

## Syllabus.

ground that a Federal question was involved, unless that question was raised in and submitted to the trial court, and such court had the opportunity to pass upon it; and that while it could not be laid down by rule how every such question must be raised in the trial court, it should, at least, be fairly and directly presented by some of the methods recognized by the practice and procedure of the court. In this instance, the Supreme Court in banc refused to direct the case to be transferred, and we cannot say that it was not justified in that refusal. The interjection into the motions to quash and for a new trial, of the assertion that section 3959 was in conflict with the Constitution of the United States, and also in the motion in arrest, was perhaps regarded as not sufficiently definite to invoke a distinct ruling on the points afterwards suggested, and, moreover, the full court may have been of the opinion that there was no sufficient ground for the contention that a violation of the Federal Constitution had occurred to require it to hear argument upon that subject. At all events, as we find that there was no ground for questioning the judgment of the Supreme Court because of such violation in the legislation on which that judgment was based or in the conduct of the trial, we cannot hold that the plaintiff in error was subjected to an unconstitutional ruling in not being allowed to have his case heard at large by seven judges instead of three.

*Judgment affirmed.*

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BUCKLIN *v.* UNITED STATES (No. 1).

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF KANSAS.

No. 246. Submitted October 21, 1895.—Decided November 18, 1895.

The final judgment of a court of the United States in a case of the conviction of a capital or otherwise infamous crime is not reviewable here except on writ of error; and the review is confined to questions of law, properly presented.

## Opinion of the Court.

THE case is stated in the opinion.

*Mr. Thomas T. Taylor* for appellant.

*Mr. Assistant Attorney General Dickinson* for appellees.

MR. JUSTICE HARLAN delivered the opinion of the court.

The appellant Bucklin was convicted of the crime of perjury under section 5392 of the Revised Statutes, and sentenced to imprisonment at hard labor in the penitentiary for the term of one and one-half years, and also to pay a fine of one hundred dollars. He seeks a review of that judgment by the present appeal.

The appeal must be dismissed. By section five of the act of March 3, 1891, c. 517, 26 Stat. 826, "appeals or writs of error may be taken from the District Courts or from the existing Circuit Courts" of the United States directly to this court, in certain enumerated cases, civil and criminal, among others, "in cases of conviction of a capital or otherwise infamous crime." There was no purpose by that act to abolish the general distinction, at common law, between an appeal and a writ of error. The final judgment of a court of the United States in a case of the conviction of a capital or otherwise infamous crime is not reviewable here except upon writ of error. Our review of the judgment, when brought here in that form, is confined to questions of law, properly presented by a bill of exceptions, or arising upon the record.

*Appeal dismissed.*