

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.

DERIVATION

Derived from 1928 revised rule 46, as amended by Order May 31, 1932.

Rule 47. Appeals Under the Act of August 24, 1937.

Appeals to this court under the Act of August 24, 1937, shall be governed, as far as may be, by the rules of this court regulating the procedure on appeal in other cases from courts of the United States; provided, however, that when an appeal is taken under Section 2 of the Act [28 U. S. C. § 349a] the service required by paragraph 2 of Rule 12 shall be made on all parties to the suit other than the party or parties taking the appeal. The record shall be made up and the case docketed in this court within sixty days from the time the appeal is allowed.

DERIVATION

Derived from 1928 revised rule 46½, as added January 10, 1938.

Rule 48. Joint or Several Appeals or Petitions for Writs of Certiorari; Summons and Severance Abolished.

Parties interested jointly, severally, or otherwise in a judgment may join in an appeal or a petition for writ of certiorari therefrom; or, without summons and severance, any one or more of them may appeal or petition separately or any two or more of them may join in an appeal or petition.

DERIVATION

New rule.

Rule 49. No Session on Saturday.

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

DERIVATION

Derived from 1928 revised rule 47, which was from 1925 revised rule 43.

Rule 50. 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, within two weeks before the adjournment, unless otherwise ordered for special cause shown.

DERIVATION

Derived from 1928 revised rule 48, which was from 1925 revised rule 44.

Rule 51. Abrogation of Prior Rules.

These rules shall become effective February 27, 1939, and be printed as an appendix to 306 U. S., 59 S. Ct. The rules promulgated June 5, 1928, appearing in 275 U. S., Appendix, 50 S. Ct. and all amendments thereof are rescinded, but this shall not affect any proper action taken under them before these rules become effective.

DERIVATION

Derived from 1928 revised rule 49, which was from 1925 revised rule 45.

Chapter 10.—PROVISIONS COMMON TO MORE THAN ONE COURT

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Sec.

372. Oath of United States judges.

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§ 371. (Judicial Code, section 256.) Exclusive jurisdiction of United States courts.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:

First. Of all crimes and offenses cognizable under the authority of the United States.

Second. Of all suits for penalties and forfeitures incurred under the laws of the United States.

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common

law is competent to give it and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States.

Fourth. Of all seizures under the laws of the United States, on land or on waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize.

Fifth. Of all cases arising under the patent-right, or copyright laws of the United States.

Sixth. Of all matters and proceedings in bankruptcy.

Seventh. Of all controversies of a civil nature, where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens.

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls. (Mar. 3, 1911, ch. 231, § 256, 36 Stat. 1160; Oct. 6, 1917, ch. 97, § 2, 40 Stat. 395; June 10, 1922, ch. 216, § 2, 42 Stat. 635.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 563, 629, and 711, which were repealed by acts Feb. 18, 1876, ch. 80, 18 Stat. 318, and Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

They were derived as follows:

U. S. § 563 from acts Sept. 24, 1789, ch. 20, § 9, 1 Stat. 76; Mar. 8, 1815, ch. 101, § 4, 3 Stat. 245; Aug. 23, 1842, ch. 188, § 3, 5 Stat. 517; Feb. 28, 1871, ch. 100, § 57, 16 Stat. 456; Mar. 3, 1875, ch. 137, §§ 1, 9, 18 Stat. 470, 473.

R. S. § 629 from act Aug. 6, 1861, ch. 60, 12 Stat. 319.

R. S. § 711 from acts Sept. 24, 1789, ch. 20, §§ 9, 11, 1 Stat. 76, 78; Aug. 6, 1861, ch. 60, 12 Stat. 319; July 13, 1866, ch. 184, 14 Stat. 111; Mar. 2, 1867, ch. 169, 14 Stat. 483; Mar. 2, 1867, ch. 176, 14 Stat. 517; July 8, 1870, ch. 230, 16 Stat. 206, 207, 215.

CROSS REFERENCES

Judicial power of Federal courts, see U. S. Const. Art. III, § 2, cl. 1, and Amend. XI.

§ 372. (Judicial Code, section 257.) Oath of United States judges.

The justices of the Supreme Court, the circuit judges, and the district judges appointed shall take the following oath before they proceed to perform the duties of their respective offices: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States: So help me God." (Mar. 3, 1911, ch. 231, § 257, 36 Stat. 1161.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 712 which was derived from act Sept. 24, 1789, ch. 20, § 8, 1 Stat. 76, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 373. (Judicial Code, section 258.) Practice of law by United States judges.

It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. Any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor. (Mar. 3, 1911, ch. 231, § 258, 36 Stat. 1161.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 713 which was derived from act Dec. 18, 1812, ch. 5, 2 Stat. 788, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 374. (Judicial Code, section 259.) Traveling expenses of circuit justices and circuit and district judges.

