IN THE SUPREME COURT
OF THE UNITED STATES

KHEMALL JOKHOO
petitioner,

CASE NO: 20-7398

Petition FOR REHEARING

v

LOIA VELAQUEZ-AGUILU
Respondent

ON Petition TO THE SUPREME COURT FOR REHEARING

I, DECLARE under PENALTY OF PERJURY that the foregoing is true and correct to the Best of my knowledge. (28 U.S.C. 1746)

I, KHEMALL JOKHOO, Being competent to testify, having First-hand knowledge of the facts, Below, and first DULY SWORN, Dispose and SAY:

Comes NOW, KHEMALL JOKHOO, Petitioner, Petition to this COURT FOR REHEARING, IN ACCORDANCE with the U.S. constitution And the JUDICIARY Act provisions

SUMMARY

the JUDGment of the lower And Supreme court (Denial of

(Ex. A)

Writ of Certiorari;) were without the mandated provisions set forth in the second. Congress sess. I. ch. 36. 1792, states; processes issuing from the supreme or a circuit court, shall bear test of the chief Justice of the Supreme Court (or if that office shall be vacant) of the associate Justice next in precedence; and all writs and processes issuing from a District court, shall bear test of the Judge of such court, which said writs and processes shall be under the seal of the court from whence they issue, and signed by the clerk thereof." (See Ex. B). Petitioner initiated pleading / compliant was file as a common law cause of action, pursuant to the 7th Amendment of the U.S. constitution and section. 9 of the Judiciary Act of 1789, this ~~cause of action~~ common law cause of action was denied by the U.S. District court (E.D.N.C., Western Division) and affirm by the U.S. court of Appeals for the Fourth Circuit." If a case is cognizable at common law, the defendant has a right of trial by jury, and a suit upon it cannot be sustained in Equity. Baker v Biddle, 1 Baldwin's C.C.R. 405 (See Ex. C), the District court erred and its failure to serve process on Respondent pursuant to F.R. Civ. P. Rule 4(c)(3), after in forma pauperis was allowed and upon the instructions of petitioner, the District court failure to comply with Rule 4(c)(3) (F.R. Civ. P.) Denied petitioner the equal protection and Due process of law.

Grounds For Rehearing

1) A Rehearing is warranted to undue the Denial of a common law cause of action, pursuant to the 7th Amendment of the U.S. constitution and section. 9 of the Judiciary Act of 1789 (See Ex. C)

2) A Rehearing is warranted to Decide if the lower courts Summary Judgment are lawful and valid and the Supreme Court Denial of writ of certiorari were lawful and valid, pursuant to Section. 22 of the Judiciary Act of 1789 (See Ex. B) and the Act of Second Congress. Sess. I. CH. 36. 1792 mandated provisions states; processes issuing from the supreme or a Circuit Court, shall bear test of the chief Justice of the Supreme Court, which said writs and processes shall be under the Seal of the Court from whence they issue, and Sibned By the Clerk thereof (See Ex. B)

3) A Rehearing is warranted to Re-examined the lower Court erred and its failure to serve process on Respondent, pursuant to F.R. Civ. P. Rule 4(C)(3) After IN Forma pauperis was Allowed and upon the instructions of petitioner, the District Court fail to Comply with Rule 4(C)(3) (F.R. Civ. P.), Petitioner was Denied Equal protection and Due process of law.

4) this Court power to Award a writ is conferred By Section. 14 of the Judiciary Act of 1789 (See Ex. C) the Act Does not mandate a majority's Decision to Award a writ nor Does it mandate Compliance with this Court's Specific Rules outlined in its letter Dated May 17, 2021 (See Ex. d)

Conclusion

~~the~~ petitioner was Denied the Right to a Common law Jury trial, pursuant to the 7th Amendment of the U.S. constitution and Section. 9 of the Judiciary Act of 1789

(see Ex. C), further, Petitioner was Denied Equal protection of law, Due process, the challenge of Jurisdiction, and the lawful validity of the lower courts summary Judgment and this court Denial of writ of Certiorari. A Rehearing is warranted to Re-Examine these Constitutional challenges and undue A Miscarriage of Justice,

For the foreboing reasons, this court should Grant A Re-hearing, Review the Decision on Appeal and Reverse the Judgment of the U.S. Cant of Appeals for the Fourth Circuit.

