

DECISIONS PER CURIAM, ETC., FROM OCTOBER
5, 1942, THROUGH JANUARY 18, 1943.*

No. 140. *OSMENT v. PITCAIRN ET AL., RECEIVERS.* On petition for writ of certiorari to the Supreme Court of Missouri. October 12, 1942. *Per Curiam:* The last clause of § 4 of the 1890 amendments to Article VI of the Missouri constitution provides that "when a division [of the Supreme Court of Missouri] in which a cause is pending shall so order, the cause shall be transferred to the court for its decision." In *Scheufler v. Manufacturing Lumbermen's Underwriters*, decided July 7, 1942, the Supreme Court of Missouri stated that under this clause "either division, on application or its own motion and for reasons deemed sufficient though not enumerated in the section, may order a cause transferred to the court en banc." 349 Mo. 855, 857; 163 S. W. 2d 749, 750. In this case petitioner made no application to transfer the cause from Division Two, where it was heard and decided, to the court en banc. As it does not appear that petitioner has exhausted the appellate review provided by state law, the petition for certiorari must be denied for want of jurisdiction. *Gorman v. Washington University*, 316 U. S. 98, and cases cited. *Mr. H. G. Waltner, Jr.* for petitioner. *Messrs. Edgar Shook and N. S. Brown* for respondents. Reported below: 349 Mo. 137, 159 S. W. 2d 666.

No. 113. *DAVIDSON TRANSFER & STORAGE CO. ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

*For decisions on applications for certiorari, see *post*, pp. 606, 624; rehearing, *post*, p. 703. For cases disposed of without consideration by the Court, *post*, p. 702.

October 12, 1942. *Per Curiam*: The judgment is affirmed. *Mr. Charles E. Cotterill* for appellants. Reported below: 42 F. Supp. 215.

No. 128. GURNEY ET AL. *v.* FERGUSON ET AL. Appeal from the Supreme Court of Oklahoma. October 12, 1942. *Per Curiam*: The appeal is dismissed for want of jurisdiction. § 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. *Messrs. W. F. Wilson, M. A. Ned Looney, and T. Austin Gavin* for appellants. Reported below: 190 Okla. 254, 122 P. 2d 1002.

No. 129. TENNESSEE OIL CO. *v.* McCANLESS, COMMISSIONER OF FINANCE AND TAXATION. Appeal from the Supreme Court of Tennessee. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a properly presented federal question. *Fullerton v. Texas*, 196 U. S. 192; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114. *Mr. Cecil Sims* for appellant. *Messrs. Roy H. Beeler*, Attorney General of Tennessee, and *William F. Barry*, Solicitor General, for appellee. Reported below: 178 Tenn. 328, 162 S. W. 2d 1081.

No. 160. CHELTENHAM & ABINGTON SEWERAGE CO. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Appeal from the Supreme Court of Pennsylvania; and

No. 169. PENNSYLVANIA PUBLIC UTILITY COMMISSION *v.* CHELTENHAM & ABINGTON SEWERAGE CO. On petition for writ of certiorari to the Supreme Court of Pennsylvania. October 12, 1942. *Per Curiam*: In No. 160 the appeal is dismissed, and in No. 169 the petition for writ of

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certiorari is denied, for want of a final judgment. *Grays Harbor Logging Co. v. Coats-Fordney Co.*, 243 U. S. 251; *Wick v. Superior Court*, 278 U. S. 575. Mr. George Henry Huft for appellant in No. 160 and respondent in No. 169. Mr. Thomas A. Foulke for Benjamin H. Davis et al., appellees in No. 160. Messrs. Claude T. Reno, Harry M. Showalter, Samuel Graff Miller, and Herbert S. Levy for the Pennsylvania Public Utility Commission. Reported below: 344 Pa. 366, 25 A. 2d 334.

No. 174. *PEAK v. CALIFORNIA*. Appeal from the Superior Court of California. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. § 237 (a), Judicial Code, as amended, 28 U. S. C., § 344 (a). The petition for writ of certiorari is denied. The motion for leave to proceed further *in forma pauperis* is denied. *George Peak, pro se*.

