THE

LAW OF PATENTS

AND

PATENT PRACTICE IN THE PATENT OFFICE AND THE FEDERAL COURTS

WITH

RULES AND FORMS

BY

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OF THE

BAR OF THE SUPREME COURT OF THE UNITED STATES.

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IN TWO VOLUMES

VOLUME II

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HOPKINS ON PATENTS

VOL. II.

APPENDIX

PATENT STATUTES---Continued

956742

EXTRACTS FROM THE JUDICIAL CODE.
ACT OF MARCH 3, 1911.

SEC. 1. In each of the districts described in chapter five, there shall be a court called a district court, for which there shall be appointed one judge, to be called a dsitrict judge; except that in the northern district of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern districts of Ohio, the district of Oregon, the eastern and western districts of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three additional district judges: *Provided,* That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further,* That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further,* That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

See § 551, R. S. U. S., 1 Comp. Stat., p. 446, 4 Fed. Stat. Ann., p. 216.

SEC. 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly installments.

See § 554, R. S. U. S., 1 Comp. Stat., p. 449, 4 Fed. Stat. Ann., p. 217, Pierce, Code § 6985.

SEC 3. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law.

Re-enactment of § 555, R. S. U. S., Pierce Cdoe, § 6986, 1 Comp. Stat., p. 451, 4 Fed. Ann., p. 74. The office of clerk is held at the discretion of the court and mandamus cannot be invoked to restore him to office when removed by an order of court. *Ex parte Hennen*, 13 Peters, 230, 261, 10 L. Ed. 138, 154.

SEC. 4. Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

See § 558, R. S. U. S., 1 Comp. Stat., p. 452, 4 Fed. Stat. Ann., p. 74, Pierce, Code § 6989.

SEC. 5. The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge

may determine, to wait upon the grand and other juries, and for other necessary purposes.

See § 715, R. S. U. S., 1 Comp. Stat., p. 579, 4 Fed. Stat. Ann., p. 81.

SEC. 6. The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge.

Re-enactment of § 562, R. S. U. S., Act Sept. 24, 1789, c. 20, § 3, 1 Stat. at L. 73, 1 Comp. Stat., p. 424, 4 Fed. Stat. Ann., p. 218.

SEC. 7. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof.

Re-enactment of § 573, R. S. U. S., 1 Comp. Stat., p. 475, 4 Fed. Stat. Ann. p. 671. The same provision, as to the circuit courts, repealed by the judicial code, was contained in § 660 R. S. U. S., 1 Comp. Stat. p. 542. See § 297, this Code.

Under § 573, R. S. U. S., a session of the district court in a district where the act of congress provided for a regular term of court, held upon a day other than the one designated in the act, was ruled to be held without authority of law, and its proceedings inoperative and void, as against the forfeiture of a recognizance. McGlashan v. United States, 71 Fed. Rep. 434, 18 C. C. A. 172.

SEC. 8. When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened.

See § 746, R. S. U. S., Act March 2, 1855, c. 140 § 1, 10 Stat. at L. 630, 1 Comp. Stat., p. 590, 4 Fed. Stat. Ann. 556.

That the trial "has been commenced and is in progress" at the expiration of the term of court, although but three jurors have been selected, see United States v. Loughery, 13 Blatchf. 267, Fed. Case 15, 631.

SEC. 9. The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

Re-enactment of § 574, R. S. U. S., Act August 23, 1842, c. 188, § 5, 5 Stat. at L. 517, 1 Comp. Stat., p. 475, 4 Fed. Stat. Ann. 671.

As to the Circuit Courts, Equity Rule I provided as follows

The Circuit Courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all cases upon their merits.

With the transfer of the jurisdiction of the Circuit Court to the District Court, the equity rule will doubtless be properly amended.

Under § 602, R. S. U. S., which is repealed by § 297 of this code, it has been held that "the existence of a term (of the district court) does not depend on the fact that any business is transacted thereat, nor does any general order of continuance of itself close the term." Mr. Justice Brewer, in McDowell v. United States, 159 U. S. 596, 600, 40 L. Ed. 271, 273.

Under Equity Rule 1 the practice in the circuit courts has been to treat all questions of confirmation of sale as relating to final process, * * * "and as within the jurisdiction of the chancellor to determine at any time, irrespective of whether a stated term of the circuit court be in session." Pardee, J., in Central Trust Co. v. Sheffield & Birmingham Coal, I. & R. Co., 60 Fed. Rep. 9, 15.

Under § 574, R. S. U. S., it has been held that "the circuit and district court are * * * actually in session * * * when the court is opened by the judge for business, or business is actually transacted in court." Baker, J., in Butler v. United States, 87 Fed. Rep. 655, 659.

SEC. 10. District courts hall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

Re-enactment of § 578, R. S. U. S., Act August 23, 1842, c. 188, § 3, 5 Stat. at L. 517, 1 Comp. Stat., p. 476, 4 Fed. Stat. Ann., p. 672.

SEC. 11. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term.

Re-enactment of § 581, R. S. U. S., 1 Comp. Stat., p. 477, 4 Fed. Stat. Ann., p. 672.

SEC. 12. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

Re-enactment of § 583, R S. U. S., 1 Comp. Stat., p. 478, 4 Fed. Stat. Ann., p. 673.

The word "term" as used in this section has been thus defined by Judge Carpenter. "In literal meaning, and the easliest use of the word, it signifies a definite period of time, during which the court remains in continuous session. There is, however, nothing here implied which will exclude a session consisting of a single day. The term is that session of the court which begins at a time fixed by or under authority of law, and, having proceeded continuously, ends when the business then un-

der consideration is concluded." Pitnam v. United States, 45 Fed. Rep. 159, 160. Affirmed in United States v. Pitnam, 147 U. S. 669, 37 L. Ed. 324.

SEC. 13. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled, during such disability. Whenever it shall be certified by any such circuit judge or, in his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the clerk to the judge so designated and appointed.

See § 591, R. S. U. S., 1 Comp. Stat., p. 480, 4 Fed. Stat. Ann., p. 675.

The failure to file the appointment in the clerk's office does not affect the authority of the appointed judge. National Home for Soldiers v. Butler, 33 Fed. Rep. 374.

It was held that under this section the power of designation to hold court is case of disability did not extend to the case of a vacancy (9 Ops. Atty. Gen. 131) and that opinion was embodied in § 603, R. S. U. S., but where a judge was appointed to hold court in case of disabili-

ty, and, the disabled judge dying after the appointment, continued to hold court, it was held that the appointee was judge *de facto*, if not *de jure*, and his acts as such were held not to be open to collateral attack. Ball v. United States, 140 U. S. 118, 35 L. Ed. 377; Norton v. Shelby County, 118 U. S. 425, 30 L. Ed. 178; Manning v. Weeks, 139 U. S. 504, 35 L. Ed. 624.

SEC. 14. When from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein.

See § 592, R. S. U. S., 1 Comp. Stat., p. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 15. If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section.

See § 593, R. S. U. S., 1 Comp. Stat. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 16. Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment.

See § 594, R. S. U. S., 1 Comp. Stat., p. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 17. It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit.

See § 596, R. S. U. S., 1 Comp. Stat., p. 482, 4 Stat. Ann. 677.

SEC. 18. Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court.

New section.

SEC. 19. It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

See § 595, R. S. U. S., 1 Comp. Stat., p. 482, 4 Fed. Stat. Ann., p. 676.

SEC. 20. Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen.

See § 601, R S. U. S., 1 Comp. Stat., p. 484, 4 Fed. Stat. Ann., p. 678. The fact that the judge was plaintiff in a pending suit in a State Court against a defendant corporation, and that one of the parties was his son-in-law did not disqualify him from making administrative orders in the cause; his decision to so act being within his discretion, and not the subject of error. Coltrane v. Templeton, 106 Fed. Rep. 370, 377, 45 C. C. A. 328. If the facts are known to the party rescuing, his objection will be taken as being waived if he fails to make it before issues are joined and the trial commenced. Ibid. The fact that the dirstrict judge is a tax payer of a county does not give him such relation to the county as to disqualify him from sitting in a suit involving the validity of the bonds of the county. Wade v. Travis County, 72 Fed. Rep. 985. Disqualification by relationship defined in a State statute renders it improper for a district judge to act, even by consent of the parties. In re Eatonton Elec. Co., 120 Fed. Rep. 1010.

SEC. 21. Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge, shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three, to hear such matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.

New section.

SEC. 22. When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in section nineteen.

Similar to § 602, R. S. U. S., 1 Comp. Stat., p. 484; whose operation was automatic, providing that

"§ 602. When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and qualification of his successor; except when such first-mentioned term is held as provided in the next section." 4 Fed. Stat. Ann., p. 679.

This statute was held to apply to both civil and criminal causes; to be a remedial statute and entitled to liberal construction "The general purpose of § 602 is plain. It is that the administration of justice by a district court shall not, through a vacancy in the office of judge, be defeated or unduly impeded; that causes, civil and criminal, shall, notwithstanding the vacancy, be preserved in their full force and vitality, to be effectively proceeded in where there is a judge authorized to discharge the functions of the court; that all acts and steps, calling for or

serving as the basis of judicial action, which otherwise must or should earlier be done or taken in court in the process of a case, shall or may be done or taken therein after the termination of the vacancy." Bradford, J., in United States v. Murphy, 82 Fed. Rep. 893, 899. "'Process pending before' must be held to include process * * * of which the object has not been fully accomplished,—process which is still *in fieri*,—process, which if continued in force, will result either in securing the appearance of the accused to meet the demands of justice or in fastening upon the recognizors liability for his default. Imprisonment under a commitment by a commissioner to answer a criminal charge clearly is process within the meaning of the section. It is only a means of compelling appearance in court." Ibid.

SEC. 23. In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district.

SECTION 24. The district court shall have original jurisdiction as follows: * * *

Seventh. Of all suits at law or in equity arising under the patent * * * laws.

SEC. 116. There shall be nine judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

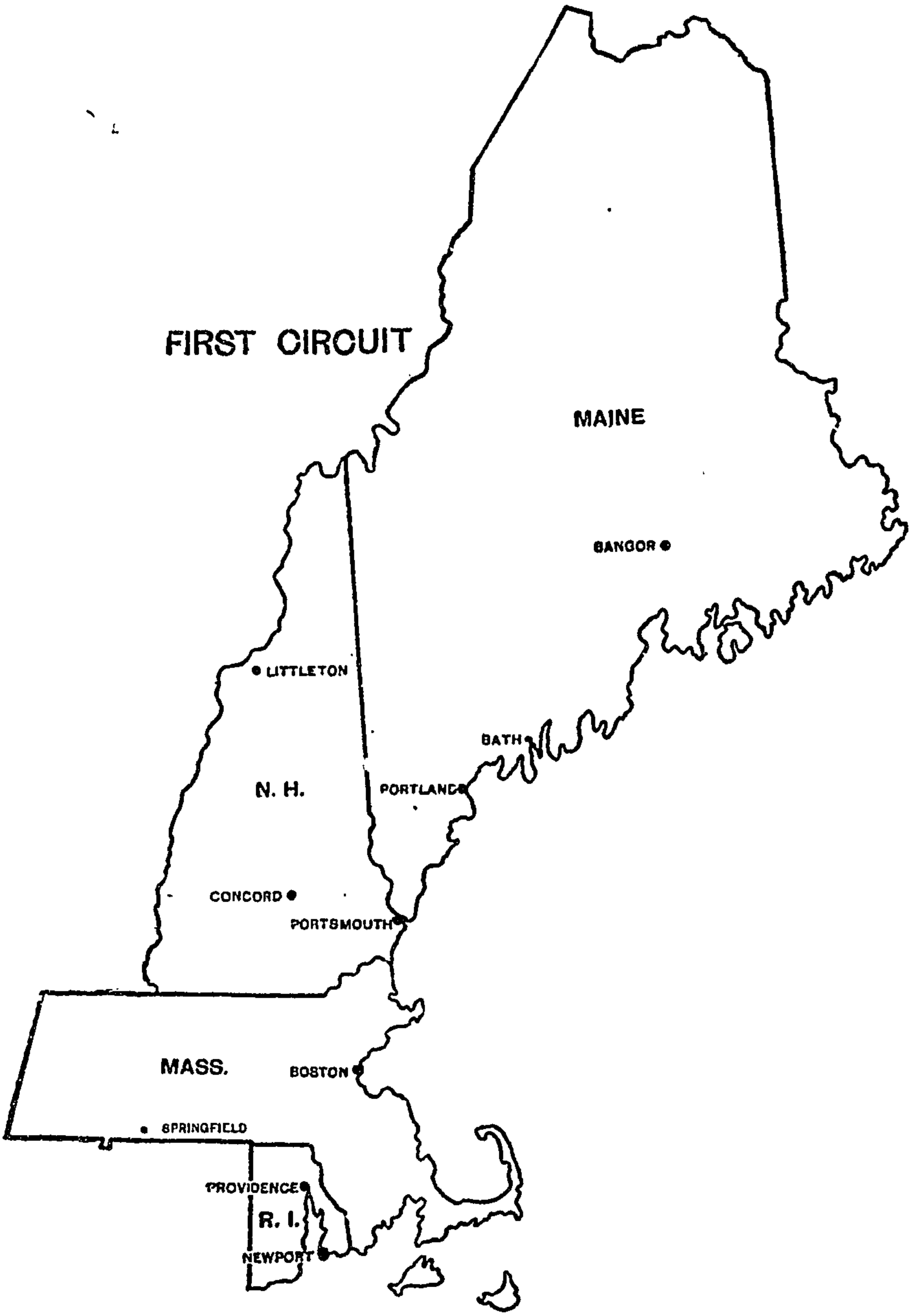
Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

Eighth. The eighth circuit shall include the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, and Oklahoma.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii.