I, Declare under penalty of perJury that the forboing is true and correct to the Best of my knowledge. (28 U.S.C. 1746)

Without Prejudice

Khemali Jokhoo

5-26-21

Date:

Certificate of Service

I HEREBY certify that A copy of petition For Re-HEARING WAS served upon Respondent At the LAST Known ADDRESS OF: 710 MEDTRONIC PARKWAY Minneapolis, Minnesota 55432 BY Depositing A copy of the MAIL in F.C.I. MILAN, INMATE MAILBOX with Sufficient prepaid postage (VIA U.S.P.S.) A copy of the petition for Rehearing WAS served on the U.S. Supreme Court OF the United States, office of the CLERK, WASHINGTON, DC 20543 BY PREPAID POSTAGE (VIA U.S.P.S.)

I, DECLARE under PENALTY OF PERJURY, that the FORGOING is true and CORRECT to the BEST of my KNOWLEDGE (28 U.S.C. 1746)

Without PREJUDICE

Khoo

KHEMALL JOKHOO

5-26-21

DATE:

Ex. A

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

April 5, 2021

Mr. Khemall Jokhoo
Prisoner ID 16804-041
FCI Milan
P.O. Box 1000
Milan, MI 48160

Re: Khemall Jokhoo
v. Lola Velaquez-Aguilu, Assistant United States Attorney
No. 20-7398

Dear Mr. Jokhoo:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk

EX. 15

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

and seals provided.

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

Forms of writs, 1789, ch. 21.

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

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

Fees for serving writs &c.

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

Proviso in favor of state constables;

for attending courts;

levying execution, &c.

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

Ex. C

STATUTE I. Sept. 24, 1789.

CHAP. XX.—*An Act to establish the Judicial Courts of the United States.*(a)

Supreme court to consist of a chief justice, and five associates.

Two sessions annually.

Precedence.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Thirteen districts.

Maine.

N. Hampshire.

Massachusetts.

Connecticut.

New York.

New Jersey.

Pennsylvania.

Delaware.

Maryland.

Virginia.

Kentucky.

South Carolina.

Georgia.

SEC. 2. *And be it further enacted,* That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

A district court in each district.

SEC. 3. *And be it further enacted,* That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form presented by law. It then becomes a case. Osborn et al. v. The Bank of the United States, 9 Wheat. 738; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 28, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 16, 1816; act of April 20, 1818; act of May 15, 1820; act of March 3, 1823.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: The Thomas Jefferson, 10 Wheat. 428; 6 Cond. Rep. 173. M'Donough v. Dancy, 3 Dall. 188; 1 Cond. Rep. 94. United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 139. Glass et al. v. The Betsey, 3 Dall. 6; 1 Cond. Rep. 10. The Alerta v. Blas Moran, 9 Cranch, 359; 3 Cond. Rep. 425. The Merino et al., 9 Wheat. 391; 5 Cond. Rep. 623. The Josefa Segunda, 10 Wheat. 312; 6 Cond. Rep. 111. The Bolina, 1 Gallis. C. C. R. 75. The Robert Fulton, Paine's C. C. R. 620. Jansen v. The Vrow Christiana Magdalena, Bee's D. C. R. 11. Jennings v. Carson, 4 Cranch, 2; 2 Cond. Rep. 2. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. Penhallow et al. v. Doane's Adm'rs, 3 Dall. 54; 1 Cond. Rep. 21. The United States v. Richard Peters, 3 Dall. 121; 1 Cond. Rep. 60. M'Lellan v. the United States,

Four sessions annually in a district; and when held.

