amount of \$154,455.30." Therefore that amount "is due the Seminole Nation from the defendant." As to it the court found that the Secretary of the Interior did disburse from the principal of the permanent school fund in 1920 and 1921 "per capita payments" amounting to \$32,445.56; in 1921 "equalization of allotments," \$490.22; in each of the years 1922 to 1930 payments for "Education" amounting in all to \$121,519.52. In its opinion the court said: "That Congress had the power to change the terms of the agreement and authorize these payments, is well established,<sup>5</sup> but we find no act of Congress that either in express terms or by necessary implication authorizes any of them. It must, therefore, be held that they were illegally made and that the Seminole 'permanent school fund'—a trust fund—was unlawfully depleted thereby. The plaintiff is entitled to recover the sum claimed."

Congress contemplated, at least as early as 1898 at the time of the passage of the Curtis Act and the ratification of the Seminole Agreement, that the tribal government was soon to be terminated. The Act of March 3, 1903, § 8, 32 Stat. 1008, declared that it should not continue after March 4, 1906. Congress, by Joint Resolution March 2, 1906, 34 Stat. 822, continued tribal existence and tribal government until all tribal property and its proceeds should be distributed among individual members. The Act of April 26, 1906, § 28, 34 Stat. 148, continued tribal existence and government for all authorized

---

<sup>5</sup> *Lone Wolf v. Hitchcock*, 187 U. S. 553, 564-567.

purposes until otherwise provided by law. By Acts passed in 1906 and 1908 Congress directed the Secretary of the Interior to take possession of all buildings used for governmental, school or other tribal purposes, together with the furniture and land pertaining thereto and to sell the same and deposit the proceeds to the credit of the Seminoles.<sup>6</sup> Liquidation of Seminole property and distribution of its proceeds per capita went forward under direction of Congress.<sup>7</sup> And, by May 25, 1918, when the Congress passed the Act making appropriations for the Bureau of Indian Affairs for the fiscal year ending June 30, 1919, under which defendant claims that the per capita payments here in question were made, the need of a permanent school fund had almost ended. At the hearing upon that measure before the House Committee on Indian Affairs,<sup>8</sup> the Bureau, through the Assistant Commissioner, reported that one of the two Seminole Academies had already ceased to exist, that the other was still used but that public school privileges were within the reach of almost every pupil and that the fund was not needed for the support of any other school. It was on the recommendation of the Bureau that Congress included in § 18 of this Act a clause specifically authorizing the Secretary of the Interior to pay to the enrolled members of the Seminole Tribe entitled to share in its funds, or to their lawful heirs, out of the Seminole school fund not to exceed \$100 per capita and directed payment to be made under rules and regulations prescribed by the Sec-

---

<sup>6</sup> Act of April 26, 1906, §§ 15-17, 34 Stat. 143. Act of April 30, 1908, 35 Stat. 71.

<sup>7</sup> Acts: March 3, 1911, § 17, 36 Stat. 1070. August 22, 1911, 37 Stat. 44. June 30, 1913, § 18, 38 Stat. 95. March 2, 1917, § 18, 39 Stat. 983-984.

<sup>8</sup> House Committee Hearings, Indian Appropriation Bill, December, 1917, p. 286.

retary.<sup>9</sup> The Act, like earlier ones<sup>10</sup> and those making appropriations for fiscal years ending, respectively, June 30, 1920, and 1921,<sup>11</sup> contained a proviso directing that in the specified fiscal year no money shall be expended from tribal funds without specific appropriation by Congress except "Equalization of allotments, per capita and other payments authorized by law . . ." By regulations promulgated June 17, 1918, par. 14, the Secretary required disbursements to continue "until all claims are paid or until further orders of the Department."

Plaintiff does not claim that § 18 of the appropriation Act of 1918 did not specifically authorize the use of the principal to make the per capita payments here in question. But it contends authority so to use that fund ceased with the fiscal year ending June 30, 1919. The payments authorized constituted a distribution looking to the ultimate disposition of all tribal property. The provision expressed no limitation in respect of the time

---

<sup>9</sup>" . . . That the Secretary of the Interior be, and he is hereby, authorized to pay to the enrolled members of the Seminole Tribe of Indians of Oklahoma entitled under existing law to share in the funds of said tribe, or to their lawful heirs, out of the Seminole school fund, or any moneys belonging to said tribe in the United States Treasury or deposited in any bank or held by an official under the jurisdiction of the Secretary of the Interior, not to exceed \$100 per capita: *Provided*, That said payment shall be made under such rules and regulations as the Secretary of the Interior may prescribe: *Provided further*, That in cases where such enrolled members, or their heirs, are Indians who belong to the restricted class, the Secretary of the Interior may, in his discretion, withhold such payments and use the same for the benefit of such restricted Indians. . . ." Act of May 25, 1918, § 18, 40 Stat. 580.

<sup>10</sup>Indian Appropriation Acts for the fiscal years beginning July 1, 1912: August 24, 1912, 37 Stat. 531; June 30, 1913, 38 Stat. 95; August 1, 1914, 38 Stat. 600; March 4, 1915, 38 Stat. 1228; May 18, 1916, 39 Stat. 148; March 2, 1917, 39 Stat. 985.

<sup>11</sup>Act of June 30, 1919, § 18, 41 Stat. 23. Act of February 14, 1920, § 18, 41 Stat. 427-428.

within which they were to be made. The occasion and purpose of the enactment tend strongly to negative any implication that Seminoles entitled to participate in the distribution would be barred if the Secretary failed to cause payments to be made them within the fiscal year. The provisos contained in the appropriation Acts for the fiscal years 1920 and 1921 during which the per capita payments in controversy were made reasonably may be deemed sufficient to authorize them. Weight is to be given to the Secretary's regulations, par. 13, which declared that all suspended or withheld payments were "to be disbursed at such times and in such amounts as the best interest of the persons, to whom such suspended or withheld payments are due, may demand." Plaintiff's contention that it is entitled to recover upon the ground that the per capita payments were not made within time allowed therefor is without merit. The amount of the per capita payments must be eliminated from the judgment.

As to the amount of \$490.20 paid out of the school fund for "equalization of allotments," the defendant relies upon a provision in the appropriation Act of February 14, 1920, 41 Stat. 427, declaring: "That hereafter no money shall be expended from tribal funds . . . without specific appropriation . . . except as follows: Equalization of allotments . . . and other payments authorized by law to individual members of the respective tribes . . ." But defendant fails to show that the expected payments were "authorized by law." This amount was properly included in the judgment.

As to the sum of \$121,519.52 made up of payments from 1922 through 1930 for "Education," the sole question is whether Congress authorized the use of the principal of the permanent school fund for that purpose. The appropriation Acts applicable to these years authorized the Secretary of the Interior to continue Seminole

schools from the tribal funds.<sup>12</sup> It must be assumed that when enacting these measures Congress took into account the fact that the Seminole school fund in pursuance of its authority had been so depleted that interest on the amount remaining in it would not meet even the lessened requirements. Its failure to limit expenditure for education to interest on the permanent fund and adherence to substantially the same form of words yearly throughout the entire period sufficiently indicate the intention of Congress that disbursements for that purpose were not limited to the interest and that principal was to be used. The inclusion of that amount in the judgment cannot be sustained.

The judgment will be reversed and the cause remanded to the lower court with directions for further proceedings in accordance with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>12</sup> Act of March 3, 1921, 41 Stat. 1243; Act of May 24, 1922, 42 Stat. 575; Act of Jan. 24, 1923, 42 Stat. 1196; Act of June 5, 1924, 43 Stat. 398; Act of March 3, 1925, 43 Stat. 1148; Act of May 10, 1926, 44 Stat. 460; Act of Jan. 12, 1927, 44 Stat. 948; Act of March 7, 1928, 45 Stat. 216; Act of March 4, 1929, 45 Stat. 1577.

Syllabus.

CITY BANK FARMERS TRUST CO., ASSIGNEE, v.  
IRVING TRUST CO., TRUSTEE IN BANK-  
RUPTCY, ET AL.

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

No. 260. Argued December 16, 1936.—Decided January 4, 1937.

1. The purpose of § 77B of the Bankruptcy Act was to facilitate rehabilitation of embarrassed corporations by scaling or rearrangement of their obligations and shareholders' interests, thus avoiding a winding up, a sale of assets, and a distribution of the proceeds. P. 437.
2. A salient element in such a reorganization is the discharge of all demands of whatsoever sort, executory and contingent, presently due or to mature in the future, and of such claims not the least important are those for rent to accrue under a lease, or for damages or indemnity payable because of the termination of a leasehold. P. 438.
3. Section 77B of the Bankruptcy Act provides: "In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity, in a proceeding pending prior to the institution of a proceeding under this section, *any person injured* by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor."

*Held:* That the lessor, in a lease having no covenant upon the part of the lessee to indemnify against or pay damages arising out of its termination, was a "person injured" by the rejection of the lease by the lessee's trustee in bankruptcy; and in a subsequent proceeding under § 77B has a provable claim against the debtor's estate for the injury, even assuming that the lessor's reentry, reletting, and restoration of the premises, after rejection of the lease, had terminated the leasehold and ended the tenant's liability under the local law. Pp. 438, 443.

4. In relation to § 77B of the Bankruptcy Act and the contemporaneous amendment of § 63 (a), judicial notice is taken of the plight of landlords resulting from the flood of corporate bankruptcies caused by the economic depression, and in particular of the situa-

tion of owners of business properties leased to chain store organizations, which had resorted to voluntary bankruptcy largely as a lever to force revision of leases. P. 438.  
83 F. (2d) 209, reversed.

CERTIORARI \* to review the affirmance of an order of the District Court rejecting a claim in a reorganization proceeding under § 77B of the Bankruptcy Act.

*Mr. Henry L. Glenn*, with whom *Mr. Rollin Browne* was on the brief, for petitioner.

*Mr. William D. Whitney*, with whom *Mr. R. L. Gilpatric* was on the brief, for Irving Trust Co., Trustee, respondent.

*Messrs. Sanford H. E. Freund, Winthrop H. Kellogg,* and *Douglas B. Steimle* were on the brief for the Preferred Stockholders' Protective Committee, respondent.

By leave of Court, *Messrs. John Gerdes* and *John Godfrey Saxe* filed a brief on behalf of *Ella May Voigt et al.*, Trustees, as *amici curiae*, urging reversal of the decision below.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Certiorari was granted in this and three following cases involving the construction and validity of provisions of § 77B of the Bankruptcy Act<sup>1</sup> which enlarge the category of provable claims to include one by a landlord for injury due to rejection of a lease, or for damages or indemnity under a lessee's covenant.

---

\* See Table of Cases Reported in this volume.

<sup>1</sup> Added to the Bankruptcy Act of 1898 by Act of June 7, 1934, c. 424, § 1, 48 Stat. 912, as amended by Act of Aug. 20, 1935, c. 577, 49 Stat. 664, and Act of Aug. 29, 1935, c. 809, 49 Stat. 965; 11 U. S. C. 207.

Florence H. Bugbee, the petitioner's assignor, leased to United Cigar Stores Company of America premises in Trenton, New Jersey, for a term commencing April 1, 1926, and ending March 31, 1946. August 29, 1932, the lessee was adjudicated a bankrupt upon its own petition. November 11, 1932, the respondent, as trustee in bankruptcy, rejected the lease and abandoned the premises, a portion of which had been sublet by the bankrupt. Without notice to the Cigar Stores Company the landlord relet portions of the building to subtenants in possession and let other portions to new tenants.

June 9, 1934, two days after the passage and effective date of § 77B, the Cigar Stores Company, as permitted by subsection (*p*), filed in the pending bankruptcy proceeding its petition for reorganization. In the latter cause the petitioner presented a proof of claim for injury resulting from the rejection of the lease. The trustee objected to the claim and asked to have it expunged for the reason that the lease incorporated no covenant to indemnify the lessor for loss of rents or other provision enabling her to hold the tenant for damages or for rent accruing subsequent to termination of the leasehold estate, and asserted the leasehold had been terminated and all obligations of the debtor under the lease extinguished by the landlord's reëntry and reletting.

The special master who heard the cause recommended disallowance of the claim in the view that § 77B did not, and could not, create any valid and legal claims against the debtor where none existed anterior to the enactment of the section, and held that none existed before its adoption because, by the law of New Jersey, the landlord's reëntry and reletting worked a surrender of the leasehold. In his report the master referred to the fact that the record in the earlier bankruptcy proceeding disclosed a claim filed by the landlord, upon which dividends had been paid, for expenditures in restoring a party wall and closing up a

common entrance in the leased building based upon the debtor's agreement to restore it at the expiration of the term, which was again asserted in the present proceeding. He thus commented upon this situation:

"Naturally, the entire basis of this claim for restoration is the expiration of the lease. The Trustee may well point to it, as showing that the Landlord, prior to the enactment of Section 77-B, by her re-entry and reletting of the premises as aforesaid, considered that the lease terminated and expired."

The District Court approved the master's report and rejected the claim; and the Circuit Court of Appeals affirmed,<sup>2</sup> holding that the injury specified in § 77B (b) (10) for which a claim by a landlord is allowable can only be such injury as would found an action under applicable state law. The court concluded that although according to the law of New Jersey the reëntry and reletting did not effect a surrender, the restoration of the building was such an assertion of dominion by the landlord as to deprive her of any further claim against the tenant.

The parties differ with respect to the correctness of the Circuit Court of Appeals' interpretation of the law of New Jersey. They also disagree as to whether the record supports the finding that the landlord restored a portion of the leased building. The disputes need not be resolved if the petitioner is right in asserting that, within the purview of § 77B, the lessor was a person injured by the rejection of the lease who is accorded a provable claim against the debtor's estate for the injury, notwithstanding the reëntry, reletting, and restoration of the premises, after rejection of the lease, consummated a surrender of the leasehold, and ended the tenant's liability under the local law. As § 77B supplements and extends the bankruptcy system in force at the time of its enactment, we

---

<sup>2</sup> 83 F. (2d) 209.

shall examine the question in the light of the old law, the supposed mischief arising under it and the alterations made by the later act.

1. Section 63 (a) of the Bankruptcy Act of 1898<sup>3</sup> stated what claims should be provable in bankruptcy. The section gave a landlord no provable claim for rent to accrue after the trustee's rejection of a lease. The tenant's liability for future rent was not discharged and remained enforceable as instalments of rent fell due. This was necessarily so, since future rent is demandable only in the amounts and at the times named in the lease and the total cannot be recovered at law in a lump sum in advance of accrual of the instalments. This state of the law involved elements of hardship to both lessor and lessee. In the case of a corporate, and often in that of an individual lessee, the landlord's right to collect rent from a bankrupt tenant was valueless. On the other hand, if the landlord, notwithstanding rejection by the trustee, was compelled by its terms, or elected pursuant to its provisions, to treat the lease as still in force, he might throughout the remainder of the term harass the discharged bankrupt by successive actions for accruing rent and so retard or prevent the debtor's financial rehabilitation which the statute was intended to aid.

Many leases provide for the termination of the tenant's estate upon his adjudication as a bankrupt, by the lessor's reëntry. Under the old law such termination did not give rise to a provable claim for future rent, or for damages, or for indemnity. Not uncommonly lease agreements, in addition to stipulation for termination of the leasehold upon the tenant's bankruptcy, provide that the bankrupt shall indemnify the landlord for loss of future rent. These provisions vary in their terms, some requiring the rendition of indemnity as each instalment

---

<sup>3</sup> 30 Stat. 562.

of rent falls due, others at the end of the term when the full difference between the rent reserved and that received upon reletting can be ascertained. Under § 63 (a) of the Act of 1898 such covenants did not support a provable claim, as the obligation to indemnify ripened after adjudication. The consequence was that liability under this sort of covenant was not discharged and remained to haunt the bankrupt.

As early as 1932 proposals were brought forward in Congress for the broadening of the bankruptcy system to authorize proceedings for the reorganization of business corporations. Bills authorizing proceedings in courts of bankruptcy to that end failed of passage in the 72d and 73d Congress. H. R. 5884, 73d Congress, Second Session, which ultimately became law as § 77B of the Bankruptcy Act, was under consideration when the decision in *Manhattan Properties, Inc. v. Irving Trust Co.*, 291 U. S. 320, threw into high relief the plight in which landlords found themselves as a result of the flood of corporate bankruptcies brought about by the economic depression. The situation of owners of business properties leased to chain store organizations which had resorted to voluntary bankruptcy largely as a lever to force revision of leases was the subject of comment in and out of Congress. By the same act § 63 (a) was amended to give a provable claim to a landlord whose lease had been rejected by a trustee in bankruptcy and a similar provision was incorporated in 77B, the new reorganization section. This history cannot be ignored in construing the supplemental legislation.

2. The purpose of § 77B was to facilitate rehabilitation of embarrassed corporations by a scaling or rearrangement of their obligations and shareholders' interests, thus avoiding a winding up, a sale of assets, and a distribution of the proceeds. A salient element in such a reorganization is the discharge of all demands of whatsoever sort, executory and contingent, presently due or to mature

in the future. Of such claims not the least important are those for rent to accrue under a lease, or for damages or indemnity payable because of the termination of a leasehold. Obviously if such obligations are to be discharged they must be made provable, for they cannot be destroyed. How, then, did the Congress deal with them?

The pertinent provisions of § 77B are copied in the margin.<sup>4</sup>

---

<sup>4</sup>“(a) Any corporation which could become a bankrupt under section 4 of this Act, . . . may file an original petition, . . . in any proceeding pending in bankruptcy, whether filed before or after this section becomes effective, . . .”

“(b) . . . (10) . . . The term ‘creditors’ shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts, whether or not such claims would otherwise constitute provable claims under this Act. The term ‘claims’ includes debts, securities, other than stock, liens, or other interests of whatever character. . . .”

“In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity, in a proceeding pending prior to the institution of a proceeding under this section any person injured by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be treated as a claim ranking on a parity with debts which would be provable under section 63 (a) of this Act, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by said lease for the three years next succeeding the date of surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid rent accrued up to such date of surrender or reentry: . . .”

“(p) This section shall take effect and be in force from and after the date of the approval of this amendatory Act and shall apply

Clause 10 renders provable, claims upon covenants of indemnity maturing upon reëntry after adjudication. The term "creditors" is made to include "holders of *claims* of whatever character against the debtor or its property, including claims under executory contracts, *whether or not such claims would otherwise constitute provable claims under this Act.*" Bankruptcy of the obligor is an anticipatory breach of an executory contract and a claim for damages for the breach was provable under § 63 (a) of the Act of 1898.<sup>5</sup> One having a demand against a debtor whose affairs are in the hands of an equity receiver, if the claim matured after the receiver's appointment but before the expiration of the period fixed for presentation of claims, is entitled to prove and to share in distribution;<sup>6</sup> but the rule in bankruptcy has been that the claim under an executory contract must mature at or before the filing of the petition.<sup>7</sup> The language which is italicized in the foregoing quotation from clause 10 can have no other meaning than that claims upon covenants for damages or indemnity arising out of the termination of a lease after initiation of proceedings under § 77B are provable. The provision, however, creates no new claim. It merely treats the adjudication as a breach of covenant and gives a provable claim in virtue of the breach.

Since in the instant case the lease contains no such covenant, in the absence of some further provision respecting landlords' claims the petitioner would be without remedy under § 77B, as it would have been in strict bank-

as fully to debtors, their stockholders and creditors, whose interests or debts have been acquired or incurred prior to such date, as to debtors, their stockholders and creditors, whose interests or debts are acquired or incurred after such date. Proceedings under this section may be taken in proceedings in bankruptcy which are pending on the effective date of this amendatory Act."

<sup>5</sup> *Chicago Auditorium Assn. v. Central Trust Co.*, 240 U. S. 581.

<sup>6</sup> *Wm. Filene's Sons Co. v. Weed*, 245 U. S. 597, 601-602.

<sup>7</sup> *Manhattan Properties, Inc., v. Irving Trust Co.*, *supra*.

ruptcy proceedings under § 63 (a) of the Act of 1898 until that section was amended in 1934. There is, however, a further provision: "In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge [See subsection (c) (5).] given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity, in a proceeding pending prior to the institution of a proceeding under this section *any person injured* by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor." Under the old law the rejection of a lease by a trustee in bankruptcy was not a breach of the lease, in the absence of a specific agreement that it should be so. The bankrupt tenant remained liable for the rent as it fell due but all the assets wherewith he might pay were taken from him. For a default in payment subsequent to adjudication the landlord might reënter and terminate the lease. By virtue of a covenant so providing the landlord might treat the bankruptcy as cause for reëntry and termination of the leasehold estate. While, therefore, the rejection of a lease by a trustee in bankruptcy might, and usually did, spell possible or probable injury to the landlord, that fact gave him no standing as a creditor in the bankruptcy proceeding. Having in mind this state of affairs the purpose is clearly to give a landlord a provable claim for injury due to the rejection of his lease, whether the instrument contains a covenant of indemnity or not.

Although, as we have noted, under the Act of 1898 rejection by the trustee was not a breach of the lease, it left the premises in the possession of an impecunious tenant with the virtual certainty they would be thrown back upon the landlord's hands untenanted. If the owner could not turn his property to account on terms as favorable as those embodied in the rejected lease obviously he suffered an injury.

The opinion in the *Manhattan Properties* case, *supra*, adverts to the fact that for many years the English bankruptcy acts have given a remedy for the loss of future rents due to supervening bankruptcy and sequent rejection of the lease.<sup>8</sup> Congress was familiar with this fact when § 77B was under discussion.<sup>9</sup> The analogous provisions of the English Acts while differently phrased are of the same purport as those of § 77B.<sup>10</sup> Congress intended to supply the omission of the Act of 1898 and to create a claim provable in a reorganization proceeding for injury due to a trustee's rejection. This conclusion finds further support in the succeeding sentence, which in limiting the amount allowable upon these claims, refers to them in three aspects, thus: "The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate *or* for damages *or* indemnity under a covenant contained in such lease," etc.

3. Like any other provable claim, that of a landlord for injury resulting from rejection of the lease, or for damages or indemnity for termination of the tenure, may, for an adequate consideration, be released, *Schwartz v. Irving Trust Co.*, *post*, p. 456. The lease, moreover, may contain stipulations, fulfillment of which is to be full compensation for any loss due to termination of the leasehold

<sup>8</sup> 291 U. S. at p. 332.

<sup>9</sup> Cong. Rec., Vol. 76, Part 3, p. 2940.

<sup>10</sup> 32 & 33 Vict., c. 71, § 23 (1869); 46 & 47 Vict., c. 52, § 55 (1) (3) (7) (1883); 4 & 5 George V, c. 59, § 54 (1) (3) (7) (1914). The subject is first mentioned in the Act of 1869. The English acts authorize "disclaimers" of onerous property or contracts and specifically refer to leases. The provision for a provable claim based on a disclaimer is the same in the Acts of 1883 and 1914, "Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy."

and thus bar any claim under 77B for the landlord's loss. *Meadows v. Irving Trust Co.*, *post*, p. 464.

4. The question for decision in this case is whether the claim recognized by § 77B, which would not have been an enforceable demand at common law, or under the laws of many of the states, is allowable only if the leasehold estate has not, after rejection of the lease, been drowned by surrender effective under state law or otherwise terminated pursuant to state law by the lessor's conduct.

We think it clear that provability of such a claim is unaffected by any termination of the leasehold subsequent to rejection of the lease. The provision is that the landlord's claim for injury resulting from rejection, or for damages, or for indemnity under a covenant, shall be limited to an amount not exceeding the rent reserved "for the three years next succeeding *the date of surrender of the premises to the landlord or the date of reëntry of the landlord, whichever first occurs*, whether before or after the filing of the petition, . . ." Plainly the word "reëntry" is used to describe a case where the landlord, treating the bankruptcy as a breach of the lease, reënters for condition broken. Whether the other phrase, "surrender of the premises to the landlord," denotes the technical surrender which drowns the particular estate in the reversion, or the mere tradition to, and acceptance by, the landlord of possession, is immaterial. The amount of the landlord's claim for the loss of his lease necessarily is the difference between the rental value of the remainder of the term and the rent reserved, both discounted to present worth. This, we have said, is a method of liquidation familiar and fair. It was the method adopted under § 77B in *Kuehner v. Irving Trust Co.*, 85 F. (2d) 35, the judgment in which is this day affirmed, *post*, p. 445. If the landlord must give credit for the present rental value of the premises he is

entitled to avail himself of them for realization of that value, and this he cannot do without reëntry and re-letting. If he must give such credit he surely has the option to attempt recoupment of his loss by occupying the premises for the remainder of the term. But such occupation, under the law of most of the states, amounts to a complete termination of the leasehold and deprives the landlord of any further rights as lessor. It is evident that if a lease be rejected the subsequent repossession of the demised premises, and acts of control and dominion do not destroy the provability of a claim under § 77B.

It is suggested that if a landlord desires to avail himself of the privilege accorded by the Section, he must keep the leasehold estate intact until his claim shall have been proved and allowed. In view, however, of the obvious intent of the statute to extend relief not only to landlords whose leases may in future be rejected, but also to those whose leases have been rejected in prior bankruptcy or equity proceedings, such a construction would ill accord with the remedial purposes of the act, which demand a liberal construction in favor of the claimants for whom relief was intended.

We conclude that the petitioner's claim should have been allowed. The judgment is reversed and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

*Reversed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE took no part in the consideration or decision of this case.

Syllabus.

KUEHNER *ET AL.*, TRUSTEES, *v.* IRVING TRUST  
CO., TRUSTEE IN BANKRUPTCY, *ET AL.*CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 354. Argued December 15, 1936.—Decided January 4, 1937.

1. Section 77B of the Bankruptcy Act provides that in proceedings to reorganize a bankrupt corporation, the claim of a landlord for indemnity under a covenant contained in a lease which has been rejected by the trustee in bankruptcy "shall be treated as a claim ranking on a parity with debts which would be provable under § 63 (a) of the Act but shall be limited to an amount not to exceed the rent, without acceleration, reserved by said lease for the three years next succeeding . . . the date of reëntry of the landlord."

*Held:*

(1) The language being clear, its meaning cannot be affected by resort to the legislative history. P. 449.

(2) If, upon liquidation by deduction of present rental value from the present value of rent reserved, the difference exceeds the amount of the total rent for the three years succeeding the landlord's reëntry, the claim may be allowed only for that amount; the surplus is not to have priority over the interests of stockholders or to be reserved as a liability of the reorganized corporation. P. 450.

(3) Thus applied, the Act does not exceed the power to legislate upon the subject of bankruptcies nor violate the due process clause of the Fifth Amendment. P. 450.

2. Bankruptcy laws seek equitable distribution of the debtor's assets amongst his creditors; and Congress, in determining what such an equitable distribution demands, is free to establish standards of provability and measures of allowance, regardless of the claimant's ability to maintain an action in a court or the measure of his recovery in such an action if maintainable. P. 450.
3. As respects the exertion of the bankruptcy power, there is a significant difference between a property interest and a contract, since the Constitution does not forbid impairment of the obligations of contracts under that power. P. 451.
4. The Fifth Amendment does not prohibit bankruptcy legislation affecting the creditor's remedy for enforcement of a contract against the debtor's assets, or affecting the measure of the creditor's par-

ticipation therein, if the statutory provisions are consonant with a fair, reasonable, and equitable distribution of those assets. P. 452.

5. The object of § 77B of the Bankruptcy Act is to extend the bankruptcy system to the reorganization of certain types of insolvent or embarrassed business corporations in the interests of the public, the creditors, and the shareholders; in discharging the claims of landlords, it admits them to participation with other creditors on a basis deemed by Congress to be equitable, giving them a new and more certain remedy for a limited amount, in lieu of an old remedy inefficient and uncertain in its result. This is not a taking of the landlord's property without due process of law. P. 452.
  6. The limit set upon landlords' claims cannot be regarded as an arbitrary discrimination between them and other creditors. P. 453.
  7. The limit fixed upon landlords' claims cannot be regarded as whimsical and arbitrary merely because, being general and uniform, it cannot have the same relation in all cases to the actual losses of different landlords. P. 453.
- 85 F. (2d) 35, affirmed.

CERTIORARI \* to review the affirmance of an order of the District Court, allowing the claim of a landlord, in reorganization proceedings under § 77B of the Bankruptcy Act, but limited to three years' rent from date of reentry.

*Mr. Rollin Browne*, with whom *Mr. Henry L. Glenn* was on the brief, for petitioners.

*Mr. William D. Whitney*, with whom *Mr. R. L. Gilpatric* was on the brief, for the Irving Trust Co., Trustee, respondent.

*Messrs. Sanford H. E. Freund, Winthrop H. Kellogg, and Douglas B. Steimle* were on the brief for the Preferred Stockholders' Protective Committee, respondent.

By leave of Court, *Messrs. M. Carl Levine and David Morgulas* filed a brief on behalf of the Jacob Ruppert Realty Corporation, as *amicus curiae*, urging reversal of the decision below.

---

\* See Table of Cases Reported in this volume.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

In this case we are concerned with that portion of subsection (b) (10) of § 77B of the Bankruptcy Act which limits the claim of a landlord for indemnity under a covenant in a lease to an amount not to exceed three years' rent.

The questions are: (1) Is the claim so limited in all events and for all purposes or is the surplus over the specified amount, though subordinated to the claims of other creditors, to have priority over the interests of stockholders or to be reserved as a liability of the reorganized corporation? (2) If the claim is limited in all events to the named amount, is the provision obnoxious to the Fifth Amendment of the Constitution?

The petitioners leased real estate to United Cigar Stores Company in 1926 for a term expiring in 1946. August 29, 1932, the company was adjudicated a voluntary bankrupt. November 14, 1932, the trustee rejected the lease and abandoned the premises. The following day the petitioners reentered and terminated the leasehold in accordance with the provisions of the lease which contained a covenant by the lessee to indemnify them against all loss of rent from such termination. Immediately upon adoption of § 77B the bankrupt filed its petition for reorganization thereunder, which was approved by the court.

The petitioners presented a proof of claim, measuring the injury resulting from the termination of the leasehold by the difference between the rental value and the value of the rent reserved for the remainder of the term. They prayed that the amount claimed be ranked on a parity with other provable debts to the extent of three years' rent and, as to the balance, be subordinated to other provable debts but awarded priority over the claims or inter-

ests of the debtor's stockholders. The trustee asked that the allowance be in an amount limited as provided by the statute. Committees representing preferred stockholders and debenture holders objected to allowance of the claim in any amount, asserting the petitioners could not sue on the covenant of indemnity under the state law until the expiration of the term and, having no presently enforceable claim under state law, had none in the reorganization proceeding. The petitioners amended their pleading by adding a prayer that to the extent any portion of the claim might be held not allowable a charge be reserved against the debtor's assets for such portion in priority to any interest accorded stockholders.

The uncontroverted testimony is that the fair rental value for the balance of the term is \$111,545.36. The future instalments of rent to the end of the term aggregate \$199,237.66. A special master recommended that the petitioners' claim be allowed and liquidated at the amount of the difference between present rental value and present value of the rent reserved. He found that the sum so ascertained would be not less than the equivalent of three years' rent and recommended allowance of the claim on a parity with provable debts to the extent of three years' rent,—\$44,377.55,—and the reservation of all questions as to the balance until the time for classification of creditors and consideration of a reorganization plan. The District Court confirmed the master's report save that it decided the claim as allowed should represent the extent of claimants' right to participate in the proceedings. Cross appeals were taken to the Circuit Court of Appeals, which held that petitioners had a provable claim, that the method adopted for the liquidation of the claim was proper, that § 77B required limitation of allowance to a sum not in excess of the three years' rent mentioned in the statute and that such limitation does not take petitioners' property without due process of law

in violation of the Fifth Amendment.<sup>1</sup> We granted certiorari because of the importance of the questions involved.

The respondent Stockholders' Committee does not now deny that the petitioners have a provable claim but joins the trustee in support of the decision below that the allowance must be limited for all purposes of the proceeding to three years' rent.

We have held in *City Bank Farmers Trust Co. v. Irving Trust Co.*,<sup>2</sup> ante, p. 433, that the broad definition of creditors in § 77B gives the petitioners a provable claim for breach of the debtor's covenant of indemnity. The section, however, limits the amount for which such a claim may be allowed. The relevant provision, so far as applicable to petitioners' claim is:

"The claim of a landlord . . . for . . . indemnity under a covenant contained in such lease shall be treated as a claim ranking on a parity with debts which would be provable under section 63 (a) of this Act, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by said lease for the three years next succeeding . . . the date of reentry of the landlord, . . ."

The legislative history of this provision, and the successive alterations of its wording in both houses of Congress and in conference, to which we are referred, cannot affect its interpretation, since the language of the act as adopted is clear. The only phrase to which petitioners point in support of their contention that the claim is to be divided into two parts, one for an amount not exceeding three years' rent, to stand on a parity with other provable claims, and the other, representing the balance, to be subordinated to creditors' claims, but preferred to the interest of stockholders, is: "shall be treated as a claim

<sup>1</sup> 85 F. (2d) 35.

<sup>2</sup> No. 260, decided this day.

ranking on a parity with debts which would be provable under section 63 (a).” We need not consider the suggestion that the words “on a parity” were left in the clause *per incuriam* when formulation of an earlier draft was altered, since, in our opinion, their presence however they came to be inserted, cannot overcome the direct mandate that “the claim . . . shall be limited.” We agree, therefore, with the Circuit Court of Appeals that if, upon liquidation by deduction of present rental value from the present value of rent reserved, the difference exceeds the amount of the total rent for the three years succeeding the landlord’s reëntry, the claim may be allowed only for that amount.

A more serious question is raised by the petitioners’ insistence that thus applied the act exceeds legislative powers granted and infringes personal guaranties given by the Constitution. They say that the prescribed method will in some instances limit the amount allowed to a figure less than the landlord’s actual ultimate loss, and thus partially destroy his remedy for enforcement of his contract. The resulting violations of the Constitution, they assert, are the transgression of the boundaries of the bankruptcy power vested in Congress, and the taking of their property without due process.

Is the enactment in excess of the power to legislate on the subject of bankruptcies, conferred upon Congress by Art. I, § 8, of the Constitution? Congress evidently considered the limitation imposed on claims of this class necessary or advantageous to a successful reorganization and its judgment is conclusive upon us, if the enactment is within its power.

The petitioners concede Congress has power to exclude contingent claims from proof and allowance so long as the obligations they represent are not extinguished by the statute.<sup>3</sup> They refer, however, to the statement in *Louis-*

<sup>3</sup> Compare *Manhattan Properties, Inc. v. Irving Trust Co.*, 291 U. S. 320, 332.

*ville Joint Stock Land Bank v. Radford*, 295 U. S. 555, that Congress has never attempted to supply a bankrupt with capital to engage in business at the expense of his creditors, as persuasive that a statute cannot discharge a bankrupt's assets from liability for his debts but can only discharge the bankrupt from encumbrances on his future exertions.<sup>4</sup> This principle, they assert, the statute violates. The short answer is that the object of bankruptcy laws is the equitable distribution of the debtor's assets amongst his creditors;<sup>5</sup> and the validity of the challenged provision must be tested by its appropriateness to that end. Congress, in determining what such an equitable distribution demands, is free to establish standards of provability and measures of allowance regardless of the claimant's ability to maintain an action in a court or the measure of his recovery in such an action if maintainable. The contested provision is within the power of Congress. The exercise of the power is, nevertheless, subject to the commands of the Fifth Amendment.<sup>6</sup>

Does the Act offend the due process guaranty by destruction of rights conferred by the petitioners' contract? They affirm that it does, not merely by impairing those rights but by a direct taking *pro tanto* of all remedies for their enforcement and, to that extent, of the contract itself. Conceding they have no lien upon, or property right in, the debtor's assets, such as was the subject of decision in *Louisville Joint Stock Land Bank v. Radford*, *supra*, they maintain that the Fifth Amendment assures them some effective procedure for the enforcement of the obligation of their contract; that the debtor's assets are a trust fund for creditors which cannot be invaded for the benefit of stockholders. As pointed out in the case last cited there is, as respects the exertion of the bankruptcy

<sup>4</sup> See *Hanover National Bank v. Moyses*, 186 U. S. 181, 188.

<sup>5</sup> *Kothe v. R. C. Taylor Trust*, 280 U. S. 224, 227.

<sup>6</sup> *Louisville Joint Stock Land Bank v. Radford*, *supra*, p. 589.

power, a significant difference between a property interest and a contract, since the Constitution does not forbid impairment of the obligation of the latter. The equitable distribution of the bankrupt's assets, or the equitable adjustment of creditors' claims in respect of those assets, by way of reorganization, may therefore be regulated by a bankruptcy law which impairs the obligation of the debtor's contracts. Indeed every bankruptcy act avowedly works such impairment. While, therefore, the Fifth Amendment forbids the destruction of a contract it does not prohibit bankruptcy legislation affecting the creditor's remedy for its enforcement against the debtor's assets, or the measure of the creditor's participation therein, if the statutory provisions are consonant with a fair, reasonable, and equitable distribution of those assets. The law under consideration recognizes the petitioners' claim and permits it to share in the consideration to be distributed in reorganization. The question is whether the remedy is circumscribed in so unreasonable and arbitrary a way as to deny due process.

Bankruptcy originated as a seizure of the debtor's assets for equitable distribution amongst creditors. It was akin to a taking in execution. The concept was subsequently broadened to embrace the discharge of the embarrassed debtor from antecedent debts and to make the process available at his instance as well as at that of his creditors. Claims not provable, since they did not participate in the avails of the bankrupt's assets, were not discharged but remained recoverable by action against the discharged bankrupt. The object of § 77B was to extend the system to permit and facilitate the reorganization of certain types of insolvent or embarrassed business corporations. The theory of the legislation is that the extension will serve the interests of the public, the creditors, and the shareholders.

If the bankruptcy act was to be broadened to embrace reorganization of corporate debtors the wisdom of relieving them of continuing liability for rent or under contracts of indemnity was apparent. And if the landlords' claims were to be discharged in the reorganization they must be admitted to participation on an equitable basis with other claims in shaping the reorganization and in distribution of that which is to go to creditors pursuant to any plan adopted. The section therefore made such claims provable. Its legislative history attests the diverse views entertained in Congress as to the amount for which a claim should be allowed. Only after mature deliberation was the limit set at the amount fixed in the act. The reasonableness of the limitation is to be determined in the light of all circumstances Congress might properly consider.

In *City Bank Farmers Trust Co. v. Irving Trust Co.*, ante, p. 433, the peculiar and unfortunate status of landlords' claims under the Bankruptcy Act of 1898 is described. The tenant's bankruptcy removed all his assets from the reach of the landlord and left, as the latter's only remedy, suits against an empty corporate shell or a destitute individual. In framing the reorganization statute Congress obviously attempted to award landlords an equitable share in the debtor's assets as, in justice, it was bound to do since the purpose was to discharge the debtor from liability to future suits based upon the lease. It is incorrect to say that Congress took away all remedy under the lease. On the contrary, it gave a new and more certain remedy for a limited amount, in lieu of an old remedy inefficient and uncertain in its result. This is certainly not the taking of the landlord's property without due process.

But we are told that if Congress determined to admit landlords' claims to a share in debtors' assets it was

bound by the Fifth Amendment not to be arbitrary in the allotment of such share or to discriminate between landlords and other creditors and between individual landlords. We cannot pronounce the limit set upon petitioners' claim arbitrary or unreasonable. It is well known that leases of business properties, particularly retail business properties, commonly run for long terms. The longer the term the greater the uncertainty as to the loss entailed by abrogation of the lease. Testimony as to present rental value partakes largely of the character of prophesy and, although that value is the cardinal factor in the measure of damages for which petitioners contend, it is obvious that, since the landlord is not bound to relet the premises for the unexpired term of the lease, that factor may have little real bearing upon the realities of the case. And, in any event, the possibility of the landlord's using the premises for his own purposes, their sale, their condemnation for public use, or their loss by foreclosure, renders an estimate of present rental value highly uncertain. Add to this the fact that bankruptcies multiply in hard times, and that estimates of rental value are made upon the basis of what a new tenant will pay in an era of economic depression, and the estimate becomes even more unreliable. Whatever courts, in the absence of a statutory formula, might feel compelled to adopt as the measure of damage in such a case, we cannot hold that Congress could not reasonably find that an award of the full difference between rental value and rent reserved for the remainder of the term smacks too much of speculation and that a uniform limit upon landlords' claims will, in the long run, be fair to them, to other creditors, and to the debtor.

The petitioners insist that the amount to which the claim must be limited has no reasonable relation to the facts; that a sum equal to three times the annual rent can have no relation to the probable loss by the ending

of the leasehold. But the rent reserved, broadly speaking, has some relationship to the value of the property and the value of a lease thereon. What the statute does, is to assure at least three full years' rent to a landlord whose possible loss may exceed that amount, evidently upon the theory that with such an allowance the landlord stands a reasonable chance of restoring himself to as good a position as if the lease had not been terminated.

The petitioners say that by limiting their claim they are put upon a different basis from other creditors. A sufficient ground for the distinction is that petitioners get back their property. In other words, they have lost merely a bargain for the use of real estate, whereas merchandise creditors, lenders, and others, recover in specie none of the property or money which passed from them to the debtor.

Finally, it is said that the statute is whimsical and arbitrary in that the limit fixed upon landlords' claims necessarily represents a varying proportion of the actual loss of individual landlords and that this is discrimination of the most obvious sort. If, however, the statute does not deal unfairly with the petitioners it does not lie in their mouths to object because someone else perchance will receive a larger proportion of his ultimate loss as the same is ascertained years hence than will the petitioners. Congress, not unreasonably, felt that it was necessary, in the interest of expedition of proof and allowance of landlords' claims, which had never theretofore been permitted to share in a bankrupt debtor's assets, to fix a reasonable limit upon such claims. Naturally the amount fixed cannot bear the same relation to the ultimate loss or damage in every case. But it does not follow that, for this reason, all effort at uniformity of treatment of a peculiar class of claims, difficult of liquidation, is doomed to condemnation. All the arguments which petitioners submit would equally apply to any general and uniform formula

for the limitation of such claims which the Congress might adopt. We are unable to say that that which Congress did select so discriminates between individual claimants to the detriment of the petitioners as to render it unconstitutional as to them.

The judgment is

*Affirmed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

SCHWARTZ ET AL. v. IRVING TRUST CO., TRUSTEE  
IN BANKRUPTCY, ET AL.

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

No. 436. Argued December 16, 1936.—Decided January 4, 1937.

1. When claims of a landlord for injury resulting from rejection of the lease by the lessee's trustee in bankruptcy have been unqualifiedly released by him as against the trustee, the bankrupt, and the bankrupt estate, they may not be reasserted in a proceeding under § 77B of the Bankruptcy Act to reorganize the corporation. Pp. 459, 461.
2. An agreement between the landlord of a bankrupt corporation, the bankrupt and its trustee in bankruptcy, which under the local law of landlord and tenant effects a surrender and termination of the leasehold, does not deprive the landlord of his provable claim in proceedings under § 77B of the Bankruptcy Act for future rent or indemnity. *City Bank Farmers Trust Co. v. Irving Trust Co.*, ante, p. 433. P. 461.
3. Agreements executed by landlords of a bankrupt corporation with the lessee and its trustee in bankruptcy, which operated (as it is here assumed) to surrender and terminate the leaseholds, each contained a clause purporting to release the trustee, the bankrupt estate and the bankrupt from all liability respecting the lease to which it related, including all claims of the landlord in respect of rent, but contained also a modifying clause declaring that nothing in the release clause should be deemed a waiver by the landlord of the right to prove against the bankrupt estate "any provable claims"

to which the bankruptcy court might adjudge him entitled, etc. Held that the modifications applied in each case not only to the releasing clause but to the agreement as a whole and operated to preserve the right to prove claims for future rent, or indemnity for loss of rent, which were not provable in bankruptcy as the law then stood, but which became provable in a proceeding to reorganize the corporation under § 77B of the Bankruptcy Act subsequently enacted. P. 462.

83 F. (2d) 202; 85 *id.* 11, reversed.

CERTIORARI\* to review a judgment of the Circuit Court of Appeals which affirmed the District Court in rejecting nine claims of landlords for future rent, or indemnity, in a proceeding to reorganize the lessee corporation under § 77B of the Bankruptcy Act.

*Mr. Murray C. Bernays*, with whom *Miss Susan Brandeis* was on the brief, for petitioners.

*Mr. William D. Whitney*, with whom *Mr. R. L. Gilpatric* was on the brief, for respondents.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The provability of certain landlords' claims in proceedings under § 77B of the Bankruptcy Act is here drawn in question. The petitioners were lessors of the debtor. Their leases were rejected in a bankruptcy proceeding pending when the reorganization section was adopted. All of the leases contained indemnity covenants similar to that considered in *Kuehner v. Irving Trust Co.*, *ante*, p. 445. The variant in the present case is the contention that prior to initiation of the 77B proceeding, the petitioners bargained away any valid claims they had against the debtor and its assets.\*\*

---

\*See Table of Cases Reported in this volume.

\*\*This paragraph appears here as amended by order of February 1, 1937.

In August 1932, when United Cigar Stores Company was adjudicated a voluntary bankrupt, there were in force about one thousand leases under which it held real estate. In some cases the trustee desired to retain the demised premises under a new lease for a shorter term, or at a lower rental, or both. In others, where the company occupied and used but a part of the premises and sublet the balance, the trustee desired the abrogation of the lease as to that portion which United had sublet, and a new lease covering only the portion used by United. In certain instances where the company was lessee and sole occupant, or occupied a part and sublet a part, or had sublet the entire premises, the trustee wished to be rid of the leasehold.