The circuit justices, the circuit and district judges of the United States, and the judges of the district courts of the United States in Alaska, Hawaii, and Puerto Rico, shall each be allowed and paid his necessary expenses of travel, and his reasonable expenses (not to exceed \$10 per day) actually incurred for maintenance, consequent upon his attending court or transacting other official business in pursuance of law at any place other than his official place of residence, said expenses to be paid by the marshal of the district in which such court is held or official business transacted, upon the written certificate of the justice or judge. The official place of residence of each circuit and district judge, and of each judge of the district courts of the United States in Alaska, Hawaii, and Puerto Rico, shall be at that place nearest his actual residence at which either a circuit court of appeals or a district court is regularly held. Every such judge shall, upon his appointment, and from time to time thereafter whenever he may change his official residence, in writing notify the Department of Justice of his official place of residence. (Mar. 3, 1911, ch. 231, § 259, 36 Stat. 1161; May 17, 1932, ch. 190, 47 Stat. 158; Apr. 22, 1940, ch. 126, 54 Stat. 149.)

EFFECTIVE DATE

Section 2 of act Apr. 22, 1940, cited to text, provided that the amendment by said act should take effect as of July 1, 1939.

TRANSFERS OF FUNCTIONS

Disbursement functions of United States marshals which would otherwise have devolved upon the Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, June 10, 1933, as amended, set out in note under section 132 of Title 5, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by 1940 Reorg. Plan No. IV, § 3, eff. June 30, 1940, 5 F. R. 2421, 54 Stat. 1234, set out in note under section 133t of Title 5, Executive Departments and Government Officers and Employees. See, also, sections 13-15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. §§ 554, 596, and 597 and act Mar. 3, 1891, ch. 517, § 8, 26 Stat. 828, all of which were repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 596 was derived from acts July 29, 1850, ch. 30, § 1, 9 Stat. 442; Mar. 3, 1871, ch. 113, § 3, 16 Stat. 494.

R. S. § 597 was derived from act Mar. 5, 1872, ch. 35, 17 Stat. 36.

CROSS REFERENCES

Per diem in lieu of expenses to be paid government employees traveling on official business and repeal of inconsistent laws, see sections 823 and 829 of Title 5, Executive Departments and Government Officers and Employees.

Residence requirements not applicable to retired judges, see section 402 of this title.

§ 374a. Salaries of stenographers and law clerks to district or circuit judges.

CODIFICATION

Section, act June 29, 1939, ch. 248, title II, 53 Stat. 906, was limited to the appropriation act of which it was a part. Similar subject matter is now contained in section 374b of this title.

§ 374b. Salaries of secretaries or law clerks to district or circuit judges.

The compensation of secretaries and law clerks of circuit and district judges (exclusive of any additional compensation under sections 84, 663, 667, 672a, 673, 901-933, 934, 935, 941, 942, 943, and 944-948 of Title 5, and any other Acts of similar purport subsequently enacted) shall be fixed by the Director of the Administrative Office without regard to sections 661-663, 664-669, 670-672, 673 and 674 of Title 5, except that the salary of a secretary shall conform with that of the main (CAF-4), senior (CAF-5), or principal (CAF-6) clerical grade, or assistant (CAF-7) or associate (CAF-8) administrative grade, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the junior (P-1), assistant (P-2), associate (P-3), full (P-4), or senior (P-5) professional grade, as the appointing judge shall determine, subject to review by the judicial council of the circuit if requested by the Director, such determination by the judge otherwise to be final: *Provided further*, That (exclusive of any additional compensation under sections 84, 663, 667, 672a, 673, 901-933, 934, 935, 941, 942, 943, and 944-948 of Title 5, and any other Acts of similar purport subsequently enacted) the aggregate salaries paid to secretaries and law clerks appointed by one judge shall not exceed \$6,500 per annum, except in the case of the senior circuit judge of each circuit and senior district judge of each district having five or more district judges, in which case the aggregate salaries shall not exceed \$7,000. (July 5, 1946, ch. 541, title IV, 60 Stat. 478.)

SIMILAR PROVISIONS

Section was taken from the Judiciary Appropriation Act, 1947, cited to text. Similar provisions were contained in the following prior acts:

- 1945—May 21, 1945, ch. 129, title IV, 59 Stat. 199.
- 1944—June 26, 1944, ch. 277, title II, § 201, 58 Stat. 357.
- 1943—June 28, 1943, ch. 173, title II, § 201, 57 Stat. 242.
- 1942—July 2, 1942, ch. 472, title IV, 56 Stat. 504.
- 1941—June 28, 1941, ch. 253, title IV, 55 Stat. 301.
- 1940—May 14, 1940, ch. 189, title IV, 54 Stat. 209.
- 1939—June 29, 1939, ch. 248, title II, 53 Stat. 906.

CROSS REFERENCES

Administrative matters relating to court personnel vested in Administrative Office of the United States Courts, see sections 446 and 450 of this title, and note under said section 446.

Increase in basic compensation rates, see section 934 of Title 5, Executive Departments and Government Officers and Employees.

§ 375. (Judicial Code, section 260.) Salary of United States judges after resignation or retirement; recall to perform judicial duties; procedure where judge is mentally or physically disabled; effect on seniority.

