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Ex Parte Harding

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Judgement :

Ex Parte Harding - 219 U.S. 363 (1911)
U.S. Supreme Court Ex Parte Harding, 219 U.S. 363 (1911)

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Ex Parte Harding

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Decided February 20, 1911

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SYLLABUS

The general rule that a court, having jurisdiction over the subject matter and the parties, is competent to decide questions arising as to its jurisdiction and that its decisions on such questions are not open to collateral attack applied in this case, and mandamus refused to compel the circuit court to remand a case in which it decided that it had jurisdiction on the issues of citizenship and separable controversy.

There is nothing peculiar in an order of the circuit court refusing to remand which differentiates it from any other order or judgment of a federal court concerning its jurisdiction.

In this case, the exceptional rule that mandamus will lie to the circuit court to correct an abuse of judicial discretion in retaining a case over which it has not jurisdiction does not apply.

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It is the duty of this Court to reconcile decisions and, in order to enforce the correct doctrine, to determine which rest upon the right principle and to overrule or qualify those conflicting therewith.

Conflicting decisions regarding issuing mandamus to the circuit court to correct its decisions in regard to jurisdiction over cases removed from the state court reviewed and harmonized.

In this case, *Ex Parte Hoard,* 105 U. S. 578 , and cases following it applied as expressing the general principle involved; *Virginia v. Rives,* 100 U. S. 313 , and cases following it distinguished as applicable only to exceptional instances not involved in this case; *Ex Parte Wisner,* 203 U. S. 449 ; *In re Moore,* 209 U. S. 490 , and *In re Winn,* 213 U. S. 458 , disapproved in part and qualified.

The facts are stated in the opinion.

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MR. CHIEF JUSTICE WHITE delivered the opinion of the Court.

By a motion for leave to file a petition for mandamus, George F. Harding seeks the reversal of the action of the Circuit Court of the United States for the Northern District of Illinois, eastern division, in taking jurisdiction over a cause as the result of a refusal to grant a request of Harding to remand the case to a state court. The facts shown on the face of the motion papers are these:

On October 19, 1907, George F. Harding, the petitioner, alleging himself to be a resident of the State of California, sued in an Illinois state court various corporations alleged to be created by and citizens of the State of New Jersey, and fourteen individuals whose citizenship and residence were not given. The suit was brought by Harding as a stockholder in the Corn Products Company, one of the defendants, and the object of the suit was to annul an alleged

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unlawful merger of that company, and for relief in respect of an asserted misappropriation of its assets. On November 6, 1907, the Corn Products Company applied to remove to the Circuit Court of the United States for the Northern District of Illinois, eastern division, on the ground that there was a separable controversy between it and Harding. By separate petitions, all the other defendants united in the prayer for removal. The state court not having acted on the petition for removal, the judge of the United States court, upon the application of the Corn Products Company, ordered the transcript of record from the state court to be filed and the case to be docketed. This being done, the Corn Products Company filed what was styled an amendment and supplement to the petition for removal, stating the residence and citizenship of the individuals named as defendants in the original bill, four of them being averred to be residents of Chicago, Illinois, one of Pekin, Illinois, and the others citizens and residents of states other than Illinois.

In December, 1907, Harding moved to remand to the state court, in substance upon the ground that there was no separable controversy, and that the requisite diversity of citizenship was not shown by the petition for removal, and especially

directed attention to the fact that, at the time of the commencement of the suit in the state court, he, Harding, was not a resident of the district, and that none of the corporate defendants were such residents.