Superseding § 604, R. S. U. S., 1 Comp. Stat., p. 485, 4 Fed. Stat. Ann. 59, Pierce Code, § 7115. For earlier statutes defining the circuits, see Introduction, Title "The Earlier Judiciary Acts," in Hopkin's Judicial Code.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MASS.
BOSTON
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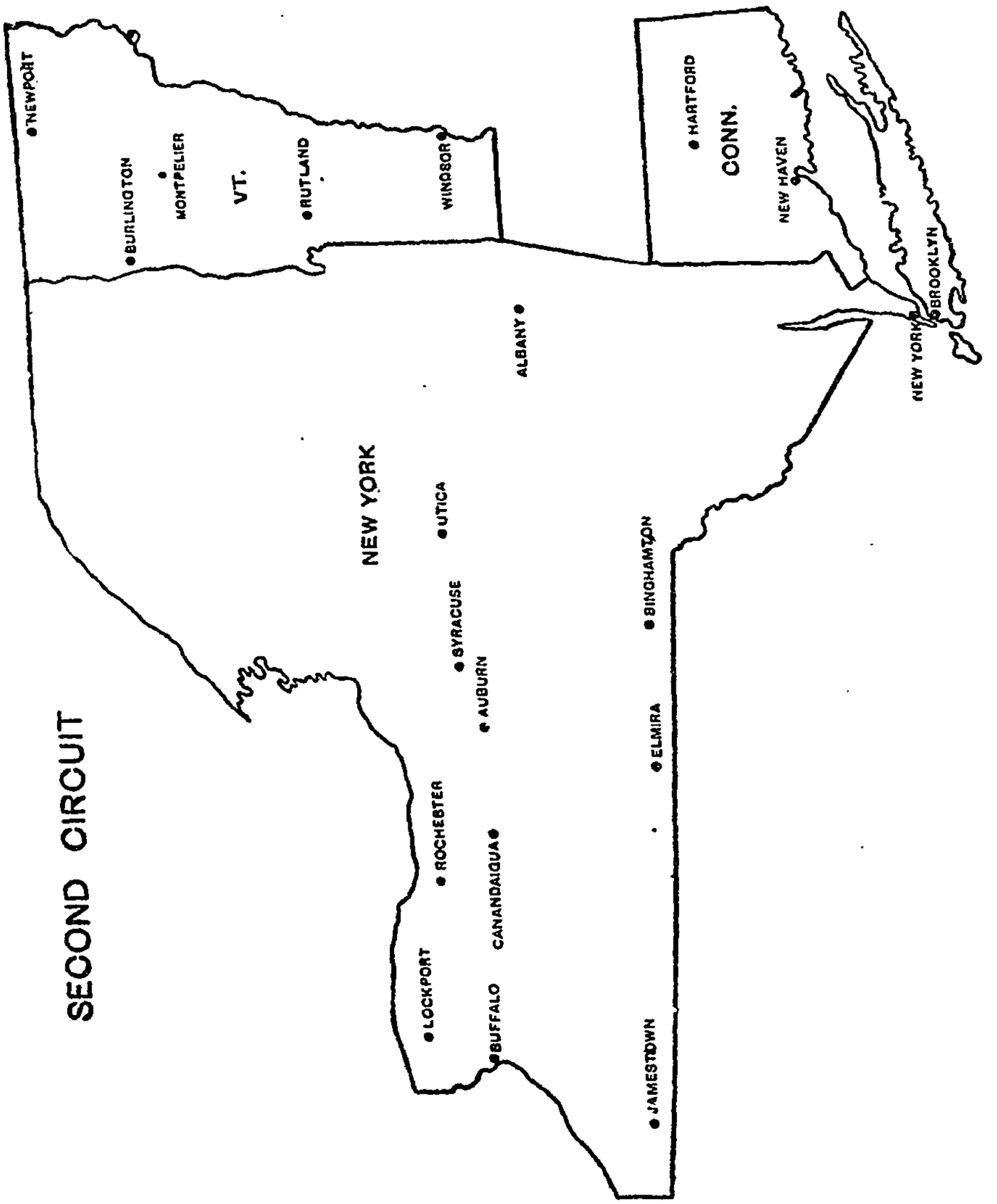
PROVIDENCE
R. I.
NEWPORT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VT.
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WINDSOR
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CONN.
NEW HAVEN
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NEW YORK
ALBANY
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LOCKPORT
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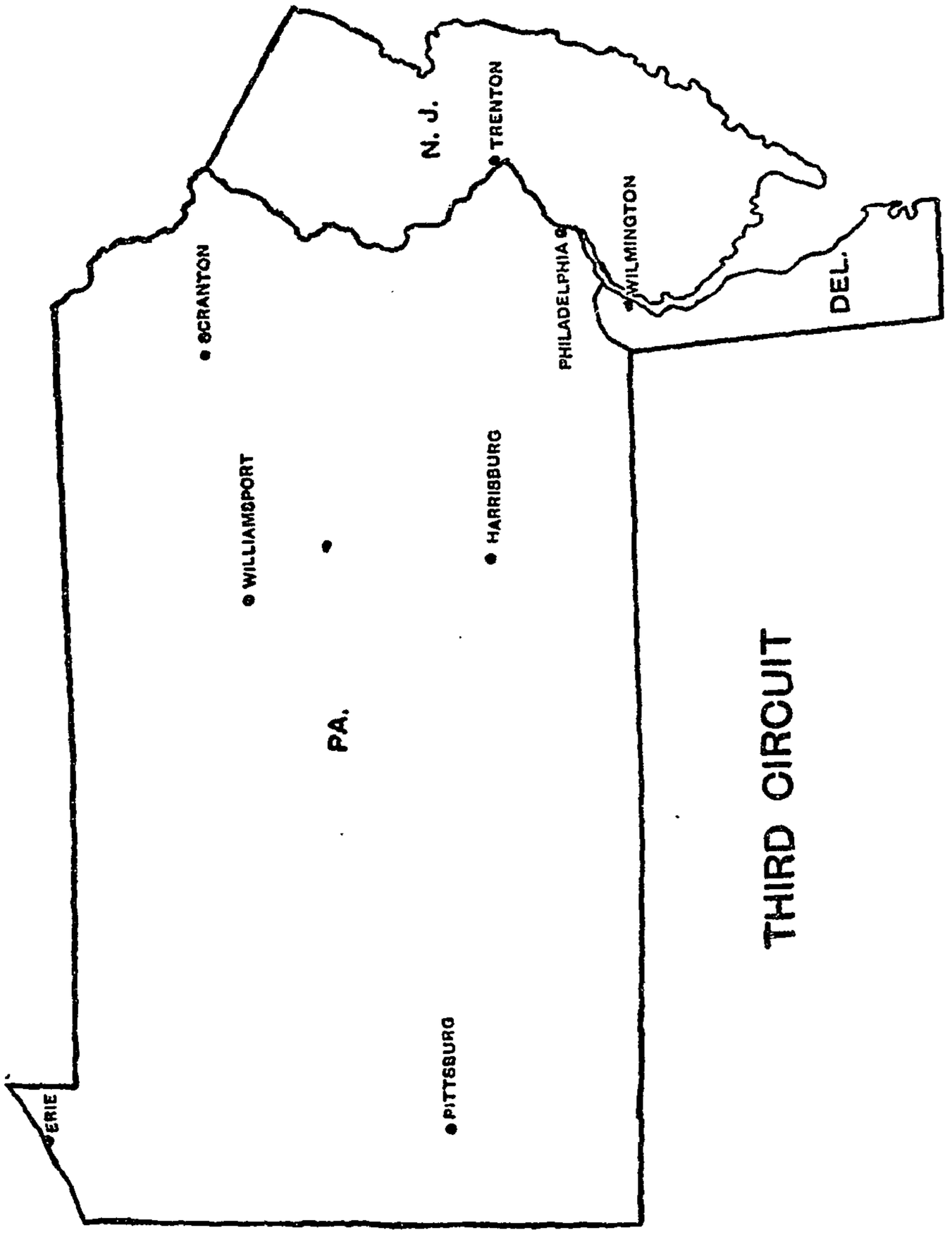
JAMESTOWN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SCRANTON
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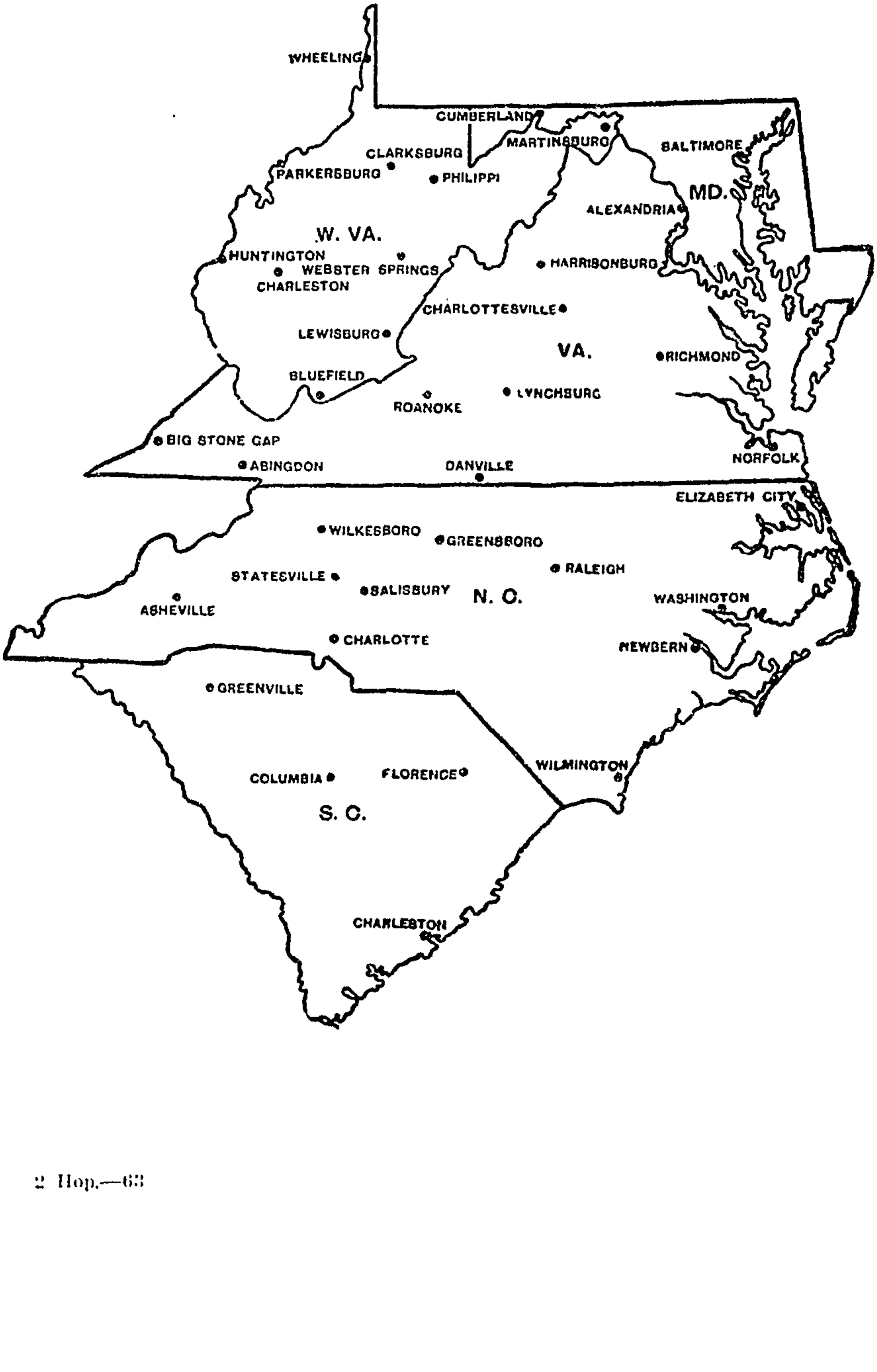
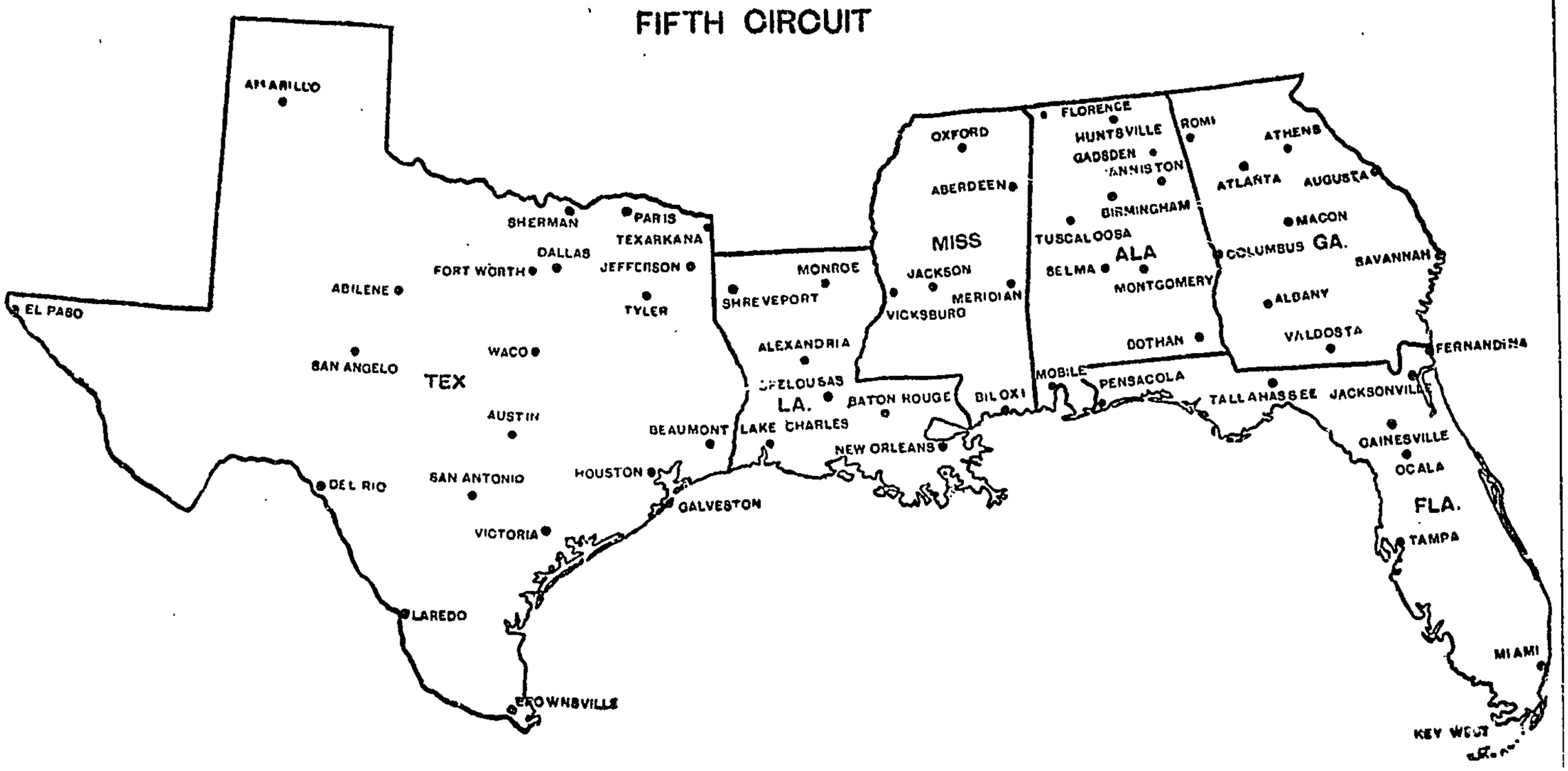
WILMINGTON
DEL.
WILLIAMSPORT
HARRISBURG
PA.
THIRD CIRCUIT
PITTSBURG
ERIE