sessions, the first of which to commence as follows, to wit: in the districts of New York and of New Jersey on the first, in the district of Pennsylvania on the second, in the district of Connecticut on the third, and in the district of Delaware on the fourth, Tuesdays of November next; in the districts of Massachusetts, of Maine, and of Maryland, on the first, in the district of Georgia on the second, and in the districts of New Hampshire, of Virginia, and of Kentucky, on the third Tuesdays of December next; and the other three sessions progressively in the respective districts on the like Tuesdays of every third calendar month afterwards, and in the district of South Carolina, on the third Monday in March and September, the first Monday in July, and the second Monday in December of each and every year, commencing in December next; and that the District Judge shall have power to hold special courts at his discretion. That the stated District Court shall be held at the places following, to wit: in the district of Maine, at Portland and Pownalsborough alternately, beginning at the first; in the district of New Hampshire, at Exeter and Portsmouth alternately, beginning at the first; in the district of Massachusetts, at Boston and Salem alternately, beginning at the first; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the first; in the district of New York, at New York; in the district of New Jersey, alternately at New Brunswick and Burlington, beginning at the first; in the district of Pennsylvania, at Philadelphia and York Town alternately, beginning at the first; in the district of Delaware, alternately at Newcastle and Dover, beginning at the first; in the district of Maryland, alternately at Baltimore and Easton, beginning at the first; in the district of Virginia, alternately at Richmond and Williamsburgh, beginning at the first; in the district of Kentucky, at Harrodsburgh; in the district of South Carolina, at Charleston; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first; and that the special courts shall be held at the same place in each district as the stated courts, or in districts that have two, at either of them, in the discretion of the judge, or at such other place in the district, as the nature of the business and his discretion shall direct. And that in the districts that have but one place for holding the District Court, the records thereof shall be kept at that place; and in districts that have two, at that place in each district which the judge shall appoint.

Special district courts.

Stated district courts; when holden.

Special courts, where held.

Where records kept.

Three circuits, and how divided.

[Obsolete.]

SEC. 4. *And be it further enacted*, That the before mentioned districts, except those of Maine and Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the southern circuit. That the eastern circuit shall consist of the districts of New Hampshire, Massachusetts, Connecticut and New York; that the middle circuit shall consist of the districts of New Jersey, Pennsylvania, Delaware, Maryland and Virginia; and that the southern circuit shall consist of the districts of South Carolina and Georgia, and that there shall be held annually in each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of any two justices of

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1 Gallis. C. C. R. 227. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. De Lovio v. Bolt et al., 2 Gallis. Rep. 398. Burke v. Trevitt, 1 Mason, 96. The Amiable Nancy, 3 Wheat. 546; 4 Cond. Rep. 322. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40. Slocum v. Mayberry et al., 2 Wheat. 1; 4 Cond. Rep. 1. Southwick v. The Postmaster General, 2 Peters, 449. Davis v. A New Brig, Gilpin's D. C. R. 473. Smith v. The Pekin, Gilpin's D. C. R. 203. Peters' Digest, "Courts," "District Courts of the United States."

The 3d section of the act of Congress of 1789, to establish the Judicial Courts of the United States, which provides that no summary writ, return of process, judgment, or other proceedings in the courts of the United States shall be abated, arrested or quashed for any defect or want of form, &c., although it does not include verdicts, eo nomine, but judgments are included; and the language of the provision, "writ, declaration, judgment or other proceeding, in court causes," and further "such writ, declaration, pleading, process, judgment or other proceeding whatsoever," is sufficiently comprehensive to embrace every conceivable step to be taken in a court, from the emanation of the writ, down to the judgment. Roach v. Hulings, 16 Peters, 319.

Ex. C

the Supreme Court, and the district judge of such districts, any two of whom shall constitute a quorum: *Provided*, That no district judge shall give a vote in any case of appeal or error from his own decision; but may assign the reasons of such his decision.

First session of the circuit courts; when holden. [Obsolete.]