Prior to the bringing of the Harding suit, a suit had been brought in an Illinois state court by the Chicago Real Estate & Trust Company, an Illinois corporation and a stockholder in the Corn Products Company, upon substantially the same grounds as those subsequently alleged in the Harding suit, against the principal corporations and individuals who were thereafter made defendants in the Harding suit. This cause had been removed by the Corn Products Company into the Circuit Court of the United

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States for the Northern District of Illinois, Eastern Division, and on its removal at the instance of the Corn Products Company, the court had restrained the real estate company, its officers, agents, attorneys, etc., from further prosecuting the cause in the state court. Immediately after the bringing of the Harding suit in the state court, the Corn Products Company applied to the circuit court in the real estate company suit to restrain Harding from prosecuting his suit on the ground that the bringing of the same was a violation of the previous restraining order. The court issued a temporary restraining order. Thereafter, as we have said, the Harding suit was removed on the application of the Corn Products Company to the circuit court of the United States, and the motion to which we have referred was made by Harding to remand. That motion to remand, however, in consequence of the restraining order, which had been made permanent, was not heard until the summer of 1909, after the restraining order above referred to had been dissolved by the circuit court of appeals. 168 F. 658. Before the motion to remand, however, was passed upon, the circuit court granted permission to the Corn Products Company to amend its removal petition by alleging that at the time of the commencement by Harding of his suit, and continuously thereafter, he was a citizen of Illinois and a resident of Chicago, in that state. To this Harding objected on the ground that the court was without power to allow an amendment, and that its jurisdiction was to be tested by the averments of the original removal petition.

The permitted amendments having been filed, the motion to remand was denied. Harding thereupon, reiterating his objection to the allowance of the amendment and to the jurisdiction of the court to do other than remand the cause, traversed the averment in the amended removal petition as to his Illinois citizenship and residence, and specially prayed

"that there may be a speedy hearing and a decision of such issue of citizenship

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and a remand of this cause to the state court by the order of this Court. . . ."

The request for hearing was granted. A large amount of evidence was introduced on such hearing, which extended over a period of more than fifteen months, and the taxable costs, it is said, "ran up into several thousands of dollars." Finally, on October 25, 1910, the issue was decided against Harding. 182 F. 421. The court, finding from the proof that Harding was, as alleged in the amended petition, a citizen and resident of the State of Illinois, expressly refused the prayer for removal, made by Harding in his answer to the amended petition; in other words, the court reaffirmed and reiterated its previous action in refusing to remand the cause. Whether these facts give such color of right to the contention that we have jurisdiction to review the action of the trial court by the writ of mandamus as to lead us to be of opinion that further argument at bar is necessary, and therefore a rule to show cause should issue, is then the question for decision.

The doctrine that a court which has general jurisdiction over the subject matter and the parties to a cause is competent to decide questions arising as to its jurisdiction, and therefore that such decisions are not open to collateral attack, has been so often expounded (*see Dowell v. Applegate,* 152 U. S. 327 , 152 U. S. 337 , and cases cited), and has been so recently applied (*Hine v. Morse,* 218 U. S. 493), that it may be taken as elementary, and requiring no further reference to authority. Nor is there any substantial foundation for the contention that this elementary doctrine has no application to decisions of courts of the United States, refusing to remand causes to state courts, since there is nothing peculiar in an

order refusing to remand which differentiates it from any other order or judgment of a court of the United States concerning its jurisdiction. The importance of the subject which is involved in the contrary assertion, the apparent conflict between certain

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decided cases dealing with the right to review by mandamus orders of circuit courts refusing to remand, and a long and settled line of other cases relating to the same subject, the confusion and misapprehension which must result unless the conflict is reconciled or abated, and the duty to remove obscurity, as far as it may be done, concerning the review of questions of jurisdiction, all lead us to give the subject a more extended examination than it would otherwise be entitled to receive.

In *Ex Parte Hoard,* 105 U. S. 578 , the Court was called upon to consider whether the judgment of a circuit court of the United States, declining to remand a civil cause to a state court from which it had been removed was reviewable by the extraordinary process of mandamus. In refusing to exert jurisdiction by mandamus and considering the inherent nature of the powers of a circuit court, it was declared that "jurisdiction has been given to the circuit court to determine whether the cause is one that ought to be remanded," and it was also observed that "no case can be found in which a mandamus has been used to compel a court to remand a cause after it has once refused a motion to that effect." Calling attention to the fact that the act of 1875, in 5, expressly gave an appeal to or a writ of error from this Court for the review of orders of circuit courts remanding causes, without regard to the amount involved, the Court said:

"The same remedy has not been given if the cause is retained. It rests with Congress to determine whether a cause shall be reviewed or not. If no power of review is given, the judgment of the court having jurisdiction to decide is final."

