

DECISIONS PER CURIAM, ETC., FROM JANUARY
11, 1944, THROUGH APRIL 10, 1944.*

No. 209. UNITED STATES *v.* WATERHOUSE ET AL. *Certiorari*, 320 U. S. 723, to the Circuit Court of Appeals for the Ninth Circuit. Argued January 5, 6, 1944. Decided January 17, 1944. *Per Curiam*: Judgment affirmed by an equally divided Court. MR. JUSTICE JACKSON states that, the proceeding having been commenced, as the record shows, "under the instructions of the Attorney General" and the valuation for which the Government now contends appearing to have been fixed at the time when he held that office, he thinks it inappropriate that he should now participate in the determination of the case, notwithstanding he has no recollection of personal participation in the Departmental action. *Assistant Attorney General Littell*, with whom *Solicitor General Fahy* and *Messrs. Vernon L. Wilkinson* and *Roger P. Marquis* were on the brief, for the United States. *Mr. Herman Phleger*, with whom *Mr. A. G. M. Robertson* was on the brief, for respondents. Reported below: 132 F. 2d 699.

No. —. *EX PARTE* LOUIS RED CLOUD. January 17, 1944. Application denied.

No. —. *EX PARTE* FRANK HARRIS. January 17, 1944. The motion for leave to file petition for writ of habeas corpus is denied.

*Decisions on applications for certiorari, *post*, pp. 756, 762; rehearing, *post*, p. 800; cases disposed of without consideration by the Court, *post*, p. 800.

No. —. BENJAMIN OLWEISS ET AL. *v.* UNITED STATES. January 17, 1944. The motion for leave to file a petition for writ of certiorari nunc pro tunc is denied.

No. 457. VIATOR ET AL. *v.* EDWINS, SHERIFF, ET AL. Appeal from and on petition for writ of certiorari to the Supreme Court of Mississippi. January 31, 1944. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the reason that the judgment of the court below is based upon a non-federal ground adequate to support it. The petition for writ of certiorari is denied. *Messrs. Albert Sidney Johnston, Jr. and William L. Guice* for appellants-petitioners. *Mr. J. H. Sumrall* for appellees-respondents. Reported below: 195 Miss. 220, 14 So. 2d 212.

No. 560. NATHANSON *v.* UNITED STATES. On petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit. January 31, 1944. *Per Curiam*: The petition for writ of certiorari is granted. The judgment of the Circuit Court of Appeals is vacated and the cause is remanded to the District Court of the United States for the Western District of Missouri with directions to proceed in conformity with the Act of December 23, 1943, c. 377, 57 Stat. 608. *Messrs. J. Francis O'Sullivan and Maurice J. O'Sullivan* for petitioner. *Solicitor General Fahy and Assistant Attorney General Shea* for the United States. See *post*, p. 746.

No. —. ILLINOIS EX REL. WILLIAMS *v.* RAGEN, WARDEN; and

No. —. EX PARTE GARFIELD J. KELLY. January 31, 1944. Applications denied.

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No. —. EX PARTE TAYLOR SEALS. January 31, 1944. The motion for leave to file petition for writ of prohibition is denied.

No. —. EX PARTE JAMES THOMAS. January 31, 1944. The motion for leave to file petition for writ of habeas corpus is denied.

No. —. EX PARTE JOSEPH E. JONES. January 31, 1944. The motion for leave to file petition for writ of certiorari is denied.

No. —. EX PARTE MERRITT R. LONGBRAKE. January 31, 1944. The motion for leave to file petition for writ of mandamus is denied.

No. 109. CITY OF YONKERS ET AL. v. UNITED STATES ET AL. January 31, 1944. The motion to stay the mandate until March 1, next, is granted. MR. JUSTICE BLACK states: "I dissent. As this record stands, railroad service to Yonkers has been abandoned without any valid order authorizing such action. I therefore would permit the Court's mandate to go down. But if the mandate is to be stayed, I think that, at the very least, since the stay is equivalent to an injunction, a bond should be required of the railroad in an amount sufficient to protect the people of Yonkers against such loss as the city or its citizens may sustain in case it is ultimately decided that the railroad had no legal right to abandon its service. Cf. *Inland Steel Co. v. United States*, 306 U. S. 153, 156-157." MR. JUSTICE DOUGLAS and MR. JUSTICE MURPHY agree with this dissent.

See 320 U. S. 685.

