

DECISIONS PER CURIAM, ETC., FROM APRIL 18,
1939, THROUGH JUNE 5, 1939.*

No. —, original. EX PARTE HARMON METZ WALEY;
and

No. —, original. EX PARTE JOHN F. STRUTHERS. April
24, 1939. Motions for leave to file petitions for writs of
habeas corpus denied.

No. 514. NATIONAL LABOR RELATIONS BOARD *v.* FAIN-
BLATT ET AL. April 24, 1939. It is ordered that the
entry in this case in the Journal of this Court for April
17, 1939, be amended by striking out the words "Mr.
Justice Frankfurter took no part in the consideration
or decision of this case."

Reported as amended, 306 U. S. 601.

No. 339. LONG ET AL., MEMBERS OF THE STATE TAX
COMMISSION OF ALABAMA, ET AL. *v.* STOKES, COMMIS-
SIONER OF FINANCE AND TAXATION. Appeal from the
Supreme Court of Tennessee. April 28, 1939. John C.
Curry, State Tax Commissioner of Alabama, substituted
as a party appellant in the place and stead of Henry S.
Long, John P. Kohn, Sr., and W. W. Ramsey; and George
F. McCannless, present Commissioner of Finance and Tax-
ation of Tennessee, substituted as the party appellee in
the place and stead of Walter Stokes, Jr., on motion of
Mr. Charles S. Trabue, Jr., for the appellants. *Ante*,
p. 357.

No. 856. HINES *v.* TEXAS;

No. 857. RYAN *v.* SAME;

* For decisions on applications for certiorari, see *post*, pp. 617, 621;
for rehearing, p. 649. For cases disposed of without consideration by
the Court, p. 648.

No. 858. *BROWN v. SAME*; and

No. 859. *HUNTER v. SAME*. Appeals from the Court of Criminal Appeals of Texas. Decided May 1, 1939. *Per Curiam*: The appeals are dismissed for 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 appeals were allowed as petitions for writs of certiorari, as required by § 237 (c) of the Judicial Code, as amended (43 Stat. 936, 938), certiorari is denied. The motions for leave to proceed further *in forma pauperis* are denied. Reported below: 136 Tex. Cr. R. 60, 94, 95, 140; 123 S. W. 2d 659-661.

No. 742. *MISSISSIPPI EX REL. RICE, ATTORNEY GENERAL, ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Southern District of Mississippi. Argued April 24, 1939. Decided May 1, 1939. *Per Curiam*: The decree is affirmed. *Interstate Commerce Comm'n v. Union Pacific R. Co.*, 222 U. S. 541, 547-548; *Los Angeles Switching Case*, 234 U. S. 294, 311-312; *United States v. American Tin Plate Co.*, 301 U. S. 402, 411. *Messrs. E. R. Holmes, Jr. and Russell Wright*, with whom *Mr. Greek L. Rice*, Attorney General of Mississippi, was on the brief, for appellants. *Solicitor General Jackson, Assistant Attorney General Arnold*, and *Messrs. Wendell Berge, Elmer B. Collins, Frank Coleman, J. Stanley Payne, and Daniel W. Knowlton* were on a brief for the United States et al. *Messrs. W. A. Northcutt and Elmer A. Smith* were on a brief for the railroad appellees. *Mr. Louis A. Schwartz* was on a brief for the New Orleans Joint Traffic Bureau, appellee.

No. —, original. *EX PARTE JOSEPH PORESKEY*. May 1, 1939. Application denied.

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No. —, original. *EX PARTE MARK O. DAVIS*. May 1, 1939. Motion for leave to file petition for writ of mandamus denied.

No. —. *STONER v. BOARD OF COMMISSIONERS OF BOULDER COUNTY*. May 1, 1939. Motion for mandate denied.

