

subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Pub. L. 94-381, § 5, Aug. 12, 1976, 90 Stat. 1120.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 401 (Aug. 24, 1937, ch. 754, § 1, 50 Stat. 751).

Word “action” was added before “suit or proceeding”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word “suit” was not required to be deleted by such rule.

“Court of the United States” is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

#### Editorial Notes

##### AMENDMENTS

1976—Pub. L. 94-381, § 5(b), inserted “or a State” after “United States” in section catchline.

Subsecs. (a), (b). Pub. L. 94-381, § 5(a), designated existing provisions as subsec. (a) and added subsec. (b).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94-381, set out as a note under section 2284 of this title.

#### § 2404. Death of defendant in damage action

A civil action for damages commenced by or on behalf of the United States or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

(June 25, 1948, ch. 646, 62 Stat. 971.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 780a (June 16, 1933, ch. 103, 48 Stat. 311).

Substitution of parties, see rule 25(a) of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

#### § 2405. Garnishment

In any action or suit commenced by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees. Any person so summoned shall appear in open court and depose in writing to the amount of his indebtedness to the corporation at the time of the service of the summons and at the time of making the deposition, and judgment may be entered in favor of the United States for the sum admitted by the garnishee to be due the corporation as if it had been due the United States. A judgment shall not be entered against any garnishee until after judgment has been rendered against the corporation,

nor until the sum in which the garnishee is indebted is actually due.

When any garnishee deposes in open court that he is not and was not at the time of the service of the summons indebted to the corporation, an issue may be tendered by the United States upon such deposition. If, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs.

Any garnishee who fails to appear at the term to which he is summoned shall be subject to attachment for contempt.

(June 25, 1948, ch. 646, 62 Stat. 971.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 748, 749, and 750 (R.S. §§ 935, 936, 937).

Changes were made in phraseology.

#### § 2406. Credits in actions by United States; prior disallowance

In an action by the United States against an individual, evidence supporting the defendant's claim for a credit shall not be admitted unless he first proves that such claim has been disallowed, in whole or in part, by the Government Accountability Office, or that he has, at the time of the trial, obtained possession of vouchers not previously procurable and has been prevented from presenting such claim to the Government Accountability Office by absence from the United States or unavoidable accident.

(June 25, 1948, ch. 646, 62 Stat. 972; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 774 (R.S., §§ 236, 951; June 10, 1921, ch. 18, §§ 304, 305, 42 Stat. 24).

Word “action” was substituted for “suits”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Section 774 of title 28, U.S.C., 1940 ed., provided that “no claim for a credit shall be admitted, upon trial”, etc. This was changed to “evidence supporting the defendant's claim for a credit shall not be admitted”, to clarify the meaning of the section. The case of *U.S. v. Heard*, D.C.Va. 1940, 32 F.Supp. 39, reviews the conflicting decisions on the question whether compliance with the section must be pleaded, and offers persuasive argument that it need not be, and that the section was designed as a rule of evidence. The wording of the remainder of the section also supports this conclusion, as pointed out by Judge Learned Hand in *U.S. v. Standard Aircraft Corp.*, D.C.N.Y. 1926, 16 F.2d 307, followed in the Heard case.

Changes in phraseology were made.

#### Editorial Notes

##### AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

#### § 2407. Delinquents for public money; judgment at return term; continuance

In an action by the United States against any person accountable for public money who fails to pay into the Treasury the sum reported due the United States, upon the adjustment of his account the court shall grant judgment upon motion unless a continuance is granted as specified in this section.