No. 603. *BEILFUSS v. CALIFORNIA*. Appeal from the District Court of Appeal, 2d Appellate District, of California. February 7, 1944. *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. Morris Lavine* for appellant. *Messrs. Robert W. Kenny*, Attorney General of California, and *Frank Richards*, Deputy Attorney General, for appellee. Reported below: 59 Cal. App. 2d 83, 138 P. 2d 332.

No. —. *EX PARTE* NORMAN BAKER;

No. —. *EX PARTE* CHARLES JANULIS; and

No. —. *EX PARTE* CHARLES E. RAGGIO. February 7, 1944. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —. *EX PARTE* GARFIELD J. KELLY. February 7, 1944. Application denied.

No. 11, original. *ILLINOIS v. INDIANA ET AL.* February 7, 1944. The motion of the State of Indiana to dismiss is denied without prejudice to any question presented, *Wisconsin v. Illinois*, 270 U. S. 634. The replies of the complainant to the answers are received and ordered filed.

No. 560. *NATHANSON v. UNITED STATES*. February 7, 1944. The order entered January 31st, *ante*, p. 744, is amended to read as follows:

"*Per Curiam*: The petition for writ of certiorari is granted. The judgment of the Circuit Court of Appeals

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is vacated and the cause is remanded to the District Court of the United States for the Western District of Missouri with directions to proceed in conformity with the Act of December 23, 1943, c. 377, 57 Stat. 608, but without prejudice to the consideration of any questions which petitioner may wish to raise as to the validity or application of that Act."

No. 154. *ANDERSON NATIONAL BANK ET AL. v. REEVES, COMMISSIONER OF REVENUE, ET AL.* February 7, 1944. Luckett substituted for Reeves. See *ante*, p. 233.

No. 541. *FITZJERRELL v. BECKER, WARDEN.* See *post*, p. 772.

No. 577. *TRIMBLE ET AL. v. JUSTICE ET AL., EXECUTORS, ET AL.* Appeal from and on petition for writ of certiorari to the Court of Appeals of Kentucky. February 14, 1944. *Per Curiam*: The motion for leave to file the statement as to jurisdiction is granted. 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. *Mr. J. Smith Hays* for appellants-petitioners. *Messrs. LeWright Browning and J. J. Moore* for appellees-respondents. Reported below: 295 Ky. 178, 173 S. W. 2d 985.

No. 619. *CASH v. METROPOLITAN TRUST CO. ET AL.* Appeal from the Supreme Court of Illinois. February 14, 1944. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed for the want of a properly presented substantial federal question. (1) *Simon v. Craft*, 182 U. S. 427, 428, 434-5; *Chaloner v. Sherman*, 242 U. S. 455, 459-60; (2) *Milk Wagon Drivers' Union v.*

Meadowmoor Co., 312 U. S. 287, 294; (3) *Milwaukee Electric Ry. Co. v. Milwaukee*, 252 U. S. 100, 106. *Mr. Henry W. Dieringer* for appellant. *Mr. George Bayard Jones* for appellees. Reported below: 383 Ill. 409, 50 N. E. 2d 487.

No. — . *EX PARTE HARRY C. KELLY*. February 14, 1944. Application denied.

No. — . *EX PARTE WILLIAM CLARK*. February 14, 1944. The motion for leave to file petition for writ of habeas corpus is denied.

No. — . *EX PARTE SELVIE W. WELLS*. February 14, 1944. The motion for leave to file petition for writ of habeas corpus is denied and the rule to show cause is discharged.

No. 195. *NORTHWESTERN ELECTRIC CO. ET AL. v. FEDERAL POWER COMMISSION*. February 14, 1944. It is ordered that the opinion of the Court in this case be amended by striking out the sentence beginning "In a brief", at line 10, page 4, and by altering the first sentence of the succeeding paragraph, beginning with the word "although", to read as follows: "Although, as suggested in a brief filed by the American Institute of Accountants, the Commission's prescribed method of eliminating the write-up may not accord with the best accounting practice, it is sustained by expert evidence."

Opinion reported as amended, *ante*, p. 119.

No. 70. *THOMSON, TRUSTEE OF THE PROPERTY OF THE CHICAGO & NORTH WESTERN RAILWAY CO., v. UNITED*

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STATES ET AL. February 14, 1944. Roth substituted for Thomson. See *post*, p. 803, No. 70.