No. 748. *FORD MOTOR Co. v. CLARK, SECRETARY OF STATE OF TEXAS, ET AL.* May 1, 1939. Motion to substitute Tom L. Beauchamp, present Secretary of State, and Gerald Mann, present Attorney General, as parties respondent in place of Edward Clark and William McCraw, respectively, granted. Reported below: 100 F. 2d 515.

No. 532. *DEPPE v. GENERAL MOTORS CORP.* May 1, 1939. Petition for reopening denied. *Mr. William P. Deppe, pro se*. No appearance for respondent. Reported below: 98 F. 2d 813.

No. 906. *ROSEHILL CEMETERY Co. v. STEELE*. Appeal from the Supreme Court of Illinois. Decided May 15, 1939. *Per Curiam*: The motion of the appellee to dismiss the appeal is granted, and the appeal is dismissed for want of a properly presented substantial federal question. (1) *Willoughby v. Chicago*, 235 U. S. 45, 49; *Cleveland & Pittsburgh R. Co. v. Cleveland*, 235 U. S. 50, 53; *Mellon v. O'Neil*, 275 U. S. 212, 214-215; (2) *Violet Trapping Co. v. Grace*, 297 U. S. 119, 120; *Ingraham v. Hanson*, 297 U. S. 378, 381; *Schenebeck v. McCrary*, 298 U. S. 36, 37. *Mr. Carroll J. Lord* for appellant. *Mr. Henry N. Shabsin* for appellee. Reported below: 370 Ill. 405; 19 N. E. 2d 189.

No. —, original. *EX PARTE JOHN P. GOODMAN*; and
No. —, original. *EX PARTE RICHARD BUNDY*. May 15,
1939. Motions for leave to file petitions for writs of
certiorari denied.

No. —, original. *EX PARTE HARPER BLATTENBERGER*.
May 15, 1939. Motion for leave to file petition for writ
of habeas corpus denied.

No. 11, original. *TEXAS v. FLORIDA ET AL.* Decree en-
tered May 15, 1939, reported in 306 U. S. 435.

No. 532. *DEPPE v. GENERAL MOTORS CORP.* May 15,
1939. The petition filed May 6, 1939, is stricken from the
files as scandalous.

No. 902. *CAROLENE PRODUCTS CO. v. WALLACE, SECRETARY OF AGRICULTURE, ET AL.* Appeal from the District Court of the United States for the District of Columbia. Decided May 22, 1939. *Per Curiam*: The motion of the appellees to affirm is granted and the order denying a temporary injunction is affirmed. *Alabama v. United States*, 279 U. S. 229, 231; *United Gas Co. v. Public Service Commn.*, 278 U. S. 322, 326-327; *National Fire Ins. Co. v. Thompson*, 281 U. S. 331, 338. *Messrs. Frank K. Nebeker and George N. Murdock* for appellant. *Solicitor General Jackson* for appellees. Reported below: 27 F. Supp. 110.

No. 907. *MARYLAND JOCKEY CLUB v. SPENCER ET AL.* Appeal from the Court of Appeals of Maryland. Decided May 22, 1939. *Per Curiam*: The motion of the appellees to dismiss is granted and the appeal is dismissed for want of a substantial federal question. (1) *Car-michael v. Southern Coal Co.*, 301 U. S. 495, 521-523; *Thomas v. Gay*, 169 U. S. 264, 278-280; *Cincinnati*

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Soap Co. v. United States, 301 U. S. 308, 313; *Rapid Transit Corp. v. New York*, 303 U. S. 573, 584-587; (2) *Fort Smith Light Co. v. Paving District*, 274 U. S. 387, 391; *Missouri Ry. Co. v. Mackey*, 127 U. S. 205, 209; *Rapid Transit Corp. v. New York*, *supra*, at pp. 578-579. Messrs. *Stuart S. Janney* and *Frank B. Ober* for appellant. Messrs. *William C. Walsh*, *Wm. L. Henderson*, and *Randolph Barton, Jr.* for appellees. Reported below: 176 Md. 82; 4 A. 2d 124, 479.

