

THE FEDERAL COURTS.

A BRIEF OUTLINE OF THEIR ORGANIZATION AND JURISDICTION UNDER THE NEW "JUDICIAL CODE."

Of the statute enacted by the sixty-first Congress, not one is of as great present interest to the legal profession as the Act of March 3, 1911, codifying, revising and amending the laws relating to the judiciary of the United States, not one, probably, will prove to be of more lasting importance to the country.

Legislation upon social, financial and industrial questions is often of an ephemeral character, destined to frequent revision to meet new economic situations. On the other hand, the framework of our institutions is seldom disturbed; such changes as do occur are usually the result of gradual, almost imperceptible growth and expansion, culminating in an effort to accommodate the existing structure to larger purposes already predetermined.

It is to this latter class that the legislation under consideration belongs. At the first session of Congress after the adoption of the Constitution, the national courts were organized, their respective limits defined and their practice settled upon lines which were closely adhered to for one hundred years. The Supreme Court, of course, owed its existence to the Constitution not to Congress, but the system of circuit courts, presided over by the respective justices of the Supreme Court, and of district courts, organized on state lines, had its inception in the Act of 1789.¹ As the country grew, the number of districts and district judges was increased and, in 1869, circuit judges were added to relieve the pressure on circuit.² But the relief thus afforded to the Supreme Court justices was only temporary, the appellate business constantly increased, until Congress, in 1891, was compelled to establish the circuit courts of appeals to lighten the burden of the overworked court of

¹ September 24, 1789, 1 Statutes at Large, 73.

² A return to the discarded policy of Adams's administration.

last resort.³ This was the first radical departure from the system established in 1789 and the new Judicial Code is a logical consequence of the legislation of 1891.

The immediate result of the creation of the new court was a more speedy determination of appeals and an increase in the prestige of the federal courts, through the addition of a singularly able body of jurists to the justly renowned federal judiciary. But the triple organization of the inferior federal courts did not add clarity to the already complex federal court practice, nor did it lessen the cost of litigation, already high, when compared with state courts. Numerous amendments to the revised statutes had added to the difficulty of obtaining a clear understanding of the provisions applicable to the courts. Unification and revision were imperatively required.

The principal results accomplished by the new code are, a systematic re-statement of the laws relating to federal court practice and the administrative machinery of the courts; the abolition of the circuit courts; and a re-distribution of jurisdiction, original and appellate, between the remaining courts. The Court of Customs Appeals and the Commerce Court are also welded into the system. To describe adequately the technical features of the code would require a discussion of many acts and decisions and will no doubt occupy the attention of text writers on federal practice for some time to come. All that is now proposed is to summarize briefly the constitution of the courts under the new act which will take effect on January 1, 1912.

The District Courts.

The United States is divided into seventy-seven judicial districts, each state comprising one district at least. In some states there is more than one district, in New York and Texas, four; in other states there are two districts with but one judge, as in South Carolina, in still other districts there are additional judges, in the southern district of New York, four, the maximum number. There is no uniformity in this matter.⁴

³ Act of March 3, 1891, chapter 517, 26 Statutes at Large, 826.

⁴ See chapter 5 of the Judiciary Code, sections 69 to 115. The Code will hereinafter be cited J. C.

The salary of the district judges is six thousand dollars a year. When a district judge is prevented from holding court by any disability, the circuit judge, or, in his absence, the circuit justice, may appoint another district judge in the same circuit to hold court, or, if for sufficient reason that is impracticable, the chief justice of the United States may designate the judge of a district in another circuit to discharge the duties of the judge so disabled. Special assignments may be made also to meet an accumulation of business, and, when the public interests require, the senior circuit judge, the circuit justice or the chief justice may appoint a circuit judge to hold the district court. The district courts have original jurisdiction as follows:⁵

1. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States;⁶ or where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of *three thousand dollars*, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a state and foreign states, citizens or subjects.⁷

2. Of all crimes and offenses cognizable under authority of the United States.

3. Civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it; of all seizures on land or waters not within admiralty and maritime jurisdiction;

⁵ J. C., §24, *et seq.*

⁶ To the corresponding clauses, prescribing the civil jurisdiction of the circuit courts, in the Act of 1875, amended August 18, 1888, 25 Statutes at Large, 434, the money limit was held not to apply, *Case of the Sayward*, 160 United States Reports, 493 (1895).

