

lis, Nottingham, Cedar Point, Georgetown, in Maryland, Hampton, Yorktown, Yeocomico, Dumfries, Foley landing, Cherrystone, South Quay, Wilmington, in North Carolina, Newbern, Washington, Edenton, Plank Bridge, Georgetown, in South Carolina, Beaufort, and Savannah, each, one half of one per centum on the amount of all monies by them respectively received on account of the duties aforesaid.

SEC. 2. *And be it further enacted,* That from and after the last day of June next, the allowance of three fourths of one per centum to the collectors of the districts of Pennsylvania, and the city of New York, on the amount of all monies by them respectively received, on account of the duties of impost and tonnage, shall cease, and instead thereof, they shall, after that time, be entitled to one half of one per centum on all such monies by them respectively received.

To collectors of N. York and Pennsylvania $\frac{1}{2}$ of 1 per cent. &c.

SEC. 3. *And be it further enacted,* That from and after the last day of June next, the expense of fuel, office rent and necessary stationary, for the collectors of the districts of Salem and Beverly, Boston and Charlestown, the cities of New York, Philadelphia and Charleston, the towns of Baltimore, Norfolk, and Portsmouth, shall be paid, three fourths by the said collectors and the other fourth by the respective naval officers in those districts.

Office rent, &c. of certain collectors, how to be paid.

SEC. 4. *And be it further enacted,* That whenever a collector shall die, the commissions, to which he would have been entitled on the receipt of all duties bonded by him, shall be equally divided between the legal representatives of such deceased collector and his successor in office, whose duty it shall be to collect the same; and for this purpose the said representatives shall deliver over to such successor all the public or official books, papers and accounts of the said deceased.

Commissions on death of a collector, how disposed of.

APPROVED, May 8, 1792.

STATUTE I.

CHAP. XXXV.—*An Act to continue in force the act intituled "An act to provide for mitigating or remitting the Penalties and Forfeitures accruing under the Revenue Laws in certain Cases," and to make further Provision for the payment of Pensions to Invalids.*

May 8, 1792.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act, intituled "An act to provide for mitigating or remitting the forfeitures and penalties accruing under the revenue laws in certain cases therein mentioned," shall be and hereby is, continued in full force for the term of three years from the passing of this act, and no longer. *Provided,* That nothing in the said act shall be construed to limit or restrain the power of the President of the United States to grant pardons for offences against the United States.

[Obsolete.]
1790, ch. 12.
The act for remitting or mitigating forfeitures, &c. continued for three years.
1797, ch. 3.

SEC. 2. *And be it further enacted,* That the yearly pensions which have been, or may be allowed by, or in pursuance of, any act or law of the United States, to persons who were wounded and disabled in the public service shall for the space of one year from the fourth day of March last be paid out of the treasury of the United States, under such regulations as the President of the United States may direct.

Pensions to be paid for one year from 4th March last.

APPROVED, May 8, 1792.

STATUTE I.

CHAP. XXXVI.—*An Act for regulating Processes in the Courts of the United States, and providing Compensations for the Officers of the said Courts, and for Jurors and Witnesses. (a)*

May 8, 1792.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all writs and

Writs by whom and how attested.

(a) An act to ascertain the fees in admiralty proceedings in the district courts of the United States, and for other purposes, March 1, 1793; an act to amend "an act for regulating process in the courts of the United States," March 3, 1821. See notes to act of September 29, 1789, chap. 21,—note page 93.

and seals provided.

Forms of writs,

1789, ch. 21.

When plaintiff may take out a *capias ad satisfaciendum* in first instance.

Fees for serving writs &c.

for bail bonds; for selling vessels and goods; commitment or discharge of a prisoner; summoning juries.

Proviso in favor of state constables;

for attending courts;

levying execution, &c.

processes issuing from the supreme or a circuit court, shall bear test of the chief justice of the supreme court (or if that office shall be vacant) of the associate justice next in precedence; and all writs and processes issuing from a district court, shall bear test of the judge of such court (or if that office shall be vacant) of the clerk thereof, which said writs and processes shall be under the seal of the court from whence they issue, and signed by the clerk thereof. The seals shall be provided at the expense of the United States.

SEC. 2. *And be it further enacted*, That the forms of writs, executions and other process, except their style and the forms and modes of proceeding in suits in those of common law shall be the same as are now used in the said courts respectively in pursuance of the act, entitled "An act to regulate processes in the courts of the United States," in those of equity and in those of admiralty and maritime jurisdiction, according to the principles, rules and usages which belong to courts of equity and to courts of admiralty respectively, as contradistinguished from courts of common law; except so far as may have been provided for by the act to establish the judicial courts of the United States, subject however to such alterations and additions as the said courts respectively shall in their discretion deem expedient, or to such regulations as the supreme court of the United States shall think proper from time to time by rule to prescribe to any circuit or district court concerning the same: *Provided*, That on judgments in any of the cases aforesaid where different kinds of executions are issuable in succession, a *capias ad satisfaciendum* being one, the plaintiff shall have his election to take out a *capias ad satisfaciendum* in the first instance.