When any judge of any court of the United States, appointed to hold his office during good behavior, resigns his office after having held a commission or commissions as judge of any such court or courts at least ten years, continuously or otherwise, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the salary which is payable at the time of his resignation for the office that he held at the time of his resignation. But, instead of resigning, any judge other than a Justice of the Supreme Court, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service on the bench, and the President shall thereupon be authorized to appoint a successor; but a judge so retiring may nevertheless be called upon by the senior circuit judge or judicial council of that circuit and be by such senior circuit judge or such council authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake or he may be called upon either by the presiding judge or senior judge of any other such court and be by him authorized to perform such judicial duties in such court as such retired judge may be willing to undertake. Any judge who has heretofore retired, or who hereafter retires, under the provisions of this section, may perform judicial duties only when so called and authorized as herein provided, or as provided by section 17-20, 22, and 23 of this title.

In the event any circuit judge, or district judge, having so held a commission or commissions at least ten years, continuously or otherwise, and having attained the age of seventy years as aforesaid, shall nevertheless remain in office, and not resign or retire as aforesaid, the President, if he finds any such judge is unable to discharge efficiently all the duties of his office by reason of mental or physical disability of permanent character, may, when necessary for the efficient dispatch of business, appoint, by and with the advice and consent of the Senate, an additional circuit judge of the circuit, or district judge of the district, to which such disabled judge belongs. Any judge who has heretofore retired or who hereafter retires voluntarily under the provisions of this section, or whose mental or physical condition caused the President to appoint an additional judge, shall be held and treated as if junior in commission to the remaining judges of said court, who shall, in the order of the seniority of their respective commissions, exercise such powers and perform such duties as by law may be incident to seniority. In districts where there may be more than one district judge, if the judges or a majority of them cannot agree upon the appointment of officials of the court, to be appointed by such judges, then the senior judge shall have the power to make such

appointments: *Provided*, That in determining the seniority of district judges in any State for the purpose of exercising the power of appointing officials of the court, any district judge whose jurisdiction extends over more than one district shall be held and treated as if junior in commission to the other district judges in such State, in all districts except the district of his residence at the time of his appointment.

Upon the death, resignation, or retirement of any circuit or district judge, so entitled to resign, following the appointment of any additional judge as provided in this section, the vacancy caused by such death, resignation, or retirement of the said judge so entitled to resign shall not be filled. (Mar. 3, 1911, ch. 231, § 260, 36 Stat. 1161; Feb. 25, 1919, ch. 29, § 6, 40 Stat. 1157; Mar. 1, 1929, ch. 419, 45 Stat. 1422; May 11, 1944, ch. 192, § 1, 58 Stat. 218.)

AMENDMENTS

1944—Act May 11, 1944, cited to text, amended section by adding last sentence of first paragraph, and second and third sentences in second paragraph.

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 714 as amended by act Feb. 15, 1909, ch. 127, 35 Stat. 619, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

R. S. § 714 was derived from act Apr. 10, 1869, ch. 22, § 5, 16 Stat. 45.

DISTRICT OF COLUMBIA

Section 3 of act May 11, 1944, cited to text, provided: "For the purpose of this Act [sections 375 and 375f of this title] the District of Columbia shall be considered as a judicial circuit."

§ 375a. Supreme Court Justices; retirement; rights and privileges; appointment of successor.

Justices of the Supreme Court are granted the same rights and privileges with regard to retiring, instead of resigning, granted to judges other than Justices of the Supreme Court by section 375 of this title, and the President shall be authorized to appoint a successor to any such Justice of the Supreme Court so retiring from regular active service on the bench, but such Justice of the Supreme Court so retired may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties, in any judicial circuit, including those of a circuit justice in such circuit, as such retired Justice may be willing to undertake. The term "judicial circuit" as used in this section includes the District of Columbia. (Mar. 1, 1937, ch. 21, §§ 1, 2, 50 Stat. 24; Feb. 11, 1938, ch. 25, 52 Stat. 28.)

§ 375b. Retirement of United States judges for disability; appointment of successor.

Any judge or justice of any court of the United States, appointed to hold office during good behavior, who becomes unable because of permanent disability to perform the duties of his office, may retire from regular active service on the bench and the President shall thereupon be authorized to appoint a successor. (Aug. 5, 1939, ch. 433, § 1, 53 Stat. 1204.)

CROSS REFERENCES

Retirement of United States judges generally, see sections 375 and 375a of this title.

§ 375c. Same; certificate of disability.

Any district or circuit judge, other than a senior circuit judge, who desires to retire under the provisions of sections 375b–375e of this title shall certify his disability in writing and shall furnish a like certificate made by the senior circuit judge of the judicial circuit in which the court of which he is a member is situated. Any Justice of the Supreme Court of the United States, other than the Chief Justice of the United States, who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the Chief Justice of the United States. If the Chief Justice of the United States retires under the provisions of said sections he need not furnish any certificate in addition to his own. Any judge of the Court of Claims, other than the chief justice, any judge of the United States Customs Court, or any judge of the United States Court of Customs and Patent Appeals, other than the presiding judge of the United States Court of Customs and Patent Appeals, who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the chief justice of the Court of Claims, if he be a judge of the Court of Claims, or by the presiding judge of the United States Court of Customs and Patent Appeals, if he be a judge of the United States Customs Court or the United States Court of Customs and Patent Appeals. Any other judge or justice who desires to retire under the provisions of said sections shall certify his disability in writing and shall furnish a like certificate made by the Chief Justice of the United States. (Aug. 5, 1939, ch. 433, § 2, 53 Stat. 1204.)