SEC. 5. *And be it further enacted*, That the first session of the said circuit court in the several districts shall commence at the times following, to wit: in New Jersey on the second, in New York on the fourth, in Pennsylvania on the eleventh, in Connecticut on the twenty-second, and in Delaware on the twenty-seventh, days of April next; in Massachusetts on the third, in Maryland on the seventh, in South Carolina on the twelfth, in New Hampshire on the twentieth, in Virginia on the twenty-second, and in Georgia on the twenty-eighth, days of May next, and the subsequent sessions in the respective districts on the like days of every sixth calendar month afterwards, except in South Carolina, where the session of the said court shall commence on the first, and in Georgia where it shall commence on the seventeenth day of October, and except when any of those days shall happen on a Sunday, and then the session shall commence on the next day following. And the sessions of the said circuit court shall be held in the district of New Hampshire, at Portsmouth and Exeter alternately, beginning at the first; in the district of Massachusetts, at Boston; in the district of Connecticut, alternately at Hartford and New Haven, beginning at the last; in the district of New York, alternately at New York and Albany, beginning at the first; in the district of New Jersey, at Trenton; in the district of Pennsylvania, alternately at Philadelphia and Yorktown, beginning at the first; in the district of Delaware, alternately at New Castle and Dover, beginning at the first; in the district of Maryland, alternately at Annapolis and Easton, beginning at the first; in the district of Virginia, alternately at Charlottesville and Williamsburgh, beginning at the first; in the district of South Carolina, alternately at Columbia and Charleston, beginning at the first; and in the district of Georgia, alternately at Savannah and Augusta, beginning at the first. And the circuit courts shall have power to hold special sessions for the trial of criminal causes at any other time at their discretion, or at the discretion of the Supreme Court.(a)

Where holden.

Circuit courts. Special sessions.

(a) The sessions of the Circuit Courts have been regulated by the following acts: In ALABAMA—act of March 3, 1837. In ARKANSAS—act of March 3, 1837. In CONNECTICUT—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826. In DELAWARE—act of September 24, 1789; act of March 3, 1797; act of April 29, 1802; act of March 24, 1801; act of March 3, 1837. In GEORGIA—act of September 24, 1789; act of August 11, 1790; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of May 13, 1826; act of Jan. 21, 1829. . KENTUCKY—act of March 3, 1801; act of March 8, 1802; act of March 2, 1803; act of Feb. 27, 1807; act of March 22, 1808; April 22, 1824. LOUISIANA—act of March 3, 1837. MAINE—act of March 3, 1801; act of March 8, 1802; act of March 30, 1820. MARYLAND—act of Sept. 24, 1789; act of March 3, 1797; act of April 29, 1802; act of Feb. 11, 1830; act of March 3, 1837. MASSACHUSETTS—act of Sept. 24, 1789; act of March 3, 1791; act of June 9, 1794; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 26, 1812. MISSOURI—act of March 3, 1837. MISSISSIPPI—act of March 3, 1839. NEW HAMPSHIRE—act of Sept. 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of March 3, 1801; act of April 29, 1802; act of March 6, 1812. NEW JERSEY—act of September 24, 1789; act of March 3, 1797; act of April 2, 1802. NEW YORK—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 2, 1793; act of March 3, 1797; act of April 29, 1802; act of March 3, 1805; act of February 10, 1832; act of May 13, 1826; act of March 3, 1837. NORTH CAROLINA—act of September 24, 1789; act of April 13, 1792; act of March 2, 1793; act of March 31, 1796; act of March 3, 1797; act of July 5, 1797; act of April 29, 1802; act of March 8, 1806; act of February 4, 1807. OHIO—act of February 24, 1807; act of March 22, 1808; act of April 29, 1824; act of May 20, 1826. PENNSYLVANIA—act of September 24, 1789; act of May 12, 1796; act of March 3, 1797; act of December 24, 1799; act of April 29, 1802; act of March 3, 1837. RHODE ISLAND—act of June 23, 1790; act of March 3, 1791; act of March 2, 1793; act of May 28, 1796; act of March 3, 1797; act of March 3, 1801; act of March 8, 1802; act of April 29, 1802; act of March 26, 1812. SOUTH CAROLINA—act of September 24, 1789; act of August 11, 1790; act of March 3, 1797; act of April 29, 1802; act of April 14, 1816; act of May 25, 1824; act of March 3, 1825; act of May 4, 1826; act of February 5, 1829. TENNESSEE—act of February 24, 1807; act of March 22, 1808; act of March 10, 1812; act of January 13, 1831. VERMONT—act of March 2, 1791; act of March 2, 1793; act of May 27, 1796; act of March 3, 1797; act of April 29, 1802; act of March 22, 1816. VIRGINIA—act of September 24, 1789; act of March 3, 1791; act of April 13, 1792; act of March 3, 1797; act of April 29, 1802; act of March 2, 1837. See the General Index.

