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Decisions Per Curiam, Etc.

DECISIONS PER CURIAM, ETC., FROM APRIL 1,  
1941, THROUGH JUNE 2, 1941.\*

No. 14, original. *HOLIDAY v. JOHNSTON, WARDEN*. April 2, 1941. It is ordered that Charles A. Horsky, Esquire, of Washington, D. C., a member of the bar of this Court, be appointed to serve as counsel for the petitioner in this case.

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No. 54. *BERNARDS ET AL. v. JOHNSON ET AL.* Certiorari, 310 U. S. 616, to the Circuit Court of Appeals for the Ninth Circuit. Argued December 11, 1940. Decided April 7, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Mr. William Lemke* for petitioners. *Mr. Harrison G. Platt*, with whom *Mr. A. D. Platt* was on the brief, for M. R. Johnson et al., respondents. *Mr. Wm. L. Brewster* submitted for Catherine Collins, respondent. Reported below: 103 F. 2d 567.

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Nos. 133 and 134. *LISENBA v. CALIFORNIA*. Certiorari, 311 U. S. 617, to the Supreme Court of California. Argued February 6, 1941. Decided April 7, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Mr. Morris Lavine* for petitioner. *Messrs. Everett W. Mattoon*, Assistant Attorney General of California, and *Eugene D. Williams*, with whom *Messrs. Earl Warren*, Attorney General, and *Frank Richards*, Deputy Attorney General, were on the brief, for respondent. Reported below: 14 Cal. 2d 403; 94 P. 2d 569.

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\*For decisions on applications for certiorari, see *post*, pp. 551, 558; for rehearing, *post*, p. 596. For cases disposed of without consideration by the Court, *post*, p. 601.

No. 586. NEW YORK, CHICAGO & ST. LOUIS RAILROAD Co. v. FRANK. Appeal from the Supreme Court of the State of New York. Argued April 2, 1941. Decided April 7, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. Mr. William J. Donovan, with whom Messrs. John H. Agate, Ralstone R. Irvine, and Harry S. Ridgely were on the brief, for appellant. Mr. Louis J. Vorhaus, with whom Messrs. David Vorhaus and Joseph Fischer were on the brief, for appellee. Reported below: 175 Misc. 902; 24 N. Y. S. 2d 846, 854. See *post*, p. 596.

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No. 587. TOUCEY v. NEW YORK LIFE INSURANCE CO. Certiorari, 311 U. S. 643, to the Circuit Court of Appeals for the Eighth Circuit. Argued March 12, 1941. Decided April 7, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. Samuel R. Toucey submitted, *pro se*. Mr. Richard S. Richter, with whom Messrs. Samuel W. Sawyer, Horace F. Blackwell, Jr., and Louis H. Cooke were on the brief, for respondent. Reported below: 112 F. 2d 927. See *post*, p. 596.

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No. 697. WHITE v. JOHNSTON, WARDEN. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. April 7, 1941. *Per Curiam*: The Solicitor General having confessed error, the motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted, the judgment is reversed, and the cause is remanded to the District Court with directions to find the facts specially and state separately its conclusions of law in accordance with Rule 52 (a) of the Rules of Civil Procedure. Samuel White, *pro se*. Reported below: 116 F. 2d 936.

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No. 839. UNITED STATES *v.* BUILDING & CONSTRUCTION TRADES COUNCIL ET AL. Appeal from the District Court of the United States for the Eastern District of Louisiana. April 7, 1941. *Per Curiam*: The judgment is affirmed. *United States v. Hutcheson*, 312 U. S. 219. MR. JUSTICE MURPHY took no part in the consideration or decision of this case. *Solicitor General Biddle* and *Mr. James C. Wilson* for the United States. *Mr. Joseph A. Padway* for the Building & Construction Trades Council et al., and *Messrs. Joseph O. Carson II, Thomas E. Kerwin, Joseph O. Carson, and Charles H. Tuttle* for the United Brotherhood of Carpenters & Joiners et al., appellees.