No. 192. *TOYE BROS. YELLOW CAB CO. v. COOPERATIVE CAB CO., INC., ET AL.* Appeal from the Supreme Court of Louisiana. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a properly presented federal question. *Fullerton v. Texas*, 196 U. S. 192; *Rooker v. Fidelity Trust Co.*, 261 U. S. 114. Mr. Eberhard Deutsch for appellant. Mr. Francis P. Burns for appellees. Reported below: 199 La. 1063, 7 So. 2d 353.

No. 238. *MARTIN v. CITY OF STRUTHERS*. Appeal from the Supreme Court of Ohio. October 12, 1942. *Per Curiam*: The appeal is dismissed on the ground that the record does not show that the federal question presented was properly preserved on appeal to the Court of Appeals

of Ohio. *Hiawassee River Power Co. v. Carolina-Tennessee Co.*, 252 U. S. 341, 343-44. *Messrs. Hayden C. Covington and Victor F. Schmidt* for appellant. Reported below: 139 Ohio St. 372, 40 N. E. 2d 154.

No. 244. *MONKS v. LEE ET AL.* Appeal from the District Court of Appeal, 4th Appellate District, of California. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed on the ground that it does not appear from the record that the appeal was applied for within the time provided by law. § 8 (a), Act of February 13, 1925 (43 Stat. 936, 940), 28 U. S. C., § 350. *Messrs. L. R. Kirby, Herbert S. Avery, and John Coker* for appellant. *Mr. William P. Cary* for appellees. Reported below: 48 Cal. App. 2d 603, 120 P. 2d 167.

No. 258. *CLARK ET AL. v. DOYLE, EXCISE ADMINISTRATOR, ET AL.* Appeal from the Supreme Court of Indiana. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. (1) *Gorin v. United States*, 312 U. S. 19, 27; (2) *Eberle v. Michigan*, 232 U. S. 700, 706. *Messrs. Lloyd D. Claycombe and Albert Stump* for appellants. *Mr. Urban C. Stover*, Deputy Attorney General of Indiana, for appellees. Reported below: 41 N. E. 2d 949.

No. 280. *GENERAL MOTORS ACCEPTANCE CORPORATION ET AL. v. HULBERT, COUNTY ASSESSOR OF CANADIAN COUNTY.* Appeal from the Supreme Court of Oklahoma. October 12, 1942. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Columbus Southern Railway Co. v. Wright*, 151 U. S. 470, 478-83; *General American Tank Car Corp. v. Day*, 270 U. S. 367,

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372. The CHIEF JUSTICE took no part in the consideration or decision of this case. *Mr. D. I. Johnston* for appellants. *Messrs. Mac Q. Williamson*, Attorney General of Oklahoma, and *Randell S. Cobb* for appellee. Reported below: 190 Okla. 578, 125 P. 2d 975.

No. 317. MORRIS PLAN INDUSTRIAL BANK *v.* GRAVES ET AL., CONSTITUTING THE STATE TAX COMMISSION. Appeal from the Supreme Court of New York. October 12, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *First National Bank v. Louisiana Tax Commission*, 289 U. S. 60, 62-64. The CHIEF JUSTICE took no part in the consideration or decision of this case. *Mr. R. Randolph Hicks* for appellant. *Messrs. John J. Bennett, Jr.*, Attorney General of New York, and *Wendell P. Brown*, Assistant Attorney General, for appellees. Reported below: 261 App. Div. 1018, 26 N. Y. S. 2d 854; 288 N. Y. 567, 42 N. E. 2d 22.