In *In re James Pollitz,* 206 U. S. 323 , the facts were these: Pollitz, a citizen of the State of New York, sued in the supreme court of that state the Wabash

Railroad Company, a consolidated corporation existing under the laws of the States of Ohio, Michigan, Illinois, and Missouri, and a citizen of the State of Ohio, and various other defendants,

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chiefly citizens and residents of the State of New York. The Wabash Company removed the cause to the circuit court of the United States on the ground of a separable controversy. A motion of Pollitz to remand was denied. The controversy was decided by this Court on the hearing of a rule, which was granted on the application of Pollitz for a writ of mandamus to direct the remanding of the cause. The Court, after stating (p. 206 U. S. 331) the general rule that

"mandamus cannot be issued to compel the court below to decide a matter before it in a particular way, or to review its judicial action had in the exercise of legitimate jurisdiction, nor can the writ be used to perform the office of an appeal or writ of error,"

refused to take jurisdiction and review the action of the court below, and therefore declined to issue the writ.

Ex Parte Nebraska, 209 U. S. 436 , presented the following facts: in a suit against a railway company commenced in a court of the State of Nebraska, the state, its attorney general, the railway commission, and the members of the commission individually were plaintiffs. The defendant railway removed the cause to the United States court upon the ground that the state was not a proper or necessary party to the suit, and that the controversy was wholly between citizens of different states. A motion to remand having been denied by the circuit court, this Court issued a rule by show cause why a mandamus should not be allowed, ordering the remanding of the cause. Upon the hearing on the return to this rule, the Court declined to take jurisdiction and review the action of the trial court. It was said that the circuit court had jurisdiction to pass upon the questions raised by the motion to remand, and if error was committed in the exercise of its judicial discretion, "the remedy is not by writ of mandamus, which cannot be used to

perform the office of an appeal or writ of error." After declaring that "the applicable principles have been laid down in innumerable cases," the Court cited

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Ex Parte Bradley, 7 Wall. 364; *Ex Parte Loring,* 94 U. S. 418 ; *In re Rice,* 155 U. S. 396 ; *In re Atlantic City Railroad,* 164 U. S. 633 . The case of Pollitz was also cited and reviewed.

In *Ex Parte Gruetter,* 217 U. S. 586 , the doctrine of *In re Pollitz* and *Ex Parte Nebraska* was reaffirmed. The case was this: an action commenced by Gruetter in a state court was removed into a circuit court of the United States, and Gruetter moved to remand. One ground of the motion was that the case was not removable because it was not an action of a civil nature, but was one to recover penalties. It was also urged that the petition and record did not show that the suit was sought to be removed to the circuit court of the United States for the district in which either the plaintiff or the defendant resided. On return to a rule to show cause why a mandamus should not be granted, the Court declined to take jurisdiction of the case, saying (p. 217 U. S. 588):

"There was no controversy as to there being diversity of citizenship. The defendant was a corporation of Kentucky, and plaintiff was a citizen of Tennessee. Inasmuch as we are of opinion that the circuit court of the United States had jurisdiction to determine the questions presented, we hold that mandamus will not lie. The final order of the circuit court cannot be reviewed on this writ. *In re Pollitz,* 206 U. S. 323 ."

It is patent from the review of the decided cases just made that the contention that the order of the court below, refusing to remand the cause, is susceptible of being here reviewed by the extraordinary process of a writ of mandamus -- in other words, that that writ may be used to subserve the purpose of a writ of error or an appeal -- is so completely foreclosed as not to be open to contention unless it be that other cases which are relied upon as sustaining our jurisdiction to issue the writ of mandamus have either overruled the line of cases to which we have

referred, or have

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so qualified them as to cause them to be here inapplicable. We therefore come to consider the cases upon which petitioner relies to ascertain whether they sustain either of these views. The cases are *Ex Parte Wisner,* 203 U. S. 449 ; *In re Moore,* 209 U. S. 490 , and *In re Winn,* 213 U. S. 458 . But, to an elucidation of these cases, it is necessary that the briefest possible recurrence be had to two leading cases which long preceded them, *viz., Virginia v. Rives,* 100 U. S. 313 , and *Virginia v. Paul,* 148 U. S. 107 .

