Statute I.

July 22, 1813.

Chap. XIV.—*An Act concerning suits and costs in courts of the United States.*(a)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever there shall be several actions or processes against persons who might legally be joined in one action or process, touching any demand or matter in dispute before a court of the United States or of the territories thereof,

When several actions are brought against persons who might be legally

(a) *Decisions in the Courts of the United States, on the law of Costs.*

1. The cost of printing a statement of the case for the Supreme Court, was refused to be allowed as part of the plaintiff's costs. Jennings et al. Plaintiffs in Error *v.* The Brig Perseverance, 3 Dall. 336; 1 Cond. Rep. 154.

2. On a writ of error to the High Court of Appeals of Maryland, the judgment of that court was reversed, and the judgment of the general court of Maryland was affirmed. The mandate of the Supreme Court was directed to the general court, and the costs of the Supreme Court and of the courts of Maryland were allowed to the plaintiff in error. Clarke, Plaintiff in Error *v.* Harwood, 3 Dall. 342; 1 Cond. Rep. 157.

3. Costs are not to be awarded against the United States. The United States *v.* Hooe et al. 3 Cranch, 73; 1 Cond. Rep. 458.

4. A judgment for costs, generally, includes all the costs belonging to the suit, whether prior or subsequent to the rendition of the judgment. If new costs accrue, the judgment opens to receive them. Peyton *v.* Brooke, 3 Cranch, 92; 1 Cond. Rep. 464.

5. Costs were allowed upon the dismission of a writ of error for want of jurisdiction; the original defendant being also defendant in error. Winchester *v.* Jackson et al. 3 Cranch, 514; 1 Cond. Rep. 612.

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

7. Where a writ of error is dismissed in the Supreme Court for want of jurisdiction, costs are not allowed. Inglee *v.* Coolidge, 2 Wheat. 363; 4 Cond. Rep. 155.

8. Each party is liable to the clerk of the Supreme Court for the fees due to him from each party, respectively. Caldwell *v.* Jackson, 7 Cranch, 276; 2 Cond. Rep. 490.

9. A copy of the record is not a part of the taxable costs of suit, to be recovered by one party against the other; but the party who requests the copy, must pay the clerk for it. *Ibid.*

10. It is undoubtedly a general rule, that no court can give a direct judgment against the United States for costs, in a suit to which they are a party, either on behalf of any suitor, or any officer of the government. But it by no means follows, from this, 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, when this right can properly be set up by way of defence to a suit by the United States. U. S. *v.* Ringgold et al. 8 Peters, 150.

11. The United States do not pay costs in any case. The U. S. *v.* Barker, 2 Wheat. 395; 4 Cond. Rep. 181.

12. No judgment or decree can be rendered directly against the United States for costs and expenses. The Antelope, 12 Wheat. 546; 6 Cond. Rep. 629.

14. The fees and compensation to the marshal, where the government is a party to the suit, and his fees or compensation are chargeable to the United States, are to be paid out of the treasury, upon a certificate of the amount, to be made by the court, or one of the judges. *Ibid.*

15. In cases of reversal, costs do not go of course; but in cases of affirmance they do. When a judgment is reversed for want of jurisdiction, it must be without costs. Montalet *v.* Murray, 4 Cranch, 46; 2 Cond. Rep. 19.

16. The court below, upon a mandamus, on reversal of its judgment, may award execution for the costs of the appellant in that court. Riddle et al. *v.* Mandeville et al. 6 Cranch, 86; 2 Cond. Rep. 307.

17. Where the court ordered the costs to be paid of a former ejectment brought by the plaintiffs in the names of other persons, but for their use, before the plaintiff could prosecute a second suit in his own name for the same land; this was not a judicial decision that the right of the plaintiffs in the first suit was the same with that of the plaintiffs in the second suit. It was perfectly consistent with the justice of the case, that when the plaintiffs sued the same defendant in their own name for the same land, that they should reimburse him for the past costs to which they had subjected him, before they should be permitted to proceed further. Rules of this kind are granted by the court to meet the justice and exigencies of cases as they occur; not depending solely on the interest which those who are subjected to such rules may have in the subject matter of suits which they bring and prosecute in the names of others; but on a variety of circumstances, which, in the exercise of a sound discretion, may furnish a proper ground for their interference. Henderson and Wife *v.* Griffin, 5 Peters, 151.

18. Where several claims had been filed by the district attorney, and, before any further proceedings in the cause, Congress remitted the forfeiture, on the payment of duties, costs, and charges: *Held*, that the district attorney of Massachusetts was entitled to seventeen dollars on each claim. The Francis, 1 Gallis. C. C. R. 453.

19. In taxing the costs in prize causes, where there are several claims, some of which are disposed of by a final decree of condemnation, while others are suspended by appeal, the practice is to tax the costs and expenses which have accrued, specially, upon each claim so disposed of, as a separate charge against the same, and to add thereto an average proportion of the general costs and expenses which have accrued in reference to all the claims in the cause. The Hiram and the Hero, 2 Gallis. C. C. R. 60.

