

## INDEX TO RULES

	Rule	Par.	Page
Abatement. See Death of party.....	...	...	...
Abrogation of prior rules.....	49	...	631
Acknowledgment of service. See Proof of Service.....	...	...	...
Adjournment of term.....	48	...	630
Admiralty,			
further proof in.....	15	2	607
interest in cases in.....	30	4	617
objections to evidence—when entered.....	16	...	607
record in, contents of.....	10	5	601
Admission to bar,			
fee for.....	32	6	618
motion for.....	2	3	594
preliminaries to.....	2	2	594
qualifications for.....	2	1	594
Advancement. See Motions to Advance.			
Advanced cases,—subject to hearing with cases involving similar questions.....	20	7	612
Affirm. See Motions to affirm.			
Appeal,			
assignments of errors required on.....	9	...	599
bond on.....	36	1 & 2	620-621
by whom allowed.....	36	1	620
certiorari ancillary to, no oral argument on jurisdictional statement.....	12	3	603
citation on.....	10	1	599
in equity—manner of perfecting.....	46	1	629
may be dismissed for failure to file statement as to jurisdiction.....	12	4	603
not allowed unless assignment of errors accompanies petition.....	9	...	599
petition for.....	46	2	630
statement of jurisdiction on.....	12	1	602
substituted for writs of error—manner of applying for and perfecting.....	46	2	630

	Rule	Par.	Page
Appeal—Continued.			
supersedeas on.....	36	2	621
when not precluded by death of party..	19	3	609
Appearance,			
no appearance of appellant or peti- tioner.....	21	....	612
no appearance of appellee or re- spondent.....	22	....	612
no appearance of either party.....	23	....	613
of counsel, entered upon docketing case.....	11	3	602
Argument. See Oral Argument, Briefs.			
Assignment of errors. (See also Statement of Points.)			
contents of.....	599	....	6
must be included in rec- ord on appeal.....	10	2	600
required on appeal.....	9	....	599
when not filed counsel will not be heard....	27	4	615
Attachment, shall issue for default in payment of costs.....	13	8	606
Attorneys,			
clerk shall not practice as attorney...	1	1	592
disbarment of.....	2	5	594
law clerks to Justices not to practice as.....	3	....	595
may use books in law library.....	4	1	595
motion for admission of.....	2	3	594
oath of.....	2	4	594
preliminaries to admission of.....	2	2	594
qualifications for admission of.....	2	1	594
secretaries to Justices not to practice as.....	3	....	595
Attorney General, government cases may be ad- vanced on motion of.....	20	6	611
Attorneys General of States, to be served with process against states.....	6	2	596
Bills of Exception,			
charge to jury.....	8	1	598
evidence.....	8	2	599
Bonds,			
supersedeas bonds, amount of.....	36	2	621
for costs.....	36	1	620

Books. See Law Library.	Rule	Par.	Page
Briefs,			
clerk to deposit copies of in law library..	4	2	595
for respondent on petition for certiorari to Court of Claims, contents, number of copies, etc.....	41	5	627
for respondent on petition for certiorari to other courts, contents, number of copies, etc.....	38	3 & 3a	623-624
form of printing of, etc.....	26	....	614
in support of petition for certiorari to Court of Claims, number of copies, when filed, etc.....	41	5	627
in support of petition for certiorari to other courts, contents, etc.....	38	2 & 3	623
not received after argument and/or submission of causes—exception.....	25	3 & 4	613-614
not to be filed unless accompanied by proof of service.....	27	6	616
of appellant or petitioner, contents of, number of copies.....	27	1 & 2	614
of appellee or respondent, contents, number of copies.....	27	3	615
opposing motion to dismiss.....	7	3	597
submission of causes on.....	25	1	613
Call of docket (See also Appearance, Oral argument) .....	20	1	611
Cases once adjudicated may be advanced.....	20	5	611
Certificate of clerk or presiding judge of state court, required as preliminary to admission of attorneys .....	2	2	594
Certificate of counsel, must be attached to petition for rehearing.....	33	....	619
Certificate of Questions. See Certified questions.			
Certificate, required in support of motion to docket and dismiss.....	11	1	601
Certified questions,			
from circuit courts of appeals and Court of Appeals of District of Columbia.	37	1	622
contents of certificate.....	37	1	622
court may order entire record sent up.....	37	2	622
parties may request that entire record be sent up.....	37	2	622

	Rule	Par.	Page
Certified questions—Continued.			
from Court of Claims.....	40	....	626
Certiorari as proceeding to obtain review,			
ancillary to appeal, no oral argument			
on jurisdictional statement.....	12	3	603
judgments of state courts, circuit			
courts of appeals, and Court of			
Appeals of District of Columbia..	38	1	622
before judgment.....	39	....	625
brief in support of petition for.....	38	2	623
notice of filing of.....	38	3	623
petition for, contents of, service &c.	38	2 & 3	623
reasons for granting.....	38	5	624
record to accompany petition for..	38	1 & 7	622, 625
stay pending application for.....	38	6	625
when applied for within time.....	38	2	623
judgments of Court of Claims.....	41	1	626
judgments of Court of Customs and			
Patent Appeals.....	42	....	628
judgments of Supreme Court of Philip-			
pine Islands.....	42	....	628
Certiorari,			
form of order granting.....	43	....	628
rules relating to appeals may apply			
to.....	44	....	628
to correct diminution of record.....	17	....	608
when not precluded by death of party.	19	3	609
writ of—when issued.....	43	....	628
Certified record, to be transmitted to Supreme			
Court,			
on appeal.....	10	2	600
on petition for certiorari.....	38	1	622
Charge to jury—exceptions to, when included in			
bill of exceptions.....	8	1	598
Circuit Courts of Appeals,			
appeals from.....	46	1 & 2	629-630
certified questions from.....	37	1	622
certiorari to.....	38	1	622
Citation,			
issued upon allowance of appeal.....	10	1	599
on death of party—when.....	19	3	609
service of—when.....	10	1	599
signed by judge or justice allowing ap-			
peal.....	36	1	620
when returnable.....	10	1	599

Clerk of Supreme Court,	Rule	Par.	Page
fees of, based on folios in record.....	13	9	606
not to permit removal of original papers			
without order.....	1	2	594
not to practice as attorney.....	1	1	592
office and residence of.....	1	1	592
shall deposit copies of printed records, etc.,			
in law library.....	4	2	595
shall print and record opinions.....	29	1, 2, 3	616-617
shall print only parts of record designated			
by parties to appeal.....	13	9	606
to omit duplications, etc., in printed			
records.....	13	9	606
to refuse to receive improperly printed			
briefs, etc.....	26	....	614
to report cases where translations neces-			
sary.....	14	....	607
to report failure to file statement as to			
jurisdiction .....	12	6	604
to report failure to make deposit for costs.	13	2	604
to distribute petitions for writs of certiorari			
to the court for consideration—when,			
cases from state courts, circuit courts			
of appeals, or Court of Appeals of			
District of Columbia or Supreme Court,			
Philippine Islands.....	38	4	624
cases from Court of Claims.....	41	5	627
to distribute motions to dismiss—when...	7	3	597
to distribute statements as to jurisdiction			
on appeal—when.....	12	3	603
to supervise printing of records.....	13	3 & 5	605
Clerks, Law Clerks to Justices not to practice			
law.....	3	....	595
Clerks of lower courts, to transmit certified rec-			
ords to Supreme Court on appeal.....	10	2	600
Commission, to be issued to take further proof..	15	1 & 2	607
Consolidation. Cases may be consolidated for			
argument .....	20	8	612
Contents of record on appeal.....	10	2	600
Continuance,			
cases continued when neither party			
ready at first term.....	20	1	611
cases so continued may be re-			
stored—how.....	20	9	612

Costs,	Rule	Par.	Page
allowance of.....	32	1, 2, 3	618
amount of to be inserted in mandate.....	32	5	618
appellant to make deposit for upon docketing case.....	13	1	604
attachment upon non-payment of.....	13	8	606
may be taxed against offending party when immaterial papers printed in record .....	13	9	606
not ordinarily allowed for or against United States .....	32	4	618
offending party may be taxed with when unnecessary papers brought up on appeal .....	10	2	600
on affirmance.....	32	2	618
on dismissal .....	32	1	618
on dismissal for want of jurisdiction.....	32	1	618
on dismissal in vacation.....	35	....	620
on reversal .....	32	3	618
rule for taxing.....	13	7	605
security for to be taken by judge or justice allowing appeal.....	36	1	620
Cost bond (See also supersedeas).....	36	2	621
Counsel to enter appearance upon docketing case. 11		3	602
Counsellors. See Attorneys.			
Counter-designation of parts of record to be printed—may be filed by appellee.....	13	9	606
Counter-praeceipe for record—when and where filed .....	10	2	600
Court of Appeals, District of Columbia,			
certified questions from.....	37	1	622
certiorari to.....	38	1	622
Court of Claims,			
certified questions from.....	40	....	626
certiorari to.....	41	1	626
Criminal cases, may be advanced.....	20	4	611
Cross-interrogatories, in admiralty.....	15	2	607
Custody of prisoners pending review on habeas corpus.....	45	....	629
Damages, when allowed and how calculated.....	30	2	617
Death of party,			
suggestion, substitution, abatement.....	19	....	608-611

	Rule	Par.	Page
Death of party—Continued.			
when does not preclude appeal			
or writ of certiorari.....	19	3	609
when public officer.....	19	4	610
Deposit for costs, made upon docketing case..	{ 13 12	{ 1 5	{ 604 604
when made in cases on petition for certiorari to Court of Claims .....	41	4	627
Designation of points. See Statement of points.			
Designation of parts of record to be printed....	13	9	606
Diagrams .....	18	1 & 2	608
Diminution of record, certiorari to correct....	17	....	608
Disbarment of attorneys.....	2	5	594
Dismiss. See Motion to dismiss.			
Dismissal,			
appeal may be dismissed for failure to file statement as to jurisdiction.....	12	6	604
appeal may be dismissed if material papers omitted from record.....	13	9	606
causes dismissed when neither party ready at second term—exception....	24	....	613
for failure to substitute parties appellant or petitioner.....	19	1	608
of causes in vacation.....	35	....	620
District Courts of the United States, appeals from .....	46	....	629-630
Division of time of argument.....	28	4	616
Docket and dismiss,			
certificate in support of motion to.....	11	1	601
motion to.....	11	1	601
Docketing cases,			
by appellant.....	11	1	601
by appellee.....	11	1 & 2	601-602
Enlargement of time. See Extension of time.			
Equity,			
appeals in, manner of perfecting.....	46	1	629
interest in cases in.....	30	3	617
objections to evidence—when entertained.....	16	....	607
Errors,			
assignment of.....	{ 9 10 27	{ 1 2 4	{ 599 600 615

Errors—Continued.	Rule	Par.	Page
not specified will be disregarded—exception.....	27	4	615
statement of points to be relied upon.....	13	9	606
Evidence,			
in bills of exceptions.....	8	2	599
further proof in certain cases, how taken .....	15	....	607
models, diagrams, and exhibits of material .....	18	1 & 2	608
objections to, in equity and admiralty cases.....	16	....	607
to be omitted in cases from Court of Claims .....	41	4	627
to be reduced to narrative form.....	8	2	599
Execution, stay of,			
pending appeal—by whom allowed.....	36	1	620
pending application for certiorari .....	38	6	625
Exhibits of material. (See also Original exhibits).	18	1 & 2	608
Extension of time,			
for issuance of mandate.....	34	....	620
within which to file appellee's praecipe for record.....	10	2	600
within which to file petition for rehearing.....	33	....	619
within which to docket case and file record on appeal..	11	1	601
Ex parte, when complainant may so proceed....	6	3	596
Fees, (see also Costs).			
of clerk based on folios in record.....	13	9	606
table of.....	32	6	618
Form of printing records, briefs and motions...	26	....	614
Further proof,			
generally.....	15	1 & 2	607
in admiralty.....	15	2	607
when ordered by Supreme Court.	15	1	607
Governors of States, to be served with process against state.....	6	2	596
Habeas corpus. See Custody of prisoners.			
Interest, when allowed and how calculated.....	30	1	617
Interrogatories, in admiralty—commission shall issue upon.....	15	2	607

	Rule	Par.	Page
Joint request to restore cause to call.....	20	9	612
Judge,			
allowing appeal shall sign citation.....	36	1	620
allowing appeal may grant supersedeas..	36	1	620
may order stay pending application for			
certiorari.....	38	6	625
who signed citation may enlarge time			
within which to docket case on appeal. 11		1	601
may enlarge time within which appellee			
may file praecipe for record.....	10	2	600
Judgments,			
of Circuit Courts of Appeals—how { 46		1 & 2	629-630
reviewed .....	38	....	622-625
of Court of Claims—how reviewed.. 41		....	626-627
of Court of Customs and Patent Ap-			
peals—how reviewed.....	42	....	628
of District Courts, U. S., review of.. { 36		1	620
{ 46		1	629
of State Courts—how reviewed..... { 46		2	630
{ 38		....	622-625
of Supreme Court of Philippine Is-			
lands—how reviewed.....	42	....	628
Jurisdiction, statements as to.....	12	1 & 3	602, 603
Justice of Supreme Court,			
allowing appeal may			
grant supersedeas.. 36		1	620
allowing appeal shall			
sign citation..... 36		1	620
may enlarge time			
within which			
appellee may file			
praecipe for rec-			
ord .....	10	2	600
may enlarge time			
within which to			
docket case and file			
record on appeal.. 11		1	601
may order stay pend-			
ing application for			
certiorari..... 38		6	625
Law Library,			
clerk to deposit copies of records,			
etc, in.....	4	2	595

## Law Library—Continued.

	Rule	Par.	Page
marshal to have charge of conference room library.....	4	3	596
use of books by members of bar.....	4	1	595
Law clerks to Justices, not to practice as attorneys or counsellors.....	3	....	595
Mandates,			
in general.....	31	....	617
shall not issue upon dismissal of causes			
in vacation.....	35	....	620
stay of mandate of Supreme Court.....	34	....	620
when issued.....	34	....	620
Marshal,			
to have charge of books of the Court..	4	3	596
to have custody of exhibits of material.	18	1 & 2	608
Models, diagrams, etc.....	18	1 & 2	608
Mondays, to be motion days.....	7	6	598
Motion days.....	7	6	598
Motions,			
in general,			
clerk to deposit copies of in law library.....	4	2	595
must be printed.....	7	1	596
oral argument will not be heard on—			
exception .....	7	2	597
when assigned for argument shall have precedence over other cases.	7	6	598
to advance, contents, printing of.....	20	3	611
to affirm.....	7	4 & 5	598
grounds for .....	7	4	598
may be joined with motions to dismiss .....	7	4	598
procedure as on motions to dismiss to be followed on.....	7	4	598
result of, transfer to summary docket .....	7	5	598
to bring up entire record and cause in cases on certified questions.....	37	2 & 3	622
to dismiss			
may be joined with motions to affirm.	7	4	598
moving party must serve notice of...	7	3	597
must be printed.....	7	1 & 3	596-597
proof of service of to be filed.....	7	3	597

## RULES OF THE COURT.

587

Motions—Continued.	Rule	Par.	Page
result of — transfer to summary docket .....	7	5	598
to be distributed by clerk—when....	7	3	597
Narrative form, evidence in bills of exception to be reduced to.....	8	2	599
Notice,			
of filing statement as to jurisdiction....	12	2	603
of filing petition for certiorari to be given.	38	3	623
Oath of attorneys.....	2	4	594
Objections, to evidence in admiralty or equity—			
when entertained.....	16	....	607
Opinions of Supreme Court, to be printed, filed and recorded.....	29	....	616—617
Opinions of courts below,			
must be included in record on appeal...	10	2	600
in admiralty.....	10	5	601
Oral arguments,			
but one counsel heard where other party does not argue orally.....	28	2	616
cross appeals.....	28	1	616
division of time for.....	28	4	616
motions assigned for shall have precedence .....	7	6	598
not allowed on motions unless especially assigned therefor...	7	2	597
not allowed on petition for re-hearing.....	33	....	619
not heard within two weeks before adjournment of term....	48	....	630
time allowed for, regular docket.	28	4	616
time allowed for, certified questions.....	28	5	616
time allowed for, summary docket.....	28	6	616
two counsel only heard for each party—exception.....	28	3	616
who to open and close.....	28	1	616
Order granting writ of certiorari—effect of.....	43	....	628
Original cases, printing.....	13	4	605
Original documents. See Original Exhibits.			

	Rule	Par.	Page
Original exhibits .....	10	4	601
Original records,			
copies of to be made for printer—when.....	13	4	605
not to be removed without order of Court or Justice.....	1	2	594
sent to printer in cases on appellate docket.....	13	4	605
Parties. See Death of party.			
Petition for appeal.....	46	2	630
Petition for certiorari to Court of Claims.....	41	4	627
Petition for certiorari to Court of Customs and Patent Appeals.....	42	....	628
Petition for certiorari to Supreme Court of Philippine Islands .....	42	....	628
Petition for certiorari to other courts.....	38	1 & 2	622-623
Petition for rehearing.....	33	....	619
filing of does not stay mandate.....	34	....	620
Practice, when not otherwise fixed.....	5	....	596
Praeclipe for record on appeal,			
by appellant.....	10	2	600
by appellee.....	10	2	600
stipulation may be filed in lieu of.....	10	2	600
Printing,			
estimated cost of to be deposited with clerk—when .....	13 41	2 4	604 627
form of, for records, motions and briefs.	26	....	614
motions to be printed.....	7	1	596
of statements as to jurisdiction and motions to dismiss or affirm.....	12	5	604
of motion for certiorari to correct diminution of record.....	17	....	608
of order upon death of parties, substitution, etc.....	19	1	608
of record, on petition for certiorari.....	38	7	625
of record, under supervision of clerk.....	13	3 & 5	605
of petition, brief and record, Court of Claims.....	41	4	627
where record printed below and requisite copies furnished .....	38 32	7 6	625 618
Procedendo .....	31	....	617
Procedure on motion to dismiss to be followed on motion to affirm.....	7	4	598

## RULES OF THE COURT.

589

	Rule	Par.	Page
Process, form and service of.....	6	....	596
Proof of service to be filed with clerk			
of appellant's praecipe for record.....	10	2	600
of motion to dismiss and brief.....	7	3	597
of notice of motion to dismiss.....	7	3	597
of notice of filing petition for certiorari..	38	3	623
of statement and designation.....	13	9	606
of statement as to jurisdiction.....	12	2	603
of statement opposing jurisdiction.....	12	3	603
of briefs.....	27	6	616
of petition, brief and record on petition for certiorari to Court of Claims.....	41	4	627
Public Officer, substitution of.....	19	4	610
Questions. See Certified Questions.			
Reasons moving Court to grant writs of certiorari.	38	5	624
Record,			
as return to writ of certiorari.....	43	....	628
certified copy of to accompany motion			
to bring up entire record and cause..	37	3	622
certiorari to correct diminution of....	17	....	608
in admiralty—contents of.....	10	5	601
must contain all proceedings necessary			
to hearing.....	10	3	601
on appeal, making up transcript of....	10	....	599-601
designation of parts of to be printed..	13	9	606
must include assignments of error....	10	2	600
must include opinions.....	10	2	600
must include statements and motions	10	2	600
filed pursuant to Rule 12.....	12	4	603
praecipes for, to be filed with clerk of			
lower court.....	10	2	600
to be filed in Supreme Court before			
return day—enlargement of time..	11	1	601
to be transmitted to Supreme Court			
by clerk of lower court.....	10	2	600
on petition for certiorari to Court of			
Claims.....	41	4	627
on petition for certiorari to other	38	1	622
courts .....	38	7	625
original record. See Original record.			
printed under supervision of clerk...	13	3 & 5	605
Rehearing.....	33	....	619
Resignation of public officer, substitution of suc-			
cessor.....	19	4	610

