

DECISIONS PER CURIAM, ETC., FROM MARCH 31,
1942, THROUGH JUNE 8, 1942.*

No. 1060. *DUCK v. ARKANSAS CORPORATION COMMISSION*. Appeal from the Supreme Court of Arkansas. April 6, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *California v. Thompson*, 313 U. S. 109; *Olsen v. Nebraska*, 313 U. S. 236. *Mr. Edward H. Coulter* for appellant. *Mr. Jack Holt*, Attorney General of Arkansas, for appellee. Reported below: 203 Ark. 488, 158 S. W. 2d 24.

No. 1067. *AVENT v. MISSISSIPPI UNEMPLOYMENT COMPENSATION COMMISSION ET AL.* Appeal from the Supreme Court of Mississippi. April 6, 1942. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Carmichael v. Southern Coal Co.*, 301 U. S. 495, 510-13; *Great A. & P. Co. v. Grosjean*, 301 U. S. 412; *H. E. Butt Grocery Co. v. Sheppard*, 311 U. S. 608; *Helvering v. Clifford*, 309 U. S. 331. *Mr. Rufus Creekmore* for appellant. Reported below: 4 So. 2d 296, 684.

No. —, original. *EX PARTE WILLIAM DOSTER NOLAND*. April 6, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. 19. *PHOENIX FINANCE CORP. v. IOWA-WISCONSIN BRIDGE CO.* April 6, 1942. The motion of petitioner to

*For decisions on applications for certiorari, see *post*, pp. 651, 660; for rehearing, *post*, p. 706. For cases disposed of without consideration by the Court, *post*, p. 706.

recall the mandate and retax costs is granted and it is ordered that the mandate be recalled and amended so as to give petitioner recovery for additional costs in the sum of \$94.00.

No. 64. *HYSLER v. FLORIDA*. April 6, 1942. The opinion of the Court is amended as follows: On page 8 of the slip opinion, strike out the first five sentences of the first paragraph.

The petition for rehearing is denied.

Opinion reported as amended, 315 U. S. 411.

No. 745. *SCHENECTADY UNION PUBLISHING Co. v. SWEENEY*. Certiorari, 314 U. S. 605, to the Circuit Court of Appeals for the Second Circuit. Argued March 31, April 1, 1942. Decided April 13, 1942. *Per Curiam*: The judgment is affirmed by an equally divided Court. MR. JUSTICE JACKSON took no part in the consideration or decision of this case. *Mr. Morris L. Ernst*, with whom *Messrs. William A. Roberts, Benjamin Kaplan, and Edgar Turlington* were on the brief, for petitioner. *Mr. John O'Connor*, with whom *Mr. William F. Cusick* was on the brief, for respondent. Briefs of *amici curiae* were filed by *Mr. Edmund D. Campbell* on behalf of the American Civil Liberties Union; by *Messrs. Milton Handler, Henry H. Nordlinger, and David Sher* on behalf of the American Jewish Committee et al.; and by *Mr. Charles J. Tobin* on behalf of the New York State Publishers Assn.,—urging reversal. Reported below: 122 F. 2d 288.

No. 1074. *MOORE, DOING BUSINESS AS MOORE MOTOR FREIGHT LINES, v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the District of Minnesota. April 13, 1942. *Per Curiam*: The mo-

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tion to affirm is granted and the judgment is affirmed. *United States v. Maher*, 307 U. S. 148, 153-154; *United States v. Rosenblum Truck Lines*, 315 U. S. 50; *Lubetich v. United States*, 315 U. S. 57. Messrs. Ernest A. Michel and Thomas Walsh for appellant. Solicitor General Fahy and Mr. Daniel W. Knowlton for respondents. Reported below: 41 F. Supp. 786.

No. —, original. *EX PARTE MARTIN WOHL ET AL.* April 13, 1942. The motion for leave to file petition for writ of prohibition is denied. The rule to show cause is discharged.

No. 238. *UNITED STATES v. STATE OF NEW YORK*; and No. 251. *STATE OF NEW YORK v. UNITED STATES.* April 13, 1942. Ordered that the opinion in these cases be amended as follows: Strike from line 12 of page 7, the phrase "the sum of the assets available" and insert "the total of such claims."