⁷ It is added "No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note, or other chose in action if no assignment had been made: *Provided, however*, that the foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section."

of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

4. Suits arising under any law relating to the slave trade.

5. Cases arising under any law providing for internal revenue, or from revenue from imports or tonnage, except where jurisdiction has been conferred on the Court of Customs Appeals.

6. Cases arising under the postal laws.

7. Suits at law or in equity arising under the patent, the copyright and the trademark laws.

8. Suits and proceedings arising under any law regulating commerce, except those suits and proceedings exclusive jurisdiction of which has been conferred upon the Commerce Court.

9. Suits and proceedings for the enforcement of penalties and forfeitures under laws of the United States.

10. Suits by assignee of debentures for drawback of duties.

11. Suits by any person to recover damages for injuries to person or property on account of acts done under laws of the United States for the protection or collection of the revenue, or to enforce the right of citizens to vote.

12, 13, 14, 15. Certain suits to enforce the civil rights acts and the fifteenth amendment to the Constitution.

16. Cases commenced by the United States or by direction of any officer thereof against national banking associations and for winding up the affairs of any such bank, and suits by national banks in the district for which the court is held to enjoin action by the Comptroller of the Currency or a receiver. For the purpose of all other suits national banks are deemed citizens of the States in which they are located.

17. Suits brought by an alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

18. Suits against consuls and vice consuls.

19. All matters and proceedings in bankruptcy.

20. Claims against the United States, not exceeding ten thousand dollars, founded upon the Constitution, laws or any regulation of an executive department, or upon a contract express or implied with the government, or for damages, liquidated or un-

liquidated, in cases not sounding in tort, in respect to which the party would be entitled to redress if the United States were suable.

21. Proceedings by injunction to restrain the unlawful enclosure of public lands.

22. Suits arising under any law regulating the immigration of aliens, or under the contract labor laws.

23. Suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies.

24. Suits involving rights to Indian allotments of land.

25. Suits for partition of land where the United States is a tenant in common or joint tenant.⁸

Suits of a civil nature, at law or in equity, arising under the Constitution or laws of the United States or treaties, of which the district courts are given original jurisdiction, brought in a state court, may be removed by the defendant into a district court. Other civil suits, of which the district court is given jurisdiction, may be removed from a state court into the district court by a non-resident defendant. And when, in any such suit, there is a controversy which is wholly between citizens of different states and which can be determined fully as between them, then either one or more of the defendants actually interested may remove the suit into a district court. So also, where in a suit in a state court between a citizen of the state and a citizen of another state, it is made to appear that the latter will not be able to obtain justice on account of prejudice or local influence, the defendant may remove the cause into a district court. But no case arising under the Act of April 22, 1908, relating to the liability of railroads to their employees, brought in a state court of competent jurisdiction shall be removed to any court of the United States.

The trial of offenses punishable with death shall be had in the county where the offense was committed, where that can be done without great inconvenience. The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of the particular state or district, shall be in the

⁸J. C., §25, confers appellate jurisdiction on the district courts of orders of United States commissioners in cases under the Chinese exclusion laws.

district where the offender is found, or into which he is first brought. Where an offense against the United States is begun in one district and completed in another, it may be dealt with in either district. Penalties and forfeitures may be sued for either in the district where they accrue or where the offender is found. Internal revenue taxes may be sued for either in the district where the liability for such tax occurs or where the delinquent resides. Suits for the infringement of letters patent may be brought in the district of which the defendant is an inhabitant or in any district in which the defendant may have committed acts of infringement. Subject to certain exceptions,⁹ chiefly relating to states containing more than one district, no person shall be arrested in a civil action in one district for trial in another, and no civil suit shall be brought in any district court against any person by any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but when the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant.¹⁰

Circuit Courts of Appeals.