FOURTH CIRCUIT

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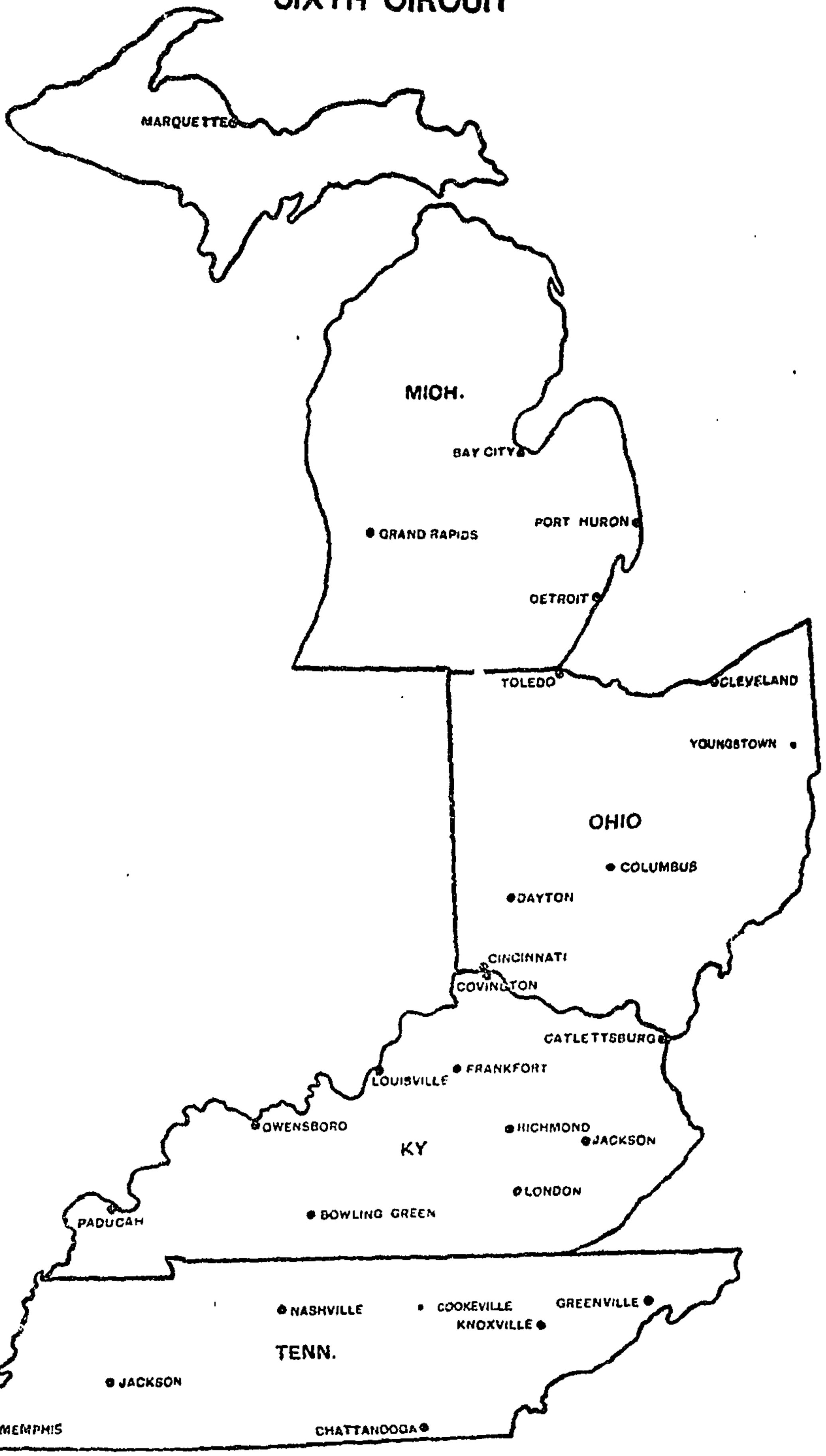
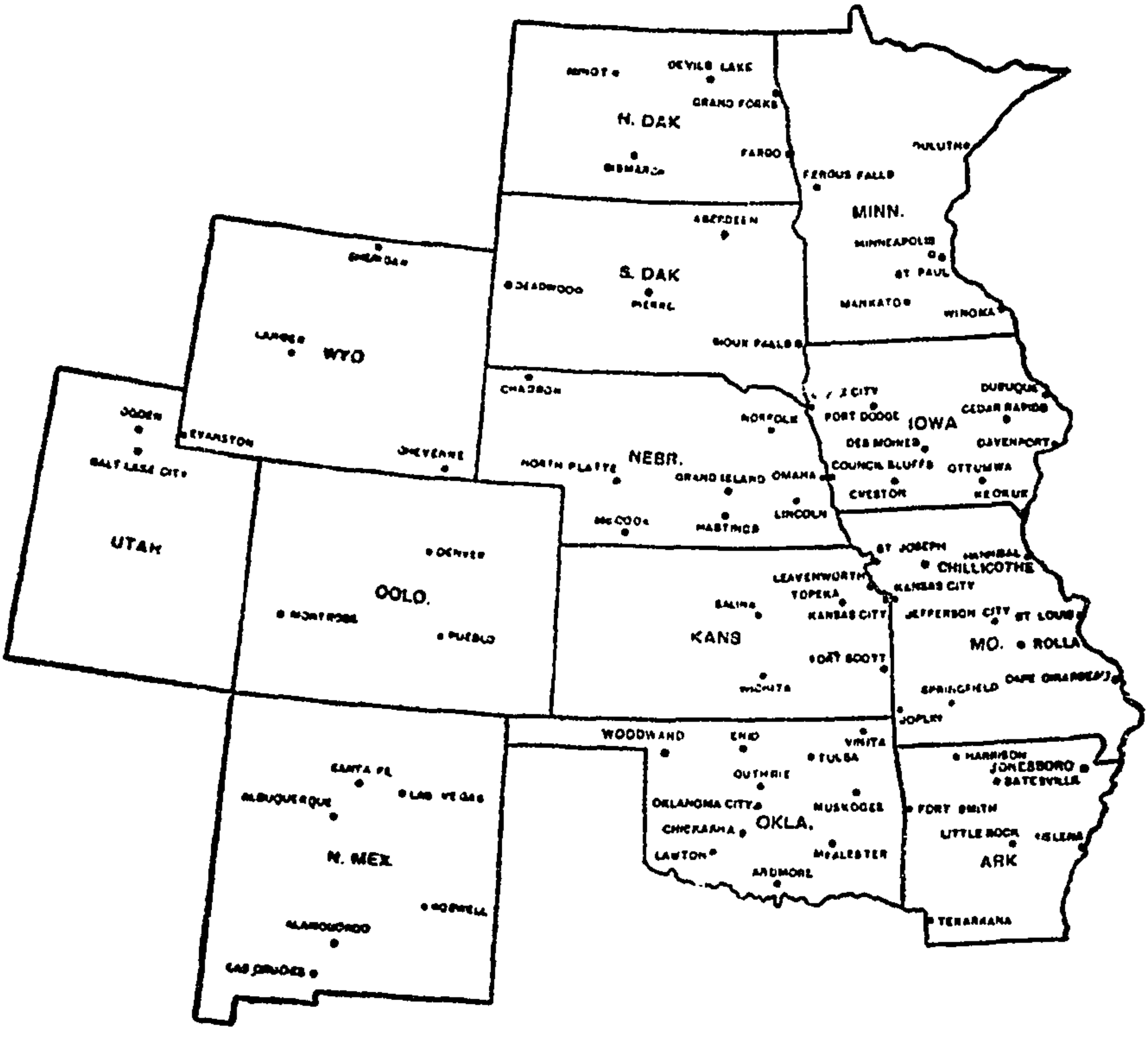
SAN ANGELO
SHERMAN
PARIS
TEXARKANA
DALLAS
FORT WORTH
JEFFERSON
TYLER
WACO
TEX
AUSTIN
SAN ANTONIO
DEL RIO
LAREDO
VICTORIA
BEAUMONT
HOUSTON
GALVESTON
BROWNSVILLE
MONROE
SHREVEPORT
ALEXANDRIA
OPELOUSAS
LA.
LAKE CHARLES
BATON ROUGE
NEW ORLEANS
OXFORD
ABERDEEN
MISS
JACKSON
MERIDIAN
VICKSBURG
BILOXI
FLORENCE
HUNTSVILLE
GADSDEN
ANNISTON
BIRMINGHAM
TUSCALOOSA
SELMA
ALA
MONTGOMERY
DOTHAN
MOBILE
PENSACOLA
TALLAHASSEE
ROME
ATHENS
ATLANTA
AUGUSTA
MACON
COLUMBUS
GA.
SAVANNAH
ALBANY
VALDOSTA
FERNANDINA
JACKSONVILLE
GAINESVILLE
OCALA
FLA.
TAMPA
MIAMI
KEY WEST

SIXTH CIRCUIT



SEVENTH CIRCUIT
SUPERIOR
EAU CLAIRE
WIS
GREEN BAY
OSHKOSH
LA CROSSE
MADISON
MILWAUKEE
FREEPORT
CHICAGO
HAMMOND
FORT WAYNE
PEORIA
ILL.
IND.
QUINCY
SPRINGFIELD
INDIANAPOLIS
DANVILLE
EAST ST. LOUIS
NEW ALBANY
EVANSVILLE
CAIRO

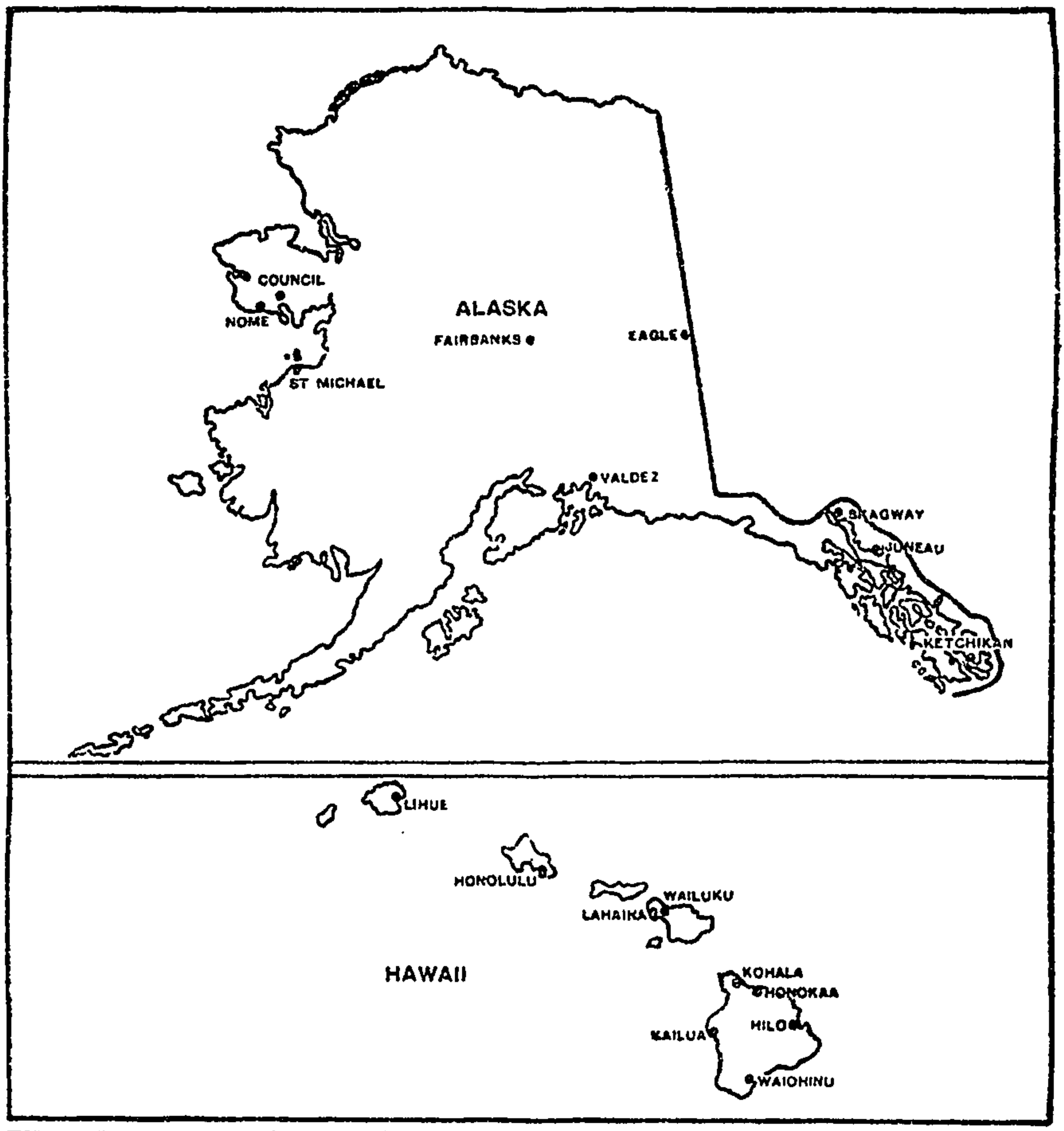
EIGHTH CIRCUIT



NINTH CIRCUIT
(PART OF)
BELLINGHAM
SEATTLE
TACOMA
WASH.
SPOKANE
NORTH YAKIMA
WALLA WALLA
PORTLAND
PENDLETON
OREG.
MEDFORD
EUREKA
SACRAMENTO
SAN FRANCISCO
CAL.
FRESNO
LOS ANGELES
SAN DIEGO
MOSCOW
CARSON CITY
NEV.
IDAHO
BOISE
POCATELLO
GREAT FALLS
HELENA
BUTTE
MONT.
PRESCOTT
ARIZ
PHOENIX
GLOBE
TUCSON
TOMBSTONE

NINTH CIRCUIT

(PART OF)



SECTION 117. There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established.

Superseding Act of March 3, 1891, § 2, 26 Stat. at L. 826, 4 Fed. Stat. Ann. 395, 1 Comp. Stat., p. 547, Pierce, Code § 7247.

SECTION 118. There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges, in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each payable monthly. Each circuit judge shall reside within his circuit.

See the various Acts providing for additional judges in the circuits, in addition to the judge for each circuit provided by § 607, R. S. U. S., 1 Comp. Stat. 487.

As; Act of March 3, 1887, c. 347, 24 Stat. at L. 492; Act March 3, 1891, c. 517, § 1, 26 Stat. at L. 826.

SECTION 119. The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit.

See § 606, R. S. U. S., 1 Comp. Stat. p. 487, 4 Fed. Stat. Ann., p. 238, Pierce, Code § 7122.

SECTION 120. The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided*, That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals.

Based upon § 3, Act Feb. 19, 1897, 29 Stat. at L 536, 4 Fed. Stat. Ann. 434, 1 Comp. Stat. 547, Pierce, Code § 7248.

SECTION 121. The words "circuit justice" and "justice of a circuit," when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice.

Re-enacting § 605, R. S. U. S., 1 Comp. Stat. p. 486, 4 Fed. Stat. Ann. p. 59, Pierce, Code § 7121.

SECTION 122. Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the

form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.

See Act of March 3, 1891, c. 517, § 2, 26 Stat. at L. 826.

SECTION 123. The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable.

See Act of July 16, 1892, c. 196, § 1, 27 Stat. at L. p. 222, 1 Comp. Stat. p. 555.

SECTION 124. Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.

See Act of March 3, 1891, c. 517, § 2, 26 Stat. at L. 826, 1 Comp. Stat. p. 547.

SECTION 125. The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his

death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Re-enacting § 558, R. S. U. S., 1 Comp. Stat. p. 453, 4 Fed. Stat. Ann. p. 74, Pierce, Code § 6989.

SECTION 126. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Denver or Cheyenne, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in St. Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs

of error in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of errors, and other appellate proceedings which may hereafter be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said courts shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the States of Colorado, Utah, and Wyoming, and the supreme court of the Territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said States or Territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne.

(From the Register of the Department of Justice.)

TIMES AND PLACES OF HOLDING CIRCUIT COURTS OF APPEALS. First circuit: Annual term, first Tuesday in October; stated sessions, first Tuesday in every month; sessions for hearing cases, first Tuesday in January and October, and second Tuesday in April, at Boston, Mass.

Second circuit: Second Monday in October, at New York City.

Third circuit: First Tuesday in March and first Tuesday in October, at Philadelphia.

Fourth circuit: First Tuesday in February, first Tuesday in May, and first Tuesday in November, at Richmond, Va.

Fifth circuit: First Monday in October, at Atlanta, Ga.; third Monday in October, at Montgomery, Ala.; first Monday in November, at Fort Worth, Tex.; and third Monday in November, at New Orleans, La.

Sixth circuit: Tuesday after the first Monday of October, and adjourned sessions on the Tuesday after first Monday of each month in the year, except August and September, at Cincinnati, Ohio. At the July session no causes will be heard, except upon special order of the court.

Seventh circuit: First Tuesday in October. Term is divided into three sessions, beginning on first Tuesdays in October and January, and second Tuesday in April, at Chicago, Ill.

Eighth circuit: First Monday in May, at St. Paul, Minn.; first Monday in September, at Denver, Colo. (or by the provisions of above § 126, at Cheyenne, Wyo.); first Monday in December, at St. Louis, Mo.

Ninth circuit: At San Francisco, Cal., annual term, commencing first Monday in October; adjourned sessions on first Monday in each month; calendar sessions for hearing of causes at San Francisco, Cal., commence on first Monday in October, February, and May, respectively. At Seattle, Wash., annual term, second Monday in September, for hearing of causes. At Portland, Oreg., annual term, third Monday in September, for hearing of causes.

SECTION 127. The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: *Provided*, That in case proper rooms cannot be provided in such buildings, then the marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for such courts.

Superseding Act of March 3, 1891, c. 517, § 9, 26 Stat. at L. 829, 1 Comp. Stat. 829.

SECTION 128. The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii, in all cases other than those in which appeals and writs of error may

be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different States; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

See Act of March 3, 1891, c. 517, Z 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 549, 4 Fed. Stat. Ann. 434, Pierce, Code § 7251.

SECTION 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided,* That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however,* That the court below may, in its discretion, require as a condition of the appeal an additional bond.

See Act of April 14, 1906, § 7, 34 Stat. at L. 116, 1 Comp. Stat. p. 550, Pierce, Code § 7252. The above section of the Judicial Code is a substantial re-enactment of the Act of March 3, 1891, c. 517, § 7, 26 Stat. at L. 828 as amended by the Act of February 18, 1895, c. 96, 28 Stat. at L. 666.

SEC. 132. Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowance of appeals and writs of error, and the conditions of such allowances, as by law belong to the justices or judges in respect of other courts of the United States, resepctively.

Superseding Act of March 3, 1891, § 12, c. 517, 26 Stat. at L. 829, 1 Comp. Stat., p. 553, Pierce, Code § 7257.

SEC. 133. The circuit court of appeals, in cases in which their judgments and decrees are made final by this title, shall have appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the Supreme courts of Arizona and New Mexico, as by this title they may have to review the judgments, orders, an decrees of the district courts; and for that purpose said Territories shall, by orders of the Supreme Court of the United States, to be made from time to time, be assigned to particular circuits.

See Act of March 3, 1891, c. 517, § 15, 26 Stat. at L. 830, 1 Comp. Stat., p. 554.

SEC. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the Ninth Circuit, and the judgments, or-

ders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals.

See Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828.

SEC. 135. All appeals, and writs of error, and other cases, coming from the district court for the district of Alaska to the Circuit Court of Appeals for the Ninth Circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided,* That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there.

SEC. 136. The Court of Claims, established by the Act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice an four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars,

and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury.

See § 1049, R. S. U. S., 1 Comp. Stat., p. 729, 2 Fed. Stat. Ann., p. 53, Pierce, Code § 7772.

SEC. 137. The Court of Claims shall have a seal, with such device as it may order.

Re-enacting § 1050, R. S. U. S., 1 Comp. Stat., p. 729, 2 Fed. Stat. Ann. 53, Pierce, Code § 7773.

SEC. 138. The Court of Claims shall hold one annual session at the City of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided*, That the concurrence of three judges shall be necessary to the decision of any case.

See § 1052, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7776. Also Act of June 23, 1874, c. 468, 18 Stat. at L. 252, 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann. 54, Pierce, Code § 7777.

SEC. 139. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a baliff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

Re-enacting § 1053, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7778.

SEC. 140. The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff, one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury.

See § 1054, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7779.

SEC. 141. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

Re-enacting § 1055, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann. 54, Pierce, Code § 7780.

SEC. 142. The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled.

Re-enacting § 1056, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 54, Pierce, Code §7781.

SEC. 143. On the first day of every regular session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of

departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States.

Re-enacting § 1057, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7782. "The decisions of the Court of Claims in general, not appealed from, are guides to the executive officers of the government, and furnish precedents for the executive departmets in all other like cases." Meigs v. United States, 20 Ct. Cl. 181.

SEC. 144. Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

See § 1058, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7783.

SEC. 145. The Court of Claims shall have jurisdiction to hear an determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear

and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided,* That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Compare § 1059, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7784.