Return day,	Rule	Par.	Page
causes on appeal must be docketed			
on or before.....	11	1	601
of citation.....	10	1	599
of subpoena .....	6	3	596
Revenue cases, may be advanced.....	20	6	611
Saturday, no session on.....	47	....	630
Secretaries to Justices, not to practice as attorney neys or counsellors.....	3	....	595
Service of,			
briefs .....	27	6	616
designation of parts of record to be printed.....	13	9	606
citation.....	10	1	599
interrogatories .....	15	2	607
motion to dismiss.....	7	3	597
notice of motion to dismiss.....	7	3	597
notice of filing of petition for certi- orari.....	38	3	623
petition, brief and record, Court of Claims cases.....	41	4	627
petition, brief and record on certi- orari.....	38	3	623
praecipes for record.....	10	2	600
process.....	6	2	596
statement as to jurisdiction.....	12	2	603
statement of points to be relied upon.	13	9	606
statement opposing jurisdiction and motion to dismiss or affirm.....	12	3	603
subpoena .....	6	3	596
Sessions, none on Saturday.....	47	....	630
Special findings of fact, may be requested of Court of Claims.....	41	....	626-627
Specification of errors, to be included in brief of appellant or petitioner.....	27	2	614
Sponsor of applicant for admission to bar must be member of Supreme Court bar.....	2	3	594
statement to be made by.....	2	3	594
State Courts, review of, decisions of,			
on appeal .....	46	2	630
on certiorari.....	38	....	622-625
Statement as to jurisdiction on appeal,			
contents of.....	12	1	602
failure to file may cause dismissal...	12	6	604

	Rule	Par.	Page
Statement as to jurisdiction on appeal—Contd.			
service of.....	12	2	603
when and where filed.....	12	1 & 2	602-603
Statement of case, to be included in brief of ap- pellant or petitioner.....	27	2	614
Statement of points to be relied upon.....	13	9	606
Statement required of applicants for admission to bar, contents of.....	2	2	594
Stay of execution,			
pending appeal, by whom al- lowed .....	36	1	620
pending application for certi- orari .....	38	6	625
Stipulation as to contents of record on appeal, may be filed in lieu of praecipes for record.....	10	2	600
to dismiss in vacation.....	35	....	620
to pass not recognized.....	20	10	612
Submission of, cases on briefs.....	25	....	613-614
Subpoena, service of.....	6	3	596
Substitution. See Death of Party.			
Suggestion of death of party.....	19	....	608-610
Summary docket,			
hearing of causes on.....	7	5	598
20		11	612
transfer to .....	7	5	598
Supersedeas,			
bonds, amount of.....	36	2	621
on appeal.....	36	....	620-621
on certiorari.....	38	6	625
Table of fees .....	32	6	618
Time,			
allowed for argument of motions when es- pecially assigned therefor.....	7	2	597
allowed for oral argument of cases,			
regular docket.....	28	4	616
certified questions .....	28	5	616
summary docket .....	28	6	616
for issuance of mandates.....	34	....	620
for service of subpoena.....	6	3	596
for distribution of motions to dismiss....	7	3	597
for distribution of petitions for certiorari to Court of Claims.....	41	5	627

Time—Continued.	Rule	Par.	Page
for distribution of petitions for certiorari to other courts.....	38	4	624
for distribution of statements as to jurisdiction.....	12	3	603
when appellant must file statement as to jurisdiction.....	12	1	602
within which appellant must file statement of points and designation of record....	13	9	606
within which appellee may file praecipe for record—may be enlarged.....	10	2	600
within which appellee may file statement opposing jurisdiction.....	12	3	603
within which to docket case and file record on appeal.....	11	1	601
within which to file brief opposing petition for certiorari .....	38	3 & 3a	623-624
within which to file briefs opposing motions to dismiss.....	7	3	597
within which to file cross-interrogatories in admiralty.....	15	2	607
within which to file designations of parts of record to be printed.....	13	9	606
within which to file petition for certiorari.	38	2	623
within which to file petition for rehearing .....	33	....	619
within which to make deposit for printing, costs, etc.....	13 12 41	2 5 4	604 604 627
within which to move for substitution of public officer.....	19	4	610
within which to present motion for certiorari to correct diminution of record.	17	....	608
within which to serve notice of filing certiorari .....	38	3	623
within which to suggest death of party occurring prior to application for appeal or petition for certiorari.....	19	3	609
Translations.....	14	....	607
Waiver of right to file brief opposing certiorari.	38 41	4 5	624 627
Writ of certiorari, shall not issue unless especially directed.....	43	....	628
Writ of error, abolished.....	46	2	630

## Revised Rules of the Supreme Court of the United States\*

Adopted June 5, 1928. Effective July 1, 1928.

Amended June 1, 1931, and May 31, 1932.

(The Acts of February 13, 1925, c. 229, 43 Stat. 936, January 31, 1928, c. 14, 45 Stat. 54, and April 26, 1928, c. 440, 45 Stat. 466, are printed in an Appendix.)

---

FOR REVIEW ON APPEAL SEE RULES 9, 10, 12,  
36 AND 46, AMONG OTHERS.

FOR REVIEW ON CERTIORARI SEE, AMONG  
OTHERS, RULES 38, 39, 41 AND 42.

### 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 as attorney or counsellor in any court, while he continues in office.

---

\* The rules were last published in 275 U. S., Appendix. Rule 32, par. 6, has since been amended, by order of June 1, 1931 (283 U. S. 869). The order of May 31, 1932, effective September 1, 1932, amended the following rules: Rule 2, par. 5; Rule 7, par. 3; Rule 10, pars. 1 and 2; Rule 12; Rule 13, pars. 2 and 9; Rule 38, pars. 2, 3(a), and 4; Rule 41, pars. 4 and 5; Rule 46, par. 2. The present printing includes all these amendments. For amendments of Equity, Admiralty, and Bankruptcy rules, see *ante*, pp. 570 *et seq.*

2. The clerk shall not permit any original record or paper to be taken from the office without an order from the court or one of the justices, except as provided by Rule 13, paragraph 4.

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 highest courts of the State, Territory, District, or Insular Possession to which they respectively belong, and that their private and professional characters shall appear to be good.

2. In advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, and (2) his personal statement setting out the date and place of his birth, the names of his parents, his place of residence and office address, the courts of last resort to which he has been admitted, the places where he has been a practitioner, and, if he is not a native born citizen, the date and place of his naturalization.

3. Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he knows, or after reasonable inquiry believes, the applicant possesses the necessary qualifications and has filed with the clerk the required certificate and statement.

4. Upon being admitted, each applicant shall 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.

5. Where it is shown to the court that any member of its bar has been disbarred from practice in any State,

Territory, District, or Insular Possession, or has been guilty of conduct unbecoming a member of the bar of this court, he will be forthwith suspended from practice before this court, and unless, upon notice mailed to him at the address shown in the clerk's records and to the clerk of the highest court of the State, Territory, District or Insular Possession, to which he belongs, he shows good cause to the contrary within forty days he will be disbarred.

3.

CLERKS TO JUSTICES NOT TO PRACTICE.

No one serving as a law clerk or secretary to a member of this court shall practice as an attorney or counsellor in any court while continuing in that position; nor shall he after separating from that position practice as an attorney or counsellor in this court until two years shall have elapsed after such separation.

4.

LAW LIBRARY.

1. During the sessions of the court, any gentleman of the bar having a case on the docket, and wishing to use any books in the law library, shall be at liberty, upon application to the clerk, to receive an order to take the same (not exceeding four at any one time) from the library, he becoming thereby responsible for the prompt return of the same. And if the same be not so returned he shall be responsible for, forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond two days.

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 and briefs 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.

5.

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 in matters not covered by its rules or decisions, or the laws of Congress.

6.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the given 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 such 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*.

7.

MOTIONS—INCLUDING THOSE TO DISMISS OR AFFIRM—  
SUMMARY DOCKET—MOTION DAY.

1. Every motion to the court shall be printed, and shall state clearly its object and the facts on which it is based.

2. Oral argument will not be heard on any motion unless the court specially assigns it therefor, when not exceeding one-half hour on each side will be allowed.

3. No motion by respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

A motion by appellee to dismiss an appeal will be received in advance of the court's ruling upon the jurisdictional statements only when presented in the manner provided by Rule 12, paragraph 3. When such a motion is made, the appellant shall have 20 days after service upon him within which to file in this court 40 printed copies of a brief opposing the motion, except that where his counsel resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be 25 days.

A motion by respondent to dismiss a writ of certiorari or by appellee to dismiss an appeal, after the court has ruled upon the jurisdictional statements and accompanying motions, if any (Rule 12, paragraph 5), will be received if not based upon grounds already advanced in opposition to the granting of the writ of certiorari or to the noting of jurisdiction of the appeal. Such motions, together with motions to dismiss certificates in case of questions certified, must be printed and 40 copies thereof must be filed with the clerk, accompanied by proof that a copy of the motion, and accompanying brief, if any, have been served upon counsel of record for the opposing party. The opposing party shall have 20 days from the date of such service within which to file a printed brief opposing the motion. When counsel for the opposing party resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be 25 days. Upon the filing of the opposing brief, or the expiration of the time allowed therefor, or express waiver of the right to

file, the motion and briefs thereon shall be distributed by the clerk to the court for its consideration.

The pendency of a motion to dismiss or affirm shall not preclude the placing of the cause upon the calendar of the court for oral argument or its being called for argument when reached.

4. The court will receive a motion to affirm on the ground that it is manifest that the appeal was taken for delay only, or that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. The procedure provided in paragraph 3 of this rule for motions to dismiss shall apply to and control motions to affirm. A motion to affirm may be united in the alternative with a motion to dismiss.

5. Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may, if it concludes that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to the summary docket. The hearing of causes on such docket will be expedited from time to time as the regular order of business may permit. A cause may be transferred to the summary docket on application, or on the court's own motion. See Rule 28, paragraphs 3 and 6.

6. Monday of each week, when the court is in session, shall be motion day; and motions specially assigned for oral argument shall be entitled to preference over other cases.

## 8.

### BILLS OF EXCEPTION—CHARGE TO JURY—OMISSION OF UNNECESSARY EVIDENCE

The judges of the district courts in allowing bills of exception shall give effect to the following rules:

1. No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required be-

fore the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise. See Equity Rule 75b, 226 U. S. Appendix, p. 23, as amended, 286 U. S. 570.

#### 9.

##### ASSIGNMENT OF ERRORS.

Where an appeal is taken to this court from a state court, a district court or a circuit court of appeals (see sections 237(a), 238 and 240(b) of the Judicial Code as amended February 13, 1925), the appellant shall file with the clerk of the court below, with his petition for appeal, an assignment of errors (see Rev. Stat. sec. 997), which shall set out separately and particularly each error asserted. No appeal shall be allowed unless such an assignment of errors shall accompany the petition. See Rule 36.

#### 10.

##### APPEAL—CITATION—RECORD—DESIGNATION OF PARTS TO BE INCLUDED IN TRANSCRIPT.

1. When an appeal is allowed a citation to the appellee shall be signed by the judge or justice allowing the appeal and shall be made returnable not exceeding forty days from the day of signing the citation, whether the return day fall in vacation or in term time, except in appeals from California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming and

Montana, when the time shall be sixty days. The citation must be served before the return day.

2. The clerk of the court from which an appeal to this court may be allowed, shall make and transmit to this court under his hand and the seal of the court a true copy of the material parts of the record always including the assignment of errors and any opinions delivered in the case.

To enable the clerk to perform such duty and for the purpose of reducing the size of transcripts and eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant, or his counsel, to file with the clerk of the lower court, together with proof or acknowledgment of service of a copy on the appellee, or his counsel, a *praecipe* indicating the portions of the record to be incorporated into the transcript. Should the appellee, or his counsel, desire additional portions of the record incorporated into the transcript, he or his counsel shall file with the clerk of the lower court his *praecipe*, within ten days thereafter (unless the time be enlarged by a judge of the lower court or a justice of this court), indicating the additional portions of the record desired to be included. See Equity Rules 75-77, 226 U. S. Appendix, p. 23, as amended, 286 U. S. 570.

The clerk of the lower court shall transmit to this court as the transcript of the record only the portions of the record covered by such designations.

The parties or their counsel may by written stipulation filed with the clerk of the lower court indicate the portions of the record to be included in the transcript, and the clerk shall then transmit only the parts designated in such stipulation.

In all cases the clerk shall include in the transcript all papers filed under authority of Rule 12. See Rule 12, paragraph 4.

If this court shall find that any portion of the record unnecessary to a proper presentation of the case has been

incorporated into the transcript at the instance of either party, the whole or any part of the cost of printing and the clerk's fee for supervising the printing may be ordered to be paid by the offending party.

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

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in the court from which the appeal is taken that original papers of any kind should be inspected in this court, 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 along with the usual transcript.

5. 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, findings of fact and conclusions of law thereon, opinions of the court, final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper determination of such questions.

## 11.

### DOCKETING CASES.

1. It shall be the duty of the 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, before its expiration, the order of enlargement to be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the ap-

peltee may have the cause docketed and the appeal dismissed upon producing a certificate, whether in term or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly allowed. And in no case shall the appellant be entitled to docket the cause and file the record after the appeal shall have been dismissed under this rule, unless by special leave of the court.

2. But the 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 by the appellant within the period of time prescribed by this rule, or by the appellee within forty days thereafter, the case shall stand for argument.

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

## 12.

### JURISDICTION OF THIS COURT TO REVIEW UPON APPEAL.

1. Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented. The

statement shall show that the nature of the case and of the rulings of the court were such as to bring the case within the jurisdictional provision relied on, and shall cite the cases believed to sustain the jurisdiction.

If the appeal is from an interlocutory decree of a specially constituted District Court of the United States (Judicial Code, sec. 266; U. S. C., Tit. 28, sec. 380), the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion in granting or denying the interlocutory injunction. (*Alabama v. United States*, 279 U. S. 229.)

2. If the appeal is allowed, the appellant shall serve upon the appellee within 5 days after such allowance (a) a copy of the petition for and order allowing the appeal, together with a copy of the assignments of error and of the statement required by paragraph 1 of this rule, and (b) a statement directing attention to the provisions of paragraph 3 of this rule. Proof of service of the papers required by this paragraph to be served shall be filed forthwith with the clerk of the court possessed of the record, and shall be incorporated by him in the transcript of record prepared for this court upon the appeal.

3. Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3.

4. The clerk of the court possessed of the record shall include the statements and motions, required and permitted to be filed under the provisions of this rule, in the transcript of record prepared for the use of this court on the appeal, anything in the praecipes or stipulations of the parties (Rule 10, paragraph 2) to the contrary notwithstanding.

5. After the case shall have been docketed in this court by the appellant, and the transcript of record filed (Rule 11, paragraph 1), the clerk of this court shall forthwith print the appellant's statement required by paragraph 1 of this rule and the opposing statement, and motions, if any, permitted by paragraph 3 of this rule, and the clerk shall thereupon distribute such printed papers to the court for its consideration.

At the time of docketing the case the appellant shall make such cash deposit with the clerk, in addition to such deposit as may be required under Rule 13, paragraph 1, as shall be necessary to defray the cost of printing 40 copies of his statement filed pursuant to paragraph 1 of this rule; and the appellee, upon demand, shall forthwith deposit with the clerk a sum sufficient to cover the cost of printing 40 copies of any statement or motions filed under paragraph 3 of this rule.

6. If either appellant or appellee fails to comply with the provisions of this rule, the clerk of this court shall report such failure to the court immediately so that this court may take such action as it deems proper.

### 13.

#### PRINTING RECORDS—DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND OF PARTS OF RECORD TO BE PRINTED.

1. In all cases the appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require, or otherwise satisfy him in that behalf.

2. Immediately after the designation of the parts of the record to be printed or the expiration of the time allotted therefor (see paragraph 9 of this rule), the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the

printing, and other probable fees, and shall furnish the same to the party docketing the case. If such estimated sum be not paid on or before a date designated by the clerk of this court in each case, it shall be the duty of the clerk to report that fact to the court, whereupon the cause will be dismissed, unless good cause to the contrary is shown.

3. Upon payment of the amount estimated by the clerk, thirty 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 10, paragraph 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 fees of the clerk, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fees shall exceed the estimate, the excess shall be paid to the clerk within forty days after notice thereof, and if it be not paid the matter shall be dealt with as if it were a default under paragraph 2 of this rule, as well as by rendering a judgment against the defaulting party for such excess.

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

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of a party or his surety, of having served on such party or surety a copy of the bill of fees due by him in this court, and showing that payment has not been made, an attachment shall issue against such party or surety to compel payment of such fees.

9. When the record is filed, or within five days thereafter, the appellant shall file with the clerk a definite statement of the points on which he intends to rely and of the parts of the record which he thinks necessary for the consideration thereof, with proof of service of the same on the adverse party. The adverse party, within ten days after service of the statement and designation required to be filed by appellant 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 appellant. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The statement of points intended to be relied upon and the designations of the parts of the record to be printed shall be printed by the clerk with the record. He shall, however, omit all duplication, all repetition of titles and all other obviously unimportant matter, and make proper note thereof. The court will consider nothing but the points of law so stated and the parts of the record so designated. If at the hearing it shall appear that any material part of the record has not been printed, the appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If either party 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 32, paragraph 6, shall be computed on the folios in the record as filed, and shall be in full for the performance of his duties in that regard.

## 14.

## TRANSLATIONS.

Whenever any record transmitted to this court upon appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, without a translation of such document, paper, testimony, or other proceedings, made under the authority of the lower court, or admitted to be correct, the case shall be reported by the clerk, to the end that this court may order that a translation be supplied and printed with the record.

## 15.

## FURTHER PROOF.

1. In all cases where further proof is ordered by this court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any district 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 district 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, requiring him to file cross-interrogatories within twenty days from the service of such notice.

## 16.

## OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection to the admissibility of any deposition, deed, grant, or other exhibit found in the record

as evidence shall be entertained, unless such objection was taken in the court below and entered of record. Where objection was not so taken the evidence shall be deemed to have been admitted by consent.

### 17.

#### CERTIORARI TO CORRECT DIMINUTION OF RECORD.

No *certiorari* to correct diminution of the record will be awarded in any case, unless a printed motion therefor shall be made, and the facts on which the same is founded shall be shown, if not admitted by the other party, by affidavit. All such motions must be made not later than the first motion day after the expiration of sixty days from the printing of the record, unless for special cause shown the court receives the motion at a later time.

### 18.

#### MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case, and brought up to this court for its inspection, shall be placed in the custody of the marshal at least one month before the case is heard or submitted.

2. All such models, diagrams, and exhibits of material, placed in the custody of the marshal must be taken away by the parties within forty days after the case is decided. When this is not done, it shall be the duty of the marshal to notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the marshal shall destroy them, or make such other disposition of them as to him may seem best.

### 19.

#### DEATH OF PARTY—REVIVOR—SUBSTITUTION.

1. Whenever, pending an appeal or writ of certiorari in this court, either party shall die, the proper representa-

tive in the personality or realty of the deceased, according to the nature of the case, may voluntarily come in and be admitted as a party to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representative shall not voluntarily become a party, the other party may suggest the death on the record, and on motion obtain an order that, unless such representative shall become a party within a designated time, the party moving for such order, if appellee or respondent, shall be entitled to have the appeal or writ of certiorari dismissed; and if the party so moving be appellant or petitioner he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, District or Insular Possession, in which the case originated, for three successive weeks, at least sixty days before the expiration of the time designated for the representative of the deceased party to appear.