No. —, original. EX PARTE RICHARD PAUL BILLINGS; and

No. —, original. EX PARTE HOWARD H. HIGLEY. May 22, 1939. Motions for leave to file petitions for writs of habeas corpus denied.

No. —. IN THE MATTER OF JOHNNIE CAESAR. May 22, 1939. Application for writ of prohibition denied.

No. 441. *ELECTRIC STORAGE BATTERY CO. v. SHIMADZU ET AL.* May 22, 1939. The opinion is amended by striking out the word "them" at the end of the first full paragraph on page 11, and substituting "the claims in suit"; and by striking out the words "invalidity of" in the next to the last line of the opinion and substituting therefor the words "dismissal as to." The petitions for rehearing are denied.

Reported as amended, *ante*, p. 5.

No. 498. *BONET, TREASURER OF PUERTO RICO, v. YABUCOA SUGAR Co.* May 22, 1939. The opinion of the Court announced March 27, 1939, is amended in the following particulars:

In the first complete sentence on page 3, the word "refund" is stricken and the word "relief" inserted in lieu

thereof, and omission of quoted matter in the third complete sentence is indicated, so that the first three sentences will read: "Such a taxpayer can sue at law under these sections only if he has been denied relief by both the Treasurer and the Board of Review and Equalization of the Island. But these sections nowhere expressly authorize appeal from the Treasurer to the Board by one who paid taxes without protest. And § 76 (b), which the Circuit Court of Appeals interpreted as authorizing suit by a taxpayer who paid without protest, expressly prohibits suit in court 'until a claim for refund or credit has been duly filed with . . . the Board of Review and Equalization *on appeal*, according to the provisions of law in that regard, and the regulations established in pursuance thereof.'"

The petition for rehearing is denied.

Reported as amended, 306 U. S. 505.

No. —, original. EX PARTE EDD. POTTER;
 No. —, original. EX PARTE RALPH MARK; and
 No. —, original. EX PARTE LLOYD RUBIN. May 29, 1939. Motions for leave to file petitions for writs of habeas corpus denied.

No. —, original. EX PARTE HARMON METZ WALEY. May 29, 1939. Application denied.

No. —. UNITED STATES *v.* NARDONE ET AL. May 29, 1939. Motion for bail denied.

No. 738. GUMP *v.* CALIFORNIA ET AL. May 29, 1939. Motion to vacate the order of denial and to reconsider the petition for writ of certiorari as amended denied. *Edgar Roy Gump, pro se.* No appearance for respondents.

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No. 923. *HOLLEY v. GENERAL AMERICAN LIFE INSURANCE Co. ET AL.* May 29, 1939. Motion to substitute Ray B. Lucas, present Superintendent of the Insurance Department of the State of Missouri, as a party respondent in the place and stead of George A. S. Robertson, deceased, granted. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit denied. *Mr. Chelsea O. Inman* for petitioner. *Messrs. Fred L. Williams, Earl F. Nelson, and Allen May* for respondent. Reported below: 101 F. 2d 172.

No. 945. *CITY AND COUNTY OF DENVER v. COLORADO.* Appeal from the Supreme Court of Colorado. Decided June 5, 1939. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U. S. 394; *Trenton v. New Jersey*, 262 U. S. 182; *Williams v. Mayor*, 289 U. S. 36, 40. *Messrs. Malcolm Lindsey and Thomas H. Gibson* for appellant. No appearance for appellee. Reported below: 103 Colo. 565; 88 P. 2d 89.