No. 359. C. I. T. CORPORATION ET AL. *v.* STONE, CHAIRMAN, STATE TAX COMMISSION, ET AL.;

No. 360. UNIVERSAL CREDIT CO. ET AL. *v.* STONE, STATE TAX COMMISSION, ET AL.; and

No. 361. YELLOW MANUFACTURING ACCEPTANCE CORP. ET AL. *v.* STONE, CHAIRMAN, STATE TAX COMMISSION, ET AL. Appeals from the Supreme Court of Mississippi. October 12, 1942. *Per Curiam*: The motions to affirm are granted and the judgments are affirmed. *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435, 443-445; *Bristol v. Washington County*, 177 U. S. 133; *Savings & Loan Society v. Multnomah County*, 169 U. S. 421; *Curry v. McCanness*, 307 U. S. 357, 365-68. *Messrs. William H. Watkins* and *P. H. Eager, Jr.* for appellants. *Mr. John Thomas Smith*

was with them on the brief in No. 361. *Messrs. Greek L. Rice*, Attorney General of Mississippi, and *J. H. Sumrall* for appellees. Reported below: 193 Miss. 338, 344, 354; 7 So. 2d 811, 820.

No. —, Original. *EX PARTE ELMER E. DAVIS*. October 12, 1942. *Per Curiam*: It appears that petitioner has an application for a writ of error coram nobis pending in the Circuit Court of Vigo County, Indiana. He alleges that that court has not taken any action upon his application. It does not appear that petitioner has exhausted his remedies in the state courts to obtain a determination, which would be a reviewable judgment. The motion for leave to file a petition for writ of habeas corpus is therefore denied without prejudice.

No. —, Original. *EX PARTE JOHN BOTWINSKI*;
 No. —, Original. *EX PARTE JOE CEPHUS GRAY*;
 No. —, Original. *EX PARTE JOSEPH BEMATRE*;
 No. —, Original. *EX PARTE CHARLES E. PHILLIPS*;
 No. —, Original. *EX PARTE ALFRED MAURICE*;
 No. —, Original. *EX PARTE DONALD FLOWERS*; and
 No. —, Original. *EX PARTE ALBERT SMITH*. October 12, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —. *EX PARTE JAMES R. ALLEN*. October 12, 1942. Application denied.

No. 1. *CARTER OIL CO. v. WELKER ET AL.* Certiorari, 311 U. S. 633, to the Circuit Court of Appeals for the Seventh Circuit. October 19, 1942. *Per Curiam*: The judgment is reversed, per stipulation, on the authority of *Tallman v. Eastern Illinois & Peoria R. Co.*, 379 Ill. 441, 41 N. E. 2d

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537, and *Vandenbark v. Owens-Illinois Co.*, 311 U. S. 538. Messrs. *L. G. Owen, Henry I. Green, and Harold F. Lindley* for petitioner. Messrs. *William M. Acton, Paul J. Wimsey, and Lawrence T. Allen* for respondents. Reported below: 112 F. 2d 299.

No. 259. REEVES, COMMISSIONER OF REVENUE OF KENTUCKY, *v.* WILLIAMSON, TRUSTEE. Appeal from, and petition for writ of certiorari to, the Circuit Court of Appeals for the Sixth Circuit. October 19, 1942. *Per Curiam*: The appeal is dismissed for the want of jurisdiction. § 240 (b), Judicial Code, as amended, 28 U. S. C., § 347 (b); *Memphis Gas Co. v. Beeler*, 315 U. S. 649, 650-51. The petition for writ of certiorari is denied. Messrs. *M. B. Holifield and H. Appleton Federa* for appellant. *Mr. Ben Williamson* for appellee. Reported below: 127 F. 2d 657.

No. —. HOLWIG *v.* HIATT;
 No. —. HUMES *v.* BLAIR, JUDGE;
 No. —. EX PARTE FRANK S. FOWLER; and
 No. —. EX PARTE THOMAS M. WOFFORD. October 19, 1942. Applications denied.

No. —. FLYNN *v.* HUDSPETH, WARDEN. October 19, 1942. The motion for review is denied.

No. —. EX PARTE PEDRO E. SANCHEZ TAPIA. October 19, 1942. The application for allowance of an appeal is denied.