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No. 840. UNITED STATES *v.* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ET AL. Appeal from the District Court of the United States for the Northern District of Illinois. April 7, 1941. *Per Curiam*: The judgment is affirmed. *United States v. Hutcheson*, 312 U. S. 219. MR. JUSTICE MURPHY took no part in the consideration or decision of this case. *Solicitor General Biddle* and *Messrs. Leo F. Tierney and J. Albert Woll* for the United States. *Messrs. Joseph O. Carson II, Thomas E. Kerwin, Joseph O. Carson, and Charles H. Tuttle* for appellees.

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No. 841. UNITED STATES *v.* INTERNATIONAL HOD CARRIERS & COMMON LABORERS' DISTRICT COUNCIL ET AL. Appeal from the District Court of the United States for the Northern District of Illinois. April 7, 1941. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *United States v. Hutcheson*, 312 U. S. 219. MR. JUSTICE MURPHY took no part in the consideration or decision of this cause. *Solicitor General Biddle* and



*Messrs. J. Albert Woll and Leo F. Tierney* for the United States. *Messrs. Thomas D. Nash and Michael J. Ahern* for appellees.

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No. 845. *A. F. & G. REALTY CORPORATION ET AL. v. CITY OF NEW YORK*. Appeal from the Supreme Court of the State of New York. April 7, 1941. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. (1) *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; (2) *Perley v. North Carolina*, 249 U. S. 510, 514; *Puget Sound Co. v. Seattle* 291 U. S. 619, 624. *Messrs. Bernard L. Bermant and John B. Marsh* for appellants. *Messrs. William C. Chanler and Paxton Blair* for appellee. Reported below: 259 App. Div. 552; 284 N. Y. 48, 701; 20 N. Y. S. 2d 53; 29 N. E. 2d 465; 30 N. E. 2d 729.

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No. —. *EX PARTE SAMUEL LESSER*. April 7, 1941. Application denied.

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No. —, original. *EX PARTE CHARLES H. KNIGHT*;  
No. —, original. *EX PARTE CHARLES VON GLAHN*; and  
No. —, original. *EX PARTE JACK SHEARER*. April 7, 1941. The motions for leave to file petitions for writs of habeas corpus are denied.

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No. 449. *VERNON v. ALABAMA*. April 7, 1941. The order denying certiorari, 311 U. S. 694, is vacated and the petition for writ of certiorari to the Supreme Court of Alabama is granted. The motion for leave to proceed *in forma pauperis* is granted. It is ordered that execution of the judgment and sentence of the Supreme Court of

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Alabama in this case be, and the same hereby is, stayed pending the final determination of this cause by this Court.

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No. 671. KINNEY, SECRETARY OF LABOR, *v.* NEBRASKA EX REL. WESTERN REFERENCE & BOND ASSOCIATION, INC. ET AL. April 8, 1941. O. M. Olsen, Secretary of Labor, substituted as the party petitioner herein on motion of *Mr. Don Kelley* for the petitioner.

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No. 629. HARRIS, ADMINISTRATOR, *v.* ZION'S SAVINGS BANK & TRUST Co. Certiorari, 312 U. S. 670, to the Supreme Court of Utah. Argued March 31, 1941. Decided April 14, 1941. *Per Curiam*: Upon appeal from an order of the Probate Court of Salt Lake County, Utah, purporting to authorize an administrator of a deceased farmer to file a petition for relief under § 75 of the Bankruptcy Act, the Supreme Court of Utah has held that under the Probate Code of the State the Probate Court had no power to make the order. The decision thus rests upon an adequate non-federal ground, and as the federal question, whether in such circumstances a District Court of the United States sitting in bankruptcy could entertain a petition of the personal representative of the deceased farmer under § 75 of the Bankruptcy Act, was not necessarily involved, the writ of certiorari is dismissed. *Mr. J. D. Skeen* for petitioner. *Mr. Hadlond P. Thomas* for respondent. Reported below: 99 Utah 464; 105 P. 2d 461.