Ex. C

Supreme court adjourned by one or more justices; circuit courts adjourned.

SEC. 6. *And be it further enacted*, That the Supreme Court may, by any one or more of its justices being present, be adjourned from day to day until a quorum be convened; and that a circuit court may also be adjourned from day to day by any one of its judges, or if none are present, by the marshal of the district until a quorum be convened;(*a*) and that a district court, in case of the inability of the judge to attend at the commencement of a session, may by virtue of a written order from the said judge, directed to the marshal of the district, be adjourned by the said marshal to such day, antecedent to the next stated session of the said court, as in the said order shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied, all process, pleadings and proceedings of what nature soever, pending before the said court, shall be continued of course until the next stated session after the appointment and acceptance of the office by his successor.

District courts adjourned.

The courts have power to appoint clerks.

SEC. 7. *And be it [further] enacted*, That the Supreme Court, and the district courts shall have power to appoint clerks for their respective courts,(*b*) and that the clerk for each district court shall be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being appointed clerk of , do solemnly swear, or affirm, that I will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and impartially discharge and perform all the duties of my said office, according to the best of my abilities and understanding. So help me God." Which words, so help me God, shall be omitted in all cases where an affirmation is admitted instead of an oath. And the said clerks shall also severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments and determinations of the court of which he is clerk.

Their oath or affirmation.

Oath of justices of supreme court and judges of the district court.

SEC. 8. *And be it further enacted*, That the justices of the Supreme Court, and the district judges, before they proceed to execute the duties of their respective offices, shall take the following oath or affirmation, to wit: "I, A. B., 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 on 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."

District courts exclusive jurisdiction.

SEC. 9. *And be it further enacted*, That the district courts(*c*) shall have, exclusively of the courts of the several States, cognizance of all crimes and offences that shall be cognizable under the authority of the United States, committed within their respective districts, or upon the

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By the act of March 10, 1838, the Justice of the Supreme Court is required to attend but one circuit in the districts of Indiana, Illinois, and Michigan.

By an act passed in 1814, the Justices of the Supreme Court are empowered to hold but one session of the Circuit Court in each district in their several circuits. The Judges of the District Courts hold the other sessions of the Circuit Court in their several districts.

(*a*) The provisions of law on the subject of the adjournments of the Supreme Court in addition to the 6th section of this act, are, that in case of epidemical disease, the court may be adjourned to some other place than the seat of government. Act of February 25, 1799.

(*b*) By the 2d section of the act entitled "an act in amendment of the acts respecting the judicial system of the United States," passed February 28, 1839, chap. 36, it is provided "that all the circuit courts of the United States shall have the appointment of their own clerks, and in case of disagreement between the judges, the appointment shall be made by the presiding judge of the court." See ex parte Duncan N. Hennen, 13 Peters, 230.

(*c*) The further legislation on the subject of the jurisdiction and powers of the District Courts are: the act of June 5, 1794, ch. 50, sec. 6; act of May 10, 1800, chap. 51, sec. 5; act of February 24, 1807, chap. 13; act of February 24, 1807, chap. 16; act of March 3, 1815; act of April 18, 1818, chap. 66, sec. 6; act of April 20, 1818, chap. 88; act of May 15, 1820, chap. 106, sec. 4; act of March 3, 1823, chap. 78.

EX. C

high seas; where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made, on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas;(a) saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it; and shall also have exclusive original cognizance of all seizures on land, or other waters than as aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the United States.(b) And shall also have cognizance, concurrent with the courts of the several States, or the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation of the law of nations or a treaty of the United States.(c) And shall also have cognizance, concurrent as last mentioned, of all suits at common law where the United States sue, and the matter in dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also have jurisdiction exclusively of the courts of the several States, of all suits against consuls or vice-consuls, except for offences above the description aforesaid.(d) And the trial of issues in fact, in the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be by jury.