No. —, Original. EX PARTE JOHN O. SPAULDING. October 19, 1942. The motion for leave to file petition for

writ of habeas corpus is denied without prejudice to an application to the appropriate District Court.

No. —, Original. *EX PARTE MARVIN DAVIS*. October 19, 1942. The motions for leave to file a petition for writ of certiorari and a petition for writ of habeas corpus are denied.

No. —, Original. *EX PARTE GEORGE E. PHILLIPS*;
No. —, Original. *EX PARTE FRANK CONTARDI*;
No. —, Original. *EX PARTE FRANK BLASZAK*;
No. —, Original. *EX PARTE JAMES DOBRY*;
No. —, Original. *EX PARTE RAY J. KNOWLTON*;
No. —, Original. *EX PARTE GEORGE D. TEMPLETON*;
No. —, Original. *EX PARTE JAMES E. JACKSON*;
No. —, Original. *EX PARTE JOSEPH BROWN*;
No. —, Original. *EX PARTE GLENN WILKERSON*; and
No. —, Original. *EX PARTE THOMAS JORDAN*. October 19, 1942. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —, Original. *EX PARTE DAVID H. JOHNSON*. October 19, 1942. The motion for leave to file a bill of complaint is denied.

No. —, Original. *EX PARTE FRED BENIOFF Co.* October 19, 1942. The motion for leave to file petition for writ of mandamus is denied without prejudice to an application to the Circuit Court of Appeals.

No. 12, October Term, 1940. *UNITED STATES v. AP-PALACHIAN ELECTRIC POWER Co.* October 19, 1942. The petition for construction of the mandate is denied.

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No. 310. *LACY v. UNITED STATES*. October 22, 1942. Application for stay denied.

No. 9. *UNITED STATES v. CONSUMERS PAPER Co.* Certiorari, 315 U. S. 792, to the Court of Claims. Argued October 16, 1942. Decided October 26, 1942. *Per Curiam*: The judgment is affirmed by an equally divided Court. *Mr. Paul A. Freund* argued the cause, and *Solicitor General Fahy*, *Assistant Attorney General Shea*, and *Messrs. Melvin H. Siegel*, *Oscar H. Davis*, and *H. G. Ingraham* were on the brief, for the United States. *Mr. Fred B. Rhodes* for respondent. Reported below: 94 Ct. Cls. 713.

No. 406. *SOUTHEASTERN GREYHOUND LINES ET AL. v. McCANLESS, COMMISSIONER OF FINANCE AND TAXATION, ET AL.* Appeal from the Supreme Court of Tennessee. October 26, 1942. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. (1) *Maurer v. Hamilton*, 309 U. S. 598; (2) *Clark v. Paul Gray, Inc.*, 306 U. S. 583, 598-600. *Mr. Charles C. Trabue, Jr.* for appellants. *Mr. W. F. Barry, Jr.* for appellees. Reported below: 178 Tenn. 614, 162 S. W. 2d 370.

No. 423. *ROYAL CADILLAC SERVICE, INC. ET AL. v. UNITED STATES ET AL.* Appeal from the District Court of the United States for the Southern District of New York. November 9, 1942. *Per Curiam*: The motions to affirm are granted and the judgment is affirmed, it appearing that the only substantial question raised by the appeal—whether under § 206 (a) of the Interstate Commerce Act, 49 U. S. C., § 306 (a), appellants may lawfully

continue operation until the determination by the Commission of their application for a certificate of public convenience and necessity—has become moot because of the denial of such application by the Interstate Commerce Commission on September 16, 1942. *Mr. George H. Rosen* for appellants. *Solicitor General Fahy* and *Mr. Daniel W. Knowlton* for the United States et al.; *Mr. Henry P. Goldstein* for the Mountain Transit Corporation; and *Mr. James F. X. O'Brien* for the Hudson Transit Lines,—appellees.