There are nine judicial circuits of the United States, each including specific districts, thus, the second circuit includes the districts of Vermont, Connecticut and New York, the third circuit, the districts of Pennsylvania, New Jersey and Delaware. In each circuit is a circuit court of appeals consisting, normally,¹¹ of three judges, of whom two constitute a quorum. Each judge shall receive a salary of seven thousand dollars and must reside within his circuit. The chief justice and associate

⁹ See J. C., §§52 to 57.

¹⁰ See, under the prior act, *Smith v. Lyon*, 133 United States Reports, 315 (1890).

¹¹ J. C., §§ 117, 118. In the second, seventh and eighth circuits there are four, in the fourth circuit two, and in the other circuits three circuit judges. The Circuit Court of Appeals for the ninth circuit is empowered to hear appeals from the United States Court for China, the district court of Hawaii and, with certain exceptions (J. C., §247), from the district court of Alaska. It is provided (J. C., §133), that the Supreme Court of the United States shall assign the territories of Arizona and New Mexico to circuits. J. C., §126, would indicate that New Mexico was to be included in the eighth circuit.

justices of the Supreme Court of the United States are allotted among the circuits by order of the court, but temporary assignments may be made by the chief justice. When a Supreme Court justice attends a session of a circuit court of appeals, he presides: in his absence, the circuit judges preside in the order of their seniority. In case the full court at any time shall not be made up, one or more district judges within the circuit shall be assigned by the court to sit; but no judge before whom a case was tried in the court below shall sit on the hearing of such cause on appeal. Each circuit court of appeals shall prescribe the forms of writs and other process conformable to its jurisdiction and establish rules for the conduct of the business of the court.

The circuit courts of appeals shall exercise appellate jurisdiction to review final decisions in the district courts in all cases other than those in which appeals and writs of error may be taken direct to the Supreme Court;¹² and, except as provided in sections 239 and 240 of the code,¹³ 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, copyright laws, revenue laws, criminal laws and in admiralty cases.

Appeals may be taken to the circuit courts of appeals from orders or decrees of a district court granting, continuing, refusing, dissolving or refusing to dissolve an injunction, or appointing a receiver in equity proceedings, notwithstanding an appeal in such case might, upon final decree, be taken directly

¹² As provided in J. C., §238, see *infra*.

¹³ J. C., §239, provides that, in cases within its appellate jurisdiction, the Circuit Court of Appeals may certify to the Supreme Court any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; the Supreme Court may, thereupon, give instructions or may direct the whole cause to be sent up for its consideration, as if on appeal. J. C., §240, provides that, in any case, civil or criminal, in which the judgment or decree of the Circuit Court of Appeals is made final, it shall be competent for the Supreme Court, on petition of a party, to require by *certiorari* or otherwise that the case be certified to it for review, with the same power and authority as if it had been carried up by appeal or writ of error.

to the Supreme Court.¹⁴ The circuit courts of appeals have also the appellate and supervisory jurisdiction conferred by the bankruptcy act and its amendments.¹⁵

Court of Claims.

The Court of Claims consists of a chief justice who receives a salary of six thousand five hundred dollars and four judges who receive salaries of six thousand dollars each. The sessions of the court are held at Washington, three judges constitute a quorum and the concurrence of three judges is necessary to the decision of any case.

The court has jurisdiction to hear and determine (1) claims (except for pensions) founded on the Constitution or laws of the United States, upon any regulation of an executive department, upon any contract, express or implied, with the government, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect to which the party would be entitled to redress if the United States were suable. (2) All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands on the part of the government against the claimant. (3) The claim of any paymaster or other disbursing officer for relief from responsibility on account of loss by capture or otherwise while in the line of his duty.