§ 375d. Same; salary upon retirement.

Any judge or justice who retires under the provisions of sections 375b–375e of this title, after he has served less than ten years, shall receive annually, in equal monthly installments, during the remainder of his life, a sum equal to one-half of the annual salary he is receiving at the date of retirement; and any judge or justice who retires under the provisions of said sections, after he has served ten years or more, shall receive in like manner during the remainder of his life the salary he is receiving at the date of retirement. (Aug. 5, 1939, ch. 433, § 3, 53 Stat. 1205.)

§ 375e. Same; definitions.

The term "senior circuit judge", as used in sections 375b–375e of this title, includes the chief justice of the United States Court of Appeals for the District of Columbia. The term "judicial circuit", as used in said sections, includes the District of Columbia. (Aug. 5, 1939, ch. 433, § 4, 53 Stat. 1205.)

§ 375f. Same; recall and authorization to perform judicial duties.

Any Justice of the Supreme Court who retires or who has retired under the provisions of sections 375b–375f of this title may nevertheless be called upon by the Chief Justice and be by him authorized to perform such judicial duties, in any judicial circuit, including those of a circuit justice in such circuit, as such retired Justice may be willing to under-

take; a circuit or district judge so retiring or retired may nevertheless be called upon by the senior circuit judge or judicial council of that circuit and be by such senior circuit judge or such judicial council authorized to perform such judicial duties in such circuit as such retired judge may be willing to undertake, or he may be called upon by the Chief Justice and be by him authorized to perform such judicial duties in any other circuit as such retired judge may be willing to undertake; and any judge of any other court of the United States so retiring or retired may be called upon by the presiding judge or senior judge of such court and be by him authorized to perform such judicial duties in such court as he may be willing to undertake. Any such judge so retiring or retired may perform judicial duties only when so called and authorized as herein provided. (Aug. 5, 1939, ch. 433, § 5, as added May 11, 1944, ch. 192, § 2, 58 Stat. 219.)

DISTRICT OF COLUMBIA

Section 3 of act May 11, 1944, cited to text, provided: "For the purpose of this Act [sections 375 and 375f of this title] the District of Columbia shall be considered as a judicial circuit."

§ 375g. Retirement of certain justices and judges in the various Territories and Possessions; salary.

Every justice of the Supreme Court of the Territory of Hawaii, and every judge of the United States District Court for the Territory of Hawaii, the District Court for the District of Alaska, the District Court of the United States for Puerto Rico, the District Court of the Virgin Islands, and the United States District Court for the District of the Canal Zone, may, after April 16, 1946, retire after attaining the age of seventy years. If such justice or judge retires after having served as a justice or judge of any of the aforementioned courts for a period or periods aggregating ten years or more, whether continuously or not, he shall receive annually in equal monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such justice or judge at the date of such retirement as the total of his aggregate years of service bears to the period of sixteen years, the same to be paid by the United States in the same manner as the salaries of the aforesaid justices and judges: *Provided, however,* That in no event shall the sum received by any such justice or judge under this section be in excess of the salary of such justice or judge at the date of such retirement. (May 31, 1938, ch. 301, § 1, 52 Stat. 591; Apr. 16, 1946, ch. 139, § 1, 60 Stat. 90.)

AMENDMENTS

1946—Act Apr. 16, 1946, cited to text, amended section by inserting "the District Court * * * of the Canal Zone" following "Hawaii".

AMENDMENT OF TITLE OF ACT

Section 3 of Act Apr. 16, 1946, cited to text, amended title of Act May 31, 1938, cited to text, which read "An Act relating to the retirement of the justices of the Supreme Court of the Territory of Hawaii and judges of the United States District Court for the Territory of Hawaii," to read "An Act relating to the retirement of certain justices and judges in the various Territory and possessions".

§ 375h. Same; computation of years of service; definitions.

In computing the years of service under this section and section 375g of this title, service in any of the aforesaid courts shall be included whether such service be continuous or not and whether rendered before or after April 16, 1946. The terms "retire" and "retirement" as used in this section and section 375g of this title, shall mean and include retirement, resignation, failure of reappointment upon the expiration of the term of office of an incumbent, or removal by the President of the United States upon the sole ground of mental or physical disability. (May 31, 1938, ch. 301, § 2, 52 Stat. 591; Apr. 16, 1946, ch. 139, § 2, 60 Stat. 91.)

AMENDMENTS

1946—Act Apr. 16, 1946, cited to text, amended section by deleting "either of the" preceding "courts mentioned in" and inserting in lieu thereof "any of the aforesaid", in the first sentence.

§ 376. (Judicial Code, section 261.) Writs of ne exeat.

Writs of ne exeat may be granted by any justice of the Supreme Court, in cases where they might be granted by the Supreme Court; and by any district judge, in cases where they might be granted by the district court of which he is a judge. But no writ of ne exeat shall be granted unless a suit in equity is commenced, and satisfactory proof is made to the court or judge granting the same that the defendant designs quickly to depart from the United States. (Mar. 3, 1911, ch. 231, § 261, 36 Stat. 1162.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 717 which was derived from acts Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334; Apr. 10, 1860, ch. 22, § 2, 16 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action in district courts, see Rule 2, following section 723c of this title.