TERRITORIAL JURISDICTION. The pendency of a suit in a court of the United States wherever situated is not a suit in a foreign jurisdiction; the territorial jurisdiction of the Court of Claims is co-extensive with the territory in which the courts of the United States sit. Peterson v. United States, 26 Ct. Cl. 93. "It issues writs to every part of the United States, and is specially authorized to enforce them." United States v. Borcherling, 185 U. S. 223, 46 L. Ed. 884.

RESTRICTING JURISDICTION BY RULE. As in all courts, the jurisdiction conferred by Act of Congress upon the Court of Claims cannot be

restricted by rule, and a rule requiring the claim to go through a governmental department before suit was therefore held void. United States v. Clyde, 13 Wall. 35, 20 L. Ed. 479.

PARTIES. To enable joint claimants to maintain a single suit they must have joint interest. Wilson v. United States, 1 Ct. Cl. 318. Suits by assignees are subject to the conditions of § 3477, R. S. U. S.

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deed, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same." 2 Comp. Stat., p. 2320, 2 Fed. Stat. Ann., p. 7, Pierce, Code § 1661. See Emmons v. United States, 48 Fed. Rep. 43; United States v. Gillis, 95 U. S. 407, 24 L. Ed. 503; Jackson v. United States, 1 Ct. Cl. 260. But the assignor and assignee may maintain an action for the use of the assignee. Tebetts v. United States, 5 Ct. Cl. 607. A suit brought by the holder of the legal title to the use of the beneficial owner is not within the operation of § 3477, R. S. U. S. United States v. American Tobacco Co., 166 U. S. 468, 41 L. Ed. 1081.

THE JURISDICTION SPECIALLY SUBJECT TO CONTROL BY CONGRESS. Possibly the most unique characteristic of the jurisdiction of the Court of Claims resides in the control which Congress exercises at all times to limit or explain its jurisdiction, not only generally, but as to a particular class of cases, or as to a particular case. This rule, with its underlying logic, has been thus expressed by Mr. Justice Miller;

"The Government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court, that it has been held that when the United States is plaintiff in one of the Federal Courts, and the defendant has pleaded a set-off which the Acts of Congress have authorized him to rely on, no judgment can be rendered against the government, although it may be judicially ascertained that on striking a balance of just demands the government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the costs expended by the defendant in his defense.

"If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgmest against that defendant, it is only by virtue of Acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the causes of action, as Congress has prescribed.

"It is true that, ordinarily, when we seek for the foundation of this jurisdiction, we look to the general law creating the court, and defining cause of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, or prescribe in such case the circumstance under which alone the court may render a judgment against the government." DeGroot v. United States, 72 U. S. 419, 18 L. Ed. 700, 703.

CONTRACTS; EXPRESS AND IMPLIED. An appropriation made by Congress for work done may be sufficient to constitute an express contract. Myerle v. United States, 33 Ct. Cl. 1. To constitute an implied contract which will serve as a basis for the recovery of money received by the United States, "There must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake." Knote v. United States, 95 U. S. 149, 24 L. Ed. 442.

JURISDICTION OVER PATENT CASES. See *ante*, §§ 497-500. This code (§ 145) re-enacts the substance of the former statutes, confining the jurisdiction of the Court of Claims to cases arising out of contract, express or implied. Under these statutes the Court of Claims had no jurisdiction of suits against the Government for Patent Infringement. Pitcher v. United States, 1 Ct. Cl. 7. In rare cases a contract to pay for the use of a patented invention was held to be implied (Berdan Fire Arms Mfg. Co. v. United States, 156 U. S. 552, 39 L. Ed. 530), but as a rule, in the absence of an express contract, no recovery could be had (Gill v. United States, 25 Ct. Cl. 415, 160 U. S. 426, 40 L. Ed. 480). But the jurisdiction of the Court of Claims over Patent Cases has been enlarged by the Act of June 25, 1910, 36 Stat. at L., p. 851, providing as follows:

"That whenever an invention described in and covered by a patent of the United States shall hereafter be used by the United States without license of the owner thereof

or lawful right to use the same, such owner may recover reasonable compensation for such use by suit in the Court of Claims: *Provided, however,* That said Court of Claims shall not entertain a suit or award compensation under the provisions of this Act where the claim for compensation is based on the use by the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, which might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further,* That the benefits of this Act shall not inure to any patentee, who, when he makes such claim is in the employment or service of the Government of the United States; or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service."

JURISDICTION OVER TORTS. The general rule excluding torts from the jurisdiction of the Court of Claims is announced in Luddington v. United States, 15 Ct. Cl. 453. The following classes of cases have been held to be outside of the jurisdiction of the Court of Claims as being founded on tort: Suits for damages for personal injuries resulting from the fall of an elevator in a public building, Bigby v. United States, 188 U. S. 400, 47 L. Ed. 519; contracts implied by law from torts, Harley v. United States, 198 U. S. 229, 49 L. Ed. 1029, 39 Ct. Cl. 105; a claim for the taking of land under tidewater for lighthouse purposes, Hill v. United States, 149 U. S. 593, 37 L. Ed. 862; a suit for the diversion of a water course, Mills v. United States, 46 Fed. Rep. 738; a suit for damages for injury to property resulting from defective construction of a dam, Hayward v. United States, 30 Ct. Cl. 219; a suit for infringement of copyright, Lanman v. United States, 27 Ct. Cl. 260; a suit for damages arising from a maritime collision, St. Louis & Miss. Valley Trans. Co. v. United States, 33 Ct. Cl. 251.

CLAIMS FOUNDED UPON A LAW OF CONGRESS. Claims of this character are justiciable under the Court of Claims Act, regardless of whether they are founded on contract or in tort. Christie-Street Com. Co. v. United States, 126 Fed. Rep. 991, 994. The Court of Claims has classified the cases arising under this grant of jurisdiction as follows:

"1. Where Congress creates a class of claims such as the customs cases, the internal revenue cases, the pension cases, and provide a jurisdiction for the ascertainment and allowance of such claims, that jurisdiction is exclusive.

"2. But where the officer clothed with authority to investigate and allow determines the facts of a case and refers it to this court for the determination of a question of law thereby presented, or where the officer, having allowed a claim, transmits it to the accounting officers for payment, and they, or the Secretary of the Treasury, refuses to give effect to the award, an action thereon will lie in this court.

"3. Where Congress creates a class of claims, such as for horses and vessels lost or destroyed in the military service, and refer the claims for investigation and settlement to the accounting officers of the treasury, no jurisdiction to finally determine a legal right is created, and the accounting officers act simply in their usual capacity of auditing officers, and this court has jurisdiction of the claims.

"4. Where Congress creates a class of claims, such as claims for a surplus in the treasury derived from property sold for taxes, or the direct-tax cases, with directions to the Secretary of the Treasury to pay the amount found to be due to the persons entitled thereto, no special jurisdiction is thereby created, and an action will lie in this court.

"5. Where Congress pledge the faith of the United States in consideration of a person doing some act, such as that in the drawback cases, or in sugar-bounty cases, presenting thereby an obligation in the nature of an implied contract, the action of the Secretary of the Trasury, or of the revenue officers, is not conclusive, and an action will lie upon the statutory obligation of the government." Foster v. United States, 32 Ct. Cl. 170.

"ANY REGULATION OF AN EXECUTIVE DEPARTMENT." This expression manifestly refers to Rules and Regulations made by the head of a Governmental Department for the conduct of his department. Harvey v. United States, 3 Ct. Cl. 38.

DEMANDS ON THE PART OF THE UNITED STATES AGAINST A CLAIMANT. That the right of set-off in behalf of the government is founded on § 236, R. S. U. S., and exists independently of the Act of March 3, 1875, and § 1766, R. S. U. S., see Taggart v. United States, 17 Ct. Cl. 322. So the amount of a payment made on a fraudulent voucher may be set up by way of counter claim, Charles v. United States, 19 Ct. Cl. 316. An unliquidated demand may be used as a set-off by the United States. Allen v. United States, 17 Wall. 207, 21 L. Ed. 553. That the right of the government to set off and counter claim is of equal scope with the right given the Crown by the Act of 1860, 23 and 24 Vict., c. 34, see Roman v. United States, 11 Ct. Cl. 761. That the United States may assert a set-off against a judgment, see Bonnafon v. United States, 14 Ct. Cl. 484. That the set-off or counter claim need not be pleaded, see Hart v. United States, 118 U. S. 62, 30 L. Ed. 96; Wisconsin Cent. R. Co. v. United States, 164 U. S. 190, 41 L. Ed. 399.

"THE CLAIM OF ANY PAYMASTER, ETC." This provision extends to the disbursing officer of all the executive departments (Hobbs v. United States, 17 Ct. Cl. 189), and extends to cases where the officer has not given bond. Wood v. United States, 25 Ct. Cl. 98. The claimant's testimony, unsupported, is insufficient under this section. Pattee v. United States, 3 Ct. Cl. 397.

SEC. 146. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

Re-enacting § 1061, R. S. U. S., 1 Comp. Stat., p. 737, 2 Fed. Stat. Ann., p. 61, Pierce, Code, § 7790. Where a claim is dismissed for want of jurisdiction, judgment cannot be entered upon a counter claim. Baltimore & Ohio R. Co. v. United States, 34 Ct. Cl. 484. That in suits under the Act of March 3, 1887, c. 359, 24 Stat. at L. 505 (the Tucker Act) the Federal Courts may render a money judgment for the United States on a set-off or counter claim, see United States v. Saunders, 79 Fed. Rep. 407, 24 C. C. A. 649.

SEC. 147. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts.

Re-inacting § 1062, R. S. U. S., 1 Comp. Stat., p. 737, 2 Fed. Stat. Ann., p. 61, Pierce, Code § 779. That the expression "without fault or negligence" is to be taken in its common sense (fault meaning error, and negligence meaning omission) and that the degree of care exacted is that which would be required of his agent by a prudent man in like circumstances, see Malone v. United States, 5 Ct. Cl. 486; Martin v. United States, 37 Ct. Cl. 527. For illustrations of cases where disbursing officers were granted relief from the results of such mishaps as theft, capture by an enemy, or bank failure, see Reynolds v. United States, 15 Ct. Cl. 314; Broadhead v. United States, 19 Ct. Cl. 125; Prime v. United States, 3 Ct. Cl. 209; Hobbs v. United States, 17 Ct. Cl. 189.

SEC. 148. When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents and proofs pertaining thereto, to the Court of Claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however,* That it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate if any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject-matter or character, the said court might under existing laws, take jurisdition on the voluntary action of the claimant, to be transmitted, with all the vouchers, papers, documents and proofs per-

taining thereto, to the said court for trial and adjudication.

Superseding § 1063, R. S. U. S., 1 Comp. Stat., p. 738, 2 Fed. Stat. Ann., p. 63, Pierce, Code § 7792. "It is only the pendency of a claim or matter in an executive department that gives the head of such department jurisdiction to transmit the same to the court. Armstrong v. United States, 29 Ct. Cl. 148. See also, as to the incidental jurisdiction of the Court of Claims to adjudicate all issues arising in cases transmitted from the departments although involving unliquidated claims which the department could not have settled, see Myerle v. United States, 33 Ct. Cl. 1. That ex parte affidavits transmitted by a department with the claim will not be considered, being incompetent, see Chickasaw Nation v. United States, 19 Ct. Cl. 133.

SEC. 149. All cases transmitted by the head of any department, or upon the certificate of any auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

Re-enacting § 1064, R. S. U. S., 1 Comp. Stat., p. 738, 2 Fed. Stat. Ann., p. 63, Pierce, Code § 7793. Prior to the Act of 1863, the judgments of the Court of Claims were not conclusive. Nourse v. United States, 2 Ct. Cl. 214. As to their present conclusiveness see Baumer v. United States, 26 Ct. Cl. 82.

SEC. 150. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Re-enacting § 1065, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann., p. 64, Pierce, Code § 7794.

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the

payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation an determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts esablished, that under exising laws or the provisions of this chapter, the subject-matter of the bill is such that it has jurisdicion to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

Superseding Act of March 3, 1887, c. 359, § 14, 24 Stat. at L. 507, 1 Comp. Stat., p. 757, 2 Fed. Stat. Ann., p. 87, Pierce, Code, § 7834. That the report of the Court of Claims under this section is not conclusive upon the merits and does not relieve the claimant from the defense of laches, see Balmer v. United States, 26 Ct. Cl. 82. That a case brought before the Court of Claims under this provision is subject to the taking of testimony under § 1063, R. S. U. S., and that ex parte affidavits transmitted by Congress with the claim are not competent, see Smith v. United States, 19 Ct. Cl. 690.

SEC. 152. If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.

Re-enacting Act of March 3, 1887, c. 359, § 151, 24 Stat. at L. 508, 1 Comp. Stat., p. 758, 2 Fed. Stat. Ann., p. 88, Pierce, Code, § 7835. For rulings as to the award of costs under this provision see Hill v. United States, 40 Fed. Rep. 441; Abbott v. United States, 66 Fed. Rep. 447; Abbott v. United States, 72 Fed. Rep. 686, 18 C. C. A. 679; Jacobus v. United States, 87 Fed. Rep. 99; United States v. Harmon, 147 U. S. 268, 37 L. Ed. 164.

SEC. 153. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Re-enacting § 1066, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7795.

SEC. 154. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Re-enacting § 1067, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7796.

SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such govern-

ment in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.

Re-enacting § 1068, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann., p. 64, Pierce, Code § 7797.

SEC. 156. Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunaticts, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Re-enacting § 1069, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann., p. 65, Pierce, Code § 7798.

SEC. 157. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Re-enacting § 1070, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann. 67, Pierce, Code § 7799.

SEC. 158. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Re-enacting § 1071, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7800.

SEC. 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney.

Superseding § 1072, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7801.

SEC. 160. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Re-enacting § 1073, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 68, Pierce, Code §7802.

SEC. 161. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War.

Superseding § 1074, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7803.

SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; aid the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding.

See Act of March 12, 1863, c. 120, 12 Stat. at L. 820. Also § 1059, R. S. U. S., paragraph 4, 2 Fed. Stat. Ann., p. 60.

SEC. 163. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and

to issue commissioners for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Re enacting § 1075, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7804.

SEC. 164. The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Re-enacting § 1076, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann., p. 69, Pierce, Code § 7805.

SEC. 165. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein.

Superseding § 1077, R. S. U. S., (the change being purely verbal), 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann., p. 69, Pierce, Code § 7806.

SEC. 166. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claim-

ant, after such order is made and due and reasonable notice is given to him, to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue the court may in its discretion order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

Re-enacting § 1080, R. S. U. S., 1 Comp. Stat., p. 743, 2 Fed. Stat. Ann., p. 70, Pierce, Code § 7808. The application for an order of examination under this section may be made *ex parte*, and need not recite special cause. Truitt v. United States, 30 Ct. Cl. 19. The operation of the section is limited to the claim Act. Macauley v. United States, 11 Ct. Cl. 575.

SEC. 167. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Re-enacting § 1081, R. S. U. S., 1 Comp. Stat., p. 743, 2 Fed. Stat. Ann., p. 70, Pierce, Code § 7809.

SEC. 168. The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpoenas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Re-enacting § 1082, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat Ann., p. 70, Pierce, Code § 7810.

SEC. 169. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Re-enacting § 1083, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7811.

SEC. 170. The Commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witness brought before him for examination.

Re-enacting § 1084, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code § 7812.

SEC. 171. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose.

Re-enacting § 1085, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7813.

SEC. 172. Any person who corruptly practices or attemps to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, ipso facto, forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

Re-enacting § 1086, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7814.

SEC. 173. No claim shall be allowed by the accounting officers under the provisions of the Act of Congress approved June sixteenth, eighteen hundred and seventy-

four, or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof.

Superseding Act of April 30, 1878, c. 77, § 2, 20 Stat. at L. 524, 1 Comp. Stat., p. 178.

SEC. 174. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Re-enacting § 1087, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7815.

SEC. 175. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

Re-enacting § 1088, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 72, Pierce, Code, § 7816. "In order to give full effect to this statute the Court of Claims must have power to grant a new trial at a term subsequent to that at which the judgment was rendered, for it explicitly provides that it may be exercised at any time within two years." United States v. Ayers, 76 U. S. 9 Wall. 608, 19 L. Ed. 625; United States v. Crusell, 79 U. S. 12 Wall. 175, 20 L. Ed. 384; *Ex parte* Russell, 80 U. S. (13 Wall.) 664, 20 L. Ed. 632; *Ex Parte* United States, 83 U. S. (16 Wall.) 699, 21 L. Ed. 507; United States v. Young, 94 U. S.

258, 24 L. Ed. 153; Young v. United States, 95 U. S. 642, 643, 24 L. Ed. 467, 468; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192. A mandate from the Supreme Court does not prevent the operation of this statute or take away the power or interfere with the discretion of the Court of Claims to grant a new trial. *Ex parte* Russell, 80 U. S. (13 Wall) 664, 20 L. Ed. 632; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192.