In order to deal with these varying situations the trustee presented appropriate forms of agreement to landlords, many of whom executed them. Ninety-four landlords who had re-entered the demised premises, pursuant to such agreements, during the pendency of the original bankruptcy, filed claims in the reorganization proceeding. From the District Court's disallowance of the claims all the claimants joined in a single appeal to the Circuit Court of Appeals. That court found that each of eighty-two claimants, in connection with the transfer of possession of the premises, or the modification of the existing leases, gave a general, unqualified release to the trustee, individually and as trustee, to the bankrupt and to the bankrupt estate, of all claims under the leases or in respect of rent. Three, so the court found, gave releases containing reservations which were not broad enough to preserve claims provable under § 77B.

The court held that the releases executed by these eighty-five landlords were not procured by duress or misrepresentation, were for a valid consideration, and extinguished all claims the releasors might have had. As

respects the remaining nine claims, the court divided, a majority holding the agreements the landlords executed, and what was done pursuant to the agreements, amounted to a surrender under state law and therefore deprived the claimants of the right to prove, and one judge holding that whether or not surrenders had occurred under state law the form of the agreements reserved claims against the debtor's assets in the reorganization proceeding.<sup>1</sup>

All ninety-four claimants petitioned this court for review by certiorari. We granted the writ to the nine last mentioned.

In each of the cases under consideration surrender and repossession of the premises was pursuant to an agreement between the claimant, as lessor, the respondent, as trustee, and the United Company. After describing the lease, reciting the state of the title thereunder, the bankruptcy proceeding, and the authority granted the trustee by the court to reject the lease, the contract contains these provisions: The trustee assigns to the lessor its right, title, and interest in and to the lease and any subleases; the bankrupt does the same, and also assigns its right to any rent accrued and to accrue under subleases; the trustee agrees to pay to the landlord any rents received from subtenants by it as receiver or trustee, less certain costs; the landlord assumes all existing and future obligations, terms, and conditions of and under the lease and any sublease which would be performable by the bankrupt or the trustee. By article Fifth the landlord releases the trustee (individually and as receiver and trustee), the bankrupt estate, and the bankrupt from any and all liability of any nature with respect to the lease and the subleases and with respect to the premises, including all claims of the landlord in respect of rent or use

---

<sup>1</sup> *In re United Cigar Stores of America*, 83 F. (2d) 202; on rehearing 85 F. (2d) 11.

or occupation. To each agreement a rider prepared by the trustee was attached at the insistence of the landlord. In most of the cases the rider was substantially in the following form:

"Nothing in this Article 5 shall be deemed a waiver by the Landlord of the right to prove against the Bankrupt Estate any provable claims to which the Bankruptcy Court may adjudge the Landlord is entitled, but this shall not be deemed to render any claim a provable claim which is not otherwise such or to relieve the Landlord from the necessity of proving and obtaining the allowance of any such claim or preclude the Trustee from contesting such proof or allowance."

In one the form was:

"It is, however, expressly understood and agreed that the said Landlord does not waive any right to prove against the Bankrupt Estate any provable claims to which the Bankruptcy Court may adjudge the Landlord is entitled, but this shall not be deemed to render any claim a provable claim which is not otherwise such or relieve the Landlord from the necessity of proving and obtaining the allowance of any such claim or preclude the Trustee from contesting such proof or allowance. All such provable claims shall not be affected by this agreement."

The special master to whom the matter was referred conceded that the riders were intended to preserve claims for future rent, but thought them effective to save only claims the provability of which resulted from a favorable court ruling and that claims rendered provable by subsequent legislation were not within the reservation. The District Court approved the master's report. A majority of the Circuit Court of Appeals held the agreements constituted surrenders, which, according to state law, terminated all rights of the landlords against the tenant, and no claim is provable under § 77B, unless it is a continuing and subsisting claim against the debtor, recognized by

the substantive law of landlord and tenant, that is, by the applicable state law. The riders were construed to be qualifications of the Fifth article only, which was the general release. As there was, in this view of the agreements, no right or claim to be released, a reservation or restriction applicable only to the release amounted to nothing. The dissenting judge agreed that the contracts operated as surrenders but held that the riders were not limited in their operation to the release clause alone but were applicable to the entire contract and were intended and effective to reserve claims which might be found to be provable, despite surrender, either as the result of future judicial decision or future legislative action.

1. We refused to grant certiorari in the case of the eighty-five claimants each of whom, for a consideration, bargained away all claims, present or prospective, against the bankrupt, the trustee, and the estate. We agree with the court below that, under well settled principles, their releases preclude proof of claims for future rent or for indemnity.

2. We have held in *City Bank Farmers Trust Co. v. Irving Trust Co.*, *ante*, p. 433, that surrender by the trustee, acceptance by the landlord, reëntry, and the exercise of dominion over the demised premises by the latter after rejection of the lease, do not deprive him of a provable claim in proceedings under § 77B for injury due to rejection of his lease or upon the covenant of indemnity found in the lease. It follows that, except for the release, which was a part of each of the agreements, the petitioners would have provable claims.

3. We do not agree, therefore, that if the earlier paragraphs of the agreements worked a surrender (which we do not decide) nothing was left upon which the final release clause could operate. An absolute release would have been a bar to claims for future rent or for indemnity.

4. As we have seen, each of the releases was qualified by a rider which reserved "the right to prove against the Bankrupt estate any provable claims to which the Bankruptcy Court may adjudge the landlord is entitled." A majority of the court below thought that these riders applied only to the release clause. The dissenting judge thought that they purported to reserve all claims provable as a result of judicial decision or amendment of the statute which might otherwise be lost by the execution and performance of the agreements and that they were effective for that purpose notwithstanding the earlier paragraphs of the agreement amounted to a surrender under state law. We think this is the correct view of the meaning and effect of the reservations. The language in which they are couched is broad enough to include claims under § 77B. They reserve the right to prove against the bankrupt estate any provable claims to which the bankruptcy court may adjudge the landlord is entitled. The bankrupt estate, to which the reservations refer, consists of the property which formerly belonged to the bankrupt and, upon adjudication, came into the custody of the bankruptcy court. It still remains there. Claims for future rent are specifically made provable by § 77B (b) (10). The court having charge of the reorganization proceeding is a bankruptcy court. Section 77A provides: "In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in § 77B of this Act." Proceedings in reorganization under § 77B are "proceedings in bankruptcy."<sup>2</sup> They may be initiated in a pending bankruptcy proceeding by the express terms of subsection (p). The petitioners are creditors and their claims are provable by the express terms of the section; the estate against which the peti-

<sup>2</sup> *Meyer v. Kenmore Hotel Co.*, 297 U. S. 160, 165.

tioners reserved all provable claims is the same estate which was within the jurisdiction of the bankruptcy court at the time the agreements were executed.

The special master found, and it seems to be conceded, that the reservations were intended to preserve claims for future rent or for indemnity for loss of future rent. But the master held, and the majority of the Circuit Court of Appeals agreed, that their scope was restricted to claims provable as a result of judicial decision and did not extend to claims made provable by legislation. The language used does not so limit them. The most that can be said is that there was serious question whether such claims could be proved under the law as it stood when the agreements were executed. For whatever they were worth the petitioners desired the reservations so that they might possibly make good claims for injury done and loss incurred by the abrogation of their leases. If amendatory legislation was adopted the bankruptcy court might, pursuant thereto, adjudge them entitled to allowance of a claim. We think the operation of the saving clause cannot be limited by the fact that the claims are described as those to which the bankruptcy court may adjudge the petitioners entitled. That court's adjudication would necessarily follow and apply any amendment of the Act. We hold, therefore, that the reservation was broad enough to preserve the right to prove whatever claims were provable and allowable either by judicial decision or supplementary legislation. It follows that the petitioners' claims are provable.

The decree below must be reversed and the cause remanded to the District Court for further proceedings in conformity to this opinion.

*Reversed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE took no part in the consideration or decision of this case.

MEADOWS *v.* IRVING TRUST CO., TRUSTEE IN  
BANKRUPTCY, ET AL.CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
SECOND CIRCUIT.

No. 151. Argued December 15, 16, 1936.—Decided January 4, 1937.

1. Landlord's claim for injury due to rejection of lease by trustee in bankruptcy, preserved by saving clause limiting release. *Schwartz v. Irving Trust Co.*, ante, p. 456. P. 465.
2. Although the claim of a landlord, in reorganization proceedings under § 77B of the Bankruptcy Act, for injury due to the trustee's rejection of the lease, is not barred by the surrender of the premises by the trustee, the acceptance thereof by the landlord and the assignment of the lease to a new tenant nominated by the landlord, no such claim exists where, by the terms of the lease itself all liability of the lessee under it was terminated by the assignment and its accompaniments. P. 466.

83 F. (2d) 207, affirmed.

CERTIORARI\* to review a judgment of the Circuit Court of Appeals which affirmed an order of the District Court, rejecting part of a claim of a landlord for injury due to rejection of the lease by the trustee in bankruptcy.

*Mr. Perlle P. Fallon* for petitioner.

*Mr. William D. Whitney*, with whom *Mr. R. L. Gilpatric* was on the brief, for respondents.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

The petitioner's claim, under § 77B of the Bankruptcy Act, for injury due to the rejection of a lease by the respondent trustee, was denied by the District Court, and its action was affirmed by the Circuit Courts of Appeals<sup>1</sup>

---

\*See Table of Cases Reported in this volume.

<sup>1</sup>83 F. (2d) 207.

upon a ground similar to that upon which it based its decision in *Schwartz v. Irving Trust Co.*, ante, p. 456.

In 1922 the petitioner leased premises in Lincoln, Nebraska, to the United Company for ninety-nine years. The lessee agreed to pay an annual rent, taxes and insurance, and by July 1, 1942, to demolish the existing building and erect a new four-story structure. When in August 1932 the United Company was adjudicated a voluntary bankrupt it was occupying a store on the demised premises and subletting the remaining space. The trustee obtained leave of court either to reject the lease or to assign it to the petitioner or her nominee. The petitioner elected to have it assigned to a nominee and this was done by agreement dated in December 1932 in which the United Company joined. The petitioner made a new lease to her nominee for a shorter term and at a reduced rental and with no obligation for replacement of the existing building. The agreement between the landlord on the one hand, and the trustee and the bankrupt on the other, provided for the turning over to the landlord's assignee the subleases, the rents which had accrued or would accrue thereunder from the date of the adjudication, and the insurance. The petitioner agreed to assume all existing and future obligations of the United Company under the lease and released the trustee, the bankrupt, and the bankrupt estate, from all claims with respect to the lease except that petitioner did not waive "the right to prove against the bankrupt estate any provable claims to which the bankruptcy court may adjudge the landlord is entitled." In the bankruptcy proceeding the petitioner filed claims for taxes and cost of repairs, liability for which had accrued prior to the bankruptcy, for unliquidated damages resulting from loss of future rent and from anticipatory breach of the covenant to build in 1942. After the institution of a 77B pro-

ceeding by the United Company the petitioner refiled the same claims therein. The items for accrued taxes and cost of repairs are not in dispute. The trustee objected to the claim for loss of future rent and for anticipatory breach of the covenant to build in 1942. A special master recommended the allowance of the amount of the taxes and repairs and the disallowance of the balance of the claim. Upon appeal, a majority of the Circuit Court of Appeals held that although the trustee had decided to reject the lease and had filed a petition for leave so to do, or to assign, as the claimant had elected to have the lease assigned and had accepted surrender of the premises by requesting assignment to her nominee without reserving any rights under the lease against the debtor, there was no basis under § 77B for allowance of the claim. One judge concurred, holding that the qualification of the release left the way open for proof of any claim permitted by the lease itself and the provisions of 77B, but that no claim for future rent could be sustained because of a provision in the lease to the effect that, if default should occur, transfer of the lessee's interest in the demised premises together with all improvements thereon, all rents, issues, and profits accrued or to accrue, and all insurance policies upon the buildings and improvements, without compensation therefor to the lessee should constitute full satisfaction of the lessor's rights under the lease and the transfer thereof should not be considered as a penalty but as liquidating the damages suffered by the termination of the lease. We think that the decree of the Circuit Court of Appeals was right for the reasons stated in the concurring opinion.

But for the clause stipulating that a transfer by the tenant to the landlord of the demised premises and other things mentioned should terminate the tenant's liability under the lease, the petitioner would have had a provable

claim.<sup>2</sup> The surrender of the premises by the trustee, the acceptance thereof, and the assignment of the lease to a new tenant nominated by the petitioner, whatever may have been their effect under state law, would not bar any claim which she had by force of § 77B for injury due to the trustee's rejection of the lease.<sup>3</sup> The landlord's release would likewise have been ineffective to prevent the proving of a claim for injury due to the rejection since the reservation in it was broad enough to save any claim provable under the Section.<sup>4</sup> The petitioner would, therefore, have had a provable claim except for the terms of her own lease contract by which she had stipulated that, upon termination of the lease, the transfer of the demised premises and certain other things to her, all of which admittedly were transferred to her nominee upon the trustee's rejection of the lease, should be full satisfaction of any damage due to the lessee's default. We have held in *Schwartz v. Irving Trust Co.*, *ante*, p. 456, that a landlord is bound by his release of the tenant and the trustee for a consideration moving to him, and it is immaterial whether such a release be executed after default or constitute a part of the lease contract. The decree is

*Affirmed.*

MR. JUSTICE BRANDEIS and MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>2</sup> *City Bank Farmers Trust Co. v. Irving Trust Co.*, *ante*, p. 433. *Schwartz v. Irving Trust Co.*, *ante*, p. 456.

<sup>3</sup> *City Bank Farmers Trust Co. v. Irving Trust Co.*, *supra*.

<sup>4</sup> *Schwartz v. Irving Trust Co.*, *supra*.

## SHAPLEIGH ET AL. v. MIER.

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

No. 125. Argued December 9, 1936.—Decided January 4, 1937.

1. A transfer of land from the sovereignty of Mexico to that of the United States, brought about by an avulsive change in the course of the Rio Grande—the boundary stream—and by the provisions of the Convention of June 5, 1907, and proceedings thereunder, did not affect its private ownership. P. 469.
2. An expropriation of such land while still a part of Mexico, if lawful and effective under the Constitution and laws of Mexico when made, must be recognized as lawful and effective under the laws of the United States when questioned in a judicial proceeding. P. 471.
3. In an action to establish ownership of land on the Rio Grande which became part of the State of Texas pursuant to the above mentioned Convention with Mexico, the District Court found that, before the transfer of sovereignty, there had been an expropriation, valid under the laws of Mexico, by which the plaintiffs were divested of any title they may have had. Assuming that the Mexican proceedings were reëxaminable and that the finding is reviewable with the aid of judicial notice of the Mexican law, *held* that the plaintiffs have failed to make out their case, since the finding was reasonably supported by the evidence taken below, and this Court has been referred to no document or other evidence *dehors* the record establishing a different rule. P. 472.
4. To say that a court will take judicial notice of a fact, whether it be an event or a custom or a law of some other government, is merely another way of saying that the usual forms of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. P. 475.
5. Judicial notice and judicial knowledge are not the same thing. A court that is left without knowledge of a fact after exploring to the full every channel of information, must needs decide against the litigant who counts upon the fact as an essential of his claim. *De non apparentibus et de non existentibus eadem est ratio.* P. 475.

83 F. (2d) 673, affirmed.

CERTIORARI \* to review a judgment affirming a judgment against the plaintiffs, the present petitioners, in an action of trespass to try title before a district judge without a jury.

*Mr. H. R. Gamble* for petitioners.

*Mr. Richard F. Burges* for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The action is trespass for the trial of title.

Plaintiffs, petitioners here, are citizens of Missouri; defendant, respondent here, is a citizen of Mexico. A tract of 337 acres in Texas, known as "El Guayuco Banco No. 319," on the left bank of the Rio Grande river, is the subject matter of the controversy. A jury having been waived, the trial was by a judge, who made his findings of fact and conclusions of law, and gave judgment for defendant. From this there was an appeal, its scope, however, narrowed by the manner of the trial and the form of the decision. *Eastman Kodak Co. v. Gray*, 292 U. S. 332; *Harvey Co. v. Malley*, 288 U. S. 415; *Fleischmann Co. v. United States*, 270 U. S. 349. A single question was open: were the conclusions of law supported by the facts as found, when supplemented by any other facts within the range of judicial notice? The Court of Appeals for the Fifth Circuit affirmed the judgment of the District Court. 83 F. (2d) 673. We granted certiorari to pass upon the contention, strongly pressed by the petitioners, that their rights had been illegally divested through the action of a foreign government.

The land in controversy was once part of the Mexican state of Chihuahua. In 1926 it was cut by avulsion from

---

\* See Table of Cases Reported in this Volume.

the south or right bank of the Rio Grande to the north or left bank, and became part of the United States. By the ordinary rule a change of location resulting from avulsion would have left Mexico still sovereign over the territory thus moved, the centre of the old channel remaining as the boundary. *Missouri v. Nebraska*, 196 U. S. 23, 35; *Nebraska v. Iowa*, 143 U. S. 359, 361, 367, 370. Here a different rule applied by force of a convention, proclaimed June 5, 1907 (35 Stat. 1863), whereby the boundaries were to shift in the event of future changes, with exceptions not now material as to population and area. A Boundary Commission, previously established but confirmed by the Convention, marked the change upon the ground. Sovereignty was thus transferred, but private ownership remained the same. *United States v. Chaves*, 159 U. S. 452, 457; *United States v. Percheman*, 7 Pet. 51, 86. To find the title to the land today we must know where title stood while the land was yet in Mexico.

In 1925, before the river had wrought the change, proceedings were begun for the division of a "latifundium," which embraced the land in controversy, and for its acquisition by the state. A petition in due form was submitted to the Governor of Chihuahua, and resulted in a decree, dated March 5, 1925, whereby the State of Chihuahua was proclaimed to be the owner. The District Judge has found that the plaintiffs and those from whom they trace their claim were notified of the proceedings and were given the opportunity to prove their title, but failed to do so. The judge has also found that the proceedings were regular and valid, that there was no requirement in the Constitution or laws of Mexico whereby payment must be made or secured at or before the time of expropriation, and that by force of the decree the plaintiffs were divested of any title that had been theirs. Following this expropriation, the defendant, who is now in possession, filed with the proper officials an application

that he be permitted to buy the lands in suit, acquiring by that request an inchoate or potential interest, which was afterwards perfected by the payment of the purchase price.

Petitioners concede that the expropriation decree, if lawful and effective under the Constitution and laws of Mexico, must be recognized as lawful and effective under the laws of the United States, the sovereignty of Mexico at the time of that decree being exclusive of any other. *Oetjen v. Central Leather Co.*, 246 U. S. 297; *Ricaud v. American Metal Co.*, 246 U. S. 304; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347; *Underhill v. Hernandez*, 168 U. S. 250; *Hewitt v. Speyer*, 250 Fed. 367; *Earn Line S. S. Co. v. Sutherland S. S. Co.*, 254 Fed. 126; *Oliver American Trading Co. v. United States of Mexico*, 5 F. (2d) 659; *Compania M. Y. R. R., S. A. v. Bartlesville Zinc Co.*, 115 Tex. 21; 275 S. W. 388. The question is not here whether the proceeding was so conducted as to be a wrong to our nationals under the doctrines of international law, though valid under the law of the situs of the land. For wrongs of that order the remedy to be followed is along the channels of diplomacy. "A citizen of one nation wronged by the conduct of another nation, must seek redress through his own government." *United States v. Diekelman*, 92 U. S. 520, 524. Cf. *Ware v. Hylton*, 3 Dall. 199, 230; *Young v. United States*, 97 U. S. 39, 67, 68; *Frelinghuysen v. Key*, 110 U. S. 63, 71, 75. Indeed, a tribunal is in existence, the International Claims Commission, established by convention between the United States and Mexico, to which the plaintiffs are at liberty to submit and have long ago submitted a claim for reparation. *Convention of September 8, 1923*, proclaimed March 3, 1924; 43 Stat. 1730. What concerns us here and now is the efficacy of the decree under the land law of Mexico at the date of its proclamation to extinguish hostile claims of ownership and pass the title to another.

Petitioners are content thus to limit the inquiry, if we read their argument aright. They insist that the decree which purports to divest them of their title, is a nullity even by the law of Mexico, and that it is the duty of our courts, if the nullity has been made out, to adjudge ownership accordingly. Meeting the objection that the acts of an independent government done in its own territory are not subject to reëxamination by the courts of another (*Underhill v. Hernandez, supra; Oetjen v. Central Leather Co., supra; Hewitt v. Speyer, supra; Oliver American Trading Co. v. United States of Mexico, supra*), they say that the land in controversy is now a part of the United States; that it was brought into our domain by a treaty of cession, the avulsion being merely the occasion that made the treaty operative; and that in passing upon the validity of the Mexican decree we are adjudicating a claim of title to part of our own soil. To do this, they maintain, is an incident of the judicial function. Meeting the objection that by the findings of the trial court the decree and the proceedings leading up to it are valid, they make a two-fold answer. They say that the laws formerly prevailing in territory acquired by treaty or convention are those of an antecedent government rather than a foreign one, and are the subject of judicial notice. *Fremont v. United States*, 17 How. 542, 557; *United States v. Perot*, 98 U. S. 428, 429, 430; *United States v. Chaves, supra*, p. 459. They say again that if such notice is not appropriate, a finding as to a foreign law is not solely one of fact, but one of fact and law compounded, which may be reviewed upon appeal, like a finding in certain circumstances as to the meaning of a document. Wigmore, Evidence, vol. 5, § 2558; *Fitzpatrick v. International Ry. Co.*, 252 N. Y. 127, 139, 140; 169 N. E. 112; *Saloshin v. Houle*, 85 N. H. 126; 155 Atl. 47; *Compania Transcontinental v. Mexican Gulf Oil Co.*, 292 Fed. 846; *Hanley v. Donoghue*, 116 U. S. 1, 6.

We leave for another case a delimitation of the principles thus invoked by the petitioners to clear a pathway to review. To delimit them with accuracy is unnecessary now, for, accepting them, provisionally, in their fullest length and breadth, we find the expropriating decree to be proof against assault. The defect imputed to it is expropriation in advance of payment or without adequate security, either payment or security being necessary in the view of the petitioners to effect a change of title. What the decree does provide is that there shall be "indemnity" to the owners, whoever they may be, for every interest condemned, and that bonds of the state shall be delivered as a medium of payment. Experts testifying for the defendant tell us that such indemnity is adequate under the Constitution of the Federal Republic (Constitution of Mexico, 1917, Art. 27), and also under the Agrarian Law of the State of Chihuahua. Cf. *Sweet v. Rechel*, 159 U. S. 380; *Crozier v. Krupp*, 224 U. S. 290, 306; *Phillips v. Commissioner*, 283 U. S. 589, 597; *Hurley v. Kincaid*, 285 U. S. 95, 104. The pertinent articles are quoted in the record, and give reasonable support to the opinion so expressed.\* Other witnesses testifying for the plain-

\*Constitution of Mexico, 1917, Article 27:

"Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

"The Nation shall have at all times the right to impose on private property such limitations as the public interest may demand as well as the right to regulate the development of natural resources, which are susceptible of appropriation, in order to conserve them and equitably to distribute the public wealth. For this purpose necessary measures shall be taken to divide large landed estates; to develop small landed holdings. . . . Private property acquired for the said purposes shall be considered as taken for public utility. . . .

"During the next constitutional term, the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carrying out the division of large landed estates, subject to the following conditions. . . .

"(e) The owners shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this

tiffs, advance a different view. Opinions of the Supreme Court of Mexico are laid before us in the briefs, and were summarized by the witnesses, though they were not exhibits at the trial. One gives color of support to the view advanced for the petitioners. Five of later date tend the other way. There is testimony that by the law of Mexico five decisions are necessary to give rise to a controlling precedent. For anything to the contrary appearing in the record, the claimants are still at liberty, though their estate has been divested, to receive delivery of bonds of the State of Chihuahua upon giving evidence of title.

In what has been written, we have assumed in favor of the petitioners, but without intending to decide, that the land law of Mexico in the territory now part of Texas is a proper subject of judicial notice. The assumption helps

end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations."

Agrarian Law of the State of Chihuahua:

"Article third: Owners of larger extensions of lands than those prefixed in Article 1st, are under the obligations to divide into fractions their lands, and, to this effect a term of ninety days is granted them from the date on which this law goes into effect, so that they may select the extension of land they can keep; and another term of six months, from same date, is granted them for the formulation of the project for the division into fractions of the land in excess, which project is to be submitted to the Executive of the State for its approval attaching thereto corresponding plats of the land together with authentic title deeds."

"Article sixth: By the mere fact that the owners, do not present the plats to the Executive of the State in the form and terms as provided for in the article 3rd., it shall be understood that they refuse to divide the latifundium, into fractions, and the Executive of the State shall carry it out (the division into fractions of said latifundium) by means of expropriation in accordance to provision of subsection C, or the section VII of Article 27th, of the General Constitution."

them nothing. A different case would be here if they were able to refer us to documents or other evidence *dehors* the present record establishing a different rule from that stated in the findings. In such conditions, the doctrine of judicial notice might be a crutch on which to lean. But none of these extrinsic aids to judgment has been placed at our disposal. Neither through any reference to documents nor through other sources of information has anything been added to what has been developed by the witnesses in the pages of this record. The situation is thus the same, whatever the extension of the doctrine of judicial notice, as if the record stood alone.

Heed must be given to the burden of proof, at least when other tests are lacking. In this action to establish ownership, petitioners must recover, if at all, on the strength of their own title. Judicial notice is unavailing to rid them of that burden. To say that a court will take judicial notice of a fact, whether it be an event or a custom or a law of some other government, is merely another way of saying that the usual forms of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. Wigmore, Evidence, vol. 5, § 2567; Thayer, Preliminary Treatise on the Law of Evidence, pp. 277, 308. But the truth, of course, is that judicial notice and judicial knowledge are far from being one. The law is not so vain as to make pretense of their identity. To the contrary, a court that is left without knowledge of a fact after exploring to the full every channel of information must needs decide against the litigant who counts upon the fact as an essential of his claim. *De non apparentibus et de non existentibus eadem est ratio.*

We are not persuaded upon this record, supplemented by everything now brought to our attention, that the law of Mexico is other than by the concurrent judgments of the courts below it has been here adjudged to be. That

being so, petitioners have not maintained the burden of overcoming the decree. Their claim of title fails.

The judgment is

*Affirmed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

SHOSHONE TRIBE OF INDIANS *v.* UNITED STATES.\*

CERTIORARI TO THE COURT OF CLAIMS.

No. 216. Argued December 17, 18, 1936.—Decided January 4, 1937.

1. A taking of an interest in land, tortious in its origin, may be made lawful by relation. P. 496.
2. A taking of land may be partial, not involving complete eviction. P. 497.
3. The right to interest, or a fair equivalent, attaches automatically to an award for damages for an expropriation of property, though not specified in the Act of Congress permitting the suit. *Id.*
4. The guardianship of the United States over the property and affairs of tribal Indians does not enable the Government to require a tribe to which an exclusive right of occupancy has been pledged by treaty, to share it with another tribe without just compensation. P. 497.
5. By treaty of July 3, 1868, a reservation was set apart for the Shoshone Indians exclusively. On March 18, 1878, a band of Arapahoes, under military escort, settled upon the land; others did so later. These intrusions were directed or sanctioned by the Commissioner of Indian Affairs, with intent that the settlements should be permanent; and from then on, in the administrative way, he treated the two tribes as equal beneficiaries of the reservation—a view which at length found sanction in Acts of Congress dealing with cessions of land and with the privilege of allotment in severalty. The Shoshones, however, protested consistently

---

\*Together with No. 328, *United States v. Shoshone Tribe of Indians*. Certiorari to the Court of Claims.

against the invasion of their rights, and finally secured from Congress the jurisdictional Act of March 3, 1927, under which they presented to the court below their claim for compensation for the taking of an undivided one-half interest in their tribal lands. *Held*:

(1) That the jurisdictional Act is not an exercise of eminent domain, although it provides that a recovery under it shall be in full settlement and shall annul the claim of the Shoshones. Consequently the date of that Act is not the time as of which the property taken should be valued in assessing compensation. P. 492.

(2) Neither are the damages to be measured as of a date (Aug. 13, 1891) when the Commissioner of Indian Affairs expressed in an official letter his opinion that the rights of the two tribes to the reservation were equal. P. 494.

(3) By the action and inaction of the executive and legislative branches of the Government, the *de facto* appropriation, originally tortious, was ratified, and the ratification relates back to the date of the original unlawful entry, March 18, 1878. P. 495.

(4) Damages should be measured as of that date. *Id.*

(5) The claimant's damages include such additional amount beyond the value of its property rights when taken by the Government as may be necessary to the award of just compensation, the increment to be measured either by interest on the value or by such other standard as may be suitable in the light of all the circumstances. P. 496.

82 Ct. Cls. 23, reversed.

CROSS-WRITS of certiorari\* to review a judgment awarding compensation for the taking of a one-half undivided interest in the reservation of the Shoshone Tribe of Indians.

*Messrs. George M. Tunison and Albert W. Jefferis, with whom Messrs. Charles J. Kappler and Francis S. Howell were on the brief, for the Shoshone Tribe of Indians.*

The Commissioner of Indian Affairs was without authority to divest the Shoshones of rights in the reservation held under their treaty of 1868. *Leecy v. United States,*

---

\* See Table of Cases Reported in this volume.

190 Fed. 289; *United States v. Creek Nation*, 295 U. S. 103; *Borax Consolidated v. Los Angeles*, 296 U. S. 10; *United States v. Carpenter*, 111 U. S. 347; *Lane v. Santa Rosa*, 249 U. S. 110, 113; *Santa Rosa v. Fall*, 273 U. S. 315, 320, 321; 18 Ops. Atty. Gen. 235-237.

Congress in 1897 and in 1905, by enacting the appropriate reservations in each of the agreements of cession, preserved for the Shoshones all benefits to which they were entitled under their 1868 treaty stipulations.

As there was no permanent taking until 1927, compensation should be allowed for temporary use and occupancy from 1878 to 1927. *Johnson v. United States*, 2 Ct. Cls. 391; *Johnson v. United States*, 4 Ct. Cls. 248; *Pope v. United States*, 26 Ct. Cls. 11.

The award for temporary use and occupation is inadequate. Present full equivalent should be allowed. In addition to proper compensation for temporary use and occupancy from 1878 to 1927, there should be enough more to produce the present equivalent of compensation paid contemporaneously. *Phelps v. United States*, 274 U. S. 341; *Waite v. United States*, 282 U. S. 508; *Jacobs v. United States*, 290 U. S. 13.

Taking the use of an undivided one-half of the reservation by executive officers and appropriating it to the benefit of the United States and the Arapahoes, was a taking for public use; and, under the ratification of the Jurisdictional Act of 1927, the case stands as though the United States, from year to year, had taken the use of the property of the Shoshones. *Tiaco v. Forbes*, 228 U. S. 549; *United States v. The Nuestra Senora De Regla*, 108 U. S. 92; *Dona Maria Francisca O'Reilly de Camara v. Brooke*, 209 U. S. 45.

The Jurisdictional Act contemplates, (1) recovery of damages for the temporary use from 1878 to 1927; (2) permanent provision for the Arapahoes. Therefore the Act provides that: "The decree . . . shall . . . cancel all claim," etc.

The just compensation includes such addition to the value of the property at the time of the permanent taking as may be required to produce the present full equivalent of that value paid contemporaneously. *United States v. Creek Nation*, 295 U. S. 103.

Indians are citizens of the United States. Act of June 2, 1924, 43 Stat. 253; General Allotment Act of February 8, 1887, § 6, 24 Stat. 388.

Indians and Indian tribes come within the protection of the Constitution. *United States v. Creek Nation*, *supra*. See also *Cherokee Nation v. Southern Kansas R. Co.*, 135 U. S. 641; *United States v. Mille Lac Band of Chippewa Indians*, 229 U. S. 498.

The United States is more strictly obligated to act justly towards Indians than in similar cases towards whites. *Choctaw Nation v. United States*, 119 U. S. 1. Indian tribes are not to be discriminated against merely because the naked title of the land taken resides in the United States. Retention of legal title was solely that it might not pass into foreign hands. *Leavenworth, L. & G. R. Co. v. United States*, 92 U. S. 733; *Yankton Sioux Tribe of Indians v. United States*, 61 Ct. Cls. 40; *Yankton Sioux Tribe of Indians v. United States*, 272 U. S. 351; s. c., 65 Ct. Cls. 428.

There was no taking in 1878.

The theory of the Government in the court below was that the Shoshones had consented, without consideration, to give away a half interest in their beautiful home to their ancient enemies, the Arapahoes. Now, abandoning that contention, the Government claims that the half interest was forcibly taken from the Shoshones in 1878. The difficulty with this contention is that the Shoshones knew nothing of any such claim. They were highly honorable people. They respected their pledged word and they believed the Government would respect its pledged

word. So we have the unusual situation of the Government now claiming that the half interest in the Shoshones' treaty reservation was taken from them in 1878 by the mere "thought" of the Commissioner of Indian Affairs, which "thought" was not at that time, nor thereafter until 1891, even communicated or made known to the Shoshones.

Indian treaty lands may not be taken by mistakes of officials of the Interior Department. *United States v. Creek Nation*, 295 U. S. 103.

Legislation affecting the Indians is to be construed in their interest; and a purpose to make radical departure is not lightly inferred. *United States v. Nice*, 241 U. S. 591; *Leavenworth, L. & G. R. Co. v. United States*, 92 U. S. 733.

At any time up to the filing of this suit, the Government could have maintained an action as guardian of the Shoshones to eject the Arapahoes. One of the very purposes of the Jurisdictional Act was to put an end to the uncertainty of the tenure of the Arapahoes.

The findings preclude the claim that the Shoshones' title was taken in 1878 by what the Commissioner of Indian Affairs may secretly have "thought," or that Congress surreptitiously, by language hidden away in Indian appropriation acts, intended to take it.

Congress has often recognized that Indian tribes are the beneficial owners of their treaty reservations, including all natural resources. See, for example, the Acts of February 6, 1871, 16 Stat. 404; April 25, 1876, 19 Stat. 37; June 15, 1880, 21 Stat. 199; March 31, 1882, 22 Stat. 36; and April 11, 1882, 22 Stat. 42.

Since the Acts of March 3, 1883, 22 Stat. 582-590, and March 2, 1887, 24 Stat. 449-463, the general and constant policy of Congress has been to recognize that the Indians have complete equitable property, not only in the surface

but in all resources of every nature, and in every element of value in their treaty reservations, below and above the surface. Such recognition is by both general and special legislation.

*Vide* general laws pertaining to sale or lease of natural resources on Indian reservations; and special legislation pertaining to Shoshones of the Wind River Reservation: Act of March 3, 1905, 33 Stat. 1016; Act of February 25, 1909, 35 Stat. 650; Act of August 21, 1916, 39 Stat. 516; Act of May 21, 1928, 45 Stat. 617.

The legislative history of Congress respecting the Indians indicates that the United States has never sought to profit from any resources on Indian reservations, and that the holding of the mere naked title was solely for the protection of the interests of the Indians during their pupilage. See 29 Ops. Atty. Gen., pp. 239-242; 34 Ops. Atty. Gen., pp. 181, 189; 19 Ops. Atty. Gen., p. 194, overruled by 29 Ops. Atty. Gen., pp. 239-242, and 34 Ops. Atty. Gen., pp. 181, 189.

This Court has held in *Mitchel v. United States*, 9 Pet. 711, 756; s. c. 15 Pet. 84, that the right of the Indians in their lands is not that of mere occupancy and perpetual possession, but a right of property, held under the guaranty of treaties.

The Court of Claims, in arriving at the value of the one-half interest in the Shoshones' reservation, committed no error in considering the beneficial ownership of the resources as a part of the value of the land itself.

Distinguishing: *United States v. Cook*, 19 Wall. 591; *Pine River Logging & Imp. Co. v. United States*, 186 U. S. 280.

*Assistant Attorney General Blair*, with whom *Solicitor General Reed* and *Messrs. George T. Stormont, Charles H. Small, and W. Marvin Smith* were on the brief, for the United States.

The liability of the United States to the Shoshones is limited to one-half of the value of their right in the reservation as of 1878, without interest.

The letter of August 13, 1891, from the Commissioner of Indian Affairs to the Woodruff Commission did not constitute a "taking." The absence of any intention to "take" is in itself sufficient to refute the holding that the writing of the letter effected a "taking." *Horstmann Co. v. United States*, 257 U. S. 138. The letter was nothing but a statement by the Commissioner of his opinion of the rights of the parties; and that opinion was based upon facts which had occurred 13 years before.

The "taking" was complete in 1878, when the Commissioner, with full knowledge of the fact that the Shoshones had consented to temporary occupancy only, kept the Arapahoes on the reservation over the protests of the Shoshones.

That Congress understood these facts as constituting the expropriation for which the Jurisdictional Act was designed to afford the Shoshones relief, is shown by the history of that Act.

Both parties to this suit are agreed that there was no authority in the Commissioner of Indian Affairs to deprive the Shoshones of any property rights either in 1878 or 1891. The only way in which the Shoshones could lawfully have been deprived of the use and occupation was through the exercise of the power of eminent domain, *United States v. Creek Nation*, 295 U. S. 103, 110; but the Government will not be deemed to have exercised that power merely because some unauthorized officer takes possession. *United States v. North American Transportation Co.*, 253 U. S. 330, 333.

The only color for a "taking" in any sense by the Commissioner of Indian Affairs was § 463 of the Revised Statutes (25 U. S. C. 2), upon which the Court of Claims apparently based its conclusion. Cf. *United States v. Creek Nation*, 295 U. S. 103.

Since the action of the Commissioner was without authority, Congress could have repudiated it altogether, and it would have created no liability on the part of the Government except as a breach of the treaty. *J. Ribas y Hijo v. United States*, 194 U. S. 315, 323; *United States v. North American Transportation Co.*, 253 U. S. 330, 334.

It is submitted that instead of repudiating the action of the Commissioner, Congress by the Jurisdictional Act provided in effect that the "taking" or appropriation in 1878 should operate as an offer to purchase as of the date of the appropriation, and left the Shoshones free to accept or reject that offer.

By bringing this suit, the Shoshones accepted that offer, and thereby a simple contractual obligation of the Government arose. The Government is not liable for interest on its contractual obligations unless the contract expressly provides therefor or some statute authorizes it. Distinguishing: *Seaboard Air Line v. United States*, 261 U. S. 299; *Liggett & Myers Tobacco Co. v. United States*, 274 U. S. 215; *Jacobs v. United States*, 290 U. S. 13; *Phelps v. United States*, 274 U. S. 341.

The original appropriation created no liability, constitutional or contractual, on the part of the Government, and Congress was free to repudiate it or adopt it on such terms and with such conditions as it saw fit to impose. It could have adopted the original appropriation as a forcible taking in the exercise of the power of eminent domain, *Crozier v. Krupp*, 224 U. S. 290, but it refrained. Instead, it chose to treat the appropriation as an offer to contract, and therefore the United States is liable only under that contract. *United States v. North American Transportation Co.*, 253 U. S. 330, 335.

The Act of 1883, standing by itself, gave the Shoshones no greater right in the timber, minerals, and other products of the reservation than they had under the treaty of 1868. Congress did not understand the Act of 1883

as conferring upon an Indian Tribe any title to timber, minerals, or other products of the reservation. See Act of February 16, 1889, c. 172, 25 Stat. 673. 34 Ops. Atty. Gen., p. 171, distinguished. The contention of the Shoshones in that regard is contrary to *United States v. Cook*, 19 Wall. 591, and *Pine River Logging Co. v. United States*, 186 U. S. 279, see *Northern Pacific R. Co. v. Lewis*, 162 U. S. 366; *United States v. Denver & Rio Grande R. Co.*, 191 U. S. 84; and *United States v. Paine Lumber Co.*, 206 U. S. 467.

By leave of Court, *Mr. G. Carroll Todd* filed a brief on behalf of the Klamath and Moadoc Tribes of Indians and the Yahooskin Band of Snake Indians, as *amici curiae*, on the question of the rights of an Indian Tribe in standing timber, minerals, etc., on lands within their reservation.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

The Shoshone Tribe of Indians of the Wind River Reservation in Wyoming has sued the United States in the Court of Claims for the breach of treaty stipulations, whereby the tribe has been permanently excluded from the possession and enjoyment of an undivided half interest in the tribal lands. Jurisdiction to hear the claim was conferred upon the Court of Claims by an act of March 3, 1927 (44 Stat. 1349, Part II), which, so far as its provisions are now material, is quoted in the margin.<sup>1</sup>

<sup>1</sup> Section 1 provides that jurisdiction is "conferred upon the Court of Claims, with right of appeal to the Supreme Court of the United States by either party, notwithstanding the lapse of time or statutes of limitation, to hear, examine, adjudicate, and render judgment in any and all legal and equitable claims which the Shoshone Tribe of Indians of the Wind River Reservation in the State of Wyoming may have against the United States arising under or growing out of the treaty of July 3, 1868 (Fifteenth Statutes, page 673), or

The court gave judgment for the claimant. Neither party to the controversy was satisfied with the award of damages, the claimant finding it too low, and the Government too high. There were cross-petitions for certiorari. To fix with certainty and justice the rights and duties of the Government in its relations with an Indian tribe, the writs were allowed, and the case is here accordingly.

By treaty of July 3, 1868 (15 Stat. 673), the Shoshone Tribe of Indians relinquished to the United States a reservation of 44,672,000 acres in Colorado, Utah, Idaho and Wyoming, and accepted in exchange a reservation of 3,054,182 acres in Wyoming, with other benefits not now important. The United States agreed that the territory described in the treaty now generally known as the Wind River Reservation, would be "set apart for the absolute and undisturbed use and occupation of the Shoshone Indians . . . and for such other friendly tribes

---

arising under or growing out of any subsequent treaty or agreement between said Shoshone Tribe of Indians and the United States or any subsequent Act of Congress affecting said tribe, which claims have not heretofore been determined and adjudicated upon their merits by the Court of Claims or the Supreme Court of the United States."

Section 3 provides: "In said suit the court shall also hear, examine, and adjudicate any claims which the United States may have against said tribe, but any payment, including gratuities which the United States may have made to said tribe, shall not operate as an estoppel, but may be pleaded as an offset in such suit: *Provided, however,* That the United States may interpose to such suit or action any and all pleas of defense, affirmative and negative, legal and equitable, which it may have thereto not herein specifically barred by the provisions of this Act. In reference to all claims which may be the subject matter of the suits herein authorized, the decree of the court shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the said Shoshone Indians in and to such money, lands, or other property."

or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them." Reinforcing this covenant, there was a solemn pledge of faith by the United States that no persons, except a few specially enumerated, and governmental agents engaged in the discharge of duties enjoined by law, should "ever be permitted to pass over, settle upon, or reside" in the territory so reserved. The loyalty of the Shoshone tribe to the people of the United States has been conspicuous and unflinching. A fidelity at least as constant and inflexible was owing in return.

In 1869, a band of the Northern Arapahoes, separating from the main body of the nation, was wandering about the country, looking for a home. The Arapahoes had been allies of the Sioux, who were the foes of the Shoshones. None the less, the wanderers expressed a wish to have a refuge and a settlement on the Wind River Reservation. They came upon the Reservation in 1870, and were informed by Washakie, Chief of the Shoshones, that they would be permitted to stay there for a short time while the Government was seeking to place them elsewhere. After a few months they moved away. The Government had no success, however, in providing them with a satisfactory home, and they continued to cast longing eyes toward the fair and fertile acres set apart for their ancestral foes. At the instance of the Commissioner of Indian Affairs, acting in coöperation with the Secretary of the Interior, a new attempt was made in October, 1877, to bring the tribes together and relieve the growing tension developing between them. One Irwin, formerly the Indian agent on the Wind River Reservation, discussed the problem with Washakie. He said that the President had no intention of placing the Arapahoes on the Shoshone Reservation, but that the desire was merely to insure peace between the tribes and to find a place for the Arapahoes nearby, on a separate tract of

land close to the eastern boundary. Washakie agreed that there should be peace, but insisted that the traditional enemies of his tribe be placed at a safe distance, predicting that close contact would bring friction and fresh hostility.

Irwin telegraphed the Commissioner of Indian Affairs at Washington on October 17, 1877: "I returned from Shoshone Agency today. Held a council and made peace between Shoshones and Arapahoes." A written report, dated February 21, 1878, gave the details of the council. Even so, the telegram, it seems, had been misunderstood by the Commissioner, for in his annual report for 1877 (dated November 1, 1877), he said (p. 19): "In a formal council held last month by Agent Irwin with the Shoshones, their consent to the arrangement desired by the Arapahoes was obtained, and the removal of the latter is now in progress." Ignoring many warnings in February and later that consent had been refused, the Commissioner adhered to his erroneous assumption. The consequences of his error are visible in the events that followed.

On March 18, 1878, a band of Northern Arapahoes was brought to the Reservation of the Shoshones under military escort. The Reservation had been reduced to 2,343,000 acres by the cession of 700,642 acres in 1874 for a money consideration. The Shoshones believed that for hunting and for husbandry it was not in excess of present needs. The unheralded arrival of the Arapahoes was the cause of much excitement. There was a council the next day, at which the leader of the Arapahoes explained to Washakie that they and their horses were weary and without food, and in need of rest and care. Thereupon Washakie agreed that they might remain for a short time to rest their horses and themselves. But the Indian Commissioner, it seems, had not brought them to the reservation for any temporary visit. On April 2, 1878, he telegraphed the agent at the Reservation to furnish the

Arapahoes with the necessary food and supplies, and directed him to "report fully by mail what other measures are necessary to locate the Band of Northern Arapahoe Indians under Black Coal," their leader. The agent responded that the Shoshones looked upon the presence of the Arapahoes as "an encroachment on their rights." At the request of both tribes, he urged the calling of a council to be attended by the Department Commander, General Crook, in order that the location of the Arapahoes might be permanently settled. No reply to this request came from the Commissioner or from any one else.