Seizure of persons, see Rule 64, following said section 723c.

Supersedeure of section by Rule 64, see note by Advisory Committee under said Rule 64.

§ 377. (Judicial Code, section 262.) Power to issue writs.

The Supreme Court and the district courts shall have power to issue writs of scire facias. The Supreme Court, the circuit courts of appeals, and the district courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (Mar. 3, 1911, ch. 231, § 262, 36 Stat. 1162.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 716, which was derived from acts Sept. 24, 1789, ch. 20, § 14, 1 Stat. 81; Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

Writs of scire facias abolished, see subdivision (b) of said Rule 81.

§ 377a. Quo warranto; against whom issued.

A quo warranto may be issued from the district court of the United States for the District of Columbia in the name of the United States—

First. Against a person who usurps, intrudes into, or unlawfully holds or exercises within the District a franchise or public office, civil or military, or an office in any domestic corporation.

Second. Against any one or more persons who act as a corporation within the District without being duly authorized, or exercise within the District any corporate rights, privileges, or franchises not granted them by the laws in force in said District.

And said proceedings shall be deemed a civil action. (Mar. 3, 1901, ch. 854, § 1538, 31 Stat. 1419; June 25, 1936, ch. 804, 49 Stat. 1921.)

CHANGE IN NAME

Act June 26, 1936, cited to text, changed the name of the "Supreme Court of the District of Columbia" to "district court of the United States for the District of Columbia."

§ 377b Same; who may institute

The Attorney General or the district attorney may institute a quo warranto proceeding on his own motion, or on the relation of a third person. But such writ shall not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator shall file a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court may prescribe, conditioned for the payment by him of all costs incurred in the prosecution of the writ in case the same shall not be recovered from and paid by the defendant. (Mar. 3, 1901, ch. 854, § 1539, 31 Stat. 1420.)

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 377c. Same; institution on refusal of Attorney General and district attorney.

If the Attorney General and district attorney shall refuse to institute a quo warranto proceeding on the request of a person interested, such person may apply to the court by verified petition for leave to have said writ issued; and if in the opinion of the court the reasons set forth in said petition are sufficient in law, the said writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of said interested person, on his compliance with the condition prescribed in section 377b of this title as to security for costs. (Mar. 3, 1901, ch. 854, § 1540, 31 Stat. 1420.)

FEDERAL RULES OF CIVIL PROCEDURE

Application of, see Rule 81, following section 723c of this title.

Preservation of section under Rule 81, see note by Advisory Committee under said Rule 81.

§ 378. (Judicial Code, section 264.) Injunctions; when granted.

Writs of injunction may be granted by any justice of the Supreme Court in cases where they

might be granted by the Supreme Court; and by any judge of a district court in cases where they might be granted by such court. But no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order in any cause pending in the circuit to which he is allotted, elsewhere than within such circuit, or at such place outside of the same as the parties may stipulate in writing, except when it cannot be heard by the district judge of the district. In case of the absence from the district of the district judge, or of his disability, any circuit judge of the circuit in which the district is situated may grant an injunction or restraining order in any case pending in the district court, where the same might be granted by the district judge. (Mar. 3, 1911, ch. 231, § 264, 36 Stat. 1162.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 719, which was derived from acts Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334; Feb. 13, 1807, ch. 13, 2 Stat. 418; Apr. 10, 1809, ch. 22, § 1, 16 Stat. 44; June 1, 1872, ch. 255, § 7, 17 Stat. 197, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 65, see note by Advisory Committee under said Rule 65.

Injunctions, see Rule 65, following section 723c of this title.

§ 379. (Judicial Code, section 265.) Same; stay in State courts.

The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy. (Mar. 3, 1911, ch. 231, § 265, 36 Stat. 1162.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 720 which was derived from act Mar. 2, 1793, ch. 22, § 5, 1 Stat. 334, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 65, see note by Advisory Committee under said Rule 65.

Injunctions, see Rule 65, following section 723c of this title.

§ 380. (Judicial Code, section 266.) Same; alleged unconstitutionality of State statutes; appeal to Supreme Court.

No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit or district judge,

and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, ~~that~~ the suit in the State courts is not being prosecuted with diligence and good faith. 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 ~~State~~ Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit. (Mar. 3, 1911, ch. 231, § 266, 36 Stat. 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in act June 18, 1910, ch. 309, § 17, 36 Stat. 557.

CROSS REFERENCES

Single judge's powers in action in three-judge district court for interlocutory injunction and final hearing under this section, see section 792 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Assignment of cases for trial, stay of proceedings and injunctions, see Rules 40, 62, 65, following section 723c of this title.

Continuation of provisions on injunctions under Rule 65, see note by Advisory Committee under said Rule 65.

§ 380a. Same; constitutionality of Federal statute; application for hearing; appeal to Supreme Court.