No. 491. *COLEMAN v. CALIFORNIA*. Appeal from the Supreme Court of California. November 9, 1942. *Per Curiam*: The motion for leave to proceed *in forma pauperis* is granted. The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Troche v. California*, 280 U. S. 524. *John Lawrence Coleman, pro se*. Reported below: 20 Cal. 2d 399, 126 P. 2d 349.

No. 426. *FLOYD v. DU BOIS SOAP CO.* On petition for writ of certiorari to the Supreme Court of Ohio. November 9, 1942. *Per Curiam*: The motion for leave to proceed *in forma pauperis* is granted. The petition for writ of certiorari is granted and the judgment is reversed on the authority of *Overnight Motor Co. v. Missel*, 316 U. S. 572, and *Warren-Bradshaw Drilling Co. v. Hall, ante*, p. 88. *Mr. Charles A. Williams* for petitioner. *Mr. Alfred T. Geisler* for respondent. Reported below: 139 Ohio St. 520, 41 N. E. 2d 393.

No. —, Original. *EX PARTE WILLIAM IRA JENKINS*. November 9, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

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No. —. UNITED STATES *v.* TERRELL. November 9, 1942. The motion by defendant to set aside judgment is denied.

No. —. EX PARTE JAMES RULONG. November 9, 1942. The application for appeal is denied.

No. —. IN THE MATTER OF JOE TENNER. November 9, 1942. The orders of stay entered herein October 27, 1941, December 8, 1941, December 15, 1941, and December 22, 1941, are vacated.

No. 250. CARLOTA BENITEZ DE SEIX ET AL. *v.* ROS MARIA ANCIANI ET AL. November 9, 1942. The "Petition to the Court" filed herein September 9, 1942, is denied without prejudice to an application to the District Court. *Carlota Benitez de Seix* and *J. Octavio Seix, pro se.* Reported below: 127 F. 2d 121.

No. 134. BECKMAN ET AL. *v.* MALL ET AL. Appeal from the District Court of the United States for the District of Kansas. November 16, 1942. *Per Curiam:* The decree is affirmed on the authority of *Wickard v. Filburn, ante*, p. 111, without consideration of the grounds relied upon by the court below for dismissing the bill. *Mr. William Lemke* for appellants. Reported below: 48 F. Supp. 853.

No. —, Original. EX PARTE FRED STEFFLER. November 16, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. —, Original. EX PARTE EUGENE WEIL. November 16, 1942. The motion for leave to file petition for

writ of habeas corpus is denied as moot, it appearing that the petitioner is no longer in respondent's custody. The rule to show cause is therefore discharged.

No. 75. NORTH CHICAGO ET AL. *v.* THE MACCABEES, A CORPORATION, ET AL.; and

No. 96. THE MACCABEES, A CORPORATION, *v.* NORTH CHICAGO ET AL. On petitions for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit. November 23, 1942. *Per Curiam:* The motion to withdraw the petition for certiorari in No. 96 is granted and the petition is dismissed. The motion of The Maccabees to withdraw all papers previously filed on their behalf in No. 75 is granted. All motions made by Arvid B. Tanner on his own behalf are denied. The motion to substitute counsel is granted and the appearance of Arvid B. Tanner is ordered withdrawn. *Messrs. Lionel A. Mincer and Frank T. O'Brien* for petitioners in No. 75 and respondents in No. 96. *Messrs. Edward J. Jeffries, Jr. and David A. Hersh* for respondents in No. 75 and petitioner in No. 96. Reported below: 125 F. 2d 330.

No. —. LEVY *v.* STURGEON. November 23, 1942. Application for appeal denied.

No. —. HUMES *v.* LEAVENWORTH COUNTY LOCAL SELECTIVE SERVICE BOARD, No. 1. November 23, 1942. Application for injunction denied.

No. —, Original. *EX PARTE* ROBERT E. PEYTON. November 23, 1942. The motion for leave to file petition for writ of mandamus is denied.