In *Virginia v. Rives,* a prosecution of persons accused of murder was removed from a state court to a circuit court of the United States. The latter court, moreover, under a writ of *habeas corpus cum causa,* took the prisoners from the custody of the state authorities. The case in this Court arose upon an application by the Commonwealth of Virginia for a rule to show cause why the prisoners should not be returned to the state court for trial. On hearing, this Court took jurisdiction over the cause, issued the writ of mandamus, and directed the return of the accused. Speaking of the functions of the writ of mandamus, the Court said (p. 100 U. S. 323):

"It does not lie to control judicial discretion, except when that discretion has been abused, but it is a remedy when the case is outside of the exercise of this discretion and outside the jurisdiction of the court or officer to which or to whom the writ is addressed."

It is obvious from the opinion of the Court and the concurring opinion that jurisdiction over the cause was taken because of the extraordinary abuse of discretion disclosed by the power attempted to be exerted, the confusion and disregard of constitutional limitations which the asserted power implied, and because, under the law as it then stood, no power would otherwise have existed to correct the wrongful assumption of jurisdiction by the circuit court.

In *Virginia v. Paul,* 148 U. S. 107 , a person in the custody of the state authorities, charged with murder, was released under a writ of habeas corpus issued by a district

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judge. Subsequently the circuit court of the United States took, by way of removal, jurisdiction over the prosecution. The Commonwealth of Virginia applied to this Court for a mandamus to remand the prosecution and to restore the accused to the custody of the state authorities. The Court, reaffirming the doctrine of *Virginia v. Rives,* pointed out that to wrongfully divest the state of its right to prosecute in its own courts for crimes committed against its authority was a gross abuse of discretion which, if not corrected by mandamus, could not be done in any other form. A mandamus to remand was issued. The Court, however, declined to review the order discharging on habeas corpus, on the ground that, on the face of the application for habeas corpus, issue had been presented which the judge had a right to decide, and, if error was committed, there was a remedy by appeal.

In *Ex Parte Wisner,* 203 U. S. 449 , mandamus was sought to compel a circuit court of the United States to remand a civil cause to the state court from which it had been removed, and which the circuit court had refused to remand. The case was one where, although there was diversity of citizenship, neither of the parties resided in the particular district to which the suit had been removed. This Court took jurisdiction. Reviewing the action of the court below, it was observed that the absence of residence within the district of either of the parties demonstrated the absolute want of authority of the circuit court over the cause, and that, even if the objection was susceptible of being waived, a waiver by both parties was essential, and the record did not disclose that there had been such waiver. Considering the right to revise by mandamus the action of the circuit court in refusing to remand, no reference whatever was made to the existence of statutory remedies to correct the error found to have been committed, and no authority was cited, it being simply observed:

"Our conclusion is that the case should have been remanded, and,

as the circuit court had no jurisdiction to proceed, that mandamus is the proper remedy."

In re Moore, 209 U. S. 490 , was also a case of removal, where there was diversity of citizenship, but neither of the parties resided in the particular district. The circuit court had refused to remand. Taking jurisdiction to review such action, an application for a writ of mandamus, this Court held that, as there was diversity of citizenship, there was general jurisdiction in the circuit court, and that the objection that neither party resided within the district was a matter susceptible of being waived by the parties, and that such waiver had taken place. The observations in *Ex Parte Wisner* to the contrary were expressly disapproved. The action of the circuit court in refusing to remand was consequently approved. No discussion was had or authority referred to upon the question of the right to review by mandamus the action of the circuit court, the right to exert such authority having in effect been assumed as the result of the decision in the *Wisner* case.