SEC. 176. There shall be taxed against the losing party in each and every cause pending in the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States.

Superseding a provision of the Sundry Civil Appropriation Act of March 3, 1877, ch. 105, 19 Stat. at L. 344, 2 Fed. Stat. Ann., p. 293.

SEC. 177. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Re-enacting § 1091, R. S. U. S., 1 Comp. Stat., p. 747, 2 Fed. Stat. Ann., p. 73, Pierce, Code, § 7818, enacted as Act of March 3, 1863, ch. 92, 12 Stat. at L. 1206. This section has been uniformly applied to cases arising under the Captured and Abandoned Property Act of March 12, 1863, and special acts. Rice v. United States, 21 Ct. Cl. 413, 122 U. S. 611, 30 L. Ed. 793.

SEC. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Superseding § 1092, R. S. U. S., 1 Comp. Stat., p. 747, 2 Fed. Stat. Ann., p. 74, Pierce, Code, § 7819. That payment is a bar to motions to set aside and vacte judgments of the Court of Claims, see Vaughn v. United States, 34 Ct. Cl. 342.

SEC. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall

forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Re-enacting of § 1093, R. S. U. S., 1 Comp. Stat. 747, 2 Fed. Stat. Ann., p. 74, Pierce, Code, § 7820. That dismissal for want of jurisdiction is not a bar under this section, see Green v. United States, 18 Ct. Cl. 93; while judgment based on plea of the statute of limitations is. Battelle v. United States, 21 Ct. Cl. 250. "The Judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court, until it is set aside on a motion for a new trial." Mr. Justice Clifford, in United States v. O'Grady's Exrs., 22 Wall. 641, 22 L. Ed. 772.

SEC. 180. Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or persnoal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United State at the hearing of said cause. The court may

postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United State against such principal or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section.

Superseding Act of March 3, 1887, § 3, ch. 359, 24 Stat. at L. 505, 1 Comp. Stat., p. 754, 2 Fed. Stat. Ann., p. 83, Pierce, Code, § 7823. This section is for the benefit of persons indebted to the United States. Gerding v. United States, 26 Ct. Cl. 319.

SEC. 181. The plaintiff or the United States, in any suit brought under the provision of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

Superseding the Act of March 3, 1887, § 9, 24 Stat. at L. 507, 1 Comp. Stat., p. 756, 2 Fed. Stat. Ann. 85, Pierce, Code, § 7829.

SEC. 182. In any case brought in the Court of Claims under any Act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party

in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

See Act of March 3, 1891, ch. 538, § 10, 26 Stat. at L. 854, 2 Fed. Stat. Ann., p. 100, 1 Comp. Stat., p. 763, Pierce, Code, § 7853.

SEC. 183. The Attorney General shall report to Congress at the beginning of each regular session, the suits under section one hundred and eighty, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case.

See Act of March 3, 1891, ch. 538, § 8, 26 Stat. at L. 853, 1 Comp. Stat., p. 763, 2 Fed. Stat. Ann. 92, Pierce, Code, § 7851.

SEC. 184. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and that fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

Re-enacting the Act of March 3, 1883, § 4, ch. 116, 22 Stat. at L. 485, 1 Comp. Stat., p. 749, 2 Fed. Stat. Ann., p. 79, Pierce, Code, § 7840. On the same day (March 3, 1883) a special relief bill was passed (22 Stat. at L. 804, ch. 111) in considering which the Supreme Court has reviewed the decisions under the prior act relating to the effect of the proclamation of pardon and amnesty of December 25, 1868, 15 Stat. at L. 711.

The above section was considered in connection with the provision of the special (Austin) Act, and the Court said;

"Undoubtedly Congress framed this Act with due regard to the state of decision under the prior Act, and hence, instead of making proof of loyalty an integral part of complainant's case with his ownership of the property and his right to the proceeds, as in the Captured and Abandoned Property Act, it made the establishment of loyalty in fact, as contradistinguished from innocence in law produced by pardon, a prerequisite to jurisdiction. Consent to be sued was given only on this condition." Mr. Chief Justice Fuller, in Austin v. United States, 155 U. S. 417, 432, 39 L. Ed. 206, 212. August 20th, 1866, the date on which the President proclaimed the Rebellion suppressed throughout the whole of the United States (14 Stat. at L. 814) has been recognized as the date closing the Rebellion. Act of March 2, 1867, 14 Stat. at L. 422; United States v. Anderson, 9 Wall. 56, 19 L. Ed. 615; Austin v. United States, 155 U. S. 417, 420, 39 L. Ed. 206, 208.

SEC. 185. The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counter claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court.

Re-enacting Act of March 3, 1883, § 5, ch. 116, 22 Stat. at L. 486, 1 Comp. Stat., p. 749.

SEC. 186. No person shall be excluded as a witness in the Court of Claims on account of color, because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Superseding Act of March 3, 1883, § 6, ch. 116, 22 Stat. at L. 486. See § 1078, R. S. U. S., 1 Comp. Stat. 743, 2 Fed. Stat. Ann. 69, Pierce, Code, § 7807.

SEC. 187. Reports of the Court of Claims to Congress, under sections one hundred and forty-eight and one hundred and fifty-one, if not finally acted upon during the

session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

See § 1057, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code, § 7782.

See also Act of March 3, 1883, § 7, 22 Stat. at L. 485, 1 Comp. Stat. 750, 2 Fed. Stat. Ann. 75, Pierce, Code, §7843.

SEC. 215. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

Re-enacting Act of April 10, 1869, § 1, 16 Stat. at L. 44, § 673, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7287.

SEC. 216. The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages.

Act of September 24, 1789, c. 20, § 1, 1 Stat. at L. 73. Re-enacted § 674, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7288.

SEC. 217. In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice.

Act of September 24, 1789, c. 20, § 1, 1 Stat. at L. 73. Act June 25, 1868, c. 81, § 1, 15 Stat. at L. 80. Re-enacted § 675, R. S. U. S., 1, Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7289.

SEC. 218. The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive

the sum of fourteen thousand five hundred dollars a year each, to be paid monthly.

Superseding § 676, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7290.

SEC. 219. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

Re-enacting § 677, R. S. U. S., 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7291.

SEC. 220. The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney-General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.

Superseding Act of February 22, 1875, c. 95, § 3, 18 Stat. at L. 333, 1 Comp. Stat., p. 619.

SEC. 221. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and

perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Re-enacting § 678, R. S. U. S., Act of June 8, 1872, c. 336, 17 Stat at L. 330, 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7292.

SEC. 222. The records and proceedings of the courts of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court.

Re-enacting § 679, Act of May 7, 1792, c. 36, § 12, 1 Stat. at L. 279, 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 425, Pierce, Code, § 7293.

SEC. 223. The Supreme Court is authorized and empowered to prepare the table of fees to be charged by the clerk thereof.

Superseding § 681, R. S. U. S., 1 Comp. Stat., p. 560, 6 Fed. Stat. Ann., p. 767.

SEC. 224. The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the ap-

proval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

Superseding § 680, R. S. U. S., 1 Comp. Stat., p. 560, 4 Fed. Stat. Ann. 159, Pierce, Code, § 7294.

SEC. 225. The reporter shall cause the decisions of the Supreme Court to be printed and published within eight months after they are made; and within the same time he shall deliver three hundred copies of the volumes of said reports to the Attorney-General. The reporter shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver a like number of copies in like manner and time.

Superseding § 681, R. S. U. S., 6 Fed. Stat. Ann. 761, 1 Comp. Stat. p. 560, Pierce, Code, § 7295.

SEC. 226. The reporter shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume, and an additional sum of one thousand two hundred dollars when, by direction of the court, he causes to be printed and published in any year a second volume; and said reporter shall be annually entitled to clerk hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars: *Provided*, That the volumes of the decisions of the court heretofore published shall be furnished by the reporter to the public at a sum not exceeding two dollars per volume, and those hereafter published at a sum not exceeding one dollar and seventy-five ecnts per volume; and the number of volumes now required to be delivered to the Attorney-General shall be furnished by the reporter without any charge therefor.

Said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding one dollar and seventy-five cents a volume.

Superseding § 682, R. S. U. S., 1 Comp. Stat., p. 560, 6 Fed. Stat. Ann. 767, Pierce, Code, § 7296. As amended, Act of August 5, 1882, c. 389, § 1, 22 Stat. at L. 254, 1 Comp. Stat., p. 561.

SEC. 227. The Attorney-General shall distribute copies of the Supreme Court reports, as follows: To the President, the justices of the Supreme Court, the judges of the Commerce Court, the judges of the Court of Customs Appeals, the judges of the circuit courts of appeals, the judges of the district courts, the judges of the Court of Claims, the judges of the Court of Appeals and of the Supreme Court of the District of Columbia, the judges of the several Territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War. the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Attorney-General, the Secretary of Agriculture, the Secretary of Commerce and Labor, the Solicitor General, the Assistant to the Attorney-General, each Assistant Attorney-General, each United State district attorney, each Assistant Secretary of each Executive Department, the Assistant Postmasters General, the Secretary of the Senate for the use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives, the Governors of the Territories, the Solicitor for the Department of State, the Treasurer of the United States, the Solicitor of the Treasury, the Register of the Treasury, the Comptroller of the Treasury, the Comptroller of the Currency, the Commissioner of Internal Revenue, the Director of the

Mint, each of the six Auditors in the Treasury Department, the Judge Advocate General, War Department, the Paymaster General, War Department, the Judge Advocate General, Navy Department, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commisioner of Education, the Commissioner of Labor, the Commisioner of Navigation, the Commissioner of Corporations, the Commisioner General of Immigration, the Chief of the Bureau of Manufactures, the Director of the Geological Survey, the Director of the Census, the Forester, Department of Agriculture, the Purchasing Agent, Post Office Department, the Interstate Commerce Commission, the Clerk of the Supreme Court of the United States, the Marshal of the Supreme Court of the United States, the Attorney for the District of Columbia, the Naval Academy at Annapolis, the Military Academy at West Point, and the heads of such other executive offices as may be provided by law, of equal grade with any of said offices, each one copy; to the Law Library of the Supreme Court, twenty-five copies; to the Law Library of the Department of the Interior, two copies; to the Law Library of the Department of Justice, two copies; to the Secretary of the Senate for the use of the committees of the Senate, twenty-five copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty copies; to the Marshal of the Supreme Court of the United States, as custodian of the public property used by the court, for the use of the justices therof in the conference room, robing room, and court room, three copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands and for the headquarters of military departments in the United States, twelve copies; and to each of the places where district courts of the United

States are now holden, including Hawaii, and Porto Rico, one copy. He shall also distribute one complete set of said reports, and one set of the digests thereof, to such executive officers as are entitled to receive said reports under this section and have not already received them, to each United States judge and to each United States district attorney who has not received a set, to each of the places where district courts are now held to which said reports have not be distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them. No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of said courts (except the Supreme Court) shall in all cases keep said reports and digest for the use of the courts and of the officers thereof. Such rports and digest shall remain the property of the United States, and shall be preserved by the officers above named and by them turned over to their successors in office.

See former Acts; § 683, R. S. U. S., 1 Comp. Stat., p. 561, 6 Fed. Stat. Ann. 768, Pierce, Code, § 7297; Act of February 12, 1889, c. 135, §§ 1, 2, 25 Stat. at L. 661, 1 Comp. Stat., p. 562, 6 Fed. Stat. Ann., p. 769, Pierce, Code, § 7297.

SEC. 228. The publishers of the decisions of the Supreme Court shall deliver to the Attorney-General, in addition to the three hundred copies delivered by the Reporter, such number of copies of each report heretofore published, as the Attorney-General may require, for which he shall pay not more than two dollars per volume, and such number of copies of each report hereafter published as he may require, for which he shall pay not

more than one dollar and seventy-five cents per volume. The Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the current volumes of such reports, and also for the additional sets of reports and digests required for distribution under the section last preceding.

SEC. 229. The Attorney-General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit Court of Appeals, or a district court, is now or may hereafter regularly be held, and to the Supreme Court of the United States, the Court of Claims, the court of Customs Appeals, the Commerce Court, the Court of Appeals and the Supreme Court of the District of Columbia, the Attorney-General, the Solicitor General, the Solicitor of the Treasury, the Assistant Attorney-General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Seceretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney-General shall distribute to such court room, office, or officer, only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The

clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The Property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exeeed two dolars per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed five dollars per volume for the digest, the said money to be disbursed under the direction of the Attorney-General; and the Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section.

SEC. 230. The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business.

See former § 684, R. S. U. S., 1 Comp. Stat., p. 563, 4 Fed. Stat. Ann. 992, Pierce, Code, § 7309.

SEC. 231. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session;

and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjorun the court from day to day until there is a quorum, or may adjourn without day.

Re-enacting § 685, R. S. U. S., 1 Comp. Stat., p. 563, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7310.

SEC. 232. The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof.

Re-enacting § 686, R. S. U. S., 1 Comp. Stat., p. 564, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7311.

SEC. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it will have original but not exclusive jurisdition. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public misisters, or in which a consul or vice consul is a party.

Re-enacting § 687, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 436, Pierce, Code, § 7317.

JURISDICTION FIXED BY THE CONSTITUTION. The original jurisdiction of the Supreme Court can neither be enlarged nor restricted by Congress. Marbury v. Madison, 1 Cranch. 137, 2 L. Ed. 60.

JURISDICTION SPARINGLY EXERCISED. "The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be ex-

panded by construction." California v. Southern Pac. Co., 157 U. S. 229, 261, 39 L. Ed. 683, 695.

EXCLUSIVE AND NON-EXCLUSIVE JURISDICTION DISTINGUISHED. "By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a state is a party, but not of controversies between a state and its own citizens, and original but not exclusive jurisdiction of controversies between a state and citizens of another state or aliens." California v. Southern Pac. Co., 157 U. S. 229, 258, 39 L. Ed. 683, 694.

SEC. 234. The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party.

Re-enacting § 688, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 439, Pierce, Code, § 7318.

The issuance of the writ of prohibition is limited to cases in which the district courts are proceeding as courts of admiralty and maritime jurisdiction. Ex parte Graham, 10 Wall. 541, 19 L. Ed. 981; Ex parte Easton, 95 U. S. 68, 24 L. Ed. 373. Mandamus "does not lie to control judicial discretion, except when the discretion has been abused; but it is a remedy when the case is outside the jurisdiction of the court or officer to which or to whom the writ is addressed. One of its peculiar and more common uses is to restrain inferior courts and to keep them within their lawful bounds." Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667.

SEC. 235. The trial of issues of fact in the Supreme Court, in all actions of law against citizens of the United States shall be by jury.

Re-enacting § 689, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7319.

SEC. 236. The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for.

Superseding (with §§ 237, 238, 239), §§ 690, 693, R. S. U. S., See 1 Comp. Stat., p. 556, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7320.

SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may revise, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ.

Re-enacting § 709, R. S. U. S., 1 Comp. Stat., p. 575. 4 Fed. Stat. Ann., p. 467, Pierce, Code § 7340. Jurisdiction under this provision must be strictly within the terms of the statute (Capital Nat. Bank v. Cadiz Nat. Bank, 172 U. S. 425, 43 L. Ed. 502), and cannot be conferred by consent of the parties (Mills v. Brown, 16 Peters 525, 10 L. Ed. 1055). The method of review under this provision is by writ of error. Dower v. Richards, 151 U. S. 658, 38 L. Ed. 305.

SECTION 238. Appeals and writs of error may be taken from the district courts, including the United States district court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the contionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Superseding Act March 3, 1891, c. 517, § 5, 26 Stat. at L. 827, 1 Comp. Stat. p. 549.

SECTION 239. In any case within its appellate jurisdiction, as defined in section one hundred and twenty-eight, the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Superseding the first paragraph of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251. See *ante*, § 490.

SECTION 240. In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by *certiorari* or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

Re-enacting a clause of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SECTION 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs.

Re-enacting the final clause of the Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SECTION 250. Any final judgment or decree of the court of appeals of the District of Columbia may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the va-

lidity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

See former §§ 705, 706 R. S. U. S. and Act of Feb. 9, 1893, c. 74, § 8, 27 Stat. at L. 436, 1 Comp. Stat. p. 573, 4 Fed. Stat. Ann. 466, Pierce, Code § 7335.

SECTION 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by *certiorari* or otherwise, any such case to be certified to it for its review and determination, with the same power, and authority in the case as if it had been carried by writ of

error or appeal to said Supreme Court. It shall also be competent for said court of appeals in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

See Act of March 3, 1897, c. 390, 29 Stat. at L. 692, 1 Comp. Stat. p. 574, Pierce, Code § 7337.

SECTION 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States.

Superseding Act of March 3, 1877, c. 105, § 1, 19 Stat. at L. 344, 2 Fed. Stat. Ann. 293, Pierce, Code § 208.