2. When the death of a party is suggested, and the representative of the deceased does not appear by the second day of the 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 court of the United States shall desire to prosecute an appeal or writ of certiorari to this court from any final judgment or decree, rendered in that court, and at the time of applying for such appeal or writ of certiorari the other party to the suit shall be dead and have no proper representative within the jurisdiction of that court, so that the suit can not be revived in that court, but shall have a proper representative in some State, Territory or District of the United States, the party desiring such appeal or writ of certiorari may procure the same, if otherwise entitled thereto, and may have proceedings on such judgment or decree superseded or stayed in the manner allowed by law and shall thereupon proceed with such appeal or writ of certiorari

as in other cases. And within thirty days after the time when such appeal or writ of certiorari is returnable, or if the court be not then in session within ten days after it next convenes, the appellant or petitioner shall make a suggestion to the court, supported by affidavit, that such party was dead when the appeal or writ of certiorari was allowed, 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 such deceased party had a proper representative in some State, Territory or District of the United States—giving the name and character of such representative, and his place of residence; and, upon such suggestion and a motion therefor, an order may be obtained that, unless such representative shall make himself a party within a designated time the appellant or petitioner shall be entitled to open the record, and, on hearing have the judgment or decree reversed, if the same be erroneous: Provided, 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 expiration of the time designated: And provided, also, That in every such case if the representative of the deceased party does not appear by the second day of the term next succeeding said suggestion, and the measures above provided to compel his appearance have not been taken as above required, by the opposite party, the case shall abate: And provided, also, That the representative may at any time before or after the suggestion, but before such abatement, come in and be made a party and thereupon the case shall be heard and determined as in other cases.

4. Where a public officer, by or against whom a suit is brought, dies or ceases to hold the office while the suit is pending in a federal court, either of first instance or appellate, the matter of abatement and substitution is covered by section 11 of the Act of February 13, 1925. Under

that section a substitution of the successor in office may be effected only where a satisfactory showing is made within six months after the death or separation from office.

## 20.

### CALL AND ORDER OF THE DOCKET—MOTIONS TO ADVANCE.

1. Unless it otherwise orders, the court, on the first day of 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 with the argument, the case shall be continued to the next term or otherwise dealt with as provided in these rules.

2. Ten cases only shall be subject to call 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. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons supporting the motion.

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

5. Cases once adjudicated by this court upon the merits, and again brought up, may be advanced by leave of the court.

6. Revenue and other cases in which the United States is concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may be advanced by leave of the court on motion of the Attorney General.

7. Other cases may be advanced for special cause shown. When a case is advanced, under this or any other paragraph, it will be subject to hearing with any other case subsequently advanced and involving a like question, as if they were one case.

8. Two or more cases, involving the same question, may, by order of the court, be heard together, and argued as one case or on such terms as may be prescribed.

9. If, after a case has been continued under paragraph 1 of this rule, both parties desire to have it heard at the term of the continuance, they may file with the clerk their joint request to that effect accompanied by their affidavits or those of their counsel giving the reasons why they failed to present their argument when the case was called and why it should be reinstated. Such a request will be granted only when it appears to the court that there was good reason for the previous failure to proceed and that the request can be granted without prejudice to parties in other cases coming on regularly for hearing.

10. No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

11. Cases on the summary docket will be heard specially as provided in paragraph 5 of Rule 7.

## 21.

### NO APPEARANCE OF APPELLANT OR PETITIONER.

Where no counsel appears and no brief has been filed for the appellant or petitioner when the case is called for hearing, the adverse party may have the appellant or petitioner called and the appeal or writ of certiorari dismissed, or may open the record and pray for an affirmance.

## 22.

### NO APPEARANCE OF APPELLEE OR RESPONDENT.

Where the appellee or respondent fails to appear when the case is called for hearing, the court may hear argument

on behalf of the party appearing and give judgment according to the right of the case.

**23.**

**NO APPEARANCE OF EITHER PARTY.**

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

**24.**

**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, it shall be dismissed at the cost of the appellant or petitioner, unless strong cause is shown for further postponement.

**25.**

**SUBMISSION ON BRIEFS BY ONE OR BOTH PARTIES WITHOUT ORAL ARGUMENT.**

1. Any case may be submitted on printed briefs regardless of its place on the docket, if the counsel on both sides choose to submit the same in that manner, before the first Monday in May of any term. After that date cases may be submitted on briefs alone only as they are reached on the regular call.

2. When a case is reached on the regular call, if a printed brief has been filed for only one of the parties and no counsel appears to present oral argument for either party, the case will be regarded as submitted on that brief.

3. When a case is reached on the regular call and argued orally in behalf of only one of the parties, no brief for the opposite party will be received after the oral argument begins, except as provided in the next paragraph of this rule.

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

## 26.

### FORM OF PRINTED RECORDS, PETITIONS, BRIEFS, ETC.

All records, petitions, motions 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, having pages  $6\frac{1}{8}$  by  $9\frac{1}{4}$  inches and type matter  $4\frac{1}{6}$  by  $7\frac{1}{6}$  inches. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than small pica or 11-point type) adequately leaded; and the paper must be opaque and unglazed. The clerk shall refuse to receive any petition, motion or brief which has been printed otherwise than in substantial conformity to this rule.

## 27.

### BRIEFS.

1. The counsel for appellant or petitioner shall file with the clerk, at least three weeks before the case is called for hearing, forty 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 be printed as prescribed in Rule 26 and shall contain in the order here indicated—

(a) A subject index of the matter in the brief, with page references, and a table of the cases (alphabetically arranged), text books and statutes cited, with references to the pages where they are cited.

(b) A reference to the official report of the opinions delivered in the courts below, if there were such and they have been reported.

(c) If paragraph 1 of Rule 12 has not been complied with, a concise statement of the grounds on which the jurisdiction of this court is invoked, embodying all that is required to be set forth in the statement described in that paragraph.

(d) A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate page references to the printed record, e. g., (R. 12).

(e) A specification of such of the assigned errors as are intended to be urged.

(f) The argument (preferably preceded by a summary) exhibiting clearly the points of fact and of law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such statutes, federal and state, as are deemed to have an important bearing. If the statutes are long they should be set out in an appendix.

3. The counsel for an appellee or respondent shall file with the clerk forty printed copies of his brief, at least one week before the case is called for hearing—such brief to be of like character with that required of the other party, except that no specification of errors need be given, and that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side.

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, save as the court, at its option, may notice a plain error not assigned or specified.

5. When, under this rule, an appellant or petitioner is in default, the court may dismiss the cause; and when an appellee or respondent is in default, the court may decline to hear oral argument in his behalf.

6. No brief, required by this rule, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

## 28.

### ORAL ARGUMENT.

1. The appellant or petitioner shall be entitled to open and conclude the argument. 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. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

3. Two counsel, and no more, will be heard for each party, save that in cases on the summary docket (see Rule 7, paragraph 5) only one counsel will be heard on the same side.

4. In cases on the regular docket (except where questions have been certified) one hour on each side, and no more, will be allowed for the argument, unless more time be granted before the argument begins. The time allowed may be apportioned between counsel on the same side, at their discretion; but a fair opening of the case shall be made by the party having the opening and closing.

5. In cases where questions have been certified to this court three-quarters of an hour shall be allowed to each side for oral argument.

6. In cases on the summary docket one-half hour on each side, and no more, will be allowed for the argument.

## 29.

### OPINIONS OF THE COURT.

1. All opinions of the court shall be handed to the clerk immediately upon the delivery thereof. He shall cause the same to be printed and shall deliver a copy to the reporter.

2. The original opinions shall be filed by the clerk 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 he shall cause them to be bound in a substantial manner, and when so bound they shall be deemed to have been recorded.

### 30.

#### INTEREST AND DAMAGES.

1. Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated 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 was rendered.

2. In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, may be awarded upon the amount of the judgment.

3. Paragraphs 1 and 2 of this rule shall be applicable to decrees for the payment of money in cases in equity, unless otherwise specially ordered by this court.

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

### 31.

#### PROCEDENDO TO ISSUE ON DISMISSAL.

In all cases of the dismissal of any appeal or writ of certiorari in this court, the clerk shall issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, so that further proceedings may be had in such court as to law and justice may appertain. See Rules 34 and 35.

## 32.

## COSTS.

1. In all cases where any appeal or writ of certiorari shall be dismissed in this court, costs shall be allowed to the appellee or respondent unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when only the costs incident to the motion to dismiss shall be allowed.

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

3. In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, 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. No costs shall be allowed in this court either for or against the United States, except where specially authorized by statute and directed by the court.

5. 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.

6. 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, ten 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, including filing of preliminary certificate and statement, fifteen dollars.

For preparing the record or a transcript thereof for the printer, in all cases, including records presented with petitions for certiorari, 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, eight cents per folio of each one hundred words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision.

For making a manuscript copy of the record, when required under Rule 13, fifteen cents per folio of each one hundred words, but nothing in addition for supervising the printing.

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.

### 33.

#### REHEARING.

A petition for rehearing may be filed with the clerk, in term time or in vacation, within twenty-five days after judgment is entered, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session; and must be printed, briefly

and distinctly state its grounds, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Such a petition is not subject to oral argument, and will not be granted, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

### 34.

#### MANDATES.

Mandates shall issue as of course after the expiration of twenty-five days from the day the judgment is entered, irrespective of the filing of a petition for rehearing, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session. See Rules 31 and 35.

### 35.

#### DISMISSING CASES IN VACATION.

Whenever the appellant and appellee in an appeal, or the petitioner and respondent in a writ of certiorari, shall in vacation, by their attorneys of record, file with the clerk an agreement in writing that such appeal or writ shall be dismissed, specifying the terms as respects 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 such dismissal and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue on such dismissal without an order of the court. See Rules 31 and 34.

### 36.

#### APPEALS—BY WHOM ALLOWED—SUPERSEDEAS.

1. In cases where an appeal may be had from a district court to this court the same may be allowed, in term time or in vacation, by any judge of the district court,

including a circuit judge assigned thereto, or by a justice of this court. In cases where an appeal may be had from a circuit court of appeals to this court the same may be allowed, in term time or in vacation by any judge of the circuit court of appeals or by a justice of this court. In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court. The judge or justice allowing the appeal shall take the proper security for costs and sign the requisite citation and he may also, on taking the requisite security therefor, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal. See Rev. Stat., secs. 1000 and 1007, paragraph 1 of Rule 10, paragraph 2 of Rule 46, and Equity Rule 74, 226 U. S. Appendix p. 22. For stay pending application for review on writ of certiorari see Rule 38, paragraph 6.

2. Supersedeas bonds must be taken, with good and sufficient security, that the appellant shall prosecute his 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 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 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.

## 37.

QUESTIONS CERTIFIED BY A CIRCUIT COURT OF APPEALS OR  
THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(See Sec. 239 of the Judicial Code as amended by the Act  
of February 13, 1925.)

1. Where a circuit court of appeals or the Court of Appeals of the District of Columbia shall certify to this court a question or proposition of law, concerning which it desires instruction for the proper decision of a cause, the certificate shall contain a statement of the nature of the cause and of the facts on which such question or proposition of law arises. Questions of fact cannot be so certified. Only questions or propositions of law may be certified, and they must be distinct and definite.

2. If in such a cause it appears that there is special reason therefor, this court may on application, or on its own motion, require that the entire record be sent up so that it may consider and decide the whole matter in controversy as upon appeal.

3. Where application is made for direction that the entire record be sent up, the application must be accompanied by a certified copy thereof.

## 38.

REVIEW ON WRIT OF CERTIORARI OF DECISIONS OF STATE COURTS, CIRCUIT COURTS OF APPEALS AND THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(See secs. 237(b) and 240(a) of the Judicial Code as amended by the Act of February 13, 1925.)

1. A petition for review on writ of certiorari of a decision of a state court of last resort, a circuit court of appeals, or the Court of Appeals of the District of Columbia, shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court

to which the writ is asked to be directed. For printing record see paragraph 7 of this rule.

2. The petition shall contain only a summary and short statement of the matter involved and the reasons relied on for the allowance of the writ. A supporting brief may be included in the petition, but, whether so included or presented separately, it must be direct, concise and in conformity with Rules 26 and 27. A failure to comply with these requirements will be a sufficient reason for denying the petition. See *United States v. Rimer*, 220 U. S. 547; *Furness, Withy & Co. v. Yang Tsze Insurance Assn.*, 242 U. S. 430; *Houston Oil Co. v. Goodrich*, 245 U. S. 440; *Layne & Bowler Corporation v. Western Well Works*, 261 U. S. 387, 392; *Magnum Import Co. v. Coty*, 262 U. S. 159, 163; *Southern Power Co. v. North Carolina Public Service Co.*, 263 U. S. 508. Forty printed copies of the petition and supporting brief shall be filed. The petition will be deemed in time when it, the record, and the supporting brief, are filed with the clerk within the period prescribed by section 8 of the Act of February 13, 1925.

3. Notice of the filing of the petition, together with a copy of the petition, printed record and supporting brief, shall be served by the petitioner on counsel for the respondent within ten days after the filing, and due proof of service shall be filed with the Clerk. If the United States, or any of its officers, is respondent and has been represented in the court below by the Attorney General of the United States or any of his subordinates, the service of the petition, record and brief shall be made on the Solicitor General at Washington, D. C. Counsel for the respondent shall have twenty days, and where he resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, shall have twenty-five days, after notice, within which to file forty printed copies of an opposing brief, conforming to Rules 26 and 27.

(a) If the date for filing a brief in opposition falls in the summer recess, the brief may be filed within forty days after the service of the notice, but this enlargement shall not extend the time to a later date than September 10th.

4. Upon the expiration of the period for filing the respondent's brief, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, record and briefs shall be distributed by the clerk to the court for its consideration.

5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of general law in a way probably untenable or in conflict with the weight of authority; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

(c) Where the Court of Appeals of the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or ap-

plication of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court.

6. Section 8 (d) of the Act of February 13, 1925, prescribes the mode of obtaining a stay of the execution and enforcement of a judgment or decree pending an application for review on writ of certiorari. The stay may be granted by a judge of the court rendering the judgment or decree, or by a justice of this court, and may be conditioned on the giving of security as in that section provided. See Rule 36.

7. The record must be printed conformably to Rule 26, with a suitable index, and thirty copies filed with the clerk. But where the record has been printed for the use of the court below and the necessary copies as so printed are furnished, it shall not be necessary to reprint it for this court, but only to print such additions as may be necessary to show the proceedings in that court and the opinions there. When the petition is presented it will suffice to furnish ten copies of the record as printed below together with the proceedings and opinion in that court; but if the petition is granted the requisite additional printed copies must be promptly supplied, by further printing if necessary.

### 39.

#### CERTIORARI TO A CIRCUIT COURT OF APPEALS OR THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA BEFORE JUDGMENT.

(See sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925.)

Proceedings to bring up to this court on writ of certiorari a case pending in a circuit court of appeals or the Court of Appeals of the District of Columbia, before judgment is given in such court, should conform, as near as may be, to the provisions of Rule 38; and similar reasons

for granting or refusing the application will be applied. That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.

#### 40.

##### QUESTIONS CERTIFIED BY THE COURT OF CLAIMS.

(See sec. 3(a) of the Act of February 13, 1925.)

Where the Court of Claims shall certify to this court a question of law, concerning which instructions are desired for the proper disposition of a case, the certificate shall contain a statement of the case and of the facts on which such question arises. Questions of fact cannot be certified. The certification must be confined to definite and distinct questions of law.

#### 41.

##### JUDGMENTS OF THE COURT OF CLAIMS—PETITIONS FOR REVIEW ON CERTIORARI

(See sec. 3(b) of the Act of February 13, 1925.)

1. In any case in the Court of Claims where both parties request in writing, at the time the case is submitted, that the facts be specially found, it shall be the duty of that court to make and enter special findings of fact as part of its judgment.

2. In any case in that court where special findings of fact are not so requested at the time the case is submitted, a party aggrieved by the judgment may, not later than twenty days after its rendition, request the court in writing to find the facts specially; and thereupon it shall be the duty of the court to make special findings of fact in the case and, by an appropriate order, to make them a part of its judgment. The judgment shall be regarded as remaining under the court's control for this purpose.

3. The special findings required by the two preceding paragraphs shall be in the nature of a special verdict, and shall set forth the ultimate facts found from the evidence, but not the evidence from which they are found.

4. A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, judgment and opinion of the court, but not the evidence. The petition shall contain only a summary and short statement of the matter involved and the reasons relied on for the allowance of the writ, but may be accompanied by a brief to conform to Rules 26 and 27 as to form. The petition, brief and record shall be filed with the clerk and forty copies shall be printed under his supervision. The record shall be printed in the same way and upon the same terms that records on appeal are required to be printed. The estimated costs of printing shall be paid within five days after the estimate is furnished by the clerk and if payment is not so made the petition may be summarily dismissed. When the petition, brief and record are printed the petitioner shall forthwith serve copies thereof on the respondent, or his counsel of record, and shall file with the clerk due proof thereof.

5. Within twenty days after the petition, brief and record are served the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs and record, shall be distributed by the clerk to the court for its consideration.

The provision of subdivision (a) of paragraph 3 of Rule 38 shall apply to briefs in opposition to petitions for writs of certiorari to review judgments of the Court of Claims.

6. The same general considerations will control in respect of petitions for writs of certiorari to review judg-

ments of the Court of Claims as are applied to applications for such writs to other courts. See paragraph 5 of Rule 38.

#### 42.

##### JUDGMENTS OF COURT OF CUSTOMS AND PATENT APPEALS OR OF SUPREME COURT OF PHILIPPINE ISLANDS—PETITIONS FOR REVIEW ON CERTIORARI.

(See sec. 195, Judicial Code, as amended, or sec. 7 of the Act of February 13, 1925.)

Proceedings to bring up to this court on writ of certiorari a case from the Court of Customs and Patent Appeals or from the Supreme Court of the Philippines should conform, as near as may be, to the provisions of Rule 38. The same general considerations which control when such writs to other courts are sought will be applied to them.

#### 43.

##### ORDER GRANTING CERTIORARI.

Whenever application for a writ of certiorari to review a decision of any court is granted, the clerk shall enter an order to that effect, and shall forthwith mail notice of the granting of the application to the court below and to counsel of record. The order shall direct that the certified transcript of record on file here be treated as though sent up in response to a formal writ. A formal writ shall not issue unless specially directed.

#### 44.

##### RULES, COSTS, FEES, ETC., ON CERTIORARI.

Where not otherwise specially provided, the rules relating to appeals, including those relating to costs, fees and interest, shall apply, as far as may be, to petitions for, and causes heard on, certiorari.

## 45.

CUSTODY OF PRISONERS PENDING A REVIEW OF PROCEEDINGS  
IN HABEAS CORPUS.

(See Rev. Stat. sec. 765 and Act of Feb. 13, 1925, sec. 6.)

1. Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.

3. Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

4. The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard.

## 46.

## REVIEW ON APPEAL.

1. Appeals to this court from decrees in suits in equity in the district courts and in the circuit courts of appeals are not affected by the act of January 31, 1928,

or the amendatory act of April 26, 1928, both of which are copied in the appendix hereto. Such appeals, where admissible, must be sought, allowed and perfected as provided in other statutes and in the equity rules. See 226 U. S. appendix. The act of February 13, 1925, copied in the appendix hereto, shows when an appeal is admissible and when the mode of review is limited to certiorari.

2. Under the act of January 31, 1928, as amended by the act of April 26, 1928, the review which theretofore could be had in this court on writ of error may now be obtained on an appeal. But the appeal thereby substituted for a writ of error must be sought, allowed and perfected in conformity with the statutes theretofore providing for a writ of error. The appeal can be allowed only on the presentation of a petition showing that the case is one in which, under the legislation in force when the act of January 31, 1928, was passed, a review could be had in this court on writ of error. The petition must be accompanied by an assignment of errors (see Rule 9), and statement as to jurisdiction (see Rule 12), and the judge or justice allowing the appeal must take proper security for costs and sign the requisite citation to the appellee. See paragraph 1 of Rule 10 and paragraph 1 of Rule 36. The citation must be served on the appellee or his counsel and filed, with proof of service, with the clerk of the court in which the judgment to be reviewed was entered. The mode of obtaining a supersedeas is pointed out in paragraph 2 of Rule 36.

#### 47.

##### NO SESSION ON SATURDAY.

The court will not hear arguments or hold open sessions on Saturday.