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No. —, Original. *EX PARTE WILFRED HILL CASTLEMAN*. November 23, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. —, Original. *EX PARTE CECIL WRIGHT*. November 23, 1942. The motion for leave to proceed *in forma pauperis* is granted. The motion for leave to file petition for writ of certiorari to the District Court of the United States for the Eastern District of Illinois is denied.

No. 510. *DONOVAN v. TURNER ET AL., COPARTNERS*. Appeal from the District Court of Appeal, 2d Appellate District, of California. December 7, 1942. *Per Curiam*: The appeal is dismissed for want of jurisdiction. § 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. L. E. Dadmun* for appellant. *Messrs. Virgil T. Seaberry and Vernon Bettin* for appellees. Reported below: 52 Cal. App. 2d 236, 126 P. 2d 187.

No. 492. *WILLIAMS ET AL. v. MILLER ET AL.* Appeal from the District Court of the United States for the Northern District of California. December 7, 1942. *Per Curiam*: The decree dismissing the bill of complaint is affirmed on the ground that the bill does not allege facts which would warrant the granting of equitable relief by a federal court to restrain enforcement of the state statute. *Spielman Motor Co. v. Dodge*, 295 U. S. 89; *Beal v. Missouri Pacific R. Co.*, 312 U. S. 45; *Watson v. Buck*, 313 U. S. 387, 400-01. *Mr. John L. McNab* for appellants. *Messrs. Earl Warren*, Attorney General of California, and

Lucas E. Kilkenny, Deputy Attorney General, for appellees. Reported below: 48 F. Supp. 277.

Nos. 446 and 447. *WILLIAMS ET AL. v. DELAWARE & HUDSON RAILROAD CORP. ET AL.* On petition for writs of certiorari to the Circuit Court of Appeals for the Seventh Circuit. December 7, 1942. *Per Curiam*: The petition for writs of certiorari is granted. In view of the death of the referee appointed by the National Mediation Board, the judgments are vacated, without consideration of the merits, and the causes remanded to the District Court for such further proceedings as may be appropriate. *Mr. Leo J. Hassenauer* for petitioners. *Messrs. Joseph Rosch, Conrad H. Poppenhusen, and Anan Raymond* for the Delaware & Hudson Railroad Corp.; and *Messrs. Kenneth F. Burgess and Douglas F. Smith* for E. W. Fowler et al.,—respondents. Reported below: 129 F. 2d 11.

No. —, Original. *EX PARTE ETHEL PITT DONNELL*. December 7, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

No. —, Original. *EX PARTE THOMAS MERRYL WOFFORD*. December 7, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. 537. *RODDENBERRY v. FLORIDA*. Appeal from the Supreme Court of Florida. December 14, 1942. *Per Curiam*: The motion for leave to proceed *in forma pauperis* is granted. The appeal is dismissed for the want of a substantial federal question. *Mr. W. D. Bell* for appellant. Reported below: 11 So. 2d 582.

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No. —. *EX PARTE HENRY E. TERRELL*. December 14, 1942. The motion to set aside judgment is denied.

No. —, Original. *EX PARTE CECIL WRIGHT*. December 14, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

No. —, Original. *EX PARTE KARL KIVE GREENFIELD*. December 14, 1942. The motion for leave to file petition for writ of mandamus is denied.

No. —, Original. *EX PARTE ORVILLE CHESTER GARRISON*. December 14, 1942. The motion for leave to file petition for writ of certiorari is denied.

No. 76. *MILLER v. UNITED STATES*. December 14, 1942. It is ordered that the opinion filed December 7, 1942, be amended as follows:

Page 3, line 4, insert a period after the word "transcribed" and strike out the balance of line 4 and all of lines 5, 6, 7, and 8, beginning with the word "that" and ending with the word "Exceptions."

Page 5, line 3. After "4. As we have said" strike out the balance of line 3, and all of lines 4, 5, 6, 7, 8, as well as the first six words on line 9, beginning with the words "a stenographer" and ending with the word "addition."