The famished Arapahoes and their horses had been fed and cared for, but they did not move away. Instead of moving away, they came in increasing numbers. As early as April 8, 1878, nearly the whole tribe was on the scene. Washakie protested to the agent. The agent at frequent intervals communicated the protests to the Commissioner. There was nothing in return but silence. Months lengthened into years, and the signs accumulated steadily that the Arapahoes were there to stay. Schools were established for their benefit to the end that their youth might be adequately trained. Report of Commissioner of Indian Affairs, 1879, p. 169. Ditches were dug for the irrigation of their ranches. Report of Commissioner of Indian Affairs, 1889, p. 308. In numberless other ways, their equality of right and privilege became a postulate of daily life. At length in August, 1891, the flame of controversy blazed forth anew. The "Woodruff Commission" had been sent to the Reservation to treat with the Indians for a cession of a portion of their lands. The Shoshones took the ground that the Arapahoes should not be suffered to take part in the council and vote upon the projects. The Commission telegraphed the Commissioner of Indian Affairs asking for instructions. In reply, August 13, 1891, the Commissioner notified the Commission: "This office holds . . . that the Arap-

ahoes have equal rights to the land on the said reservation which does not depend upon the further consent of the Shoshones, and you should conduct your negotiations with them upon that basis and with that understanding." Accordingly, both tribes participated in the council, though a cession was not effected.

The Commissioner continued to act on the assumption that the occupancy of the Arapahoes, initiated, as we have seen, under military escort, was permanent and rightful. What is more to the point, Congress did the same. Thus, in 1897, the Government by its agent concluded an agreement with the Shoshones and Arapahoes whereby the Indians ceded to the Government part of the Shoshones Reservation (55,040 acres) for \$60,000, to be expended without discrimination among the members of the tribes. In preliminary conferences the Shoshones protested that they alone should receive the stipulated payments. Their protest was overruled, though they succeeded in adding a proviso that nothing in the agreement was to be construed to deprive them of their annuities or benefits under any existing agreements or treaty stipulations. This agreement with its clear recognition of the occupancy of the Arapahoes and their equal interest in the land, was ratified by act of Congress. Act of June 7, 1897, c. 3, 30 Stat. 62, 93, 94. Again, on April 21, 1904, the Government made an agreement with the two tribes for the cession of a large tract (1,480,000 acres), leaving only 808,500 acres in the diminished reservation. Again the Shoshones protested that the Arapahoes were intruders, and refused to sign without a proviso similar to the one in the agreement of 1897.<sup>2</sup>

---

<sup>2</sup> "Article X. It is further understood that nothing in this agreement shall be construed to deprive the said Indians of the Shoshone or Wind River Reservation, Wyoming, of any benefits to which they are entitled under existing treaties or agreements, not inconsistent with the provisions of this agreement."

Again the Government dealt with the two tribes as lawful occupants and equals. This agreement like the earlier one was ratified by act of Congress. Act of March 3, 1905, c. 1452, 33 Stat. 1016. It provides *inter alia* that "any individual Indian, a member of the Shoshone or Arapahoe tribes, who has, under existing laws or treaty stipulations, selected a tract of land within the portion of said reservation hereby ceded, shall be entitled to have the same allotted and confirmed to him or her, and any Indian who has made or received an allotment of land within the ceded territory shall have the right to surrender such allotment and select other lands within the diminished reserve in lieu thereof at any time before the lands hereby ceded shall be opened for entry." There is a finding that 245,058 acres were allotted to Shoshone and Arapahoe Indians between 1907 and 1919 under the power thus conferred. Many other provisions of the agreement and the statute are almost equally explicit and significant in their recognition of the *status quo*. Nowhere is there a suggestion that the occupancy of the newcomers is impermanent or provisional.

The Arapahoes held their ground, pushing the Shoshones farther to the west, and retaining for themselves the eastern section of the Reservation, found by the Court of Claims to be the most eligible portion. At all times the population of each of the two tribes has been approximately equal. There continued to come forth from the Shoshones intermittent protests, which at last reached the halls of Congress, and in 1927 had a long delayed fruition. In that year the Committee on Indian Affairs of the House of Representatives reported a bill to make atonement for the wrongs that for nearly half a century had been left without redress. House Report No. 1628, 69th Congress, 2nd Session, Congressional Record, vol. 68, part 1, p. 625.

Extracts from that report are printed in the margin.<sup>3</sup> The bill so proposed was passed, but was vetoed by the President, chiefly for the reason that it made provision for the payment of interest at five per cent per annum on the value of any property appropriated in violation of the treaty or wrongfully disposed of. Congressional Record, vol. 68, part 3, page 2414, 69th Congress, 2nd session. On February 4, 1927, the Senate Committee on Indian Affairs reported a new bill, with the statement that it had been redrafted to correct the objection of the President and that it was identical with the earlier bill except for the interest provision, though in truth other verbal changes had been made in the process of revision. Senate Report No. 1389, Congressional Record, vol. 68, part 3, p. 2921. The bill so revised became Chapter 302 of the Laws of 1927, the jurisdictional act under which the present suit has been maintained.

Upon these facts the Court of Claims decided that the occupancy of the Arapahoes became definitive and perma-

---

<sup>3</sup>“Despite the fact that the United States expressly guaranteed to these Indians the uninterrupted use and occupancy of the reservation, and against the protests of the Shoshones of said Wind River Reservation in Wyoming, the northern band of the Arapahoes, under military escort, were moved upon said reservation in the winter of 1877-78.

“In order to disarm the Shoshones they were assured by the military authorities that the Arapahoes would be removed from the reservation the following year. Since then the Shoshones have frequently protested against the alleged unlawful appropriation of their reservation but have received no relief from the Government. On the contrary, the Government has allowed the Arapahoes upon the reservation and treated the funds claimed by the Shoshones as though they were the joint property of both tribes.

“The purpose of the bill is to permit the Shoshones to submit their claims for alleged appropriation of property to the Court of Claims, and your committee feels that in view of the strong showing made the bill should be enacted at an early date.”

ment on August 13, 1891, when the Commissioner of Indian Affairs made public statement of his opinion that they were entitled to enjoy the Reservation equally with the Shoshones. The value at that time of an undivided half interest in the land was found to be \$2,050,597.50. The value of the use and occupation between March 18, 1878 and August 13, 1891, was fixed at \$332,475. The sum of these values, along with a few minor items, was \$2,483,467.99, from which there was a deduction of \$1,689,646.50, for offsets owing to the Government, and not in controversy here. The balance, \$793,821.49 is the amount of the judgment now before us for review. As already stated, neither the claimant nor the Government is content with the decision. Both agree that there was error in fixing the value of the land as of August 13, 1891. The claimant insists that it should be reckoned as of March 3, 1927, the date of the jurisdictional act, and that compensation should be added for the value of the intermediate use and occupation. The Government insists that the value should be reckoned as of March 18, 1878, when the unlawful occupancy began. The claimant makes the additional point that, irrespective of the date at which the value is computed, interest must be awarded up to the date of the judgment on the recovery allowed.

*First.* The Court of Claims did not err in refusing to fix the damages on the basis of the value of the land on March 3, 1927.

The claimant takes the ground that the jurisdictional act is an exercise of the power of eminent domain. The argument is that by force of its provisions a trespass which had been unlawful, though continuous, since March 18, 1878, was turned as of March, 1927, into a definitive and lawful taking. But this is to mistake utterly the design and meaning of the statute. The jurisdictional act is not a taking of anything. It "makes no admission of liability, or of any ground of liability, on the

part of the Government, but merely provides a forum for the adjudication of the claim according to applicable legal principles." *United States v. Mille Lac Band of Chippewa Indians*, 229 U. S. 498, 500. No cause of action can be vindicated thereunder unless such a cause of action as, apart from the impediment of governmental immunity from suit, was already in existence. Under the jurisdictional act the court is to inquire whether the violation of the treaty of 1868 or of some later treaty or agreement or some later act of Congress has given rise to legal or equitable grounds of liability. True, the decree when it is made "shall be in full settlement of all damages, if any, committed by the Government of the United States and shall annul and cancel all claim, right, and title of the Shoshone Indians in and to such money, lands, or other property." But the claimant is not subject to a duty either under that act or any other to sue the Government at all. In the event of a failure to sue or to prosecute the suit to a decree, rights and liabilities will remain as they were before any act was passed. The sovereign power is not exercised to extinguish titles or other interests against the will of tribal occupants by force of eminent domain.

If this conclusion might otherwise be doubtful (which we do not suggest), the doubt would be dispelled by a consideration of the history of the statute. The reports of the Committees of Congress preceding the two bills—the one vetoed by the President and the one enacted into law—make it plain that the purpose was to give reparation to the claimant for an "alleged unlawful appropriation" effected in the past, not to make a new and lawful appropriation by an exercise of sovereign power. So the message of the President vetoing the first bill which permitted an award of interest, adds this comment to a sketch of the grievance of the tribe: "It seems to me unreasonable to expect that the Government should be

charged with interest from the dates of origin of such ancient claims." Congress had no thought in its revision of the rejected bill to prescribe present expropriation in lieu of present reparation. As pointed out already, the bill redrafted was understood to be identical with the first one except that the interest provision had been dropped to meet the President's objection.

*Second.* The Court of Claims erred in holding that damages should be measured as of August 13, 1891, the date of the letter from the Commissioner of Indian Affairs to the Woodruff Commission, and in failing to measure them as of 1878, the date of the unlawful entry.

The treaty of 1868 charged the Government with a duty to see to it that strangers should never be permitted without the consent of the Shoshones to settle upon or reside in the Wind River Reservation. That duty was not fulfilled. Instead, the Arapahoes were brought upon the Reservation with a show of military power, and kept there in defiance of the duty to expel them. The decision below is based upon the theory that the letter of August 13, 1891, is the earliest overt act evincing a definitive purpose to make the occupancy permanent. But the Commissioner of Indian Affairs was not empowered to fix the future policy of the Government, still less to exercise in its behalf the power of eminent domain. He made no such attempt. All that his letter of August, 1891, expresses is an opinion as to the meaning and operation of notorious and accomplished facts. By deed as well as by word, he had done his part for more than thirteen years in shaping those facts to conform to his opinion. He had made report to the Secretary of the Interior in November, 1877, that the transfer of the Arapahoes to the Wind River Reservation was a movement then in progress. He had notified the local agent in April, 1878, to indicate any other measures necessary to settle the intruders. He had turned a deaf ear to many a remonstrance by the tribe

whose possession had been violated. In so far as his own opinion and intention were facts of any moment, he had manifested them too often and too plainly, by conduct and by speech alike, to leave his attitude in doubt. Little wonder that counsel for the claimant are at one with counsel for the Government in rejecting August, 1891, as the date when occupancy became more than a temporary trespass.

If the date adopted by the Court of Claims is not accepted as the true one, the question is before us, what other shall be substituted? Looking at events in retrospect through the long vista of the years we can see that from the outset the occupancy of the Reservation was intended to be permanent; that, however tortious in its origin, it has been permanent in fact; and that the Government of the United States through the action and inaction of its executive and legislative departments for half a century of time, has ratified the wrong, adopting the *de facto* appropriation by relation as of the date of its beginning. To see the facts in true perspective we must view them in their totality and not in isolation. There are the reports at the beginning as to the purpose of the settlement; the words and the silence of administrative officers when entreated to banish the intruders; the creation of schools for the education of their youth as for that of the youth already there (Report of Commissioner of Indian Affairs, 1879, p. 169); and most important of all, the statutes already summarized, recognizing the Arapahoes equally with the Shoshones as occupants of the land, accepting their deeds of cession, assigning to the tribes equally the privilege of new allotments, and devoting to the two equally the award of future benefits. What meaning can be ascribed to all these cumulative tokens of intention unless it be that the intruders have been confirmed in their occupancy as of the date of the intrusion? Cf. *United States v. Creek*

*Nation*, 295 U. S. 103, 110. The Shoshones might protest, as they did, that in setting their hands to the agreement, they did not assent to the violation of treaty stipulations. They might reserve as much as they pleased claims, present and past, for the recovery of damages. Whatever their provisos, the outstanding fact remained that for good or for ill, the Arapahoes were to dwell upon the soil along with them. "The adoption by the United States of the wrongful act of any officer is of course an adoption of the act when and as committed, and causes such act of the officer to be, in virtue of the statute, a rightful appropriation by the Government, for which compensation is provided." *Crozier v. Krupp*, 224 U. S. 290, 305.

Confusion is likely to result from speaking of the wrong to the Shoshones as a destruction of their title. Title in the strict sense was always in the United States, though the Shoshones had the treaty right of occupancy with all its beneficial incidents. *United States v. Creek Nation*, *supra*, p. 109. What those incidents are, it is needless to consider now. Cf. *United States v. Cook*, 19 Wall. 591; *Pine River Logging Co. v. United States*, 186 U. S. 279; *United States v. Paine Lumber Co.*, 206 U. S. 467. The right of occupancy is the primary one to which the incidents attach, and division of the right with strangers is an appropriation of the land *pro tanto*, in substance, if not in form.

*Third.* The claimant's damages include such additional amount beyond the value of its property rights when taken by the Government as may be necessary to the award of just compensation, the increment to be measured either by interest on the value or by such other standard as may be suitable in the light of all the circumstances.

The fact is unimportant that the taking was tortious in its origin, if it was made lawful by relation. *Crozier*

v. *Krupp, supra*. The fact also is unimportant that it was a partial taking only, and that eviction was not complete. *Jacobs v. United States*, 290 U. S. 13, 16; *United States v. Cress*, 243 U. S. 316, 327-330; *Hurley v. Kincaid*, 285 U. S. 95, 104. Finally the fact is unimportant, there having been an appropriation of property within the meaning of the Fifth Amendment, that the jurisdictional act is silent as to an award of interest or any substitute therefor. *United States v. Creek Nation, supra*, pp. 110, 111. Cf. *Yankton Sioux Tribe v. United States*, 272 U. S. 351, 359. Given such a taking, the right to interest or a fair equivalent, attaches itself automatically to the right to an award of damages. *Jacobs v. United States, supra*; *Phelps v. United States*, 274 U. S. 341; *Brooks-Scanlon Corp. v. United States*, 265 U. S. 106, 123; *Seaboard Air Line Co. v. United States*, 261 U. S. 299, 306. These cases distinguish *United States v. North American Co.*, 253 U. S. 330, cited by the Government which "rested upon its special facts." *Jacobs v. United States, supra*. Nor does the nature of the right divested avail to modify the rule. Power to control and manage the property and affairs of Indians in good faith for their betterment and welfare may be exerted in many ways and at times even in derogation of the provisions of a treaty. *Lone Wolf v. Hitchcock*, 187 U. S. 553, 564, 565, 566. The power does not extend so far as to enable the Government "to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation . . .; for that 'would not be an exercise of guardianship, but an act of confiscation.'" *United States v. Creek Nation, supra*, p. 110; citing *Lane v. Pueblo of Santa Rosa*, 249 U. S. 110, 113; *Cherokee Nation v. Hitchcock*, 187 U. S. 294, 307-308. The right of the Indians to the occupancy of the lands pledged to them, may be one of occupancy only, but it is "as sacred as that of the United States to the fee."

*United States v. Cook, supra*, p. 593; *Lone Wolf v. Hitchcock, supra*; *Choate v. Trapp*, 224 U. S. 665, 671; *Yankton Sioux Tribe v. United States, supra*. Spoliation is not management.

The judgment should be reversed and the cause remanded to the Court of Claims for further proceedings in accord with this opinion.

*Reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

UNITED STATES *v.* HUDSON.

CERTIORARI TO THE COURT OF CLAIMS.

No. 97. Argued November 17, 18, 1936.—Decided January 11, 1937.

The Silver Purchase Act of June 19, 1934, imposed on transfers of any interest in silver bullion a tax of 50% of the profits over cost and allowed expenses, payable as to future transfers by attaching stamps to the memoranda of sale. Transfers made on or after May 15, 1934, and prior to the date of the Act were also subjected to the tax, payable, however, in a different way. *Held*:

1. That the tax is a special income tax. P. 500.

2. Congress had power to impose this tax in addition to the tax imposed on the same profits, with other gains, under the general income tax law. *Id.*

3. Making the tax provision retroactive for a period of 35 days, to include profits from transactions consummated while the statute was in course of enactment, was consistent with due process. *Id.*

82 Ct. Cls. 15; 12 F. Supp. 620; 13 F. Supp. 640, reversed.

CERTIORARI\* to review a judgment sustaining a claim against the United States for a tax refund.

*Assistant Attorney General Jackson, with whom Solicitor General Reed and Messrs. Sewall Key, George H.*

---

\*See Table of Cases Reported in this volume.

*Foster, Herman Oliphant, and Loren P. Oakes* were on the brief, for the United States.

*Mr. Bernhard Knollenberg*, with whom *Mr. George de Forest Lord* was on the brief, for respondent.

By leave of Court, *Messrs. Kingman Brewster, O. R. Folsom-Jones, A. H. Conner, and John Ward Cutler* filed a brief, as *amici curiae*, urging affirmance of the decision below.

MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

Respondent bought on May 3 and sold on May 23 and 29, all in 1934, certain futures contracts for the delivery of 500,000 ounces of silver, and realized therefrom, after deducting allowed expenses, a profit of \$8,621.96. He paid a tax of 50% of this profit in obedience to the taxing provision of the Silver Purchase Act of June 19, 1934,<sup>1</sup> duly but unsuccessfully sought to have the amount of the tax refunded, and then brought suit in the Court of Claims to recover the same. The court held the tax invalid, as retroactively applied to respondent's sales, and gave judgment accordingly. 12 F. Supp. 620; 13 F. Supp. 640. The case is here on certiorari.

The Silver Purchase Act, in § 8, imposes on all transfers of any interest in silver bullion, where the price for which such interest is transferred exceeds the total cost and allowed expenses, a tax of 50 per centum of such excess, and requires that the tax be paid by affixing to a memorandum of the sale lawful stamps in the amount of the tax. The section further provides that the tax, besides reaching transfers thereafter made, shall be applicable to transfers made on or after May 15, 1934, and prior to the date of the act, with the qualification that

---

<sup>1</sup> C. 674, § 8, 48 Stat. 1178.

as to such prior transfers the tax shall be paid in such manner and at such time as the Commissioner, with the approval of the Secretary of the Treasury, may by regulation prescribe.

The question presented for decision is whether, in view of the restraints of the due process of law clause of the Constitution,<sup>2</sup> the retroactive provision under which the tax was exacted from the respondent is an admissible exertion of the power to tax.

Examination of the taxing provision and of pertinent decisions shows, as we think, that the answer must be in the affirmative.

The taxing provision does not impose a tax in respect of all transfers, but only in respect of such as yield a profit over cost and allowed expenses. If there be no profit there is to be no tax. If there be a profit the tax is to be 50% of it. Thus a profit is made the occasion for the tax and also the measure of it. Because of this, counsel for the Government contend that the tax is a special income tax; and we think the contention is sound.

It is not material that such profit is taxed, along with other gains, under the general income tax law, for Congress has power to impose an increased or additional tax if satisfied there is need therefor. *Patton v. Brady*, 184 U. S. 608, 620-622.

As respects income tax statutes it long has been the practice of Congress to make them retroactive for relatively short periods so as to include profits from transactions consummated while the statute was in process of enactment, or within so much of the calendar year as preceded the enactment; and repeated decisions of this Court have recognized this practice and sustained it as consistent with the due process of law clause of the Constitution. *Stockdale v. Insurance Cos.*, 20 Wall. 323, 331,

---

<sup>2</sup>The Fifth Amendment contains the due process of law clause applicable to the United States.

332, 341; *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1, 20; *Lynch v. Hornby*, 247 U. S. 339, 343; *Cooper v. United States*, 280 U. S. 409, 411. And see *Milliken v. United States*, 283 U. S. 15, 21. The cases on which the Court of Claims partly rested its decision were both examined and distinguished in *Cooper v. United States* and *Milliken v. United States*.

The period of retroactivity prescribed for this taxing provision reaches backward from June 19, 1934, the date of the act, to and including May 15, 1934,—35 days. For some months prior to this period there was strong pressure for legislation requiring increased acquisition and use of silver by the Government, and several bills providing therefor were presented in the Senate and House of Representatives. On May 22 the President sent to Congress a message<sup>3</sup> recommending legislation for increasing the amount of silver in our monetary stocks and further recommending the imposition of a tax of at least 50% on profits accruing from private dealing in silver. The bill which became the Silver Purchase Act was introduced May 23 in response to this message. In these circumstances we think the period of retroactivity fixed in the act is not unreasonable, but consistent with the practice sustained by this Court in the cases already cited.

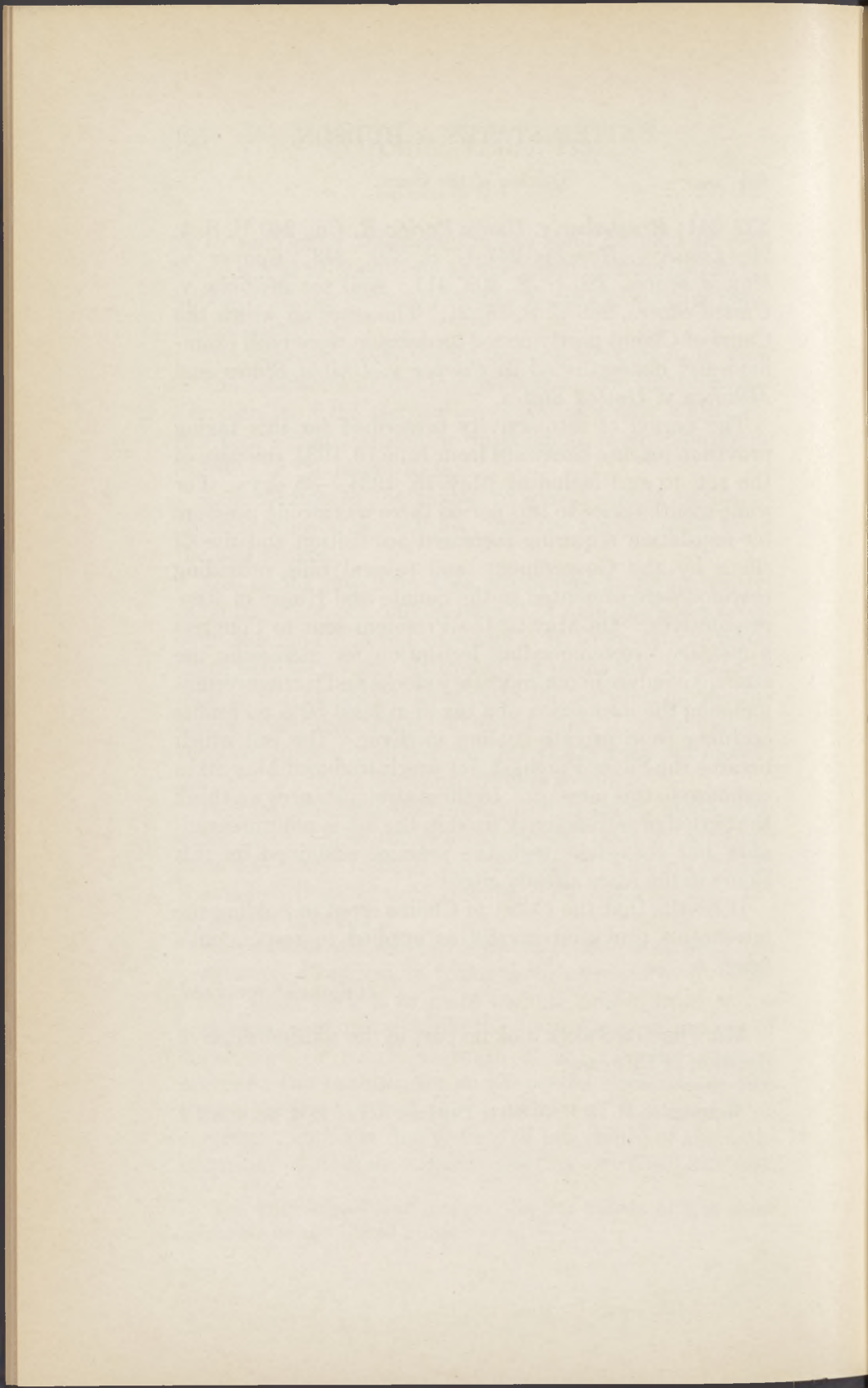
It results that the Court of Claims erred in holding the retroactive provision invalid as applied to respondent's sales.

*Judgment reversed.*

MR. JUSTICE STONE took no part in the consideration or decision of this case.

---

<sup>3</sup> Hearings on H. R. 9745, Silver Purchase Act of 1934, pp. 1 and 2.



DECISIONS PER CURIAM, ETC., FROM OCTOBER  
5, 1936, THROUGH JANUARY 31, 1937.\*

No. 94. *CANNON v. LOUISIANA*. Appeal from the Supreme Court of Louisiana. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The appeal herein is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for a writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. The motion for leave to proceed further herein *in forma pauperis* is denied. *Mr. H. P. Viering* for appellant. No appearance for appellee. Reported below: 184 La. 514; 166 So. 485.

---

No. 109. *TIMMONS ET AL. v. SECURITY SAVINGS BANK*. Appeal from the Supreme Court of Iowa. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *Gibbes v. Zimmerman*, 290 U. S. 326, 332; *Doty v. Love*, 295 U. S. 64. *Mr. C. H. E. Boardman* for appellants. *Mr. Earl C. Mills* for appellee. Reported below: 221 Iowa 102; 264 N. W. 708.

---

No. 116. *DRACKETT COMPANY v. CHAMBERLAIN COMPANY*. Appeal from and petition for writ of certiorari

\*MR. JUSTICE STONE took no part in the consideration or decision of any of the cases reported in this volume in which judgments or orders were announced on November 9th or days subsequent.

For decisions on applications for certiorari, see *post*, pp. 523, 539; for rehearing, *post*, p. 618.

to the Circuit Court of Appeals for the Third Circuit. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of jurisdiction. Section 240 (b) and (c), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 939). The petition for a writ of certiorari is denied for the reason that application therefor was not made within the time provided by law. Act of February 13, 1925, § 8 (a) 43 Stat. 936, 940). *Messrs. Walter F. Murray, Jonathan S. Green, and Edgar W. McCallister* for appellant. *Messrs. W. H. Parmelee, Bruce G. Mackey, and Leslie C. Strickland* for appellee. Reported below: 81 F. (2d) 866.

---

No. 130. BRACKEN ET AL. *v.* SECURITIES & EXCHANGE COMM'N. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. October 12, 1936. *Per Curiam*: The petition for writ of certiorari in this case is granted. The decree of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court with directions to vacate its decree and to dismiss the proceeding upon the ground that the cause is moot. *Brownlow v. Schwartz*, 261 U. S. 216; *Alejandrino v. Quezon*, 271 U. S. 528, 535, 536; *C. M. Patten & Co. v. United States*, 289 U. S. 705; *First Union Trust & Savings Bank v. Consumers Co.*, 290 U. S. 585. *Mr. Abraham M. Lowenthal* for petitioners. *Solicitor General Reed* and *Mr. John J. Burns* for respondent. Reported below: 84 F. (2d) 316.

---

No. 134. WISCONSIN EX REL. SAYLESVILLE CHEESE MANUFACTURING Co. *v.* ZIMMERMAN, CIRCUIT JUDGE. Appeal from the Supreme Court of Wisconsin. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the

299 U. S.

Decisions Per Curiam, Etc.

appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *Cincinnati Street Ry. Co. v. Snell*, 193 U. S. 30; *Bain Peanut Co. v. Pinson*, 282 U. S. 499, 501. Mr. Harold M. Wilkie for appellant. Mr. William H. Spohn for appellee. Reported below: 220 Wis. 682; 265 N. W. 856.

---

No. 149. BANNER CLEANERS & DYERS, INC. v. LOUISIANA. Appeal from the Supreme Court of Louisiana. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *American Sugar Refining Co. v. Louisiana*, 179 U. S. 89; *Quong Wing v. Kirkendall*, 223 U. S. 59, 62, 63; *Tax Commissioners v. Jackson*, 283 U. S. 527, 537-538. Mr. Moses C. Scharff for appellant. Mr. Charles J. Rivet for appellee. Reported below: 184 La. 997; 168 So. 127.

---

No. 157. EASTMAN v. OHIO. Appeal from the Supreme Court of Ohio. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The appeal herein is dismissed for the want of a final judgment. *Rankin v. State*, 11 Wall. 380; *Heike v. United States*, 217 U. S. 423, 432-433. Messrs. H. W. Fraser, E. R. Eppler, and R. H. Baker for appellant. Messrs. Frazier Reams and Joel S. Rhinefort for appellee. Reported below: 131 Oh. St. 1; 1 N. E. (2d) 140.

---

No. 174. HAM, INSURANCE COMMISSIONER, v. EQUITABLE LIFE ASSURANCE SOCIETY. Appeal from the Supreme Court of Wyoming. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936.

*Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *Seattle & Renton Ry. v. Linhoff*, 231 U. S. 568, 570; *Gasquet v. Lapeyre*, 242 U. S. 367, 369; *Enterprise Irrigation Dist. v. Canal Co.*, 243 U. S. 157, 165, 166. *Messrs. Ray E. Lee and James A. Greenwood* for appellant. *Messrs. John U. Loomis and James H. McIntosh* for appellee. Reported below: 49 Wyo. 525; 52 P. (2d) 1223.

---

No. 252. *GLOVER v. SIMPSON, WARDEN*. Appeal from the Supreme Court of Kansas. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *Moore v. Missouri*, 159 U. S. 673; *McDonald v. Massachusetts*, 180 U. S. 311; *Graham v. West Virginia*, 224 U. S. 616; *Levell v. Simpson*, 297 U. S. 695. *Mr. Harold E. Neibling* for appellant. *Mr. John G. Egan* for appellee. Reported below: 144 Kan. 153; 58 P. (2d) 73.

---

No. 265. *LINDWAY v. OHIO*. Appeal from and petition for writ of certiorari to the Supreme Court of Ohio. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted and the appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). The petition for writ of certiorari is denied. *Mr. Morris H. Wolf* for appellant. *Mr. Frederick W. Green* for appellee. Reported below: 131 Oh. St. 166; 2 N. E. (2d) 490.

---

No. 282. *DEDERICK v. SMITH*. Appeal from the Supreme Court of New Hampshire. Jurisdictional state-

299 U. S.

Decisions Per Curiam, Etc.

ment distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed for the want of a substantial federal question. *Railroad Co. v. Husen*, 95 U. S. 465, 472; *Jacobson v. Massachusetts*, 197 U. S. 11, 28, 29; *Zucht v. King*, 260 U. S. 174, 176, 177. *Florence M. Dederick, pro se. Mr. Fred C. Demond* for appellee. Reported below: 88 N. H. 63; 184 Atl. 595.

---

No. 289. *SKIPPER v. SCHUMACHER, SHERIFF*. Appeal from the Supreme Court of Florida. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion for leave to file amended statement as to jurisdiction is granted. The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of a substantial federal question. *Seattle, R. & S. Ry. v. Linhoff*, 231 U. S. 568, 570; *Enterprise Irrigation District v. Canal Co.*, 243 U. S. 157, 165, 166; *Hebert v. Louisiana*, 272 U. S. 312, 316, 317; *American Railway Express Co. v. Kentucky*, 273 U. S. 269, 272, 273; *Secor v. Fulton*, 293 U. S. 517. Insofar as the papers whereon the appeal was allowed seek review of the rulings of the Supreme Court of Florida upon questions of the asserted denial of rights under the Federal Constitution not involving the validity of any statute of the State, such papers are treated as a petition for writ of certiorari (§ 237 (c), Judicial Code, as amended by the Act of February 13, 1925, 43 Stat. 936, 938), and certiorari is denied. *Mr. W. D. Bell* for appellant. *Mr. Cary D. Landis*, Attorney General of Florida, for appellee. Reported below: 124 Fla. 384; 169 So. 58.

---

No. 290. *POLK COMPANY v. MAYO, COMMISSIONER OF AGRICULTURE*. Appeal from the Supreme Court of Florida. Jurisdictional statement distributed September

10, 1936. Decided October 12, 1936. *Per Curiam*: The motion for leave to amend the statement as to jurisdiction is granted. The appeal is dismissed for the want of a substantial federal question. *Gundling v. Chicago*, 177 U. S. 183, 188; *Payne v. Kansas*, 248 U. S. 112; *Arnold v. Hanna*, 276 U. S. 591; cf. *Sligh v. Kirkwood*, 237 U. S. 52, 61, 62. *Mr. George C. Bedell* for appellant. *Mr. Cary D. Landis*, Attorney General of Florida, for appellee. Reported below: 124 Fla. 534; 169 So. 41.

---

No. 338. WINSTON BROTHERS Co. *v.* STOVER. Appeal from the Supreme Court of Washington. Jurisdictional statement distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal herein is granted, and the appeal is dismissed (1) for the want of a substantial federal question (*Atkin v. Kansas*, 191 U. S. 207, 223, 224; *Heim v. McCall*, 239 U. S. 175, 191-193; *Caldwell v. Louisiana*, 282 U. S. 801; *Gianatasio v. Kaplan*, 284 U. S. 595); (2) for the reason that the judgment sought here to be reviewed is based upon a non-federal ground adequate to support it. *Pierce v. Somerset Railway*, 171 U. S. 641, 648; *Leonard v. Vicksburg R. Co.*, 198 U. S. 416, 422, 423; *McCoy v. Shaw*, 277 U. S. 302, 303. The motion of the appellee to allow damages is granted, and it is ordered that damages of one thousand dollars, payable to appellee, be taxed against appellant. *Slaker v. O'Connor*, 278 U. S. 188; *Roe v. Kansas*, 278 U. S. 191; *Mississippi Central R. Co. v. Aultman*, 296 U. S. 537. *Messrs. Robert H. Evans, William G. McLaren, J. Speed Smith, and Norman M. Littell* for appellant. *Mr. Samuel B. Bassett* for appellee. Reported below: 185 Wash. 416; 55 P. (2d) 821.

---

No. 353. TORINUS *v.* JOHNSON ET AL. Appeal from the Supreme Court of Minnesota. Jurisdictional state-

299 U. S.

Decisions Per Curiam, Etc.

ment distributed September 10, 1936. Decided October 12, 1936. *Per Curiam*: The appeal herein is dismissed for the want of a substantial federal question. *Tappan v. Merchants' National Bank*, 19 Wall. 490, 505; *Florida Central R. Co. v. Reynolds*, 183 U. S. 471, 480-481; *White River Co. v. Arkansas*, 279 U. S. 692, 696-699. *Mr. Carl W. Cummins* for appellant. *Messrs. Harry H. Peterson and William S. Ervin* for appellees. Reported below: 197 Minn. 266; 266 N. W. 867.

---

No. —, original. *EX PARTE THOMAS P. MERRIAM*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE JOSEPH LESSER*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE NORMAN T. WHITAKER*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE T. J. HAMILTON*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE ELZA G. WYATT*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE WILLIAM F. WILTSE*. October 12, 1936. Motion for leave to file petition for writ of habeas corpus denied.

No. —, original. *EX PARTE DOUGLAS VAN HORNE*. October 12, 1936. Motion for leave to file petition for writ of mandamus denied.

---

No. —, original. *EX PARTE HAROLD MANILOFF*. October 12, 1936. Motion for leave to file petition for writ of mandamus denied.

---

No. —, original. *EX PARTE NICHOLS, STATE TAX COMMISSIONER OF NORTH DAKOTA*. October 12, 1936. The rule to show cause herein is discharged and the motion for leave to file petition for writ of mandamus is denied. *Mr. P. O. Sathre*, Attorney General of North Dakota, and *Mr. Charles A. Verret*, Assistant Attorney General, for petitioner. *Messrs. F. G. Dorety* and *C. J. Murphy* for respondent.

---

No. 10, original. *NEBRASKA v. WYOMING ET AL.* October 12, 1936. The replications of Nebraska to the amended and supplemental answer of Wyoming and the answer of Colorado, the answers of Nebraska and Wyoming to the cross-bill of Colorado, and the replications of Colorado to the answers of Nebraska and Wyoming are received and ordered filed.

It is ordered that the authority granted Michael J. Doherty, Esq., the Special Master, by the provisions of the order entered herein on October 14, 1935, shall be deemed to embrace like authority in relation to the issues raised by the pleadings above mentioned.

---

No. 225. *CONTINENTAL OIL Co. v. UNITED STATES*. October 12, 1936. The application for a writ of certiorari to the Court of Claims is dismissed upon the ground that it is premature, without prejudice to a renewal of the application after action by the Court of Claims on the

299 U. S.

Decisions Per Curiam, Etc.

motion for amendment of the special findings. The motion to defer consideration of the application for certiorari is denied. *Mr. Arthur B. Hyman* for petitioner. *Solicitor General Reed* for the United States. Reported below: 83 Ct. Cls. 344; 14 F. Supp. 533.

---

No. 384. *S. H. KRESS & CO. ET AL. v. JOHNSON, GOVERNOR*. Appeal from the District Court of the United States for the District of Colorado. Jurisdictional statement distributed September 10, 1936. Decided October 19, 1936. *Per Curiam*: The motion of the appellees to affirm the decree is granted. *Powell v. Pennsylvania*, 127 U. S. 678, 685, 686; *Price v. Illinois*, 238 U. S. 446, 451, 452; *Standard Oil Co. v. Marysville*, 279 U. S. 582, 584; *Nebbia v. New York*, 291 U. S. 502, 537, 538. *Messrs. Paul W. Lee, George H. Shaw, and Wm. A. Bryans, III*, for appellants. *Messrs. Norris C. Bakke and Hudson Moore* for appellee. Reported below: 16 F. Supp. 5.

---

No. 403. *JONES v. LOUISIANA*. Appeal from the Supreme Court of Louisiana. Jurisdictional statement distributed October 10, 1936. Decided October 19, 1936. *Per Curiam*: The appeal herein is dismissed for the want of a properly presented substantial federal question. (1) *Pim v. St. Louis*, 165 U. S. 673; *Wall v. Chesapeake & Ohio Ry. Co.*, 256 U. S. 125; *Herndon v. Georgia*, 295 U. S. 441, 443. (2) *Enterprise Irrigation Dist. v. Canal Co.*, 243 U. S. 157, 166; *Hebert v. Louisiana*, 272 U. S. 312, 316; *Ham, Commissioner, v. Equitable Life Assurance Society, ante*, p. 505. In so far as the papers whereon the appeal was allowed seek a review of the rulings of the Supreme Court of Louisiana upon questions of the asserted denial of rights under the Federal Constitution not involving the validity of any statute of the State, such

papers are treated as a petition for writ of certiorari, § 237 (c), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938), and certiorari is denied. The motion for leave to proceed further herein *in forma pauperis* is denied. *Mr. Alex W. Swords* for appellant. No appearance for appellee. Reported below: 185 La. 308; 169 So. 417.

---

No. 417. *EISENHARDT v. LOUISIANA*. Appeal from the Supreme Court of Louisiana. Jurisdictional statement distributed October 10, 1936. Decided October 19, 1936. *Per Curiam*: The appeal herein is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. The motion for leave to proceed further herein *in forma pauperis* is denied. *Mr. Henry P. Viering* for appellant. No appearance for appellee. Reported below: 185 La. 308; 169 So. 417.

---

No. 33. *WERK ET AL. v. LORAIN STREET SAVINGS & TRUST Co. ET AL.* Appeal from the Supreme Court of Ohio. Argued October 20, 1936. Decided October 26, 1936. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted, and the appeal is dismissed for the want of a properly presented substantial federal question as to the validity of a statute of the State. (1) *Crowell v. Randell*, 10 Pet. 368, 392; *Railroad Co. v. Rock*, 4 Wall. 177, 180; *Whitney v. California*, 274 U. S. 357, 360. (2) *Doty v. Love*, 295 U. S. 64. In so far as the papers whereon the appeal was allowed seek a review of the rulings of the Supreme Court of Ohio upon questions of the asserted denial of rights under the

299 U. S.

Decisions Per Curiam, Etc.

Federal Constitution not involving the validity of any statute of the State, such papers are treated as a petition for writ of certiorari, § 237 (c), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938), and certiorari is denied. *Mr. Orlin F. Goudy*, with whom *Mr. Louis W. Gering, Jr.*, was on the brief, for appellants. *Messrs. James R. Garfield, Arthur D. Baldwin, John W. Bricker*, Attorney General of Ohio, and *J. Roth Crabbe*, Assistant Attorney General, were on the brief for appellees. Reported below: 130 Ohio St. 338.

---

No. 439. *MUSSER v. SHEPPARD*, COMPTROLLER OF PUBLIC ACCOUNTS. Appeal from the Supreme Court of Texas. Jurisdictional statement distributed October 24, 1936. Decided November 9, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of a final judgment. *Reddall v. Bryan*, 24 How. 420; *Verden v. Coleman*, 18 How. 86; *Twin City Power Co. v. Savannah River Electric Co.*, 284 U. S. 574; *Gant v. Oklahoma City*, 284 U. S. 594. *Mr. Mark McGee* for appellant. *Mr. Wm. McCraw*, Attorney General of Texas, and *Messrs. William C. Davis and Cecil C. Rotsch* for appellee. Reported below: 127 Tex. 193; 92 S. W. (2d) 219.

---

No. 444. *WALTER v. INDIANA*. Appeal from the Supreme Court of Indiana. Jurisdictional statement distributed October 31, 1936. Decided November 9, 1936. *Per Curiam*: The appeal herein is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for a writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. *Mr. P. H. Marshall* for appellant.

No appearance for appellee. Reported below: 210 Ind. —; 1 N. E. (2d) 127.

---

No. 464. AMERICAN BAKERIES CO. ET AL *v.* HUNTSVILLE. Appeal from the Supreme Court of Alabama. Jurisdictional statement distributed October 31, 1936. Decided November 9, 1936. *Per Curiam*: The appeal herein is dismissed for the want of a final judgment. *Missouri Ry. Co. v. Olathe*, 222 U. S. 185; *O'Mara v. Crampton*, 267 U. S. 575; *Manassas Park, Inc. v. Robertson*, 274 U. S. 716. *Messrs. Hughes Spalding and Joseph B. Brennan* for appellants. *Mr. Robert V. Fletcher* for appellee. Reported below: 232 Ala. 612; 168 So. 880.

---

No. —, original. *EX PARTE OTTO VAN DYKE*. November 9, 1936. The motion for leave to file petition for writ of habeas corpus is denied.

---

No. —, original. *EX PARTE C. M. BRUMMETT*. November 16, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE ETHEL E. GLEASON*. November 16, 1936. Motion for leave to file petition for writ of mandamus or prohibition denied.

---

No. 26. LEONARD SCHAFER *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE. November 17, 1936. Death of Leonard Schafer suggested and Louis B. Tim and Adelina T. Schafer, Executors of the Estate of Leonard Schafer, substituted as party petitioners on motion of *Mr. Eugene Untermeyer* for the petitioner.

299 U. S.

Decisions Per Curiam, Etc.

No. 49. W. H. H. CHAMBERLIN, INC. *v.* ANDREWS, INDUSTRIAL COMMISSIONER OF NEW YORK, ET AL.;

No. 50. E. C. STEARNS & Co. *v.* SAME; and

No. 64. ASSOCIATED INDUSTRIES OF NEW YORK STATE, INC. *v.* DEPARTMENT OF LABOR OF NEW YORK ET AL. Appeals from the Supreme Court of New York. Argued November 11, 12, 1936. Decided November 23, 1936. *Per Curiam*: The judgments in these cases are severally affirmed by an equally divided Court. *Messrs. Henry S. Fraser and Frederick H. Wood*, with whom *Messrs. Reynolds Robertson, Thomas T. Cooke, and G. Everett DeMore* were on the brief, for appellants in Nos. 49 and 50. *Mr. James McCormick Mitchell*, with whom *Messrs. Ernest J. Brown and Harold V. Potter* were on the brief, for appellant in No. 64. *Mr. Henry Epstein*, Solicitor General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, was on the brief, for appellees. Reported below: 271 N. Y. 1, 2 N. E. (2d) 22; 286 N. Y. S. 242, 459.

---

No. —, original. *EX PARTE* JAMES J. WALTER. November 23, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. 516. UNION BUILDING CORP. *v.* CONWAY. Appeal from the Supreme Court of Louisiana. Jurisdictional statement distributed November 21, 1936. Decided December 7, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of a substantial federal question. *Southwestern Oil Co. v. Texas*, 217 U. S. 114, 121-124; *Singer Sewing Machine Co. v. Brickell*, 233 U. S. 304, 315; *Tax Commissioners v. Jackson*, 283 U. S. 527, 537-542; *First National Bank v. Tax Commission*, 289 U. S. 60, 63-64; *Puget Sound Co. v. Seattle*, 291 U. S.

619, 626. *Anna Judge Veters* for appellant. *Messrs. Charles J. Rivet* and *P. H. Stern* for appellee. Reported below: 185 La. 598; 170 So. 7.