SEC. 3. *And be it further enacted*, That from and after the passing this act, the fees and compensations to the several officers and other persons hereafter mentioned, shall be as follows; that is to say, to the marshals of the several districts of the United States, for the service of any writ, warrant, attachment or process in chancery, on each person named in the same, two dollars; for his travel out in serving each writ, warrant, attachment or process aforesaid, five cents per mile, to be computed from the place of service to the court where the writ or process shall be returned; and if more persons than one are named therein, the travel shall be computed from the court to the place of service which is most remote, adding thereto the extra travel necessary to serve it on the other: *Provided*, That the fee for travel where there is one person named in such writ, warrant, attachment or process, shall in no case exceed seven dollars, and when there are more than one the fee for extra travel shall not exceed one dollar above seven dollars for each person. For each bail bond, fifty cents; for selling goods and vessels condemned, and receiving and paying the money, three per cent.; for every commitment or discharge of a prisoner, fifty cents; for summoning witnesses, where he does it, each thirty cents; for summoning a grand or petit jury, each three dollars: *Provided*, That in those states where jurors by the laws of the state are drawn by constables or other officers of corporate towns or places by lot, the marshals shall receive for the use of such constables or officers the fees allowed for summoning juries: For attending the supreme, circuit or district courts, five dollars per day, and at the rate of ten cents per mile for his expenses and time in travelling from the place of his abode to either of the said courts: For levying an execution, and for all other services not herein enumerated, such fees or compensation as are allowed in the supreme court of the state where the

The act for regulating process in the courts of the United States, provides that the forms and modes of proceeding in courts of equity and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules, and usages, which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from courts of common law, subject, however, to alterations by the courts, &c. This act has been generally understood to adopt the principles, rules, and usages of the courts of chancery of England. *Hinde v. Vattier*, 5 Peters, 398.

services shall be rendered: (a) To the clerk of the supreme court of the United States, ten dollars per day for his attendance in court, and for his other services in discharging the duties of his office, double the fees of the clerk of the supreme court of that state in which the supreme court of the United States shall be holden. To the clerk of the district and circuit courts such fees in each state respectively as are allowed in the supreme courts of the same; and five dollars per day for his attendance on any circuit or district court, and at the rate of ten cents per mile for his expenses and time in travelling from the place of his abode to either of the said courts. And in case any clerk of a court of the United States shall in discharging the duties of his office perform any kind of service which is not performed by the clerks of the courts of the state, and for which the laws of the state make no allowance, the court in which such service shall be rendered may allow a reasonable compensation therefor. To each grand and petit juror fifty cents per day for attending in court, and for travelling, at the rate of five cents per every mile from their respective places of abode to the place where the court is held, and the like allowance for returning: To witnesses summoned in any of the courts of the United States the same compensations in each state respectively as are allowed in the supreme courts of the same; To the attorney of the United States for the district, such fees in each state respectively as are allowed in the supreme courts of the same, and also the like compensation for travelling as is above allowed to the clerk of the district and circuit courts.

SEC. 4. *And be it further enacted*, That the marshal shall have the custody of all vessels and goods seized by any officer of the revenue, and shall be allowed such compensation therefor as the court may judge reasonable: And there shall be paid to the marshal the amount of the expense for fuel, candles, and other reasonable contingencies that may accrue in holding the courts within his district, and providing the books necessary to record the proceedings thereof; and such amount, as also the compensations aforesaid to the grand and petit jurors,—To the witnesses summoned on the part of the United States, to the clerk of the supreme court for his attendance,—to the clerks of the district and circuit courts for their travelling and attendance,—to the attorney of the district for travelling to court—to the marshal for his attendance at court; for summoning grand and petit jurors and witnesses in behalf of any prisoner to be tried for a capital offence; for the maintenance of prisoners confined in gaol for any criminal offence, and for the commitment or discharge of such prisoner,—and also the legal fees of the clerk, attorney and marshal, in criminal prosecutions, shall be included in the account of the marshal; and the same having been examined and certified by the court or one of the judges of it in which the service shall have been rendered, shall be passed in the usual manner at, and the amount thereof paid out of the treasury of the United States, to the marshal, and by him shall be paid over to the persons entitled to the same, and the marshal shall be allowed two and an half per cent. on the amount by him so paid over to be charged in his future account.

