## CARROLL *v.* BECKER, SECRETARY OF STATE.

CERTIORARI TO THE SUPREME COURT OF MISSOURI.

No. 805. Argued March 24, 1932.—Decided April 11, 1932.

Decided upon the authority of *Smiley* v. *Holm, ante,* p. 355. 328 Mo. —; 45 S. W. (2d) 533, affirmed.

CERTIORARI* to review a judgment quashing an alternative writ of mandamus.

*Messrs. Edward F. Colladay* and *Hyman G. Stein* for petitioner.

Whatever the term "legislature" meant to the framers of the Constitution when it was adopted it still means. 1 Cooley's Const. Lim., p. 123.

When the Constitution was agreed upon, eleven of the original States had adopted constitutions in which the word "legislature" or its equivalent was defined, but not in any one of them was the Governor included as a part of the legislature.

The framers must have intended to provide for the uniform operation of the instrument among all of the original States. The carrying out of such intention necessarily required that the word "legislature" should mean the same in each State, and this required the exclusion from that term of the Governor.

As was pointed out in *Hawke* v. *Smith,* 253 U. S. 221, a "legislature" at the time the Constitution was framed was the representative body which made the laws of the people, and the term is often used in the Constitution with this evident meaning.

If the word "legislature" as used in Art. V does not mean the law-making power, then we submit that it does

* See table of cases reported in this volume.

not mean the law-making power when it is used in Art I, § 4.

The Act of August 8, 1911, 37 Stat. 13, has expired by its own limitations. The legislature, in re-districting the State, acted exclusively under Art. I, § 4, of the Constitution.

The clause "by the method used in the last preceding apportionment," in the 1929 Act, related only to the arithmetical method of computation. The Act of 1911, has been repealed by the repealing clause (§ 21) of the Act of 1929.

*Mr. Ray Weightman,* Assistant Attorney General of Missouri, with whom *Messrs. Stratton Shartel,* Attorney General, and *L. Cunningham* were on the brief, for respondent.

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

The State of Missouri, under the reapportionment of representatives in Congress (Act of June 18, 1929, c. 28, 46 Stat. 21, 26) is entitled to thirteen representatives in place of sixteen as theretofore. The petitioner brought this proceeding to obtain a writ of mandamus to compel the Secretary of State of Missouri to file a declaration of the petitioner's candidacy for the office of representative in Congress in one of the congressional districts alleged to have been created by a bill passed by the House of Representatives and the Senate of Missouri in April 1931. An alternative writ was issued, and respondent, Secretary of State, alleged in his return that the bill in question had been vetoed by the Governor and hence had not become a valid law of the State. The Supreme Court of the State, in the view that Article I, section 4, of the Federal Constitution, provided for the enactment

of laws, upheld the action of the Secretary of State and quashed the alternative writ. The court also decided that "since the number of representatives for Missouri has been reduced the former districts no longer exist and representatives must be elected at large." 45 S. W. (2d) 533. A writ of certiorari was granted by this Court.

The questions are substantially the same as those which were presented in *Smiley* v. *Holm*, decided this day, *ante*, p. 355, and the judgment is affirmed.

*Judgment affirmed.*

MR. JUSTICE CARDOZO took no part in the consideration or decision of this case.

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## CLAIBORNE-ANNAPOLIS FERRY CO. *v.* UNITED STATES ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 454. Argued February 18, 1932.—Decided April 11, 1932.

1. Paragraphs 18, 19 and 20 of § 1 of the Interstate Commerce Act, respecting extension and new construction of railroads, are restricted to carriers engaged in transporting persons or property in interstate and foreign commerce and were intended to affect intrastate commerce only as that may be incidental to the effective regulation of interstate commerce. P. 390.
2. A company operating a ferry within a State under a state charter *held* capable, as a "party in interest," of instituting suit for the purpose of annulling an order and certificate of the Interstate Commerce Commission whereby permission was granted a railway company to extend its line by a ferry over the same waters, and for the purpose of enjoining the railway from constructing and operating such proposed ferry, it appearing from the bill that such action might directly and adversely affect the welfare of the plaintiff by changing the transportation situation. *Id.*
3. A suit of this kind is to be tried by the specially constituted District Court, under the Urgent Deficiencies Act of October 22, 1913; 28 U. S. C., § 47. *Id.*