Page 5, last paragraph, 6th line from bottom of page. Strike out sentence beginning with the word "We" and ending with the word "foreclosed." On the same page, 4th line from bottom, strike out the words "so" and "rule" and insert between the words "to" and "in" the follow-

ing: "hold that the petitioner is foreclosed from obtaining a bill."

Opinion reported as amended, *ante*, p. 192.

No. 85. FISHER, RECEIVER, *v.* WHITON, EXECUTRIX, ET AL. December 14, 1942. It is ordered that the opinion of the Court in No. 85, *Fisher v. Whiton*, filed December 7, 1942, be amended by inserting after the word "eliminated" in footnote 5 on page 2 of the slip opinion the following phrase: "where there has been compliance with the provisions of the statute,".

Opinion reported as amended, *ante*, p. 217.

No. 49. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* R. DOUGLAS STUART; and

No. 48. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *v.* JOHN STUART. December 14, 1942. It is ordered that the last paragraph on page 3 of the opinion of November 16, 1942, be struck out. It reads as follows:

"In answer to the taxpayers' petitions for the redetermination of the deficiencies, the Commissioner asserted the increase was required by the provisions of Sections 22, 166, and 167 of the Revenue Act of 1934, 48 Stat. 680. So far as pertinent these are set out in the footnote below."

In lieu thereof insert the following:

"In answer to the taxpayer's petition in No. 49 for the redetermination of the deficiencies, the Commissioner asserted the increase was required by the provisions of Sections 22, 166, and 167 of the Revenue Act of 1934, 48 Stat. 680. Section 22 was not raised by the Commissioner in his answer to the petition in No. 48. But the applicability of that section was raised by the Commissioner as appellee before the Circuit Court of Appeals (*Helvering v. Gowran*, 302 U. S. 238, 245). The contention in the Court

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of Appeals rested on the facts stipulated in the Board of Tax Appeals. On the rejection of that ground in the court below the Commissioner was entitled to raise the question, as he did, in his petition for certiorari and rely on Section 22 in this Court. *Helvering v. Gowran*, *ibid.*, 246; cf. *Hormel v. Helvering*, 312 U. S. 552. So far as pertinent the sections are set out in the footnote below.*"

It is further ordered that the first sentence of the last paragraph on page 8 be struck out. It reads as follows:

"The Commissioner, however, has pressed continually since this litigation started for taxation under 22 (a), see footnote page 3, on the ground that the trust incomes are chargeable to the donors under the rule of *Helvering v. Clifford*, 309 U. S. 331."

In lieu thereof insert the following:

"The Commissioner, however, raised in the Court of Appeals and has pressed here the liability of the donors for taxation under 22 (a), see footnote page 3, on the ground that the trust incomes are chargeable to the donors under the rule of *Helvering v. Clifford*, 309 U. S. 331."

The petitions for rehearing are denied.

Opinion reported as amended, *ante*, p. 154.

No. 477. *TEGMEYER v. TEGMEYER ET AL.* December 14, 1942. The application for a stay is denied.

No. —, Original. *EX PARTE JOHN MOSHER.* December 21, 1942. The motion for leave to file petition for writ of habeas corpus is denied.

No. —, Original. *EX PARTE H. L. MEYERS.* December 21, 1942. The motion for leave to file petition for writ of certiorari is denied.

No. —. WATERMAN *v.* INTERBOROUGH RAPID TRANSIT Co. January 4, 1943. Application denied.

No. —, Original. *EX PARTE* R. H. HUGHES; and

No. —, Original. *EX PARTE* F. M. WINDSOR. January 4, 1943. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —, Original. *EX PARTE* LESLIE WILLIAMS ET AL. January 4, 1943. *Per Curiam*: It does not appear that petitioners have exhausted their remedies under state law, especially in view of their failure to file an original application for habeas corpus in the Supreme Court of Nebraska as is permissible under state law (Nebraska Compiled Statutes, 1929, § 27-204; *In re White*, 33 Neb. 812, 814, 51 N. W. 287), nor does it appear that the question presented here has been considered on the merits by the Supreme Court of Nebraska in any prior proceeding. The motion for leave to file a petition for writ of habeas corpus is therefore denied without prejudice. *Leslie Williams and Joe Bennett, pro se.*

No. —, Original. *EX PARTE* ARMIN ELLERBRAKE; and

No. —, Original. *EX PARTE* WILLIAM W. BOEHMAN. January 4, 1943. The motions for leave to file petitions for writs of mandamus are denied.