---

No. —, original. *EX PARTE FRANK CASSEL*. December 7, 1936. Motion for leave to file petition for writ of habeas corpus denied.

---

No. —, original. *EX PARTE HARRY CLARK*. December 7, 1936. A rule is ordered to issue, returnable within thirty days from this date, requiring the respondent to show cause why leave to file the petition for writ of habeas corpus should not be granted.

---

No. —, original. *EX PARTE GENE McCANN*. December 7, 1936. Motion for leave to file petition for writ of mandamus denied.

---

No. 27. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. ILLINOIS LIFE INSURANCE Co.* December 7, 1936. It is ordered that the sentence in the second paragraph of the opinion delivered in this cause on November 9, 1936, which is as follows: "That provision is a reënactment of § 245 (a) (2), Revenue Act of 1921, which in *Helvering v. Insurance Co.* we held not to apply to assets reserved by a life insurance company against unmatured, unsurrendered, and unpaid coupons attached to its policies," be amended by striking therefrom the word "unmatured" and inserting in its place the word "matured." The petition for rehearing is denied. [Opinion reported as amended, *ante*, p. 88.]

---

No. 546. *NORTHROP ET AL. v. BEALE ET AL.* Appeal from the Court of Appeals of Maryland. Jurisdictional

299 U. S.

Decisions Per Curiam, Etc.

statement distributed December 5, 1936. Decided December 14, 1936. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted, and the appeal is dismissed for the reason that the judgment sought here to be reviewed is based upon a non-federal ground adequate to support it. *Petrie v. Nampa Irrigation District*, 248 U. S. 154, 157; *McCoy v. Shaw*, 277 U. S. 302, 303; *Fox Film Corp. v. Muller*, 296 U. S. 207, 209-210. Insofar as the papers whereon the appeal was allowed seek a review of the rulings of the Court of Appeals of Maryland upon questions of the asserted denial of rights under the Federal Constitution not involving the validity of any statute of the State, such papers are treated as a petition for writ of certiorari, § 237 (c), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 938), and certiorari is denied. *Mr. Claudian B. Northrop* for appellants. *Messrs. Frederic D. McKenney, John S. Flannery, and G. Bowdoin Craighill* for appellees. Reported below: 170 Md. 439; 184 Atl. 900.

---

No. 108. NORTH AMERICAN CEMENT CORP. *v.* GRAVES ET AL. Appeal from the Supreme Court of New York. Argued December 8, 1936. Decided December 21, 1936. *Per Curiam*: Judgment affirmed upon the ground that the statute (§ 214, Art. 9-A, of the Tax Law of the State of New York) is valid upon its face and it has not been shown to have been so applied as to violate appellants' constitutional rights. *Bass, Ratchiff & Gretton, Ltd. v. State Tax Comm'n*, 266 U. S. 271. *Messrs. Henry S. Manley and Charles J. Tobin* for appellant. *Mr. Wendell P. Brown*, Assistant Attorney General of New York, with whom *Mr. John J. Bennett, Jr.*, Attorney General, was on the brief, for appellees. Reported below: 269 N. Y. 507, 199 N. E. 510; 243 App. Div. 834, 278 N. Y. S. 920.

No. 212. *MARVEL v. ZERBST, WARDEN*. On writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit. Argued December 17, 1936. Decided December 21, 1936. *Per Curiam*: Judgment affirmed. *Salingler v. Loisel*, 265 U. S. 224, 235, 237. *Mr. John B. Boddie* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahon, and Messrs. Guy K. Bard, William W. Barron, John T. M. Reddan, and Lee A. Jackson* were on the brief for respondent. Reported below: 83 F. (2d) 974.

---

No. 543. *MISSISSIPPI CENTRAL R. CO. ET AL. v. SMITH*. Appeal from the Supreme Court of Mississippi. Jurisdictional statement distributed December 12, 1936. Decided December 21, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 936, 937). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari, as required by § 237 (c), Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. The motion of the appellee to allow damages is granted, and it is ordered that damages of five hundred dollars, payable to the appellee, be taxed against appellants. *Mississippi Central R. Co. v. Roberts*, 296 U. S. 536; *Mississippi Central R. Co. v. Aultman*, 296 U. S. 537. *Mr. Thomas Brady, Jr.*, for appellants. *Messrs. Wm. H. Watkins, S. B. Laub, and Charles F. Engle* for appellee. Reported below: 176 Miss. 306; 168 So. 604.

---

No. 483. *BOSTON SAFE DEPOSIT & TRUST Co., TRUSTEE, v. LONG, COMMISSIONER*. Appeal from the Probate Court of Dukes County, Massachusetts. Jurisdictional statement distributed November 14, 1936. Decided December 21, 1936. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is

299 U. S.

Decisions Per Curiam, Etc.

dismissed for the want of a substantial federal question. *Saltonstall v. Saltonstall*, 276 U. S. 260. *Mr. R. Ammi Cutter* for appellant. *Mr. Paul A. Dever*, Attorney General of Massachusetts, and *Mr. James J. Ronan* for appellee. Reported below: 3 N. E. (2d) 33.

---

No. —, original. TEXAS *v.* NEW YORK ET AL. December 21, 1936. A rule is ordered to issue, returnable within forty days from this date, requiring the respondents to show cause why leave to file the bill of complaint should not be granted.

---

No. 2, original. VERMONT *v.* NEW HAMPSHIRE. December 21, 1936. Upon the joint application of the State of Vermont and the State of New Hampshire, it is ordered that Samuel S. Gannett, Esq., Special Commissioner in this cause, supplement his report filed November 23, 1936, by adding thereto a description of the traverse reference line and a map thereof. The time within which exceptions or objections to said report and supplemental report may be filed is extended to forty days after the delivery of the supplemental report to the Clerk of the Court and to the Attorneys General of the two States.

---

No. 561. HAMMOND ET AL. *v.* BURBANK ET AL. Appeal from the Supreme Court of California. Jurisdictional statement distributed December 26, 1936. Decided January 4, 1937. *Per Curiam*: The motion of the appellees to dismiss the appeal is granted, and the appeal is dismissed (1) for the reason that the judgment sought here to be reviewed is based upon a non-federal ground adequate to support it, *Henderson Bridge Co. v. Henderson City*, 141 U. S. 679, 688, 689; *McCoy v. Shaw*, 277 U. S. 302, 303; *Fox Film Corp. v. Muller*, 296 U. S. 207, 209, 210; (2) in so far as a federal question is sought to be presented, for the want of a substantial federal question, *Seattle & Renton Ry. v. Linhoff*, 231 U. S. 568,

570; *Enterprise Irrigation Dist. v. Canal Co.*, 243 U. S. 157, 165, 166; *Hebert v. Louisiana*, 272 U. S. 312, 316, 317; *Ham v. Equitable Life Assurance Society*, ante, p. 505. *Mr. E. C. Pyle* for appellants. *Mr. Leon Thomas David* for appellees. Reported below: 6 Cal. (2d) 646; 59 P. (2d) 495.

---

No. —, original. *EX PARTE MAURO PIERGIOVANNI*. January 4, 1937. Motion for leave to file petition for writ of habeas corpus denied.

---

No. 207. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. TEX-PENN OIL CO.*;

No. 208. *SAME v. BENEDUM*; and

No. 209. *SAME v. PARRIOTT*. January 4, 1937. These cases are restored to the docket and assigned for reargument.

---

No. —, original. *EX PARTE HARRY CLARK*. January 11, 1937. The rule to show cause herein is discharged and the motion for leave to file petition for writ of habeas corpus is denied.

---

No. —, original. *EX PARTE JOHN JOBISSY*. January 11, 1937. Motion for leave to file petition for writ of habeas corpus denied.

---

No. 584. *CITY BUS CO. v. MISSISSIPPI*. Appeal from the Supreme Court of Mississippi. January 18, 1937. *Per Curiam*: The appeal herein is dismissed for failure of the appellant to comply with Rule 12. *Messrs. Marcellus Green, Garner W. Green, and B. E. Eaton* for appellant. *Messrs. Greek L. Rice and W. W. Pierce* for appellee. Reported below: 176 Miss. 597; 169 So. 774.

---

No. 603. *SOUTHERN NEBRASKA POWER CO. ET AL. v. NEBRASKA EX REL. SORENSEN, ATTORNEY GENERAL*. Ap-

299 U. S.

Decisions Per Curiam, Etc.

peal from the Supreme Court of Nebraska. Jurisdictional statement distributed January 9, 1937. Decided January 18, 1937. *Per Curiam*: The appeal herein is dismissed (1) for the reason that the judgment sought here to be reviewed is based upon a non-federal ground adequate to support it, *Electric Co. v. Dow*, 166 U. S. 489, 492, 493; *Pierce v. Somerset Railway*, 171 U. S. 641, 648; *Leonard v. Vicksburg Ry. Co.*, 198 U. S. 416, 422, 423; *Gause v. Detroit Trust Co.*, 297 U. S. 695, (2) in so far as a federal question is sought to be presented, for the want of a substantial federal question, *Zucht v. King*, 260 U. S. 174, 176; *Sugarman v. United States*, 249 U. S. 182, 184; *Texas & Pacific Ry. Co. v. Texas*, 296 U. S. 552. *Mr. B. F. Napheys, Jr.*, for appellants. *Mr. Edwin Vail* for appellee. Reported below: 131 Neb. 472; 268 N. W. 284.

---

NO. 241. POPE ET AL. *v.* BLANTON, COUNTY JUDGE, ET AL. Appeal from the District Court of the United States for the Northern District of Florida. Argued January 11, 12, 1937. Decided January 18, 1937. *Per Curiam*: The decree of the District Court is modified and the cause is remanded with directions to dismiss the bill for want of jurisdiction by reason of the absence of the requisite jurisdictional amount. *McNutt v. General Motors Corp.*, 298 U. S. 178; *KVOS, Inc. v. Associated Press*, 299 U. S. 269. *Mr. John B. Sutton* for appellants. *Messrs. W. P. Allen and H. E. Carter*, Assistant Attorneys General of Florida, with whom *Mr. Cary D. Landis*, Attorney General, and *Mr. W. T. Hendry* were on the brief, for appellees. Reported below: 10 F. Supp. 15, 18.

---

NO. 374. LAURO ET AL. *v.* BARKER ET AL. Appeal from the Supreme Court of New York. Argued January 14, 1937. Decided January 18, 1937. *Per Curiam*: The motion of the appellees to affirm the judgment is granted, and the judgment is affirmed. (1) *Bellingham Bay Co.*

v. *New Whatcom*, 172 U. S. 314, 318, 319; *Goodrich v. Ferris*, 214 U. S. 71, 81; *Wick v. Chelan Electric Co.*, 280 U. S. 108, 110, 111. (2) *Gilfillan v. Union Canal Co.*, 109 U. S. 401. *Mr. Henry N. Rapaport*, with whom *Messrs. Irving S. Rapaport* and *Robert S. Garson* were on the brief, for appellants. *Messrs. Lawrence S. Greenbaum, Benjamin J. Rabin, Theodore S. Jaffin, Benjamin Kaplan*, and *Maurice Finkelstein* were on the brief for appellees. Reported below: 270 N. Y. 436.

---

No. 347. *NEW YORK CITY v. GOLDSTEIN, TRUSTEE IN BANKRUPTCY*. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. January 18, 1937. *Per Curiam*: The motion for leave to file a petition for rehearing is granted. The order heretofore entered on October 26, 1936, denying the petition for writ of certiorari herein is vacated, and the petition for writ of certiorari is granted. The decree of the Circuit Court of Appeals is reversed and the case is remanded to the District Court for further proceedings. *In the Matter of Atlas Television Co. Inc.*, 273 N. Y. 51 (decided December 31, 1936). *Messrs. Paul Windels, Paxton Blair, Oscar S. Cox*, and *Charles S. Levine* for petitioner. *Mr. S. Frederick Placer* for respondent. Reported below: 84 F. (2d) 982.

---

No. —, original. *EX PARTE ARTHUR O'TOOLE*. January 18, 1937. Motion for leave to file petition for writ of habeas corpus denied.

---

No. 638. *STEELMAN, TRUSTEE IN BANKRUPTCY, v. ALL CONTINENT CORPORATION*. On petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit. January 18, 1937. The petition for a temporary restraining order and injunction, pending action of this Court upon the petition for a writ of certiorari filed herein, is granted, and

It is ordered that, until this Court acts upon the petition for writ of certiorari, All Continent Corporation, its officers, agents, attorneys, and employees be, and they are hereby, enjoined from proceeding in any manner against the petitioner herein in a suit in equity now pending in the United States District Court for the Eastern District of Pennsylvania entitled "*All Continent Corporation, Plaintiff v. John S. Wynn et al., Defendants,*" being cause No. 9533 on the equity docket of said court. *Mr. Wm. Elmer Brown, Jr.*, for petitioner. *Mr. Benjamin Reass* for respondent. Reported below: 86 F. (2d) 913.

---

DECISIONS GRANTING CERTIORARI, FROM OCTOBER 5, 1936, THROUGH JANUARY 31, 1937.

No. 130. BRACKEN ET AL. *v.* SECURITIES & EXCHANGE COMM'N. See *ante*, p. 504.

---

No. 212. MARVEL *v.* ZERBST, WARDEN. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit granted. The motion for leave to proceed *in forma pauperis* is also granted. *Mr. John B. Boddie* for petitioner. *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Messrs. Guy K. Bard*, *William W. Barron*, and *Lee A. Jackson* for respondent. Reported below: 83 F. (2d) 974.

---

No. 70. NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS ET AL. *v.* WOOD, ADMINISTRATOR. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Solicitor General Reed* for petitioners. *Messrs. Ray M. Foreman* and *Lawrence T. Allen* for respondent. Reported below: 81 F. (2d) 963.

---

No. 97. UNITED STATES *v.* HUDSON. October 12, 1936. Petition for writ of certiorari to the Court of Claims

granted. *Solicitor General Reed* for the United States. *Messrs. Bernhard Knollenberg, Harry J. Rudick, and George DeForest Lord* for respondent. Reported below: 82 Ct. Cls. 15; 12 F. Supp. 620; 13 *id.* 640.

---

No. 100. *W. P. BROWN & SONS LUMBER CO. ET AL. v. LOUISVILLE & NASHVILLE R. CO. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Mr. J. V. Norman* for petitioners. *Messrs. Elmer A. Smith and Blakey Helm* for respondents. Reported below: 82 F. (2d) 94.

---

No. 103. *DISTRICT OF COLUMBIA v. CLAWANS.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia granted. *Messrs. Elwood Seal, Vernon E. West, and Raymond Sparks* for petitioner. *Messrs. Seth W. Richardson, Allen Caruthers, and Miss Lillian Clawans* for respondent. Reported below: 66 App. D. C. 11; 84 F. (2d) 265.

---

No. 104. *PRAIRIE FARMER PUBLISHING CO. ET AL. v. INDIANA FARMER'S GUIDE PUBLISHING CO.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Messrs. Maxwell V. Beghtol, Thomas E. Murphy, and Burke G. Slaymaker* for petitioners. *Messrs. U. S. Lesh and Eben Lesh* for respondent. Reported below: 82 F. (2d) 704.

---

No. 125. *SHAPLEIGH ET AL. v. MIER.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. H. R. Gamble* for petitioners. *Mr. Richard F. Burges* for respondent. Reported below: 83 F. (2d) 673.

No. 138. KENTUCKY WHIP & COLLAR Co. v. ILLINOIS CENTRAL R. Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Messrs. Charles I. Dawson and A. Shelby Winstead* for petitioner. *Messrs. Blakey Helm, John C. Doolan, E. C. Craig, and Charles N. Burch* for respondent. Reported below: 84 F. (2d) 168.

---

No. 146. JOHN HANCOCK MUTUAL LIFE INSURANCE Co. v. YATES. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Georgia granted. *Mr. Alex. W. Smith, Jr.*, for petitioner. *Mr. Edgar Watkins* for respondent. Reported below: 182 Ga. 213; 185 S. E. 268.

---

No. 155. EMPLOYERS REINSURANCE CORP. v. BRYANT, U. S. DISTRICT JUDGE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. John D. Watkins* for petitioner. *Messrs. Tom L. Beauchamp, C. W. Napier, and Oran Lowry* for respondent. Reported below: 82 F. (2d) 373.

---

No. 161. LIGGETT & MYERS TOBACCO Co. v. UNITED STATES.

No. 162. MASSACHUSETTS v. SAME; and

No. 163. LIGGETT & MYERS TOBACCO Co. ON BEHALF OF MASSACHUSETTS v. SAME. October 12, 1936. Petition for writs of certiorari to the Court of Claims granted. *Mr. Henry F. Long* and *Mr. Paul A. Dever*, Attorney General of Massachusetts, for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key, Lee A. Jackson, and Charles A. Horsky* for the United States. Reported below: 82 Ct. Cls. 328; 13 F. Supp. 143; 14 *id.* 543.

No. 171. HILL, WARDEN, *v.* UNITED STATES *EX REL.* WEINER. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit granted. *Solicitor General Reed* for petitioner. *Mr. Samuel H. Kaufman* for respondent. Reported below: 84 F. (2d) 27.

---

No. 172. UNITED STATES *v.* SEMINOLE NATION. October 12, 1936. Petition for writ of certiorari to the Court of Claims granted. *Solicitor General Reed* for the United States. *Messrs. Paul M. Niebell* and *W. W. Pryor* for respondent. Reported below: 82 Ct. Cls. 135.

---

No. 180. HOLYOKE WATER POWER CO. *v.* AMERICAN WRITING PAPER CO., INC. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Mr. Bentley Wirt Warren* for petitioner. *Messrs. John L. Hall, Claude R. Branch,* and *Charles P. Curtis, Jr.,* for respondent. Reported below: 83 F. (2d) 398.

---

No. 214. BENGZON *v.* SECRETARY OF JUSTICE *ET AL.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of the Philippine Islands granted. *Mr. Pedro Y. Ylagan* for petitioner. *Mr. Mark E. Guerin* for respondents.

---

No. 224. OSAKA SHOSEN KAISHA LINE *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. J. Newton Rayzor* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahon,* and *Messrs. William W. Barron* and *W. Marvin Smith* for the United States. Reported below 84 F. (2d) 482.

299 U. S.

Decisions Granting Certiorari.

No. 227. *MATOS v. ALONSO HERMANOS ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Mr. Gabriel I. Lewis* for petitioner. *Mr. Francis H. Dexter* for respondents. Reported below: 81 F. (2d) 930.

---

No. 247. *BLAIR v. COMMISSIONER OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Messrs. Wm. B. McIlvaine* and *J. F. Dammann* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. J. Louis Monarch*, *A. F. Prescott* and *Charles A. Horsky* for respondent. Reported below: 83 F. (2d) 655.

---

No. 254. *CUMMINGS, ATTORNEY GENERAL, ET AL. v. DEUTSCHE BANK UND DISCONTO-GESELLSCHAFT.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia granted. *Solicitor General Reed* for petitioners. *Messrs. Otto C. Sommerich*, *Thomas H. Creighton, Jr.*, and *James J. Lenihan* for respondent. Reported below: 65 App. D. C. 297; 83 F. (2d) 554.

---

No. 255. *ELMHURST CEMETERY Co. v. COMMISSIONER OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Messrs. Elden McFarland* and *Edward J. Quinn* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and *J. Louis Monarch* for respondent. Reported below: 83 F. (2d) 4.

---

No. 257. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. MIDLAND MUTUAL LIFE INSURANCE Co.* Oc-

tober 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Solicitor General Reed* for petitioner. *Messrs. Francis J. Wright, Edward W. Merkel, and Wm. Marshall Bullitt* for respondent. Reported below: 83 F. (2d) 629.

---

No. 266. ICKES, SECRETARY OF THE INTERIOR, *v.* FOX ET AL.;

No. 267. SAME *v.* PARKS ET AL.; and

No. 268. SAME *v.* OTTMULLER. October 12, 1936. Petition for writs of certiorari to the United States Court of Appeals for the District of Columbia granted. *Solicitor General Reed* for petitioner. *Mr. Stephen E. Chaffee* for respondents. Reported below: 66 App. D. C. 128; 85 F. (2d) 294.

---

No. 280. TABER, TREASURER, *v.* INDIAN TERRITORY ILLUMINATING OIL Co. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Oklahoma granted. *Messrs. Guy L. Horton and L. O. Lytle* for petitioner. *Mr. Wm. P. McGinnis* for respondent. Reported below: 177 Okla. 67; 57 P. (2d) 1167.

---

No. 305. WAYNE UNITED GAS Co. *v.* OWENS-ILLINOIS GLASS Co. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Messrs. Fred O. Blue and Robert S. Spilman* for petitioner. *Messrs. H. D. Rummel, D. O. Blagg, and A. G. Stone* for respondents. Reported below: 84 F. (2d) 965.

---

No. 309. KELLY, TRUSTEE IN BANKRUPTCY, *v.* UNITED STATES ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth

299 U. S.

Decisions Granting Certiorari.

Circuit granted. *Mr. W. B. Stratton* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. J. Louis Monarch, Frank J. Ready, Jr., and Lee A. Jackson* for the United States et al. Reported below: 83 F. (2d) 783; 84 *id.* 541.

---

No. 324. VIRGINIAN RAILWAY CO. *v.* SYSTEM FEDERATION No. 40, RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Messrs. John C. Connally, James Piper, W. H. T. Loyall, and H. T. Hall* for petitioner. *Messrs. Frank L. Mulholland, S. M. Branat, and Willard H. McEwen* for respondents. Reported below: 84 F. (2d) 641.

---

No. 325. MORLEY CONSTRUCTION CO. ET AL. *v.* MARYLAND CASUALTY Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted. *Messrs. William Buchholz and Martin J. O'Donnell* for petitioners. *Mr. John C. Grover* for respondent. Reported below: 84 F. (2d) 522.

---

No. 186. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* FRIED; and

No. 187. SAME *v.* EINHORN. October 12, 1936. Petitions for writs of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Solicitor General Reed* for petitioner. *Mr. John J. Curtin* for respondents. Reported below: 83 F. (2d) 193.

---

No. 207. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* TEX-PENN OIL Co.;

No. 208. SAME *v.* BENEDUM; and

No. 209. *SAME v. PARRIOTT*. October 12, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit granted. MR. JUSTICE ROBERTS took no part in the consideration and decision of this application. *Solicitor General Reed* for petitioner. *Mr. John W. Davis* for respondents. Reported below: 83 F. (2d) 518.

---

No. 221. *LANDIS ET AL. v. NORTH AMERICAN CO.*; and  
No. 222. *SAME v. AMERICAN WATER WORKS & ELECTRIC CO., INC.* October 12, 1936. Petition for writs of certiorari to the United States Court of Appeals for the District of Columbia granted. *Solicitor General Reed* for petitioners. *Messrs. John S. Flannery, John C. Higgins, and Joseph P. Tumulty* for respondents. Reported below: 66 App. D. C. 141; 85 F. (2d) 398.

---

No. 271. *IN THE MATTER OF 620 CHURCH STREET BUILDING CORP. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Mr. Theodore E. Rein* for petitioners. *Messrs. Isaac E. Ferguson and Don Kenneth Jones* for respondent. Reported below: 81 F. (2d) 463.

---

No. 216. *SHOSHONE TRIBE OF INDIANS v. UNITED STATES*; and

No. 328. *UNITED STATES v. SHOSHONE TRIBE OF INDIANS*. October 19, 1936. Petitions for writs of certiorari to the Court of Claims granted. *Messrs. George M. Tunison, Charles J. Kappler, Albert W. Jefferis, and Francis S. Howell* for the Shoshone Tribe. *Solicitor General Reed, Assistant Attorney General Blair, and Messrs. George T. Stormont, Charles H. Small, and W. Marvin Smith* for the United States. Reported below: 82 Ct. Cls. 23.

299 U. S.

Decisions Granting Certiorari.

No. 329. UNITED STATES *v.* GILES. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Solicitor General Reed* for the United States. *Mr. Nat L. Hardy* for respondent. Reported below: 84 F. (2d) 943.

---

No. 330. UNITED STATES *v.* AUTOMATIC WASHER CO. October 19, 1936. Petition for writ of certiorari to the Court of Claims granted. *Solicitor General Reed* for the United States. *Mr. Jesse I. Miller* for respondent. Reported below: 83 Ct. Cls. 593; 15 F. Supp. 70.

---

No. 331. UNITED STATES *v.* A. B. LEACH & Co., INC. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit granted. *Solicitor General Reed* for the United States. *Messrs. E. J. Blair* and *George K. Bowden* for respondent. Reported below: 84 F. (2d) 908.

---

No. 332. DUPONT ET AL. *v.* UNITED STATES. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Mr. I. Maurice Wormser* for petitioners. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. J. Louis Monarch* and *George Zeutzius* for the United States. Reported below: 83 F. (2d) 951.

---

No. 335. UNITED STATES FOR THE USE OF WILHELM, TRUSTEE, ET AL. *v.* CHAIN, EXECUTRIX. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Mr. F. E. Parrack* for petitioners. *Mr. Frank Cox* for respondent. Reported below: 84 F. (2d) 138.

No. 340. *DUGAS v. AMERICAN SURETY Co.* October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. M. C. Scharff* for petitioner. *Messrs. Victor Leovy, Henry H. Chaffe, Harry McCall, and Jas. Hy. Bruns* for respondent. Reported below: 82 F. (2d) 953.

---

No. 354. *KUEHNER ET AL. v. MURPHY ET AL.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Messrs. Henry L. Glenn, Rollin Browne, and Ralph Montgomery Arkush* for petitioners. *Mr. William D. Whitney* for respondents. Reported below: 85 F. (2d) 35.

---

No. 151. *MEADOWS v. IRVING TRUST Co., TRUSTEE, ET AL.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Mr. Perlie P. Fallon* for petitioner. *Mr. William D. Whitney* for respondents. Reported below: 83 F. (2d) 207.

---

No. 260. *CITY BANK FARMERS TRUST Co. v. IRVING TRUST Co., TRUSTEE, ET AL.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Messrs. Rollin Browne and Henry L. Glenn* for petitioner. *Mr. William D. Whitney* for respondents. Reported below: 83 F. (2d) 209.

---

No. 365. *ASSOCIATED PRESS v. NATIONAL LABOR RELATIONS BOARD.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Messrs. John W. Davis and William C.*

299 U. S.

Decisions Granting Certiorari.

*Cannon* for petitioner. *Solicitor General Reed* and *Messrs. Charles Fahy, Robert B. Watts, and Charles A. Horsky* for respondent. Reported below: 85 F. (2d) 56.

---

No. 469. WASHINGTON, VIRGINIA & MARYLAND COACH Co. v. NATIONAL LABOR RELATIONS BOARD. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Messrs. Robert E. Lynch, Wm. E. Leahy, and Wm. J. Hughes, Jr.*, for petitioner. *Solicitor General Reed* and *Mr. Charles Fahy* for respondent. Reported below: 85 F. (2d) 990.

---

No. 381. KENNEDY v. BOSTON-CONTINENTAL NATIONAL BANK ET AL. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Mr. Burton E. Eames* for petitioner. *Mr. Robert E. Goodwin* for respondents. Reported below: 84 F. (2d) 592.

---

No. 382. WENDELL PHILLIPS Co. v. BOSTON-CONTINENTAL NATIONAL BANK ET AL. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit granted. *Mr. Edmund K. Arnold* for petitioner. *Mr. Robert E. Goodwin* for respondents. Reported below: 84 F. (2d) 599.

---

No. 389. KNOX NATIONAL FARM LOAN ASSN. ET AL. v. PHILLIPS. November 9, 1936. Petition for writ of certiorari to the Court of Appeals of Ohio granted. *Messrs. Peyton R. Evans, Gerald E. Lyons, Roger D. Branigin, John M. Rankin, and Miss May T. Bigelow* for petitioners. *Mr. Wm. E. Richardson* for respondent. Reported below: 54 Ohio App. 334.

No. 413. GRAND RAPIDS TRUST Co., RECEIVER, *v.* UNITED LIGHT & POWER Co. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Messrs. Stuart E. Knappen* and *Malcolm Donald* for petitioner. *Messrs. William P. Sidley* and *Kenneth F. Burgess* for respondent. Reported below: 85 F. (2d) 331.

---

No. 406. SUMI *v.* YOUNG. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted. *Messrs. Herman Weinberger* and *Louis K. Pratt* for petitioner. *Mr. Robert W. Jennings* for respondent. Reported below: 83 F. (2d) 752.

---

No. 398. FOUNDERS GENERAL CORP. *v.* HOEY, COLLECTOR OF INTERNAL REVENUE. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Messrs. Royal E. T. Riggs* and *Henry J. Richardson* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and *George Zeutzius* for respondent. Reported below: 84 F. (2d) 976.

---

No. 419. NATIONAL LABOR RELATIONS BOARD *v.* JONES & LAUGHLIN STEEL CORP. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Solicitor General Reed* and *Mr. Charles Fahy* for petitioner. *Messrs. Charles Rosen*, *Earl F. Reed*, and *W. D. Evans* for respondent. Reported below: 83 F. (2d) 998.

---

Nos. 420 and 421. NATIONAL LABOR RELATIONS BOARD *v.* FRUEHAUF TRAILER Co. November 9, 1936. Petition

299 U. S.

Decisions Granting Certiorari.

for writs of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Solicitor General Reed* and *Mr. Charles Fahy* for petitioner. *Messrs. T. G. Long* and *Victor W. Klein* for respondent. Reported below: 85 F. (2d) 391.

---

Nos. 422 and 423. NATIONAL LABOR RELATIONS BOARD *v.* FRIEDMAN-HARRY MARKS CLOTHING CO., INC. November 9, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Solicitor General Reed* and *Mr. Charles Fahy* for petitioner. *Messrs. Leonard Weinberg* and *Harry J. Green* for respondent. Reported below: 85 F. (2d) 1.

---

No. 436. JOSEPH E. OTIS ESTATE LAND TRUST ET AL. *v.* IRVING TRUST CO., TRUSTEE, ET AL. November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted in relation to the nine claims enumerated on page two of the petition for certiorari, being those involving qualified releases. MR. JUSTICE BRANDEIS took no part in the consideration or decision of this case. *Miss Susan Brandeis* for petitioners. *Mr. William D. Whitney* for respondents. Reported below: 83 F. (2d) 202; 85 *id.* 11.

---

No. 460. VAN BEECK, ADMINISTRATOR, *v.* SABINE TOWING CO., INC. ET AL. November 16, 1936. Petition for writ of certiorari to Circuit Court of Appeals for the Fifth Circuit granted, limited to the question whether the cause of action abated with the death of the mother of Edward C. Van Beeck. *Messrs. M. G. Adams* and *H. C. Hughes* for petitioner. *Mr. M. A. Grace* for respondents. Reported below: 85 F. (2d) 478.

No. 440. AMERICAN LIFE INSURANCE CO. *v.* REESE SMITH STEWART, JR., ET AL.; and

No. 441. SAME *v.* ORA INEZ STEWART ET AL. November 16, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Tenth Circuit granted. *Messrs. Earle W. Evans and Charles M. Blackmar* for petitioner. *Mr. Charles G. Yankey* for respondents. Reported below: 80 F. (2d) 600; 85 *id.* 791.

---

No. 442. O'CONNOR ET AL. *v.* MILLS ET AL. November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted. *Mr. J. A. Tellier* for petitioners. *Mr. J. W. House* for respondents. Reported below: 85 F. (2d) 1017.

---

No. 446. AETNA LIFE INSURANCE CO. *v.* HAWORTH ET AL. November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted. *Mr. E. R. Morrison* for petitioner. *Mr. Rees Turpin* for respondents. Reported below: 84 F. (2d) 695.

---

No. 451. BRUSH *v.* COMMISSIONER OF INTERNAL REVENUE. November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Mr. Boykin C. Wright* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and Joseph M. Jones* for respondent. Reported below: 85 F. (2d) 32.

---

No. 500. MARTIN *v.* NATIONAL SURETY CO. ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted.

299 U. S.

Decisions Granting Certiorari.

*Mr. Harold R. Small* for petitioner. *Mr. William L. Igoe* for respondents. Reported below: 85 F (2d) 135.

---

No. 505. *ATCHISON, TOPEKA & SANTA FE RY. Co. v. SCARLETT*. December 7, 1936. Petition for writ of certiorari to the Supreme Court of California granted. *Messrs. Robert Brennan* and *Charles H. Woods* for petitioner. *Mr. Herman A. Bachrack* for respondent. Reported below: 7 Cal. (2d) 181; 60 P. (2d) 462.

---

No. 530. *WRIGHT v. VINTON BRANCH OF THE MOUNTAIN TRUST Co., ET AL.* December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Mr. William Lemke* for petitioner. *Mr. John F. Reinhardt* for respondents. Reported below: 85 F. (2d) 973.

---

No. 531. *BOSEMAN v. CONNECTICUT GENERAL LIFE INSURANCE Co.* December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. Sterling D. Bennett* for petitioner. *Messrs. Wm. Marshall Bullitt* and *Major T. Bell* for respondent. Reported below: 84 F. (2d) 701.

---

No. 532. *UNITED STATES v. BELMONT ET AL., EXECUTORS.* December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit granted. *Solicitor General Reed* for the United States. *Messrs. John W. Davis, Cornelius W. Wickersham,* and *William C. Cannon* for respondents. Reported below: 85 F. (2d) 542.

---

No. 549. *LAWRENCE, GUARDIAN, v. SHAW ET AL.* January 4, 1937. Petition for writ of certiorari to the Su-

preme Court of North Carolina granted. *Mr. John E. Benton* for petitioner. *Mr. W. D. Boone* for respondents. Reported below: 210 N. C. 352; 186 S. E. 504.

---

No. 562. UNITED STATES *v.* MADIGAN. January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted. *Solicitor General Reed* for the United States. *Messrs. Jordan R. Bentley* and *David Spaulding* for respondent. Reported below: 85 F. (2d) 609.

---

No. 563. HOFFMAN *v.* RAUCH, ADMINISTRATOR, ET AL. January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit granted. *Messrs. George P. Barse, John F. Anderson, and Joseph Levy* for petitioner. *Mr. Leland W. Walker* for respondents. Reported below: 85 F. (2d) 1000.

---

No. 347. NEW YORK CITY *v.* GOLDSTEIN, TRUSTEE IN BANKRUPTCY. See *ante*, p. 522.

---

No. 558. ALASKA PACKERS ASSN. *v.* PILLSBURY, DEPUTY COMMISSIONER, ET AL. January 18, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted, limited to the question of the operation of the Act of February 13, 1925, and its effect upon Rule 1 of the Admiralty Rules of the Circuit Court of Appeals for the Ninth Circuit with respect to the mode of taking an appeal. *Messrs. F. D. Madison, Francis Gill, and Eugene M. Prince* for petitioner. *Solicitor General Reed, Assistant Attorney General Morris, and Messrs. J. Frank Staley, Charles A. Horsky, and Victor H. Pinckney* for respondents. Reported below: 85 F. (2d) 758.

299 U. S.

Decisions Denying Certiorari.

No. 552. KELLY, DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES, ET AL. *v.* WASHINGTON EX REL. FOSS COMPANY, INC. ET AL. January 18, 1937. Petition for writ of certiorari to the Supreme Court of Washington granted. *Messrs. Daniel Baker and W. A. Toner* for petitioners. *Mr. Glenn J. Fairbrook* for respondents. Reported below: 186 Wash. 589; 59 P. (2d) 373.

---

No. 559. GENERAL BAKING CO. *v.* HARR, SECRETARY, ET AL. January 18, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit granted. *Messrs. George Eugene Beechwood, J. Harry LaBrum, and Wm. J. Conlen* for petitioner. *Messrs. Charles J. Margiotti and Joseph S. Clark, Jr.*, for respondents. Reported below: 85 F. (2d) 932.

---

No. 575. BROWN *v.* O'KEEFE, RECEIVER. January 18, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit granted. *Mr. Wm. Elmer Brown, Jr., pro se. Messrs. George P. Barse, William B. Hunter, and Ernest Russell* for respondent. Reported below: 85 F. (2d) 885.

---

DECISIONS DENYING CERTIORARI, FROM OCTOBER 5, 1936, THROUGH JANUARY 31, 1937.

No. 94. CANNON *v.* LOUISIANA. See *ante*, p. 503.

---

No. 116. DRACKETT COMPANY *v.* CHAMBERLAIN COMPANY. See *ante*, p. 503.

---

No. 265. LINDWAY *v.* OHIO. See *ante*, p. 506.

No. 289. *SKIPPER v. SCHUMACHER, SHERIFF.* See *ante*, p. 507.

---

No. 129. *HAMMERSMITH v. BROPHY, WARDEN.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of New York, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Robert E. Hammersmith, pro se.* No appearance for respondent. Reported below: 247 App. Div. 860; 286 N. Y. S. 966.

---

No. 150. *PERKINS ET AL. v. SUPREME COURT OF ARIZONA ET AL.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Arizona, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Cephas F. Perkins* for petitioners. No appearance for respondents. Reported below: 47 Ariz. 376; 56 P. (2d) 639.

---

No. 165. *WOLKER v. ELECTRIC FERRIES, INC.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Messrs. Silas B. Artell and Charles A. Ellis* for petitioner. *Mr. George C. Sprague* for respondent. Reported below: 82 F. (2d) 1023.

---

No. 168. *OWENS v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. James J. Laughlin* for petitioner. No appearance for the United States. Reported below: 66 App. D. C. 104; 85 F. (2d) 270.

299 U. S.

Decisions Denying Certiorari.

No. 176. CHAMBLIN *v.* CHAMBLIN ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Illinois, and motion for leave to proceed further *in forma pauperis*, denied. *Mathilda Chamblin, pro se.* No appearance for respondents. Reported below: 362 Ill. 588; 1 N. E. (2d) 73.

---

No. 178. NORTON *v.* ZERBST, WARDEN. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. James Norton, pro se.* No appearance for respondent. Reported below: 83 F. (2d) 677.

---

No. 211. REHMEYER ET AL. *v.* FIRST NATIONAL BANK. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Jacob Halper* for petitioners. No appearance for respondent. Reported below: 84 F. (2d) 194.

---

No. 249. KRUEGER *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. T. T. Oughterson* for petitioner. No appearance for the United States. Reported below: 83 Ct. Cls. 412.

---

No. 277. PAIGE *v.* VIRGINIA. October 12, 1936. Petition for writ of certiorari to the Corporation Court of Norfolk, Virginia, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. James G. Martin* for petitioner. No appearance for respondent.

No. 300. O'BRIEN *v.* HULBERT, JUDGE, ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. James J. O'Brien, pro se.* No appearance for respondents.

---

No. 302. YANNISH *v.* NEW YORK CENTRAL R. CO. October 12, 1936. Petition for writ of certiorari to the Supreme Court of New York, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Charles J. O'Brien* for petitioner. *Mr. Robert E. Whalen* for respondent. Reported below: 271 N. Y. 656; 3 N. E. (2d) 470.

---

No. 380. LUKE *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Clifford E. Hay* for petitioner. No appearance for the United States. Reported below: 84 F. (2d) 711.

---

No. 450. MARKS *v.* MOORE ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of New York, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Lawrence Marks, pro se.* No appearance for respondents. Reported below: 245 App. Div. 729; 281 N. Y. S. 885.

---

No. 106. LEE, COMPTROLLER, *v.* FLORIDA EX REL. ADAMS ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Florida denied for the want of a final judgment. *Mr. Cary D. Landis*, Attorney General of Florida, and *Messrs. H. E. Carter* and *J. V. Keen* for petitioner. *Messrs. Thomas B. Adams* and

299 U. S.

Decisions Denying Certiorari.

*Henry P. Adair* for respondents. Reported below: 122 Fla. 639; 166 So. 249.

---

No. 107. SIMPSON, TAX COLLECTOR, *v.* FLORIDA EX REL. LANE DRUG STORES, INC. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Florida denied for the want of a final judgment. *Mr. Cary D. Landis*, Attorney General of Florida, and *Messrs. H. E. Carter* and *J. V. Keen* for petitioner. *Messrs. Thomas B. Adams* and *Henry P. Adair* for respondent. Reported below: 122 Fla. 582; 166 So. 227.

---

No. 192. HOBART IRON CO. *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. The petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit is denied. MR. JUSTICE BUTLER took no part in the consideration and decision of this application. *Messrs. Floyd F. Toomey* and *Ellsworth C. Alvord* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, *Messrs. David E. Hudson* and *Sewall Key*, and *Miss Louise Foster* for respondent. Reported below: 83 F. (2d) 25.

---

No. 225. CONTINENTAL OIL CO. *v.* UNITED STATES. See *ante*, p. 510.

---

No. 274. ROSS, EXECUTOR, *v.* MAYOR AND COUNCIL OF THE BOROUGH OF EDGEWATER ET AL. October 12, 1936. The petition for writ of certiorari to the Court of Errors and Appeals of New Jersey is denied. *Mr. William A. Kirk* for petitioner. *Mr. L. Stanley Ford* for respondents. Reported below: 116 N. J. L. 447; 184 Atl. 810.

---

No. 244. UNJIENG *v.* PHILIPPINE ISLANDS. October 12, 1936. Petition for writ of certiorari to the Su-

preme Court of the Philippine Islands denied. The motion as to the printing of the record is also denied. *Messrs. Louis Titus, Allison D. Gibbs, and Charles L. Frailey* for petitioner. *Messrs. Jose Yulo, Clyde Alton DeWitt, and Eugene Arthur Perkins* for respondent.

---

No. 352. *REID v. UNITED STATES*. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. October 12, 1936. The motion for leave to proceed further herein *in forma pauperis* is denied for the reason that the Court, upon examination of the papers herein submitted, finds that the application for writ of certiorari was not made within the time provided by law. Act of February 13, 1925, § 8 (a) (43 Stat. 936, 940; 28 U. S. C. 350.) The petition for writ of certiorari is therefore also denied. *Mr. Henry F. Butler* for petitioner. No appearance for the United States. Reported below: 73 F. (2d) 153.

---

No. 1. *GLOBE KNITTING WORKS v. MICHIGAN TRUST Co., TRUSTEE*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Mr. Stuart E. Knappen* for petitioner. *Messrs. Willard F. Keeney and Julius H. Amberg* for respondent.

---

No. 42. *NATIONAL FOODS, INC. v. UNITED STATES*. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. George N. Murdock* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Sewall Key* for the United States. Reported below: 82 Ct. Cls. 627; 13 F. Supp. 364.

No. 45. *GUSTASON v. BOARD OF OSTEOPATHIC EXAMINERS ET AL.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of California denied. *Mr. David G. Gustason, pro se.* No appearance for respondents. Reported below: 10 Cal. App. (2d) 436; 51 P. (2d) 1106.

---

No. 47. *MARRET, ADMINISTRATOR, ET AL. v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. Camden R. McAtee* for petitioners. *Solicitor General Reed, Assistant Attorney General Morris,* and *Mr. Paul A. Sweeney* for the United States. Reported below: 82 Ct. Cls. 1.

---

No. 52. *INTERSTATE TRUST & BANKING CO. ET AL. v. STANDARD LUMBER CO. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Robert H. Anderson* for petitioners. *Messrs. J. T. G. Crawford and Philip S. May* for respondents. Reported below: 82 F. (2d) 346.

---

No. 53. *DOHERTY RESEARCH CO. v. VICKERS PETROLEUM Co.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Mr. Dean S. Edmonds* for petitioner. *Mr. William F. Hall* for respondent. Reported below: 80 F. (2d) 809.

---

No. 56. *PEERLESS OIL & GAS Co. v. HEINER, COLLECTOR OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Robert Ash* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson,* and *Messrs. Sewall Key, J. Louis Monarch,* and *S. E.*

*Blackham* for respondent. Reported below: 81 F. (2d) 391.

---

No. 57. TOY NATIONAL BANK *v.* HAMMERSTROM, COUNTY TREASURER, ET AL.;

No. 58. IOWA JOINT STOCK LAND BANK *v.* SAME; and

No. 59. LIVE STOCK NATIONAL BANK *v.* SAME. October 12, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Royal C. Johnson* for petitioners. *Mr. Charles M. Stilwill* for respondents. Reported below: 81 F. (2d) 628.

---

No. 60. BARNETT ET AL. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Anna Laura Barnett* and *Maxine Sturges* for petitioners. *Solicitor General Reed*, *Assistant Attorney General Blair*, and *Mr. C. E. Collett* for the United States. Reported below: 82 F. (2d) 765.

---

No. 61. UNDERHILL *v.* LENT. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Edward J. McGratty, Jr.*, for petitioner. *Mr. Arthur F. Gotthold* for respondent. Reported below: 82 F. (2d) 258.

---

No. 65. SIMS *v.* DOUGLASS, TRUSTEE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Messrs. Henderson Stockton* and *H. A. Elliott* for petitioner. *Mr. Thomas A. Flynn* for respondent. Reported below: 82 F. (2d) 812.

No. 66. GIESY ET AL. *v.* FIRST NATIONAL BANK ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Oregon denied. *Mr. Donald C. Beelar* for petitioners. No appearance for respondents. Reported below: 152 Ore. 516; 53 P. (2d) 20.

---

No. 67. CENTRAL FIBRE PRODUCTS CO. ET AL. *v.* HARDIN ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. William R. Watkins* for petitioners. *Mr. Gillis A. Johnson* for respondents. Reported below: 82 F. (2d) 692.

---

No. 68. SAUK RIVER LUMBER CO. *v.* NORTHERN PACIFIC RY. Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Messrs. Harold Preston, O. B. Thorgrimson, L. T. Turner, and Charles Horowitz* for petitioner. *Messrs. Dennis F. Lyons and Lorenzo B. da Ponte* for respondent. Reported below: 82 F. (2d) 519.

