

Mr. Justice BLACK is of the opinion that the appeal raises no substantial federal question and therefore concurs in its dismissal. For the same reason he thinks certiorari should be denied.

Mr. Justice ROBERTS.

I am of opinion the judgment should be reversed. I think the evidence is not only without contradiction but is persuasive that persons and corporations whose circumstances are precisely similar to those of the complaining taxpayers, and persons competing in the investment

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field with them and holding similar security, have been benefited by assessments purposely intended to discriminate in their favor, and against the complainants. I think the decision below plainly runs counter to decisions of this court. *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23, 52 S.Ct. 48, 76 L.Ed. 146; *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239, 245, 52 S.Ct. 133, 135, 76 L.Ed. 265; *Concordia Fire Insurance Co. v. Illinois*, 292 U.S. 535, 54 S.Ct. 830, 78 L.Ed. 1411.



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CATLIN et al. v. UNITED STATES.  
No. 419.

Argued and Submitted Feb. 1, 2, 1945.

Decided Feb. 26, 1945.

#### 1. Courts ⇨405(12)

A "final decision" for purposes of appeal under Judicial Code is one which ends litigation upon the merits and leaves nothing for court to do but execute the judgment. Jud.Code § 128(a), as amended, 28 U.S.C.A. § 225(a).

See Words and Phrases, Permanent Edition, for all other definitions of "Final Decision".

#### 2. Eminent domain ⇨253(1)

Ordinarily in condemnation proceeding, appellate review may be had only upon an order or judgment disposing of the whole case and adjudicating all rights, in-

cluding ownership and just compensation, as well as right to take property. Jud. Code § 128(a), as amended, 28 U.S.C.A. § 225(a).

#### 3. Courts ⇨393

The rule in condemnation proceedings that appellate review may be had only upon an order or judgment disposing of the whole case applies to review by Supreme Court of judgments of state courts in advance of determination of just compensation, notwithstanding that under local statute the question of right to condemn is reviewable before compensation is found and awarded. Jud. Code, § 128, as amended, 28 U.S.C.A. § 225(a).

#### 4. Eminent domain ⇨253(1)

The rule in condemnation proceedings that appellate review may be had only upon an order or judgment disposing of whole case applies to proceedings under War Purposes Act of 1917 authorizing condemnation proceedings to obtain land for military purposes. Jud.Code, § 128(a), as amended, 28 U.S.C.A. § 225(a); 50 U.S.C.A. § 171; Federal Rules of Civil Procedure, rule 81(a) (7), 28 U.S.C.A. following section 723c.

#### 5. Courts ⇨405(12)

The denial of a motion to dismiss, even when denial is based upon jurisdictional grounds, is not immediately reviewable, particularly if question may be saved for disposition upon review of final judgment disposing of all issues involved in litigation or in some other adequate manner. Jud.Code, § 128(a), as amended, 28 U.S.C.A. § 225(a).

#### 6. Eminent domain ⇨253(1)

In condemnation proceeding under War Purposes Act of 1917 and the Declaration of Taking Act, orders entering judgment on the declaration of taking and denying motion to vacate the judgment and to dismiss the proceeding were not appealable as "final decisions" within Judicial Code. Jud.Code § 128(a), as amended, 28 U.S.C.A. § 225(a); 50 U.S.C.A. § 171; 40 U.S.C.A. §§ 258a to 258e.

#### 7. Eminent domain ⇨253(1)

The rule in condemnation proceeding that appellate review may be had only upon an order or judgment disposing of the whole case was not altered by provisions of the Declaration of Taking Act. Jud. Code § 128(a), as amended, 28 U.S.C.A. §§ 225(a); 40 U.S.C.A. § 258a to 258e.

retary of War filed a declaration and deposited in court \$43,579.00 as the estimated compensation for Tract ED-7, to which petitioners assert ownership as trustees. The court thereupon entered "judgment," likewise ex parte, decreeing that title had vested in the United States upon the filing of the declaration and making of the deposit, also declaring the right of just compensation "now vested in the persons entitled thereto," and holding the cause open for further "orders, judgments and decrees."