When a claim is pending in any of the executive departments, which involves controverted questions of law or fact, the head of such department may transmit the same with the vouchers and papers to the Court of Claims for determination. So, either house of Congress, when any bill, except for a pen-

¹⁴ The appeal must be taken within thirty days from the entry of the order and the Court below may require an additional bond, J. C., §129. The section, as embodied in the act establishing the Circuit Court of Appeals, March 3, 1891, chapter 517, 26 Statutes at Large, 826, was intended to permit immediate relief from an injunction, the continuance of which might seriously impair the appellant's interests, *Smith v. Vulcan Iron Works*, 165 United States Reports, 518 (1897). The section was amended by the Act of February 18, 1895, chapter 96, 28 Statutes at Large, 666, to include appeals where an injunction was refused or dissolved. The amendment of 1895 was impliedly repealed by the subsequent Act of June 6, 1900, chapter 803, 31 Statutes at Large, 660, under which there was no appeal from an interlocutory order denying or dissolving an injunction, *March v. Romare*, 116 Federal Reporter, 354 (1902). The new act gives an appeal in such cases in the broadest terms.

¹⁵ Act of July 1, 1898, chapter 541, 30 Statutes at Large, 544 §§24, 25.

sion, is pending providing for the payment of a claim, legal or equitable, against the government, may, for an investigation and determination of the facts, refer the same to this court which shall proceed with the same and report the facts to the house.

Upon the trial of cases where the government sets up a counterclaim, the court shall hear the case both for and against the government and if upon the whole case it finds the claimant indebted to the government it shall render judgment to that effect and a transcript of that judgment filed in a district court shall become a judgment of such court. In cases transmitted by the head of a department, if the judgment is in favor of the claimant, the amount shall be paid out of any specific appropriation applicable to the case, if any such there be. On the first day of every regular session of Congress, the clerk of the court shall transmit to Congress a full statement of all the judgments rendered by the court during the previous year, stating the amounts and the parties in whose favor they were rendered with a brief synopsis of the nature of the claims. Reports of the court not finally acted upon during the session at which they are reported, shall be continued from session to session of Congress until finally acted upon.¹⁶

Court of Customs Appeals.

The Court of Customs Appeals consists of a presiding judge and four associate judges each receiving a salary of seven thousand dollars. Three members of the court constitute a quorum and the concurrence of three members shall be necessary to a decision. In case of a vacancy or temporary inability or disqualification of a judge, the President, on request of the presiding judge, may designate a circuit or district judge to sit. The sessions of the court may be held in the several judicial circuits at such places as the court may designate, but the officer of the clerk of the court shall be in Washington.

¹⁶ J. C., §136 to §187. By §242 an appeal from the Court of Claims to the Supreme Court is allowed on behalf of the United States from all judgments adverse to the United States; and, on behalf of the plaintiff, where the amount in controversy exceeds three thousand dollars, or where the claim is forfeited for fraud. Appeals must be taken within ninety days after judgment is rendered.

The Court of Customs Appeals exercises exclusive appellate jurisdiction to review, by appeal, final decisions by a Board of General Appraisers of the United States in all cases as to the construction of the law and facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said court shall be final in all such cases.¹⁷

The Commerce Court.

The Commerce Court is composed of five judges, to be assigned to this duty from time to time by the chief justice of the United States from among the circuit judges, for the period of five years.¹⁸ In case of death, resignation or termination of assignment, the chief justice shall fill the vacancy for the unexpired term. After the year 1914 no circuit judge shall be re-designated to serve in the court until the expiration of at least one year after the expiration of the period of his last designation. Four judges shall constitute a quorum and at least a majority of the court shall concur in all decisions. Each of the judges receives, in addition to his salary as circuit judge, an expense allowance at the rate of fifteen hundred dollars per annum. The regular sessions of the court are held in Washington; but, for expedition of the work of the court and the

¹⁷ J. C., §195. The court was created by the tariff act of August 5, 1909, chapter 6, §28, 36 Statutes at Large, 105, as an additional section (§29) to the Customs Administrative Act of June 10, 1890, chapter 407. In the original Act of 1909, the salaries of the judges were fixed at ten thousand dollars, but this amount has been reduced to seven thousand dollars. The administrative features of the act and the provisions for the disposal of pending cases are substantially re-enacted.