No interlocutory or permanent injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any Act of Congress upon the ground that such Act or any part thereof is repugnant to the Constitution of the United States shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge. When any such application is presented to a judge he shall immediately request the senior circuit judge (or in his absence, the presiding circuit judge) of the circuit in which such district court is located to designate two other judges to participate in hearing and determining such application. It shall be the duty of the senior circuit judge or the presiding circuit judge, as the case may be, to designate immediately two other judges from such circuit for such purpose, and it shall be the duty of the judges so designated to participate in such hearing and determination. Such application shall not be heard or determined before at least five days' notice of the hearing has been given to the Attorney General and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the petitioner unless a temporary restraining order is granted, the judge to whom the application is made may grant such temporary restraining order at any time before the hearing and determination of the application, but such temporary restraining order shall remain in force only until such hearing and determination upon notice as aforesaid, and such temporary restraining order shall contain a specific finding, based upon evidence submitted to the court making the order and identified by reference thereto, that such irreparable loss or damage would result to the petitioner and specifying the nature of the loss or damage. The said court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension, in whole or in part, until decision upon the application. The hearing upon any such application for an interlocutory or permanent injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day. An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case. In the event that an appeal

is taken under this section, the record shall be made up and the case docketed in the Supreme Court of the United States within sixty days from the time such appeal is allowed, under such rules as may be prescribed by the proper courts. Appeals under this section shall be heard by the Supreme Court of the United States at the earliest possible time and shall take precedence over all other matters not of a like character. This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law. (Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752.)

DEFINITIONS

Act August 24, 1937, § 5, cited to text, provided that the term "district court of the United States" should include the District Court of the United States for the District of Columbia, the term "judge" should include justice, the term "senior circuit judge" should include the Chief Justice of the United States Court of Appeals for the District of Columbia, and the term "circuit" should include the District of Columbia.

CROSS REFERENCES

Single judge's powers in action in three-judge district court for interlocutory injunction and final hearing under this section, see section 792 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Generally, see Rules 40, 62, 65, 72, following section 723c of this title.

Continuation of provisions on injunctions under Rule 65, see note by Advisory Committee under said Rule 65.

§ 381. Same; preliminary injunctions and temporary restraining orders.

No preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine

the motion as expeditiously as the ends of justice may require. Nothing in this section contained shall be deemed to alter, repeal, or amend section 380 of this title. (Oct. 15, 1914, ch. 323, § 17, 38 Stat. 737.)

SIMILAR PROVISIONS

Prior provisions on this subject were contained in R. S. § 718 and section 263 of the Judicial Code, act Mar. 3, 1911, ch. 231, 36 Stat. 1162. R. S. § 718, which was derived from act June 1, 1872, ch. 255, 17 Stat. 197, was repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168, and section 263 of the Judicial Code was repealed by act Oct. 15, 1914, cited to text.

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

Issuance of injunctions in labor disputes, see sections 107-109 of Title 20, Labor.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions and signing of pleadings, see Rules 11, 65, following section 723c of this title.

§ 382. Same; security on issuance of.

Except as otherwise provided in section 26 of Title 15, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby. (Oct. 15, 1914, ch. 323, § 18, 38 Stat. 738.)

SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

§ 383. Same; requisites of order; binding effect.

Every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same. (Oct. 15, 1914, ch. 323, § 19, 38 Stat. 738.)

SIMILAR PROVISIONS

Prior provisions relating to temporary restraining orders, see note under section 381 of this title.

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see Rule 65, following section 723c of this title.

§ 384. (Judicial Code, section 267.) Suits in equity, when not sustainable.

Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. (Mar. 3, 1911, ch. 231, § 267, 36 Stat. 1163.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 723 which was derived from act Sept. 24, 1789, ch. 20, § 16, 1 Stat. 82, and repealed by act Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

Modification of section by Rule 2, see note by Advisory Committee under said Rule 2.

One form of action, see Rule 2, following section 723c of this title.

§ 385. (Judicial Code, section 268.) Administration of oaths; contempts.

The courts of the United States shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts. (Mar. 3, 1911, ch. 231, § 268, 36 Stat. 1163.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 725 which was derived from acts Sept. 24, 1789, ch. 20, § 17, 1 Stat. 83; Mar. 2, 1831, ch. 99, § 1, 4 Stat. 487, and repealed by act Mar. 3, 1911, ch. 231, § 207, 36 Stat. 1168.

§ 386. Contempts; when constituting also criminal offense.

Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed shall be proceeded against for his said contempt as provided in sections 387-390 of this title. (Oct. 15, 1914, ch. 323, § 21, 38 Stat. 738.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687

of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

Definition of persons as used in this section, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

§ 387. Same; procedure; bail; attachment; trial; punishment.

Whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of criminal contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court. If the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of sections 381-383, 383-390 of this title, section 412 of Title 18, section 52 of Title 29, sections 12, 13, and 14-27 of Title 15, such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months. In any case the court or a judge thereof may, for good cause shown,

by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance. (Oct. 15, 1914, ch. 323, § 22, 38 Stat. 738.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

Definition of person or persons as used in this section, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

Failure of witness to appear before foreign court to answer interrogatories of United States courts made contempt punishable by fine not exceeding \$100,000, see section 717 of this title.

§ 388. Same; review of conviction.

The evidence taken upon the trial of any persons accused of criminal contempt may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon appeal in all respects as provided on October 15, 1914, by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such appeal, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia. (Oct. 15, 1914, ch. 323, § 23, 38 Stat. 739; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

Definition of person and persons as used in this title, see section 390a of this title.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

Exceptions unnecessary, see Rule 51 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure.