Thereafter, on August 2, 1943, an order for service of process by publication was entered, and in October following petitioners moved to vacate the "judgment" and to dismiss the petition as to Tract ED-7. After this the Government amended its petition<sup>4</sup> and petitioners filed

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an amended motion to vacate and dismiss,<sup>5</sup> which the court denied. From this order and the order entering the "judgment" on the declaration of taking, petitioners appealed. The Circuit Court of Appeals held the orders not final decisions within Section 128 and dismissed the appeal. 7 Cir., 142 F.2d 781. We granted certiorari, 323 U.S. 696, 65 S. Ct. 92, in order to resolve conflict upon this

question among several Circuit Courts of Appeals.<sup>6</sup>

We think the judgment was right. Petitioners' motions raised issues grounded in contentions that the taking was not for a purpose authorized by the War Purposes Act.<sup>7</sup>

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Accordingly they urged that neither petition stated a cause of action, the court acquired no jurisdiction of the cause or to enter the order relating to title, and it was error to deny the motion to vacate and to dismiss. Since the issue here is whether the orders are final, for purposes of appeal, we assume, though we do not decide, that the substantive issues have sufficient merit to warrant determination upon review. Even so, we think petitioners have mistaken their remedy.

[1-3] Their right to appeal rests upon Section 128 of the Judicial Code. This limits review to "final decisions" in the District Court. A "final decision" generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment. *St. Louis I. M. & S. R. R. v. Southern Express Co.*, 108 U.S. 24, 28, 2 S.Ct. 6, 8, 27 L.Ed. 638. Hence, ordinarily in condemnation pro-

rial portions of the statute are set forth in the text of this opinion and the notes.

<sup>4</sup> Petitioners attacked the original petition for failure to set forth (1) the purpose of the acquisition or that it was for any purpose authorized by the act; (2) that the Secretary of War had found that the land was needed or (3) had requested the Attorney General to institute the proceeding to acquire it for such a purpose. Considering these objections jurisdictional, petitioners regard "all further proceedings based upon the said petition" as "ineffective," including the filing of the first declaration of taking and the "judgment" entered pursuant to it.

The amendment added a new paragraph to the petition stating the lands were being taken for purposes described in the language of the statute and incorporated in the petition the letter of the Secretary of War requesting the Attorney General to institute the proceedings to acquire the land "for use in the establishment of the Granite City Engineer Branch Depot." This is the specific purpose which petitioners say does not come within any set forth in the statute, for which see note 1.

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<sup>5</sup> The amended motion urged that the amendment of the petition, by incorporating the Secretary's statement of intended use for an engineer depot, caused the petition to show on its face that the use was not within those authorized by the act. Petitioners assert the amendment "came too late to validate" the "judgment."

<sup>6</sup> *Dade County, Fla. v. United States*, 5 Cir., 142 F.2d 230, accords with the decision in this case. Contrary decisions were rendered in *City of Oakland v. United States*, 9 Cir., 124 F.2d 959, certiorari denied, 316 U.S. 679, 62 S.Ct. 1106, 86 L.Ed. 1753; *United States v. 243.22 Acres of Land*, 2 Cir., 129 F.2d 678, certiorari denied, 317 U.S. 698, 63 S.Ct. 441, 87 L.Ed. 558; *Puerto Rico Ry. Light & Power Co. v. United States*, 1 Cir., 131 F.2d 491.

Under the comparable provision of the 1929 act applicable in the District of Columbia, where special appeal may be allowed upon interlocutory orders, D. C.Code 1940, § 17-101, compare *Lee v. United States*, 61 App.D.C. 153, 58 F.2d 879, with *Keyes v. United States*, 73 App.D.C. 273, 119 F.2d 444.

<sup>7</sup> See notes 1, 4 and 5.