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No. 584. COMMERCIAL MOLASSES CORP. *v.* NEW YORK TANK BARGE CORP. Certiorari, 311 U. S. 643, to the Circuit Court of Appeals for the Second Circuit. Argued March 13, 14, 1941. Decided April 14, 1941. *Per Cu-*

*riam*: The judgment is affirmed by an equally divided Court. *Mr. T. Catesby Jones*, with whom *Messrs. D. Roger Englar, Leonard J. Matteson, and Ezra G. Benedict Fox* were on the brief, for petitioner. *Mr. Robert S. Erskine*, with whom *Messrs. Cletus Keating, L. de Grove Potter, and Richard Sullivan* were on the brief, for respondent. Reported below: 114 F. 2d 248. See *post*, p. 596.

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No. 678. BALTIMORE & OHIO RAILROAD CO. *v.* KEPNER. Certiorari, 312 U. S. 671, to the Supreme Court of Ohio. Argued April 2, 3, 1941. Decided April 14, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Messrs. Morison R. Waite and Harry H. Byrer*, with whom *Mr. William A. Eggers* was on the brief, for petitioner. *Mr. Samuel T. Gaines*, with whom *Mr. Edward M. Ballard* was on the brief, for respondent. Reported below: 137 Ohio St. 206, 409; 28 N. E. 2d 586; 30 N. E. 2d 982. See *post*, p. 596.

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No. 686. REITZ *v.* MEALEY, COMMISSIONER OF MOTOR VEHICLES. Appeal from the District Court of the United States for the Northern District of New York. Argued April 3, 1941. Decided April 14, 1941. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Mr. Harry A. Allan*, with whom *Mr. Daniel H. Prior* was on the brief, for appellant. *Mr. Jack Goodman*, Assistant Attorney General of New York, with whom *Messrs. John J. Bennett, Jr., Attorney General, and Henry Epstein, Solicitor General*, were on the brief, for appellee. Reported below: 34 F. Supp. 532.

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No. 922. CONNOR *v.* CALIFORNIA ET AL. Appeal from the Supreme Court of California. April 14, 1941. *Per*



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*Curiam*: 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) of the Judicial Code (43 Stat. 936, 938), certiorari is denied. The motion for leave to proceed further herein *in forma pauperis* is also denied. *Frank S. Connor, pro se.* Reported below: 16 Cal. 2d 701; 108 P. 2d 10.

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No. —. JONES *v.* JACKSON, ATTORNEY GENERAL; and

No. —. *EX PARTE* ELLERT L. McGRATH. April 14, 1941. Applications denied.

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No. —, original. *EX PARTE* EDWARD KEPFORD. April 28, 1941. The motion for leave to file petition for writ of habeas corpus is denied.

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No. 535. UNITED STATES *v.* CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD Co. ET AL. April 28, 1941. It is ordered that the opinion filed March 31, 1941, be amended by inserting in the first paragraph on page 6, after the word "question," the following: "not only are above ordinary high water mark but also claim that they".

Opinion reported as amended, 312 U. S. 592.

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No. 312. SWANSON, SECRETARY OF STATE OF NEBRASKA, ET AL. *v.* BUCK ET AL. April 29, 1941. Frank Marsh et al. substituted as parties appellant in the place and stead of Harry R. Swanson et al., on motion of *Mr. William J. Hotz* for the appellants.

No. 729. *LOMAX v. TEXAS*. Certiorari, 312 U. S. 674, to the Court of Criminal Appeals of Texas. Argued May 1, 1941. Decided May 5, 1941. *Per Curiam*: The judgment is reversed. *Chambers v. Florida*, 309 U. S. 227; *White v. Texas*, 310 U. S. 530. Mr. F. S. K. Whittaker for petitioner. Messrs. Geo. W. Barcus, Assistant Attorney General of Texas, and Lloyd Davidson, with whom Mr. Gerald C. Mann, Attorney General, was on the brief, submitted for respondent. Reported below: 144 S. W. 2d 555.