Opinion reported as amended, 315 U. S. 510.

No. 821. *AIKEN ET AL. v. INSULL ET AL.*; and

No. 822. *DEMET'S, INCORPORATED, ET AL. v. INSULL ET AL.* April 13, 1942. The motion to grant relief requested in alternative motion filed March 13, 1942, is denied. See 315 U. S. 806, 829.

No. 1083. *C. J. HENDRY CO. ET AL. v. MOORE ET AL., AS THE FISH AND GAME COMMISSION.* Appeal from the Supreme Court of California. April 13, 1942. The appeal is dismissed for want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C. § 344 (a). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by § 237 (c) of the Judicial Code as amended, 28 U. S. C. § 344 (c), certiorari is

granted. *Mr. Arch E. Ekdale* for appellants. *Messrs. Earl Warren*, Attorney General of California, and *Everett W. Mattoon*, Assistant Attorney General, for appellees. Reported below: 18 Cal. 2d 835, 118 P. 2d 1.

No. 1113. *VIATOR v. STATE TAX COMMISSION ET AL.* Appeal from the Supreme Court of Mississippi. April 27, 1942. *Per Curiam*: The motion for leave to file amended statement as to jurisdiction is granted. The appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. *Mr. Albert Sidney Johnston, Jr.* for appellant. Reported below: 5 So. 2d 487.

No. —, original. *EX PARTE HAROLD GLASS*;
No. —, original. *EX PARTE EMMET H. BOZEL*; and
No. —, original. *EX PARTE JAMES R. BLOOD*. April 27, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 910. *A. B. KIRSCHBAUM Co. v. FLEMING, ADMINISTRATOR*. April 28, 1942. L. Metcalfe Walling, present Administrator of the Wage and Hour Division, U. S. Dept. of Labor, substituted as the party respondent herein in the place and stead of Philip B. Fleming resigned.

No. 1042. *NAILLING v. UNITED STATES*. April 29, 1942. Order denying certiorari, *post*, p. 675, withheld until May 11th next on motion of *Mr. L. E. Gwinn* for the petitioner.

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No. 815. STATE TAX COMMISSION OF UTAH ET AL. *v.* UNTERMYER ET AL., EXECUTORS. On petition for writ of certiorari to the Supreme Court of Utah. May 4, 1942. *Per Curiam*: The petition for writ of certiorari is granted and the judgment is reversed on authority of *State Tax Commission of Utah v. Aldrich*, *ante*, p. 174. *Messrs. Grover A. Giles*, Attorney General of Utah, and *J. Lambert Gibson* for petitioners. *Mr. Eugene Untermyer* for respondents. Reported below: 116 P. 2d 926.

No. 1160. BOARD OF TRUSTEES OF THE TOWN OF CEBOLLETA LAND GRANT *v.* L BAR CATTLE CO., INC. Appeal from the Supreme Court of New Mexico. May 4, 1942. *Per Curiam*: The appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as an application for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. *Mr. George S. Klock* for appellant. Reported below: 46 N. M. 26, 120 P. 2d 432.

No. —, original. *EX PARTE JOHN WEBER*. May 4, 1942. Application denied.

No. —, original. *EX PARTE LEO T. SCHUGSDA*; and

No. —, original. *EX PARTE ANDREW VIALVA*. May 4, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 5, original. *COLORADO v. KANSAS ET AL.* May 4, 1942. Honorable Charles C. Cavanah, a retired District Judge of the United States, of Boise, Idaho, is appointed Special Master in this cause.

No. 1154. *BANQUE DE FRANCE v. SUPREME COURT OF THE STATE OF NEW YORK ET AL.* Appeal from the Supreme Court of New York. May 25, 1942. *Per Curiam*: The appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as an application for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. The CHIEF JUSTICE took no part in the consideration or decision of this case. *Messrs. Fred-eric R. Coudert and Mahlon B. Doing* for appellant. *Messrs. John C. Bruton and John Foster Dulles* for appellees. Reported below: 263 App. Div. 703, 287 N. Y. 483, 31 N. Y. S. 2d 660, 41 N. E. 2d 65.