20. In prize causes, the allowance or denial of costs rests in the discretion of the court; and where

sued in one action, costs can only be recovered as in one.

if judgment be given for the party pursuing the same, such party shall not thereon recover the costs of more than one action or process, unless special cause for several actions or processes shall be satisfactorily shown on motion in open court.

Costs to be recovered only in one libel when that is sufficient.

Sec. 2. *Be it further enacted*, That whenever proceedings shall be had on several libels against any vessel and cargo which might legally be joined in one libel before a court of the United States or of the territo-

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the capture, though made in good faith, is in law adjudged tortious, the claimant is entitled by the general practice of the court to such costs as have necessarily arisen in the prosecution of his claim, unless he has been guilty of such misconduct as amounts to a forfeiture of such costs. The Ulpiano, 1 Mason, 91.

21. When a cause is removed from a state court to the circuit court, under the act of Congress, the plaintiff is entitled to recover his costs; although he obtains a verdict for less than five hundred dollars. Ellis *v.* Jarvis, 3 Mason, 457.

22. If a witness, recognised 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. United States *v.* Coulter, C. C. U. S. of Pennsylvania, April, 1803.

23. It is within the discretion of the court to permit the defendant to file a new plea; but where the effect of it would be to put the plaintiff out of court, and the cause was instituted in consequence of the act of the defendant himself, and had been long at issue before the application was made, the court would not permit it to be done, unless the defendant would pay not only the costs incurred since the filing of his first plea, but the whole costs of the action. Anonymous, 2 Wash. C. C. R. 270.

24. Where the plaintiff prevails in the action, the court will not, in the exercise of their discretion, tax the costs against him, where he might naturally and fairly suppose he was entitled to recover more than five hundred dollars. Cottle *v.* Payne, 3 Day, 289.

25. Costs and expenses are not matters positively limited by law, but are allowed in the exercise of a sound discretion of the court; and no appeal lies from a mere decree respecting costs and expenses. Canter *v.* The American and Ocean Insurance Company, 3 Peters, 319.

26. In Virginia, if the first ca. sa. be returned non est, the second may include the costs of issuing both. Peyton *v.* Brooke, 3 Cranch, 92; 1 Cond. Rep. 464.

27. Costs will be allowed on the dismission of a writ of error for want of jurisdiction, if the original defendant be defendant in error. Winchester *v.* Jackson et al. 3 Cranch, 515; 1 Cond. Rep. 612.

28. A party who obtains a continuance of a cause, must pay the costs of the term. Lessee of Patton *v.* Blackwell, 2 Overt. Rep. 114.

29. The Supreme Court has no jurisdiction in a case in which the judges of the circuit court have divided in opinion, upon a motion for a rule to show cause why the taxation of the costs of the marshal on an execution should not be reversed. Bank of the United States *v.* Green and others, 6 Peters, 26.

30. The transcript of the record had been lodged by the plaintiffs in error with the clerk of the court on the 24th of October, 1835; who refused to file it or docket the cause, until the plaintiffs had given the fee bond in pursuance of the thirty-seventh rule of the court. The counsel for the plaintiffs in error moved to have the transcript filed and docketed; alleging they had done all the law required to be done in order to bring the case before the Supreme Court. On the part of the defendant in error, his counsel filed and read in open court certified copies of the writ of error, citation and appeal bond, and of the judgment of the circuit court; and having stated that the plaintiffs in error had failed to have the case docketed according to the thirtieth rule of the court, they moved to have the case docketed and dismissed. The court overruled the motion to docket and dismiss the cause; and also the motion to have the transcript filed, and the cause docketed without the fee bond being first given. These motions were overruled on the 18th of January, 1836; and the court allowed the plaintiffs in error until the 1st day of March following to give to the clerk the fee bond: on the failure so to give the same, the writ of error to be dismissed. Owings *v.* Tiernan, 10 Peters, 447.

31. If the court had jurisdiction of the cause, when the action was commenced, the repeal of the law which gave the jurisdiction, will not take away the plaintiff's right to costs. Walker *v.* Smith, 1 Wash. C. C. R. 202.

32. Where three members of the bar enter their appearance for the defendant, to suits instituted against him, and are all equally called upon, and act as the attorneys of the defendant, no warrant of attorney having been given by the defendant to either; the attorneys' fee in the bill of costs is to be equally divided among all who have acted in the case, and who have appeared to the suits. Hurst *v.* Durnell, 1 Wash. C. C. R. 438.

33. *Query.* If in an action for the violation of a patent, the plaintiff recover five hundred dollars damages, or the damages when trebled amount to that sum, the plaintiff is entitled to costs. Kneas *v.* The Schuylkill Bank, 4 Wash. C. C. R. 106.

34. The common law gave costs in no case; and the statute of Gloucester gave them only where damages were recoverable at common law. *Ibid.*

35. If the defendant do not demand security for costs within a reasonable time, it shall not be a ground for a continuance, that such security has not been given when the cause is called for trial. Hawkins *v.* Wiltbank, 4 Wash. C. C. R. 285.