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No. 827. *ODOM ET AL. v. UNITED STATES*. On petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit. May 5, 1941. *Per Curiam*: The Solicitor General having confessed error, the motion for leave to proceed *in forma pauperis* is granted, the petition for writ of certiorari is granted, the judgment is reversed, and the cause is remanded to the District Court for further proceedings. Mr. Hall Etter for petitioners. Reported below: 116 F. 2d 996.

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No. 934. *NORTHWEST LINSEED Co. v. MINNESOTA*. Appeal from the Supreme Court of Minnesota. May 5, 1941. *Per Curiam*: The motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question. *Euclid v. Amber Realty Co.*, 272 U. S. 365; *Fischer v. St. Louis*, 194 U. S. 361; *Pierce Oil Corp. v. City of Hope*, 248 U. S. 498. Mr. Josiah E. Brill for appellant. Messrs. R. S. Wiggin and John F. Bonner for appellee. Reported below: 209 Minn. 422; 297 N. W. 635.

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No. 54. *BERNARDS ET AL. v. JOHNSON ET AL.*; and Nos. 133 and 134. *LISENBA v. CALIFORNIA*. See *post*, p. 597.



No. 588. *EDWARDS v. CALIFORNIA*. Appeal from the Superior Court, County of Yuba, California. May 5, 1941. Reargument is ordered. The case is set for oral argument on Monday, October 13, next, and the Attorney General of California is requested to appear either in person or by his representative to present the views of the State with particular reference to the judicial or administrative interpretation by State authorities of the statute involved.

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No. 869. *TINKOFF ET AL. v. GOLD, TRUSTEE, ET AL.* On petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. May 12, 1941. *Per Curiam*: The motion to proceed *in forma pauperis* is granted. It appears that on a motion to vacate an order approving a supersedeas bond given on the appeal to the Circuit Court of Appeals, the appeal was dismissed for failure of appellants to produce the surety on the bond as required by the court, and later the Circuit Court of Appeals denied appellants' motion to vacate that order of dismissal. The petition for certiorari is granted and the order of dismissal is reversed upon the ground that while the failure to produce the surety for examination was an adequate reason for vacating the approval of the supersedeas bond, it did not justify the dismissal of the appeal. *Ella H. Tinkoff and Paysoff Tinkoff, pro se.*

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No. 919. *STEELEY v. KURN ET AL., TRUSTEES*. On petition for writ of certiorari to the Supreme Court of Missouri. May 12, 1941. *Per Curiam*: The petition for writ of certiorari is granted, and the judgment is reversed. *Jamison v. Encarnacion*, 281 U. S. 635. *Mr. Harry G. Waltner, Jr.*, for petitioner. Reported below: 347 Mo. 74; 146 S. W. 2d 578.

Nos. 907 and 908. *SAFE HARBOR WATER POWER CORP. v. UNITED STATES ET AL.* Appeals from the District Court of the United States for the Eastern District of Pennsylvania. May 12, 1941. *Per Curiam*: The motion to dismiss is granted, and the appeals are dismissed for want of jurisdiction. *Stratton v. St. Louis S. W. Ry. Co.*, 282 U. S. 10, 15-16; *Virginian Ry. Co. v. United States*, 272 U. S. 658, 671-672; *Ex parte Atlantic Coast Line R. Co.*, 279 U. S. 822. See Federal Power Act, § 313 (b) (Act of August 26, 1935, c. 687, Title II, § 213, 49 Stat. 847, 860, 16 U. S. C., § 825L (b)). *Messrs. Charles Markell and Edwin M. Sturtevant* for appellant. *Solicitor General Biddle* for appellees. Reported below: 37 F. Supp. 9.