#### 48.

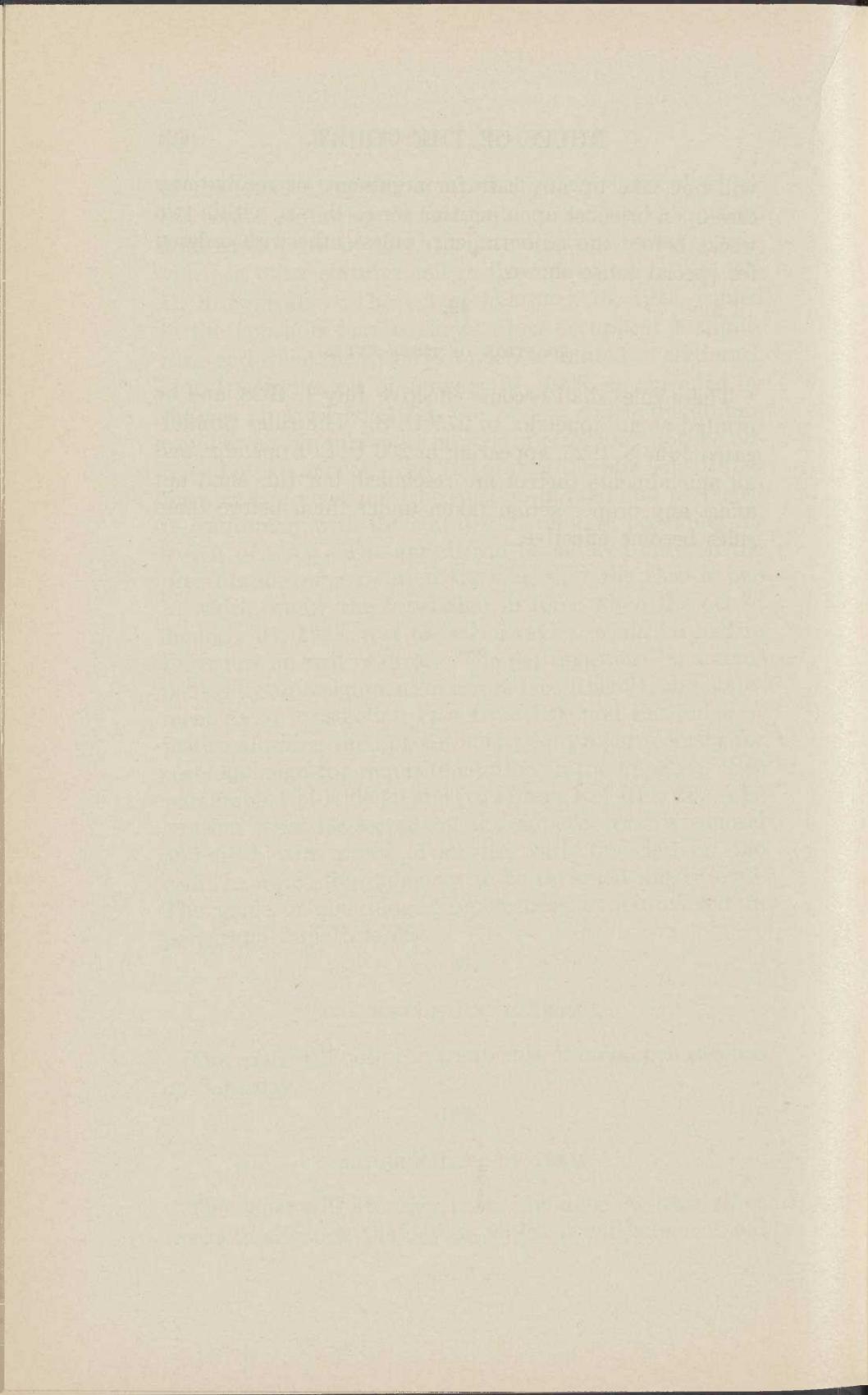
##### ADJOURNMENT OF TERM.

The court will at every term announce, at least three weeks in advance, the day on which it will adjourn, and

will not take up any case for argument, or receive any case upon briefs or upon petition for certiorari, within two weeks before the adjournment, unless otherwise ordered for special cause shown.

**49.****ABROGATION OF PRIOR RULES.**

These rules shall become effective July 1, 1928, and be printed as an appendix to 275 U. S. The rules promulgated June 8, 1925, appearing in 266 U. S. Appendix, and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.



## APPENDIX TO RULES.

---

ACT OF FEBRUARY 13, 1925.

Chapter 229, 43 Stat. 936.

Effective May 13, 1925.

---

An Act To amend the Judicial Code, and to further define the jurisdiction of the circuit courts of appeals and of the Supreme Court, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are severally, amended and reenacted to read as follows:*

SEC. 128. (a) The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error final decisions—

“First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 238.

“Second. In the United States district courts for Hawaii and for Porto Rico in all cases.

“Third. In the district courts for Alaska or any division thereof, and for the Virgin Islands, in all cases, civil and criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interest and costs, exceeds \$1,000, in all other criminal cases where the offense charged is punishable by imprisonment for a term exceeding one year or by death, and in all habeas corpus pro-

ceedings; and in the district court for the Canal Zone in the cases and mode prescribed in the Act approved September 21, 1922, amending prior laws relating to the Canal Zone.

“Fourth. In the Supreme Courts of the Territory of Hawaii and of Porto Rico, in all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interest and costs, exceeds \$5,000, and in all habeas corpus proceedings.

“Fifth. In the United States Court for China, in all cases.

“(b) The circuit court of appeals shall also have appellate jurisdiction—

<sup>1</sup> First. To review the interlocutory orders or decrees of the district courts, including the District Courts of Alaska, Hawaii, Virgin Islands, and Canal Zone, which are specified in section 129.

<sup>2</sup> Second. To review decisions of the district courts, under section 9 of the Railway Labor Act.

“(c) The circuit courts of appeal shall also have an appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act of July 1, 1898, over all proceedings, controversies, and cases had or brought in the district courts under that Act or any of its amendments, and shall exercise the same in the manner prescribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Porto Rico.

“(d) The review under this section shall be in the following circuit courts of appeal: The decisions of a district

---

<sup>1</sup> As amended by sec. 1, Act of April 11, 1928, Chapter 354, 45 Stat. 422.

<sup>2</sup> As amended by sec. 13(a), Act of May 20, 1926, Chapter 347, 44 Stat. 587.

court of the United States within a State in the circuit court of appeals for the circuit embracing such State; those of the District Court of Alaska or any division thereof, the United States district court, and the Supreme Court of Hawaii, and the United States Court for China, in the Circuit Court of Appeals for the Ninth Circuit; those of the United States district court and the Supreme Court of Porto Rico in the Circuit Court of Appeals for the First Circuit; those of the District Court of the Virgin Islands in the Circuit Court of Appeals for the Third Circuit; and those of the District Court of the Canal Zone in the Circuit Court of Appeals for the Fifth Circuit.

“(e) The circuit courts of appeal are further empowered to enforce, set aside, or modify orders of the Federal Trade Commission, as provided in section 5 of ‘An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,’ approved September 26, 1914; and orders of the Interstate Commerce Commission, the Federal Reserve Board, and the Federal Trade Commission, as provided in section 11 of ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,’ approved October 15, 1914.

“SEC. 129. Where, upon a hearing in a district court, or by a judge thereof in vacation, an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, or an application to dissolve or modify an injunction is refused, or an interlocutory order or decree is made appointing a receiver, or refusing an order to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder, an appeal may be taken from such interlocutory order or decree to the circuit court of appeals; and sections 239 and 240 shall apply to such cases in the circuit courts of appeals as to other cases therein: *Provided*, That the appeal to the circuit court of appeals must be applied for within thirty days from the entry of such order or decree,

and shall take precedence in the appellate court; and the proceedings in other respects in the district court shall not be stayed during the pendency of such appeal unless otherwise ordered by the court, or the appellate court, or a judge thereof: *Provided, however,* That the district court may, in its discretion, require an additional bond as a condition of the appeal."

<sup>3</sup>(a) In all cases where an appeal from a final decree in admiralty to the circuit court of appeals is allowed an appeal may also be taken to said court from an interlocutory decree in admiralty determining the rights and liabilities of the parties: *Provided,* That the same is taken within fifteen days after the entry of the decree: *And provided further,* That within twenty days after such entry the appellant shall give notice of the appeal to the appellee or appellees; but the taking of such appeal shall not stay proceedings under the interlocutory decree unless otherwise ordered by the district court upon such terms as shall seem just.

<sup>4</sup>(b) That when in any suit in equity for the infringement of letters patent for inventions, a decree is rendered which is final except for the ordering of an accounting, an appeal may be taken from such decree to the circuit court of appeals: *Provided,* That such appeal be taken within thirty days from the entry of such decree or from the date of this act; and the proceedings upon the accounting in the court below shall not be stayed unless so ordered by that court during the pendency of such appeal.

SEC. 237. (a) 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 the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of

---

<sup>3</sup> Act of April 3, 1926, Chapter 102, 44 Stat. 233.

<sup>4</sup> Act of February 28, 1927, Chapter 228, 44 Stat. 1261.

the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

“(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

“(c) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded

and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed: *Provided*, That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 1010 of the Revised Statutes."

"SEC. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

"(1) Section 2 of the Act of February 11, 1903, 'to expedite the hearing and determination' of certain suits brought by the United States under the antitrust or interstate commerce laws, and so forth.

"(2) The Act of March 2, 1907, 'providing for writs of error in certain instances in criminal cases' where the decision of the district court is adverse to the United States.

"(3) An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, 'The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.'

"(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set

aside orders of the Interstate Commerce Commission other than for the payment of money.

"(5) Section 316 of 'An Act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes' approved August 15, 1921."

"SEC. 239. In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal."

SEC. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

"(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the

instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

"(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section."

<sup>5</sup> SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and under section 11 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply.

SEC. 3. (a) That in any case in the Court of Claims, including those begun under section 180 of the Judicial Code, that court at any time may certify to the Supreme Court any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the cause; and thereupon the Supreme Court may give appropriate instructions on the questions certified and transmit the same to the Court of Claims for its guidance in the further progress of the cause.

(b) In any case in the Court of Claims, including those begun under section 180 of the Judicial Code, it shall be competent for the Supreme Court, upon the petition of either party, whether Government or claimant, to require, by certiorari, that the cause, including the findings of fact and the judgment or decree, but omitting the evidence, be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought there by appeal.

---

<sup>5</sup> As amended by sec. 13(b) of Act of May 20, 1926, Chapter 347, 44 Stat. 587.

(c) All judgments and decrees of the Court of Claims shall be subject to review by the Supreme Court as provided in this section, and not otherwise.

SEC. 4. That in cases in the district courts wherein they exercise concurrent jurisdiction with the Court of Claims or adjudicate claims against the United States the judgments shall be subject to review in the circuit courts of appeals like other judgments of the district courts; and sections 239 and 240 of the Judicial Code shall apply to such cases in the circuit courts of appeals as to other cases therein.

SEC. 5. That the Court of Appeals of the District of Columbia shall have the same appellate and supervisory jurisdiction over proceedings, controversies, and cases in bankruptcy in the District of Columbia that a circuit court of appeals has over such proceedings, controversies, and cases within its circuit, and shall exercise that jurisdiction in the same manner as a circuit court of appeals is required to exercise it.

SEC. 6. (a) In a proceeding in habeas corpus in a district court, or before a district judge or a circuit judge, the final order shall be subject to review, on appeal, by the circuit court of appeals of the circuit wherein the proceeding is had. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit that a district judge has within his district; and the order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) In such a proceeding in the Supreme Court of the District of Columbia, or before a justice thereof, the final order shall be subject to review, on appeal, by the Court of Appeals of that District.

(c) Sections 239 and 240 of the Judicial Code shall apply to habeas corpus cases in the circuit courts of appeals and in the Court of Appeals of the District of Columbia as to other cases therein.

(d) The provisions of sections 765 and 766 of the Revised Statutes, and the provisions of an Act entitled "An Act restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings," approved March 10, 1908, shall apply to appellate proceedings under this section as they heretofore have applied to direct appeals to the Supreme Court.

SEC. 7. That in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds \$25,000, or wherein the title or possession of real estate exceeding in value the sum of \$25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review.

SEC. 8. (a) That no writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months: *Provided*, That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court.

(b) Where an application for a writ of certiorari is made with the purpose of securing a removal of the case to the Supreme Court from a circuit court of appeals or the Court of Appeals of the District of Columbia before the court wherein the same is pending has given a judg-

ment or decree the application may be made at any time prior to the hearing and submission in that court.

(c) No writ of error or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree.

(d) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to apply for and to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of good and sufficient security, to be approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

SEC. 9. That in any case where the power to review, whether in the circuit courts of appeals or in the Supreme Court, depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record, may be shown and ascertained by the oath of a party to the cause or by other competent evidence.

SEC. 10. That no court having power to review a judgment or decree of another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out; but where such error occurs the same shall be disregarded and the court shall proceed as if in that regard its power to review were properly invoked.

SEC. 11. (a) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

(b) Similar proceedings may be had and taken where an action, suit, or proceeding brought by or against an officer of a State, or of a county, city, or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.

(c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have.

SEC. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided*, That this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock.

SEC. 13. That the following statutes and parts of statutes be, and they are, repealed:

Sections 130, 131, 133, 134, 181, 182, 236, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, and 252 of the Judicial Code.

Sections 2, 4, and 5 of "An Act to amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March 3, 1911," approved January 28, 1915.

Sections 2, 3, 4, 5, and 6 of "An Act to amend the Judicial Code, to fix the time when the annual term of the Supreme Court shall commence, and further to define the jurisdiction of that court," approved September 6, 1916.

Section 27 of "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August 29, 1916.

So much of sections 4, 9, and 10 of "An Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, as provides for a review by the Supreme Court on writ of error or appeal in the cases therein named.

So much of "An Act restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings," approved March 10, 1908, as permits a direct appeal to the Supreme Court.

So much of sections 24 and 25 of the Bankruptcy Act of July 1, 1898, as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named.

So much of "An Act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917, as permits a direct review by the Supreme Court of cases in the courts in Porto Rico.

So much of the Hawaiian Organic Act, as amended by the Act of July 9, 1921, as permits a direct review by the Supreme Court of cases in the courts in Hawaii

So much of section 9 of the Act of August 24, 1912, relating to the government of the Canal Zone as designates the cases in which, and the courts by which, the judgments and decrees of the district court of the Canal Zone may be reviewed.

Sections 763 and 764 of the Revised Statutes.

An Act entitled "An Act amending section 764 of the Revised Statutes," approved March 3, 1885.

An Act entitled "An Act to prevent the abatement of certain actions," approved February 8, 1899.

An Act entitled "An Act to amend section 237 of the Judicial Code," approved February 17, 1922.

An Act entitled "An Act to amend the Judicial Code in reference to appeals and writs of error," approved September 14, 1922.

All other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith.

SEC. 14. That this Act shall take effect three months after its approval; but it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to a review, or the mode or time for exercising the same, as respects any judgment or decree entered prior to the date when it takes effect.

Approved, February 13, 1925.

---

ACT OF JANUARY 31, 1928.

Chapter 14, 45 Stat. 54.

An Act In reference to writs of error.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.*

SEC. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts.

---

ACT OF APRIL 26, 1928.

Chapter 440, 45 Stat. 466.

An Act To amend section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

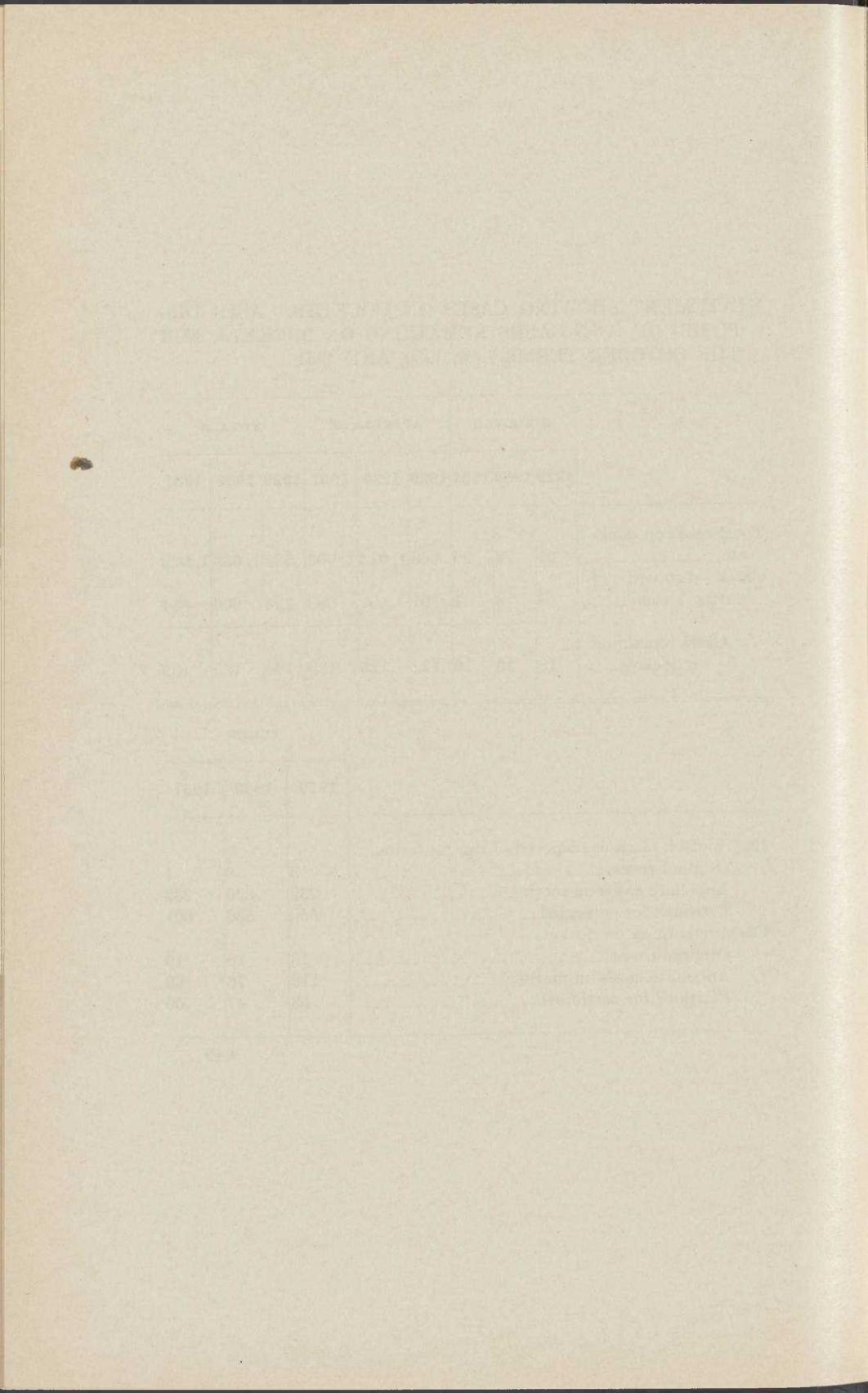
"SEC. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."



STATEMENT SHOWING CASES ON DOCKETS, CASES DISPOSED OF, AND CASES REMAINING ON DOCKETS, FOR THE OCTOBER TERMS 1929, 1930, AND 1931

	ORIGINAL			APPELLATE			TOTALS		
	1929	1930	1931	1929	1930	1931	1929	1930	1931
Total cases on dockets-----	21	24	20	963	1,015	1,003	984	1,039	1,023
Cases disposed of during terms-----	3	8	1	791	892	883	794	900	884
Cases remaining on dockets-----	18	16	19	172	123	120	190	139	139

	TERMS		
	1929	1930	1931
Distribution of cases disposed of during terms:			
Original cases-----	3	8	1
Appellate cases on merits-----	232	326	282
Petitions for certiorari-----	559	566	601
Cases remaining on dockets:			
Original cases-----	18	16	19
Appellate cases on merits-----	119	76	60
Petitions for certiorari-----	53	47	60



## INDEX.

---

**ABANDONMENT.** See **Workmen's Compensation Acts**, 2.

**ADMINISTRATIVE DECISIONS.**

*Enjoining Enforcement.* Suit in federal court premature if application to state court having jurisdiction by suit in equity to revise administrative order in a legislative way has not been made. *Porter v. Investors Syndicate*, 461.

**ADJOURNMENT.** See **Constitutional Law**, II, 1.

**ADMIRALTY.** See **Rules**.

*Limited Liability.* Restraint of action in state court when right to limit is there questioned. *Ex parte Green*, 437.