No. 4. HILL, ADMINISTRATOR, *v.* HAWES ET AL., TRUSTEES. February 14, 1944. MR. JUSTICE DOUGLAS is of the view that a rehearing of this case should be ordered. [320 U. S. 520; *post*, p. 801.]

No. —. EX PARTE JOHN FOSTER. February 28, 1944. The motion for leave to file petition for writ of habeas corpus is denied.

No. —. PEYTON *v.* RAILWAY EXPRESS AGENCY, INC. ET AL.;

No. —. PATTEN *v.* DENNIS, U. S. ATTORNEY, ET AL.; and

No. —. EXUM *v.* ILLINOIS. February 28, 1944. Applications denied.

No. —. DIOGUARDI *v.* CITY OF NEW YORK PARKS ET AL. February 28, 1944. Petition for appeal denied.

No. —. L. P. STEUART & BRO., INC. *v.* BOWLES, PRICE ADMINISTRATOR. February 28, 1944. The motion of petitioner to stay the mandate and to continue the temporary restraining order is granted and the mandate is stayed and the temporary restraining order continued until March 15 next, and if on or before that date a petition for a writ of certiorari is filed in this Court in this case, it is ordered that the mandate be stayed and the temporary restraining order be continued until the final disposition of the case by this Court.

No. 142. UNITED STATES *v.* MYERS;

No. 143. UNITED STATES *v.* ARBLE;

No. 144. UNITED STATES *v.* MARTIN;

No. 145. UNITED STATES *v.* PLITZ; and

No. 146. UNITED STATES *v.* SPITZ. February 28, 1944.

On respondents' petition for clarification of the opinion of the Court, it is ordered that the two paragraphs beginning on page 10 of the slip opinion be amended to read as follows:

"As to Sundays and holidays, we construe the statute to require extra compensation for inspectors without regard to the hours of the day or whether such services are additional to a regular weekly tour of duty. Before § 5 there was no authority to pay extra compensation for Sunday and holiday work. Revised Statutes, § 2871, allowed extra pay for nighttime work only. Somewhat indirectly the Act of February 13, 1911, gave Sunday and holiday pay and the 1920 amendment made the right to that extra compensation clear by saying extra compensation shall be paid inspectors 'who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays'. This language and the Customs Regulations, note 18, *supra*, give an employee who works regular hours weekdays in daytime extra pay for Sunday and holiday work. The statute covers also those who work outside the statutory normal hours. Logically, if Sundays and holidays were not to receive extra compensation, without regard to whether services on those days were overtime, there would have been no occasion to add Sundays and holidays to the overtime. Overtime would cover every situation.

"The proviso of § 5 does not give the Collector of Customs authority to make assignments which deprive inspectors of the Sunday and holiday pay. It authorizes adjustments of hours but specifically forbids alteration of overtime pay. It is silent as to Sundays and holidays

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which leaves the earlier grant of extra compensation for those days in effect. Overtime pay is also applicable to Sundays and holidays when inspectors work longer than nine hours with one hour for food and rest. The rate of overtime extra compensation on Sundays and holidays is the same as the rate for week days. The administrative practice is uncertain. It does not support a contrary conclusion. The Government cites excerpts from testimony on amendatory bills, not here directly involved, which indicate the extra compensation is paid for Sundays and holidays.²² Findings 5 and 6 of the Court of Claims, note 17, *supra*, show that extra compensation was paid at times for Sunday and holiday services.²³

Opinion reported as amended, 320 U. S. 561, 574-575.

No. 497. MARIO MERCADO E HIJOS *v.* COMMINS ET AL.
See *post*, p. 758.

No. 698. VAUGHN, DOING BUSINESS AS VAUGHN'S USED CARS, *v.* BOARD OF POLICE COMMISSIONERS OF THE CITY OF LOS ANGELES ET AL. Appeal from the District Court of Appeal, 2d Appellate District, of California. March 6, 1944. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. (1) *Hall v. Geiger-Jones Co.*, 242 U. S. 539, 552-4; *Lehmann v. Board of Accountancy*, 263 U. S. 394, 398; cf. *Nash v. United States*, 229 U. S. 373, 376-7; (2) *Caldwell v. Texas*, 137 U. S. 692, 698; *Bergemann v. Backer*, 157 U. S. 655, 656; cf. *Dohany v. Rogers*, 281 U. S. 362, 369; (3) *Cincinnati, N. O. & T. P. Ry. Co. v. Slade*, 216 U. S. 78, 83; *Mobile, J. & K. C. R. Co. v. Mississippi*, 210 U. S. 187, 204. Messrs. Albert G. Bergman and Bates Booth for appellant. Messrs. Ray L. Chesebro, Frederick von Schrader, and Edwin F. Shinn for appellees. Reported below: 59 Cal. App. 2d 771, 140 P. 2d 130.