SECTION 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States. * * *

Fifth. Of all cases arising under the patent right * * * laws of the United States.

Superseding § 711, R. S. U. S.

SECTION 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law.

Re-enacting § 723 R. S. U. S., 1 Comp. Stat. p. 583, 4 Fed. Stat. Ann. p. 530, Pierce, Code § 7359. As this section merely embodies an elementary rule of law, it might well have been omitted from the Code.

SECTION 289. The circuit courts of the United States, upon the taking effect of this Act, shall be, and hereby are, abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in their hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers of or belonging to or in any several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this Act.

SECTION 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided.

EXTRACTS FROM THE CRIMINAL CODE OF THE UNITED STATES AS AMENDED DURING THE SECOND SESSION OF THE SIXTY-FIRST CONGRESS: BEING THE ACT OF MARCH 4, 1909, *C.* 321, 35 *STAT. AT L.* 1088.

The following extracts are taken from Chapter 6 of the Criminal Code, and relate to "Offenses against Public Justice."

SEC. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any cause in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

This section is substantially a re-enactment of § 5392, R. S. U. S. . . . As to what constitutes perjury under this section, Judge Toulmin has said: "The oath must be administered in a proceeding that is valid and regular. It must be administered by law. The false testimony must be material, and the oath must be administered by one having legal authority to administer it." United States v. Bedgood, 49 Fed. Rep. 54, 56.

A conviction under this section cannot be sustained on the uncorroborated testimony of a single witness. Boren v. United States, 144 Fed. Rep. 801, 805, 75 C. C. A. 531. As to the requisites of an indictment under this section, see Noah v. United States, 128 Fed. Rep. 270, 62 C. C. A. 618; United States v. Lake, 129 Fed. Rep. 499; United States v. Eddy, 134 Fed. Rep. 114.

SEC. 126. Whoever shall procure another to commit and perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

This section substantially re-enacts § 5393, R. S. U. S. . . . Under this section, Judge Hoffman has defined the requisites of the offense as follows: "To sustain an indictment for procuring a person to commit perjury it is obviously necessary that perjury has in fact been committed. It cannot be committed unless the person taking the oath not only swears to what was false, but does so willfully and knowingly. He who procures another to commit perjury must not only know that the statements to be sworn to are false, but also that the person who is to swear to them knows them to be false; for unless the witness has that knowledge the intent to swear falsely is wanting, and he commits no perjury. It is therefore essential that the indictment should aver, not only that the statements made by the witness were false in fact, and that he knew them to be false, but also that the party procuring him to make those statements knew that they would be intentionally and willfully false on the part of the witness, and thus the crime of perjury would be committed by him." United States v. Evans, 19 Fed. Rep. 912.

Under this section subornation of perjury may be proved by the uncorroborated testimony of the person suborned. United States v. Thompson, 31 Fed. Rep. 331; Boren v. United States, 144 Fed. Rep. 801, 75 C. C. A. 531. As to the requisites of an indictment under this section, see United States v. Howard, 132 Fed. Rep. 325; United States v. Cobban, 134 Fed. Rep. 290.

SEC. 127. Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any Court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years, or both; but this pro-

vision shall not extend to the acknowledgement of any judgment by an attorney, duly admitted, for any person against whom such judgment is had or given.

This section is a substantial re-enactment of § 5394, R. S. U. S.

SEC. 128. Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both.

This section substantially re-enacts § 5403, R. S. U. S. As to the object of the section, see United States v. DeGroat, 30 Fed. Rep. 764.

SEC. 129. Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

This section is a substantial re-enactment of § 5408, R. S. U. S.

SEC. 130. Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature

or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years.

Based upon § 5419, R. S. U. S.

SEC. 131. Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

A substantial re-enactment of § 5449, R. S. U. S.

SEC. 132. Whoever, being a judge of the United States, shall in any wise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever

disqualified to hold any office of honor, trust, or profit under the United States.

A substantial re-enactment of § 5499.

SEC. 133. Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States Commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision, shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollors, or imprisoned not more than two years, or both.

SEC. 134. Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

SEC. 135. Whoever corruptly, or by threats or force, or by any threatening letter or communication shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States Commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any

court of the United States, or officer who may be serving at any examination or other proceeding before any United States Commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or threatening communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

See §§ 5399, 5404, R. S. U. S.

SEC. 136. If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States Commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testfied, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Substantially re-enacting § 5406, R. S. U. S. That the section is restricted to the protection of parties, witnesses, and jurors, see United States v. McLeod, 119 Fed. Rep. 416.

SEC. 137. Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member

or pertaining to his duties, by writing or sending to him any letter or any communicatino, in print or writing, in relation to such issue or matter, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

A substantial re-enactment of § 5405, R. S. U. S.

SEC. 140. Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States Commissioner, or shall assault beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than three hundred dollars and imprisoned not more than one year.

A substantial re-enactment of § 5398, R. S. U. S. As to the requisites of an indictment under this section see Blake v. United States, 71 Fed. Rep. 286, 18 C. C. A. 117.

SEC. 145. Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both.

This section was formerly, as § 5484, R. S. U. S., limited to internal revenue informers. As now framed it extends to threats of informing against the violation of any law of the United States, and hence to threats in relation to false marking of patented articles.

RULES OF THE SUPREME COURT OF THE UNITED STATES.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to the clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, ———— ————, do solemnly swear [or affirm] that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3.

PRACTICE.

This court considers the former practice of the courts of king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

4.

BILL OF EXCEPTIONS.

The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

3. Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. There may be united with a motion to dismiss a writ of error or an appeal, a motion to affirm on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

6. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. It shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs or arguments filed therein.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

8.

WRIT OF ERROR, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit-court jurisdiction, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transport-

ing, and return of such original papers as tc him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

9.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been

duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

4. In all cases where the period of thirty days is mentioned in Rule 8, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii and Porto Rico, and to one hundred and twenty days from the Philippine Islands.

10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the

estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed.

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by

them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of said fees.

9. The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 24, section 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation

of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court, in order that a translation may be there supplied and inserted in the record.

12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any circuit court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however,* That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record, as evidence,

unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

14.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of errror or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall

be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment, or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the

United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And *provided, also,* That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: And *provided, also,* That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

16.

NO APPEARANCE OF PLAINTIFF.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the right of the case.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but twenty-five copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

21.

BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evi-

dence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

22.

ORAL ARGUMENTS.

1. The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: *Provided, always*, That a fair opening of the case shall be made by the party having the opening and closing arguments.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio; but when the necessary printed copies of the record, as printed for the use of the lower court, shall be furnished, the fee for supervising shall be five cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter as soon as the same shall be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will

be heard; and if neither party shall be ready to proceed in the argument, the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also by leave of the court be advanced on motion of the Attorney-General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every case which shall have been called in its order and passed and put at the foot of the docket shall, if not again reached during the term it was called, be continued to the next term of the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the

case shall then be by him reinstated for all ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

29.

SUPERSEDEAS.

Supersedeas bonds in the circuit courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, a majority of the court so determines.

31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

32.

WRITS OF ERROR AND APPEALS UNDER THE ACT OF FEBRUARY 25, 1889, CHAPTER 236, OR UNDER SECTION 5 OF THE ACT OF MARCH 3, 1891, CHAPTER 517.

Cases brought to this court by writ of error or appeal, under the act of February 25, 1889, chapter 236, or under section 5 of the act of March 3, 1891, chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIALS.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away

by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

34.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

35.

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a district court or a circuit court direct to this court, under section 5 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States,

and for other purposes," approved March 3, 1891, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and paticularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9, of Rule 10.

36.

APPEALS AND WRITS OF ERROR.

1. An appeal or a writ of error from a circuit court or a district court direct to this court, in the cases provided for i ections 5 and 6 of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, may be allowed, in term time or in vaca-

tion, by any justice of this court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under said sections 5 and 6, the circuit court or district court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

37.

CASES FROM CIRCUIT COURT OF APPEALS.

1. Where, under section 6 of the said act, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where application is made to this court under section 6 of the said act to require a case to be certified to it for its review and determination, a certified copy of the entire record of the case in the circuit court of appeals shall be furnished to this court by the applicant, as part of the application.

38.

INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 5 and 6 of the said act.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

RULES

OF THE

SUPREME COURT OF THE UNITED STATES

RELATING TO

APPEALS FROM THE COURT OF CLAIMS.

(As adopted by the Supreme Court in 1866 and subsequently added to and amended.)

RULE I.

Record on which appeals are heard in Supreme Court.
9. Wall., 419, and 7 C. Cls. R., 508, and 116 U. S. R., 154, 402.

In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

—transcript of pleadings, etc.
116 U. S., 402; 1 Wall., 102.

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case. (1)

—finding of fact and conclusions of laws.
17 Wall., xvii.
5 Wall., 419, and 7 C. Cls. R., 93 U. S. R., 605, and 12 C. Cls. R., 83.
18 C. Cls. R., 289, 705.
111 U. S. R., 609; 6 Wall., 101, and 7 C. Cls. R., 11; 116 U. S., 154; 20 C. Cls. R., 508, 509; 26 C. Cls. R., 109.

2. A finding by the Court of Claims of the facts in the case, established by the evidence, in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts on which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as part of the record. (2)

RULE II.

Obsolete rule.

[Applied only to decisions rendered before its adoption in 1866, and therefore long since obsolete.]

RULE III.

Allowance of appeals; application stops running of limitation.

In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal. (3)

17 Wall., 405; 9 C. Cls. R., 22, and 23 C. Cls. R., 1, 41.

RULE IV.

Findings of fact and conclusions of law to be filed by court.

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their findings of fact and their conclusions of law therein, in open court, before or at the time they enter judgment in the case.

RULE V.

Parties before trial to submit request to find facts.

In every such case, each party, at such time before trial, and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the findings of fact. (3)

RULE VI.

Rules to apply to cases under the District claims act.

Ordered, that Rule 1, in reference to appeals from the Court of Claims, be, and the same is hereby, made applicable to appeals in all cases heretofore or hereafter decided

by that court under the jurisdiction conferred by the act of June 16, 1880, c. 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of claims to hear the same, and for other purposes." (Adopted May 7, 1883.)

(1) Rule 8, section 2, of the Supreme Court requires the clerk to annex to and transmit with the record a copy of the opinion or opinions filed in the case.

(2) The following extract from the opinion of the Supreme Court in the case of Burr v. The Des Moines Railroad and Navigation Co., 1 Wall., p. 102, will explain what is necessary to be set out in the findings:

"The statement of facts on which this court will inquire if there is or is not error in the application of the law to them is a statement of the ultimate facts or propositions which the evidence is intended to establish, and not the evidence on which those ultimate facts are supposed to rest. The statement must be sufficient in itself, without inferences or comparisons, or balancing of testimony, or weighing evidence, to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by this court, but must have all the sufficiency, fullness, and perspicuity of a special verdict. If it requires of the court to weigh conflicting testimony, or to balance admitted facts, and deduce from these the proposition of fact on which alone a legal conclusion can rest, then it is not such a statement as this court can act upon."

(3) Rule 8, section 5, and Rule 9, section 1, require that the record on appeal in cases from all courts must be filed with the clerk of the Supreme Court and the case docketed within thirty days from the allowance of the appeal.

Rule 20, section 1, permits submission of appeals from the Court of Claims on printed briefs without oral argument, by consent of both parties, within the first ninety days of the term, and thereafter within thirty days after docketing, but not later than April 1. Twenty-five copies of the arguments, signed by attorneys or counsellors of the Supreme Court, must first be filed.

RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

PRELIMINARY REGULATIONS.

1.

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules and other proceedings, preparatory to hearing of all causes upon their merits.

2.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for or had by the parties or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits in the same manner and with the same effect as the circuit court could

make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary, at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

4.

All motions, rules, orders and other proceedings, made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order-book touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, de-

murrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso;* for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court or of any judge thereof, shall be deemed motions and applications grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

6.

All motions for rules or orders and other proceedings, which are not grantable of course or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte,* and granted, as if not objected to, or refused, in his discretion.

PROCESS.

7.

The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

9.

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

10.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the

cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

SERVICE OF PROCESS.

11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

12.

Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall contain the Christian names as well as the surnames of the parties, and shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

13.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant, if he shall require it, until due service is made.

15.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

16.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

17.

The appearance-day of the defendant shall be the rule-day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his

plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte,* and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

19.

When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso,* and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of ——: A. B., of ——, and a citizen of the State of ——, brings this his bill against C. D., of ——, and a citizen of the State of ——, and E. F., of ——, and a citizen of the State of ——. And thereupon your orator complains and says that," etc.

21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defense or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is required, it shall also be specially asked for.

22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

23.

The prayer for process of subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon, as justice may require. upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him, and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable

costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26.

Every bill shall be expressed in as brief and succinct terms as it réasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts or other instruments, in *haec verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a master, by any judge of the court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

27.

No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding, depending before the court, for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnec-

essary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

28.

The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filing blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plain-

tiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

30.

If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and, if a plea, that it is true in point of fact.

32.

The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part and answer as to the residue; but in every case in which the bill specially

charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

33.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period unless the court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

35.

If, upon the hearing, any demurer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill, upon such terms as it shall deem reasonable.

36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for that purpose.

ANSWERS.

39.

The rule that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer

and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defense. Thus, for example, a *bona-fide* purchaser, for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

DECEMBER TERM, 1850.

Ordered, That the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is

required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

DECEMBER TERM, 1871.

Amendment to Forty-first Equity Rule.

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864. (See § 858, R. S. U. S.)

42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say—

"1. Whether, etc.

"2. Whether, etc."

44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

46.

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

48.

Where the parties on either side are very numerous, and can not, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interest of the plaintiffs and the defendants in the suit properly before it. But, in such cases, the decree shall be without prejudice to the rights and claims of all the absent parties.

49.

In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estates, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50.

In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiffs shall be at liberty to make the heir at law a party where he desires to have the will established against him.

51.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

52.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection

only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following (that is to say): "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

53.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties not having by plea or answer taken the objection, and therein specified by name or description of parties to whom the objection applies, the court (if it shall think fit) shall be at liberty to make a decree saving the rights of the absent parties.

NOMINAL PARTIES TO BILLS.

54.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill, unless the plaintiff specially requires him so to do by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him unless the court shall otherwise direct.

55.

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction—either the common injunction or a special injunction—is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

57.

Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day upon proper cause shown and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

58.

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory, or before any notary public.

AMENDMENT OF ANSWERS.

60.

After an answer is put in, it may be amended, as of course, in any matter or form, or by filling up a blank, or correcting a date, or reference to a document, or other

small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit; and in every case where leave is so granted, the court or the judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

61.

After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and, if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers, or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63.

Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter, before a judge of the court, and shall enter, as of course, in the order-book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

64.

If, at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

65.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled

to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY—HOW TAKEN.

67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time the commission may issue *ex parte*. In all cases the commissioner or commissioners may be named by the

court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court. The examiner, if he so request, shall be furnished with a copy of the pleadings.

Such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common-law courts.

The depositions taken upon such oral examination shall be reduced to writing by the examiner, in the form of question put and answer given; provided, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative.

At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skillful stenographer or by a skillful typewriter, as the examiner may elect, and when taken stenographically shall be put into typewriting or other writing; provided, that such stenographer or typewriter has been appointed by the court, or is approved by both parties.

The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; provided that if the witness shall refuse to sign his deposition so taken, then

the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.

The examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in section 865 of the Revised Statutes.

Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons, satisfactory to the court or judge.

Where the evidence to be adduced in a cause is to be taken orally, as before provided, the court may, on mo-

tion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties or by leave of court first obtained, on motion for cause shown.

The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

Upon due notice given as prescribed by previous order, the court may, at its discretion, permit the whole, or any specific part, of the evidence to be adduced orally in open court on final hearing.

68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the act of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or judge thereof shall, under all the circumstances, deem it reasonable.

69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court, or a judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testi-

mony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable, under all the circumstances; but, by consent of the parties, publication of the testimony may at any time pass into the clerk's office, such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

70.

After any bill filed and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

71.

The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties

at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master to whom it is referred to take the same to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

74.

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance or for whose benefit the reference is made shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit

to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

75.

Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay.

76.

In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them (him) shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he

shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office or by deposition, according to the act of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But

nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

79.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

80.

All affidavits, depositions, and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master.

81.

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

82.

The circuit courts may appoint standing masters in chancery in their respective districts, (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the

district, concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.

83.

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and, if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter, by adjournment or otherwise.

84.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for

every exception allowed shall be entitled to costs; the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

85.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before an actual enrollment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

86.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:" [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

87.

Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami;* subject, however, to such orders as the court may direct for the protection of infants and other persons.

88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No hearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

89.

The circuit courts (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the district, concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

90.

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

91.

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

DECEMBER TERM, 1863.

92.

Ordered, That in suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity practice, where the decree is solely for the payment of money.