---

No. 69. MERINOS VIESCA Y COMPANIA, INC. *v.* PAN AMERICAN PETROLEUM & TRANSPORT CO. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Samuel A. Pleasants* for petitioner. *Mr. Dean Emery* for respondents. Reported below: 83 F. (2d) 240.

---

No. 71. AMERICAN NATURAL GAS CO. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. J. Nelson Anderson* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Sewall Key* for the United States. Reported below: 82 Ct. Cls. 300; 13 F. Supp. 69.

No. 72. YORK, ADMINISTRATRIX, *v.* BALTIMORE & OHIO R. Co. October 12, 1936. Petition for writ of certiorari to the Court of Appeals, 1st Appellate District, of Ohio, denied. *Mr. Edward M. Ballard* for petitioner. *Mr. Benton S. Oppenheimer* for respondent.

---

No. 73. D. & M. MACHINE WORKS ET AL. *v.* TEXAS RUBBER & SPECIALTY CORP. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. E. A. Berry* for petitioners. *Mr. Robert H. Kelley* for respondents. Reported below: 81 F. (2d) 206.

---

No. 75. MERTZ *v.* MELLON ET AL. October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. George E. H. Goodner, Jerry A. Mathews, Josephus C. Trimble and D. F. Prince* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key, J. Louis Monarch, E. E. Angevine, and Charles A. Horsky* for respondents. Reported below: 65 App. D. C. 266; 82 F. (2d) 872.

---

No. 76. EQUITABLE LIFE ASSURANCE SOCIETY *v.* DAY. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Mr. Clifton P. Williamson* for petitioner. *Mr. Ralph L. Carr* for respondent. Reported below: 83 F. (2d) 147.

---

No. 78. WADE, ADMINISTRATOR, *v.* WADE, EXECUTRIX. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Arkansas denied. *Mr. W. F. Kirsch* for petitioner. *Mr. Charles D. Frierson* for respondent. Reported below: 90 S. W. (2d) 214.

299 U. S.

Decisions Denying Certiorari.

No. 80. CENTRAL ILLINOIS ELECTRIC & GAS CO. *v.* MANUFACTURERS FINANCE CO. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. William M. Acton and Roy F. Hall* for petitioner. *Mr. Edward Rothbart* for respondents. Reported below: 81 F. (2d) 85.

---

No. 81. MOODEY *v.* DALE CONSOLIDATED MINES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. W. L. Pollard* for petitioner. No appearance for respondent. Reported below: 81 F. (2d) 794.

---

No. 82. STANDARD DREDGING CO. *v.* KIBADEAUX. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. Vernon S. Jones and Raymond Parmer* for petitioner. *Mr. H. C. Hughes* for respondent. Reported below: 81 F. (2d) 670.

---

No. 83. BALLF *v.* KRANZ. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Harry A. Ballf, pro se. Solicitor General Reed, Assistant Attorney General Morris, and Mr. Paul A. Sweeney* for respondent. Reported below: 82 F. (2d) 315.

---

No. 84. MARYLAND CASUALTY CO. *v.* FIRST NATIONAL BANK. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Rollin Webster Rodgers* for petitioner. No appearance for respondent. Reported below: 82 F. (2d) 465.

No. 85. *BALDWIN ET AL., TRUSTEES, v. HUFFMAN, ADMINISTRATRIX.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Robert E. Wiley* for petitioners. No appearance for respondent. Reported below: 82 F. (2d) 5.

---

No. 86. *MONTAGUE v. NEW YORK CENTRAL R. CO. ET AL.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Messrs. U. G. Denman and Lee H. Schminck* for petitioner. *Mr. Milo J. Warner* for respondents. Reported below: 130 Oh. St. 591; 200 N. E. 756.

---

No. 87. *BALDWIN ET AL., TRUSTEES, v. NELSON, ADMINISTRATRIX.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. Thomas B. Pryor and Harry L. Ponder* for petitioners. No appearance for respondent. Reported below: 82 F. (2d) 8.

---

No. 88. *MCNEILL ET AL. v. LILLY.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Robert H. McNeill and Herbert S. Ward* for petitioners. No appearance for respondent. Reported below: 65 App. D. C. 210; 82 F. (2d) 620.

---

No. 90. *BIBB MANUFACTURING Co. v. ROSE, COLLECTOR OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. J. C. Murphy, George S. Jones, and Scott Russell* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and*

299 U. S.

Decisions Denying Certiorari.

*Messrs. David E. Hudson, Sewall Key, and J. Louis Monarch* for respondent. Reported below: 81 F. (2d) 228.

---

No. 91. *ROOD v. GOODMAN, POSTMASTER.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. David E. Hume* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahon, and Messrs. William W. Barron and W. Marvin Smith* for respondent. Reported below: 83 F. (2d) 28.

---

No. 92. *HENDERSON ET AL. v. KELLAHIN ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Ernest W. Clemens* for petitioners. *Mr. Nat Louis Hardy* for respondents. Reported below: 81 F. (2d) 128.

---

No. 93. *ALEOGRAPH COMPANY v. ELECTRICAL RESEARCH PRODUCTS, INC. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. James B. Lewright* for petitioner. No appearance for respondents. Reported below: 82 F. (2d) 625.

---

No. 95. *EASTERN OR EMIGRANT CHEROKEES v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Messrs. Frank J. Boudinot, Houston B. Teehee, Robert L. Owen, and Myron M. Cohen* for petitioners. *Solicitor General Reed, Assistant Attorney General Blair, and Messrs. George T. Stormont, Wilfred Hearn, and Warner W. Gardner* for the United States. Reported below: 82 Ct. Cls. 180.

No. 96. EASTERN OR EMIGRANT CHEROKEES ET AL. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Messrs. Frank J. Boudinot, Houston B. Teehee, Robert L. Owen, and Myron M. Cohen* for petitioners. *Solicitor General Reed, Assistant Attorney General Blair, and Messrs. George T. Stormont, Walter C. Shoup, and Warner W. Gardner* for the United States. Reported below: 82 Ct. Cls. 691.

---

No. 99. ALASKA STEAMSHIP CO. ET AL. *v.* ROOKER. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Washington denied. *Messrs. Cassius E. Gates and Edward G. Dobrin* for petitioners. *Mr. Samuel B. Bassett* for respondent. Reported below: 185 Wash. 71; 53 P. (2d) 295.

---

No. 101. WEIL *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. Paul F. Myers and Richard T. Rives* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Sewall Key* for respondent. Reported below: 82 F. (2d) 561.

---

No. 102. RUMSEY *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. David Rumsey* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and Francis I. Howley* for respondent. Reported below: 82 F. (2d) 158.

---

No. 110. CHASE NATIONAL BANK, ANCILLARY ADMINISTRATOR, *v.* COMMISSIONER OF INTERNAL REVENUE. Oc-

299 U. S.

Decisions Denying Certiorari.

tober 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Robert H. Montgomery, Thomas G. Haight, David H. Taylor, James O. Wynn, and J. Marvin Haynes* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. David E. Hudson, Sewall Key, and Arnold Raum* for respondent. Reported below: 82 F. (2d) 157.

---

No. 111. *IRA M. PETERSIME & SON v. ROBBINS*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Mr. John A. Selby* for petitioner. *Messrs. Philip S. Van Cise and Kenneth W. Robinson* for respondent. Reported below: 81 F. (2d) 295.

---

No. 112. *WOLFE v. TEXAS COMPANY*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Messrs. Robert M. Rainey, Streeter B. Flynn, and C. Dale Wolfe* for petitioner. *Messrs. Charles B. Cochran and Harry T. Klein* for respondent. Reported below: 83 F. (2d) 425.

---

No. 136. *WOLFE v. SHELL PETROLEUM CORP.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Messrs. Robert M. Rainey, Streeter B. Flynn, and C. Dale Wolfe* for petitioner. *Mr. Guy A. Thompson* for respondent. Reported below: 83 F. (2d) 438.

---

No. 113. *CALIFORNIA IRON YARDS CORP. v. COMMISSIONER OF INTERNAL REVENUE*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals

for the Ninth Circuit denied. *Messrs. Robert A. Littleton and Harry G. McKannay* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and John G. Remy* for respondent. Reported below: 82 F. (2d) 776.

---

No. 114. STEWART-WARNER CORP. *v.* JIFFY LUBRICATOR Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Lynn A. Williams* for petitioner. *Mr. William C. Green* for respondent. Reported below: 81 F. (2d) 786.

---

No. 115. ADAMSON *v.* ADAMSON ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. John H. Jackson* for petitioner. *Messrs. Thomas Adamson, William S. Bennet, and Hamilton Vreeland, Jr.*, for respondents. Reported below: 83 F. (2d) 211.

---

No. 117. CENTRIFUGAL ENGINEERING & PATENTS CORP. *v.* BLACK-CLAWSON Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Mr. Harrison F. Lyman* for petitioner. *Messrs. J. B. Hayward, Drury W. Cooper, and Greer Marechal* for respondent. Reported below: 83 F. (2d) 116.

---

No. 118. FEDERAL CRUDE OIL CO. ET AL. *v.* YOUNT-LEE OIL CO. ET AL. October 12, 1936. Petition for writ of certiorari to the Court of Civil Appeals, 9th Supreme Judicial District, of Texas, denied. *Messrs. Wm. D. Gordon and C. W. Howth* for petitioners. *Messrs. Will*

299 U. S.

Decisions Denying Certiorari.

*E. Orgain and Beeman Strong* for respondents. Reported below: 92 S. W. (2d) 493.

---

No. 119. *M. W. SAVAGE FACTORIES, INC. ET AL. v. HENNEPIN COUNTY ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. Mortimer H. Boutelle and Adrian H. David* for petitioners. *Mr. Claude G. Krause* for respondents. Reported below: 83 F. (2d) 453.

---

Nos. 120 and 121. *PHOENIX JOINT STOCK LAND BANK v. HOTSENPILLER.* October 12, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. John F. Reinhardt* for petitioner. *Mr. Edwin A. Krauthoff* for respondent.

---

No. 122. *A. B. C. FIREPROOF WAREHOUSE Co. v. ATCHISON, TOPEKA & SANTA FE RY. Co.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. William G. Holt* for petitioner. *Messrs. Cyrus Crane and Charles H. Woods* for respondent. Reported below: 82 F. (2d) 505.

---

No. 124. *REMCO STEAMSHIP Co. v. COMMISSIONER OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. George C. Faulkner* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, Messrs. Sewall Key and Lee A. Jackson, and Miss Louise Foster* for respondent. Reported below: 82 F. (2d) 988.

No. 126. *MARION STEAM SHOVEL Co. v. BERTINO ET AL.* October 12, 1936. Petition for writ certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. J. M. Strelitz and Elliott H. Jones* for petitioner. *Mr. Clay C. Rogers* for respondents. Reported below: 82 F. (2d) 541, 945.

---

No. 127. *DAMEN & JARVIS BUILDING CORP. v. MECHANICS' INSURANCE Co.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Jacob Logan Fox* for petitioner. *Mr. Herbert W. Hirsh* for respondent. Reported below: 83 F. (2d) 793.

---

No. 128. *MIAMI BEACH JOCKEY CLUB, INC. v. DERN, SECRETARY OF WAR.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Mr. S. Wallace Dempsey* for petitioner. *Solicitor General Reed, Assistant Attorney General Blair, and Messrs. Aubrey Lawrence and Warner W. Gardner* for respondent. Reported below: 65 App. D. C. 369; 83 F. (2d) 715.

---

No. 131. *DENSON ET AL. v. PROVIDENT MUTUAL LIFE INSURANCE Co.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Alabama denied. *Mr. William Augustus Denson* for petitioners. No appearance for respondent. Reported below: 231 Ala. 574; 166 So. 33.

---

No. 132. *DARLING v. AMERICAN GAS & POWER Co. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Messrs. Edward A. Ryan and W. S. Culbertson* for peti-

299 U. S.

Decisions Denying Certiorari.

tioner. *Messrs. Clarence A. Southerland and Benjamin A. Javits* for respondents. Reported below: 82 F. (2d) 1005.

---

No. 133. *MOHR v. GREAT LAKES TRANSIT CORP.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. George Clinton, Jr.*, for petitioner. *Mr. Lawrence E. Coffey* for respondent.

---

No. 135. *HOFELLER v. FEDERAL TRADE COMM'N.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Lloyd C. Whitman and William Friedman* for petitioner. *Solicitor General Reed, Assistant Attorney General Dickinson*, and *Messrs. David E. Hudson, Charles H. Weston, and Charles T. Kelley* for respondent. Reported below: 82 F. (2d) 647.

---

No. 137. *OJUS MINING CO. v. MANUFACTURERS TRUST CO. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. James F. Ailshie, Jr.*, for petitioner. *Mr. Basil Robillard* for respondents. Reported below: 82 F. (2d) 74.

---

No. 140. *FIDELITY-PHENIX FIRE INSURANCE CO. ET AL. v. MURPHY.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Alabama denied. *Messrs. Forrest E. Single and Alexis T. Gresham* for petitioners. *Mr. Harry T. Smith* for respondent. Reported below: 231 Ala. 680; 166 So. 604.

---

No. 141. *HOEPEL ET AL. v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the United

States Court of Appeals for the District of Columbia denied. *Messrs. Samuel A. King, Arthur G. Brode, Jesse C. Duke, James J. Laughlin, and John Walsh* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahan, and Mr. William W. Barron* for the United States. Reported below: 66 App. D. C. 71; 85 F. (2d) 237.

---

No. 142. *MARTIN v. COE, COMMISSIONER OF PATENTS.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Mr. James V. Martin, pro se. Solicitor General Reed and Messrs. J. F. Mothershead, Lee A. Jackson, and R. F. Whitehead* for respondent. Reported below: 65 App. D. C. 349; 83 F. (2d) 606.

---

No. 144. *ZAGER v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. Samuel S. Levin* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahan, and Messrs. Mahlon D. Kiefer and W. Marvin Smith* for the United States. Reported below: 84 F. (2d) 1023.

---

No. 145. *FEDERAL LIFE INSURANCE CO. v. ZEBEC.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. L. L. Bomberger and Walter H. Eckert* for petitioner. *Mr. Clarence Thomas* for respondent. Reported below: 82 F. (2d) 961.

---

No. 147. *CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC R. CO. v. SCHIEFELBEIN, ADMINISTRATOR.* October 12,

299 U. S.

Decisions Denying Certiorari.

1936. Petition for writ of certiorari to the Supreme Court of Wisconsin denied. *Messrs. Rodger Murphy Trump, C. S. Jefferson, and Walter H. Bender* for petitioner. *Mr. Perry A. Sletteland* for respondent. Reported below: 221 Wis. 35; 265 N. W. 386.

---

No. 148. *MORRIS, TRUSTEE IN BANKRUPTCY, v. ORCAS LIME Co.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Washington denied. *Mr. Harold Remington* for petitioner. *Messrs. Arthur Cohen and Cassius E. Gates* for respondent. Reported below: 185 Wash. 126; 53 P. (2d) 604.

---

No. 152. *BERRY v. HARRELL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Tom L. Beauchamp* for petitioner. No appearance for respondent. Reported below: 83 F. (2d) 671.

---

No. 153. *BRADLEY LUMBER CO. ET AL v. NATIONAL LABOR RELATIONS BOARD ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Robert H. Kelley* for petitioners. *Solicitor General Reed, Assistant Attorney General Dickinson, and Messrs. A. H. Feller and Charles Fahy* for respondents. Reported below: 84 F. (2d) 97.

---

No. 154. *HARRIMAN NATIONAL BANK & TRUST CO. ET AL. v. GIMBEL ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. George P. Barse, John F. Anderson, and John Vance Hewitt* for petitioners. *Mr. Wilber W. Chambers* for respondents. Reported below: 83 F. (2d) 153.

No. 156. NEW YORK, NEW HAVEN & HARTFORD R. Co. v. GELBIN, ADMINISTRATRIX. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Edward R. Brumley* for petitioner. *Mr. Pinckney Estes Glantsberg* for respondent. Reported below: 82 F. (2d) 1009.

---

No. 158. NEEDHAM, RECEIVER, v. BICKFORD, RECEIVER. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Mr. John H. Sherburne* for petitioner. *Mr. Francis P. Garland* for respondent. Reported below: 83 F. (2d) 756.

---

No. 159. WEISMAN v. UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Frank J. Hogan, Edmund L. Jones, Harry H. Weinberger, and Joseph J. Cotter* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahan, and Mr. William W. Barron* for the United States. Reported below: 83 F. (2d) 470.

---

No. 160. FLUID PACKED PUMP Co. v. EL DORADO FOUNDRY MACHINE & SUPPLY Co. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. W. L. Connor* for petitioners. *Messrs. James A. Carr, W. H. Rector, and Joseph J. Gravely* for respondent. Reported below: 81 F. (2d) 782.

---

No. 164. METROPOLITAN LIFE INSURANCE Co. v. DAY, TRUSTEE. October 12, 1936. Petition for writ of certiorari to the District Court of Appeal, 1st Appellate Dis-

299 U. S.

Decisions Denying Certiorari.

trict, of California, denied. *Mr. F. Eldred Boland* for petitioner. *Mr. Dana Latham* for respondent. Reported below: 11 Cal. App. (2d) 681; 54 P. (2d) 502.

---

No. 166. *WEBER v. TEXAS COMPANY*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Charles A. McCoy* for petitioner. No appearance for respondent. Reported below: 83 F. (2d) 807.

---

No. 169. *CAPITAL ENDOWMENT CO. v. OHIO EX REL. WARNER ET AL.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Mr. George W. Ritter* for petitioner. *Mr. John W. Bricker*, Attorney General of Ohio, for respondents. Reported below: 131 Oh. St. 51; 1 N. E. (2d) 157.

---

No. 170. *MINTZ v. HORNBLOWER & WEEKS*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Rowland W. Fixel, Frank E. Wood, Robert S. Marx, and Harry Kasfir* for petitioner. *Mr. David H. Crowley* for respondents. Reported below: 83 F. (2d) 32.

---

No. 173. *KISHAN SINGH v. DISTRICT DIRECTOR OF IMMIGRATION*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Marshall B. Woodworth* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahon* and *Messrs. Bart W. Butler and William W. Barron* for respondent. Reported below: 83 F. (2d) 95.

No. 177. *BROWER v. UNITED STATES*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Rowland W. Fixel, Arthur J. Abbott, and Arthur E. Fixel* for petitioner. *Solicitor General Reed* and *Messrs. Julius C. Martin, Wilbur C. Pickett, Fendall Marbury, and W. Marvin Smith* for the United States. Reported below: 84 F. (2d) 1015.

---

No. 179. *UNITED STATES EX REL. SIERRA LAND & WATER CO. v. ICKES, SECRETARY OF THE INTERIOR*. October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Mr. F. W. Clements* for petitioner. *Solicitor General Reed, Assistant Attorney General Blair, and Messrs. D. B. Hempstead and Lee A. Jackson* for respondent. Reported below: 65 App. D. C. 375; 84 F. (2d) 228.

---

No. 181. *NATIONAL LOCK CO. v. ROSENGARD*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Roy F. Hall* for petitioner. *Mr. Edward Rothbart* for respondent. Reported below: 82 F. (2d) 600.

---

No. 182. *PEASE v. COMMISSIONER OF INTERNAL REVENUE*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Charles D. Hamel and John Enrietto* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. David E. Hudson, Sewall Key, and Harry Marselli* for respondent. Reported below: 83 F. (2d) 122.

299 U. S.

Decisions Denying Certiorari.

No. 183. *HICKS v. MUTUAL LIFE INSURANCE Co.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. James H. Bridgers* for petitioner. *Mr. Frederick L. Allen* for respondent. Reported below: 83 F. (2d) 275.

---

No. 184. *AUDITORIUM CONDITIONING CORP. v. WARNER BROTHERS PICTURES, INC. ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Theodore S. Kenyon* for petitioner. *Mr. George E. Middleton* for respondents. Reported below: 82 F. (2d) 1000.

---

No. 185. *UNITED STATES v. NATIONAL CITY BANK.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Solicitor General Reed* for the United States. *Mr. Harry W. Forbes* for respondent. Reported below: 83 F. (2d) 236.

---

No. 188. *BRONX COUNTY TRUST Co. v. BIELASKI ET AL., TRUSTEES.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Bertram Boardman* for petitioner. *Mr. Lloyd B. Kanter* for respondents. Reported below: 83 F. (2d) 1006.

---

No. 189. *CITIZENS NATIONAL BANK ET AL. v. GOLDEN.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Mississippi denied. *Mr. R. E. Wilbourn* for petitioners. *Mr. T. J. Wills* for respondent. Reported below: 175 Miss. 508; 166 So. 745.

No. 190. CITIZENS NATIONAL BANK ET AL. *v.* PIGFORD. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Mississippi denied. *Mr. R. E. Wilbourn* for petitioners. *Mr. M. W. Riley* for respondent. Reported below: 176 Miss. 517; 166 So. 749.

---

No. 191. CITIZENS NATIONAL BANK ET AL. *v.* ALLEN. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Mississippi denied. *Mr. R. E. Wilbourn* for petitioners. *Mr. M. W. Riley* for respondent. Reported below: 176 Miss. 157; 167 So. 627.

---

No. 259. CITIZENS NATIONAL BANK ET AL. *v.* BULLARD. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Mississippi denied. *Mr. R. E. Wilbourn* for petitioners. *Mr. Marion W. Riley* for respondent. Reported below: 168 So. 52.

---

No. 194. GOLD & STOCK TELEGRAPH Co. *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Francis R. Stark* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and *Morton K. Rothschild* for respondent. Reported below: 83 F. (2d) 465.

---

No. 195. PACIFIC & ATLANTIC TELEGRAPH Co. *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Francis R. Stark* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and

299 U. S.

Decisions Denying Certiorari.

*Morton K. Rothschild* for respondent. Reported below: 83 F. (2d) 469.

---

Nos. 196 and 197. NORTHWESTERN TELEGRAPH CO. *v.* UNITED STATES. October 12, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Arthur L. Shipman* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key, J. Louis Monarch, and S. E. Blackham* for the United States. Reported below: 83 F. (2d) 468.

---

No. 198. NEWHOFF *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Jack Davis* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahon, and Mr. William W. Barron* for the United States. Reported below: 83 F. (2d) 942.

---

No. 199. POTOMAC ELECTRIC POWER CO. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. S. R. Bowen and Harry W. Kelly* for petitioner. *Solicitor General Reed, Assistant Attorney General Blair, and Mr. Henry H. Glassie* for the United States. Reported below: 66 App. D. C. 77; 85 F. (2d) 243.

---

No. 200. MUTUAL BUILDING & LOAN ASSN. ET AL. *v.* KING ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Reuben G. Hunt* for petitioners.

*Mr. Wm. C. Mathes* for respondents. Reported below: 83 F. (2d) 798.

---

No. 201. *J. H. COTTMAN & Co. v. UNITED STATES*. October 12, 1936. Petition for writ of certiorari to the United States Court of Customs and Patent Appeals denied. *Messrs. Roszel C. Thomsen* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Charles D. Lawrence* for the United States. Reported below: 23 C. C. P. A. (Cust.) 378; T. D. 48-292.

---

Nos. 202, 203, and 205. *TRAVELERS INDEMNITY Co. v. COMMISSIONER OF INTERNAL REVENUE*; and

Nos. 204 and 206. *TRAVELERS FIRE INSURANCE Co. v. SAME*. October 12, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Nelson T. Hartson and James C. Rogers* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. David E. Hudson, Sewall Key, and Edward H. Horton* for respondent. Reported below: 83 F. (2d) 937.

---

No. 210. *ENGBRETSON, TRUSTEE, v. MARCELL ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. William M. Giller* for petitioner. *Mr. W. H. Herdman* for respondents. Reported below: 84 F. (2d) 315.

---

No. 213. *MARYLAND & VIRGINIA MILK PRODUCERS ASSN., INC. v. HAZEN ET AL.* October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Mr. John S. Barbour* for petitioner. *Messrs. Elwood H. Seal* and

299 U. S.

Decisions Denying Certiorari.

*Vernon E. West* for respondents. Reported below: 66 App. D. C. 136; 85 F. (2d) 302.

---

No. 215. RILEY, CONTROLLER OF CALIFORNIA, ET AL. *v.* WORCESTER COUNTY TRUST Co., EXECUTOR. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Mr. George S. Fuller* for petitioners. *Messrs. Merrill S. June* and *Bradley B. Gilman* for respondent. Reported below: 89 F. (2d) 59.

---

No. 219. DATTEL *v.* JEFFERSON STANDARD LIFE INSURANCE Co. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Sam C. Cook* for petitioner. *Mr. Julius C. Smith* for respondents. Reported below: 83 F. (2d) 504.

---

No. 220. OLIVER TYPEWRITER Co. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. Leo H. Hoffman* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. David E. Hudson* and *J. Louis Monarch* for the United States. Reported below: 83 Ct. Cls. 235; 14 F. Supp. 543.

---

No. 223. MASSACHUSETTS BONDING & INSURANCE Co. *v.* ANDEREGG ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Messrs. James G. Wilson* and *John F. Reilly* for petitioner. *Mr. Alfred E. Clark* for respondents. Reported below: 83 F. (2d) 622.

---

No. 229. SALTZ BROS., INC. ET AL. *v.* SALTZ ET AL. October 12, 1936. Petition for writ of certiorari to the

United States Court of Appeals for the District of Columbia denied. *Messrs. John E. Laskey and Charles B. McInnis* for petitioners. *Messrs. Leon Tobriner and Selig C. Brez* for respondents. Reported below: 65 App. D. C. 393; 84 F. (2d) 246.

---

No. 230. *BROOKINS v. OHIO BELL TELEPHONE CO.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Messrs. Jack B. Dworken, Albert A. Jones, and D. F. Anderson* for petitioner. *Messrs. Karl E. Burr and Wm. B. Cockley* for respondent. Reported below: 131 Oh. St. 96; 1 N. E. (2d) 627.

---

No. 231. *SECURITY TRUST CO., TRUSTEE, ET AL. v. BAKER ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Robert H. Winn, George R. Hunt, Charles Kerr, and A. K. Shipe* for petitioners. *Messrs. Henry T. Duncan and Lon B. Rogers* for respondents. Reported below: 83 F. (2d) 724.

---

No. 232. *CARKHUFF v. COMMISSIONER OF INTERNAL REVENUE.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Mr. Horace Andrews* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Harry Marselli* for respondent. Reported below: 83 F. (2d) 626.

---

No. 233. *McNAMARA v. NEW JERSEY.* October 12, 1936. Petition for writ of certiorari to the Court of Errors and Appeals of New Jersey denied. *Mr. Herman Vanderwart* for petitioner. *Mr. Wm. M. Seufert* for

299 U. S.

Decisions Denying Certiorari.

respondent. Reported below: 116 N. J. L. 497; 184 Atl. 797.

---

No. 234. CREW ET AL. *v.* SIMMONS COMPANY ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. Angus D. MacLean* for petitioners. *Messrs. Richard Cecil Kelly* and *Daniel Burke* for respondents. Reported below: 84 F. (2d) 82.

---

No. 236. MASSMAN CONSTRUCTION Co. *v.* NELSON. October 12, 1936. Petition for writ of certiorari to the Kansas City Court of Appeals, of Missouri, denied. *Messrs. Martin J. O'Donnell* and *William Buchholz* for petitioner. *Messrs. Floyd E. Jacobs, William H. Allen,* and *Charles M. Howell* for respondent. Reported below: 230 Mo. App. —; 91 S. W. (2d) 623.

---

No. 237. WESTERN WHEELED SCRAPER Co. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Messrs. John E. Hughes* and *William Cogger* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson,* and *Mr. J. Louis Monarch* for the United States. Reported below: 82 Ct. Cls. 646; 13 F. Supp. 762.

---

No. 238. COLUMBIA CASUALTY Co. *v.* INDUSTRIAL ACCIDENT COMM'N ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of California denied. *Mr. Oliver Dibble* for petitioner. *Messrs. U. S. Webb* and *Everett A. Corten* for respondents. Reported below: 5 Cal. (2d) 770, 785; 56 P. (2d) 527, 533.

---

No. 239. COLUMBIA CASUALTY Co. *v.* INDUSTRIAL ACCIDENT COMM'N ET AL. October 12, 1936. Petition for writ

of certiorari to the Supreme Court of California denied. *Mr. Oliver Dibble* for petitioner. *Messrs. U. S. Webb* and *Everett A. Corten* for respondents. Reported below: 5 Cal. (2d) 770, 785; 56 P. (2d) 527, 533.

---

No. 240. COLUMBIA CASUALTY CO. *v.* INDUSTRIAL ACCIDENT COMM'N ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of California denied. *Mr. Oliver Dibble* for petitioner. *Messrs. U. S. Webb* and *Everett A. Corten* for respondents. Reported below: 5 Cal. (2d) 770, 785; 56 P. (2d) 527, 533.

---

No. 242. ERIE R. CO. *v.* LEUTHE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. William L. Marcy, Jr.*, for petitioner. *Mr. Daniel F. Mathews* for respondent. Reported below: 83 F. (2d) 1013.

---

No. 245. UNITED STATES EX REL. RHODES *v.* HELVERING, COMMISSIONER OF INTERNAL REVENUE, ET AL. October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Wm. J. Hughes, Jr., F. Hunter Creech,* and *William E. Leahy* for petitioner. *Solicitor General Reed,* *Assistant Attorney General Morris,* and *Mr. Paul A. Sweeney* for respondent. Reported below: 66 App. D. C. 16; 84 F. (2d) 270.

---

No. 246. WARDMAN *v.* LEOPOLD ET AL. October 12, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Daniel Thew Wright* and *Philip Ershler* for petitioner. *Messrs. George E. Edelin,* *Theodore D. Peyser,*

299 U. S.

Decisions Denying Certiorari.

and *Osmond K. Fraenkel* for respondents. Reported below: 66 App. D. C. 111; 85 F. (2d) 277.

---

No. 248. COLUMBIAN NATIONAL LIFE INSURANCE CO. *v.* COMFORT. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. John S. Leahy, Hugh H. Obear, and Ernest L. Wilkinson* for petitioner. *Mr. Guy A. Thompson* for respondent. Reported below: 84 F. (2d) 291.

---

No. 250. MANILA GAS CORP. *v.* COLLECTOR OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Supreme Court of the Philippine Islands denied. *Messrs. Henry Root Stern, Clyde Alton DeWitt, and Eugene Arthur Perkins* for petitioner. *Mr. Mark E. Guerin* for respondent.

---

No. 251. MARYLAND CASUALTY CO. ET AL. *v.* IRVING TRUST CO., TRUSTEE IN BANKRUPTCY. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Edward S. Greenbaum, Carl Taylor, and Franklin H. Mills* for petitioners. *Mr. David W. Kahn* for respondent. Reported below: 83 F. (2d) 168.

---

No. 258. UNITED STATES *v.* GAGE. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Solicitor General Reed* for the United States. *Mr. Frank L. Warfield* for respondent. Reported below: 83 Ct. Cls. 381; 14 F. Supp. 500.

---

No. 261. MAGURNO *v.* O'NEIL, TRUSTEE IN BANKRUPTCY. October 12, 1936. Petition for writ of certio-

rari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Meyer Marlow* for petitioner. No appearance for respondent. Reported below: 83 F. (2d) 254.

---

No. 262. HIMELHOCH BROTHERS & Co. v. COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Mr. A. J. Levin* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Berryman Green* for respondent. Reported below: 83 F. (2d) 485.

---

No. 263. ANDREWS v. DRAKE ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Abraham M. Lowenthal and Stanley Osserman* for petitioner. *Messrs. Hal H. Smith and Alex J. Groesbeck* for respondents. Reported below: 83 F. (2d) 767.

---

No. 264. PENNSYLVANIA R. CO. ET AL. v. PITTSBURGH, LISBON & WESTERN R. CO. ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Jacob Aronson, Henry Wolf Biklé, and Thomas M. Kirby* for petitioners. *Messrs. John B. Eichenauer, August G. Gutheim, and Don Rose* for respondents. Reported below: 83 F. (2d) 861.

---

No. 269. LAVELY ET AL. v. YOUNG WOMEN'S CHRISTIAN ASSOCIATION ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Pennsylvania

299 U. S.

Decisions Denying Certiorari.

denied. *Messrs. R. T. M. McCready and Raymer F. Maguire* for petitioners. *Messrs. David A. Reed and John C. Bane, Jr.*, for respondents. Reported below: 321 Pa. 248; 184 Atl. 844.

---

No. 270. *CAROLLA ET AL. v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Alex W. Swords* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahon, and Messrs. William W. Barron and W. Marvin Smith* for the United States. Reported below: 83 F. (2d) 1006.

---

No. 272. *REEVES BROTHERS CO. v. UNITED STATES.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. John E. Hughes and William Cogger* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch, Joseph M. Jones, and Warner W. Gardner* for the United States. Reported below: 83 F. (2d) 121.

---

No. 273. *SUISMAN v. HARTFORD-CONNECTICUT TRUST Co., EXECUTOR.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Henry M. Gretsck* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch, Paul R. Russell and Charles A. Horsky* for respondent. Reported below: 83 F. (2d) 1019.

---

No. 275. *KNOX-POWELL-STOCKTON Co., INC. ET AL. v. UNITED STATES.* October 12, 1936. Petition for writ of

certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. John F. Gilbert* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. J. Louis Monarch* for the United States. Reported below: 83 F. (2d) 423.

---

No. 281. BLUE RIDGE OIL CO., LTD. ET AL. *v.* ROGAN, COLLECTOR OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. John F. Gilbert* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. J. Louis Monarch* for respondent. Reported below: 83 F. (2d) 420.

---

No. 276. JOHNSON *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Erle Pettus* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahan, and Messrs. Mahlon D. Kiefer and W. Marvin Smith* for the United States. Reported below: 84 F. (2d) 114.

---

No. 278. VAN TASSEL REAL ESTATE & LIVE STOCK CO. *v.* CHEYENNE ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Wyoming denied. *Mr. James A. Greenwood* for petitioner. No appearance for respondents. Reported below: 49 Wyo. 333; 54 P. (2d) 906.

---

No. 279. GULF, MOBILE & NORTHERN R. Co. *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. George E. H. Goodner* for petitioner. *Solicitor General Reed, Assist-*

299 U. S.

Decisions Denying Certiorari.

*ant Attorney General Jackson, and Messrs. J. Louis Monarch and Francis I. Howley for respondent. Reported below: 83 F. (2d) 788.*

---

No. 283. FOURTH NATIONAL BANK, EXECUTOR, *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Mr. Austin M. Cowan* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Lee A. Jackson* for the United States. Reported below: 83 F. (2d) 85.

---

No. 284. STUART *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Messrs. Abbot P. Mills and Richard Wait* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and L. W. Post* for respondent. Reported below: 84 F. (2d) 368.

---

No. 286. A. F. ANDERSON ESTATE, INC. ET AL. *v.* PAYNE, COUNTY AUDITOR, ET AL. October 12, 1936. Petition for writ of certiorari to the District Court of Appeal, 2d Appellate District, of California, denied. *Messrs. Preston B. Kavanagh and W. Sumner Holbrook, Jr.,* for petitioners. *Mr. Everett W. Mattoon* for respondents. Reported below: 12 Cal. App. (2d) 530; 55 P. (2d) 1264.

---

No. 287. PREBLE CORPORATION *v.* WENTWORTH ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Mr. Joseph B. Jacobs* for petitioner. *Mr. Henry F. Butler* for respondents. Reported below: 84 F. (2d) 73.

No. 288. OHIO EX REL. LEWIS *v.* ZUPNIK ET AL. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Mr. Eldon D. Lewis* for petitioner. *Mr. Alfred Clum* for respondents. Reported below: 131 Oh. St. 94; 1 N. E. (2d) 622.

---

No. 291. UNITED STATES EX REL. KESSLER ET AL. *v.* MERCUR CORPORATION ET AL. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Marshall McLean* for petitioners. *Mr. Clarence J. Shearn* for respondents. Reported below: 83 F. (2d) 178.

---

No. 292. ARMSTRONG, EXECUTOR, *v.* CORPORATION COUNSEL OF NEW YORK CITY. October 12, 1936. Petition for writ of certiorari to the Supreme Court of New York denied. *Mr. Abraham W. Feinberg* for petitioner. *Messrs. Paul Windels, Paxton Blair, and Joseph F. Mulqueen, Jr.*, for respondent. Reported below: 270 N. Y. 627; 1 N. E. (2d) 363.

---

No. 294. SCHWEITZER *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. James P. Rossiter* for petitioner. *Solicitor General Reed, Assistant Attorney General McMahan, and Messrs. William W. Barron and W. Marvin Smith* for the United States. Reported below: 85 F. (2d) 394.

---

No. 296. WHITNEY ET AL. *v.* UNITED STATES. October 12, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. Will R. Gregg* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson,*

299 U. S.

Decisions Denying Certiorari.

and *Messrs. David E. Hudson and J. Louis Monarch* for the United States. Reported below: 83 Ct. Cls. 604; 15 F. Supp. 76.

---

No. 297. *BOISE PAYETTE LUMBER CO. v. IDAHO GOLD DREDGING CORP.* October 12, 1936. Petition for writ of certiorari to the Supreme Court of Idaho denied. *Messrs. Oliver O. Haga, Thomas B. Gay, and Stephen H. Simes* for petitioner. *Mr. Oscar W. Worthwine* for respondent. Reported below: 56 Idaho 660; 58 P. (2d) 786.

---

No. 301. *ROBERTS BRINING & Co., LTD. ET AL. v. THE FLORIDIAN ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. D. Roger Englar, T. Catesby Jones, Henry N. Longley, and Ezra G. Benedict Fox* for petitioners. *Mr. Arthur M. Boal* for respondents. Reported below: 83 F. (2d) 949.

---

Nos. 303 and 304. *BITKER, TRUSTEE, v. HOTEL DULUTH Co.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Bruno V. Bitker* for petitioner. *Mr. I. A. Fish* for respondent. Reported below: 83 F. (2d) 721.

---

No. 306. *HERNIG v. BELL ET AL., RECEIVERS.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Clarence L. Cole* for petitioner. *Mr. Duane E. Minard* for respondents. Reported below: 84 F. (2d) 1003.

---

No. 308. *A. D. SAENGER, INC. v. COMMISSIONER OF INTERNAL REVENUE.* October 12, 1936. Petition for

writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Sidney L. Herold* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Arnold Raum* for respondent. Reported below: 84 F. (2d) 23.

---

No. 310. *HAMMOND LUMBER Co. v. COMPTON*. October 12, 1936. Petition for writ of certiorari to the Supreme Court of Oregon denied. *Mr. Erskine Wood* for petitioner. No appearance for respondent. Reported below: 153 Ore. 546; 58 P. (2d) 235.

---

No. 311. *TWINING v. COMMISSIONER OF INTERNAL REVENUE*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Watson Washburn* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Francis I. Howley* for respondent. Reported below: 83 F. (2d) 954.

---

No. 313. *LINCOLN NATIONAL LIFE INSURANCE Co. v. MEANS*. October 12, 1936. Petition for writ of certiorari to the Court of Appeals of Kentucky denied. *Messrs. Wm. Marshall Bullitt, Leo T. Walford, and Clyde J. Cover* for petitioner. *Mr. Joseph Selligman* for respondent. Reported below: 264 Ky. 566; 95 S. W. (2d) 264.

---

No. 314. *VAWTER v. COMMISSIONER OF INTERNAL REVENUE*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Messrs. Walter A. Bolinger and L. J. Benckenstein* for petitioner. *Solicitor General Reed,*

299 U. S.

Decisions Denying Certiorari.

*Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Harry Marselli* for respondent. Reported below: 83 F. (2d) 11.

---

No. 315. *MIRKOWICZ v. READING COMPANY*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Thomas J. O'Neill* for petitioner. *Mr. Willis H. Failing* for respondent. Reported below: 84 F. (2d) 537.

---

No. 317. *BARBOUR v. GEORGE ET AL.* October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Samuel Shapero* for petitioner. *Messrs. John K. Newhall and Cassius Poust* for respondents. Reported below: 84 F. (2d) 281.

---

No. 318. *ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE Co., LTD. v. MARTIN*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Messrs. Henry C. Hart and Hoyt W. Lark* for petitioner. *Mr. Wm. A. Needham* for respondent. Reported below: 84 F. (2d) 6.

---

No. 326. *LONDON & PROVINCIAL MARINE & GENERAL INSURANCE Co., LTD. v. KENTUCKY MACARONI Co.; and*

No. 327. *ROYAL INSURANCE Co., LTD. v. SAME*. October 12, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Mr. Frank M. Drake* for petitioners. *Mr. Robert S. Marx* for respondent. Reported below: 83 F. (2d) 126.

---

No. 333. *DEITRICK, RECEIVER, v. BAILEN*. October 12, 1936. Petition for writ of certiorari to the Circuit Court

of Appeals for the First Circuit denied. *Messrs. George P. Barse, John F. Anderson, Andrew J. Aldridge, and Brenton K. Fisk* for petitioner. *Mr. Samuel L. Bailen, pro se.* Reported below: 84 F. (2d) 375.

---

No. 403. *JONES v. LOUISIANA.* See *ante*, p. 511.

---

No. 417. *EISENHARDT v. LOUISIANA.* See *ante*, p. 512.

---

No. 434. *ABEL ET AL. v. KENNEDY ET AL.* October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mrs. Inez Abel* for petitioners. *Mr. H. Dent Minor* for respondents.

---

No. 312. *MURPHY v. CITY OF ORLANDO.* October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. Thomas B. Adams and Wm. E. Kay* for petitioner. *Messrs. George Palmer Garrett and W. H. Poe* for respondent. Reported below: 84 F. (2d) 531.

---

No. 316. *FREEMAN v. PREMIER MACHINE CO., INC.* October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Messrs. Nathan Heard, Charles E. Riordon, and Frederick A. Tennant* for petitioner. *Messrs. George P. Dike and Cedric W. Porter* for respondent. Reported below: 84 F. (2d) 425.

299 U. S.

Decisions Denying Certiorari.

No. 319. *JEFFERSON & CLEARFIELD COAL & IRON CO. v. UNITED STATES*. October 19, 1936. Petition for writ of certiorari to the Court of Claims denied. *Mr. Howe P. Cochran* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson*, and *Mr. J. Louis Monarch* for the United States. Reported below: 83 Ct. Cls. 491; 14 F. Supp. 918.

---

No. 320. *JONES v. SECURITIES & EXCHANGE COMM'N.* October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Hyman I. Fischbach and Harry O. Glasser* for petitioner. *Solicitor General Reed and Messrs. John J. Burns, A. H. Feller, and Charles A. Horsky* for respondent. Reported below: 85 F. (2d) 17.

---

No. 321. *TURBEVILLE v. COMMISSIONER OF INTERNAL REVENUE*. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. John B. King* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson*, and *Messrs. J. Louis Monarch and John G. Remy* for respondent. Reported below: 84 F. (2d) 307.

---

No. 323. *EASTMAN KODAK CO. v. UNITED STATES*. October 19, 1936. Petition for writ of certiorari to the Court of Claims denied. *Messrs. O. R. Folsom-Jones and Kingman Brewster* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson*, and *Messrs. J. Louis Monarch and Charles A. Horsky* for the United States. Reported below: 82 Ct. Cls. 504; 13 F. Supp. 435.

No. 334. FAIRBANKS COURT WHOLESALE GROCERY CO. *v.* COMMISSIONER OF INTERNAL REVENUE. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Isaac H. Mayer and Carl Meyer* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. J. Louis Monarch and Morton K. Rothschild* for respondent. Reported below: 84 F. (2d) 18.

---

Nos. 336 and 337. FARMERS' LOAN & TRUST Co., TRUSTEE, *v.* BOWERS, EXECUTOR. October 19, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. John W. Davis, Carl Taylor, Mansfield Ferry, and Philip M. Payne* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. William Stanley, Carlton Fox, J. Louis Monarch, and Charles A. Horsky* for respondent.

---

No. 339. KRISE, RECEIVER, *v.* UNITED STATES. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. H. Earlton Hanes* for petitioner. *Solicitor General Reed, Assistant Attorney General Blair, and Mr. D. B. Hempstead* for the United States. Reported below: 82 F. (2d) 1013.

---

No. 341. SCANLON ET AL. *v.* GULF BITULITHIC Co. ET AL. October 19, 1936. Petition for writ of certiorari to the Court of Civil Appeals, 1st Supreme Judicial District, of Texas, denied. *Mr. Walter F. Brown* for petitioners. No appearance for respondents. Reported below: 91 S. W. (2d) 814.

299 U. S.

Decisions Denying Certiorari.

No. 342. *PETERSON v. UNITED STATES*. October 19, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. J. S. Seidman* for petitioner. *Solicitor General Reed* for the United States. Reported below: 84 F. (2d) 312.

---

No. 343. *TEXAS UTILITIES CO. v. ICKES, FEDERAL EMERGENCY ADMINISTRATOR, ET AL.*; and

Nos. 344 and 345. *ALABAMA POWER CO. v. SAME*. October 19, 1936. Petition for writs of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Dean G. Acheson, Newton D. Baker, Raymond T. Jackson, Perry W. Turner, Charles C. Crenshaw, and Edw. B. Burling* for petitioners. *Solicitor General Reed* for respondents.

---

No. 33. *WERK ET AL. v. LORAIN STREET SAVINGS & TRUST CO. ET AL.* See *ante*, p. 512.