No. 704. JOHN J. CASALE, INC. *v.* UNITED STATES ET AL. Appeal from the District Court of the United States for the District of Delaware. March 6, 1944. *Per Curiam*: The motion to affirm is granted and the judgment is affirmed. *United States v. Illinois Central R. Co.*, 244 U. S. 82, 89; *Federal Power Commission v. Edison Co.*, 304 U. S. 375, 384-5; *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 130. Mr. Charles E. Cotterill for appellant. Solicitor General Fahy and Mr. Daniel W. Knowlton for appellees. Reported below: 52 F. Supp. 1005.

No. 119. MILLER *v.* UNITED STATES. Certiorari, 320 U. S. 732, to the Circuit Court of Appeals for the Fifth Circuit. March 6, 1944. *Per Curiam*: On consideration of the stipulation between counsel for the petitioner and the Solicitor General, the judgment of the Circuit Court of Appeals is reversed and the cause is remanded to the District Court of the United States for the Northern District of Texas with directions that petitioner, after reasonable notice, be accorded a hearing on the issues involved before a judge other than the sentencing judge, and that at such hearing petitioner be allowed to be present and represented by counsel, with opportunity to adduce testimony and cross-examine witnesses. It is ordered that the mandate issue forthwith. Mr. Gerhard A. Gesell for petitioner. Solicitor General Fahy for the United States. Reported below: 136 F. 2d 287.

No. —. *EX PARTE* FRANK ROBERSON. March 6, 1944. The motion for leave to file petition for writ of mandamus is denied.

No. 11, original. ILLINOIS *v.* INDIANA ET AL. March 7, 1944. Luther Ely Smith, Esquire, of Saint Louis, Missouri, appointed Special Master.

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No. 388. CITY OF CORAL GABLES *v.* WRIGHT, DOING BUSINESS AS ED. C. WRIGHT & Co., ET AL. Certiorari, 320 U. S. 729, to the Circuit Court of Appeals for the Fifth Circuit. Argued February 10, 11, 1944. Decided March 13, 1944. *Per Curiam*: The judgment is affirmed by an equally divided Court. MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case. *Messrs. Morton B. Adams and Ira C. Haycock*, with whom *Mr. D. H. Redfearn* was on the brief, for petitioner. *Mr. Miller Walton* for Ed. C. Wright and *Mr. F. A. Berry* for the American National Bank of Nashville,—respondents. *Mr. W. Terry Gibson* filed a brief, as *amicus curiae*, in support of respondents. Reported below: 137 F. 2d 192.

No. 710. KOHLMAYER, NEWBERGER & Co. ET AL. *v.* COOPER, COLLECTOR OF REVENUE. Appeal from the Supreme Court of Louisiana. March 13, 1944. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. *Ware & Leland v. Alabama*, 209 U. S. 405; *Moore v. New York Cotton Exchange*, 270 U. S. 593, 604; cf. *Minnesota v. Blasius*, 290 U. S. 1, 8; *Parker v. Brown*, 317 U. S. 341, 360–63. *Mr. Arthur A. Moreno* for appellants. Reported below: 16 So. 2d 247.

No. —. ILLINOIS EX REL. TRUITT *v.* NIERSTHEIMER, WARDEN. March 13, 1944. Application denied.

No. —. WILSON *v.* HINMAN ET AL. March 13, 1944. The motion for leave to file petition for writ of mandamus is denied.

No. —. EX PARTE STEPHEN MITCHELL; and
No. —. EX PARTE ERHARDT ELOWSON. March 13, 1944. The motions for leave to file petitions for writs of habeas corpus are denied.

No. —. EX PARTE JESSE T. SYLENCE; and

No. —. EX PARTE DENNIS W. ROSIER. March 27, 1944. Applications denied.

No. —. EX PARTE JAMES GOODE;

No. —. EX PARTE RICHARD O'NEILL;

No. —. EX PARTE LOUIS BERMAN;

No. —. JOHNSON v. NIERSTHEIMER, WARDEN; and

No. —. UNITED STATES EX REL. HILL v. RAGEN, WARDEN. March 27, 1944. The motions for leave to file petitions for writs of habeas corpus denied.