OCTOBER TERM, 1878.

INJUNCTIONS.

93.

When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party.

OCTOBER TERM, 1881.

94.

Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by

the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

The following provisions relating to equity practice are to be found in the act of 1st *of June*, 1872:

SECTION 7. That whenever notice is given of a motion for an injunction out of a circuit or district court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the court or judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application can not be heard by the circuit judge of the circuit, or the district judge of the district.

SECTION 13. That when in any suit in equity, commenced in any court in the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is

brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found; or where such personal service is not practicable, such order shall be published in such a manner as the court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

RULES

OF THE

UNITED STATES CIRCUIT COURTS OF APPEALS.

The following are the rules of the United States Circuit Court of Appeals for the First Circuit; where the particular rule is not the same in all of the circuits, the variations are indicated beneath the rule.

RULE 1.

NAME.

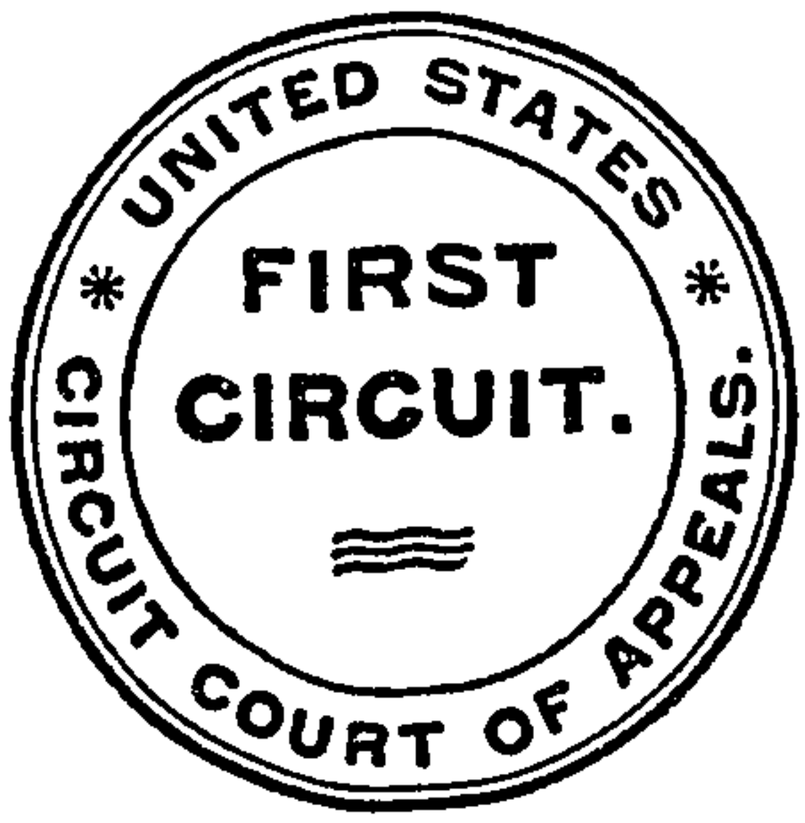
The court adopts "United States Circuit Court of Appeals for the First Circuit" as the title of the court.

This rule is the same in all of the circuits, except as to the number of the circuit.

RULE 2.

SEAL.

The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "First Circuit" in two lines, in the center, with a dash beneath; as follows:



This rule is the same in all of the circuits, except as to the number of the circuit.

RULE 3.

TERMS AND SESSIONS.

One term of this court shall be held annually at the city of Boston at ten o'clock in the forenoon on the first Tuesday of October. Stated sessions thereof shall be there held at the same hour on the first Tuesday of every month, and may be adjourned to such times and places as the court may from time to time designate. But, unless otherwise ordered, any adjournment shall be held to have been made to the first day of the next stated session.

Second Circuit. One term of this court shall be held annually at the city of New York on the second Tuesday of October, and shall be adjourned to such times and places as the court may from time to time designate.

Third Circuit. The terms of this court shall commence and be held on the first Tuesday of March and the first Tuesday of October in each year, at the city of Philadelphia.

Fourth Circuit. There shall be held in the city of Richmond, Virginia, three regular terms of this court; one on the first Tuesday of February, one on the first Tuesday of May, and one on the first Tuesday of November, in each year.

Fifth Circuit. A session of this court shall be held annually at the city of Atlanta, Georgia, on the first Monday in October; at the city of Montgomery, Alabama, on the third Monday in October; at the city of Fort Worth, Texas, on the first Monday in November; at the city of New Orleans, Louisiana, on the third Monday in November, and shall be adjourned to such other time and places as the court may from time to time order and designate.

Sixth Circuit. One term of this court shall be held annually on the Tuesday after the first Monday of Oc-

tober, and adjourned sessions on the Tuesday after the first Monday of each other month in the year except August and September.

All sessions of the court shall be held at Cincinnati unless otherwise specially ordered by the court.

At the October, February and May sessions of the court, hereafter referred to as calendar sessions, there shall be a regular and peremptory call of a calendar containing all the cases upon the docket which under the rules should then be ready for hearing.

At other than calendar sessions, except the June and July sessions, the court will hear any case upon the docket in which the record has been printed and briefs for both parties filed, provided that there has been also filed in the clerk's office on the Monday preceding the first day of such session the written consent of counsel for both parties that such hearing may be had.

At other than calendar sessions the court, on motion, will also hear appeals from interlocutory orders granting or refusing preliminary injunctions, appeals or writs of error in any cause given priority by the statutes of the United States, and appeals from orders in *habeas corpus* proceedings, where the petitioner is in jail, provided that the record has been printed and the brief of the moving party and due notice of the motion have been filed with opposing counsel at least six days before the opening day of the session.

Appeals in *habeas corpus* or criminal cases when the petitioner or appellant is in jail will be heard at any time when the court is in session after the record has been printed and the brief for the petitioner has been filed with opposing counsel six days before the day set for the hearing of the motion.

At other than calendar sessions the court will also hear all motions and miscellaneous business, and will announce opinions. For good cause shown, on motion of

either party, the court may advance any cause upon the docket to be heard at any session, whether calendar or otherwise, even though the time permitted under the rules for the filing of briefs may not have expired at the day set for hearing. Such motions for the advancement of causes will be heard only by the court upon five days' previous notice to opposing counsel.

Seventh Circuit. A term of this court shall be held annually at the city of Chicago on the first Tuesday in October, and continue until the first Tuesday in October of the succeeding year. Every term shall be adjourned to such time and places as the court may from time to time designate. Unless otherwise specially ordered, the court will hold at Chicago three sessions for the hearing of causes during each term, beginning on the first Tuesdays in October and January, respectively, and the second Tuesday in April.

Eighth Circuit. 1. Three terms of this court will be held annually, one at the city of St. Paul on the first Monday of May, one at the city of Denver on the first Monday of September and one at the city of St. Louis on the first Monday of December.

2. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas and Oklahoma in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of April, and cases from Colorado, Utah, Wyoming and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the

printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the May Term in St. Paul are filed on or before the first day of April, and those only, will be heard at the succeeding May Term of the court in St. Paul.

3. Cases from Colorado, Wyoming, Utah and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of July and cases from the remainder of the circuit in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the September term in Denver are filed on or before the first day of July, and those only, will be heard at the succeeding September term in Denver.

4. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas and Oklahoma in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of October, and cases from Colorado, Wyoming, Utah and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed

before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the December term in St. Louis are filed on or before the first day of October, and these only, will be heard at the succeeding December term in St. Louis.

5. These terms of the court may be adjourned to such times and places as the court may from time to time designate.

Ninth Circuit. One term of this court shall be held annually at the city of San Francisco on the first Monday of October, and shall be adjourned to such times and places as the court may from time to time designate.

RULE 4.

QUORUM.

1. In the absence of a quorum on any day appointed for holding a term, or on any day to which the court is adjourned, any judge who attends shall adjourn the court from day to day; or, if no judge is present, the clerk shall so adjourn; and, in the absence of all the judges and the clerk, the marshal or his deputy shall so adjourn. But the court may, from time to time, as provided in Rule 3, enter orders directing an adjournment, or adjournments, for longer periods than from day to day, or sine die.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding or process, depending in or returned to the court, preparatory to hearing, trial or decision thereof.

Second Circuit. 1. If, at any time, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

Third Circuit. If, at any term, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day, and in the absence of all the judges, the clerk may adjourn the court from day to day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

Rule 4 is same in the Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits as in the Second Circuit.

That under § 3, Act of March 3, 1891, a Circuit Court of Appeals bench may be constituted by three district Judges, see Peters v. Hanger, 136 Fed. Rep. 181, 69 C. C A. 197. See § 120, The Judicial Code.

RULE 5.

CLERK.

1. The clerk's office shall be kept at the place designated in the act creating the court at which a term shall be held annually.

2. The clerk shall not practice, either as attorney or counselor, in this court or in any other court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by Sec. 794, R. S. U. S., and shall give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room or from the office, without an order from the court.

Second Circuit. Same as First Circuit.

Third Circuit. The rule is preceded by,

1. The clerk's office shall be kept in the city of Philadelphia.

Fourth Circuit. The rule is same as in First Circuit.

Fifth Circuit. The rule is preceded by,

1. The clerk's office shall be kept in the city of New Orleans.

Sixth Circuit. The rule is same as in First Circuit.

Seventh Circuit. The rule is preceded by,

1. The clerk's office shall be kept in Chicago.

Eighth Circuit. The rule is same as in First Circuit.

Ninth Circuit. The rule is preceded by,

1. The clerk's office shall be kept at San Francisco.

RULE 6.

MARSHAL AND OTHER OFFICERS.

The marshal shall be in attendance during the sessions of the court, with such number of bailiffs, messengers, and other officers as the court may from time to time order.

Second Circuit. Every marshal and deputy marshal shall before he enters on the duties of his appointment, take an oath in the form prescribed by Sec. 782, R. S. U. S., and the marshal shall, before he enters on the duties of his office, give bond in a sum to be fixed, and with sureties to be approved, by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Third Circuit. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Fourth and Fifth Circuits. Same as Third Circuit.

Sixth Circuit. 1. The crier and bailiffs of the court shall, before they enter on their duties, take an oath in the form prescribed by Sec. 782, R. S. U. S.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may from time to time order.

Seventh Circuit. Same as Sixth Circuit.

Eighth Circuit. 1. The marshal of the district in which a term or session of the court is held and the crier

shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Ninth Circuit. Same as Third Circuit.

RULE 7.

ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States and on subscribing the roll; but no fee shall be charged therefor.

Second Circuit. Same as First Circuit.

Third Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States and on subscribing the roll, but no fee shall be charged therefor; and all attorneys and counselors of the Circuit Courts of the United States for the Third Circuit, shall be attorneys and counselors of this court without taking any further oath.

Fourth Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, subscribing the roll, and on payment of a fee of five dollars.

Fifth Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or any Circuit Court of the United States, upon filing certificate of such admission with the clerk of this court, and upon taking an oath or affirmation in the following form, viz.:

"I, ————————, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court uprightly and according to law. and that I will support the Constitution of the United States," (a copy of which shall be filed with the clerk), shall become attorneys and counselors of this court; *provided, however*, that any attorney or counselor eligible to admission as an attorney and counselor of this court may be admitted to practice, on motion to open court, upon taking the oath or affirmation as prescribed, and subscribing the roll.

On each admission the clerk will collect ten dollars ($10) to be applied to the purchase of law books for the use of the court and bar.

Sixth Circuit. All attorneys and counselors permitted to practice in the Supreme Court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation as prescribed by Rule 2 of the Supreme Court of the United States and upon subscribing the roll. The fee for such admission shall be ten dollars.

Every person taking the oath and paying such fee shall be entitled to a certificate of his admission, signed by the clerk.

Seventh Circuit. All attorneys and counselors, admitted to practice in the Supreme Court of the United States or in any Circuit Court of the United States. or in the Supreme Court of a State in this circuit, may become attorneys and counselors in this court on taking

an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, and on subscribing the roll.

Eighth Circuit. 1. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court or District Court of the United States, or in the Supreme Court of any State in this circuit, may, upon motion of some member of the bar of this court, be admitted as attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, and on subscribing the roll; but no fee shall be charged therefor.

2. And any attorney and counselor admitted to practice in the Supreme Court of the United States or in the Supreme Court of any State or in the District or Circuit Courts of the United States for this circuit, may be admitted by order of this court to practice and may be enrolled as an attorney and counselor of this court, thirty days after he furnishes to the clerk of this court a certificate of a clerk or judge of any one of the courts named that the applicant is an attorney of any one of said courts; and upon subscribing and forwarding to the clerk the following oath: "I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of the Circuit Court of Appeals for the Eighth Circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me God."

Ninth Circuit. All attorneys admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the Ninth Circuit, shall be deemed attorneys of the Circuit Court of Appeals for the Ninth Circuit; but such attorneys, on or before their first appearance in open court, in said court, shall take an oath or affirmation, in the form prescribed by Rule 2 of the Su-

preme Court of the United States and subscribe the Roll of Attorneys. All other persons who have been admitted to practice in the highest court of any State or Territory, upon presenting satisfactory evidence of good moral character and fair professional standing, may be admitted to practice in said court, upon taking the oath so prescribed, and subscribing the Roll of Attorneys.

RULE 8.

PRACTICE.

The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

Second, Third, Fourth, Fifth and Sixth Circuits, the rule same as in the First Circuit.

Seventh Circuit. The practice, so far as may be, shall be the same as in the Supreme Court of the United States.

Eighth and Ninth Circuits, the rule is the same as in the First Circuit.

RULE 9.

PROCESS.

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

RULE 10.

BILL OF EXCEPTIONS.

The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of

such charge. But the party excepting shall be required to state directly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

Second Circuit. The rule is the same as in the First Circuit.

Third Circuit. 1. The judges of the circuit and district courts shall not allow any general exception to the whole of the charge to the jury in a civil or a criminal trial at common law, nor shall a series of exceptions be allowed which produces the same result. But the party excepting shall state distinctly and separately the several matters in such charge to which he excepts, and only such matters shall be included in the bill of exceptions and allowed by the court. Exceptions to the charge or to the judge's action upon the requests for instruction shall be taken immediately on the conclusion of the charge before the jury retire, shall be specified in writing or dictated to the stenographer, and shall be specific and not general.

2. Exceptions to the admission or rejection of evidence shall be specific and not general, and the bill of exceptions to such admission or rejection shall contain only so much of the evidence admitted or offered and rejected as is necessary for the presentation and decision of the questions saved for review. Unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all of it shall not be allowed.

Fourth Circuit. The rule is the same as in the First Circuit.

Fifth Circuit, and Sixth Circuit. The rule is the same as in the First Circuit.

Seventh Circuit. 1. The judges of the Circuit and District Courts shall not allow any bill of exceptions

which shall contain the charge of the court at large to the jury in trials at common law, and upon any general exception to the whole of said charge. But the party excepting shall be required to state distinctly the several matters of law in the charge to which he excepts, and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. A bill of exceptions shall contain of the evidence only such a statement as is necessary for the presentation and decision of questions saved for review, and unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all the evidence shall not be allowed.

3. No document shall be copied more than once in a bill of exceptions or in a transcript of the record of the case, but instead there shall be inserted a reference to the one copy set out. A motion for a new trial and orders and entries relating thereto shall not be set out in the transcript unless required by written praecipe, of which a copy shall also be set out.

4. The cost of unnecessary matter in the bill of exceptions or transcript or in the printed record shall not be recovered of the appellee or defendant in error, and in its discretion the court will in case of dispute appoint a referee to determine and report what was necessary therein, and will tax the cost of the reference as shall seem just.

Eighth and Ninth Circuits. The rule is the same as in the First Circuit.

RULE 11.

ASSIGNMENT OF ERRORS.

The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall

set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned. See Rule 24, paragraph 4.

Second Circuit. The rule is the same as in the First Circuit.

Third Circuit. The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, his assignment of error, as required by Sec. 997, R. S. U. S., which shall set out separately and particularly each error asserted and intended to be urged. (See Rule 14, sec. 6.) When the error alleged is to the admission or the rejection of evidence, the assignment shall quote the full substance of the evidence admitted or rejected; when the error alleged is to the charge of the court, the assignment shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused; when the error alleged is based on the trial court's refusal to enter a judgment *non obstante veredicto* for the plaintiff in error on the whole record, the assignment shall state the reasons presented to the trial court for the entry of such judgment; when the error alleged is to

a ruling upon the report of a master or referee, the assignment shall state the exception to the report and the action of the court upon it. Such assignments of error shall form part of the transcript of the record and be printed with it. When error is not so assigned, counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded. The court, at its option, however, may notice a plain error not assigned.

Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits. The rule is the same as in the First Circuit.

RULE 12.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit or translation, found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

Thus, a petition introduced upon a hearing in a mandamus proceeding without objection as to its competency, cannot be argued to be incompetent upon appeal. Board of Supervisors v. Thompson, 122 Fed. Rep. 860, 59 C. C. A. 70.

RULE 13.