¹⁸ The court was created by the Act of June 18, 1910, chapter 309, Statutes 1909-10, page 539, which authorized the President to appoint five additional circuit judges to be designated to serve in the Commerce Court for one, two, three, four and five years respectively, and, after the expiration of their service, to be assigned for service in the Circuit Court of Appeals (or district court, J. C. §201). The judge first designated for the five-year period is the presiding judge and thereafter the judge senior in designation shall preside. If at any time the business of the court does not require the services of all the judges, the Chief Justice may terminate any assignment or temporarily assign a judge for service in a district court or a circuit court of appeals.

avoidance of undue expense or inconvenience to suitors, the court shall hold sessions in different parts of the United States as may be found desirable.

The Commerce Court has jurisdiction over all cases of the following kinds: (1) All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money. (2) Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission. (3) Cases authorized to be maintained in the circuit courts by section 3 of the Act of February 19, 1903, regulating commerce with foreign nations and among the states.¹⁹ (4) All such mandamus proceedings as are authorized to be maintained by the circuit courts under section 20 or 23 of the Act of February 4, 1887, regulating commerce.²⁰

The jurisdiction of the Commerce Court over cases of the foregoing classes is exclusive. Suits to enjoin, set aside or suspend an order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States and the Attorney General shall have charge of the interests of the government: but the Commission and any party in interest to the proceeding before the Commission may appear of their own motion, and as of right, and be represented by counsel.

A final judgment or decree of the Commerce Court may be reviewed by the Supreme Court if an appeal is taken within sixty days of final judgment. Appeals shall not supersede or stay judgment of the Commerce Court unless the Supreme Court, or a justice thereof, shall so direct and the appellant gives bond in such amount as shall be required. Appeals may also be taken

¹⁹ Act of February 19, 1903, chapter 708, 32 Statutes at Large, 848. Section 3 authorizes proceedings in equity for the enforcement of tariffs and the discontinuance of discriminations by carriers.

²⁰ The Interstate Commerce Commission Act of February 4, 1887, chapter 104, 24 Statutes at Large, 379. Section 20 is amended by §7 of the Act of June 29, 1906, chapter 3591, 34 Statutes at Large, 584, at page 593. Section 23 of the Act of 1887 merely made an appropriation. The marginal reference in the Act of 1910 is, however, to Volume 25, page 862, of the Statutes at Large, and there will be found section 10 of the Act of March 2, 1889, chapter 382, which authorizes mandamus proceedings against carriers to compel equal facilities to shippers.

to the Supreme Court from interlocutory decrees of the Commerce Court, granting or continuing injunctions restraining the enforcement of orders of the Interstate Commerce Commission. These appeals are given priority in hearing over all other causes in the Supreme Court except criminal cases.

The Supreme Court.

The Supreme Court consists of a Chief Justice of the United States and eight associate justices who have precedence according to the dates of their commissions. Six members of the court constitute a quorum. The salary of the chief justice is fifteen thousand dollars a year and of the associate justices fourteen thousand five hundred dollars. The court is required to 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.

The Supreme Court has exclusive jurisdiction²¹ 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 shall have original, but not exclusive, jurisdiction. And it has 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 ministers, or in which a consul or vice consul is a party.

The Supreme Court has power to issue writs of prohibition²² to district courts in admiralty cases, and writs of mandamus²³ in cases warranted by the principles and usages of law, to courts appointed under authority of the United States, or to

²¹ J. C., §233, re-enacts §687 of the Revised Statutes taken from the Act of September 24, 1789, chapter 20, 1 Statutes at Large, 80. See Article III, §2, of the Constitution of the United States.

²² *Ex parte Easton*, 95 United States Reports, 71 (1877); *In re Cooper*, 143 United States Reports, 472 (1892).