**AGENCY.** See **Interstate Commerce Acts**, 4.

**ANTI-TRUST ACTS.** See **Constitutional Law**, II, 2-3; **Jurisdiction**, I, 2.

1. "Trade," not limited to buying, selling or exchanging commodities; it may have a broader sense. *Atlantic Dyers & Cleaners v. United States*, 427.

2. *District of Columbia*. Restraints of purely local trade come within § 3 of Sherman Act. *Id.*

3. *Agreement of Cleaners, Dyers and Renovators of Clothes* to fix prices and allot customers, *held* in restraint of "trade." *Id.*

4. *Injunction. Modification. Packers' Consent Decree.* Modification of consent decree enjoining packers from retailing meats and trading in groceries, so as to permit wholesaling of groceries, denied. *United States v. Swift & Co.*, 106.

**APPEAL.** See **Jurisdiction**, I, 3, 4, 5, 9-11; II, 3-5; III, 1-3; **Procedure**.

**APPOINTMENT.** See **Senate**.

**ATTORNEY'S FEES.** See **Costs; Fraud**.

**AUTOMOBILES.** See **Constitutional Law**, III, 2-3; IV, 1-2; VIII, (B), 5-6, 10; VIII, (C), 4-8; **Criminal Law**, 1; **Customs Laws**, 2-4; **Highways**, 1-3; **Statutes**, 9-10.

**BANKRUPTCY.** See *Rules*.

*Summary Proceeding. Consent.* Issues in proceeding to set aside voidable preferences under § 60 (b), ordinarily triable in plenary suit, may be tried summarily before referee if parties consent; referee is "court" within §§ 23 (b) and 60 (b). *MacDonald v. Plymouth County Trust Co.*, 263; *Page v. Arkansas Natural Gas Co.*, 269.

**BANKS.**

1. *Relation* between bank and depositor is that of debtor and creditor. *Blakey v. Brinson*, 254.
2. *Insolvency. Priority.* Mere debiting of depositor's account for purchase of bonds did not create trust; depositor remained general creditor only. *Id.*

**BILLS.** See *Constitutional Law*, II, 1.**BILLS OF EXCEPTIONS.** See *Jurisdiction*, III, 3.

*Filing Out of Time. Agreement.* Bill held adequate and properly incorporated in the record, though signed by judge out of time. *Taylor v. United States*, 1.

**BLUE SKY LAWS.**

1. *Legislative Functions* of Commissioner and reviewing courts under Montana statute. *Porter v. Investors Syndicate*, 461.
2. *Id.* Power of state court to stay enforcement of Commissioner's order, by interlocutory injunction. *Id.*

**CARRIERS.** See *Constitutional Law*, III, 2, 3; VIII, (B), 6; *Employers Liability Act*; *Interstate Commerce Acts*; *Statutes*, 9-10.**CERTAINTY.** See *Constitutional Law*, VIII, (B), 2-4; *Highways*, 3; *Statutes*, 8-11.**CERTIORARI.** See *Jurisdiction*, II, 2.**CIRCUIT COURTS OF APPEALS.** See *Jurisdiction*, III.**CITIZENS.** See *International Law*; *Parties*; *Taxation*, IV, 5.**CLEANING AND DYEING BUSINESS.** See *Antitrust Acts*, 3.**COLORADO.** See *Waters*.**COMMERCE.** See *Constitutional Law*, III, 1-7.**COMMISSION MERCHANTS.** See *Interstate Commerce Acts*, 8.**CONFLICT OF LAWS.**

See *Bradford Electric Lt. Co. v. Clapper*, 145.

**CONGRESS.** See **Constitutional Law; Senate.**

*Signing of Bills* by President after adjournment of Congress. *Edwards v. United States*, 482.

**CONSENT.** See **Bankruptcy; Senate**, 3.

**CONSERVATION.** See **Constitutional Law**, VIII, (B), 7-8.

**CONSIGNEE.** See **Interstate Commerce Acts**, 7.

**CONSTITUTIONAL LAW.** See **Courts**, 2; **Injunctions**, 1; **Intoxicating Liquors**; **Senate**, 2; **Statutes**, 5-6, 12; **Taxation**, III; IV.

I. In General, p. 653.

II. Legislative Power, p. 654.

III. Commerce Clause, p. 654.

IV. Contract Clause, p. 655.

V. Full Faith and Credit Clause, p. 655.

VI. Fourth Amendment, p. 655.

VII. Fifth Amendment, p. 655.

VIII. Fourteenth Amendment.

(A) In General, p. 656.

(B) Due Process Clause, p. 656.

(C) Equal Protection Clause, p. 657.

Delegation of Legislative Power. See **Texas**.

Copyright. See this title, I, 9.

**I. In General.**

1. *Validity of Statute.* Tested by its effect rather than form.

*Gregg Dyeing Co. v. Query*, 472.

2. *Id.* *Related Statutes Considered.* Effect of questioned statute may depend upon resultant of that and other statutes. *Id.*

3. *Id.* Conclusive effect of state court ruling that several statutes must be taken together. *Id.*

4. *Attacking Statute.* Possibility of invasion of constitutional rights under statute not ground for injunction in absence of action or threat of it. *Continental Baking Co. v. Woodring*, 352.

5. *Construction of Statute.* Should favor constitutionality if possible. *Porter v. Investors Syndicate*, 461.

6. *Id.* In passing on constitutionality of state tax this Court is concerned not with designation of tax but only with its practical operation. *Lawrence v. Mississippi Tax Comm.*, 276.

7. *Presumption of Constitutionality.* Court can not assume that state court will construe state statute so as to render it unconstitutional. *Utah Power & L. Co. v. Pfost*, 165.

**CONSTITUTIONAL LAW**—Continued.

8. *Evading Federal Question.* Constitutional question properly raised in state court may not be evaded by decision on non-federal ground that is unsubstantial or illusory. *Id.*

9. *Instrumentalities of Government. Immunity from Taxation.* Copyrights not federal instrumentalities; income therefrom not immune from state taxation. *Fox Film Corp. v. Doyal*, 123.

**II. Legislative Power.** See **Senate**.

1. *Signing of Bills.* Under Art. I, § 7, of the Constitution, a bill signed by the President within ten days (Sundays excepted) after it was presented to him, but after the final adjournment of the Congress that passed it, becomes a law. *Edwards v. United States*, 482.

2. *District of Columbia.* Plenary character of power over District of Columbia vested in Congress by Const., Art. I, § 8, cl. 17, and applied in § 3 of Sherman Antitrust Act, as compared with the limited power to regulate commerce (Const., Art. I, § 8, cl. 3) on which § 1 of that Act is based. *Atlantic Cleaners & Dyers v. United States*, 427.

3. *Id. Restraint of Trade.* Congress may forbid even when the trade is purely local in the District. *Id.*

**III. Commerce Clause.** See *supra*, II, 2.

1. *Power of States.* Proration orders under Oklahoma Curtailment Act, applying to production of petroleum but not to sales or transportation, held consistent with commerce clause. *Champlin Refining Co. v. Corporation Commission*, 210.

2. *Id. Motor Vehicles* in interstate commerce. Size and weight subject to regulation by each State, in the absence of national legislation. *Sproles v. Binford*, 374.

3. *Carriers by Motor; License; Insurance.* State may condition use of highways by requiring such carriers to obey reasonable regulations, pay fee and tax and file insurance policy as security against injuries by negligence to persons and property other than the passengers and goods carried. *Continental Baking Co. v. Woodring*, 352.

4. *Gasoline Tax.* Validity of when imposed on those who import for their own local use. *Gregg Dyeing Co. v. Query*, 472.

5. *Id. Discrimination* obviated by other laws imposing like tax, in effect, on all other local users through tax on local sales. *Id.*

**CONSTITUTIONAL LAW—Continued.**

6. *State Taxation. Electricity.* Statute of Idaho imposing license tax on production of electrical energy for sale, though transmitted and sold to consumers in other State, valid; certainty and validity of tax not affected by fact that amounts of electricity transmitted to other States may have to be ascertained as element in computation. *Utah Power & Light Co. v. Pfost*, 165.

7. *Intoxicating Liquors.* Power of State to forbid importation though licensed by Federal Government. *McCormick & Co. v. Brown*, 131.

**IV. Contract Clause.**

1. *Police Power vs. Private Contracts.* Size and weight of motor vehicles on state highways subject to state regulation, though performance of contracts of carriage may be thereby interfered with. *Sproles v. Binford*, 374.

2. *Id.* Contracts relating to use of highways are made subject to this regulatory power. *Id.*

**V. Full Faith and Credit Clause.**

1. *What is Public Act.* State statute is "public act" within meaning of clause. *Bradford Electric Light Co. v. Clapper*, 145.

2. *Federal Courts.* Bound equally with state courts to observe mandate of full faith and credit clause. *Id.*

3. *Workmen's Compensation Acts. Defenses.* State workmen's compensation act determining contract of employment between residents and excluding action for wrongful death, must be recognized by courts in another State as defense, even when the accident is within their territorial jurisdiction. *Id.*

**VI. Fourth Amendment.**

*Unreasonable Search.* Search of garage adjacent to dwelling by prohibition officers, to secure evidence of guilt, held unreasonable. *Taylor v. United States*, 1.

**VII. Fifth Amendment.**

1. *Due Process. Appellate Court.* Duty to stay within record and not fix unanticipated liability on party, as to which he has not been heard and for which his opponent did not ask. *Rude v. Buchhalter*, 451.

2. *Id. Hearing.* Petition for rehearing and denial by reasoned opinion not equivalent to hearing in advance. *Id.*

**CONSTITUTIONAL LAW**—Continued.**VIII. Fourteenth Amendment.**(A) **In General.**

1. *State Action.* Action of executive committee of political party excluding negroes from participation in primary elections, pursuant to authority conferred not by party itself but by statute, was state action within meaning of Fourteenth Amendment. *Nixon v. Condon*, 73.

2. *Id.* Whether political parties or their committees are agencies of government within Fourteenth or Fifteenth Amendment is question which will be determined by this Court for itself. *Id.*

(B) **Due Process Clause.**

1. *Federal Question.* Refusal of state court to decide is denial of due process. *Lawrence v. Mississippi Tax Comm.*, 276.

2. *Statutes. Uncertainty.* Idaho statute levying license tax on production of electricity held not so uncertain as to require administrative action without a legislative standard. *Utah Power & L. Co. v. Pfost*, 165.

3. *Id.* In administration of revenue act involving complicated measurements and computations, fair and reasonable approximations are sufficient. *Id.*

4. *Penal Statutes. Uncertainty.* Section 9 of Oklahoma Curtailment Act, authorizing receivership for the producing properties of violators of the Act, held void for uncertainty. *Champlin Refining Co. v. Corporation Comm.*, 210.

5. *Motor Vehicles. Limitation of Load* to 7,000 pounds net, within discretion of legislature. *Sproles v. Binford*, 374.

6. *Carriers by Motor.* Power of State to regulate and tax for use of highways and to require insurance for third persons against carrier's negligence. *Continental Baking Co. v. Woodring*, 352.

7. *Conservation. Oil and Gas.* Right of owner of oil lands subject to reasonable regulation by State. *Champlin Refining Co. v. Corporation Comm.*, 210.

8. *Id.* Rule of proration prescribed by Oklahoma statute restricting production of petroleum to prevent waste, not arbitrary interference with private business; orders will not be set aside merely because the agents or employees of the commission were paid by operators. *Id.*

9. *Tax on Incomes.* State may tax incomes of its citizens though derived from sources outside State. *Lawrence v. Mississippi Tax Comm.*, 276.

**CONSTITUTIONAL LAW**—Continued.

10. *Police Power.* *Discretion of Legislature* as to means. Reasonableness the test; not scientific precision. *Sproles v. Binford*, 374.

**(C) Equal Protection Clause.**

1. *State Taxation.* *Discrimination.* State not required to maintain rigid rule of equal taxation; differences not shown to be substantial do not fall within constitutional prohibition. *Lawrence v. Mississippi Tax Comm.*, 276.

2. *Id.* Mississippi income tax law, though exempting income earned from sources without the State by corporations, and not by individuals, valid. *Id.*

3. *Id. Irrigation of Lands.* In Idaho statute taxing electricity produced for sale, exemption of that used for irrigating lands valid. *Utah Power & L. Co. v. Pfost*, 165.

4. *Motor Vehicles.* A classification allowing greater length and load to trucks making short hauls to and from common carriers than to motor trucks generally, valid. *Sproles v. Binford*, 374.

5. *Motor Vehicle Regulation.* Statute upheld limiting net load and length of trucks but inapplicable to temporary movements of farm implements and machinery and to passenger buses. *Id.*

6. *Id. Favoring Short Hauls to and from Railroads*, by allowing greater length and load, held constitutional. *Id.*

7. *Carriers by Motor.* In demanding compensation for use of highways, and regulating that use for the public safety, State may treat motor vehicles as special class. *Continental Baking Co. v. Woodring*, 352.

8. *Id.* Exemption from regulation and mileage tax under the particular statute, (1) of carriers in municipalities where they have headquarters and in respect of their operations within 25-mile zones surrounding such municipalities; (2) of transportation of livestock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle; and (3) of transportation of children to and from school—held justifiable classification. *Id.*

9. *Gasoline Tax* on those who import for their own use, not invidious where other local users are in effect taxed the same through a tax on local sales which is “passed on” to consumers. *Gregg Dyeing Co. v. Query*, 472.

**CONSTITUTIONAL LAW**—Continued.

10. *Race Discrimination. Primary Elections. State Action.* Action of state executive committee of political party, excluding negroes from participation in primary elections, pursuant to authority conferred not by party itself but by state statute, invalid. *Nixon v. Condon*, 73.

**CONTRACTS.** See **Antitrust Acts; Constitutional Law**, IV, 1-2; V, 3.

**COPYRIGHTS.** See **Constitutional Law**, I, 9; **Taxation**, IV, 2.

**CORPORATIONS.** See **Taxation**, I, 2; II, 6.

**COSTS.**

*Attorneys' Fees.* When taxable against fund held by depositary. *Rude v. Buchhalter*, 451.

**COURTS.** See **Administrative Decisions; Admiralty; Bankruptcy; Bills of Exceptions; Blue Sky Laws; Constitutional Law**, I, 6-8; VII, 1-2; **Jurisdiction**.

**CRIMINAL LAW.** See **Constitutional Law**, VIII, (B), 4; **Customs Laws**, 1-5; **Injunctions**, 2; **Statutes**, 11.

1. *Offenses. Smuggling. Intoxicating Liquors.* Driver of automobile used in smuggling intoxicating liquors into country was subject to prosecution under the Tariff Act for the unlawful importation and under the National Prohibition Act for transportation in violation thereof. *General Motors Acceptance Corp. v. United States*, 49.

2. *Prosecution of Revenue or Prohibition Agents.* Removal from state to federal court; character and amendment of petition. *Colorado v. Symes*, 510.

**CUSTOM.** See **Interstate Commerce Acts**, 7.

**CUSTOMS LAWS.**

1. *Offenses. Unlawful Importation.* Importation of intoxicating liquors without permit or payment of duties was offense under Tariff Act. *General Motors Acceptance Corp. v. United States*, 49.

2. *Forfeiture. Unlawful Importation. Intoxicating Liquors.* Vehicle carrying smuggled intoxicating liquors may be seized and forfeited under Tariff Act and provisions of Revised Statutes ancillary thereto. *General Motors Acceptance Corp. v. United States*, 49; *United States v. Commercial Credit Co.*, 63.

**CUSTOMS LAWS**—Continued.

3. *Id.* Vehicles which were implements or links in continuous process of carriage in unlawful importation of intoxicating liquors, *held* subject to forfeiture under Tariff Act though loaded after liquors had crossed border. *United States v. Commercial Credit Co.*, 63.

4. *Id.* *Effect of Prohibition Act.* Forfeiture provisions of customs laws applicable to vehicle used in unlawful importation of intoxicating liquors, not superseded by § 26 of National Prohibition Act. *General Motors Acceptance Corp. v. United States*, 49.

5. *Penalties.* *Manifest.* Vessel may be libeled under Tariff Act to enforce penalties for failure of master to produce manifest and for carrying unmanifested cargo of intoxicating liquors; § 26 of National Prohibition Act does not prevent. *General Import & Export Co. v. United States*, 70.

**DEATH.** See Statutes, 7; Workmen's Compensation Acts, 1.

**DEBTOR AND CREDITOR.** See Banks, 1.

**DELEGATIONS OF POWER.** See Texas, 2.

**DEPOSITORY.** See Costs.

**DIRECTOR GENERAL.** See Interstate Commerce Acts, 5.

**DISCRIMINATION.** See Constitutional Law, VIII, (C), 1-10; Highways, 2.

**DISTRICT OF COLUMBIA.** See Antitrust Acts, 2-3; Constitutional Law, II, 2-3.

**DOMICILE.** See Taxation, I, 1.

**DUE PROCESS.** See Constitutional Law, VII, 1-2; VIII, (B).

**DUTIES.** See Customs Laws.

**ELECTIONS.** See Constitutional Law, VIII, (C), 10.

**ELECTRICITY.** See Constitutional Law, III, 6; Taxation, IV, 4.

**ELECTRIC RAILWAYS.** See Interstate Commerce Acts, 2.

**EMPLOYERS' LIABILITY ACT.**

1. *Status of Employee.* Effect of misrepresentation of age in obtaining the employment. *Milwaukee, St. P. & S. S. M. Ry. Co. v. Borum*, 447.

2. *Negligence.* Injury sustained in stepping from caboose on trestle, by brakeman ordered to fix hot-box, held due to own negligence. *Baltimore & Ohio R. Co. v. Berry*, 272.

**EMPLOYERS' LIABILITY ACT**—Continued.

3. *Id.* Disobedience of operating orders by conductor and engineer resulting in collision, *held* proximate cause of their deaths. *Southern Ry. Co. v. Youngblood*, 313; *Southern Ry. Co. v. Dantzler*, 318.

4. *Last Clear Chance.* Evidence of negligence of conductor held insufficient to warrant recovery for death of engineer upon doctrine of last clear chance. *St. Louis Southwestern Ry. Co. v. Simpson*, 346.

**EQUAL PROTECTION.** See **Constitutional Law**, VIII, (C), 1-10.

**EQUITY.** See **Administrative Decisions**; **Costs**; **Injunctions**; **Jurisdiction**, I, 2-3; **Rules**.

**ESTATES.** See **Taxation**, III; IV, 1.

**ESTOPPEL.** See **Judgments**.

**EVIDENCE.** See **Constitutional Law**, VI; **Employers' Liability Act**, 4.

**EXEMPTIONS.** See **Constitutional Law**, 1, 9; **Interstate Commerce Acts**, 1.

**FACTORS.** See **Interstate Commerce Acts**, 8.

**FEDERAL CONTROL.** See **Interstate Commerce Acts**, 5; **Taxation**, II, 2-3.

**FINDINGS.** See **Interstate Commerce Acts**, 6; **Jurisdiction**, I, 11.

**FORFEITURE.** See **Customs Laws**, 2-4; **Shipping**.

*Vehicles. Smuggling. Intoxicating Liquors. Innocent Owner.* Government may elect to seize and forfeit vehicle under customs laws for unlawful importation, in which proceeding forfeiture may be enforced even against innocent owner; or it may seize vehicle under § 26 of National Prohibition Act for the unlawful transportation, in which case rights of innocent owner are protected. *General Motors Acceptance Corp. v. United States*, 49.

**FRANCHISE TAX.** See **Receivers**, 1; **Taxation**, IV, 6.

**FRAUD.** See **Bankruptcy**; **Employers' Liability Act**, 1.

*Fraud or Bad Faith* in maintaining a suit—as a basis for charging attorneys fees and other expenses against guilty party and making them a lien on the fund in question. *Rude v. Buchhalter*, 451.