SEC. 5. *And be it further enacted*, That in every prosecution for any fine or forfeiture incurred under any statutes of the United States, if judgment is rendered against the defendant he shall be subject to the payment of costs—And on every conviction for any other offence not capital, the court may, in their discretion, award that the defendant shall pay the costs of prosecution—And if any informer or plaintiff on a penal statute to whose benefit the penalty or any part thereof if recovered is directed by law to accrue shall discontinue his suit or prosecution or

fees of clerks.

Jurors.

Witnesses.

Attornies.

1796, ch. 48, sec. 2.
1799, ch. 19, sec. 9.

Marshal to have the custody of vessels seized, and be paid certain expenses of fuel &c. and receive and pay the fees of jurors &c.

his allowance therefor.

Rules for payment of costs incurred by prosecutions for fines &c.

(a) Marshal.—The marshal shall have an attachment to enforce the payment of his fees of office against suitors in the court. So also against the endorser on the writ, who by the *lex loci*, is liable to respond for costs. 2 Gallis' C. C. R. 101.

- shall be nonsuit in the same, or if upon trial a verdict shall pass for the defendant, the court shall award to the defendant his costs, unless such informer or plaintiff be an officer of the United States specially authorized to commence such prosecution, and the court before whom the action or information shall be tried, shall at the trial in open court, certify upon record, that there was reasonable cause for commencing the same, in which case no costs shall be adjudged to the defendant. (a)
- 1813, ch. 14. Fees herein how to be recovered. SEC. 6. *And be it further enacted*, That the fees and compensations to the several officers and persons herein before mentioned, other than those which are above directed to be paid out of the treasury of the United States, shall be recovered in like manner as the fees of the officers of the states respectively for like services are recovered.
- Penalty on demanding unlawful fees. SEC. 7. *And be it further enacted*, That if any officer herein before mentioned, or his deputy, shall by reason or colour of his office wilfully and corruptly demand and receive any greater fees than those allowed by this act, he shall on conviction thereof in any court of the United States, forfeit and pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding six months, at the discretion of the court before whom the conviction shall be.
- Certain acts repealed. SEC. 8. *And be it further enacted*, That the act passed at the last session of Congress, entitled "An act to continue in force for a limited time, an act passed at the first session of Congress, entitled An act to regulate processes in the courts of the United States;" and also another act passed at the last session of Congress, entitled "An act providing compensations for the officers of the judicial courts of the United States, and for jurors and witnesses and for other purposes," be and the same are hereby repealed.
- 1791, ch. 8. Clerk of supreme court to transmit to clerks of circuit courts the form of a writ of error. SEC. 9. *And be it further enacted*, That it shall be the duty of the clerk of the supreme court of the United States, forthwith to transmit to the clerks of the several circuit courts the form of a writ of error, to be approved by any two of the judges of the supreme court, and it shall be lawful for the clerks of the said circuit courts to issue writs of error agreeably to such forms, as nearly as the case may admit, under the seal of the said circuit courts, returnable to the supreme court, in the same manner as the clerk of the supreme court may issue such writs, in pursuance of the act, intitled "An act to establish the judicial courts of the United States."
- 1789, ch. 20. When clerks may take recognizances *de bene esse*; and affidavits of surveyors, &c. SEC. 10. *And be it further enacted*, That it shall and may be lawful for the clerks of the district and circuit courts, in the absence or in case of the disability of the judges, to take recognizances of special bail, *de bene esse*, in any action depending in either of the said courts, and also the affidavits of all surveyors relative to their reports, and to administer oaths to all persons identifying papers found on board of vessels or elsewhere, to be used on trials in admiralty causes.
- 1812, ch. 25. SEC. 11. *And be it further enacted*, That in all suits and actions in

(a) Costs are not to be awarded against the United States. The United States v. Hoe et al., 3 Cranch, 73; 1 Cond. Rep. 458. The Antelope, 12 Wheat. 546; 6 Cond. Rep. 629.

Where there appeared some ground for the prosecution, costs were refused. The United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132.

It is undoubtedly a general rule that no court can give a direct judgment against the United States in a suit to which they are a party, either in behalf of any suitor, or any officer of the government. But it by no means follows that they are not liable for their own costs. No direct suit can be maintained against the United States. But when an action is brought by the United States, to recover money in the hands of a party, who has a legal claim against them for costs, it would be a very rigid principle to deny to him the right of setting up such claim in a court of justice, and turn him round to an application to Congress. If the right of the party is fixed by the existing law, there can be no necessity for an application to Congress, except for the purpose of remedy. And no such necessity can exist, where the right can be properly set up by way of defence to a suit by the United States. The United States v. Ringgold et al., 8 Peters, 150.