²³ *Ex parte Newman*, 14 Wallace's U. S. Reports, 165 (1871); *Virginia v. Rives*, 100 United States Reports, 324 (1879); *American Construction Co. v. Jacksonville R. Co.*, 148 United States Reports, 372 (1893).

persons holding office under authority of the United States, where a State or an ambassador or other public minister or consul or vice consul is a party.²⁴

The Supreme Court has authority to review on writ of error the 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 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 such right. The Supreme Court may reverse, modify or affirm the judgment or decree, and may at their discretion award execution or remand the same to the court from which the case was removed.²⁵

Appeals and writs of error may be taken from a district court²⁶ *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 for decision;

from the final sentences and decrees in prize cases;

in any case that involves the construction or application of the Constitution of the United States;

in any case in which the constitutionality 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

²⁴ *Marbury v. Madison*, 1 Cranch's U. S. Reports, 137 (1803). The Court is also authorized by J. C., §262, to issue writs of *scire facias*.

²⁵ J. C., §237, re-enacting Revised Statutes, §709. *Gordon v. Calcleugh*, 3 Cranch's U. S. Reports, 268 (1806); *Baker v. Baldwin*, 187 United States Reports, 61 (1902); *Scudder v. New York*, 175 United States Reports, 32 (1899); *Columbia W. P. Co. v. Columbia E. S. R. Co.*, 172 United States Reports, 475 (1899); *Home for Incurables v. New York*, 187 United States Reports, 155 (1902); *De Lamav N. G. M. Co. v. Nesbitt*, 177 United States Reports, 523 (1900).

²⁶ Including the district court for Hawaii.

is claimed to be in contravention of the Constitution of the United States.²⁷

In cases within the appellate jurisdiction of a circuit court of appeals, that court may certify to the Supreme Court questions of law upon which it desires instruction, and, in any case, civil or criminal, in which the jurisdiction of a circuit court of appeals is made final, the Supreme Court may, by *certiorari* or otherwise, cause the case to be certified to it for review. In any case where the judgment of a circuit court of appeals is not made final, there is a right of appeal to the Supreme Court where the matter in controversy exceeds one thousand dollars.²⁸

Appeals also lie to the Supreme Court, in certain cases, from the Court of Claims; from the Supreme and District Courts of Porto Rico; the Supreme Court of the territories of Arizona and New Mexico; the District Court of Alaska; the Supreme Court of the territory of Hawaii; the Supreme Court of the Philippine Islands; and the Court of Appeals of the District of Columbia.²⁹

The Supreme Court is also invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy, from which it has appellate jurisdiction in other cases, and like jurisdiction from courts of bankruptcy not within organized circuits and the Supreme Court of the District of Columbia.³⁰ Appeals may be taken to the Supreme Court from any final decision of a court of appeals allowing or rejecting a claim in bankruptcy, under rules to be prescribed by

²⁷ J. C., §238, re-enacting §5 of the act of March 3, 1891, chapter 517, 26 Statutes at Large, 826, which established the circuit courts of appeals, but omitting clause 3 of that section which authorized a direct appeal "in cases of conviction of a capital or otherwise infamous crime." This clause had been amended in 1897 to include capital cases alone.

²⁸ J. C., §§239, 240, 241, taken from §6 of the Act of March 3, 1891. *For-syth v. Hammond*, 166 United States Reports, 506 (1897); *Felsenheld v. United States*, 186 United States Reports, 134 (1902); *German N. Bank v. Speckert*, 181 United States Reports, 405 (1901).

²⁹ J. C., §§244, 245, 246, 247, 248, 250, 251. Certain appeals from the territorial and insular courts depend upon the amount in controversy which differs in the respective jurisdictions.

³⁰ J. C., §252. Based on §24 of the bankruptcy Act of July 1, 1898, chapter 541, 30 Statutes at Large, 544. *Bardes v. Hawarden F. N. Bank*, 178 United States Reports, 524 (1900); *Western T. & T. Co. v. Brown*, 196 United States Reports, 502 (1904).

the Supreme Court in the following cases: (1) Where the amount in controversy exceeds two thousand dollars and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State; (2) where a justice of the Supreme Court shall certify that, in his opinion the determination of the question involved is essential to a uniform construction of the bankruptcy laws.³¹