**FULL FAITH AND CREDIT.** See **Constitutional Law**, V, 1-3; **Jurisdiction**, I, 12.

**GASOLINE.** See **Constitutional Law**, III, 4-5; VIII, (C), 9; **Taxation**, IV, 3.

**HEARING.** See **Constitutional Law**, VII, 1-2; **Jurisdiction**, I, 4.

**HIGHWAYS.** See **Constitutional Law**, III, 2-3; IV, 1-2; VIII, (B), 5-6; VIII, (C), 4-8; **Statutes**, 9-10.

1. *Kansas Motor Vehicles Act.* Construction and validity of as applied to private and public carriers. *Continental Baking Co. v. Woodring*, 352.

2. *Motor Vehicles.* Regulations of length and load may discriminate in order to foster fair distribution of traffic between railways and trucks and save highways, and may favor transportation of passengers by bus over property transportation by truck. *Sproles v. Binford*, 374.

3. *Texas Motor Vehicle Act* limiting net loads of motor trucks to 7,000 pounds, with certain exceptions, construed and held not void for uncertainty or invalid under the federal and state constitutions. *Id.*

**IDAHO.** See **Constitutional Law**, III, 6; VIII, (C), 3; **Statutes**, 6.

**IMPORTS.** See **Constitutional Law**, III, 4, 7; **Customs Laws**, 1-4.

**INCOME TAX.** See **Taxation**, II; IV, 5.

**INFANTS.** See **Personal Injuries**.

**INHERITANCE.** See **Taxation**, III; IV, 1.

**INJUNCTIONS.** See **Administrative Decisions**; **Antitrust Acts**, 4; **Blue Sky Laws**, 2; **Constitutional Law**, I, 4; **Jurisdiction**, I, 2-3; IV, 3.

1. *Execution of Statute.* Mere apprehension of unconstitutional acts not ground for injunction. *Continental Baking Co. v. Woodring*, 352.

2. *Criminal Law.* Injunction to restrain enforcement. *Champlin Refining Co. v. Corporation Comm.*, 210.

**INNOCENT OWNER.** See **Forfeiture**.

**INSOLVENCY.** See **Banks**, 2.

**INSTRUMENTALITIES OF GOVERNMENT.** See **Constitutional Law**, I, 9.

**INSURANCE.** See **Constitutional Law**, III, 3; VIII, (B), 6.

**INTERNATIONAL LAW.** See **Constitutional Law**, V; **Taxation**, I, 1.

Representation of citizens by State, in litigation. See *Wyoming v. Colorado*, 494.

**INTERPLEADER.** See *Reed v. Allen*, 191.

**INTERSTATE COMMERCE ACTS.** See **Jurisdiction**, I, 1, 11; **Taxation**, II, 2-3.

1. *Transportation Act. Construction.* Being remedial legislation, should be liberally interpreted; but exemptions should be limited to effect remedy intended. *Piedmont & Northern Ry. Co. v. Interstate Commerce Comm.*, 299.

2. *New Construction. Authorization.* Electric railway devoted largely to handling of interstate freight in connection with steam railroads held not exempt from jurisdiction of Commission as "interurban electric railway." *Id.*

3. *Unfair Practice* found to have existed at Chicago Stockyards in collection by line-haul carriers of increase in loading charge for the Stockyards Company. *Adams v. Mellon*, 397.

4. *Tariff. Agency.* A terminal company, though a common carrier, may act as agent for line haul carriers and not be entitled to collect its published charge from shippers. *Id.*

5. *Director General of Railroads* liable to shippers for losses due to "unjust and unreasonable practice." *Transportation Act*, § 206 (e). *Id.*

6. *Findings of Commission* that a terminal service of unloading is covered by the line-haul rate is conclusive in an action on a reparation order, if supported by evidence. *Id.*

7. *Unloading of Livestock.* Held, under the particular custom and practice, a transportation service rather than, as ordinarily, a duty of the consignee. *Id.*

8. *Reparation. Parties.* Commission merchants who paid unlawful charges on account of shippers may reclaim from carrier. *Id.*

9. *Id.* Objection not made to Commission nor to trial court in action to enforce reparation order, not entertained on review. *Id.*

**INTERURBAN RAILWAYS.** See **Interstate Commerce Acts**, 2.

**INTOXICATING LIQUORS.** See **Constitutional Law**, III, 7; VI; **Customs Laws**, 1-5; **Forfeiture**; **Prohibition Act**, 2; **Shipping**.

1. *State Legislation.* Provisions of National Prohibition Act relating to issue of permits did not supersede authority of State to require permits in enforcement of its legislation. *McCormick & Co. v. Brown*, 131.

2. *Id.* State may provide additional instruments to make prohibition effective. *Id.*

3. *Webb-Kenyon Act.* Act not repealed by Eighteenth Amendment or National Prohibition Act. *Id.*

4. *Id.* Shipments into State by wholesalers without permit required by state law, were within Act, though consigned to licensed local dealers. *Id.*

**IRRIGATION.** See **Constitutional Law**, VIII, (C), 3; **Waters**.

**JUDGMENTS.** See **Jurisdiction**, I, 1-4, 6-12; II, 4; III, 1-2.

*Res Judicata.* Judgment of ejectment, not appealed from, was bar to second action, though another decree on which plaintiffs in first action relied as having determined title was subsequently reversed. *Reed v. Allen*, 191.

**JURISDICTION.** See **Bankruptcy**; **Blue Sky Laws**, 1-2; **Constitutional Law**, V; **Injunctions**; **Interstate Commerce Acts**, 2, 9; **Rules**.

I. In General, p. 664.

II. Jurisdiction of this Court, p. 665.

III. Jurisdiction of Circuit Courts of Appeals, p. 665.

IV. Jurisdiction of District Courts, p. 666.

References to particular subjects under this title:

Administrative Decisions, I, 8.

Admiralty, IV, 3.

Amendment of Petition, IV, 2.

Appeal, III, 2-3.

Authentication of Record, II, 2; III, 2.

Bill of Exceptions, III, 3.

Certiorari, II, 2.

Criminal Law, IV, 1-2.

Decree, I, 10.

Equity, I, 2.

Federal Question, II, 5.

Findings, I, 11; II, 4.

Full Faith and Credit, I, 12.

Hearing, I, 4.

**JURISDICTION**—Continued.

References to particular subjects under this title—Contd.

Injunction, I, 2-3; IV, 3.  
Interstate Commerce Commission, I, 11.  
Judgment, I, 9-10.  
Justices, II, 2.  
Local Questions, I, 6-7.  
Parties, II, 1.  
Petition for Rehearing, I, 5.  
Receivers, I, 7.  
Record, I, 4.  
Removal, IV, 1-2.  
Reversal, I, 9-10.  
Scope of Review, I, 1.  
Senate, I, 13.  
State Courts, I, 6-7; IV, 3.  
States, II, 1.  
Time, II, 2.

**I. In General.**

1. *Scope of Review*, in action to enforce reparation order of Interstate Commerce Commission. *Adams v. Mellon*, 397.
2. *Injunction*. Court has power to modify injunction to adapt it to changed conditions, though decree entered by consent. *United States v. Swift & Co.*, 106.
3. *Id.* Pending interlocutory appeal. *Champlin Rfg. Co. v. Corporation Commn.*, 210.
4. *Hearing*. Appellate court should not inflict unanticipated and unclaimed liabilities based on grounds not argued and outside of the record. *Rude v. Buchhalter*, 451.
5. *Id.* *Petition for Rehearing*, and its denial in a reasoned opinion are not equivalent to a hearing in advance of decision. *Id.*
6. *Local Questions*. Conclusive effect of state court ruling that several state statutes must be taken together. *Gregg Dyeing Co. v. Query*, 472.
7. *Id.* Ruling that franchise tax is on privilege to do business and is applicable to business in hands of receiver. *Michigan v. Michigan Tr. Co.*, 334.
8. *Administrative Decisions*. Attempt to enjoin in federal court on constitutional ground is premature if administrative remedy by suit in state court having legislative functions in the matter has not been tried. *Porter v. Investors Syndicate*, 461.

**JURISDICTION**—Continued.

9. *Reversal. Scope of Power.* Appellate court reviewing one judgment has no power to reverse or modify another and independent judgment. *Reed v. Allen*, 191.
10. *Partial Reversal* leaves other parts of decree in effect with power in court below to enforce them. *Ex parte Krentler-Arnold Hinge Last Co.*, 533.
11. *Findings* of Interstate Commerce Commission, when conclusive. *Adams v. Mellon*, 397.
12. *Full Faith and Credit Clause*, binds federal courts. *Bradford Electric Co. v. Clapper*, 145.
13. *Rules of Senate.* Power of court to construe. *United States v. Smith*, 6.

**II. Jurisdiction of this Court.**

1. *Parties.* In a suit between two States to determine the relative rights of each and of their respective citizens to divert water from an interstate stream, private appropriators are represented by their respective States and need not be made parties to be bound by the decree. *Wyoming v. Colorado*, 494.
2. *Certiorari. Time Limit.* Applications to a Justice to extend time must be made first within the statutory period and then within period as extended. *Finn v. Railroad Commission*, 559; *Cresswell ex rel. Di Pierro v. Tillinghast*, 560.
3. *Improper Authentication of Record.* Reversal of Circuit Court of Appeals decision dismissing appeal, in order to permit authentication to be amended. *Chang Chow v. United States*, 530; *Yim Kim Lau v. United States*, 531.
4. *Findings. Conclusiveness.* Concurrent findings of two courts below not disturbed unless clearly erroneous. *United States v. Commercial Credit Co.*, 63.
5. *Federal Question.* Decision of can not be evaded by state court. *Utah Power & Light Co. v. Pfost*, 165; *Lawrence v. Mississippi Tax Commn.*, 276.

**III. Jurisdiction of Circuit Courts of Appeals.**

1. *Partial Reversal.* See *supra*, I, 10.
2. *Appeal.* Power to allow amended authentication of record. *Chang Chow v. United States*, 530; *Yim Kim Lau v. United States*, 531.
3. *Id. Bill of Exceptions.* *Id.*

**JURISDICTION**—Continued.

**IV. Jurisdiction of District Courts.** See *supra*, I, 1-3, 9-10, 12-13; II, 4; III, 2-3.

1. *Removal of Criminal Case*, against revenue or prohibition agent. Contents of petition. *Colorado v. Symes*, 510.

2. *Id. Amendment of Petition.* *Id.*

3. *Admiralty*. Restraint of action in state court, to protect ship-owner's right to limit liability. *Ex parte Green*, 437.

**JUSTICES.**

Power to extend time for filing application for certiorari. See **Jurisdiction**, II, 2.

**KANSAS.** See **Highways**, 1.

**LARAMIE RIVER.** See **Waters**.

**LAST CLEAR CHANCE.** See **Employers' Liability Act**, 4.

**LEASING ACT.** See **Public Lands**.

**LIENS.**

On fund to secure reimbursement of claimant or depositary for expenses of litigation, including attorneys fees. *Rude v. Buchhalter*, 451.

**LIMITATION OF LIABILITY.** See **Admiralty**.

**LIMITATIONS.**

On application for certiorari, see **Jurisdiction**, II, 2.

**LIVESTOCK.** See **Interstate Commerce Acts**, 3, 7.

**MANIFEST.** See **Customs Laws**, 5.

**MASTER.** See **Customs Laws**, 5.

**MASTER AND SERVANT.** See **Employers' Liability Act**, 1-4.

**MINES.** See **Public Lands**.

**MISREPRESENTATION.** See **Employers' Liability Act**, 1.

**MONOPOLY.** See **Antitrust Acts**.

**MONTANA.** See **Blue Sky Laws**, 1-2.

**MOTOR VEHICLES.** See **Constitutional Law**, III, 2-3; IV, 1-2; VIII, (B), 5-6; VIII, (C), 4-8; **Criminal Law**, 1; **Customs Laws**, 2-4; **Forfeiture**; **Highways**; **Prohibition Act**, 2; **Statutes**, 9-10; **Texas**, 1-2.

**NAVIGATION LAWS.** See **Shipping**.

**NEGLIGENCE.** See **Employers' Liability Act**, 2-4; **Personal Injuries**.

**NEGROES.** See **Constitutional Law**, VIII, (C), 10.

**NOMINATIONS.** See **Senate**, 3.

**OFFICERS.** See **Constitutional Law**, VIII, (B), 8; **Senate**.

**OIL AND GAS.** See **Constitutional Law**, III, 1; VIII, (B), 7-8; **Public Lands**.

*Property Rights* of landowners in oil and gas. *Champlin Refining Co. v. Corporation Commission*, 210.

**OKLAHOMA.**

*Curtailment Act.* Validity of Act of February 11, 1915, restricting production of oil and gas to prevent waste. *Champlin Refining Co. v. Corporation Commission*, 210.

**PACKERS CONSENT DECREE.** See **Antitrust Acts**, 4; **Jurisdiction**, I, 2.

**PARTIES.** See **Interstate Commerce Acts**, 8.

Representation of citizens by their States in suits between States in Supreme Court. *Wyoming v. Colorado*, 494.

**PENALTIES.** See **Customs Laws**, 2-5.

“**PENDING.**”

Interpretation of term. *Porter v. Investors Syndicate*, 461.

**PERMITS.** See **Intoxicating Liquors**, 1.

**PERSONAL INJURIES.**

*Trespassing Infant.* New Jersey statute bars recovery where child injured by cars while playing on railroad. *Erie R. Co. v. Duplak*, 440.

**POLICE POWER.** See **Constitutional Law**, I; IV; VIII.

**POLITICAL PARTIES.** See **Constitutional Law**, VIII, (A), 1-2; VIII, (C), 10.

**PREFERENCES.** See **Bankruptcy**; **Banks**, 2; **Public Lands**.

**PRESIDENT.** See **Senate**, 3.

Power to sign bill after adjournment of Congress. *Edwards v. United States*, 482.

**PRESUMPTIONS.** See **Constitutional Law**, I, 7; **Statutes**, 4.

**PRICE-FIXING AGREEMENTS.** See **Antitrust Acts**, 3.

**PRIORITY.** See **Banks**, 2.

**PROCEDURE.** See **Jurisdiction**; **Rules**; and other more specific titles.

*Separate Proceedings. Appeal from Judgments.* Where decree in interpleader suit and judgment of ejectment, based on same facts, went against party, appeals should have been taken from both. *Reed v. Allen*, 191.

**PROHIBITION ACT.** See **Constitutional Law**, III, 7; VI; **Criminal Law**, 1-2; **Customs Laws**, 1-5; **Forfeiture**; **Intoxicating Liquors**, 1-4; **Shipping**.

1. Removal of state prosecution of federal agent. See *Colorado v. Symes*, 510.

2. *Unlawful Transportation. Sale of Vehicle.* Section 26 of Prohibition Act does not supersede forfeiture provisions of customs laws relating to vehicles and vessels used in violation thereof. *General Motors Acceptance Corp. v. United States*, 49; *General Import & Export Co. v. United States*, 70.

**PUBLIC LANDS.**

*Oil Prospecting Permit.* To enjoy preference right under Leasing Act, applicant, after erecting monument and posting notice, must not only file application but must also pay application fee, within 30 days. *Hardeman v. Witbeck*, 444.

**PUBLIC OFFICERS.** See **Senate**, 3.

**RACE DISCRIMINATION.** See **Constitutional Law**, VIII, (C), 10.

**RAILROADS.** See **Constitutional Law**, VIII, (C), 6; **Employers' Liability Act**; **Interstate Commerce Acts**; **Personal Injuries**.

**RECEIVERS.** See **Constitutional Law**, VIII, (B), 4; **Taxation**, I, 2-3.

1. *Liability for Franchise Tax.* Corporation in hands of receiver appointed to continue business *held* subject to franchise tax imposed by statute construed by state court to be applicable; tax must be paid by receiver as it accrues, as expense of administration, and in preference to claims of creditors. *Michigan v. Michigan Trust Co.*, 334.

2. *Receiverships for Conservation.* Inequitable results should be avoided. *Id.*

**REHEARING.** See **Constitutional Law**, VII, 2; **Jurisdiction**, I, 4.

**REMOVAL.** Of state prosecution, see **Prohibition Act**, 1.

**REPARATIONS.** See **Interstate Commerce Acts**, 8-9; **Jurisdiction**, I, 1.

**REPEAL.** See **Statutes**, 14.

**RES JUDICATA.** See **Judgments**.

**RESTITUTION.**

*Rule of Restitution* upon reversal of judgment held inapplicable.  
*Reed v. Allen*, 191.

**RESTRAINT OF TRADE.** See **Antitrust Acts**, 1-3; **Constitutional Law**, II, 2-3.

**REVENUE OFFICERS.**

*Removal of Prosecution of.* See *Colorado v. Symes*, 510.

**REVERSAL.** See **Jurisdiction**, I, 9-10.

**RULES.** See **Senate**, 1-3.

Revised Rules of this Court and Amendments, p. 575.

Equity Rules, Amendments, p. 570.

Admiralty Rules, Amendments, p. 572.

Bankruptcy Rules, Amendments, p. 573.

**SALES.** See **Taxation**, II, 4.

**SAVING CLAUSE.** See **Statutes**, 13.

**SEARCH AND SEIZURE.** See **Constitutional Law**, VI.

**SCHOOLS.** See **Constitutional Law**, VIII, (C), 8.

**SENATE.**

1. *Rules. Construction.* Question of construction of Rules of Senate is judicial question when right of appointee to office depends upon it. *United States v. Smith*, 6.

2. *Id.* Great weight attaches to Senate's construction of its own Rules; but Court not bound by construction arrived at subsequently to events in controversy. *Id.*

3. *Id. Consent to Nominations.* Rules of Senate relating to reconsideration of vote confirming nomination did not contemplate reconsideration after ordering of immediate notification to President. *Id.*

**SHIPPING.** See **Customs Laws**, 5.

*Navigation Laws. Forfeiture.* Vessel carrying cargo of intoxicating liquors, though licensed only for fishing trade, subject to forfeiture; forfeiture under R. S. § 4377 is *in rem* and not dependent upon preliminary adjudication of personal guilt. *United States v. The Ruth Mildred*, 67.

**SMUGGLING.** See **Criminal Law**, 1; **Forfeiture**, 1.

**STATES.** See *Constitutional Law*, VIII, (A), 1-2; VIII, (B), 9-10.

**STATUTES.** See *Constitutional Law*, I, 1-7; II, 1-3; III, 1, 6; V, 1, 3; VIII, (A), 1; VIII, (B), 2-4; *Interstate Commerce Acts*, 1; *Receivers*, 1.

1. State statute as "public act" under full faith and credit clause. *Bradford Electric Light Co. v. Clapper*, 145.

2. *Construction. Words.* Popular import of words furnishes general rule for interpretation of public laws. *Woolford Realty Co. v. Rose*, 319.

3. *Id.* Construction that would engender mischief should be avoided. *Id.*

4. *Presumption* that identical words in different parts of statute have the same meaning—when not conclusive. *Atlantic Cleaners & Dyers v. United States*, 427.

5. *Limiting Acts to One Subject.* Invalidity of statute under constitutional requirement that acts must embrace but one subject which shall be expressed in the title. *Utah Power & L. Co. v. Pfost*, 165.

6. *Id. Expressing Subject in Title.* Idaho statute imposing license tax on production of electricity construed as applicable only to such as was produced for sale, which limitation was expressed in its title, and the statute therefore was not inconsistent with § 16, Art. 3 of state constitution. *Id.*

7. *Extra-Territorial Effect.* Recognition of Vermont Workmen's Compensation Act as defense to action in other State for death by wrongful act, when parties made contract of employment and resided in Vermont, did not give Act extra-territorial application. *Bradford Electric Light Co. v. Clapper*, 145.

8. *Certainty.* Statute may use ordinary term to express ideas which find adequate interpretation in common usage and understanding. *Sproles v. Binford*, 374.

9. *Certainty.* Statute regulating and taxing carriers by motor but excepting carriers operating wholly within a city or village and carriers operating within a radius of 25 miles beyond the corporate limits "of such city or any village," held not void for uncertainty. *Continental Baking Co. v. Woodring*, 352.