In *In re Winn,* 213 U. S. 458 , an action commenced in a state court had been removed into a circuit court of the United States not upon diversity of citizenship, but upon the ground that the case stated was one arising under the laws of the United States. The circuit court denied a motion to remand. Upon application for mandamus, this Court took jurisdiction to review such action and directed that the case be remanded upon the ground that the cause of action, when rightly construed, did not arise under any provision of the Constitution or under any law of the United States. Referring to some of the previous cases and manifestly noting an apparent conflict between them, it was said that this Court had declined to exert jurisdiction by mandamus in *Ex Parte Nebraska* and *In re Pollitz* because those cases but exemplified the exercise of judicial discretion by the circuit court as to a matter within

its jurisdiction, while the case in hand presented a question of a want of jurisdiction in the circuit court, clearly apparent on the face of the record, and therefore that court, when it decided that the cause of action alleged arose under a law of the United States, could not possibly have exercised a discretion to decide a matter which was within its jurisdiction. *Virginia v. Rives* and *Virginia v. Paul* were approvingly cited, and it was said that, in case of a refusal to remand, "although the aggrieved party may also be entitled to a writ of error or appeal," mandamus may be resorted to. On this subject it was further observed:

"Mandamus, it is true, never lies where the party praying for it has another adequate remedy, . . . but where, without any right, a court of the United States has wrested from a state court the control of a suit pending in it, an appeal or writ of error at the end of long proceedings, which must go for naught, is not an adequate remedy."

Comprehensively considering the two lines of cases, one beginning with *Ex Parte Hoard,* 105 U. S. 578 , and ending with *Ex Parte Gruetter,* 217 U. S. 586 , and the other beginning with *Virginia v. Rives,* 100 U. S. 313 , and ending with *In re Winn,* 213 U. S. 458 , it is to be conceded that they are apparently in conflict, both as to the assertion of power which one line upholds to review by mandamus the action of the United States circuit court in refusing to remand and the nonexistence of such power which the other line of cases expounds, and also as to much of the reasoning in the opinions in some of the cases. Thus, the ruling in *Ex Parte Hoard* that where, in a civil case, statutory remedies by error or appeal are provided for the ultimate review of errors committed by a court in determining its jurisdiction, such statutory provisions are, in their nature, exclusive, and therefore deprive of the right to resort to the remedy by mandamus, is directly in conflict with the jurisdiction which was exercised in *Ex Parte Wisner, In re Moore,* and *In re Winn,* as those cases were civil cases, and the right

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to review the error, if any, committed by the circuit court in refusing to remand, was regulated by statute. So, also, the statement, by way of reasoning, in the opinion in

In re Winn, to the effect that, in case of a refusal to remand, "the remedy by mandamus is available, although the aggrieved party may also be entitled to a writ of error or appeal," is in direct conflict with the reasoning upon which the decision in *Ex Parte Hoard* was based. The conflict just stated becomes more manifest when the ruling in *Virginia v. Paul* is considered, since, in that case, the Court declined by mandamus to review the action of the court below in taking one accused of crime by a writ of habeas corpus from the custody of the state authorities, on the ground that, *prima facie,* there was jurisdiction to issue the writ of habeas corpus, and a remedy by appeal existed to review the action of the circuit court. Moreover, the decision in *In re Pollitz* that there was not power to review the action of the court below in refusing to remand, because the circuit court, in passing upon the question as to whether, on the face of the papers, a separable controversy was alleged, decided a matter within its jurisdiction, and which involved the exercise of judicial discretion, cannot be harmonized with the rulings in *Ex Parte Wisner* and *In re Moore* that the action of a circuit court in refusing to remand could be reviewed by mandamus because the Court, in deciding whether the parties had waived the right to be sued in a particular district, had not been called upon to decide a matter within its jurisdiction, involving the exercise of judicial discretion. This conflict becomes more obvious when the rulings in *In re Winn* and *Ex Parte Gruetter* are contrasted, the one deciding that the action of the circuit court in refusing to remand because, from an analysis of the pleadings, it was found that a claim of federal right was presented, was reviewable by mandamus, since it was plain as a matter of law that the court erred, and therefore its decision involved no element of judicial discretion, and

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the other deciding that the denial by a circuit court of a motion to remand based upon the ground, among others, that, on the face of the papers, the suit was not removable because it was not of a civil nature, but was for a penalty, was not reviewable by mandamus because the decision of such a question was within the jurisdiction of the circuit court, and therefore involved the exercise of judicial discretion.