§ 389. Same; not specifically enumerated.

Nothing contained in sections 386-388 and 390 of this title shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any

lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section 386 of this title, may be punished in conformity to the usages at law and in equity prevailing on October 15, 1914. (Oct. 15, 1914, ch. 323, § 24, 38 Stat. 739.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

District Courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

§ 390. Same; limitations.

No proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts. (Oct. 15, 1914, ch. 323, § 25, 38 Stat. 740.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

Definition of person and persons as used in this section, see section 390a of this title.

District courts given jurisdiction to issue writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain violations or compel obedience to orders of Interstate Commerce Commission, see section 5 (8) of Title 49, Transportation.

§ 390a. "Person" or "persons" defined.

The word "person" or "persons" wherever used in sections 381-383, 386-390a of this title, sections 12, 13, 14-19, 20, 21, 22-27 and 44 of Title 15, and section 412 of Title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. (Oct. 15, 1914, ch. 323, § 1, 38 Stat. 730.)

CROSS REFERENCES

Applicability of this section to the insurance business, see sections 1011-1015 of Title 15, Commerce and Trade.

Criminal contempt procedure, see Rule 42 of the Federal Rules of Criminal Procedure, following section 687 of Title 18, Criminal Code and Criminal Procedure, and note of the Advisory Committee under such rule.

§ 391. (Judicial Code, section 269.) New trials; harmless error.

All United States courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to

technical errors, defects, or exceptions which do not affect the substantial rights of the parties. (Mar. 3, 1911, ch. 231, § 269, 36 Stat. 1163; Feb. 26, 1910, ch. 48, 40 Stat. 1181; Jan. 31, 1928, ch. 14, § 1, 45 Stat. 54.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 726, which was derived from act Sept. 24, 1789, ch. 20, § 17, 1 Stat. 83, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

FEDERAL RULES OF CIVIL PROCEDURE

Continuation of section under Rule 59, see note by Advisory Committee under said Rule 59.

New trials and harmless error, see Rules 59, 61, following section 723c of this title.

FEDERAL RULES OF CRIMINAL PROCEDURE

New trials, see Rule 33, following section 687 of Title 18, Criminal Code and Criminal Procedure.

§ 392. (Judicial Code, section 270.) Security for the peace and good behavior.

The judges of the Supreme Court and of the circuit courts of appeals and district courts, United States commissioners, and the judges and other magistrates of the several States, who are or may be authorized by law to make arrests for offenses against the United States, shall have the like authority to hold to security of the peace and for good behavior, in cases arising under the Constitution and laws of the United States, as may be lawfully exercised by any judge or justice of the peace of the respective States, in cases cognizable before them. (Mar. 3, 1911, ch. 231, § 270, 36 Stat. 1163.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 727, which was derived from acts Sept. 24, 1789, ch. 20, § 33, 1 Stat. 91; Mar. 2, 1793, ch. 22, § 4, 1 Stat. 334; July 16, 1793, ch. 83, 1 Stat. 609; Aug. 23, 1842, ch. 188, § 1, 5 Stat. 516; May 15, 1862, ch. 71, § 8, 12 Stat. 387; Apr. 10, 1869, ch. 22, § 2, 16 Stat. 44, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 393. (Judicial Code, section 271.) Enforcement of awards of foreign consuls.

The district courts and the United States commissioners shall have power to carry into effect, according to the true intent and meaning thereof, the award or arbitration or decree of any consul, vice consul, or commercial agent of any foreign nation, made or rendered by virtue of authority conferred on him as such consul, vice consul, or commercial agent, to sit as judge or arbitrator in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to his charge, application for the exercise of such power being first made to such court or commissioner, by petition of such consul, vice consul, or commercial agent. And said courts and commissioners may issue all proper remedial process, mesne and final, to carry into full effect such award, arbitration, or decree, and to enforce obedience thereto by imprisonment in the jail or other place of confinement in the district in which the United States may lawfully imprison any person arrested under the authority of the United States, until such award, arbitration, or decree is complied with, or the parties are otherwise discharged therefrom, by the consent in writing

of such consul, vice consul, or commercial agent, or his successor in office, or by the authority of the foreign government appointing such consul, vice consul, or commercial agent. The expenses of the said imprisonment and maintenance of the prisoners, and the cost of the proceedings, shall be borne by such foreign government, or by its consul, vice consul, or commercial agent requiring such imprisonment. The marshals of the United States shall serve all such process, and do all other acts necessary and proper to carry into effect the premises, under the authority of the said courts and commissioners. (Mar. 3, 1911, ch. 231, § 271, 36 Stat. 1163.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 728 which was derived from act Aug. 8, 1846, ch. 105, 9 Stat. 78, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 394. (Judicial Code, section 272.) Appearance personally or by counsel.

In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein. (Mar. 3, 1911, ch. 231, § 272, 36 Stat. 1164.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 747 which was derived from act Sept. 24, 1789, ch. 20, § 35, 1 Stat. 92, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 395. (Judicial Code, section 273.) Officers forbidden to act as attorneys.