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No. 938. *ORWITZ v. BOARD OF DENTAL EXAMINERS.* Appeal from the District Court of Appeal, 1st Appellate District, of California. May 12, 1941. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a properly presented substantial federal question. (1) *Semler v. State Board of Dental Examiners*, 294 U. S. 608; *Brown v. Massachusetts*, 308 U. S. 504. (2) *Cleveland & Pittsburgh R. Co. v. Cleveland*, 235 U. S. 50, 53; *Hiawassee Power Co. v. Carolina-Tenn. Co.*, 252 U. S. 341, 344; *White River Co. v. Arkansas*, 279 U. S. 692, 700. *Mr. Thos. D. Aitken* for appellant. *Mr. H. E. Linder-smith* for appellee. Reported below: 41 Cal. App. 2d 253; 107 P. 2d 407.

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No. —, original. *CALIFORNIA v. UNITED STATES.* On motion for leave to file complaint. May 12, 1941. *Per Curiam*: The motion for leave to file complaint is denied. *Kansas v. United States*, 204 U. S. 331; *Williams v. United States*, 289 U. S. 553, 573; *Principality of Monaco v. Mississippi*, 292 U. S. 313, 321. *Messrs. Burton Smith, John L. McNab, and Edw. D. Hays* for plaintiff.



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No. —, original. *EX PARTE PAUL WESLEY PARKER*. May 12, 1941. The motion for leave to file petition for writ of habeas corpus is denied.

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No. 2, original. *WISCONSIN ET AL. v. ILLINOIS ET AL.*;

No. 3, original. *MICHIGAN v. ILLINOIS ET AL.*; and

No. 4, original. *NEW YORK v. ILLINOIS ET AL.* On Exceptions to the Report of the Special Master. Argued May 2, 5, 1941. Decided May 26, 1941. *Per Curiam*: The exceptions to the report of the Special Master are overruled and the report is confirmed. The petition and the modified petition of the State of Illinois are dismissed with costs. MR. JUSTICE MURPHY took no part in the consideration and decision of this case. MR. JUSTICE BLACK dissents. *Mr. Albert J. Meserow*, Assistant Attorney General of Illinois, with whom *Messrs. George F. Barrett*, Attorney General, and *William C. Clausen*, Assistant Attorney General, were on the brief for the State of Illinois. *Messrs. Herbert H. Naujoks*, *Timothy F. Cohan*, Assistant Attorney General of New York, and *Thomas J. Herbert*, Attorney General of Ohio, with whom *Messrs. John E. Martin*, Attorney General of Wisconsin, *J. A. A. Burnquist*, Attorney General of Minnesota, *Claude T. Reno*, Attorney General of Pennsylvania, *Harrington Adams*, Deputy Attorney General of Pennsylvania, *Herbert J. Rushton*, Attorney General of Michigan, *James W. Williams*, Assistant Attorney General of Michigan, and *John J. Bennett, Jr.*, Attorney General of New York, were on the brief, for complainants. See 311 U. S. 107.

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No. 449. *VERNON v. ALABAMA*. Certiorari, *ante*, p. 540, to the Supreme Court of Alabama. Argued May 5, 1941. Decided May 26, 1941. *Per Curiam*: The judgment is reversed. *Chambers v. Florida*, 309 U. S. 227; *White v.*



*Texas*, 310 U. S. 530. *Mr. Walter S. Smith* for petitioner. *Mr. Thomas S. Lawson*, Attorney General of Alabama, with whom *Mr. William H. Loeb*, Assistant Attorney General, was on the brief, for respondent. Reported below: 240 Ala. 577; 200 So. 560.

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No. —. *EX PARTE CHARLES N. WILLIAMS*; and

No. —. *EX PARTE JOSEPH PORESKEY*. May 26, 1941.  
Applications denied.

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No. —, original. *EX PARTE EMMET H. BOZEL*. May 26, 1941. The motion for leave to file a petition for habeas corpus is denied without prejudice to a further application to the United States District Court for the District of Kansas, and for proceedings thereon in accordance with the decisions in *Walker v. Johnston*, 312 U. S. 275, and *Holiday v. Johnston*, *ante*, p. 342.