We must, then, either reconcile the cases, or, if this cannot be done, determine which line rests upon the right principle, and having so determined, overrule or qualify the others, and apply and enforce the correct doctrine. This is the case, since to do otherwise would serve only to add to the seeming confusion and increase the uncertainty in the future as to a question which it is our plain duty to make free from uncertainty. Coming to the origin of the two lines of cases, it is manifest that it was not conceived that there was conflict between them, since *Virginia v. Rives* and *Ex Parte Hoard* were practically contemporaneously decided, and were treated, the one as relating to an exceptional condition -- that is, an effort to remove a criminal prosecution which, if wrong was committed, no power otherwise to redress than by mandamus existed -- and the other but involved the application of the well settled rule as to civil cases, concerning which the right to review by error or appeal was generally regulated by statute. Following down the two lines of cases, it is equally manifest that it was never conceived that they conflicted with each other, because some of the cases were also practically contemporaneously decided without the suggestion that one was in conflict with the other -- indeed, the decisions in *In re Moore* and *Ex Parte Nebraska* were announced on the same day. When the cases are closely analyzed, we think the cause of the conflict between them becomes at once apparent. As we have previously pointed out, no authority was referred to in *Ex part Wisner* sustaining the taking in that case of

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jurisdiction to review by mandamus the ruling of the circuit court, although, in the course of the opinion, the statement was made with emphasis that the face of the record disclosed an entire absence of jurisdiction in the court below. In the opinion, however, in *In re Pollitz,* the *Wisner* case was referred to, and in pointing out why it was not apposite and controlling, it was observed that that case (the *Wisner*) presented a total absence of jurisdiction, involving no element of discretion, and *Virginia v. Rives* was cited, manifestly as indicating the basic authority on which the jurisdiction to review by mandamus had been exerted in the *Wisner* case. Again, in *In re Winn,* it is to be observed that not only was *Virginia v. Rives*

cited, but the cases of *Virginia v. Paul* and *Kentucky v. Powers,* 201 U. S. 1 (the last of which also concerned a criminal prosecution in which the doctrine of *Virginia v. Rives* had been applied), were also cited, evidently for the purpose of pointing out the source from whence came the doctrine of the right to review by mandamus under the facts presented. Bearing these matters in mind, it plainly results that the conflict presented has arisen not because of the announcement in any of the cases of any mistaken doctrine as to jurisdiction or of any wrongful decision of any of the cases on the merits, but has simply been occasioned, beginning with *Ex Parte Wisner,* from applying the exceptional rule announced in *Virginia v. Rives* to cases not governed by such exceptional rule, but which fell under the general principle laid down in *Ex Parte Hoard* and the line of cases which have followed it. Under these circumstances, it becomes our plain duty, while not questioning the general doctrine announced in any of the cases, yet to disapprove and qualify *Ex Parte Wisner, In re Moore,* and *In re Winn* to the extent that those cases applied the exceptional rule of *Virginia v. Rives,* and thereby obscured the broad distinction between the general doctrine announced in *Ex Parte Hoard* and the cases which have followed it, and the

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exception established by *Virginia v. Rives* and the cases which have properly applied the doctrine of that case. Our duty to take this course arises not only because of the misconception which must otherwise continue to exist, but also because it is to be observed that material portions of the Act of 1875, which were made the basis of the ruling in *Ex Parte Hoard,* are yet in force, and because the cogency of the considerations arising from this fact are greatly increased by the duty to give effect to the provisions of the Judiciary Act of 1891 concerning the review of final orders and judgments or decrees of the circuit courts of the United States.

As, then, our conclusion is that the case under consideration is not controlled by the ruling in *Ex Parte Wisner* or kindred cases, but is governed by the general rule expressed in *Ex Parte Hoard,* and followed in *In re Pollitz* and *Ex Parte Nebraska,* and, lastly, applied in *Ex Parte Gruetter,* it clearly results that the

application for leave is without merit, and

Leave to file is denied.

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