No clerk, or assistant or deputy clerk, of any Territorial, district, or circuit court of appeals, or of the Court of Claims, or of the Supreme Court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney, or counsel in any cause depending in any of said courts, or in any district for which he is acting as such officer. (Mar. 3, 1911, ch. 231, § 273, 36 Stat. 1164.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 748 which was derived from act Jan. 16, 1873, ch. 36, § 1, 17 Stat. 411, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 396. (Judicial Code, section 274.) Same; penalty.

Whoever shall violate the provisions of section 395 of this title shall be stricken from the roll of attorneys by the court upon complaint, upon which the respondent shall have due notice and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office. (Mar. 3, 1911, ch. 231, § 274, 36 Stat. 1164.)

SIMILAR PROVISIONS

Prior to the enactment of the Judicial Code the subject matter of this section was contained in R. S. § 749 which was derived from act Jan. 16, 1873, ch. 36, § 2, 17 Stat. 411, and repealed by act Mar. 3, 1911, ch. 231, § 297, 36 Stat. 1168.

§ 397. (Judicial Code, section 274a.) Amendments to pleadings.

CODIFICATION

Section, act Mar. 3, 1911, ch. 231, § 274a, as added by act Mar. 3, 1915, ch. 90, 38 Stat. 956, related to amendments to pleadings to obviate objection that suit was brought on wrong side of court. Rule 2 of the Rules of Civil Procedure abolished the distinctions between law and equity. See note by Advisory Committee under said Rule 2, set out following section 723c of this title.

§ 398. (Judicial Code, section 274b.) Equitable defenses and equitable relief in actions at law.

CODIFICATION

Section was from section 274b of act Mar. 3, 1911, ch. 231, as added by act Mar. 3, 1915, ch. 90, 38 Stat. 956. Rule 2 of the Federal Rules of Civil Procedure, set out following section 723c of this title, abolished the distinctions between actions at law and bills in equity and provided there should be one form of action to be known as a civil action. See notes of Advisory Committee under said Rule.

§ 399. (Judicial Code, section 274c.) Amendments to show diverse citizenship.

Where, in any suit brought in or removed from any State court to any district of the United States, the jurisdiction of the district court is based upon the diverse citizenship of the parties, and such diverse citizenship in fact existed at the time the suit was brought or removed, though defectively alleged, either party may amend at any stage of the proceedings and in the appellate court upon such terms as the court may impose, so as to show on the record such diverse citizenship and jurisdiction, and thereupon such suit shall be proceeded with the same as though the diverse citizenship had been fully and correctly pleaded at the inception of the suit, or, if it be a removed case, in the petition for removal. (Mar. 3, 1911, ch. 231, § 274c, as added Mar. 3, 1915, ch. 90, 38 Stat. 956.)

FEDERAL RULES OF CIVIL PROCEDURE

Amended and supplemental pleadings, see Rules 12, 15, following section 723c of this title.

Continuation of section by Rules, see note by Advisory Committee under Rule 13.

§ 400. (Judicial Code, section 274d.) Declaratory judgments authorized; procedure.

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury,

such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not. (Mar. 3, 1911, ch. 231, § 274d, as added June 14, 1934, ch. 512, 48 Stat. 955, amended Aug. 30, 1935, ch. 829, § 405, 49 Stat. 1027.)

FEDERAL RULES OF CIVIL PROCEDURE

Declaratory judgments, see Rule 57, following section 723c of this title.

Form of complaint, see Form 18, appendix of forms following section 723c of this title.

Special verdicts and interrogatories, see Rule 40, following section 723c of this title.

§ 401. Intervention by United States; constitutionality of Federal statute.

Whenever the constitutionality of any Act of Congress affecting the public interest is drawn in question in any court of the United States in any suit or proceeding to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, the court having jurisdiction of the suit or proceeding shall certify such fact to the Attorney General. In any such case the court shall permit the United States to intervene and become a party for presentation of evidence (if evidence is otherwise receivable in such suit or proceeding) and argument upon the question of the constitutionality of such Act. In any such suit or proceeding the United States shall, subject to the applicable provisions of law, have all the rights of a party and the liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the constitutionality of such Act. (Aug. 24, 1937, ch. 754, § 1, 50 Stat. 751.)

COURTS OF THE UNITED STATES

Act Aug. 24, 1937, § 5, cited to text, defined the term "court of the United States" as meaning the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States.

FEDERAL RULES OF CIVIL PROCEDURE

Effect of Rule 24 on this section, see note by Advisory Committee under said Rule 24.

Intervention, see Rule 24, following section 723c of this title.

§ 402. Residence requirements for retired judges.

No provision of law requiring any judge of any court of the United States to reside in any district or circuit shall be held or considered to apply to any such judge after he shall have retired. (Feb. 11, 1938, ch. 23, 52 Stat. 28.)

Chapter 11.—JURIES

- Sec.
- 411. Jurors; qualifications and exemptions.
 - 412. Same; manner of drawing.
 - 412a. Compensation of jury commissioners.
 - 413. Same; apportioned in district.
 - 414. Repealed.
 - 415. Jurors not disqualified because of race or color.
 - 416. Jurors; venire; service and return.
 - 417. Talesmen for petit juries.
 - 417a. Alternate jurors.
 - 418. Special juries.
 - 419. Grand jurors; number when less than required number.
 - 420. Same; foreman.