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No. —, original. *EX PARTE ERNEST J. ANDERSON*;

No. —, original. *EX PARTE CLARENCE M. BRUMMITT*;  
and

No. —, original. *EX PARTE JOHN W. MEYERS*. May 26, 1941. The motions for leave to file petitions for writs of habeas corpus are denied.

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No. 901. *BAKERY & PASTRY DRIVERS & HELPERS LOCAL 802 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL. v. WOHL ET AL.* On petition for writ of certiorari to the Court of Appeals of the State of New York. June 2, 1941. *Per Curiam*: The petition for rehearing is granted. The order denying certiorari, *post*, p. 572, is vacated and the petition for writ of certiorari is granted. The judgment is reversed. *American Federation of Labor*

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v. *Swing*, 312 U. S. 321. *Mr. Edward C. Maguire* for petitioners. *Hyman Wohl* and *Louis Platzman*, *pro se*. Reported below: 284 N. Y. 788; 31 N. E. 2d 765.

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No. 1063. PEARL ASSURANCE CO., LTD., ET AL. v. HARRINGTON, COMMISSIONER OF INSURANCE. Appeal from the District Court of the United States for the District of Massachusetts. June 2, 1941. *Per Curiam*: The judgment is affirmed. MR. JUSTICE FRANKFURTER took no part in the consideration and decision of this case. *Mr. Basil O'Connor* for appellants. Reported below: 38 F. Supp. 411.

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No. 1066. DARNALL TRUCKING CO., INC., ET AL. v. SIMPSON, STATE ROAD COMMISSIONER, ET AL. Appeal from the Supreme Court of Appeals of West Virginia. June 2, 1941. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Maurer v. Hamilton*, 309 U. S. 598. *Messrs. Robert G. Kelly* and *Edmund M. Brady* for appellants. *Messrs. Clarence W. Meadows*, Attorney General of West Virginia, and *Robert S. Spilman* for appellees. Reported below: 122 W. Va. 656; 12 S. E. 2d 516.

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No. 1067. ALROPA CORPORATION v. KIRCHWEHM. Appeal from the Supreme Court of Ohio. June 2, 1941. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a properly presented substantial federal question. (1) *Godchaux Co. v. Estopinal*, 251 U. S. 179; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114, 117; *Herndon v. Georgia*, 295 U. S. 441, 443; (2) *Zadig v. Baldwin*, 166 U. S. 485, 488; *Live Oak Water Users' Assn. v. Railroad Commission*, 269 U. S. 354, 357-358; (3) *Kryger v. Wilson*, 242 U. S. 171, 176; *Finney v. Guy*, 189 U. S. 335,

340; *Johnson v. New York Life Ins. Co.*, 187 U. S. 491, 496. *Mr. Sigmund H. Steinberg* for appellant. *Mr. Aloys C. Link* for appellee. Reported below: 138 Ohio St. 30; 33 N. E. 2d 655.

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No. —. *EX PARTE WALTER WISNIEWSKI*. June 2, 1941. Application denied.

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No. —, original. *EX PARTE CLEIO HULL*. June 2, 1941. The motion for leave to file petition for writ of habeas corpus is denied.

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No. 14, original. *HOLIDAY v. JOHNSTON, WARDEN*. June 2, 1941. Paragraph numbered 3 on page 4 of the opinion is amended to read as follows:

"The respondent insists that the petition was premature if the petitioner's claim that he was denied the assistance of counsel is without merit, but the contention is pressed only if we find that no question as to such denial is presented."

The first sentence of the last paragraph on page 6 is amended to read as follows:

"Finally, the sanction by Rule 53 of the Rules of Civil Procedure of references to masters does not aid in the decision of the question presented."

Opinion reported as amended, *ante*, p. 342.

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No. 32. *FIDELITY UNION TRUST CO. ET AL., EXECUTORS, v. FIELD*. June 2, 1941. The motion for leave to file a second petition for rehearing is granted. 311 U. S. 730.