---

No. 346. *NORTHWESTERN NATIONAL BANK & TRUST CO. v. LOWDEN ET AL.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. Claude G. Krause and Hayner N. Larson* for petitioner. *Messrs. Marcus Bell, Daniel Taylor, Edward S. Stringer, and Otis F. Glenn* for respondents. Reported below: 84 F. (2d) 847.

---

No. 347. *NEW YORK CITY v. GOLDSTEIN, TRUSTEE*. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Paul Windels, Paxton Blair, and Meyer Bernstein* for petitioner. *Mr. S. Frederick Placer* for respondent. Reported below: 84 F. (2d) 982. [See *ante*, p. 522.]

No. 348. *RIZZO v. UNITED STATES*. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Messrs. Samuel D. Kessler, Louis Halle, and Harry H. Weinberger* for petitioner. *Solicitor General Reed, Assistant Attorney General Morris, and Mr. George F. Foley* for the United States.

---

No. 349. *MERLAUD v. NATIONAL METROPOLITAN BANK ET AL.* October 26, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Clyde L. Rogers and P. H. Marshall* for petitioner. *Messrs. John E. Laskey, F. W. Clements, and Stanley D. Willis* for respondents. Reported below: 65 App. D. C. 385; 84 F. (2d) 238.

---

No. 350. *IOWA-DES MOINES NATIONAL BANK & TRUST CO. v. LOWDEN ET AL.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Garfield E. Breese* for petitioner. *Messrs. Marcus D. Bell, W. F. Dickinson, Joseph G. Gamble, Alden B. Howland, and Daniel Taylor* for respondents. Reported below: 84 F. (2d) 856.

---

No. 351. *SCHULTEN ET AL. v. DAY, TREASURER, ET AL.* October 26, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Mr. A. Julius Freiberg* for petitioners. *Messrs. John W. Bricker and Isadore Topper* for respondents. Reported below: 131 Oh. St. 538; 3 N. E. (2d) 420.

---

No. 356. *OCEAN CITY v. FEDERAL RESERVE BANK.* October 26, 1936. Petition for writ of certiorari to the

299 U. S.

Decisions Denying Certiorari.

Circuit Court of Appeals for the Third Circuit denied. *Messrs. George A. Bourgeois* and *Harry R. Coulomb* for petitioner. *Messrs. Yale L. Schekter* and *Clarence L. Cole* for respondent. Reported below: 84 F. (2d) 657.

---

No. 357. *VILLAGE OF WINNETKA v. RESCHKE*; and

No. 358. *SAME v. ERICKSON*. October 26, 1936. Petition for writs of certiorari to the Supreme Court of Illinois denied. *Messrs. Frederick Dickinson* and *Edgar Bronson Tolman* for petitioner. *Mr. George C. Otto* for respondents. Reported below: 363 Ill. 478; 2 N. E. (2d) 718.

---

No. 359. *NORTHWESTERN MUTUAL LIFE INSURANCE CO. v. O'MALEY*. October 26, 1936. Petition for writ of certiorari to the Kansas City Court of Appeals, of Missouri, denied. *Messrs. Maurice H. Winger* and *Leland Hazard* for petitioner. *Messrs. Lisbon E. Durham* and *Henry S. Conrad* for respondent. Reported below: 230 Mo. App. —; 95 S. W. (2d) 852.

---

No. 361. *SIEMENS & HALSKE ACTIENGESELLSCHAFT ET AL. v. CENTRAL HANOVER BANK & TRUST Co., TRUSTEE*. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Wm. D. Whitney* for petitioners. *Mr. John W. Drye, Jr.*, for respondent. Reported below: 84 F. (2d) 993.

---

No. 362. *FLAT-TOP FUEL CO., INC. v. MARTIN*. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Thomas H. Middleton* for petitioner. *Mr. Horace T. Atkins* for respondent. Reported below: 85 F. (2d) 39.

No. 363. NATIONAL CITY BANK *v.* FERNANDEZ ET AL. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Mr. Earle T. Fiddler* for petitioner. *Mr. Hugh R. Francis* for respondents. Reported below: 83 F. (2d) 476.

---

No. 364. P. LORILLARD & Co., INC. *v.* UNITED STATES. October 26, 1936. Petition for writ of certiorari to the United States Court of Customs and Patent Appeals denied. *Messrs. T. Catesby Jones* and *James W. Ryan* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Mr. Charles D. Lawrence* for the United States. Reported below: 24 C. C. P. A. (Cust.) 90; T. D., 48,412.

---

No. 366. SIEGEL *v.* IOWA. October 26, 1936. Petition for writ of certiorari to the Supreme Court of Iowa denied. *Messrs. J. W. Kindig*, *Amos M. Mathews*, and *Frederick F. Faville* for petitioner. *Mr. Earl C. Mills* for respondent. Reported below: 221 Iowa 429; 264 N. W. 613.

---

No. 367. CAGO CORPORATION ET AL. *v.* BRUSSELBACK ET AL. October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. George A. Spiegelberg*, *Harry W. Mack*, *Frank A. F. Severance*, *Forrest N. Anderson*, *Joseph C. Slaughter*, *Frederic R. Coudert, Jr.*, *F. Wright Moxley*, and *Julian A. Gregory* for petitioners. *Mr. Elihu Root, Jr.*, for respondents. Reported below: 85 F. (2d) 20.

---

No. 368. GRACE STEAMSHIP CO. *v.* ANGLO-CHILEAN NITRATE SALES CORP. ET AL.; and

299 U. S.

Decisions Denying Certiorari.

No. 369. *SAME v. ANGLO-CHILEAN NITRATE SALES CORP.* October 26, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. William H. McGrann* for petitioner. *Mr. Theodore L. Bailey* for respondents. Reported below: 84 F. (2d) 3.

---

No. 371. *MIDLAND BANK, LTD. v. BISHOP & Co., INC.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Paul D. Miller* for petitioner. *Messrs. H. W. O'Melveny and Walter K. Tuller* for respondent. Reported below: 84 F. (2d) 585.

---

No. 373. *ALLMAN & OLINS, INC. v. JOSEPH I. SHAPIRO, INC.* October 26, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Mr. Joseph B. Jacobs* for petitioner. *Mr. Harry N. Guterman* for respondent. Reported below: 84 F. (2d) 964.

---

No. 376. *LIVERPOOL & LONDON & GLOBE INSURANCE Co., LTD. v. CROSBY, RECEIVER; and*

No. 377. *FIDELITY-PHENIX FIRE INSURANCE Co. v. SAME.* October 26, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. Burke G. Slaymaker and Guston T. Fitzhugh* for petitioners. *Mr. R. Lee Bartels* for respondent. Reported below: 83 F. (2d) 647.

---

No. 444. *WALTER v. INDIANA.* See *ante*, p. 513.

---

No. 479. *ELLIS v. ADERHOLD, WARDEN.* November 9, 1936. Petition for writ of certiorari to the Circuit Court

of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Hal Lindsay* for petitioner. No appearance for respondent. Reported below: 84 F. (2d) 513.

---

No. 410. *HASKINS BROS. & CO. v. MORGENTHAU, SECRETARY OF THE TREASURY, ET AL.* November 9, 1936. The application for injunction in this case is denied. The petition for writ of certiorari to the United States Court of Appeals for the District of Columbia is denied. *Mr. William Stanley* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Sewall Key* for respondents. Reported below: 66 App. D. C. 178; 85 F. (2d) 677.

---

No. 411. *SAND SPRINGS HOME v. NAHARKEY.* November 9, 1936. Petition for writ of certiorari to the Supreme Court of Oklahoma denied for the want of a final judgment. *Mr. C. B. Stuart* for petitioner. *Messrs. Elmer J. Lundy and Lewis M. Poe, Jr.,* for respondent. Reported below: 177 Okla. 371; 59 P. (2d) 289.

---

No. 375. *CANDADO STEVEDORING CORP. v. LOWE, DEPUTY COMMISSIONER, ET AL.* November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Roderick Begg* for petitioner. *Solicitor General Reed, Assistant Attorney General Morris, and Messrs. Paul A. Sweeney and Hyman Korn* for respondents. Reported below: 85 F. (2d) 119.

---

No. 383. *R. & L., INC. v. COMMISSIONER OF INTERNAL REVENUE.* November 9, 1936. Petition for writ of cer-

299 U. S.

Decisions Denying Certiorari.

tiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Sidney L. Herold* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, *Mr. J. Louis Monarch*, and *Miss Helen R. Carloss* for respondent. Reported below: 84 F. (2d) 721.

---

No. 385. *RENKOFF v. UNITED STATES*. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. David P. Siegel* for petitioner. *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Mr. William W. Barron* for the United States. Reported below: 84 F. (2d) 1018.

---

No. 386. *WOOD v. UNITED STATES*. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. Samuel A. King* and *Arthur G. Brode* for petitioner. *Solicitor General Reed*, *Assistant Attorney General McMahon*, and *Mr. Amos W. W. Woodcock* for the United States. Reported below: 84 F. (2d) 749.

---

No. 387. *BOSTON & ALBANY R. CO. ET AL v. HIETALA*. November 9, 1936. Petition for writ of certiorari to the Superior Court of Berkshire County, Massachusetts, denied. *Mr. George H. Fernald* for petitioners. *Mr. J. Alfred Anderson* for respondent. Reported below: 3 N. E. (2d) 377.

---

No. 388. *LINDERMAN, EXECUTOR, v. HELVERING, COMMISSIONER OF INTERNAL REVENUE*. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Messrs. William A. Seifert* and *William Wallace Booth* for petitioner. *Solic-*

itor *General Reed*, Assistant Attorney General *Jackson*, and Messrs. *Sewall Key* and *Francis I. Howley* for respondent. Reported below: 84 F. (2d) 727.

---

No. 390. KANSAS CITY SOUTHERN RY. CO. *v.* QUIN, ADMINISTRATRIX. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. Messrs. *W. Scott Wilkinson*, *Frank H. Moore*, *C. Huffman Lewis*, and *A. F. Smith* for petitioner. *Mr. S. P. Jones* for respondent. Reported below: 85 F. (2d) 485.

---

No. 391. SINGER ET AL. *v.* FRIEDMAN ET AL. November 9, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. Messrs. *Robert H. McNeill* and *Samuel Lebowitz* for petitioners. *Mr. Rudolph H. Yeatman* for respondents. Reported below: 66 App. D. C. 191; 85 F. (2d) 690.

---

No. 392. UNITED STATES *v.* GALVESTON-HOUSTON ELECTRIC Co. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Solicitor General Reed* for the United States. *Mr. Burton E. Eames* for respondent. Reported below: 84 F. (2d) 516.

---

No. 393. A. McLEAN & SON *v.* FEDERAL TRADE COMM'N;

No. 394. M. J. HOLLOWAY & Co. *v.* SAME;

No. 395. QUEEN ANNE CANDY Co. *v.* SAME; and

No. 396. BONITA COMPANY *v.* SAME. November 9, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Irvin H.*

299 U.S.

Decisions Denying Certiorari.

*Fathchild* for petitioners. *Solicitor General Reed*, *Assistant Attorney General Dickinson*, and *Messrs. Wendell Berge, Walter L. Rice* and *W. T. Kelley* for respondent. Reported below: 84 F. (2d) 910.

---

No. 400. SOUTHERN RY. CO. ET AL. *v.* MCGRAW, ADMINISTRATOR. November 9, 1936. Petition for writ of certiorari to the Supreme Court of North Carolina denied. *Messrs. Sidney S. Alderman, B. S. Womble, R. C. Kelly, H. O'B. Cooper*, and *S. R. Prince* for petitioners. *Mr. J. M. Wells, Jr.*, for respondent. Reported below: 209 N. C. 432; 184 S. E. 31.

---

No. 401. MCGUIRE *v.* COMMISSIONER OF INTERNAL REVENUE. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Robert A. Littleton* for petitioner. *Solicitor General Reed*, *Assistant Attorney General Jackson*, and *Messrs. Sewall Key* and *Morton K. Rothschild* for respondent. Reported below: 84 F. (2d) 31.

---

No. 407. CLARK, ADMINISTRATRIX, *v.* DELAWARE & HUDSON R. CORP. November 9, 1936. Petition for writ of certiorari to the Supreme Court of New York denied. *Mr. Walter A. Fullerton* for petitioner. *Mr. Joseph Rosch* for respondent. Reported below: 272 N. Y. 413; 3 N. E. (2d) 847; 246 App. Div. 347, 287 N. Y. S. 1.

---

No. 412. UNITED LIGHT & POWER CO. *v.* GRAND RAPIDS TRUST CO., RECEIVER. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit denied. *Messrs. William P. Sidley* and

*Kenneth F. Burgess* for petitioner. *Messrs. Stuart E. Knappen* and *Malcolm Donald* for respondent. Reported below: 85 F. (2d) 331.

---

No. 425. *BASSICK v. COMMISSIONER OF INTERNAL REVENUE*; and

No. 426. *PERKINS v. SAME*. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Louis B. Eppstein, Ira W. Hirshfield, and Louis J. Altkrug* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, Mr. Sewall Key, and Miss Helen R. Carloss* for respondent. Reported below: 85 F. (2d) 8.

---

No. 428. *SEVERNS DRILLING Co., LTD. v. SUPERIOR COURT OF CALIFORNIA ET AL.* November 9, 1936. Petition for writ of certiorari to the District Court of Appeal, 2d Appellate District, of California, denied. *Messrs. Jefferson P. Chandler, Roland G. Swaffield, Howard W. Wright, and John F. Gilbert* for petitioner. *Messrs. Everett W. Mattoon, Oscar Lawler, and Felix T. Smith* for respondents. Reported below: 15 Cal. App. (2d) 281; 59 P. (2d) 593.

---

No. 453. *SIX-WAY CORPORATION v. McCURDY & COMPANY, INC.* November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Charles W. Parker* for petitioner. *Messrs. George E. Middleton and Samuel R. Gerstein* for respondent. Reported below: 85 F. (2d) 5.

---

No. 322. *SCHOLL v. UNITED STATES*. November 9, 1936. Petition for writ of certiorari to the Court of

299 U. S.

Decisions Denying Certiorari.

Claims denied. *Messrs. Samuel T. Ansell and Mahlon C. Masterson* for petitioner. *Solicitor General Reed, Assistant Attorney General Morris, and Mr. Paul A. Sweeney* for the United States. Reported below: 82 Ct. Cls. 606.

---

No. 360. *STANDLEY ET AL. v. GRAHAM PRODUCTION CO.* November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Pinckney G. McElwee* for petitioners. No appearance for respondent. Reported below: 83 F. (2d) 489.

---

No. 378. *FITZGERALD ET AL. v. CALIFORNIA.* November 9, 1936. Petition for writ of certiorari to the District Court of Appeal, 3d Appellate District, of California, denied. *Mr. Aaron Sapiro* for petitioners. *Mr. U. S. Webb* for respondent. Reported below: 14 Cal. App. (2d) 180; 58 P. (2d) 718.

---

No. 399. *GLIWA v. UNITED STATES STEEL CORP. ET AL.* November 9, 1936. Petition for writ of certiorari to the Supreme Court of Pennsylvania denied. *Agnes Gliwa, pro se. Mr. Edwin W. Smith* for respondents. Reported below: 322 Pa. 225; 185 Atl. 584.

---

Nos. 408 and 409. *U S L BATTERY CORP. v. COMMISSIONER OF INTERNAL REVENUE.* November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Robert J. Moore* for petitioner. *Assistant Attorney General Jackson and Messrs. Sewall Key, Joseph M. Jones, and Warner W. Gardner* for respondent. Reported below: 84 F. (2d) 1020.

No. 414. IOWA SOAP CO. *v.* HUSTON. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. J. G. Gamble and R. L. Read* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and Lee A. Jackson* for respondent. Reported below: 85 F. (2d) 649.

---

No. 448. HASKINS BROTHERS & CO. *v.* O'MALLEY. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. William Stanley* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and Lee A. Jackson* for respondent. Reported below: 85 F. (2d) 657.

---

No. 415. ORCUTT, TREASURER, *v.* CRAWFORD ET AL., RECEIVERS. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit denied. *Mr. James A. Greenwood* for petitioner. *Mr. G. T. Stanford* for respondents. Reported below: 85 F. (2d) 146.

---

No. 416. CHARLESWORTH, TRUSTEE IN BANKRUPTCY, *v.* HIPSH, INC. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. I. J. Ringolsky and Harry L. Jacobs* for petitioner. *Mr. Frank P. Barker* for respondent. Reported below: 84 F. (2d) 834.

---

No. 427. AMERICAN PHARMACEUTICAL CO., INC. *v.* SHERING & GLATZ, INC. ET AL. November 9, 1936. Petition for writ of certiorari to the Supreme Court of New York denied. *Messrs. Hugh M. Morris and Alexander L. Nichols* for petitioner. *Messrs. Joseph H. Choate, Jr.,*

299 U. S.

Decisions Denying Certiorari.

*Roger S. Baldwin, Maurice Leon, and Fritz von Briesen* for respondents. Reported below: 272 N. Y. 410, 3 N. E. (2d) 845; 244 App. Div. 708, 279 N. Y. S. 733.

---

No. 429. VAN DERVEER, ADMINISTRATOR, *v.* DELAWARE, LACKAWANNA & WESTERN R. Co. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Thomas J. O'Neill* for petitioner. *Mr. Douglas Swift* for respondent. Reported below: 84 F. (2d) 979.

---

No. 430. KETCHUM ET AL. *v.* MACDONALD, RECEIVER. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Messrs. William S. Doty and Thomas A. Thornton* for petitioners. *Mr. E. Lowry Humes* for respondent. Reported below: 85 F. (2d) 436.

---

No. 431. IRVING TRUST Co., TRUSTEE IN BANKRUPTCY, *v.* METROPOLITAN LIFE INSURANCE Co. November 9, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. David W. Kahn* for petitioner. *Mr. Frederick C. Tanner* for respondent. Reported below: 83 F. (2d) 945.

---

No. 432. DIXIE OIL Co. *v.* FORT, COMMISSIONER OF FINANCE AND TAXATION, ET AL. November 9, 1936. Petition for writ of certiorari to the Supreme Court of Tennessee denied. *Mr. Jordan Stokes, Jr.*, for petitioner. *Mr. Norman Farrell* for respondents. Reported below: 170 Tenn. 183; 93 S. W. (2d) 1260.

---

No. 433. HUDSON *v.* FORT, COMMISSIONER OF FINANCE AND TAXATION, ET AL. November 9, 1936. Petition for

writ of certiorari to the Supreme Court of Tennessee denied. *Mr. A. H. Roberts, Jr.*, for petitioner. *Mr. Norman Farrell* for respondents. Reported below: 170 Tenn. 192; 93 S. W. (2d) 1263.

---

No. 105. *MURPHY v. MURPHY ET AL.* November 16, 1936. Petition for writ of certiorari to the Supreme Court of California, and motion for leave to proceed further *in forma pauperis*, denied. *Lulu Mignon Murphy, pro se.* No appearance for respondents. Reported below: 5 Cal. (2d) 640; 55 P. (2d) 1169.

---

No. 489. *BUIE v. UNITED STATES.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Vivian Wycliffe Buie, pro se.* No appearance for the United States. Reported below: 84 F. (2d) 564.

---

No. 506. *GREENHAUS v. UNITED STATES.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Theodore E. Wolcott* for petitioner. No appearance for the United States. Reported below: 85 F. (2d) 116.

---

Nos. 437 and 438. *BUSH TERMINAL CO. v. PREFERRED STOCKHOLDERS PROTECTIVE COMMITTEE ET AL.* November 16, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *MR. JUSTICE McREYNOLDS* took no part in the consideration or decision of this application. *Mr. William H. Button* for

299 U. S.

Decisions Denying Certiorari.

petitioner. *Messrs. David M. Palley, Joseph M. Hartfield, and Hugo Kohlmann* for respondents. Reported below: 84 F. (2d) 984.

---

No. 405. *HEFFRON, TRUSTEE, v. WESTERN LOAN & BUILDING Co. ET AL.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Murray L. Rabbitt* for petitioner. *Mr. W. W. Ray* for respondents. Reported below: 84 F. (2d) 301.

---

No. 424. *ARMAND COMPANY, INC. v. FEDERAL TRADE COMM'N.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Henry Ward Beer* for petitioner. *Solicitor General Reed, Assistant Attorney General Dickinson, and Messrs. Wendell Berge and W. T. Kelley* for respondent. Reported below: 84 F. (2d) 973.

---

No. 435. *JORDAHL v. EGAN, PUBLIC ADMINISTRATOR.* November 16, 1936. Petition for writ of certiorari to the Supreme Court of New York denied. *Mr. Loring M. Black* for petitioner. *Messrs. Eli S. Wolbarst, Harold Harper, and Benjamin A. Matthews* for respondent. Reported below: 248 App. Div. 706; 290 N. Y. S. 113.

---

No. 443. *OHIO EX REL. VAN SCHAICK v. BOWEN, SUPERINTENDENT OF INSURANCE.* November 16, 1936. Petition for writ of certiorari to the Supreme Court of Ohio denied. *Mr. James I. Boulger* for petitioner. *Mr. John W. Bricker* for respondent. Reported below: 131 Oh. St. 310; 2 N. E. (2d) 824.

No. 445. *FLANIGAN v. DITTO, INC.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Carl V. Wisner* for petitioner. *Messrs. William Beye and Max W. Zabel* for respondent. Reported below: 84 F. (2d) 490.

---

No. 447. *UNITED STATES v. CONNOLLY ET AL.* November 16, 1936. Petition for writ of certiorari to the Court of Appeals of New York denied. *Solicitor General Reed* for the United States. *Mr. Thomas E. White* for respondents. Reported below: 272 N. Y. 465, 3 N. E. (2d) 871; 246 App. Div. 595, 284 N. Y. S. 802.

---

No. 452. *CARPENTER, INSURANCE COMMISSIONER, v. NICHOLS.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. Grover T. Owens and S. Lasker Ehrman* for petitioner. *Mr. Robert E. Wiley* for respondent. Reported below: 84 F. (2d) 896.

---

No. 457. *GEORGE A. BREON & Co., INC. v. WISCONSIN ALUMNI RESEARCH FOUNDATION.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Delos G. Haynes* for petitioner. *Messrs. George I. Haight and M. K. Hobbs* for respondent. Reported below: 85 F. (2d) 166.

---

No. 458. *COGGER v. HAZEN ET AL.* November 16, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. John E. Hughes and Philip F. Biggins* for peti-

299 U. S.

Decisions Denying Certiorari.

tioner. *Messrs. Elwood H. Seal and Vernon E. West* for respondents. Reported below: 66 App. D. C. 196; 85 F. (2d) 695.

---

No. 459. *BRENNAN, ADMINISTRATRIX, ET AL. v. SABINE TOWING Co., INC. ET AL.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. M. G. Adams and H. C. Hughes* for petitioners. *Mr. W. G. Feely* for respondents. Reported below: 85 F. (2d) 478.

---

No. 461. *NEW YORK LIFE INSURANCE Co. v. WEINTROB.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Alfred E. Driscoll* for petitioner. *Mr. C. L. Cole* for respondent. Reported below: 85 F. (2d) 158.

---

Nos. 467 and 468. *WILSON, TRUSTEE, v. METROPOLITAN LIFE INSURANCE Co.* November 16, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Samuel E. Hirsch* for petitioner. *Messrs. Mitchell D. Follansbee and Frederic Barth* for respondent. Reported below: 85 F. (2d) 467.

---

No. 473. *MERCHANTS & MINERS TRANSPORTATION Co. v. THE CITY OF CHATTANOOGA ET AL.* November 16, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Russell T. Mount* for petitioner. *Mr. Charles S. Haight* for respondents. Reported below: 85 F. (2d) 102.

No. 511. *SANACORY v. NEW YORK*. November 23, 1936. Petition for writ of certiorari to the Supreme Court of New York, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. John Sanacory, pro se*. No appearance for respondent. Reported below: 272 N. Y. 573, 4 N. E. (2d) 743; 248 App. Div. 631; 288 N. Y. S. 205.

---

No. 515. *LA VERS v. SUPREME COURT OF CALIFORNIA*. November 23, 1936. Petition for writ of certiorari to the Supreme Court of California, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Jack La Vers, pro se*. No appearance for respondent.

---

No. 449. *MCLEAN v. GOODYEAR TIRE & RUBBER Co., INC.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. W. D. Gordon* for petitioner. *Mr. John P. Bullington* for respondent. Reported below: 85 F. (2d) 150.

---

No. 463. *HAMMOND LUMBER Co. v. BROUGHTON & WIGGINS NAVIGATION Co.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Victor H. Pinckney* for petitioner. *Mr. Joseph J. Geary* for respondent. Reported below: 84 F. (2d) 496.

---

No. 465. *CROWN CENTRAL PETROLEUM CORP. v. CONSOLIDATED OIL Co.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. Wright Matthews* for petitioner. *Mr. W. J. Howard* for respondent. Reported below: 85 F. (2d) 429.

299 U. S.

Decisions Denying Certiorari.

No. 466. *SPERO ET AL. v. UNITED STATES*. November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Camden R. McAtee* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahon, and Messrs. William W. Barron and W. Marvin Smith* for the United States. Reported below: 85 F. (2d) 134.

---

No. 472. *JOHNSON v. HUGHES ET AL.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. John F. Finerty* for petitioner. No appearance for respondents.

---

No. 476. *BECKWITH ET AL. v. MCCARTER ET AL.* November 23, 1936. Petition for writ of certiorari to the Supreme Court of New York denied. *Mr. Albert Ritchie* for petitioners. *Mr. Frank H. Myers* for respondents. Reported below: 272 N. Y. 488, 3 N. E. (2d) 882; 247 App. Div. 289, 285 N. Y. S. 151.

---

No. 477. *HARRIMAN NATIONAL BANK & TRUST Co. ET AL. v. MUNROE*. November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. John Vance Hewitt and George P. Barse* for petitioners. *Messrs. Harold H. Corbin, William V. Miller, and Edward J. Bennett* for respondent. Reported below: 85 F. (2d) 493.

---

No. 482. *E. I. DUPONT DE NEMOURS & Co., INC. v. WAXED PRODUCTS Co., INC.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Harry D. Nims* for

petitioner. *Messrs. Thomas D. Thacher, Ellis W. Leavenworth, and L. A. Janney* for respondent. Reported below: 85 F. (2d) 75.

---

No. 484. *ROTHFELD v. 333 NORTH MICHIGAN AVENUE BUILDING CORP. ET AL.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Karl J. Hardy and Benjamin I. Salinger, Jr.,* for petitioner. *Messrs. John S. Miller, Lincoln R. Clark, C. H. Poppenhusen, Edward R. Johnston, James W. Hyde, Samuel A. Ettelson, and Erwin M. Treusch* for respondents. Reported below: 84 F. (2d) 936.

---

Nos. 485 and 486. *BRENNER v. 333 NORTH MICHIGAN AVENUE BUILDING CORP. ET AL.* November 23, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. John Elliott Byrne and Benjamin Levering* for petitioner. *Messrs. John S. Miller and Samuel H. Horne* for respondents. Reported below: 84 F. (2d) 936.

---

Nos. 487 and 488. *SHERMAN ET AL. v. 333 NORTH MICHIGAN AVENUE BUILDING CORP. ET AL.* November 23, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Charles Liebman* for petitioners. *Messrs. John S. Miller and Samuel H. Horne* for respondents. Reported below: 84 F. (2d) 936.

---

No. 536. *STEINBERG v. CUMMINGS, ATTORNEY GENERAL, ET AL.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit, and motion for leave to proceed further *in forma*

299 U.S.

Decisions Denying Certiorari.

*pauperis*, denied. *Mr. Joseph Hellier* for petitioner. No appearance for respondents. Reported below: 85 F. (2d) 1022.

---

No. 544. *MCCANN v. LEIBELL, JUDGE, ET AL.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Gene McCann, pro se.* No appearance for respondents. Reported below: 80 F. (2d) 211.

---

No. 285. *UNITED STATES EX REL. GIRARD TRUST CO., TRUSTEE, v. HELVERING, COMMISSIONER OF INTERNAL REVENUE.* December 7, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. H. C. Kilpatrick and Charles Myers* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. J. Louis Monarch* for respondent. Reported below: 66 App. D. C. 64; 85 F. (2d) 230. [Rehearing and certiorari granted by order of March 15, 1937.]

---

No. 462. *HELVERING, COMMISSIONER OF INTERNAL REVENUE, v. KELLY, EXECUTOR.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Solicitor General Reed* for petitioner. *Messrs. William C. DeLacy and Robert T. Mack* for respondent. Reported below: 84 F. (2d) 958.

---

No. 470. *UNITED STATES v. THE PAPOOSE ET AL.*; and  
No. 471. *SAME v. PETROLEUM NAVIGATION Co.* December 7, 1936. Petition for writs of certiorari to the

Circuit Court of Appeals for the Second Circuit denied. *Solicitor General Reed, Assistant Attorney General Morris, and Mr. J. Frank Staley* for the United States. *Messrs. Earle Farwell and John C. Crawley* for respondents. Reported below: 85 F. (2d) 54.

---

No. 478. *J. P. MORGAN & Co. v. MISSOURI PACIFIC R. Co. ET AL.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Daniel N. Kirby* for petitioner. *Solicitor General Reed, Assistant Attorney General Dickinson, and Messrs. James B. Alley, C. M. Clay, and Wendell Berge* for respondents. Reported below: 85 F. (2d) 351.

---

Nos. 480 and 481. *AVERY v. COMMISSIONER OF INTERNAL REVENUE.* December 7, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Leland K. Neeves and John E. MacLeish* for petitioner. *Solicitor General Reed, Assistant Attorney General Jackson, and Messrs. Sewall Key and S. Dee Hanson* for respondent. Reported below: 84 F. (2d) 905.

---

No. 490. *FEAK v. MARION STEAM SHOVEL Co.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. F. S. Senn* for petitioner. *Mr. Alfred A. Hampson* for respondent. Reported below: 84 F. (2d) 670.

---

No. 492. *VIRDONE, TRUSTEE, v. DOWS ESTATE, INC. ET AL.* December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit

299 U. S.

Decisions Denying Certiorari.

denied. *Mr. Leo J. Linder* for petitioner. *Mr. C. Elmer Spedick* for respondents. Reported below: 85 F. (2d) 110.

---

No. 493. MISSOURI-KANSAS-TEXAS R. Co. *v.* GOOD, ADMINISTRATOR. December 7, 1936. Petition for writ of certiorari to the Supreme Court of Missouri denied. *Messrs. Joseph M. Bryson* and *Charles S. Burg* for petitioner. *Mr. Wendel W. McCanles* for respondent. Reported below: 339 Mo. 330; 97 S. W. (2d) 612.

---

No. 498. STEPHEN L. STETSON Co., LTD. ET AL. *v.* JOHN B. STETSON Co. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Martin Conboy* for petitioners. *Messrs. Maurice Bower Saul, Allen S. Olmsted, 2d, Earl G. Harrison,* and *Murray F. Johnson* for respondent. Reported below: 85 F. (2d) 586.

---

No. 502. UNITED STATES SAVINGS BANK ET AL. *v.* MORGENTHAU, SECRETARY OF THE TREASURY, ET AL. December 7, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Dorothy Ashby Moncure* for petitioners. *Messrs. George P. Barse, J. Bruce Kremer, George B. Springston,* and *Herbert M. Bingham* for respondents. Reported below: 66 App. D. C. 234; 85 F. (2d) 811.

---

No. 514. SPANG *v.* GOSSNELL ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. H. Eugene Gardner* for petitioner. *Solicitor General Reed, Assistant Attorney General Blair,* and *Mr. Charles E. Wyzanski, Jr.,* for respondents. Reported below: 84 F. (2d) 889.

No. 495. LOUIS FIERMAN, JR. *v.* UNITED STATES;

No. 496. ABE FIERMAN *v.* SAME; and

No. 497. PALLIS *v.* SAME. December 7, 1936. Petition for writs of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Joseph Ominsky* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahon, and Mr. Mahlon D. Kiefer* for the United States. Reported below: 84 F. (2d) 968.

---

No. 499. HARTRIDGE-CANNON CO. ET AL. *v.* GILLESPIE ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. W. H. Poe* for petitioners. *Messrs. D. C. Hull, Erskine W. Landis, and Francis P. Whitehair* for respondents. Reported below: 84 F. (2d) 285.

---

No. 503. MOORE *v.* CHICAGO MERCANTILE EXCHANGE ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Walter Bachrach and Arthur Magid* for petitioner. *Solicitor General Reed, Assistant Attorney General Dickinson, and Mr. Wendell Berge* for respondents.

---

No. 504. BENNETT ET AL. *v.* CHICAGO BOARD OF TRADE ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Messrs. Walter Bachrach and Arthur Magid* for petitioners. *Solicitor General Reed, Assistant Attorney General Dickinson, and Mr. Wendell Berge* for respondents.

---

No. 508. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* VAUGHAN. December 7, 1936. Petition for

299 U. S.

Decisions Denying Certiorari.

writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Solicitor General Reed* for petitioner. *Messrs. Albert S. Wright and Wm. M. Sperry, 2d*, for respondent. Reported below: 85 F. (2d) 497.

---

No. 510. MEYER ET AL. *v.* KANSAS CITY SOUTHERN RY. CO. ET AL. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. MR. JUSTICE CARDOZO took no part in the consideration and decision of this application. *Mr. Walter E. Meyer* for petitioners. *Messrs. Samuel W. Moore, A. C. Rearick, A. H. Kiskadden, H. Brua Campbell, George L. Buland, Wm. D. Whitney, M. L. Bell, F. C. Nicodemus, Carelton S. Hadley, Ben C. Dey, Charles L. Minor, Alex B. Siegel, and Jackson A. Dykman* for respondents. Reported below: 84 F. (2d) 411.

---

No. 517. FLANIGAN *v.* DITTO, INC. December 7, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. Carl V. Wisner* for petitioner. *Mr. Max W. Zabel* for respondent. Reported below: 84 F. (2d) 490.

---

No. 518. SOUTH ATLANTIC STEAMSHIP CO. *v.* MUNK-ACSY. December 7, 1936. Petition for writ of certiorari to the Supreme Court of Delaware denied. *Messrs. Clarence A. Southerland, T. M. Cunningham, and A. R. Lawton, Jr.*, for petitioner. *Mr. Simone N. Gazan* for respondent. Reported below: 37 Del. —; 187 Atl. 600.

---

No. 546. NORTHROP ET AL. *v.* BEALE ET AL. See *ante*, p. 516.

No. 551. JACKSON *v.* FULLER ET AL. December 14, 1936. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia, and motion for leave to proceed further *in forma pauperis*, denied. *Mary E. Jackson, pro se.* No appearance for respondents. Reported below: 66 App. D. C. 239; 85 F. (2d) 816.

---

No. 553. VAN DYKE *v.* MICHIGAN. December 14, 1936. Petition for writ of certiorari to the Supreme Court of Michigan, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Otto Van Dyke, pro se.* No appearance for respondent. Reported below: 276 Mich. 32; 267 N. W. 778.

---

No. 507. KESTER, TRUSTEE IN BANKRUPTCY, *v.* ADAMS, ADMINISTRATRIX. December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Orr Chapman* for petitioner. *Mr. Harry Benoit* for respondent. Reported below: 85 F. (2d) 646.

---

No. 509. MAGNOLIA PETROLEUM Co. *v.* BLANKENSHIP ET AL. December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Messrs. George E. Elliott and Dan Moody* for petitioner. *Messrs. William McCraw, John B. Dudley, and W. Edward Lee* for respondents. Reported below: 85 F. (2d) 553.

---

No. 512. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* EAST COAST OIL Co., S. A. December 14, 1936. Petition for writ of certiorari to the Circuit Court

299 U. S.

Decisions Denying Certiorari.

of Appeals for the Fifth Circuit denied. *Solicitor General Reed* for petitioner. *Messrs. Ben C. Dey, George L. Buland, and Charles L. Minor* for respondent. Reported below: 85 F. (2d) 322.

---

No. 513. *MAGILL ET AL. v. STARKEY, TRUSTEE*. December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Victor House* for petitioners. *Mr. Walter T. Stern* for respondent. Reported below: 85 F. (2d) 519.

---

No. 521. *MOORE, ADMINISTRATOR, v. OCEAN ACCIDENT & GUARANTEE CORP., LTD.* December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Roger D. Moore, pro se. Mr. Joseph N. Hassett* for respondent. Reported below: 85 F. (2d) 369.

---

No. 529. *LANZA v. UNITED STATES*. December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Julius I. Puente* for petitioner. *Solicitor General Reed, Assistant Attorney General Dickinson, and Mr. Wendell Berge* for the United States. Reported below: 85 F. (2d) 544.

---

No. 538. *SHEERAN, RECEIVER, ET AL. v. NEW YORK CITY*. December 14, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Boykin C. Wright and James A. Fowler, Jr.*, for petitioners. *Mr. Paul Windels* for respondent. Reported below: 85 F. (2d) 531.

---

No. 541. *TETZKE v. TRUST No. 2988*. December 14, 1936. Petition for writ of certiorari to the Circuit Court

of Appeals for the Seventh Circuit denied. *Mr. Meyer Abrams* for petitioner. *Messrs. Benjamin V. Becker* and *Max Swiren* for respondent. Reported below: 85 F. (2d) 942.

---

No. 543. MISSISSIPPI CENTRAL R. CO. ET AL. *v.* SMITH. See *ante*, p. 518.

---

No. 560. McCARTHY *v.* ZERBST, WARDEN. December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. James McCarthy, pro se.* No appearance for respondents. Reported below: 85 F. (2d) 640.

---

No. 519. KANSAS CITY BOARD OF TRADE ET AL. *v.* MILLIGAN, U. S. ATTORNEY, ET AL. December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. E. R. Morrison* for petitioners. *Solicitor General Reed, Assistant Attorney General Dickinson*, and *Mr. Wendell Berge* for respondent.

---

No. 520. GUARDIAN TRUST CO. ET AL. *v.* JEFFERSON LAKE OIL Co., INC. December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit denied. *Mr. W. D. Gordon* for petitioners. *Mr. E. Howard McCaleb* for respondent. Reported below: 85 F. (2d) 465.

---

No. 535. VICTOR GASOLINE Co. *v.* SHELL PETROLEUM CORP. December 21, 1936. Petition for writ of certiorari to the Circuit Court of Appeals for the Tenth Cir-

299 U. S.

Decisions Denying Certiorari.

cuit denied. *Mr. Edgar B. Tolman* for petitioner. *Messrs. Guy A. Thompson* and *Truman Post Young* for respondent. Reported below: 84 F. (2d) 676.

---

No. 537. *TINKOFF v. CHICAGO TITLE & TRUST Co. ET AL.* January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Paysoff Tinkoff* for petitioner. No appearance for respondents. Reported below: 85 F. (2d) 305.

---

No. 585. *JONES v. ADERHOLD, WARDEN.* January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Joseph E. Jones, pro se.* No appearance for respondent. Reported below: 85 F. (2d) 1015.

---

No. 586. *ALEX WOLPA v. UNITED STATES; and*

No. 587. *JULIUS J. WOLPA v. UNITED STATES.* January 4, 1937. Petition for writs of certiorari to the Circuit Court of Appeals for the Eighth Circuit, and motions for leave to proceed further *in forma pauperis*, denied. *Mr. Eugene D. O'Sullivan* for petitioners. No appearance for respondents. Reported below: 86 F. (2d) 35.

---

Nos. 594 and 595. *ST. CHARLES v. UNITED STATES.* January 4, 1937. Petition for writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit, and motions for leave to proceed further *in forma pauperis*, denied. *Mr. James E. Fenton* for petitioner. No ap-

pearance for the United States. Reported below: 86 F. (2d) 463.

---

No. 609. *SCATA v. NEW YORK*. January 4, 1937. Petition for writ of certiorari to the Court of Appeals of New York, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Jacob W. Friedman* for petitioner. No appearance for respondent. Reported below: 272 N. Y. 602; 5 N. E. (2d) 352.

---

No. 533. *MILLER v. UNION BANK & TRUST CO. ET AL.* January 4, 1937. Petition for writ of certiorari to the Supreme Court of California denied. *Messrs. C. A. A. McGee, Donald C. Beelar, and W. Jefferson Davis* for petitioner. *Mr. Irving M. Walker* for respondents. Reported below: 7 Cal. (2d) 31; 59 P. (2d) 1024.

---

No. 540. *SPERRY FLOUR CO. v. COASTWISE STEAMSHIP & BARGE CO., INC. ET AL.* January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Messrs. S. Hasket Derby and Joseph C. Sharp* for petitioner. *Messrs. Cassius E. Gates and Edward G. Dobrin* for respondents. Reported below: 84 F. (2d) 785.

---

No. 542. *FIDELITY & CASUALTY CO. v. CITIZENS NATIONAL BANK ET AL.* January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. Robert R. Williams* for petitioner. *Mr. John F. Anderson* for respondents. Reported below: 86 F. (2d) 4.

299 U.S.

Decisions Denying Certiorari.

No. 548. HAZEN ET AL. *v.* HAWLEY. January 4, 1937. Petition for writ of certiorari to the United States Court of Appeals for the District of Columbia denied. *Messrs. Elwood H. Seal, Vernon E. West, and Raymond Sparks* for petitioners. *Messrs. Walter Schaffner and Myron Melvin Cohen* for respondent. Reported below: 66 App. D. C. 266; 86 F. (2d) 217.

---

No. 545. RINDGE LAND & NAVIGATION CO. ET AL. *v.* SECURITY-FIRST NATIONAL BANK, TRUSTEE, ET AL. January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Messrs. William A. Bockel, Sterling Carr, and John W. Preston* for petitioners. *Messrs. Garret W. McEnerney, William H. Orrick, Gurney E. Newlin, and A. W. Ashburn* for respondents. Reported below: 85 F. (2d) 557.

---

No. 547. SPECIAL SITE SIGN Co. *v.* FOSTER & KLEISER Co. January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. Ernest Clewe* for petitioner. *Messrs. Herbert W. Clark and Norman S. Sterry* for respondent. Reported below: 85 F. (2d) 742.

---

No. 550. JACOBY ET AL. *v.* HOEY, COLLECTOR OF INTERNAL REVENUE. January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Messrs. Lewis Landes and J. Bruce Kremer* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahan, and Mr. Mahlon D. Kiefer* for respondent. Reported below: 86 F. (2d) 108.

No. 555. NEW YORK LIFE INSURANCE CO. *v.* WOLF ET AL. January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Messrs. John H. Voorhees and Theodore M. Bailey* for petitioner. No appearance for respondents. Reported below: 85 F. (2d) 162.

---

No. 557. QUINTAL ET AL. *v.* BRODERICK, SUPERINTENDENT OF BANKS. January 4, 1937. Petition for writ of certiorari to the Supreme Court of New York denied. *Messrs. Walter Gordon Merritt and John W. Simpson, 2d,* for petitioners. *Messrs. Carl J. Austrian and Arthur Ofner* for respondent. Reported below: 271 N. Y. 660; 199 N. E. 679.

---

No. 567. DAVIS *v.* BOSTON & MAINE RAILROAD ET AL. January 4, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the First Circuit denied. *Messrs. Edward F. McCledden and Jacob J. Kaplan* for petitioner. *Solicitor General Reed* for respondents. Reported below: 89 F. (2d) 368.

---

No. 572. CONTINENTAL MILLS, INC. *v.* UNITED STATES. January 4, 1937. Petition for writ of certiorari to the Court of Claims denied. *Messrs. Kingman Brewster, O. R. Folsom-Jones, and A. H. Conner* for petitioner. *Solicitor General Reed* for the United States. Reported below: 84 Ct. Cls. —; 17 F. Supp. 138.

---

No. 243. FLORIDA EX REL. JONES *v.* MAYO, STATE PRISON CUSTODIAN, ET AL. January 11, 1937. Petition for writ of certiorari to the Supreme Court of Florida, and motion for leave to proceed further *in forma pauperis*, denied. *Mr. Michael C. Jones, pro se.* No appearance for respondents. Reported below: 126 Fla. 523; 171 So. 312.

299 U. S.

Decisions Denying Certiorari.

No. 379. *PELKES ET AL. v. MASON ET AL.* January 11, 1937. Petition for writ of certiorari to the Supreme Court of Idaho denied. *Mr. Webster Ballinger* for petitioners. *Mr. John P. Gray* for respondents. Reported below: 57 Idaho —; 59 P. (2d) 1087.

---

No. 554. *OGILVIE v. DEXTER HORTON ESTATE ET AL.* January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit denied. *Mr. John P. Matsen* for petitioner. *Messrs. Robert H. Evans, Norman M. Littell, Bruce Shorts, and C. H. Hartson* for respondents. Reported below: 86 F. (2d) 282.

---

No. 565. *BATEMAN, TRUSTEE IN BANKRUPTCY, v. IDEAL BUILDING & LOAN ASSN.* January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Third Circuit denied. *Mr. Robert T. McCracken* for petitioner. *Mr. M. Jacob Markmann* for respondent. Reported below: 85 F. (2d) 961.

---

No. 582. *GAGE ET AL. v. BRUSSELBACK ET AL.* January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit denied. *Mr. James G. Condon* for petitioners. *Mr. J. Arthur Miller* for respondents. Reported below: 85 F. (2d) 617.

---

No. 556. *SCHEIBLE ET AL. v. UNITED STATES.* January 11, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit denied. *Mr. Sanford H. Cohen* for petitioners. *Solicitor General Reed, Assistant Attorney General McMahon, and Mr. Wm. W. Barron* for the United States. Reported below: 86 F. (2d) 1019.