So much for the separate courts. There are certain provisions common to more than one court. The jurisdiction vested in the courts of the United States is exclusive of the courts of the States in the case of: (1) all crimes and offenses cognizable under authority of the United States. (2) Suits for penalties and forfeitures incurred under the laws of the United States. (3) Civil causes of admiralty and maritime jurisdiction, saving to suitors the right to a common law remedy where the common law can give it. (4) Seizures under the laws of the United States, on land or on waters not within the admiralty or maritime jurisdiction; of all prizes brought into the United States; and proceedings to condemn property taken as prize. (5) Cases under the patent or copyright laws. (6) Proceedings in bankruptcy. (7) Civil controversies where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens. (8) Suits and proceedings against ambassadors or other public ministers, or their domestics or domestic servants, or against consuls or vice consuls.³²

It is not within the scope of this brief review to discuss questions of Federal practice, but passing reference may be made to the subject of injunctions. The provisions of the revised statutes are re-enacted³³ with an additional section, taken from the Commerce Court Act of 1910, providing that no interlocutory injunction suspending or restraining the enforcement of a State

³¹ From §25 of the bankruptcy Act of 1898. *Hutchinson v. Otis*, 123 Federal Reporter, 14 (1902).

³² From §711 of the revised statutes. Clause 8 appeared originally, but was directly repealed by the Act of February 18, 1875, chapter 80, 18 Statutes at Large, 318. *Bors v. Preston*, 111 United States Reports, 252 (1884); *Pooley v. Luco*, 72 Federal Reporter, 561 (1896). It is now restored, see also J. C., §24, clause 18, J. C., §233.

³³ Sections 718 to 720 of the Revised Statutes are expressly repealed and are supplied by J. C., sections 263 to 265.

statute, by restraining the action of an officer of such State, shall be issued by a Federal judge upon the ground of the unconstitutionality of such statute, unless heard and determined by three judges, of whom at least one shall be a Supreme Court justice or circuit judge, and unless a majority concur in granting the application. Five days' notice of the hearing must be given to the Governor and Attorney General of the State, but, if irreparable damage would ensue, a temporary restraining order may be granted before hearing, and the hearing shall be given precedence, and assigned for the earliest practicable day after the expiration of the notice. An appeal may be taken direct to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory injunction in such case.³⁴

One chapter of the act is devoted to Federal juries.³⁵ There are many other features which require attentive consideration.³⁶ The committee to whose labors this much needed legislation is due, and particularly the chairman, the Hon. Reuben O. Moon, are to be congratulated upon the successful completion of their task. Nothing human is perfect and no doubt suggestions for improvement will occur in the future; but it augurs well for the future that we have at present in our national legislature some members who are willing to devote their time to the orderly arrangement and unification of the statute law. Excepting, however, the abolition of the Circuit Court,³⁷ the code cannot be said to include any radical departures from the existing system. Law is still law; and equity is still the equity of Lord Eldon's day. It would be unjust to the codifiers to blame them for refraining from attempting reforms that might have aroused a spirit of controversy,³⁸ and have jeopardized their whole work;

³⁴ J. C., §266, comprehending §17 of the Act of June 18, 1910, chapter 309.

³⁵ J. C., §§275 to 288.

³⁶ §721 of the Revised Statutes, making the laws of the States rules of decision in trials at common law, is not incorporated, neither is it expressly repealed.

³⁷ J. C., §289, abolishes the circuit courts upon the taking effect of the act and directs the clerks to deliver the records to the clerks of the district courts for their respective districts. Pending suits are to be disposed of in the district courts.

³⁸ See "A Practical Program of Procedural Reform" by Prof. Roscoe Pound, Green Bag XXII, page 438, August, 1910.

neither must they be blamed if some expectations are disappointed and proceedings are still technical, slow and expensive. The distinctive feature of Federal Procedure, the complete separation of law from equity, is archaic; and chancery practice, with its expensive references, a luxury for the rich, or the insolvent. But many of our most distinguished lawyers and jurists, whether from reasons of sentiment or from solid conviction it is difficult to ascertain, prefer, it would seem, to practice as their fathers did one hundred years ago, ignoring what has been accomplished by Lord Eldon's successors in the chancellorship, through the Judicature Act of 1873.

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