No. —, Original. *EX PARTE* TAYLOR SEALS. January 11, 1943. Application denied.

No. 2, October Term, 1941. BERNARDS ET AL. *v.* JOHNSON ET AL. January 11, 1943. Motion to recall mandate denied.

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No. —. LOGUE ET AL. *v.* SOUTH CAROLINA. January 14, 1943. Application for stay denied.

No. 564. ALMER RAILWAY EQUIPMENT CO. ET AL. *v.* COMMISSIONER OF TAXATION. Appeal from the Supreme Court of Minnesota. January 18, 1943. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of a substantial federal question. (1) *Department of Treasury v. Wood Preserving Corp.*, 313 U. S. 62, 66, 67; (2) *General American Tank Car Corp. v. Day*, 270 U. S. 367, 373; *Madden v. Kentucky*, 309 U. S. 83, 87-90. *Mr. Leon S. Hirsh* for appellants. *Mr. J. A. A. Burnquist*, Attorney General of Minnesota, for appellee. Reported below: 213 Minn. 62, 5 N. W. 2d 637.

No. 601. HOLLEY *v.* LAWRENCE, WARDEN. Appeal from the Supreme Court of Georgia. January 18, 1943. *Per Curiam*: The motion for leave to file the jurisdictional statement is granted. The motion for leave to proceed *in forma pauperis* is also granted. The appeal is dismissed on the authority of *Holley v. Lawrence*, *ante*, p. 518. *Mr. Benjamin E. Pierce* for appellant. Reported below: 194 Ga. 529, 22 S. E. 2d 154.

No. —, Original. EX PARTE DORSEY EDMONDSON; and

No. —, Original. EX PARTE ELLERT L. McGRATH. January 18, 1943. The motions for leave to file petitions for writs of habeas corpus are denied.

No. 79. ADAMS, WARDEN, ET AL. *v.* UNITED STATES EX REL. McCANN. January 18, 1943. The petition for rehearing is denied. The opinion is amended so that the

last paragraph reads as follows: "The order of the Circuit Court of Appeals must therefore be set aside and the cause remanded to that court for such further proceedings, not inconsistent with this opinion, as may be appropriate." The judgment is amended accordingly.

Opinion reported as amended, *ante*, p. 269.

DECISIONS GRANTING CERTIORARI THROUGH
JANUARY 18, 1943.

Nos. 1-7. UNITED STATES EX REL. QUIRIN ET AL. *v.* COX, PROVOST MARSHAL. See *ante*, p. 18, n.

No. 284. OVERSTREET ET AL. *v.* NORTH SHORE CORPORATION. October 12, 1942. The motion for leave to proceed *in forma pauperis* is granted. The petition for writ of certiorari to the Circuit Court of Appeals for the Fifth Circuit is also granted. *Mr. Lucien H. Boggs* for petitioners. *Messrs. Roswell P. C. May, Livingston Platt, and W. Gregory Smith* for respondent. Reported below: 128 F. 2d 450.

Nos. 325 and 326. JEROME *v.* UNITED STATES. October 12, 1942. On petition for writs of certiorari to the Circuit Court of Appeals for the Second Circuit. The motion for leave to proceed *in forma pauperis* is granted. The petition for writ of certiorari in No. 325 is also granted. The Court directs that the expense of printing the record be paid by the United States, pursuant to 28 U. S. C., § 832. In No. 326, the petition for writ of certiorari is denied. *Jerome Parker Jerome, pro se.* *Solicitor General Fahy* and *Assistant Attorney General Berge* for the United States. Reported below: 130 F. 2d 514.