Cases Disposed of Without Consideration by the Court. 299 U. S.

No. 628. FREEMAN *v.* UNITED STATES. January 18, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit, and motion for leave to proceed further *in forma pauperis*, denied. Messrs. *Jeptha Stephen Freeman* and *J. Frank Kemp* for petitioner. No appearance for the United States. Reported below: 86 F. (2d) 243.

---

No. 569. S. H. KRESS & Co. *v.* REAVES. January 18, 1937. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied. *Mr. William M. Hendren* for petitioner. Messrs. *Julius C. Smith* and *C. R. Wharton* for respondent. Reported below: 85 F. (2d) 915.

---

No. 571. SERVILLI *v.* ILLINOIS. January 18, 1937. Petition for writ of certiorari to the Supreme Court of Illinois denied. *Mr. Richard E. Westbrooks* for petitioner. No appearance for respondent. Reported below: 364 Ill. 190; 4 N. E. (2d) 92.

---

CASES DISPOSED OF WITHOUT CONSIDERATION BY THE COURT, THROUGH JANUARY 31, 1937.

No. 167. ROBINSON ET AL. *v.* WILSON, TRUSTEE IN BANKRUPTCY. On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. August 12, 1936. Dismissed per stipulation of counsel. *Mr. Joseph G. M. Browne* for petitioners. *Mr. Louis P. Rosenberg* for respondent. Reported below: 83 F. (2d) 397.

299 U. S. Cases Disposed of Without Consideration by the Court.

No. 143. *IGOE BROTHERS, INC. v. WICKWIRE SPENCER STEEL CO. ET AL.* On petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit. September 2, 1936. Dismissed per stipulation of counsel. *Mr. Charles A. Roberts* for petitioner. *Messrs. David M. Palley, Ray Rood Allen, Malcolm Donald, and Jacob J. Lesser* for respondents.

---

No. 193. *TROLLINGER, ADMINISTRATRIX, ET AL. v. UNITED STATES.* On petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit. September 12, 1936. Dismissed per stipulation of counsel. *Mr. Warren E. Miller* for petitioners. *Solicitor General Reed* for the United States. Reported below: 81 F. (2d) 167.

---

No. 402. *BLACKMORE ET AL. v. PUBLIC SERVICE COMMISSION OF PENNSYLVANIA ET AL.* Appeal from the District Court of the United States for the Middle District of Pennsylvania. September 26, 1936. Docketed and dismissed on motion of *Mr. Richard J. Beamish* for appellees. Reported below: 12 F. Supp. 751.

---

No. 16. *LOPORTO ET AL. v. DRUISS COMPANY, INC.* Appeal from the Supreme Court of New York. October 20, 1936. Dismissed per stipulation of counsel. *Messrs. Henry Sillcocks, Samuel Rothstein, and Harold Korzenik* for petitioners. *Mr. Ethelbert Warfield* for appellee. Reported below: 268 N. Y. 699, 198 N. E. 565; 269 N. Y. 677, 200 N. E. 54.

---

No. 43. *FARREN, EXECUTRIX, v. COMMISSIONER OF INTERNAL REVENUE; and*

No. 44. *McCrary v. SAME.* On writs of certiorari to the Circuit Court of Appeals for the Tenth Circuit.

Rehearings Denied.

299 U. S.

October 26, 1936. Dismissed per stipulation of counsel. *Messrs. Charles H. Garnett, James H. Maxey, William J. Holleman, and Nathan A. Gibson* for petitioners. *Solicitor General Reed, Assistant Attorney General Jackson, and Mr. Sewall Key* for respondent. Reported below: 82 F. (2d) 141.

---

No. 413. GRAND RAPIDS TRUST CO., RECEIVER, *v.* UNITED LIGHT & POWER CO. On writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit. December 21, 1936. Dismissed per stipulation of counsel. *Messrs. Stuart E. Knappen and Malcolm Donald* for petitioner. *Messrs. William P. Sidley and Kenneth F. Burgess* for respondent. Reported below: 85 F. (2d) 331.

---

No. 584. CITY BUS CO. *v.* MISSISSIPPI. See *ante*, p. 520.

---

PETITIONS FOR REHEARING GRANTED FROM  
OCTOBER 5, 1936, THROUGH JANUARY 31, 1937.

No. 347. NEW YORK CITY *v.* GOLDSTEIN, TRUSTEE IN  
BANKRUPTCY. See *ante*, p. 522.

---

PETITIONS FOR REHEARING DENIED, FROM  
OCTOBER 5, 1936, THROUGH JANUARY 31, 1937.\*

No. —, original (October Term, 1935). ARIZONA *v.*  
CALIFORNIA ET AL. October 12, 1936. 298 U. S. 558.

---

\* See Table of Cases Reported in this volume for earlier decisions in these cases, unless otherwise indicated.

299 U. S.

Rehearings Denied.

No. 663 (October Term, 1935). WHEELING STEEL CORP. *v.* FOX, TAX COMMISSIONER, ET AL. October 12, 1936. 298 U. S. 193.

---

No. 772 (October Term, 1935). MORF *v.* BINGAMAN, COMMISSIONER. October 12, 1936. 298 U. S. 407.

---

No. 898 (October Term, 1935). U. S. FIDELITY & GUARANTY Co. *v.* BINGAMAN, COMMISSIONER. October 12, 1936. 298 U. S. 407.

---

No. 838 (October Term, 1935). MOREHEAD, WARDEN, *v.* NEW YORK EX REL. TIPALDO. October 12, 1936. 298 U. S. 587.

---

No. 859 (October Term, 1935). ASHTON ET AL. *v.* CAMERON COUNTY WATER IMPROVEMENT DISTRICT No. 1. October 12, 1936. 298 U. S. 513.

---

No. 977 (October Term, 1935). SILK CENTER BUILDING, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. October 12, 1936. 298 U. S. 683.

---

No. 991 (October Term, 1935). PIPER ET AL. *v.* BINGAMAN, COMMISSIONER. October 12, 1936. 298 U. S. 643.

---

No. 1004 (October Term, 1935). BEALE ET AL. *v.* SNEAD, REFEREE IN BANKRUPTCY. October 12, 1936. 298 U. S. 685.

Rehearings Denied.

299 U. S.

No. 1043 (October Term, 1935). *CRAIG v. UNITED STATES*. October 12, 1936. 298 U. S. 690.

---

No. 1044 (October Term, 1935). *WEINBLATT v. UNITED STATES*. October 12, 1936. 298 U. S. 690.

---

No. 1046 (October Term, 1935). *J. V. LANE & Co., INC. v. THE CALIFORNIAN*. October 12, 1936. 298 U. S. 690.

---

No. 1049 (October Term, 1935). *MOZINGO v. MARION STEAM SHOVEL CO.* October 12, 1936. 298 U. S. 645.

---

No. 1051 (October Term, 1935). *DEBENQUE v. UNITED STATES*. October 12, 1936. 298 U. S. 681.

---

No. 93. *ALEOGRAPH COMPANY v. ELECTRICAL RESEARCH PRODUCTS, INC. ET AL.* October 26, 1936.

---

No. 47. *MARRET, ADMINISTRATOR, ET AL. v. UNITED STATES*. November 9, 1936.

---

No. 56. *PEERLESS OIL & GAS CO. v. HEINER, COLLECTOR OF INTERNAL REVENUE*. November 9, 1936.

---

No. 60. *BARNETT ET AL. v. UNITED STATES*. November 9, 1936.

---

No. 67. *CENTRAL FIBRE PRODUCTS CO. ET AL. v. HARDIN ET AL.* November 9, 1936.

299 U. S.

Rehearings Denied.

No. 83. BALLF *v.* KRANZ. November 9, 1936.

---

No. 159. WEISMAN *v.* UNITED STATES. November 9, 1936.

---

No. 210. ENGBRETSON, TRUSTEE, *v.* MARCELL ET AL. November 9, 1936.

---

No. 236. MASSMAN CONSTRUCTION CO. *v.* NELSON. November 9, 1936.

---

Nos. 238, 239, and 240. COLUMBIA CASUALTY Co. *v.* INDUSTRIAL ACCIDENT COMM'N ET AL. November 9, 1936.

---

No. 244. UNJIENG *v.* PHILIPPINE ISLANDS. November 9, 1936.

---

No. 269. LAVELY *v.* YOUNG WOMEN'S CHRISTIAN ASSOCIATION ET AL. November 9, 1936.

---

No. 273. SUISMAN *v.* HARTFORD-CONNECTICUT TRUST Co., EXECUTOR. November 9, 1936.

---

No. 417. EISENHARDT *v.* LOUISIANA. November 9, 1936.

---

No. 109. TIMMONS ET AL *v.* SECURITY SAVINGS BANK. November 16, 1936.

Rehearings Denied.

299 U. S.

No. 131. DENSON ET AL. *v.* PROVIDENT MUTUAL LIFE INSURANCE Co. November 16, 1936.

---

No. 141. HOEPEL ET AL. *v.* UNITED STATES. November 16, 1936.

---

No. 339. KRISE, RECEIVER, *v.* UNITED STATES. November 16, 1936.

---

No. 12. PICK MANUFACTURING Co. *v.* GENERAL MOTORS CORP. ET AL. November 23, 1936.

---

No. 353. TORINUS *v.* JOHNSON, AUDITOR, ET AL. November 23, 1936.

---

No. 434. ABEL ET AL. *v.* KENNEDY ET AL. November 23, 1936.

---

No. 202 (October Term, 1935). STONE ET AL. *v.* WHITE. December 7, 1936. 296 U. S. 550, 596.

---

No. 27. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* ILLINOIS LIFE INSURANCE Co. December 7, 1936.

---

No. 2. BOURDIEU *v.* PACIFIC WESTERN OIL Co. ET AL. December 7, 1936.

---

No. 10. BARWISE ET AL. *v.* SHEPPARD, COMPTROLLER OF TEXAS, ET AL. December 7, 1936.

299 U.S.

Rehearings Denied.

No. 11. CHISHOLM ET AL. *v.* GILMER, RECEIVER.  
December 7, 1936.

---

No. 22. STATE BOARD OF EQUALIZATION ET AL. *v.*  
YOUNG'S MARKET CO. ET AL. December 7, 1936.

---

No. 271. IN THE MATTER OF 620 CHURCH STREET  
BUILDING CORP. ET AL. December 7, 1936.

---

No. 384. S. H. KRESS & Co. ET AL. *v.* JOHNSON, GOV-  
ERNOR. December 7, 1936.

---

No. 386. WOOD *v.* UNITED STATES. December 7, 1936.

---

No. 425. BASSICK *v.* COMMISSIONER. December 7,  
1936.

---

No. 426. PERKINS *v.* COMMISSIONER OF INTERNAL  
REVENUE. December 7, 1936.

---

No. 105. MURPHY *v.* MURPHY ET AL. December 14,  
1936.

---

No. 424. ARMAND COMPANY, INC. *v.* FEDERAL TRADE  
COMM'N. December 14, 1936.

---

No. 445. FLANIGAN *v.* DITTO, INC. December 14,  
1936.

Rehearings Denied.

299 U. S.

No. 459. BRENNAN, ADMINISTRATRIX, ET AL. *v.* SABINE TOWING Co., INC. ET AL. December 14, 1936.

---

No. 511. SANACORY *v.* NEW YORK. December 21, 1936.

---

No. 37. BRITISH-AMERICAN OIL PRODUCING Co. *v.* BOARD OF EQUALIZATION ET AL. January 4, 1937.

---

No. 515. LAVERS *v.* SUPREME COURT OF CALIFORNIA. January 4, 1937.

---

No. 34. UNITED STATES *v.* WOOD. January 11, 1937.

---

No. 509. MAGNOLIA PETROLEUM Co. *v.* BLANKENSHIP ET AL. January 11, 1937.

---

No. 546. NORTHROP ET AL. *v.* BEALE ET AL. January 11, 1937.

---

No. 553. VAN DYKE *v.* MICHIGAN. January 11, 1937.

---

No. 151. MEADOWS *v.* IRVING TRUST Co., TRUSTEE, ET AL. January 18, 1937.

## AMENDMENT OF RULES.

### ORDER.

It is ordered that paragraph 6 of Rule 32 of the Rules of this Court be, and it is hereby, amended, effective November 2, 1936, by adding thereto the following provision:

For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the Rules, or at the request of counsel when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, five dollars for each such petition, brief, jurisdictional statement or motion. Neither the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case.

OCTOBER 19, 1936.

625

AMENDMENT TO TABLE OF FEES OF COURT OF  
CUSTOMS AND PATENT APPEALS.

ORDER.

In pursuance of section 29 of the amendments enacted by section 28 of the act of Congress approved August 5, 1909 (c. 6, sec. 28, 36 Stat. 11, 91, 105)—

It is now here ordered by this Court that the amendment to the revised table of fees of the United States Court of Customs and Patent Appeals adopted October 19, 1936, be, and the same is hereby, adopted and approved, viz:

Amend Rule V by changing the language of subdivision 5 so that the same shall read: For filing and docketing each patent appeal, \$12, this fee to be in full of all fees in the case, except the charge for preparing and supervising the printing of the record: *Provided*, That when an appeal is taken by or on behalf of the United States, no payment of fees shall be required.

NOVEMBER 9, 1936.

## AMENDMENT OF RULES.

### ORDER.

It is ordered that Rule 2 of the Rules of this Court be, and it is hereby, amended, effective February 1, 1937, so as to read as follows:

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, or Insular Possession, and that their private and professional characters shall appear to be good.

2. Not less than two weeks in advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, (2) his personal statement under oath setting out the date and place of his birth, the names of his parents, his place of residence and office address, the courts of last resort to which he has been admitted, the places where he has been a practitioner, and, if he is not a native-born citizen, the date and place of his naturalization, and information respecting any reprimand of any court pertaining to his conduct or fitness as a member of the bar, and (3) two letters or signed statements of members of the bar of this court, not related to the applicant, who are resident practitioners within the State, Territory, District, or Insular Possession (to which the application refers as provided in paragraph 1 of this rule) stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his personal statement and that they affirm that his personal and professional character and standing are good.

3. Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he has examined the credentials of the applicant filed in the office of the clerk in accordance with the foregoing requirement and that he is satisfied that the applicant possesses the necessary qualifications.

DECEMBER 7, 1936.

## INDEX

---

**ACCOUNTS.** See Telephone Companies.

**ADMINISTRATION OF ESTATES.** See Executors and Administrators.

**ADMINISTRATIVE ORDERS.** See Court of Claims; Evidence, 9; Extradition; Indians, 7; Interstate Commerce Acts, 3; Proclamations; Public Officers; Telephone Companies.

1. Administrative construction of order. *A. T. & T. Co. v. U. S.*, 232.

2. Weight of administrative construction. *Brown Lumber Co. v. L. & N. R. Co.*, 393; *N. Y. ex rel. Rogers v. Graves*, 401.

3. Findings of jurisdictional facts. *U. S. v. Curtiss-Wright Corp.*, 304.

4. Scope of Review. *A. T. & T. Co. v. U. S.*, 232.

### **ADMIRALTY.**

*Maritime Law. Uniformity.* Application of state workmen's compensation act; non-maritime contract. *Carlin Construction Co. v. Heaney*, 41.

### **ADMISSION TO BAR.**

Amendment of Rules of this Court, p. 627.

**AGENCY.** See Antitrust Acts, 1; Public Officers.

### **ANTITRUST ACTS.**

As to validity of state Fair Trade Acts, see *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

1. *Violations.* Contract between automobile manufacturer and dealer relating to sale and use of parts as violation of Clayton Act. *Pick Mfg. Co. v. General Motors Corp.*, 3.

2. *Id.* Sufficiency of evidence; misinterpretation of former opinion. *Prairie Farmer Co. v. Indiana Farmer's Guide Co.*, 156.

### **APPEARANCE.**

*General Appearance.* Effect of obtaining removal of cause to federal court. *Employers Corp. v. Bryant*, 374.

**APPROPRIATIONS.**

1. Appropriation bill and "item of appropriation bill" defined. *Bengzon v. Secretary of Justice*, 410.
2. Construction of Indian Appropriation Acts. *U. S. v. Seminole Nation*, 417.

**ASSIGNMENT.** See **Bankruptcy**, 10.

**ASSOCIATIONS.**

See *McKee v. Paradise*, 120.

**ATTORNEYS.**

Amendment of Rules relating to admission to bar of this Court, p. 627.

**ATTORNEY'S FEES.**

Right to, as question of state practice. *Kammerer v. Kroeger*, 302.

**AVULSION.**

Effect on boundary and private ownership. *Shapleigh v. Mier*, 468.

**BANKRUPTCY.**

1. *Jurisdiction.* Power to enjoin suit under § 33 of Merchant Marine Act against corporation in reorganization proceeding. *Foust v. Munson S. S. Lines*, 77.

2. *Reorganization Proceedings.* Validity of § 77B. *Kuehner v. Irving Trust Co.*, 445.

3. *Id.* Purpose and effect of § 77B. *City Bank Co. v. Irving Trust Co.*, 433.

4. *Id.* "Adequate protection" of claims. *In re 620 Church St. Corp.*, 24.

5. *Id. Provable Debts.* Claim against steamship corporation under § 33 of Merchant Marine Act. *Foust v. Munson S. S. Lines*, 77.

6. *Id. Leases.* Claim of landlord upon rejected lease; lessor as "person injured." *City Bank Co. v. Irving Trust Co.*, 433.

7. *Id.* Effect of termination of leasehold. *City Bank Co. v. Irving Trust Co.*, 433; *Schwartz v. Irving Trust Co.*, 456.

8. *Id.* Limit of amount allowable upon landlords' claims. *Kuehner v. Irving Trust Co.*, 445.

9. *Id.* Release by landlord as affecting right to reassert claim in § 77B proceeding; effect of reservation in release. *Schwartz v. Irving Trust Co.*, 456; *Meadows v. Irving Trust Co.*, 464.

**BANKRUPTCY**—Continued.

10. *Id.* Where landlord's assignment of lease to new tenant terminated all liability of lessee, claim in § 77B proceeding was barred. *Meadows v. Irving Trust Co.*, 464.
11. *Priority of Claims.* Constructive trust. *McKee v. Paradise*, 119.
12. *Id.* Rank of claims of State and municipality for taxes. *Missouri v. Ross*, 72.
13. *Procedure.* Dismissal of reorganization petition; discretion of court. *Tennessee Publishing Co. v. American Bank*, 18.
14. *Id.* Appeal from order confirming plan of reorganization. *In re 620 Church St. Corp.*, 24.

**BANKS.**

1. *Suit by State Tax Collector Against National Bank* as one not arising under Constitution and laws of the United States. See *Gully v. First Nat. Bank*, 109.
2. *Stockholder's Liability.* Liability of estate of deceased stockholder of national bank; enforcement of assessment; priority of claim; remedy as affected by local law. *Pufahl v. Estate of Parks*, 217.
3. *Insolvency. Preferences.* Liability of director. *Mechanics Co. v. Culhane*, 51.
4. *Id.* Deposits as trust funds; evidence of insolvency. *Id.*

**BLACKFEET INDIANS.** See **Indians**, 1, 3, 5.

**BOUNDARIES.**

See *Shapleigh v. Mier*, 468.

**BROADCASTING.** See **Jurisdiction**, I, 7.

**BROKERS.** See **Taxation**, I, 3-4.

**BUSINESS SITUS.** See **Taxation**, II, 3.

**CANAL ZONE.**

*Panama Railroad Company* as federal instrumentality. *N. Y. ex rel. Rogers v. Graves*, 401.

**CARMACK AMENDMENT.** See **Interstate Commerce Acts**, 4.

**CARRIERS.**

*Liability to Shipper.* Amount of damages recoverable limited by Carmack Amendment. *Southeastern Express Co. v. Pastime Co.*, 28.

**CHACO.**

Ban on munitions. See *U. S. v. Curtiss-Wright Corp.*, 304.

**CHAIN STORES.** See **Constitutional Law**, VI, (C), 4.

**CITIZENS.** See **Extradition**.

**CLAIMS.**

1. *Claims of Seminole Nation.* Recovery of tribal funds spent unlawfully by Government; limitations of jurisdictional act; effect of amended petition; what claims recoverable; Act of May 20, 1924. *U. S. v. Seminole Nation*, 417.

2. Right of Shoshones to compensation for taking of tribal lands; measure of damages; interest. *Shoshone Tribe v. U. S.*, 476.

**CLAYTON ACT.** See **Antitrust Acts**, 1.

**COAL.** See **Weights and Measures**, 1.

**COMBINATION RULE.**

Construction and application of "combination rule" in railroad freight tariffs. *Brown Lumber Co. v. L. & N. R. Co.*, 393.

**COMMON LAW.**

1. Servant of king as juror in crown cases. *U. S. v. Wood*, 123.

2. Evidence of common law rule. *Id.*

**COMMUNICATIONS ACT.** See **Telephone Companies**.

**COMMUNISM.** See **Constitutional law**, VI, (B), 4.

**CONFLICT OF LAWS.** See **Banks**, 2; **Constitutional Law**, I, 12; **Insurance**, 1.

See *Shapleigh v. Mier*, 468.

**CONFORMITY ACT.** See **Rules**, 3.

How suit shall be instituted, whether by writ or informal notice, is question to which Conformity Act applies. *Chisholm v. Gilmer*, 99.

**CONSTITUTIONAL LAW.** See **Claims**, 2; **Corporations**; **Removal**, 1; **Statutes**, 2-4.

I. In General, p. 633.

II. Commerce Clause, p. 633.

III. Contract Clause, p. 634.

IV. Fifth Amendment, p. 634.

V. Sixth Amendment, p. 635.

VI. Fourteenth Amendment.

(A) In General, p. 635.

(B) Due Process Clause, p. 635.

(C) Equal Protection Clause, p. 636.

VII. Twenty-First Amendment, p. 636.

## CONSTITUTIONAL LAW—Continued.

## I. In General.

1. *Construction of Constitution.* Court should not anticipate decision of constitutional question. *Tennessee Publishing Co. v. American Bank*, 18.

2. *Id.* Weight of long and uniform legislative practice. *U. S. v. Curtiss-Wright Corp.*, 304.

3. *Attacking Constitutionality.* Complainant must show injury. *In re 620 Church St. Corp.*, 24.

4. *Foreign Relations. Federal Power. President. Delegation of Power* by Congress to President to prohibit sale of arms and munitions of war to countries engaged in armed conflict in the Chaco. *U. S. v. Curtiss-Wright Corp.*, 304.

5. *Id.* Differences in powers of Federal Government in respect to foreign and domestic affairs. *Id.*

6. *International Extradition. Executive Power. Citizens. Valentine v. U. S. ex rel. Neidecker*, 5.

7. *Federal Instrumentality. State Taxation.* Salary of general counsel of Panama Railroad Company exempt from state income tax. *New York ex rel. Rogers v. Graves*, 401.

8. *State Instrumentality. Federal Taxation.* Tobacco purchased by State for hospital, not immune from tax under § 401 of 1926 Act. *Liggett & Myers Co. v. U. S.*, 383.

9. *Convict-Made Goods.* Federal Act forbidding transportation into State, contrary to policy of State, valid. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

10. *Bankruptcies.* Legislative powers of Congress. *Kuehner v. Irving Trust Co.*, 445.

11. *Silver Purchase Act.* Validity of tax imposed by. *U. S. v. Hudson*, 498.

12. *Full Faith and Credit. Public Acts.* Recognition of statutory substantive right of insurer in action on policy in other State. *John Hancock Ins. Co. v. Yates*, 178.

13. *Criminal Prosecutions. Impartial Trial.* Validity of Act qualifying government employees and pensioners for jury service in criminal cases in the District of Columbia. *U. S. v. Wood*, 123.

## II. Commerce Clause.

1. *Federal Regulation.* Power of Congress subject to no limitations other than are prescribed in the Constitution. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

**CONSTITUTIONAL LAW**—Continued.

2. *Id.* Act requiring that convict-made goods in interstate commerce be labeled, and forbidding transportation thereof into State, to be received, possessed, sold, or used in violation of its laws, valid. *Id.*

3. *Id.* *Panama Canal.* Construction, management and operation of Panama Canal as within power of Congress to regulate commerce. *N. Y. ex rel. Rogers v. Graves*, 401.

4. *State Taxation.* Validity of fee imposed by State for privilege of importing beer. *State Board v. Young's Market Co.*, 59.

**III. Contract Clause.**

1. *Subordination of Contracts to Taxing Power.* Lease requiring lessee to deliver to lessor "free of cost" percentage of oil produced, not impaired by production tax imposed in part on lessor. *Barwise v. Sheppard*, 33.

2. *Id.* Power of State not circumscribed by provisions of earlier tax law. *Id.*

3. *Massachusetts Succession Tax* on transfers made to take effect in possession and enjoyment after donor's death did not, as applied, violate contract clause. *Binney v. Long*, 280.

**IV. Fifth Amendment.**

1. *Criminal Prosecutions.* Act qualifying government employees as jurors in criminal cases in district of Columbia, valid. *U. S. v. Wood*, 123.

2. *Convict-Made Goods.* Act requiring labeling of convict-made goods and forbidding transportation thereof into State contrary to its policy, valid. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

3. *Telephone Companies.* Validity of order of Communications Commission prescribing uniform system of accounts for telephone companies. *A. T. & T. Co. v. U. S.*, 232.

4. *Silver Purchase Act*, imposing tax on profits from private dealing in silver bullion, valid; additional income tax; retroactive provision. *U. S. v. Hudson*, 498.

5. *Bankruptcy Laws. Validity. Contracts of Lease.* Limitation of amount allowable on landlords' claims under § 77B. *Kuehner v. Irving Trust Co.*, 445.

6. *Procedural Matters.* Requirements in respect of modes of procedure in civil causes at law; effect of Conformity Act. *Chisholm v. Gilmer*, 99.

## CONSTITUTIONAL LAW—Continued.

## V. Sixth Amendment.

1. *Criminal Prosecutions. Impartial Jury.* Qualification of employees and pensioners of United States as jurors in criminal cases. *U. S. v. Wood*, 123.

2. *Id.* Validity of Act qualifying government employees as jurors in criminal cases in District of Columbia. *Id.*

## VI. Fourteenth Amendment.

## (A) In General.

*Fair Trade Acts* of Illinois and California constitutional. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

## (B) Due Process Clause.

1. *Free Speech. Peaceable Assembly.* Rights of free speech and peaceable assembly are safeguarded against state interference by due process clause of Fourteenth Amendment. *De Jonge v. Oregon*, 353.

2. *Id.* That these rights are guaranteed specifically by the First Amendment against abridgment by Congress, does not exclude them from due process clause. *Id.*

3. *Id.* Legislature may protect against abuses of rights, but rights themselves must not be curtailed. *Id.*

4. *Id.* Conviction under state statute for participation in otherwise lawful public meeting, merely because held under auspices of Communist Party, invalid. *Id.*

5. *Regulations of Business. Fair Trade Acts* of Illinois and California, sanctioning price fixing in respect of identified goods by contract between the parties, valid. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

6. *Id. Weights and Measures.* Requirements as to weighing of commodities (coal, etc.) sold in load lots by weight. *Hauge v. Chicago*, 387.

7. *Taxation.* Tax on production of oil, apportioned between lessor and lessee according to their respective interests, valid. *Barwise v. Sheppard*, 33.

8. *Id. Intangibles. Business Situs.* New York tax on profit from sale by nonresident of right appurtenant to membership on New York Stock Exchange, valid. *N. Y. ex rel. Whitney v. Graves*, 366.

**CONSTITUTIONAL LAW**—Continued.

9. *Massachusetts Succession Tax*. Transfers made to take effect in possession or enjoyment after donor's death; trust antedating tax law; estates vesting upon death and theretofore contingent. *Binney v. Long*, 280.

10. *Id. Graduated Tax*. Aggregating interests passing upon death of decedent to same beneficiary. *Id.*

11. *Judicial Procedure*. Notice and hearing. *Chisholm v. Gilmer*, 99.

12. *Id.* State court not required to entertain on habeas corpus federal question which could have been raised in previous proceeding. *Woolsey v. Best*, 1.

## (C) Equal Protection Clause.

1. *Classification*. California law imposing \$500 fee for importing, and \$750 fee for manufacturing, beer, valid. *State Board v. Young's Market Co.*, 59.

2. *Nonresidents*. Validity of requirements of city ordinance as to weighing of commodities (coal, etc.) sold in load lots by weight. *Hauge v. Chicago*, 387.

3. *Fair Trade Acts* of Illinois and California, sanctioning price fixing in respect of "identified" goods, though inapplicable to "unidentified" goods, valid. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

4. *Chain Stores*. Iowa Chain Store Tax Act of 1935 unconstitutional. *Valentine v. Great A. & P. Tea Co.*, 32.

5. *Massachusetts Succession Tax*. Section 2 held repugnant to equal protection clause. *Binney v. Long*, 280.

**VII. Twenty-First Amendment.**

*License Fee* for privilege of importing beer from other States valid; not conditional on prohibition of manufacture within State. *State Board v. Young's Market Co.*, 59.

**CONTAINER ACT.** See **Weights and Measures**, 2.

**CONTEMPT.** See **Jurisdiction**, III, 1.

**CONTRACTS.** See **Admiralty**; **Antitrust Acts**, 1; **Constitutional Law**, III; **Insurance**, 1-3.

1. Subordination of contracts to taxing power. *Barwise v. Sheppard*, 33.

2. *Liability*. What law governs. *John Hancock Ins. Co. v. Yates*, 178.

**CONVICT-MADE GOODS.**

Power of Congress to prohibit movement in interstate commerce of goods made by convict labor. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

**CORPORATIONS.**

Federal Government may employ corporation as means to exercise substantive powers under Constitution. *N. Y. ex rel. Rogers v. Graves*, 401.

**COSTS.**

As question of state practice. See *Kammerer v. Kroeger*, 302.

**COURT OF CLAIMS.** See **Jurisdiction**, V.

1. *Findings*. Necessity of and sufficiency. *U. S. v. Esnault-Pelterie*, 201; *U. S. v. Seminole Nation*, 417.

2. Motion for new trial; Rule 91. *U. S. v. Seminole Nation*, 417.

**COURT OF CUSTOMS AND PATENT APPEALS.**

Amendment to revised table of fees, p. 626.

**CRIMINAL APPEALS ACT.** See **Jurisdiction**, II, 18.**CRIMINAL LAW.** See **Constitutional Law**, IV, 1; V, 1-2; VI, (B), 4; **Extradition**; **Statutes**, 16.**CRIMINAL SYNDICALISM.**

Law of Oregon, as applied, invalid. *De Jonge v. Oregon*, 353.

**DAMAGES.**

1. *Patents*. Liability for damages in the case of infringement. *U. S. v. Esnault-Pelterie*, 201.

2. *Amount Recoverable* by shipper from carrier for damages caused by delay in delivery limited by Carmack Amendment. *Southeastern Express Co. v. Pastime Co.*, 28.

3. *Interest*. Right to. *Shoshone Tribe v. U. S.*, 476.

4. *Measure of Damages*. *Id.*

**DEEDS.**

Application and validity of Massachusetts succession tax. *Binney v. Long*, 280.

**DELEGATION OF POWER.** See **Constitutional Law**, I, 4.**DESCENT AND DISTRIBUTION.** See **Indians**, 4.

Application and validity of Massachusetts succession tax. *Binney v. Long*, 280.

**DISMISSAL.** See Procedure, 4; Removal, 2.

**DISTRICT OF COLUMBIA.**

Qualification of government employees and pensioners as jurors in criminal cases. *U. S. v. Wood*, 123.

**EMINENT DOMAIN.**

1. Validity of expropriation decree under constitution and laws of Mexico. *Shapleigh v. Mier*, 468.

2. Right of Shoshone Tribe to compensation for division with other tribe of right of occupancy; measure of damages; right to interest. *Shoshone Tribe v. U. S.*, 476.

**EMPLOYER AND EMPLOYEE.** See Admiralty.

See *McKee v. Paradise*, 119.

**EQUITY.**

*Insufficiency of Bill* to state cause of action; disposition as affected by absence of necessary parties. *Bourdieu v. Pacific Oil Co.*, 65.

**ESCHEAT.**

Property of deceased member of national soldiers' home. *National Home v. Wood*, 211.

**ESTATES.** See *Binney v. Long*, 280.

**ESTOPPEL.**

Estoppel against carriers insisting on particular interpretation of rule employed in fixing rates. *Brown Lumber Co. v. L. & N. R. Co.*, 393.

**EVIDENCE.** See Antitrust Acts, 2; Jurisdiction, I, 5.

1. *Judicial Notice.* *Shapleigh v. Mier*, 468.

2. *Judicial Notice* of plight of landlords resulting from economic depression. *City Bank Co. v. Irving Trust Co.*, 433.

3. *Conclusive Presumption* of fraud in proof of loss under policy of fire insurance. *Soler & Co. v. United Ins. Co.*, 45.

4. *Ownership* of real property. *Shapleigh v. Mier*, 468.

5. *Insolvency.* *Mechanics Co. v. Culhane*, 51.

6. Laws of antecedent government. *Shapleigh v. Mier*, 468.

7. *Sufficiency of Evidence* to show one was officer of company rather than independent contractor. *N. Y. ex rel. Rogers v. Graves*, 401.

8. *Id.* To show existence of rule of common law. *U. S. v. Wood*, 123.

**EVIDENCE**—Continued.

9. *Id.* That order of Communications Commission requiring telephone companies to revise system of accounts was arbitrary, not supported by evidence. *A. T. & T. Co. v. U. S.*, 232.

10. *Id.* As to amount in controversy in suit in federal court. *KVOS v. Associated Press*, 269.

**EXECUTORS AND ADMINISTRATORS.** See **Banks**, 2; **Constitutional Law**, III, 3; VI, (B), 9-10; VI, (C), 5; **Taxation**, II, 7.

1. *Priority and Payment of Claims* against decedent's estate under law of Illinois. *Pufahl v. Estate of Parks*, 217.

2. *Distribution* of pension money of deceased member of National Home for Disabled Volunteer Soldiers. *National Home v. Wood*, 211.

**EXPROPRIATION.** See **Eminent Domain**.**EXTRADITION.**

*International Extradition. Nationals of Asylum State.* Power of Executive depends on treaty or Act of Congress; President without authority to surrender citizens under Treaty of 1909 with France; discretionary power not implied. *Valentine v. U. S. ex rel. Neidecker*, 5.

**FAIR TRADE ACTS.** See **Constitutional Law**, VI, (A).**FEDERAL INSTRUMENTALITY.** See **Constitutional Law**, I, 7.**FEDERAL QUESTION.** See **Jurisdiction**, II, 4-9.**FEES.**

1. Fees of Clerk of this Court. See Amendment of Rule 32, p. 625.

2. Of Court of Customs and Patent Appeals. See amendment of revised table of fees, p. 626.

**FINDINGS.** See **Jurisdiction**, II, 20-21.

1. Sufficiency of. See *U. S. v. Esnault-Pelterie*, 201.

2. Sufficiency of evidence to support findings. *Shapleigh v. Mier*, 468.

**FIRE INSURANCE.** See **Insurance**, 3.**FOREIGN LAW.** See *Shapleigh v. Mier*, 468.**FOREIGN RELATIONS.** See **Constitutional Law**, I, 4-5.**FRANCE.** See **Extradition**.

**FRAUD.** See *Banks*, 3-4; *Insurance*, 2-3; *Weights and Measures*, 1-2.

*Evidence. Conclusive Presumption. Soler & Co. v. United Ins. Co.*, 45.

**FREEDOM OF SPEECH.** See *Constitutional Law*, VI, (B), 1-4.

**FULL FAITH AND CREDIT.** See *Constitutional Law*, I, 12.

**GOOD WILL.**

Protection of. See *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183.

**GOVERNMENT EMPLOYEES.**

As jurors in criminal cases. *U. S. v. Wood*, 123.

**GOVERNOR GENERAL.** See *Philippine Islands*.

**GRADUATED TAX.**

See *Binney v. Long*, 280.

**HABEAS CORPUS.**

*Propriety and Occasion of issuance of writ. Woolsey v. Best*, 1.

**HOLDING COMPANY ACT.**

Stay of suit to restrain enforcement, pending decision in proceeding in other district court. *Landis v. North American Co.*, 248.

**HOSPITALS.**

*Query, whether State exerts governmental function in operating hospital. Liggett & Myers Co. v. U. S.*, 383.

**INDIANS.**

1. *Creation of Blackfeet Reservation* was by legislation and not by executive order. *British-American Oil Co. v. Board of Equalization*, 159.

2. *Lands. Compensation for Taking.* Division with other tribe of Shoshones' right of occupancy, as appropriation of lands; measure of damages. *Shoshone Tribe v. U. S.*, 476.

3. *Lands. Oil and Gas. Lease for mining purposes of lands occupied by Blackfeet Indians; application of statutory provisions; lease as authorized; lands "bought and paid for"; reserved oil and gas deposits as "unallotted lands."* *British American Oil Co. v. Board of Equalization*, 159.

4. *Descent of Allotted Lands of Seminole who died after selecting his allotment and before Oklahoma became a State. Cate v. Beasley*, 30.

**INDIANS**—Continued.

5. *Id.* *Taxation.* State tax on production of oil and gas under lease of lands of Blackfeet Indians; assent of Congress. *British-American Oil Co. v. Board of Equalization*, 159.
6. Recovery by Seminoles of funds unlawfully disbursed by Government. *U. S. v. Seminole Nation*, 417.
7. Payments to Seminoles under Indian Appropriation Acts. *Id.*

**INDICTMENT.**

Construction of indictment. *De Jonge v. Oregon*, 353.

**INFRINGEMENT.** See **Patents for Inventions**, 2.

**INJUNCTION.**

1. *Stay* of proceedings in one suit to abide decision in another. *Landis v. North American Co.*, 248.
2. *Stay*, under § 77B of Bankruptcy Act, of suit against debtor, as abuse of discretion. *Foust v. Munson S. S. Lines*, 77.

**INSOLVENCY.** See **Bankruptcy; Banks.**

Evidence. See *Mechanics Co. v. Culhane*, 51.

**INSTRUMENTALITIES OF GOVERNMENT.** See **Constitutional Law**, I, 7-8.

**INSURANCE.** See **Taxation**, I, 2.

1. *Rights of Insurer* in action on contract made in other State. *John Hancock Ins. Co. v. Yates*, 178.
2. *Defenses.* *Misrepresentation* in application for life insurance as defense to action on policy. *Id.*
3. *Fire Insurance.* *Defenses.* *Fraud* in proof of loss. *Soler & Co. v. United Ins. Co.*, 45.
4. *Unemployment Insurance.* See *W. H. H. Chamberlin, Inc. v. Andrews*, 515.

**INTANGIBLE PROPERTY.** See **Taxation**, II, 3.

**INTEREST.**

Right to interest upon award of damages. *Shoshone Tribe v. U. S.*, 476.

**INTERNATIONAL LAW.** See **Constitutional Law**, I, 4-6.

1. *Sovereignty* of the United States. See *U. S. v. Curtiss-Wright Corp.*, 304.
2. *Change of Sovereignty; Convention with Mexico.* Effect on private ownership of land. *Shapleigh v. Mier*, 468.
3. *Id.* Evidence as to law of antecedent government. *Id.*

**INTERSTATE COMMERCE ACTS.** See **Constitutional Law**, II, 1-4.

1. As to federal regulation of interstate commerce in aid of state policy, see *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

2. Act requiring convict-made goods in interstate commerce to be labeled, and forbidding transportation thereof into State contrary to policy of State, valid. *Id.*

3. Construction and application of "combination rule" in freight tariffs; conclusiveness of construction by Commission; reparation order as prerequisite to suit. *Brown Lumber Co. v. L. & N. R. Co.*, 393.

4. *Liability to Shipper.* Recovery from carrier for damages caused by delay in delivery limited by Carmack Amendment. *Southeastern Express Co. v. Pastime Co.*, 28.

**INTOXICATING LIQUORS.**

1. *Licenses.* Fee imposed by State for privilege of importing beer, valid; not conditional on prohibition of manufacture within State. *State Board v. Young's Market Co.*, 59.

2. *Willis-Campbell Act* reenacted statutes taxing wholesale liquor business and penalizing nonpayment. *Wainer v. U. S.*, 92.

3. *Offenses. Penalties.* One carrying on wholesale liquor business, though unlawfully, incurred penalty for failure to pay federal tax. *Id.*

**INVENTION.** See **Patents for Inventions.****INVENTORY.** See **Taxation**, I, 3.**JUDGMENTS.**

1. *Collateral Attack.* *Woolsey v. Best*, 1.

2. *Vacation of Judgment* on appeal. *Duke Power Co. v. Greenwood County*, 259.

3. Necessity of findings to support judgment of Court of Claims. *U. S. v. Seminole Nation*, 417.

**JUDICIAL NOTICE.** See **Evidence**, 1-2.**JURISDICTION.** See **Bankruptcy; Mandamus; Procedure; Removal; Stay.**

I. In General, p. 643.

II. Jurisdiction of this Court, p. 644.

III. Jurisdiction of Circuit Courts of Appeals, p. 645.

IV. Jurisdiction of District Court, p. 645.

V. Jurisdiction of Court of Claims, p. 646.

VI. Jurisdiction of State Courts, p. 646.

**JURISDICTION**—Continued.

References to particular subjects under title Jurisdiction: Administrative Officers, II, 19; Amendment of Petition, IV, 2; Amount in Controversy, I, 4-8; Certiorari, II, 12-16; Constitutional Questions, I, 1-13; Court of Claims, II, 21; V, 1-3; Criminal Appeals Act, II, 18; Dismissal, I, 4; II, 1, 7, 8, 10; IV, 4; Federal Question, II, 4-9; Final Judgment, II, 2; III, 1; Findings, II, 20-21; IV, 3; Habeas Corpus, II, 6; Injunction, I, 9; IV, 1-3; Jurisdictional Amount, I, 4-8; Mandamus, I, 10; III, 5; Moot Case, II, 3; Non-Federal Ground, II, 9; Parties, I, 11; Record, I, 12; Remand, I, 10; II, 5; III, 2, 5; Reorganization Proceedings, IV, 4; Rules, II, 10; Scope of Review, II, 15-19; Stay, I, 9; IV, 2; Stipulations, I, 12; Timeliness, II, 12-14; Vacatur, III, 4; Virginia Practice, IV, 5; Want of Jurisdiction, II, 1.

**I. In General.**

1. *Constitutional Questions*. Should not be decided upon records not necessarily presenting them. *Tennessee Pub. Co. v. American Nat. Bank*, 18.

2. *Id.* Suit as one arising under the Constitution and laws of the United States. *Gully v. First Nat. Bank*, 109.

3. *Id.* Case as one involving question not of constitutional right but of state practice and remedy. *Kammerer v. Kroeger*, 302.

4. *Amount in Controversy*. Dismissal for lack of requisite jurisdictional amount. *Pope v. Blanton*, 521.

5. *Id.* Challenge of allegations as to jurisdictional amount; effect of motion to dismiss; insufficiency of evidence as to jurisdictional amount. *KVOS v. Associated Press*, 269.

6. *Id.* Amount in controversy in suit to enjoin regulation of business; value of right to be free of regulation; capitalization of earnings. *Kroger Grocery Co. v. Lutz*, 300.

7. *Id.* Amount in controversy in suit by press association to restrain pirating and broadcasting of news. *KVOS v. Associated Press*, 269.

8. *Id.* Adjudication of merits in case where jurisdiction was not challenged is not precedent for upholding jurisdiction in similar case in which jurisdiction is in issue. *Id.*

9. *Injunction* to stay suit. See Stay. *Foust v. Munson S. S. Lines*, 77.

10. *Mandamus* does not lie to review order of District Court remanding removed cause to state court. *Employers Corp. v. Bryant*, 374.

11. *Parties*. Absent parties. *Bourdieu v. Pacific Oil Co.*, 65.

**JURISDICTION**—Continued.

12. *Preparation of Record.* Stipulation of facts. See *De Jonge v. Oregon*, 353.

**II. Jurisdiction of this Court.**

1. *Want of Jurisdiction.* Dismissal for. *Cannon v. Louisiana*, 503; *Drackett Co. v. Chamberlain Co.*, 503; *Lindway v. Ohio*, 506; *Eisenhardt v. Louisiana*, 512; *Walter v. Indiana*, 513; *Mississippi Central R. Co. v. Smith*, 518.

2. *Final Judgment.* *Eastman v. Ohio*, 505; *Musser v. Sheppard*, 513; *American Bakeries Co. v. Huntsville*, 514.

3. *Moot Case.* *Bracken v. Securities & Exchange Comm'n*, 504.

4. *Federal Question.* Existence of. *Woolsey v. Best*, 1; *Gully v. First Nat. Bank*, 109; *Kammerer v. Kroeger*, 302.

5. *Id.* Appropriate presentation of federal question; remand to state court for amendment of record or further proof. *Villa v. Van Schaick*, 152.

6. *Id.* State court not bound in habeas corpus proceeding to entertain federal question which could have been raised previously. *Woolsey v. Best*, 1.

7. *Substantial Federal Question.* Dismissal for want of. *Timmons v. Security Savings Bank*, 503; *Wisconsin ex rel. Saylesville Cheese Co. v. Zimmerman*, 504; *Banner Cleaners & Dyers v. Louisiana*, 505; *Ham v. Equitable Life Society*, 505; *Glover v. Simpson*, 506; *Dederick v. Smith*, 506; *Skipper v. Schumacher*, 507; *Polk Co. v. Mayo*, 507; *Winston Bros. Co. v. Stover*, 508; *Torinus v. Johnson*, 508; *Union Bldg. Corp. v. Conway*, 515; *Boston Safe Deposit Co. v. Long*, 518; *Southern Nebraska Power Co. v. Nebraska ex rel. Sorensen*, 520.