If a witness recognized for the defendant, is marked on the indictment and sent to the grand jury by the district attorney, the United States on the acquittal of the prisoner, must pay the witness his costs. The United States v. Coulter, Circuit Court of Pennsylvania, April, 1803.

any district court of the United States, in which it shall appear that the judge of such court is, any ways, concerned in interest, or has been of counsel for either party, it shall be the duty of such judge on application of either party, to cause the fact to be entered on the minutes of the court, and also to order an authenticated copy thereof, with all the proceedings in such suit or action, to be forthwith certified to the next circuit court of the district, which circuit court shall, thereupon, take cognizance thereof, in the like manner, as if it had been originally commenced in that court, and shall proceed to hear and determine the same accordingly.

Where judges act as counsel for a party, their duty in such case.

SEC. 12. *And be it further enacted*, That all the records and proceedings of the court of appeals heretofore appointed, previous to the adoption of the present constitution, shall be deposited in the office of the clerk of the supreme court of the United States, who is hereby authorized and directed to give copies of all such records and proceedings, to any person requiring and paying for the same, in like manner as copies of the records and other proceedings of the said court are by law directed to be given: which copies shall have like faith and credit as all other proceedings of the said court.

Records of court of appeals to be deposited with clerk of supreme court.

APPROVED, May 8, 1792.

STATUTE I.

CHAP. XXXVII.—*An Act making alterations in the Treasury and War Departments.*(a)

May 8, 1792.

SECTION I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there

(a) The acts for the establishment and regulation of the Treasury department, have been: An act to establish the Treasury department, September 2, 1789, chap. 12; an act supplemental to the act "establishing the Treasury department," and for further compensation to certain officers, March 3, 1791, chap. 18; an act making alterations in the Treasury and War departments, May 8, 1792, chap. 37; an act to amend the act entitled, "An act making alterations in the Treasury and War departments," February 13, 1795, chap. 21; an act for the more effectual recovery of debts due from individuals to the United States, March 3, 1795, chap. 48; an act to alter and amend the several acts for the establishment and regulation of the Treasury, War, and Navy departments, July 16, 1798, chap. 85; an act supplementary to the act entitled, "An act to establish the Treasury department," May 10, 1800, chap. 58; an act further to amend the several acts for the establishment and regulation of the Treasury, War, and Navy departments, March 3, 1809, chap. 28; an act authorizing the Secretary of the Treasury to appoint a clerk in the office of the commissioner of revenue, with power to sign licenses, November 22, 1814, chap. 7; an act supplementary to an act making alterations in the Treasury and War departments, passed 8th day of May, 1792, April 29, 1816, chap. 140; an act to provide for the prompt settlement of public accounts, March 3, 1817, chap. 45; an act making appropriation for the payment of arrearages which have been incurred for the support of the military establishment previous to the first of January, one thousand eight hundred and seventeen, February 16, 1818, chap. 10; an act supplementary to the act entitled, "An act to provide for the prompt settlement of public accounts," February 24, 1819, chap. 43; an act to provide for obtaining accurate statements of the foreign commerce of the United States, February 10, 1820, chap. 11; an act in addition to the several acts for the establishment and regulation of the Treasury, War, and Naval departments, May 1, 1820, chap. 50; an act to provide for the better organizing the Treasury department, May 15, 1820, chap. 107. (See *The United States v. Maurice et al.*, 2 Brockenk. C. C. R. 96.) An act further to amend the several acts relative to the Treasury, War, and Naval departments, May 7, 1822, chap. 98; an act to organize the general land office, July 4, 1836, chap. 352, sec. 12; an act to authorize the proper officers of the Treasury department to credit the account of the Treasurer of the United States, with the amount of unavailable funds standing to his debit on the books of the Treasury, to transfer the amount of the debit of banks and individuals indebted for the same, and to authorize the Secretary of the Treasury to compromise and settle the same, March 3, 1837, chap. 33.

Department of War. The acts establishing and regulating the department of War, are: An act to establish an executive department to be denominated the Department of War, August 7, 1789, chap. 7; an act making alterations in the Treasury and War departments, May 8, 1792, chap. 37; an act to amend the act entitled, "An act making alterations in the Treasury and War departments," February 13, 1795, chap. 21; an act to alter and amend the several acts for the establishment and regulation of the Treasury, War, and Naval departments, July 16, 1798, chap. 85; an act concerning public contracts, April 21, 1808, chap. 48, sec. 5; an act further to amend the several acts for the establishment and regulation of the Treasury, War, and Naval departments, March 3, 1809, chap. 28; an act concerning the annual sum appropriated for arming and equipping the militia, April 29, 1816, chap. 135; an act supplementary to "an act making alterations in the Treasury and War departments," passed 8th May, 1792, April 29, 1816, chap. 140; an act to provide for the prompt settlement of public accounts, March 3, 1817, chap. 45; an act in addition to the several acts for the establishment and regulation of the Treasury, War, and Navy departments, May 1, 1820, chap. 50; an act to amend the several acts relative to the Treasury, War, and Navy departments, May 7, 1822, chap. 47.