No. 975. *KANSAS FARMERS' UNION ROYALTY Co. ET AL. v. HUSHAW.* Appeal from the Supreme Court of Kansas. Decided June 5, 1939. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. (1) *Jackson v. Lamphire*, 3 Pet. 280, 289-290; *Vance v. Vance*, 108 U. S. 514, 520; (2) *Davis v. Mills*, 194 U. S. 451, 456-457; *Montoya v. Gonzales*, 232 U. S. 375; (3) *Bell's Gap Railroad Co. v. Pennsylvania*, 134 U. S. 232, 237; *Ohio Oil Co. v. Conway*, 281 U. S. 146, 159. *Messrs. B. I. Litowich, L. E. Clevenger, and S. H. King* for appellants. No appearance for appellee. Reported below: 149 Kan. 64; 86 P. 2d 559.

No. 982. *NEVIN, SURVIVING EXECUTOR, ET AL. v. MARTIN, TAX COMMISSIONER, ET AL.* Appeal from the

District Court of the United States for the District of New Jersey. Decided June 5, 1939. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *Worcester County Trust Co. v. Riley*, 302 U. S. 292. MR. JUSTICE BUTLER dissents. The CHIEF JUSTICE and MR. JUSTICE McREYNOLDS took no part in the consideration or decision of this case. *Mr. Alfred E. Driscoll* for appellants. *Mr. William A. Moore* for appellees. Reported below: 22 F. Supp. 836.

No. —. EX PARTE JOSEPH J. MCCARTHY. June 5, 1939. Application for an order allowing appeal denied.

No. —. PORESKEY *v.* ELY. June 5, 1939. Petition for appeal denied.

No. —, original. EX PARTE FRED HARTZELL WEST. June 5, 1939. Motion for leave to file petition for writ of habeas corpus denied.

No. 449. NEWARK FIRE INSURANCE CO. *v.* STATE BOARD OF TAX APPEALS ET AL.; and

No. 456. UNIVERSAL INSURANCE CO. ET AL. *v.* SAME. June 5, 1939. It is ordered that the opinion of MR. JUSTICE REED entered on May 29, 1939, be corrected by striking therefrom the words at the end thereof:

"The judgments in both cases are affirmed."

Reported as amended, *ante*, p. 313.

No. 441. ELECTRIC STORAGE BATTERY CO. *v.* SHIMADZU ET AL. June 5, 1939. Motion of the respondents for leave to file a second petition for modification of the decision and judgment of this Court and for recall and modification of its mandate granted. The opinion is amended by

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striking out of the second full paragraph on page 12, in the first line, the word "that" and the words "is invalid," and inserting, after the word "decision," the words "as to." In other respects the petition is denied.

Reported as amended, *ante*, p. 5; see also, *ante*, p. 613.

DECISIONS GRANTING CERTIORARI, FROM
APRIL 18, 1939, THROUGH JUNE 5, 1939.

Nos. 745 and 746. *BOTELER, TRUSTEE, v. INGELS, DIRECTOR OF MOTOR VEHICLES OF CALIFORNIA, ET AL.* April 24, 1939. Petition for writs of certiorari to the Circuit Court of Appeals for the Ninth Circuit granted. *Mr. Thomas S. Tobin* for petitioner. *Messrs. Earl Warren* and *Frank W. Richards* for respondents. Reported below: 100 F. 2d 915.

No. 767. *NATIONAL LABOR RELATIONS BOARD v. NEWPORT NEWS SHIPBUILDING & DRY DOCK CO.* April 24, 1939. Petition for writ of certiorari to the Circuit Court of Appeals for the Fourth Circuit granted. *Solicitor General Jackson* and *Mr. Charles Fahy* for petitioner. *Messrs. Fred H. Skinner, John Marshall, H. H. Rumble,* and *Percy Carmel* for respondents. Reported below: 101 F. 2d 841.

No. 867. *JOHN HANCOCK MUTUAL LIFE INSURANCE CO. v. BARTELS.* April 24, 1939. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Mr. John H. Bickett, Jr.* for petitioner. No appearance for respondent. Reported below: 100 F. 2d 813.

No. 847. *CITIES SERVICE OIL CO. v. DUNLAP ET AL.* May 1, 1939. Petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit granted. *Messrs.*