8. *Properly Presented Substantial Federal Question.* Dismissal for lack of. *Jones v. Louisiana*, 511; *Werk v. Lorain Street Savings Co.*, 512.

9. *Non-Federal Ground* adequate to support judgment. *Woolsey v. Best*, 1; *Winston Bros. Co. v. Stover*, 508; *Northrop v. Beale*, 516; *Hammond v. Burbank*, 519; *Southern Nebraska Power Co. v. Nebraska ex rel. Sorensen*, 520.

10. Dismissal for non-compliance with Rule 12. *City Bus Co. v. Mississippi*, 520.

11. *Writs of Review Generally.* Judgment of Circuit Court of Appeals declining jurisdiction of appeal from order of District Court confirming plan of reorganization under § 77B, reviewable under Jud. Code, § 262. *In re 620 Church St. Corp.*, 24.

**JURISDICTION**—Continued.

12. *Certiorari*. Application dismissed as premature. *Continental Oil Co. v. U. S.*, 510.

13. *Id.* Failure to make application in time. *Drackett Co. v. Chamberlain Co.*, 503.

14. *Id.* When time within which application must be made begins to run; motion for new trial. *U. S. v. Seminole Nation*, 417.

15. *Scope of Review*. Consideration confined to issue tendered by petition for certiorari. *Schafer v. Helvering*, 171.

16. *Id.* Respondent in certiorari who did not file cross-petition cannot question judgment reviewed. *Mechanics Co. v. Culhane*, 51.

17. *Id.* Appeal from state court; construction of indictment. *De Jonge v. Oregon*, 353.

18. *Id.* *Criminal Appeals Act*. Review of questions involving validity of statute which were decided below in favor of the United States. *U. S. v. Curtiss-Wright Corp.*, 304.

19. *Id.* Review of decisions of administrative officers. *A. T. & T. Co. v. U. S.*, 236.

20. *Findings* concurred in by District Court and Circuit Court of Appeals accepted here unless clear error is shown. *Pick Mfg. Co. v. General Motors Corp.*, 3.

21. *Findings. Court of Claims*. Insufficiency of findings; duty of this Court; disposition of case. *U. S. v. Esnault-Pelterie*, 201.

**III. Jurisdiction of Circuit Courts of Appeals.**

1. Order of District Court fining judgment debtor for civil contempt, in aid of creditor, was not final and not appealable. *Fox v. Capital Co.*, 105.

2. Order of District Court remanding cause to state court not reviewable. *Employers Corp. v. Bryant*, 374.

3. *Refusal to Allow Appeal. Discretion. In re 620 Church St. Corp.*, 24; see also II, 11, *supra*.

4. *Vacatur*. Where supervening facts require retrial, judgment appealed from should be vacated and court below reconstituted with jurisdiction. *Duke Power Co. v. Greenwood County*, 259.

5. Order of District Court remanding removed cause not reviewable by mandamus. *Employers Corp. v. Bryant*, 374.

**IV. Jurisdiction of District Courts.**

1. *Injunction*. Restraining enforcement of rate order of state commission; application of Act limiting jurisdiction of District

**JURISDICTION**—Continued.

Court; existence of "plain, speedy and efficient remedy" in Montana courts. *Mountain States Power Co. v. Public Service Comm'n*, 167.

2. *Stay* of suits to await decision of suits pending in other District Court; duration of stay as abuse of discretion. *Landis v. North American Co.*, 248.

3. *Injunction*, under § 77B of Bankruptcy Act, to stay suit against debtors; discretion. *Foust v. Munson S. S. Lines*, 77.

4. *Reorganization Proceedings under Bankruptcy Act*, § 77B. Discretion to dismiss petition. *Tennessee Publishing Co. v. American Nat. Bank*, 18.

5. *Virginia Practice. Notice of Motion for Judgment*. Applicable in U. S. District Court. *Chisholm v. Gilmer*, 99.

**V. Jurisdiction of Court of Claims.**

1. Effect of jurisdictional act authorizing suit by Shoshone Indians. *Shoshone Tribe v. U. S.*, 476.

2. *Claims of Seminole Nation*. Limitations of jurisdictional act; amendment of petition. *U. S. v. Seminole Nation*, 417.

3. *Findings*. Necessity and sufficiency of findings in action for damages for infringement of patent. *U. S. v. Esnault-Pelterie*, 201.

**VI. Jurisdiction of State Courts.**

Jurisdiction of Court of Common Pleas of Ohio to entertain applications of shareholders for reimbursement of counsel fees and expenses out of assets of association; question as one of state practice and remedy. *Kammerer v. Kroeger*, 302.

**JURY. See Merchant Marine Act.**

*Qualifications. Bias*. Government employees as jurors in criminal cases; validity of qualifying Act. *U. S. v. Wood*, 123.

**LABELS.**

Act requiring convict-made goods in interstate commerce to be labeled, valid. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

**LANDLORD AND TENANT.** See **Bankruptcy**, 6-10; **Constitutional Law**, IV, 5.

**LEASE.** See **Bankruptcy**, 6-10; **Constitutional Law**, III, 1; VI, (B), 7; **Indians**, 3, 5; **Mineral Lands**.

**LICENSE.** See **Constitutional Law**, II, 4; **Intoxicating Liquors**, 1.

**LIENS.**

Assessment of liability against stockholder of national bank did not create lien. *Pufahl v. Estate of Parks*, 217.

**LIFE INSURANCE.** See **Insurance**, 1-2.

**LIMITATIONS.**

Limitation on filing of claims against United States by Seminole Indians under jurisdictional act. *U. S. v. Seminole Nation*, 417.

**MANDAMUS.**

May not be used to review order of District Court remanding cause to state court. *Employers Corp. v. Bryant*, 374.

**MANUFACTURE.**

Tax on manufacture of tobacco. *Liggett & Myers Co. v. U. S.*, 383.

**MARITIME LAW.** See **Admiralty**.

**MASTER AND SERVANT.** See **Admiralty**; **Evidence**, 7.

**MERCHANT MARINE ACT.** See **Bankruptcy**, 5.

Liquidation of claim under § 33 by jury trial, not inconsistent with reorganization proceedings under § 77B of Bankruptcy Act. *Foust v. Munson S. S. Lines*, 77.

**MEXICO.** See **Eminent Domain**, 1.

**MINERAL LANDS.** See **Constitutional Law**, III, 1; VI, (B), 7; **Indians**, 3.

*Rights of Patentee. Preference Right. Leasing Act. Withdrawn Lands.* *Bourdieu v. Pacific Oil Co.*, 65.

**MISREPRESENTATION.** See **Insurance**, 2.

**MONOPOLY.** See **Antitrust Acts**.

**MUNICIPAL CORPORATIONS.** See **Bankruptcy**, 12; **Weights and Measures**, 1.

**NATIONAL HOMES.** See **Pensions**, 1.

**NATIONAL PROHIBITION ACT.**

Statute penalizing nonpayment of tax on wholesale liquor dealers was reenacted by Willis-Campbell Act. *Wainer v. U. S.*, 92.

**NAVIGABLE WATERS.** See **Admiralty**.

**NEWSPAPERS.**

*Press Association.* Amount in controversy in suit to restrain pirating and broadcasting of news. *KVOS v. Associated Press*, 269.

**NEW TRIAL.**

Motion for new trial; leave of court. *U. S. v. Seminole Nation*, 417.

**NONRESIDENT.** See **Constitutional Law**, VI, (C), 2.

**OIL AND GAS.** See **Constitutional Law**, III, 1; VI, (B), 7; **Indians**, 3; **Mineral Lands**.

**OWNERSHIP.** See **International Law**, 2.

**PANAMA CANAL.** See **Constitutional Law**, I, 7; II, 3.

**PANAMA RAILROAD COMPANY.** See **Constitutional Law**, I, 7.

**PARTIES.** See **Process**, 1-2.

*Absent and Indispensable Parties.* Disposition of suit where bill fails to state cause of action. *Bourdieu v. Pacific Oil Co.*, 65.

**PATENTS FOR INVENTIONS.**

1. *Validity.* Gaisman Patent No. 1,633,739, claims 1 and 2, for type of safety razor blade, void for want of invention. *Essex Blade Corp. v. Gillette Co.*, 94.

2. *Infringement. Liability.* Validity and infringement as ultimate facts on which liability depends; necessity and sufficiency of findings of Court of Claims. *U. S. v. Esnault-Pelterie*, 201.

**PEACEABLE ASSEMBLY.** See **Constitutional Law**, VI, (B), 1-5.

**PENALTIES.** See **Intoxicating Liquors**, 2-3; **Proclamations**.

**PENSIONS.**

1. Disposition of pension money of deceased member of National Home for Disabled Volunteer Soldiers. *National Home v. Wood*, 211.

2. Pensioner of United States as juror in criminal case. *U. S. v. Wood*, 123.

**PERSONAL INJURIES.** See **Admiralty**.

**PERSONAL PROPERTY.** See **Pensions**, 1.

**PHILIPPINE ISLANDS.**

*Governor General. Veto Power.* Disapproval of part of bill; Retirement Gratuity Law. *Bengzon v. Secretary of Justice*, 410.

**PLEADING.**

1. *Forms of Action.* See *Chisholm v. Gilmer*, 99.

2. *Sufficiency of Bill* to state cause of action in equity. *Bourdieu v. Pacific Oil Co.*, 65.

3. *Amendment of Pleadings.* *Duke Power Co. v. Greenwood County*, 259; *U. S. v. Seminole Nation*, 417.

**POWER OF APPOINTMENT.**

Application of Massachusetts Succession Tax in respect to exercise or non-exercise of power of appointment. *Binney v. Long*, 280.

**PREFERENCES.** See **Banks**, 3.

**PRESIDENT.** See **Constitutional Law**, I, 4, 6; **Proclamations.**

Authority in foreign affairs. *U. S. v. Curtiss-Wright Corp.*, 304.

**PRESS ASSOCIATIONS.** See **Newspapers.**

**PRESUMPTIONS.** See **Evidence**, 3.

**PRICE FIXING.**

*Fair Trade Acts.* Validity of Illinois and California Acts. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

**PRIORITY.** See **Bankruptcy**, 11-12; **Mineral Lands.**

**PRISONS.**

Regulation of transportation in interstate commerce of convict-made goods. *Kentucky Whip Co. v. Illinois Central R. Co.*, 334.

**PROCEDURE.** See **Bankruptcy**, 13-14; **Jurisdiction.**

1. *Commencement of Suit. Conformity Act.* Notice of motion for judgment under Virginia law. *Chisholm v. Gilmer*, 99.

2. Irregularities in practice; record improperly made up. *Duke Power Co. v. Greenwood County*, 259.

3. Where supervening facts require retrial, appellate court ought to vacate decree and reconstitute court below with jurisdiction. *Id.*

4. *Dismissal.* Where allegation as to amount in controversy is appropriately challenged, and no sufficient evidence is offered in support, the bill should be dismissed. *KVOS v. Associated Press*, 269.

5. Substitution of stipulation of facts for evidence, without approval of trial court, disapproved. *De Jonge v. Oregon*, 353.

6. Dismissal or remand by District Court of suit removed to it from state court. *Employers Corp. v. Bryant*, 374.

**PROCESS.**

1. *Service of Process. Validity.* Territorial jurisdiction of district court in suit *in personam*. *Employers Corp. v. Bryant*, 374.

2. *Notice of Motion* as substitute for summons. *Chisholm v. Gilmer*, 99.

**PROCLAMATIONS.**

Proclamations of President under Resolution authorizing ban on munitions to the Chaco; sufficiency of findings; revocation of proclamation as affecting penalty. *U. S. v. Curtiss-Wright Corp.*, 304.

**PROOF OF LOSS.** See **Insurance**, 3.

**PUBLIC LANDS.** See **Mineral Lands**.

**PUBLIC OFFICERS.**

Ratification of acts by United States. *Shoshone Tribe v. U. S.*, 476.

**PUBLIC UTILITIES.** See **Holding Company Act**; **Jurisdiction**, IV, 1; **Telephone Companies**.

**RADIO BROADCASTING.** See **Newspapers**.

**RATES.**

Construction and application of "combination rule" in railroad freight tariffs. *Brown Lumber Co. v. L. & N. R. Co.*, 393.

**RATIFICATION.** See **Public Officers**.

**REAL PROPERTY.**

Ownership. *Shapleigh v. Mier*, 468.

**RECEIVERS.** See **Banks**, 2-4.

**REËNACTMENT.** See **Statutes**, 15.

**REMAINDERS.** See **Constitutional Law**, VI, (B), 9.

**REMAND.** See **Removal**, 2.

**REMOVAL.** See **Appearance**.

1. Cause as one arising "under Constitution or laws of the United States." *Gully v. First Nat. Bank*, 109.

2. Discretion of District Court to remand or dismiss removed cause, when defendant cannot be served within district. *Employers Corp. v. Bryant*, 374.

**RENT.** See **Bankruptcy**, 6-10; **Constitutional Law**, IV, 5.

**REORGANIZATION.** See **Bankruptcy**.

**REPEAL.** See **Statutes**, 14.

**RETROACTIVE STATUTE.** See **Statutes**, 2.

**RULES OF COURT.**

1. Amendments of Rules. See pp. 625, 627.

2. Dismissal for failure to comply with Rule 12. *City Bus Co. v. Mississippi*, 520.

**RULES OF COURT**—Continued.

3. Rules of District Court must be consistent with Conformity Act. *Chisholm v. Gilmer*, 99.

**SALES.** See **Antitrust Acts**, 1; **Constitutional Law**, VI, (A).

**SECURITIES.** See **Taxation**, I, 3-4.

**SEMINOLE NATION.** See **Indians**, 4, 6-7.

**SHOSHONE TRIBE.** See **Indians**, 2.

**SILVER PURCHASE ACT.**

Validity. *U. S. v. Hudson*, 498.

**SITUS.** See **Taxation**, II, 3.

**SOLDIERS' HOMES.** See **Pensions**, 1.

**SOVEREIGNTY.** See **International Law**, 1-3.

**SPECIALIST.** See **Taxation**, I, 4.

**STANDARD CONTAINER ACT.** See **Weights and Measures**, 2.

**STARE DECISIS.** See **Jurisdiction**, I, 8.

**STATES.** See **Bankruptcy**, 12; **Constitutional Law**, I, 8-9.

**STATUTES.**

1. *Nature of Statute.* *Appropriation Bill.* Definition; "item of appropriation bill." *Bengzon v. Secretary of Justice*, 410.

2. *Validity.* Retroactive provisions. *U. S. v. Hudson*, 498.

3. *Id.* Statute was valid on its face and not shown to have been so applied as to violate complainant's constitutional rights. *North American Cement Corp. v. Graves*, 517.

4. *Id.* *Factual Background* justifying legislation; weight of legislative determination. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183.

5. *Construction.* Title of Act as aid. *Bengzon v. Secretary of Justice*, 410.

6. *Id.* Legislative history. *Kuehner v. Irving Trust Co.*, 445.

7. *Id.* Legislative practice. *U. S. v. Curtiss-Wright Corp.*, 304.

8. *Administrative Construction.* *N. Y. ex rel. Rogers v. Graves*, 401.

9. *Judicial Construction.* Long and uniform construction by lower federal courts persuasive here. *Missouri v. Ross*, 72.

10. *Id.* *Failure to Amend* evidences legislative approval of judicial construction. *Id.*

11. *General and Special Provisions.* *British-American Oil Co. v. Board of Equalization*, 159.

**STATUTES**—Continued.

12. *Id.* Special provisions of statute prevail over general provisions. *Missouri v. Ross*, 72.

13. *Saving Clause.* Effect. *Bengzon v. Secretary of Justice*, 410.

14. *Repeal.* Effect on criminal prosecution. *U. S. v. Curtiss-Wright Corp.*, 304.

15. *Reenactment.* *Wainer v. U. S.*, 92.

16. *Criminal Statutes.* Construed in favor of accused. *U. S. v. Resnick*, 207.

17. Validity of Fair Trade Acts of Illinois and California. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

18. Chain Store Tax Act of Iowa (1935) invalid. *Valentine v. Great A. & P. Tea Co.*, 32.

19. *Retirement Gratuity Law* of Philippines; construction. *Bengzon v. Secretary of Justice*, 410.

20. Phrases "fair and open competition," "any commodity," and "any contract entered into pursuant to the provisions of § 1," in Illinois Fair Trade Act, not fatally vague and uncertain. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183.

**STAY.**

1. Stay of proceedings in one suit to abide decision in another; power and discretion of court; duration of stay. *Landis v. North American Co.*, 248.

2. Stay, under § 77B of Bankruptcy Act, of suit against debtor, as abuse of discretion. *Foust v. Munson Lines*, 77.

**STIPULATION.** See **Procedure**, 5.

**STOCK EXCHANGE.** See **Taxation**, I, 3-4.

Tax on profits from sale by nonresident of right appurtenant to membership on N. Y. Stock Exchange. *N. Y. ex rel. Whitney v. Graves*, 366.

**STOCKHOLDERS.**

Liability of estate of stockholder of national bank. *Pufahl v. Estate of Parks*, 217.

**SUCCESSION.** See **Pensions**, 1.

Succession to Indian Lands. *Cate v. Beasley*, 30.

**TARIFFS.**

Construction and application of "combination rule" in railroad freight tariffs. *Brown Lumber Co. v. L. & N. R. Co.*, 393.

**TAXATION.** See **Bankruptcy; Banks, 1.****I. Federal Taxation.**

1. Silver purchase Act imposed valid special income tax. *U. S. v. Hudson*, 498.

2. *Income Tax. Insurance Companies. Computation of Net Income.* What reserves included in "reserve funds required by law" under § 203 (a) (2) of 1928 Act. *Helvering v. Illinois Life Ins. Co.*, 88.

3. *Income Tax. Computation. Inventories.* Stock broker not "dealer in securities" as to shares purchased for own account in expectation of rise in market, and not entitled to inventory securities at market value. *Schafer v. Commissioner*, 171.

4. *Id.* "Specialist" on New York Stock Exchange as "dealer in securities." *Helvering v. Fried*, 175.

5. *Wholesale Liquor Business.* Federal levy was excise on doing of business whether lawfully or unlawfully. *Wainer v. U. S.*, 92.

6. *Tobacco.* Tax imposed by § 401 (a) of 1926 Act was on manufacture; tobacco purchased by State for hospital not exempt. *Liggett & Myers Co. v. U. S.*, 383.

**II. State Taxation.**

1. *Federal Instrumentalities.* Immunity of salary of general counsel of Panama Railroad Company from state income tax. *N. Y. ex rel. Rogers v. Graves*, 401.

2. *Id.* Production of oil and gas under lease of Indian lands. *British-American Oil Co. v. Board*, 159.

3. *Intangibles. Business Situs.* New York tax on profit from sale by nonresident of right appurtenant to membership on New York Stock Exchange, sustained. *N. Y. ex rel. Whitney v. Graves*, 366.

4. *Chain Stores.* Iowa Act of 1935 invalid. *Valentine v. Great A. & P. Tea Co.*, 32.

5. *Oil. Production Tax,* apportioned between lessor and lessee, valid. *Barwise v. Sheppard*, 33.

6. *Intoxicating Liquors.* State license fee for importation. *State Board v. Young's Market Co.*, 59.

7. *Massachusetts Succession Tax.* *Binney v. Long*, 280.

**TELEPHONE COMPANIES.**

*Accounts.* Validity of order of Communications Commission prescribing uniform system of accounts for telephone companies; "original cost" rule; estimates; "just and reasonable" charges; classification of plant as used in present service or held for use thereafter; penalties. *A. T. & T. Co. v. U. S.*, 232.

**TITLE.**

1. Title to land. See *Shapleigh v. Mier*, 468.
2. Title of statute as aid to construction. See *Bengzon v. Secretary of Justice*, 410.

**TOBACCO.** See **Taxation**, I, 6.

**TORTS.**

*Liability* of United States; ratification of tortious acts. *Shoshone Tribe v. U. S.*, 476.

**TRADEMARKS.**

Validity of Illinois and California Fair Trade Acts sanctioning price fixing in respect of "identified" goods. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

**TRANSCRIPT OF RECORD.**

Insufficiency in respect to federal question. *Villa v. Van Schaick*, 152.

**TRANSFERS.**

Application and validity of Massachusetts Succession Tax. *Binney v. Long*, 280.

**TREATIES.**

1. *Construction* of Extradition Treaty of 1909 with France. *Valentine v. U. S. ex rel. Neidecker*, 5.
2. Indian Treaties. *Shoshone Tribe v. U. S.*, 476.

**TRIAL.** See **Jury**; **New Trial**.

**TRUSTS.** See **Banks**, 4.

1. Application of Massachusetts Succession Tax. *Binney v. Long*, 280.
2. *Constructive Trust*. *McKee v. Paradise*, 119.

**UNEMPLOYMENT INSURANCE.**

See *W. H. H. Chamberlin, Inc. v. Andrews*, 515.

**UNFAIR COMPETITION.**

1. Validity of Illinois and California Fair Trade Acts. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.
2. Pirating of news. See *KVOS v. Associated Press*, 269.

**UNITED STATES.**

1. *Instrumentalities*. Panama Railroad Company as governmental instrumentality of the United States. *N. Y. ex rel. Rogers v. Graves*, 401. See **Taxation**, II, 1-2.

**UNITED STATES**—Continued.

2. *Use of Corporation* as means to carry into effect substantive powers under Constitution. *Id.*

3. Ratification of tortious taking of lands of Shoshone Tribe; liability. *Shoshone Tribe v. U. S.*, 476.

**VACATUR.** See **Procedure**, 3.

**VENDOR AND VENDEE.**

Validity of Illinois and California Fair Trade Acts. *Old Dearborn Co. v. Seagram-Distillers Corp.*, 183; *Pep Boys v. Pyroil Sales Co.*, 198.

**VETO.** See **Philippine Islands**.

**WAR.** See **Constitutional Law**, I, 4.

**WEIGHTS AND MEASURES.**

1. Validity of requirements of city ordinance as to weighing of commodities (coal, etc.) sold in load lots by weight. *Hauge v. Chicago*, 387.

2. *Standard Container Act.* Manufacture and sale of two-quart hampers not forbidden. *U. S. v. Resnick*, 207.

**WILLIS-CAMPBELL ACT.** See **Intoxicating Liquors**, 2.

**WILLS.**

Application of Massachusetts Succession Tax. *Binney v. Long*, 280.

**WORKMEN'S COMPENSATION ACTS.**

*Application.* Interference with uniformity of maritime law. *Carlin Construction Co. v. Heaney*, 41.

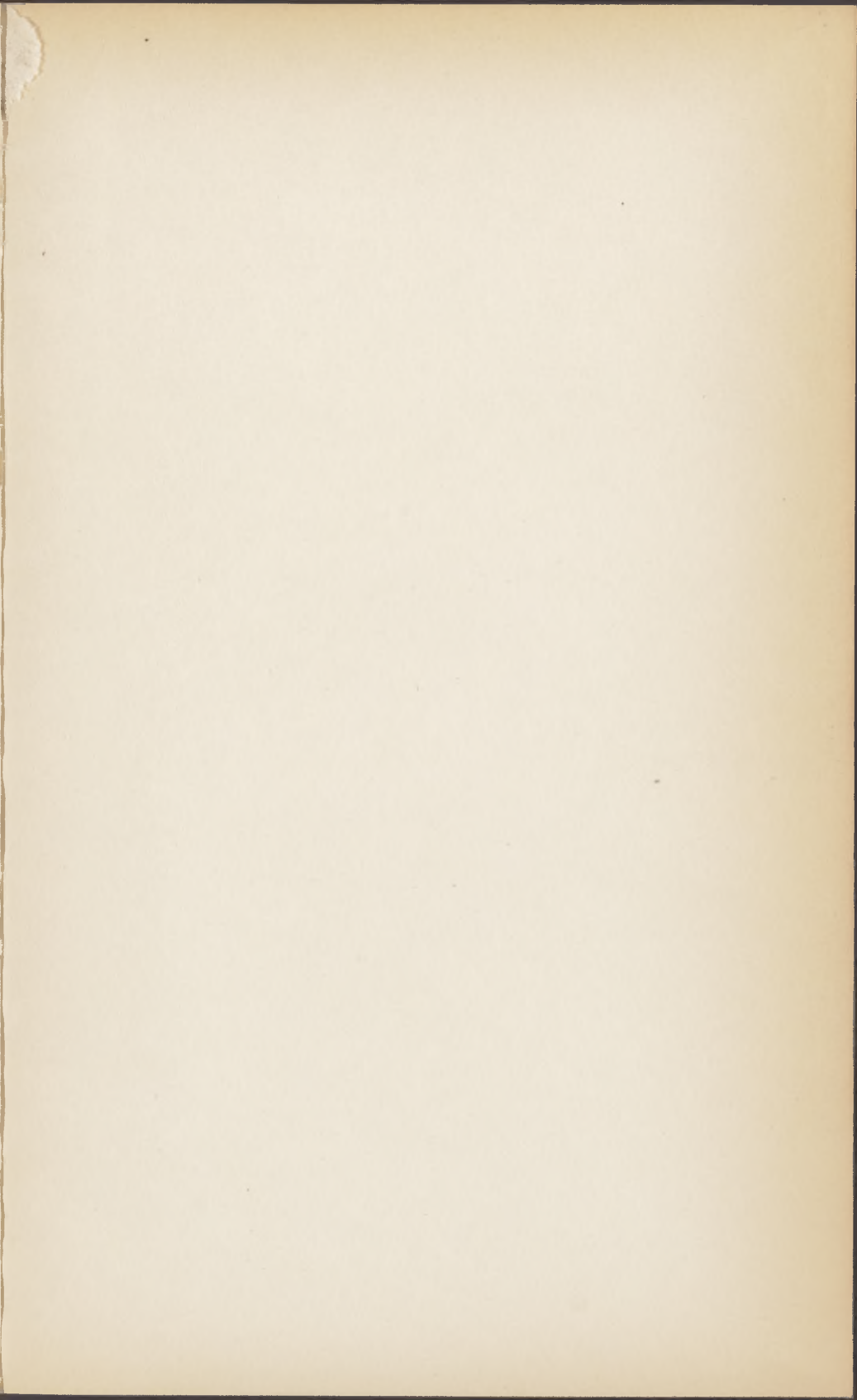
**WRITS.**

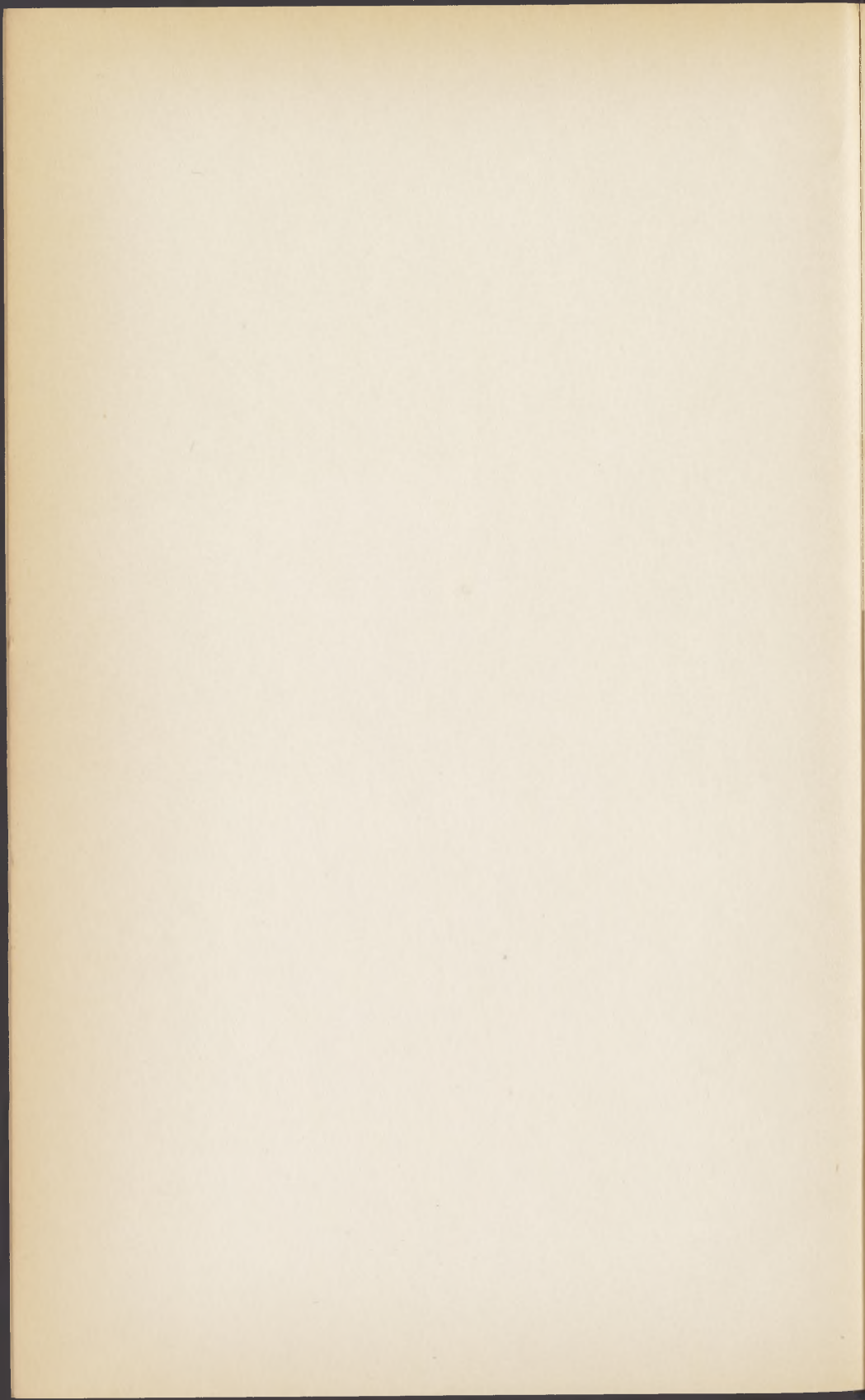
1. *General Power* to issue, under Jud. Code, § 262. *In re 620 Church St. Corp.*, 24.

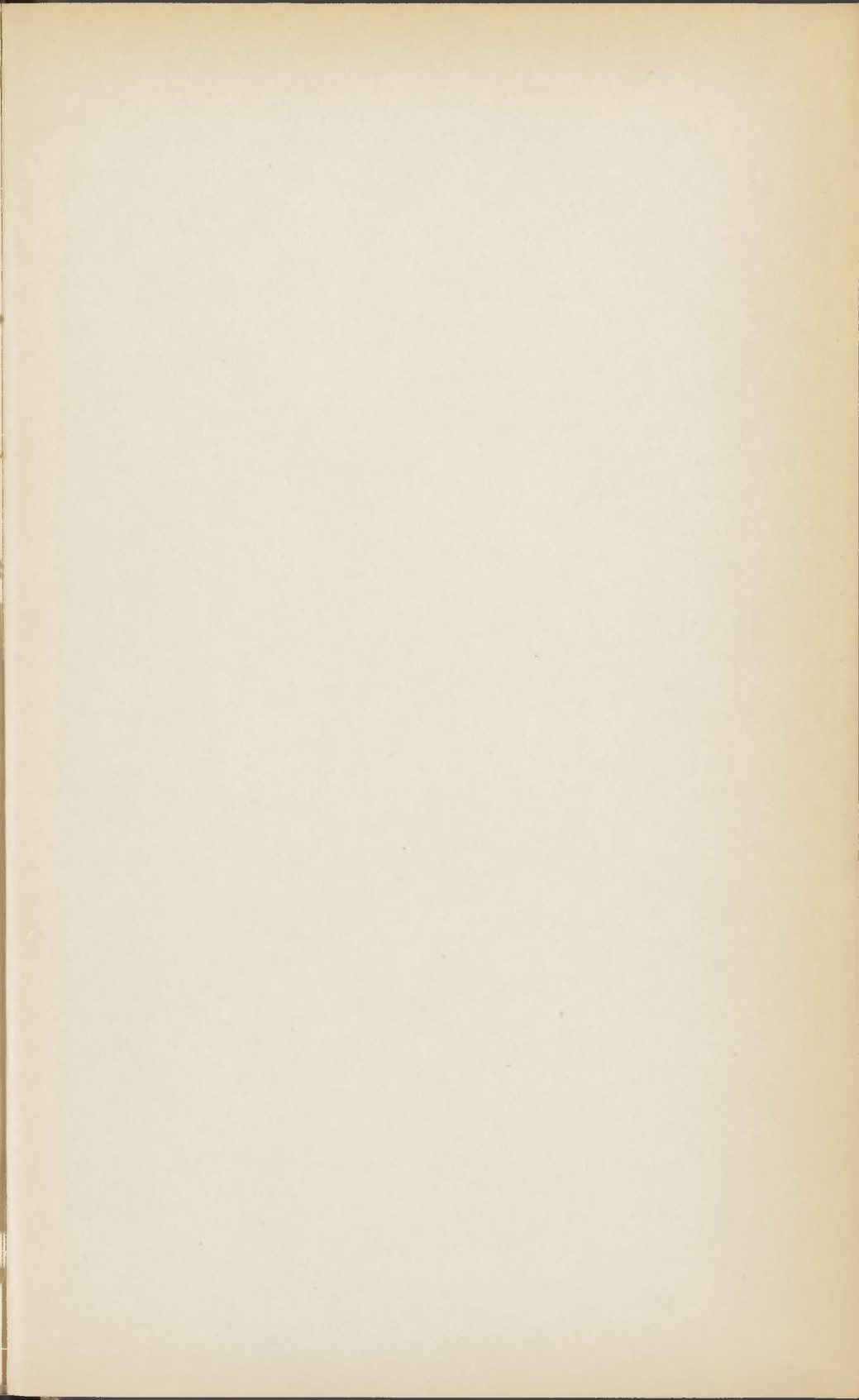
2. *Notice of Motion for Judgment* as substitute for summons in Virginia; application of Conformity Act. *Chisholm v. Gilmer*, 99.

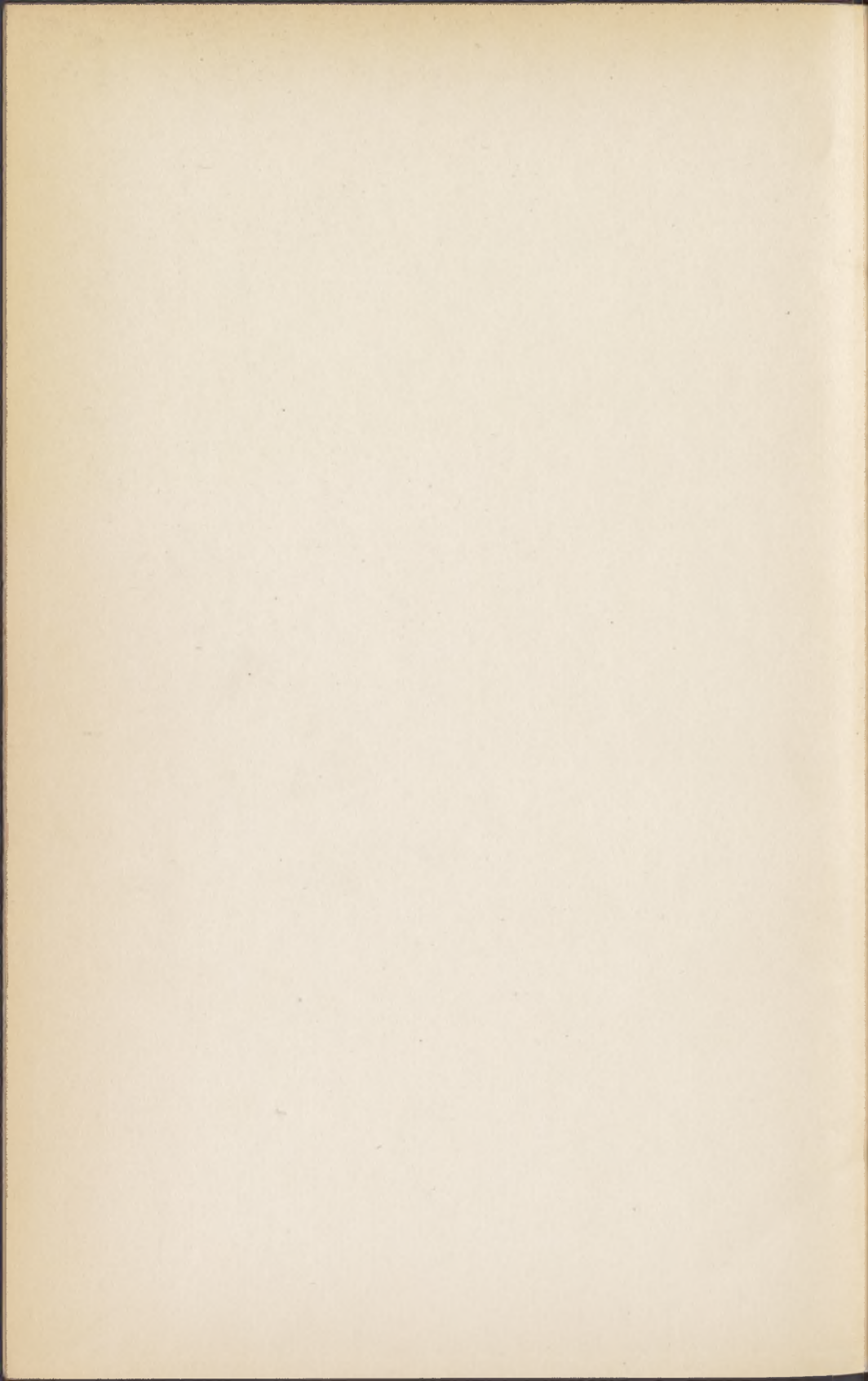


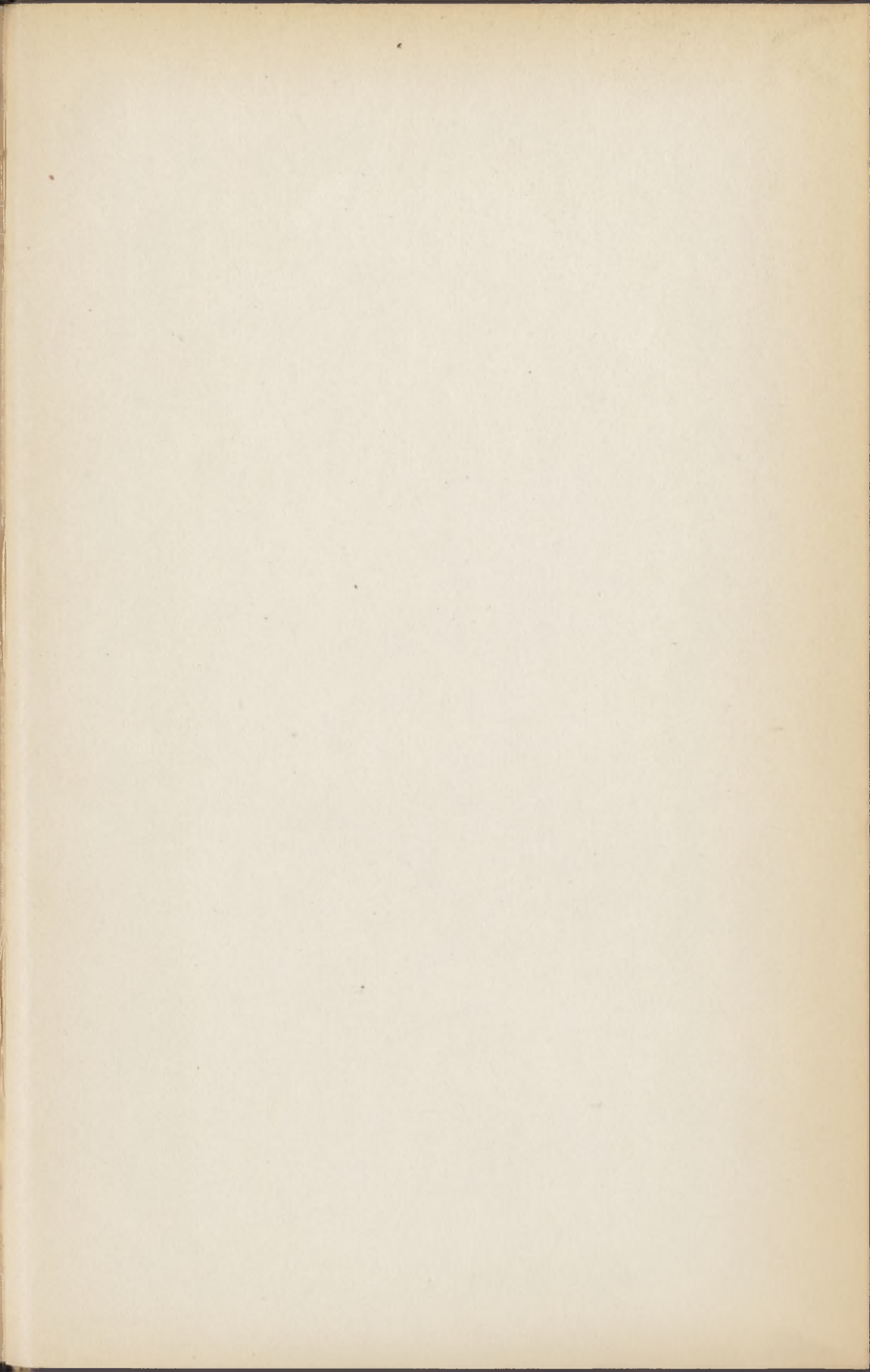


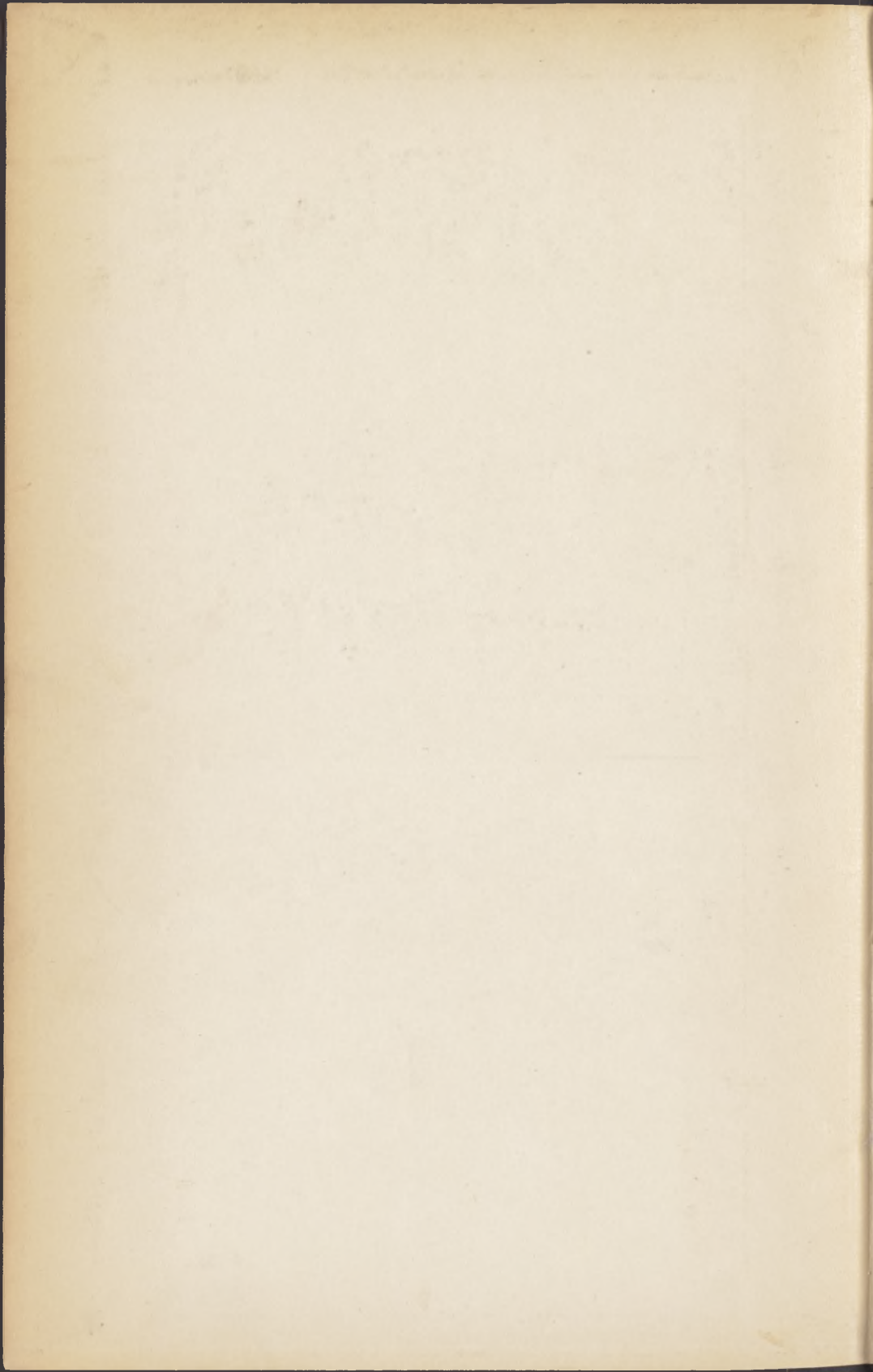












U.S. Supreme Court Reports

v. 299