10. *Id. Texas Motor Vehicle Act*, limiting length of vehicles and weight of load, but more liberal to those used to transport property from point of origin "to the nearest practicable common carrier receiving or loading point or from a common carrier

**STATUTES**—Continued.

unloading point by way of the shortest practicable route to destination,"—held not void for uncertainty. *Sproles v. Binford*, 374.

11. *Certainty. Penal Statutes.* Provision of Oklahoma Curtailment Act authorizing receivership for the producing properties of violators of the Act, was penal provision and void for uncertainty. *Champlin Refining Co. v. Corporation Commission*, 210.

12. *Separable Provisions. Validity.* Provision of Oklahoma statute restricting production of petroleum to prevent waste, objected to as authorizing price fixing, was separable from valid parts, and constitutionality need not be considered. *Id.*

13. *Saving Clause.* Effect of. *Utah Power & L. Co. v. Pfost*, 165.

14. *Repeal.* Repeals by implication not favored. *General Motors Acceptance Corp. v. United States*, 49.

**STOCKYARDS.** See **Interstate Commerce Acts**, 3.**TARIFF.** See **Interstate Commerce Acts**, 4.**TARIFF ACTS.** See **Customs Laws**, 1-4.**TAXATION.** See **Constitutional Law**, I, 6, 9; III, 4-6; VIII, (B), 2-3, 6, 9; VIII, (C), 1-3, 7-9; **Receivers**, 1.

I. In General, p. 671.

II. Income Tax, p. 672.

III. Estate Tax, p. 672.

IV. State Taxation, p. 672.

**I. In General.**

1. *Domicile* as basis for taxation. *Lawrence v. Mississippi Tax Comm.*, 276.

2. *Return by Receiver.* Under Act of 1916, only receiver having complete control of all property and business of the corporation required to make return. *North American Oil Consolidated v. Burnet*, 417.

3. *Time for Return*, when income from property was collected by receiver in suit challenging owner's title and paid to owner later upon dismissal of bill. *Id.*

4. *Time for Return*, where taxpayer's right to income not completely settled due to pendency of appeal from decree in his favor. *Id.*

**TAXATION**—Continued.**II. Income Tax.** See I, 2-4, *supra*; and **Constitutional Law**, VIII, (B), 9.

1. *Basis of Computing.* Computation of gains and losses on basis of annual accounting is general principle underlying income tax statute. *Woolford Realty Co. v. Rose*, 319.

2. *What Constitutes Income. Railroads.* Amount paid railroad by Government under § 209 of Transportation Act, as guaranteed operating income for six months following federal control, was taxable income. *Texas & Pacific Ry. Co. v. United States*, 285.

3. *Id.* Payments under § 204 of Transportation Act to railroads which were not under federal control was taxable income; award held taxable as income for 1920 though not determined by Commissioner and paid until 1923. *Continental Tie & Lumber Co. v. United States*, 290.

4. *Gains. Insurance Companies.* How gain from sale or other disposition of property computed under § 204 of 1928 Act; basis of value. *MacLaughlin v. Alliance Insurance Co.*, 244.

5. *Deductions.* Taxpayer seeking allowance for losses must show that he is entitled thereto. *Woolford Realty Co. v. Rose*, 319.

6. *Deduction of Net Loss in Succeeding Year. Affiliated Corporations.* Where corporation affiliated with another in 1927 but had no net income for that year, losses of previous years not deductible in consolidated return. *Woolford Realty Co. v. Rose*, 319. See also, *Planters Cotton Oil Co. v. Hopkins*, 332.

**III. Estate Tax.**

*Deductions.* State succession taxes not deductible from gross estate under Revenue Act of 1916. *United States v. Kombst*, 424.

**IV. State Taxation.**

1. *California Inheritance Tax.* Is a succession rather than a transfer tax. *United States v. Kombst*, 424.

2. *Copyrights.* Income from taxable by State. *Fox Film Corp. v. Doyal*, 123.

3. *Gasoline Tax*, on use of imported gasoline. *Gregg Dyeing Co. v. Query*, 472.

4. *Electric Power.* Tax on production. *Utah Power & Light Co. v. Pfost*, 165.

**TAXATION**—Continued.

5. *Foreign-earned Income.* Taxable to citizen. *Lawrence v. Mississippi Tax Commission*, 276.
6. *Franchise Tax.* Liability of corporation in hands of receiver. *Michigan v. Michigan Trust Co.*, 334.

**TENANTS IN COMMON.** See **Oil and Gas.****TEXAS.**

1. *Motor Vehicle Act* construed and sustained. *Sproles v. Binford*, 374.
2. *Id.* Provision allowing Highway Department to grant special permits, for limited periods, for transportation of oversize and overweight commodities and equipment, *held* not a delegation of legislative power in violation of Art. I, § 28, of Texas Constitution. *Id.*

**“TRADE.”** See **Antitrust Acts**, 1-3.**TRANSPORTATION ACT.** See **Interstate Commerce Acts; Taxation**, II, 2-3.**TRESPASS.** See **Personal Injuries.****TRUSTS.** See **Banks**, 2; **Costs.****UNFAIR PRACTICE.** See **Interstate Commerce Acts**, 3.**VERMONT.** See **Statutes**, 7.**WASTE.**

Oklahoma statute prohibiting waste of petroleum. See *Champlin Refining Co. v. Corporation Commission*, 210.

**WATERS.** See **Constitutional Law**, VIII, (C), 3.

*Irrigation Rights.* Effect of former decree adjudicating rights in Laramie River as between Wyoming and Colorado and their citizens. *Wyoming v. Colorado*, 494.

**WEBB-KENYON ACT.** See **Intoxicating Liquors**, 3-4.**WORKMEN'S COMPENSATION ACTS.** See **Constitutional Law**, V, 3; **Courts**, 5-6; **Statutes**, 7.

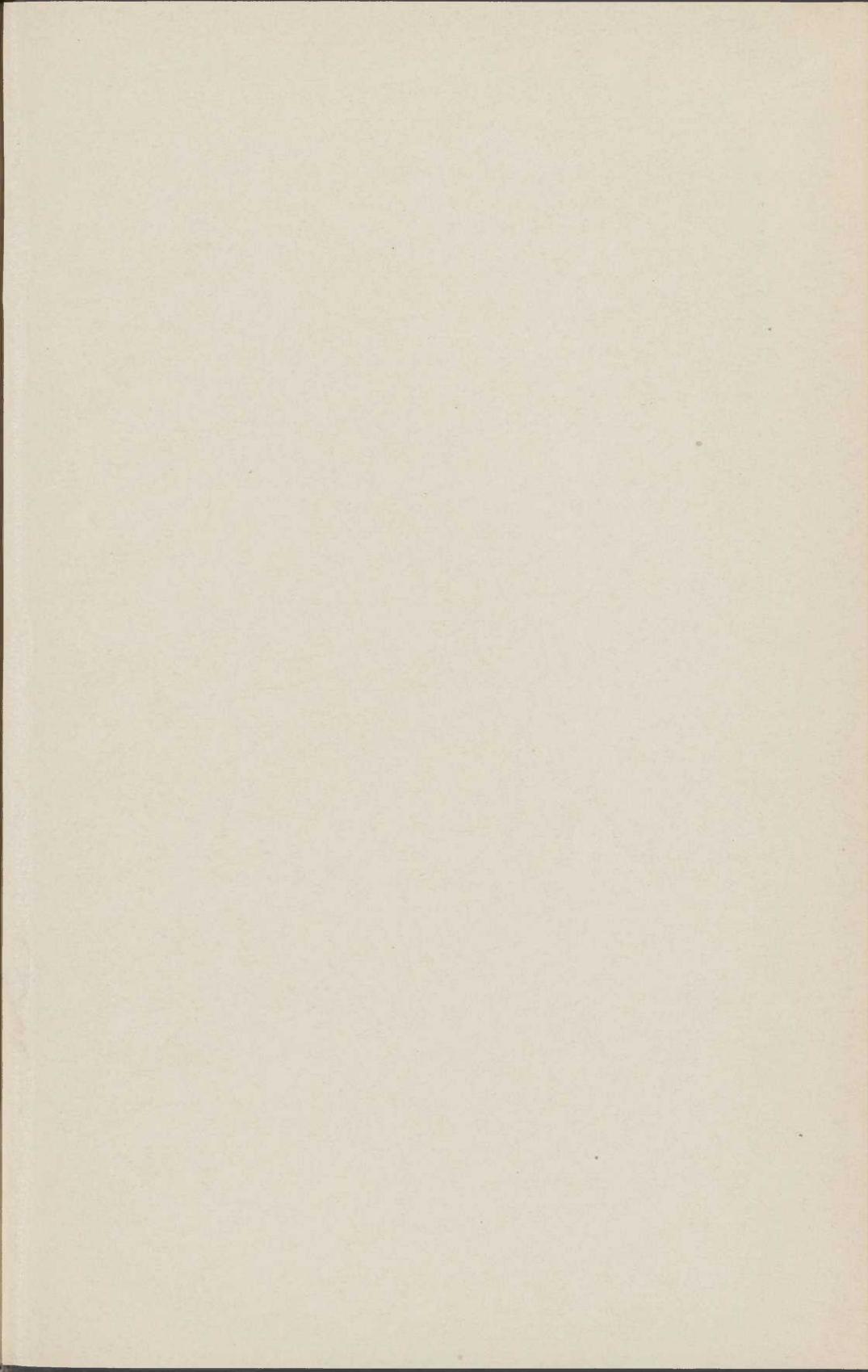
1. *Application. Injuries Outside State.* Where contract of employment was made in Vermont and parties resided there, rights must be determined by law of that State, though injury occurred in other State where suit was brought. *Bradford Electric Light Co. v. Clapper*, 145.

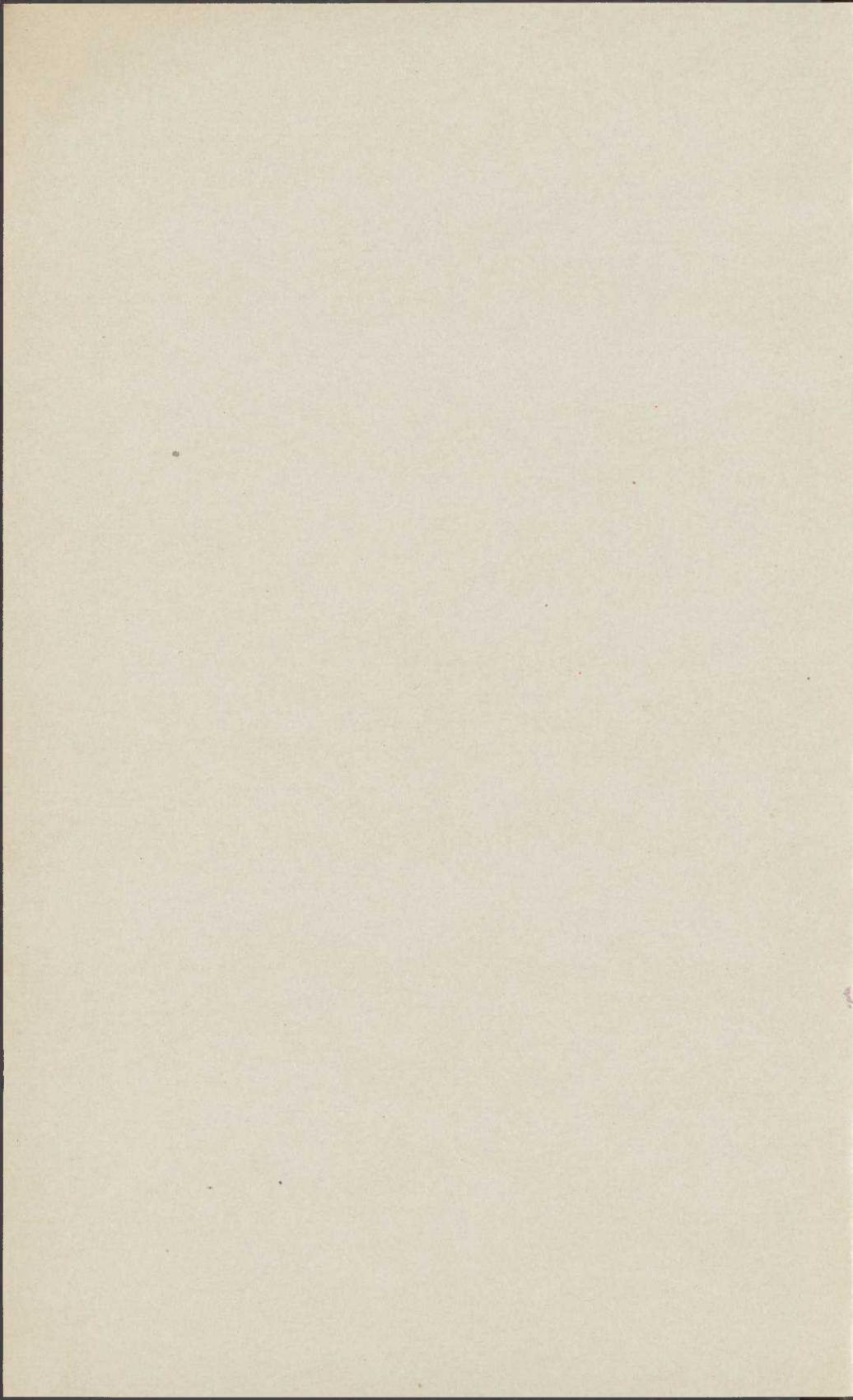
**WORKMEN'S COMPENSATION ACTS**—Continued.

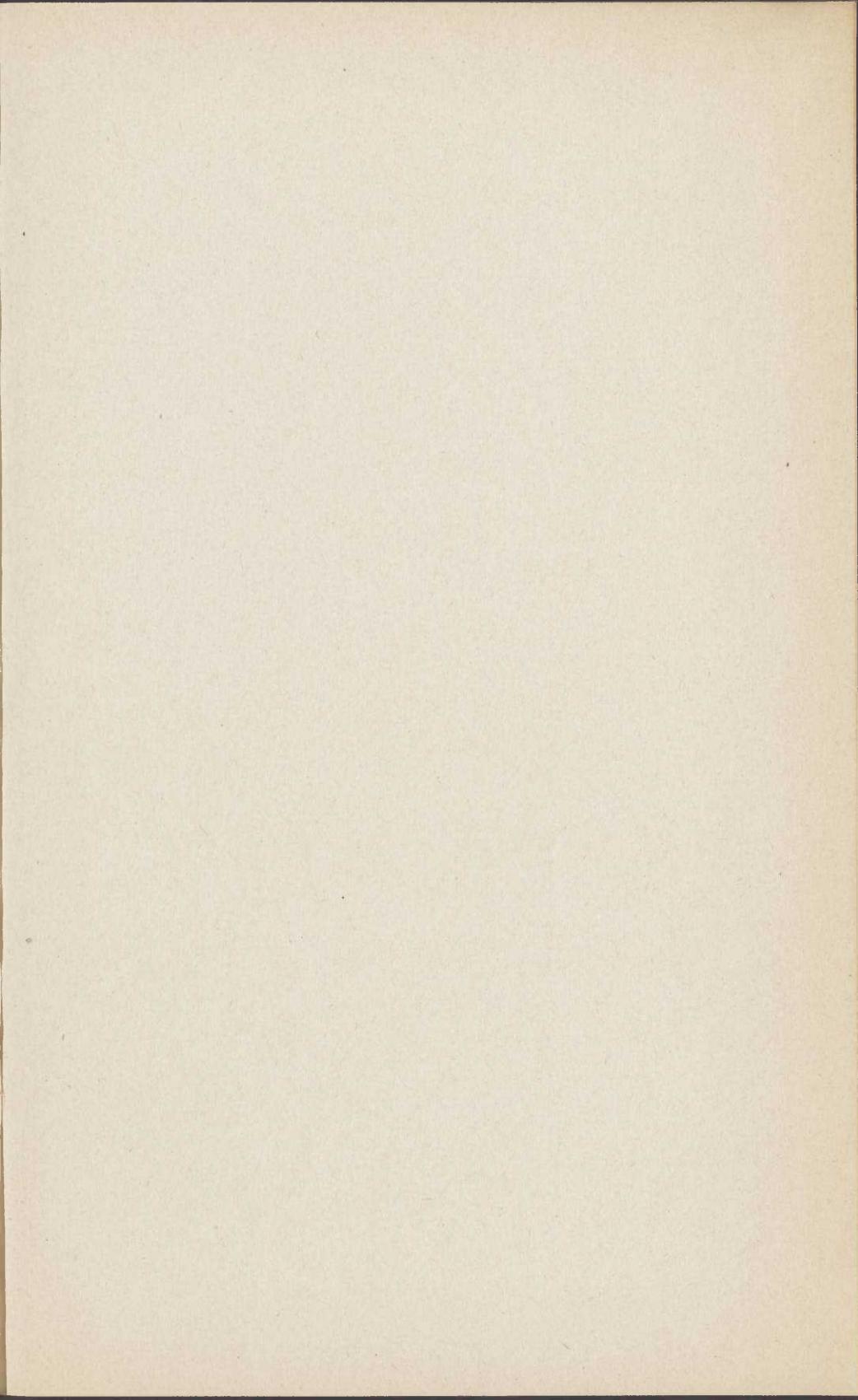
2. *Rights. Abandonment.* Acceptance of Act of one State by employer resident in other held not abandonment of defense under Act of such other State in respect of employee injured while casually working in first State. *Id.*