SUPERSEDEAS AND COST BONDS.

1. Supersedeas bonds in the circuit and district courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where

the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but, in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On an appeal from an interlocutory order or decree, the appellant shall, at the time of the allowance thereof, file a bond to the adverse party in such sum as the judge who allowed the appeal shall direct, to answer all costs if he shall fail to sustain his appeal.

Second Circuit. The first clause of this rule is the same as in the First Circuit.

2. On all appeals from any interlocutory order or decree granting or continuing an injunction in a circuit or district court, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such circuit or district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits. The rule is the same as it is in the Second Circuit.

Eighth Circuit. 1. Supersedeas bonds in the District Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity,

where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On all appeals from any interlocutory order or decree of a district court, or a judge thereof, granting, continuing, refusing, dissolving or refusing to dissolve an injunction or appointing a receiver, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal. ("The Judicial Code," Section 128, Act of March 3, 1911, *ante*, p. 993.)

Supersedeas. For the history of supersedeas in equity causes, see Hovey v. McDonald, 109 U. S. 150, 27 L. Ed. 888.

RULE 14.

WRITS OF ERROR, APPEALS, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations, must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

The testimony in such a record shall embrace the *viva voce* proof in the district court, if the same or the substance thereof, has been reduced to writing with the approval of its judge. The reasonable cost of so reducing the same to writing may be taxed as a part of the costs of the record, except so far as allowed as costs in the district court.

7. Further proof in instance causes in admiralty shall include only that which could not with diligence have been had at the trial below, or which was there rejected,

or was omitted through misapprehension, provided the evidence be accompanied with a certificate of counsel showing reasonable excuse for the misapprehension. Except by order of the court first obtained, merely cumulative proofs shall not be so taken; but for this purpose the evidence of witnesses who had different duties, interests, or opportunities of observation, will not ordinarily be held cumulative in cases of collision or other maritime tort.

8. Such further proof may be taken after the appeal is allowed, in the manner provided by law for depositions *de bene esse*, or by an examiner appointed by any circuit or district judge, or selected by the parties, or upon interrogatories and commissions as provided in Rule 13 of the circuit courts of this circuit, *mutatis mutandis*. It must be taken and filed forthwith after it is obtainable, but it cannot, except by order of the court, be taken or filed within thirty days before any session at which the cause may be heard, nor thereafterwards until the cause has been postponed to the next term or session.

9. Objections to further proof shall be filed with the magistrate and returned with the evidence. Within seven days after the evidence is taken, the party so objecting may file in print a motion to suppress the same, with a copy of the objections and a brief. The other party may within seven days thereafter file in print a counter-statement and brief. The objections and counter-statement, so far as they contain matters of fact *dehors* the record, shall be verified by affidavit. The court will consider the objections in advance of the trial, or in connection therewith, as it may in each case determine, and without oral argument, and will order suppressed evidence not rightfully taken. The party taking the evidence so suppressed shall pay the cost arising therefrom, including the printing thereof.

10. Nothing herein shall exclude applications for leave to take further proof, or objections thereto, in advance of the taking thereof, or objections touching the formalities of taking it; but the latter must be brought to the attention of the court forthwith after the evidence is filed.

The rule in the Second Circuit comprises the first five of the foregoing paragraphs, and the first clause of the sixth paragraph.

Third Circuit. 1. Any appeal to this court, or writ of error from this court, allowable by law, may be allowed, in term time or vacation, by the circuit justice, or by any of the circuit judges within this circuit, or by any district judge within the district where the case to be reviewed was heard or tried, who may also take the proper security, sign the citation, and, if he deem it proper so to do, grant a supersedeas and stay of execution or of proceedings pending such writ of error or appeal.

2. The clerk of the court to which any writ of error may be directed, or from which any appeal may be taken, upon being paid or tendered his fees therefor, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

3. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

4. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

5. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

6. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day; but the citation must be signed, and the bond for costs must be approved and filed, and the assignments of error submitted and filed, with the petition for the appeal or writ of error, immediately after the appeal or writ of error is allowed; *provided, however,* that every appeal taken from an interlocutory decree, under the seventh section of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and amendments to said section, shall be made returnable in ten days from the allowance of the appeal and the signing of the citation.

7. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52, of the Supreme Court.

The Rule in the Fourth Circuit comprises the first five paragraphs of the rule of the First Circuit, and the first clause of the sixth paragraph.

The Rule in the Fifth Circuit comprises the first five paragraphs of the rule of the First Circuit, with amendment to fifth paragraph, as follows:

Provided, however, that appeals taken from interlocutory decrees under the seventh section of the act entitled "An act to establish Circuit Courts of Appeals and define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and amendments thereto, shall be made returnable not exceeding ten days from the day of taking the same.

(As amended January 12, 1905.)

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

The Rule in the Sixth Circuit comprises the first five paragraphs of the rule of the First Circuit, and the first clause of the sixth paragraph.

Seventh Circuit. 1. The clerk of the court, to which any writ of error may be directed, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case necessary to the hearing in this court, under his hand and the seal of the court. The clerk may require of the appellant or plaintiff in error a written praecipe stating in detail what the transcript shall contain, and when a praecipe is filed shall insert a copy thereof in the transcript.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record shall have been filed, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings necessary to the hearing in this court.

4. Whenever it shall be necessary or proper in the opinion of the presiding judge in any Circuit or District

court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceeding.

5. All appeals, writs of error and citations must be made returnable not exceeding thirty days from the date on which the appeal is allowed, or the writ of error issued, whether the return fall in vacation or in term time, and be served before the return day. If a party be non-resident the citation and any other writ or notice necessary in the prosecution of the appeal or writ of error may be served upon such party's counsel or attorney of record, who for such purpose may not be discharged unless another resident be designated of record in the case upon whom service may be made.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

Eighth Circuit. 1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case, and in cases at law a complete copy of the charge of the court to the jury.

3. No case will be heard until twenty-five copies of the printed transcript of the record, containing in themselves, and not by reference, all the papers, exhibits, de-

positions, sketches, drawings, photographs, maps, blue prints and other proceedings, which are necessary to the hearing in this court, printed title pages in the form prescribed in Section five of Rule 26, chronological printed indexes of each and every item of their contents specifying the pages where evidence, testimony and exhibits including those in the body of any pleading, order or bill of exceptions may be found and briefly naming or describing each exhibit in addition to its number together with a statement of the numbers, names and dates of issue of any patents, shall have been filed in this court.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations must be made returnable not exceeding sixty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

Ninth Circuit. 1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, opinion or opinions of the court, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record the original writ of error and citation, or citations issued in the cause, and a certificate under seal stating the cost of the record and by whom paid.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable at San Francisco, California, not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.[1]

RULE 15.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony or other proceeding, in a foreign lan-

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1 See, also, Rules 16, 17, 23, 34, 35 and 36 and Rules in Admiralty.

guage, and the record does not also contain a translation of such document, paper, testimony or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

This rule is the same in all of the circuits except the Third Circuit; in which circuit Rule 15 is as follows:

BAIL IN ERROR.

1. Where a writ of error has been allowed in a criminal case, the justice or judge who allowed the writ, or any judge of the court which entered the judgment to be reviewed, shall have power to admit the plaintiff in error to bail for his appearance in such court on the determination of the proceedings on the writ of error to abide by and obey any order that may be made therein. The bond or recognizance for such appearance shall be substantially in the following form:

"United States of America,
.....District of..... } *ss.*

We (*here insert name of defendant*), residing at ..... and (*here insert the name of surety*), residing at....., in the State of....., acknowledge ourselves to be jointly and severally indebted to the United States of America in the sum of..... dollars, lawful money of the United States of America, to be levied of our goods and chattels, lands and tenements, upon this condition: That if the said....., the defendant, upon whose application a writ of error has been allowed by the United States Circuit Court of Appeals for the Third Circuit and is now pending, shall be and appear at the District Court of the United States for the.....district of.....upon the de-

termination of the proceedings on said writ of error, and the receipt and filing of a mandate or other process or certificate showing the disposition thereof by the said Court of Appeals, or, within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises, and not depart said court without leave thereof, then this recognizance to be void; otherwise, to remain in full force and virtue.

..... (L. S.)
..... (L. S.)
..... (L. S.)"

Taken, acknowledged and subscribed, this..... day of.....A. D. 191.., in open court.

.....
Clerk of District Court.

RULE 16.

DOCKETING AND DISMISSING CASES.

1. The plaintiff in error or appellant shall docket the case, and file the record thereof, on or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any circuit or district judge, may enlarge the time, the order of enlargement to be filed in this court.

2. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, whether in term time or vacation, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, the return day of the citation, and that the writ of error or appeal was duly sued out or allowed. And the plaintiff in error or appellant shall not be entitled to docket the case, or file

the record, after the same shall have been docketed or dismissed under this rule, unless by the order of the court after notice to the adverse party.

But the defendant in error or appellee may, at his option, docket the case and file the record; and, if the case is docketed and the record filed by the plaintiff in error or appellant within the time prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. On the filing of the record, the appearance of the counsel for the party docketing the case shall be entered.

In the Second, Fourth, Seventh, and Ninth Circuits the rule is substantially the same as in the First Circuit, except that in the first section its first sentence reads: "It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return-day, whether in vacation or in term time." And in the Ninth Circuit the words "at San Francisco, California" are inserted between the words "clerk of this court," and "by or before."

For the Third Circuit the rule is as follows:

TRANSLATIONS.

1. Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceeding in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

For the Fifth Circuit the rule is the same as in the Second Circuit, except that when amended on June 20, 1895, the words "the justice or judge who signed the citation" in the first clause were omitted and on April 23, 1895, the following clause was added:

4. "In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction for the payment of his fees, or otherwise satisfy him in that behalf." (Sec. 4, Adopted April 23, 1895.)

For the Sixth Circuit the rule is as given in the Second Circuit, except that by amendment of July 6, 1897, there was inserted at the end of the first sentence of the first section and as a part of it these words: "And at the time of filing the record the plaintiff in error or appellant shall deposit with the clerk the sum of thirty-five dollars as security for costs, except in cases in which the proper showing is made and an order of this court is entered thereon allowing the cause to proceed *in forma pauperis.*"

Eighth Circuit. 1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled

to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee, may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.[1]

RULE 17.

DOCKET AND CALENDARS.

1. The clerk shall enter and number on the docket all cases consecutively, in their proper chronological order.

2. He shall print at least twenty days before the first Tuesday of October and of January, and the second Tuesday of April, a calendar of all the pending cases, arranged by districts in the following order: Maine, New Hampshire, Rhode Island, Massachusetts.

Second and Fifth Circuits:

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the sec-

[1] A deposit of Thirty-Five dollars to secure Clerk's costs is required before the record in a cause is filed and docketed.

ond term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

Third Circuit:

FILING RECORDS, DOCKETING CASES AND ENTERING APPEARANCES.

1. The plaintiff in error or appellant shall file the record of the case and cause it to be docketed by the clerk of this court on or before the return day of the citation, whether in vacation or in term time; but for good cause shown the justice or judge who signed the citation, or any circuit or district judge, may extend the return day thereof, the order for extension to be filed with the clerk of this court.

2. If the plaintiff in error or appellant shall fail to comply with the first section of this rule the defendant in error or appellee may cause the case to be docketed without the filing of any record and have it dismissed, whether in term time or vacation, upon due proof of notice to the plaintiff in error or appellant of a motion for such dismissal, and upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, the return day of the citation, and that the writ of error or appeal was duly sued out or allowed; and in no case shall the plaintiff in error or appellant be entitled to file the record or to have it docketed after the defendant in error or appellee shall have had the case dismissed under this section of this rule, unless upon special order of the court.

3. Instead of having the case docketed for the purpose of having it dismissed under the provisions of the second section of this rule, the defendant in error or appellee, on payment of the usual fees, may file the

record and cause the case to be docketed by the clerk, and if the record be filed and the case docketed, either by the plaintiff in error or appellant, within the time prescribed by the first section of this rule, or by the defendant in error or appellee under the provisions of this section, the case shall stand for argument.

4. On the filing of the record the appearance of the counsel for the party docketing the case shall be entered, and on or before the return day of the citation the counsel for the appellee or defendant in error shall also enter appearance for the appellee or defendant in error.

Fourth Circuit:

1. The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and shall print a docket containing all pending cases at each term of the court, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

2. All cases where the record has been printed and copies thereof furnished to the counsel as provided in Rule 23 shall stand for argument at the term or adjourned term holden next after the docketing of the case.

In the Sixth Circuit the rule is as given for the Second Circuit, except that the words "term or adjourned term" are changed to read "calendar session as provided in Rules 3 and 37." And the word "term" in the following line is changed to "calendar sessions."

In the Seventh Circuit the rule reads as follows:

The clerk shall prepare calendars of causes for the regular terms of this court, to be held on the first Tuesday of October in each year, and for each adjourned session; placing thereon in proper chronological order

only cases in which the record having been printed, briefs upon both sides have been filed seven days before the beginning of the term or session.

Eighth Circuit:

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term, except cases from the districts of Colorado, Utah, Wyoming and New Mexico which cases shall only be called at the September term unless counsel otherwise stipulate as provided in Rule 3; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

For the Ninth Circuit, the rule is as follows:

The clerk shall, upon payment to him by the appellant or plaintiff in error of a deposit of twenty-five dollars in each case, file the record and enter upon a docket all cases brought to and pending in the court in their proper chronological order.

RULE 18.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

For the Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

DOCKET AND ARGUMENT LISTS.

1. Upon the filing of the record in any case by the plaintiff in error or appellant and the payment by him of a deposit fee of twenty-five dollars, the clerk shall enter the case, the record of which is so filed, upon the docket of this court; such docket shall have all its cases arranged in their proper chronological order.

2. The clerk shall prepare and cause to be printed, previous to the opening of each term of this court, an Argument List of all cases the records of which shall have been filed with him not less than fifteen days before the opening of the term, which cases shall be put on the Argument List in the chronological order of docketing the same, subject, however, to the following system of grouping: The first group shall be composed of the cases in which all the circuit judges shall be competent to sit; the second, of the cases in which all the circuit judges except the youngest in commission shall be competent to sit; the third, of the cases in which all the circuit judges except the next to the youngest in commission shall be competent to sit, and the fourth, of the cases in which all the circuit judges except the oldest judge in commission shall be competent to sit.

RULE 19.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily

come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and, if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and, if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit or district court of the United States shall desire to prosecute a writ of error or appeal to this court from any final judgment or decree rendered in the circuit or district court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or

appeal as in other cases. And, within thirty days after the filing of the record in this court, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the State or Territory or District in which such representative resides; and, upon such suggestion, he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days: *Provided, also,* That in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: *And provided, also,* That the said representative may at any time, before or after said suggestion, come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

For the Second, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

ARGUMENTS, CONTINUANCES AND DISMISSALS.

1. The cases in the Argument List shall be called for argument at each term, or adjourned term, and cases shall be argued on call unless the court shall for good cause otherwise order.

2. If the defendant in error or appellee fails to appear when his case is called for argument, the court may proceed to hear the argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

3. For good cause shown the court may order the continuance of any case for the term.

4. When a case is reached in the regular call, and there is no appearance for either party, it may be dismissed at the cost of the plaintiff in error or appellant.

5. Where no counsel appears for the plaintiff in error or appellant, and no brief has been filed for him, the defendant in error or appellee may have the writ of error or appeal dismissed at the cost of the defaulting party.

6. If a case is called for argument at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant unless a sufficient cause is shown for further postponement.

7. Whenever the plaintiff and defendant in a writ of error pending in the court, or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

8. Cases may also be dismissed in accordance with the second section of Rule 17, the first section of Rule 23 and the fourth section of Rule 24 of this court.

9. Except as in the preceding sections of this rule it is otherwise provided, no motion to dismiss a writ of error or an appeal will be heard unless previous notice of the motion has been given to the plaintiff in error or appellant or his counsel.

RULE 20.

DISMISSING CASES BY AGREEMENT.

Whenever the plaintiff and defendant in a writ of error pending in this court, on the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

For the Second, Fourth, Fifth, Sixth, and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

CERTIORARI.

1. No *certiorari* for diminution of the record will be awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

In the Seventh Circuit the rule reads as follows:

Whenever the parties to a writ of error or an appeal shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, in respect to costs, and shall pay to the clerk any fees that may be due to him, the clerk shall enter the case dismissed, and shall give to either party requesting it a copy of the agreement filed, but no mandate or other process shall issue without an order of the court.

In the Eighth Circuit the rule reads as follows:

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk seasonably to present such agreement to the court for its consideration and determination.

RULE 21.

MOTIONS.

1. The motion day shall be the first Tuesday of every stated session of the court, and any other Tuesday while the court shall remain in session.

2. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

3. All motions to dismiss writs of error or appeals (except motions to docket and dismiss under Rule 16) or to advance cases, or for a writ of *certiorari*, and other special motions, shall be printed, and be accompanied by printed briefs.