No. 1202. *KRAMER v. SHEEHY, WARDEN.* Appeal from the Supreme Court of Nevada. May 25, 1942. *Per Curiam*: The Court has examined all the federal questions raised by appellant. It finds that the attack upon the validity of the state statute raises no substantial federal question (*Wolfgang v. California*, 270 U. S. 627, and cases cited), and that none of the other questions presented warrant further review. The motion to dismiss is therefore granted, and the appeal is dismissed for want of a substantial federal question. The motion for leave to proceed further *in forma pauperis* is denied. *John A. Kramer, pro se.* *Messrs. Gray Mashburn*, Attorney General of Nevada, and *John W. Bonner* for appellee. Reported below: 61 Nev. 174, 122 P. 2d 862.

No. 1212. *BOHN v. BOHN.* Appeal from the Supreme Court of Mississippi. May 25, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a federal question. Under Rule 30 (2), dam-

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ages of 10 percent of the amount of the judgment are awarded, it appearing that the appeal was frivolous and taken merely for delay. *Mr. Hanun Gardner* for appellant. *Mr. Webb M. Mize* for appellee. Reported below: 5 So. 2d 429.

No. —. EX PARTE BERNARD BAHLHORN;

No. —. EX PARTE NICHOLAS PARSIN; and

No. —. *ERRINGTON v. HUDSPETH, WARDEN*. May 25, 1942. Applications denied.

No. —. *WETZEL v. SCHAEFER*. May 25, 1942. The petition for appeal is denied.

No. —, original. EX PARTE GEORGE R. BUSSE;

No. —, original. EX PARTE ALFRED BAUER; and

No. —, original. EX PARTE CASSIUS McDONALD. May 25, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 830. *SEMINOLE NATION v. UNITED STATES*. May 25, 1942. Ordered that the opinion in this case be amended by adding at the end of the first full paragraph on page 4 the following: "The Government in this Court agrees to this proposition and suggests that the cause be remanded to the Court of Claims."

Opinion reported as amended, *ante*, p. 310.

No. 1187. *SANFORD v. HILL, SHERIFF*. Appeal from the Court of Criminal Appeals of Texas. June 1, 1942. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Gorin v. United States*, 312 U. S. 19, 27-28; *Hotel & Restaurant Employees' Interna-*

tional Alliance v. Wisconsin Employment Relations Board, 315 U. S. 437. *Mr. Sewall Myer* for appellant. Reported below: 157 S. W. 2d 899.

No. 1239. *FIFTH STREET BUILDING v. McCOLGAN, FRANCHISE TAX COMMISSIONER*. Appeal from the Supreme Court of California. June 1, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of jurisdiction. Section 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). Treating the papers whereon the appeal was allowed as an application for writ of certiorari as required by § 237 (c) of the Judicial Code, as amended, 28 U. S. C., § 344 (c), certiorari is denied. *Mr. Clark J. Milliron* for appellant. *Messrs. Earl Warren*, Attorney General of California, *H. H. Linney* and *Valentine Brooks* for appellee. Reported below: 19 Cal. 2d 143, 119 P. 2d 729.

No. 1245. *TOOLE ET AL. v. MICHIGAN STATE BOARD OF DENTISTRY ET AL.* Appeal from the Supreme Court of Michigan. June 1, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Semler v. Dental Examiners*, 294 U. S. 608, and cases cited. *Mr. Edward N. Barnard* for appellants. *Messrs. Herbert J. Rushton*, Attorney General of Michigan, and *Wilbur M. Brucker*, for appellees. Reported below: 300 Mich. 180, 1 N. W. 2d 502.

No. —. *BAKER v. FLORIDA*. June 1, 1942. The application for a further stay is denied.

No. —, original. *EX PARTE ODELL WALLER*. June 1, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

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No. 595. SWIFT & COMPANY ET AL. *v.* UNITED STATES ET AL. June 1, 1942. Ordered that the opinion of this Court in this case be amended by striking from the eighth line of the second full paragraph on page 10 of the pamphlet print the word "use" and inserting in lieu thereof the words "establish or become interested in". The petition for rehearing is denied.

Opinion reported as amended, *ante*, p. 216.