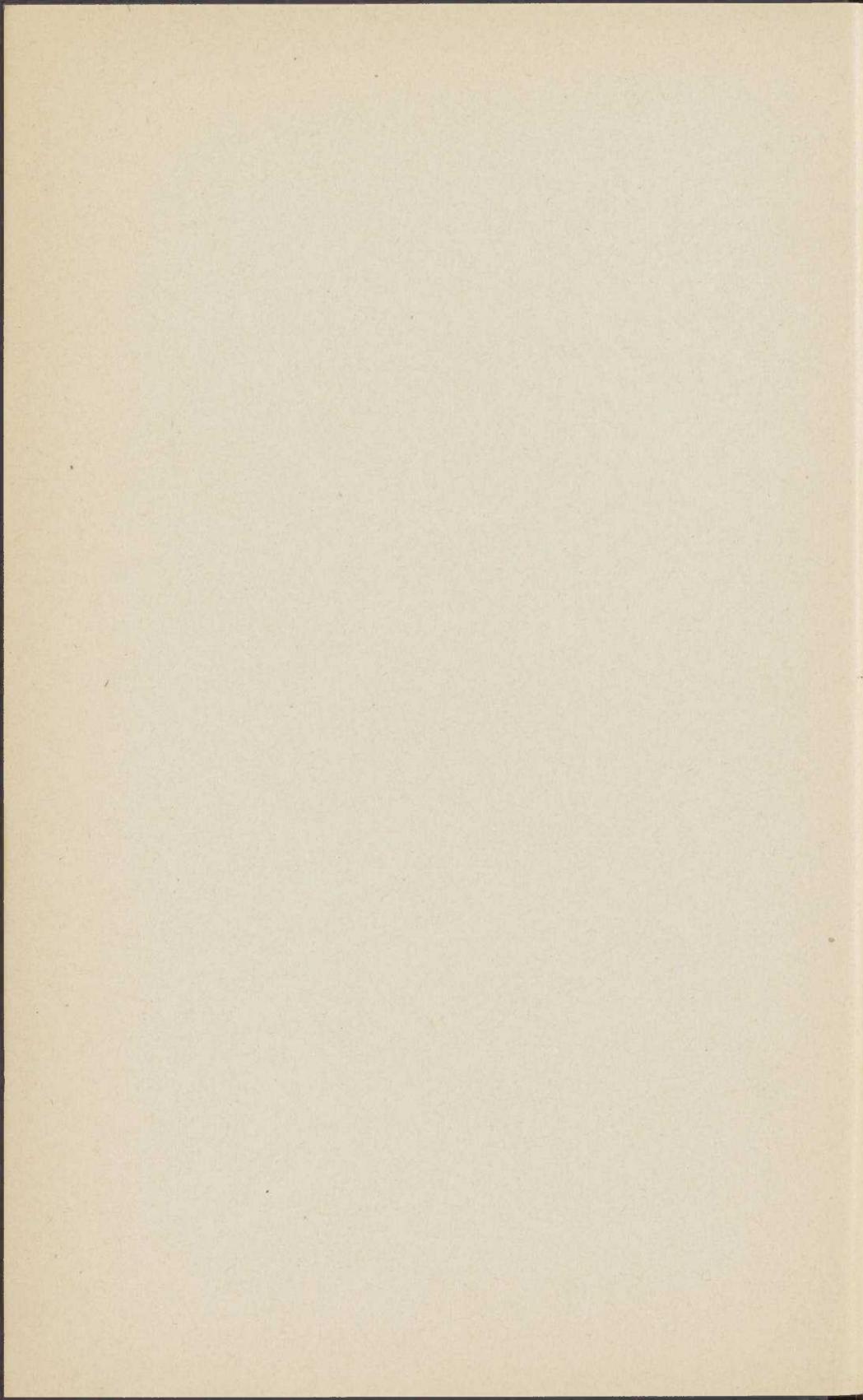
**WYOMING.** See **Waters.**

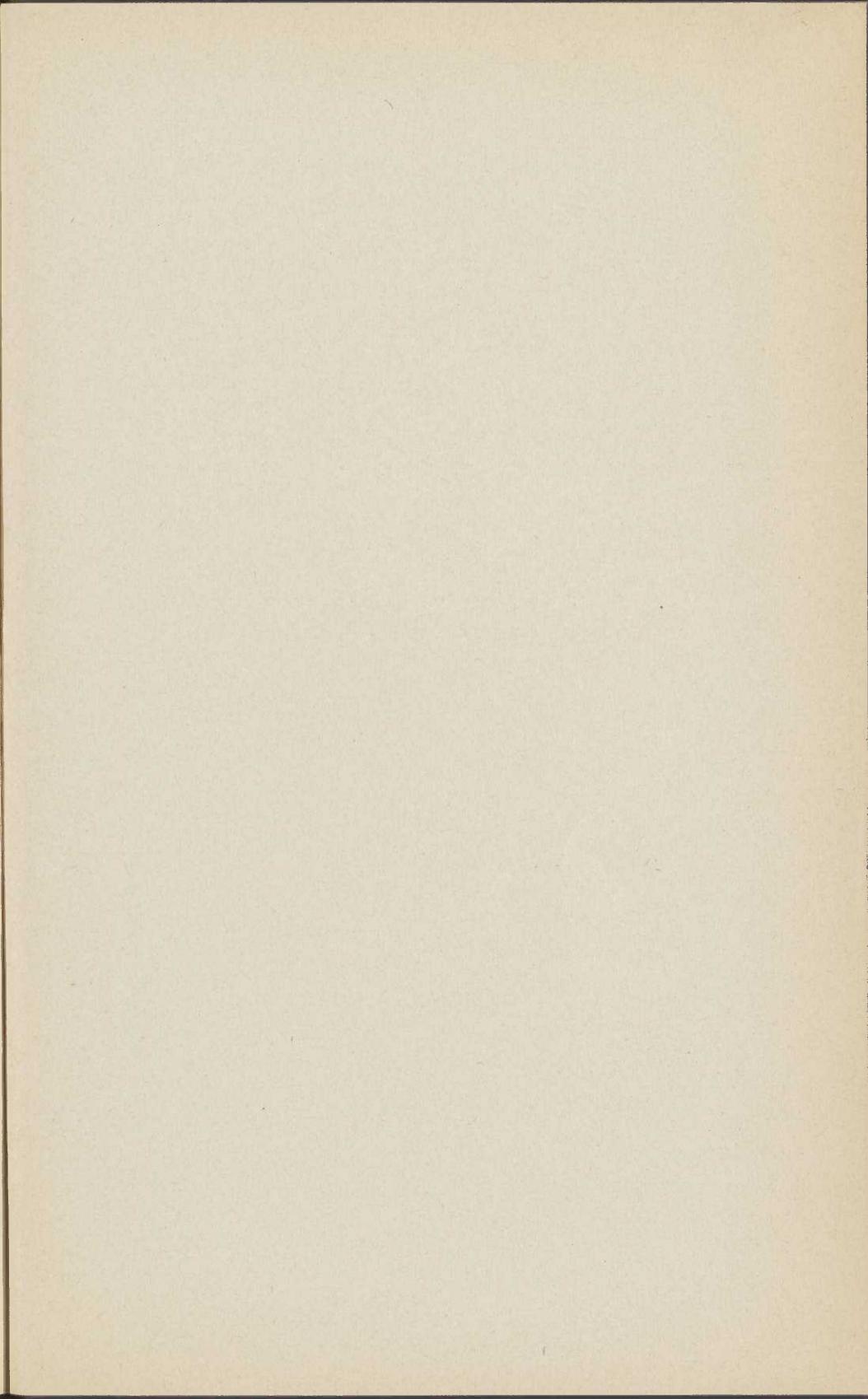


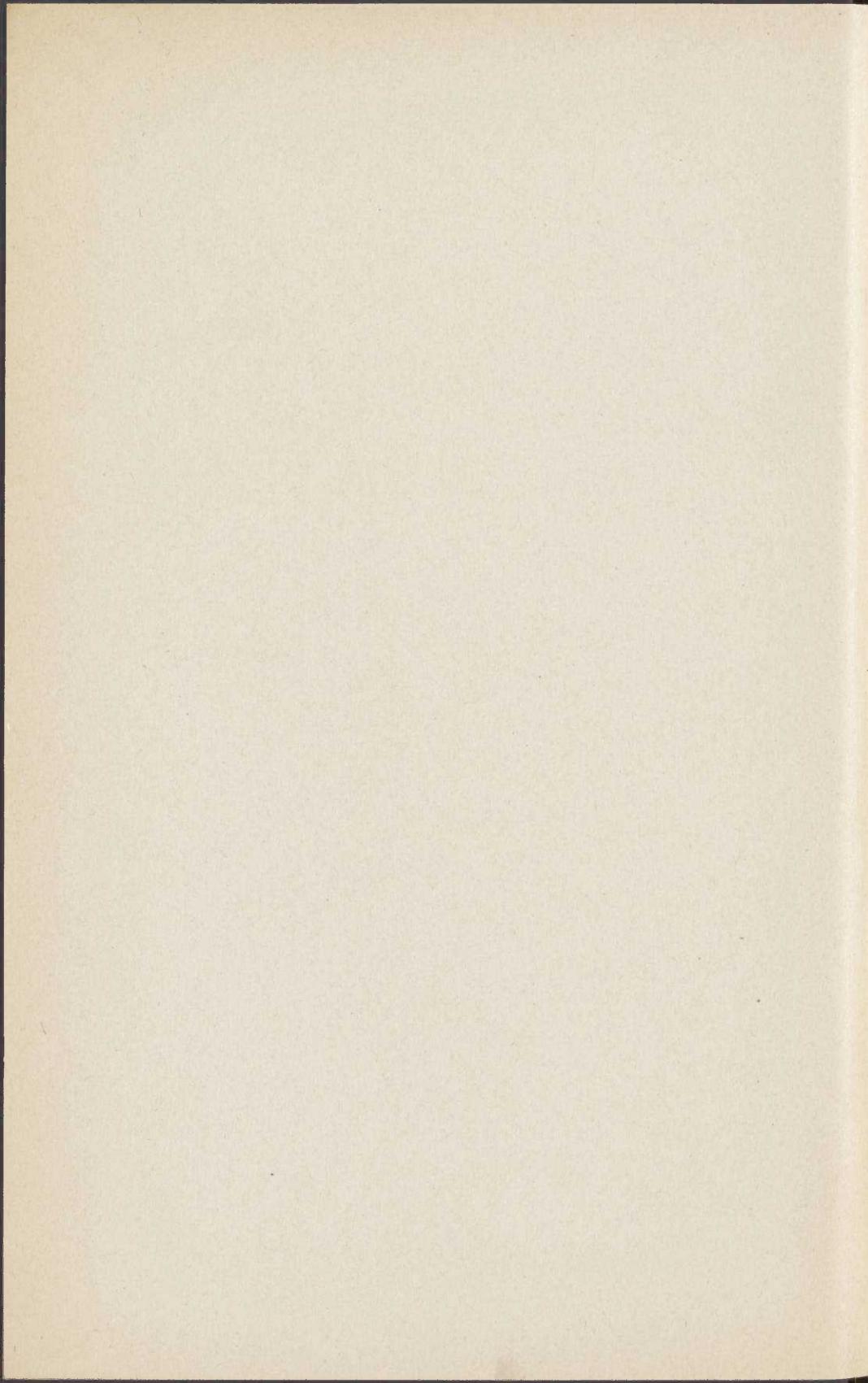


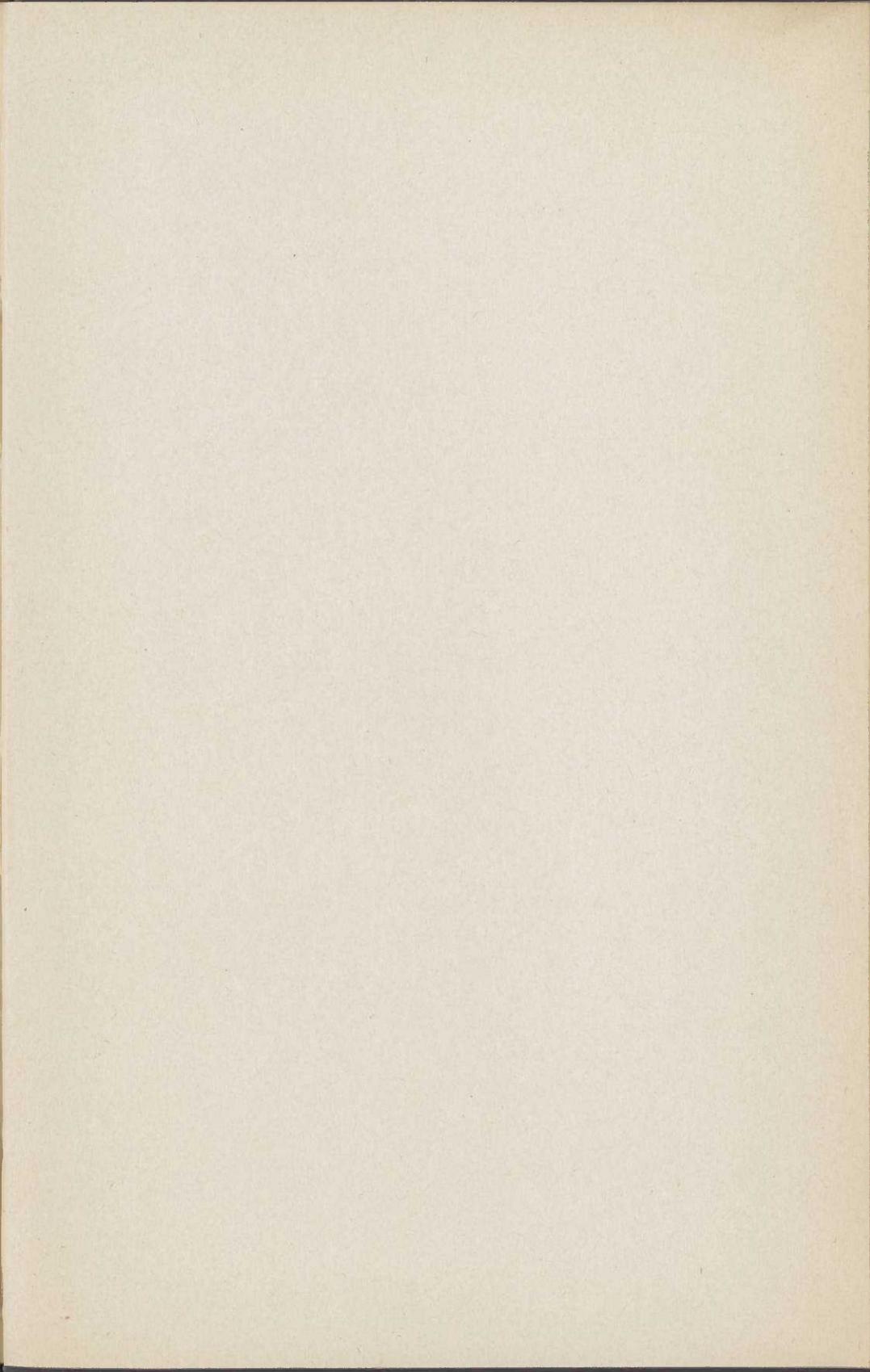


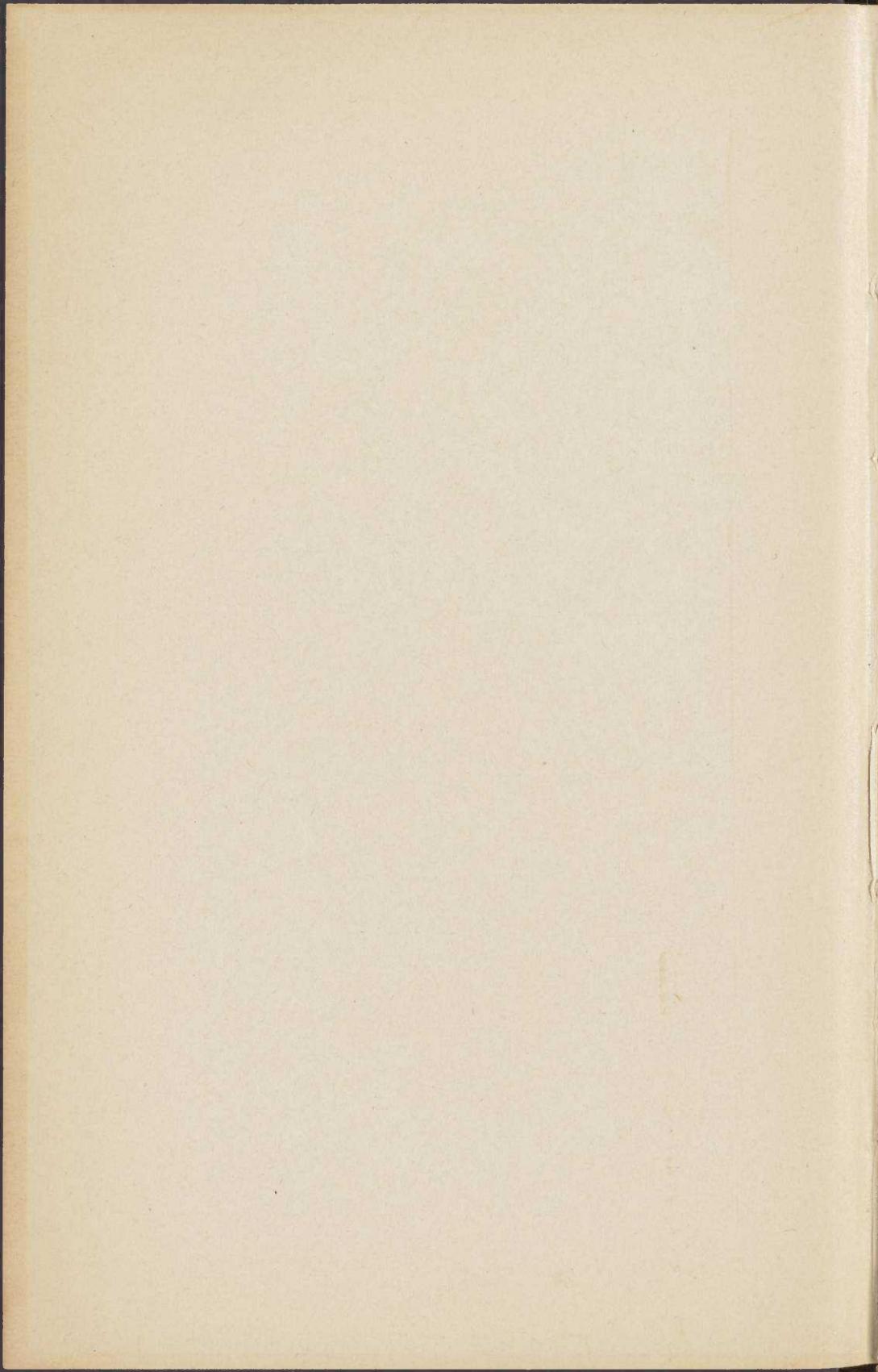


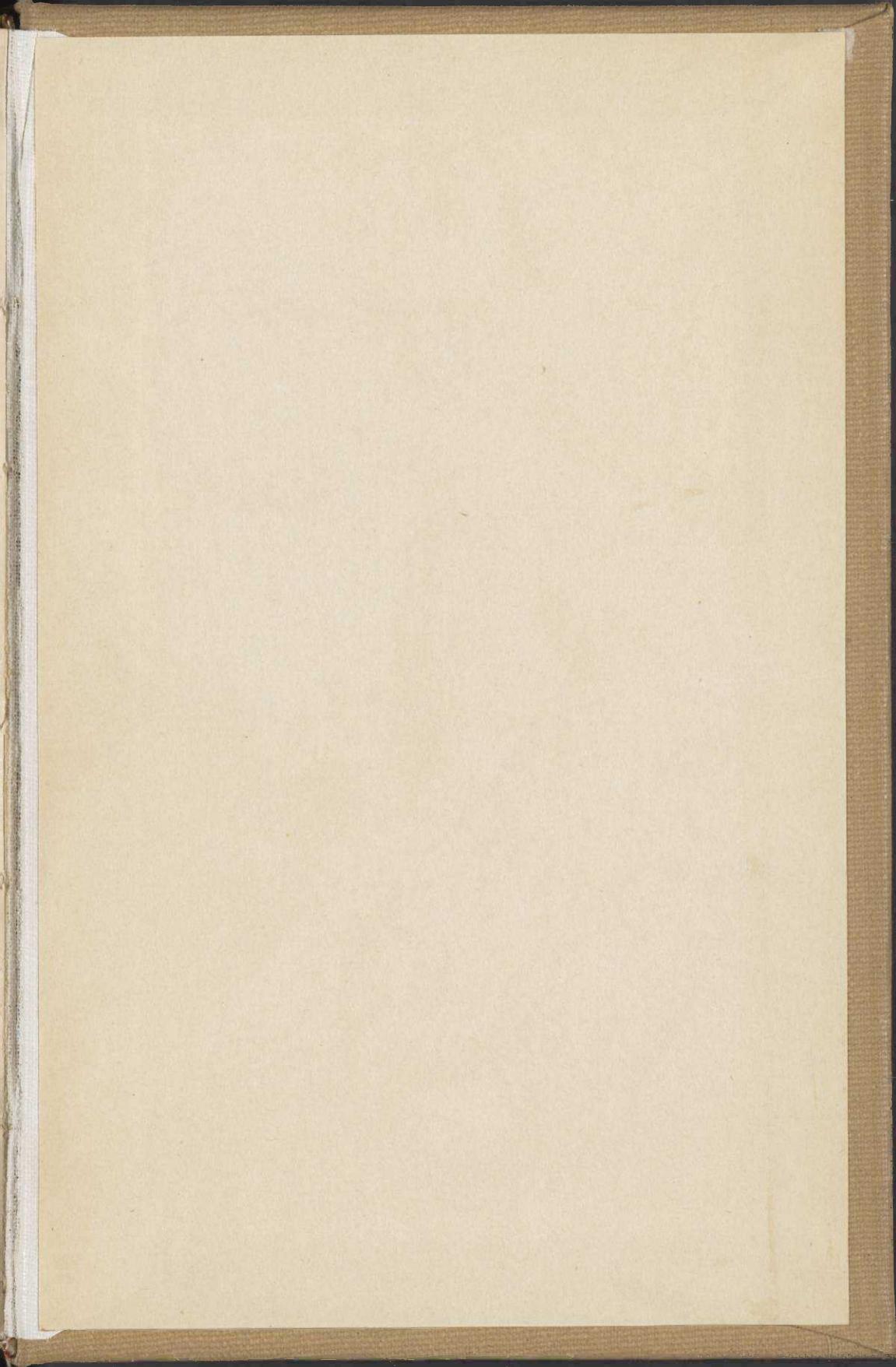














OCT  
1988