36. The clerk of the circuit court for the district of Pennsylvania cannot charge in the bill of costs any compensation for the travel and attendance of the successful party, none such being allowed in the supreme court of the state. But he ought to tax one dollar and twenty-five cents a day for the attendance of each witness, and five cents a mile for their travelling to and from the court. Sebring's Lessee *v.* Ward, 4 Wash. C. C. R. 546.

37. Costs are imposed on a party asking for an amendment of the pleadings. But in a case where, from the irregularity of the practice in the courts of Pennsylvania, the error requiring amendment arose, costs were not allowed. Lessee of Laning *v.* Dolph, 4 Wash. C. C. R. 630.

ries thereof, there shall not be allowed thereon more costs than on one libel, unless special cause for libelling the vessel and cargo severally shall be satisfactorily shown as aforesaid. And in proceedings on several libels or informations against any cargo or parts of cargo or merchandise seized as forfeited for the same cause, there shall not be allowed by the court more costs than would be lawful on one libel or information, whatever may be the number of owners or consignees therein concerned: but allowance may be made on one libel or information for the costs incidental to several claims: *Provided*, That in case of a claim of any vessel or other property seized on behalf of the United States and libelled or informed against as forfeited under any of the laws thereof, if judgment shall pass in favour of the claimant, he shall be entitled to the same upon paying only his own costs.

No more costs than on one libel or information for the same cause of forfeiture.

Proviso. On a claim of property libelled, if the property is restored, the claimant shall only pay his own costs.

Sec. 3. *And be it further enacted*, That whenever causes of like nature, or relative to the same question shall be pending before a court of the United States or of the territories thereof, it shall be lawful for the court to make such orders and rules concerning proceedings therein as may be conformable to the principles and usages belonging to courts for avoiding unnecessary costs or delay in the administration of justice, and accordingly causes may be consolidated as to the court shall appear reasonable. And if any attorney, proctor, or other person admitted to manage and conduct causes in a court of the United States or of the territories thereof, shall appear to have multiplied the proceedings in any cause before the court so as to increase costs unreasonably and vexatiously, such person may be required by order of court to satisfy any excess of costs so incurred.

Causes may be consolidated, to avoid unnecessary costs or delay.

Attorney or proctor to pay excess of costs if proceedings have been multiplied unreasonably.

Approved, July 22, 1813.

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38. The plaintiff having recovered at law, the court directed the costs of the bill of discovery, by which the plaintiffs at law were prevented recovering, should be paid by the defendants in the bill; they being plaintiffs at law. Lessee of Bowne *v.* Brown et al. 2 Wash. C. C. R. 271.

39. The clerk of the court is a competent judge of the amount of costs which can be recovered in an action; and money paid to him is in the safe keeping of the court, and subject to its disposal. Willings et al. *v.* Consequa, 1 Peters' C. C. R. 301.

40. In a case of tort, several costs of travel, attendance, and attorney's fees will be allowed to the several defendants, whether the pleadings are joint or several. Crosby *v.* Folger, 1 Sumner's Rep. 514.

41. In case of a claim on proceeds in the custody of the court, where other parties are entitled, no costs can be allowed beyond those for which there is a specific lien, and the actual charges of court. No attorney's fees can be allowed. The Jerusalem, 2 Gallis. 345.

42. *Query.* If a consul, who sues for a penalty, in his own name and person, but for the benefit of the United States, is liable for costs? Levy *v.* Burley, 2 Sumner's C. C. R. 355.

43. After notice of trial, the defendant cannot move to put off the trial, until the costs of a former ejectment be paid, without notice that such a motion would be made; nor can it prevail under any circumstances, if the costs be demanded on an ejectment, which had been decided in the state court. Den *v.* Bacon & Sharp, 4 Wash. C. C. R. 578.

44. In an action for the violation of a patent right, the plaintiff having recovered a verdict for three cents damages, is not entitled to full costs under the 20th sec. of the judicial act of September 24th, 1789, ch. 20. Kneas *v.* The Schuylkill Bank, 4 Wash. C. C. R. 100.

45. Where the plaintiff, being a non-resident, has filed security for costs, conditioned to pay them, "if the plaintiff does not prosecute his suit to effect, and does not pay the costs of the suit," in case the plaintiff succeeds, the sureties are exonerated from the payment of any costs; but the plaintiff is responsible to the officers of the court for his own costs, and the court will enforce the payment of them by attachment. Lessee of Bowne *v.* Arbuncle, 1 Peters' C. C. R. 234.

Supreme Court, January Term, 1838.
Rule of Court No. 44.

In all cases, where any suit shall be dismissed in the Supreme Court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed for the defendant in error, or appellee, as the case may be, unless otherwise agreed by the parties.

In all cases of affirmances of any judgment or decree in the Supreme Court, costs shall be allowed to the defendant in error, or appellee, as the case may be, unless otherwise ordered by the court.

In all cases of reversals of any judgment or decree in the Supreme Court, except where the reversal shall be for want of jurisdiction, costs shall be allowed in the Supreme Court for the plaintiff in error, or appellant, as the case may be; unless otherwise ordered by the court.

Neither of the foregoing rules shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in the Supreme Court for or against the United States.

When costs are allowed in the Supreme 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.