No. 935, October Term, 1942. KELLEY ET AL. v. EVERGLADES DRAINAGE DISTRICT. March 27, 1944. The motion to correct or amend the mandate is denied without prejudice to any other appropriate remedy. 319 U.S. 415.

No. 252. FLOURNOY, SHERIFF AND EX-OFFICIO TAX COLLECTOR, v. WIENER ET AL. March 27, 1944. It is ordered that the opinion in this case be amended by adding, at the end of the opinion, the following paragraph:

"Appellant having assigned as error the decision of the Louisiana Supreme Court holding the federal Act invalid, the case is properly an appeal, and appellant could have included in his assignments of error any other denial of federal right whether or not capable in itself of being brought here by appeal. *Prudential Insurance Co. v. Cheek*, 259 U. S. 530, 547. Or he could have filed a petition for writ of certiorari in addition to his appeal. *Columbus & Greenville Ry. Co. v. Miller*, 283 U. S. 96, 98. But since he failed to raise or brief in this Court any question as to the validity of the Louisiana statute under the Fourteenth Amendment, we have no jurisdiction of the case either on certiorari or on appeal, and there is no oc-

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casion for the application of Judicial Code, § 237 (c), 28 U. S. C. § 344 (c). See Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, page 40, and cases cited."

The petition for rehearing is denied.

Opinion reported as amended *ante*, p. 253.

No. 766. HUDSON & MANHATTAN RAILROAD CO. v. JERSEY CITY ET AL. Appeal from the District Court of the United States for the District of New Jersey. April 3, 1944. *Per Curiam*: The motion to dismiss is granted and the appeal is dismissed. *Smith v. Illinois Bell Telephone Co.*, 270 U. S. 587, 588-9; *Sterling v. Constantin*, 287 U. S. 378, 386. Mr. John F. Finerty for appellant. Solicitor General Fahy and Messrs. Richard H. Field and Harry R. Booth for Fred M. Vinson, Stabilization Director, and Messrs. Charles A. Rooney and Charles Hershenstein for Jersey City,—appellees. Reported below: 54 F. Supp. 315.

No. 794. RATNER v. CALIFORNIA. Appeal from the Appellate Department of the Superior Court of California, County of Los Angeles. April 3, 1944. *Per Curiam*: The appeal is dismissed for want of a substantial federal question. (1) *Nash v. United States*, 229 U. S. 373, 376-7; *United States v. Ragen*, 314 U. S. 513, 523-4; (2) *Casey v. United States*, 276 U. S. 413, 418; *Bandini Petroleum Co. v. Superior Court*, 284 U. S. 8, 18-19. Mr. Morris Lavine for appellant. Messrs. Ray L. Chesebro and John L. Bland for appellee.

No. —. EX PARTE WALTER D. STEWART; and

No. —. EX PARTE EDWARD E. P. BOYENS. April 3, 1944. Applications denied.

No. —. *BETZ v. UNITED STATES*. April 3, 1944. Petition denied.

No. —. *MINNTOLE v. JOHNSTON, WARDEN*. April 3, 1944. Motion for leave to file petition for writ of habeas corpus denied.

No. —. *SMITH v. BIDDLE, ATTORNEY GENERAL*. April 3, 1944. Motion for leave to file petition for writ of certiorari denied.

No. —. *UNITED STATES EX REL. TIGNEY v. RAGEN, WARDEN*; and

No. —. *NEW YORK EX REL. VIALVA v. WEBSTER, SUPERINTENDENT*. April 10, 1944. Applications denied.

No. —. *ILLINOIS EX REL. SULLIVAN v. RAGEN, WARDEN*; and

No. —. *EX PARTE ALLAN LAMBUS*. April 10, 1944. The motions for leave to file petitions for writs of habeas corpus are denied.

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No. 493. *BAUMGARTNER v. UNITED STATES*. January 17, 1944. Petition for writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit granted. *Carl Wilhelm Baumgartner, pro se. Solicitor General Fahy, Assistant Attorney General Tom C. Clark, Mr. Robert S. Erdahl, and Miss Beatrice Rosenberg* for the United States. Reported below: 138 F. 2d 29.

Nos. 514 and 515. *UNITED STATES v. MITCHELL*. January 17, 1944. Petition for writs of certiorari to the