No. 1046. MUELLER *v.* MUELLER ET AL. June 1, 1942. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit dismissed for failure to comply with the rules. *Mr. Edward H. Coulter* for petitioner. Reported below: 124 F. 2d 544.

No. 280. JONES *v.* CITY OF OPELIKA. Certiorari, 314 U. S. 593, to the Supreme Court of Alabama. June 8, 1942. The petition for rehearing is granted, and the judgment entered February 9, 1942, 315 U. S. 782, is vacated. See *ante*, p. 584.

No. 315. UNITED STATES EX REL. ROBINSON *v.* JOHNSTON, WARDEN. On petition for writ of certiorari to the Circuit Court of Appeals for the Ninth Circuit. June 8, 1942. *Per Curiam*: The motion for leave to file a second petition for rehearing is granted. The second petition for rehearing is granted. The order denying certiorari, 314 U. S. 675, is vacated, and the petition for writ of certiorari is granted. The motion for leave to proceed *in forma pauperis* is also granted. In view of the conflict of views which has arisen among the judges of the Ninth Circuit with respect to the decision in this case (see *Robinson v. Johnston*, 118 F. 2d 998, 1001, and *Crockett v. United States*, 125 F. 2d 547, 548, 549), and in view of this Court's decision in *Waley v. Johnston*, *ante*, p. 101, re-

versing 124 F. 2d 587, the judgment is vacated, and the case is remanded to the Circuit Court of Appeals for further proceedings, including leave to petitioner to apply for a hearing before the court *en banc*. See *Textile Mills Corp. v. Commissioner*, 314 U. S. 326. *Thomas Henry Robinson, Jr., pro se. Solicitor General Fahy, Assistant Attorney General Berge, and Mr. W. Marvin Smith* for respondent. Reported below: 118 F. 2d 998.

No. —. *WOLD v. INDUSTRIAL ACCIDENT COMMISSION OF CALIFORNIA ET AL.* June 8, 1942. Application denied.

No. —. *RYAN ET AL. v. PENNSYLVANIA PUBLIC UTILITY COMMISSION.* June 8, 1942. The application for a stay is denied.

No. —, original. *EX PARTE LOUIS BURALL.* June 8, 1942. The motion for leave to file petition for writ of certiorari is denied.

No. —, original. *EX PARTE JOHN ST. FRANCIS SLAUGHTER.* June 8, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

No. 12, original. *EX PARTE KUMEZO KAWATO.* June 8, 1942. The motion for leave to proceed on typewritten papers is granted. The motion for leave to file a petition for writ of mandamus is granted. The application is assigned for argument on Monday, October 12, next. The Solicitor General is requested to file a brief and, if he so desires, to participate in the oral argument. *Kumezo Kawato, pro se.*

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No. 348. SEMINOLE NATION *v.* UNITED STATES. June 8, 1942. Ordered that the opinion of this Court in this case be amended by adding after the first full paragraph on page 16 of the opinion the following paragraph:

"Upon the remand the Court of Claims will be free to consider any legal or equitable defenses which the Government may interpose to the claims asserted there by petitioner."

The petition for rehearing is denied. MR. JUSTICE REED took no part in the consideration or decision of this application.

Opinion reported as amended, *ante*, p. 286.

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MARCH 31, 1942, THROUGH JUNE 8, 1942.

No. 852. ANDERSON ET AL. *v.* UNITED STATES. April 6, 1942. Petition for writ of certiorari to the Circuit Court of Appeals for the Sixth Circuit granted. *Messrs. W. H. Norvell and Lee Pressman* for petitioners. *Solicitor General Fahy, Assistant Attorney General Berge, and Messrs. Oscar A. Provost and Archibald Cox* for the United States. Briefs of *amici curiae* were filed by *Mr. Abraham J. Isserman* on behalf of the National Federation for Constitutional Liberties, and by *Mr. Arthur Garfield Hays* on behalf of the American Civil Liberties Union, in support of petitioners. Reported below: 124 F. 2d 58.

No. 1016. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* OHIO LEATHER CO.;

No. 1017. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* STRONG MANUFACTURING CO.;

No. 1018. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* WARREN TOOL CO. April 6, 1942. Petition