[Acts of June 5, 1794, sect. 6; act of Feb. 18, 1807; act of March 3, 1815, sect. 4.]

Original cognizance in maritime causes and of seizure under the laws of the United States.

Concurrent jurisdiction.

Trial of fact by jury.

SEC. 10. *And be it further enacted*, That the district court in Kentucky district shall, besides the jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error, hereinafter made cognizable in a circuit court, and shall proceed therein in the same

Kentucky district court. [Obsolete.] 1807, ch. 16.

(a) Jurisdiction of the District Courts in cases of admiralty seizures, under laws of impost, navigation and trade. M'Donough v. Danery, 3 Dall. 188; 1 Cond. Rep. 94. The United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. Glass et al. v. The Betsey, 3 Dall. 6; 1 Cond. Rep. 10. The Alerta, 9 Cranch, 359; 3 Cond. Rep. 426. The Merino et al., 9 Wheat. 391; 5 Cond. Rep. 623. The Josefa Segunda, 10 Wheat. 312; 6 Cond. Rep. 111. Jennings v. Carson, 4 Cranch, 2; 2 Cond. Rep. 2. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. Penhallow et al. v. Doane's Adm'rs, 3 Dall. 54; 1 Cond. Rep. 21. United States v. Richard Peters, 3 Dall. 121; 1 Cond. Rep. 60. Hudson et al. v. Guestier, 6 Cranch, 281; 2 Cond. Rep. 374. Brown v. The United States, 8 Cranch, 110; 3 Cond. Rep. 56. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. The Amiable Nancy, 3 Wheat. 546; 4 Cond. Rep. 322. Slocum v. Mayberry, 2 Wheat. 1; 4 Cond. Rep. 1. Gelston et al. v. Hoyt, 3 Wheat. 246; 4 Cond. Rep. 244. The Bolina, 1 Gallis. C. C. R. 75. The Robert Fulton, 1 Paine's C. C. R. 620; Bee's D. C. R. 11. De Lovio v. Boit et al., 2 Gallis. C. C. R. 398. The Abby, 1 Mason's Rep. 360. The Little Ann, Paine's C. C. R. 40. Davis v. A New Brig, Gilpin's D. C. R. 473. The Catharine, 1 Adm. Decis. 104.

(b) An information against a vessel under the act of Congress of May 22, 1794, on account of an alleged exportation of arms, is a case of admiralty and maritime jurisdiction; and an appeal from the District to the Circuit Court, in such a case is sustainable. It is also a civil cause, and triable without the intervention of a jury, under the 9th section of the judicial act. The United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. The Abby, 1 Mason, 360. The Little Ann, Paine's C. C. R. 40.

When the District and State courts have concurrent jurisdiction, the right to maintain the jurisdiction attaches to that tribunal which first exercises it, and obtains possession of the thing. The Robert Fulton, Paine's C. C. R. 620.

(c) Burke v. Trevitt, 1 Mason, 96. The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States, and any intervention of State authority, which by taking the thing seized out of the hands of the officer of the United States, might obstruct the exercise of this jurisdiction, is unlawful. Slocum v. Mayberry et al., 2 Wheat. 1; 4 Cond. Rep. 1.

(d) Davis v. Packard, 6 Peters, 41. As an abstract question, it is difficult to understand on what ground a State court can claim jurisdiction of civil suits against foreign consuls. By the Constitution, the judicial power of the United States extends to all cases affecting ambassadors, other public ministers and consuls; and the judiciary act of 1789 gives to the district courts of the United States, exclusively of the courts of the several States, jurisdiction of all suits against consuls and vice consuls, except for certain offences enumerated in this act. Davis v. Packard, 7 Peters, 276.

If a consul, being sued in a State court, omits to plead his privilege of exemption from the suit, and afterwards, on removing the judgment of the inferior court to a higher court by writ of error, claims the privilege, such an omission is not a waiver of the privilege. If this was to be viewed merely as a personal privilege, there might be grounds for such a conclusion. But it cannot be so considered; it is the privilege of the country or government which the consul represents. This is the light in which foreign ministers are considered by the law of nations; and our constitution and law seem to put consuls on the same footing in this respect. *Ibid.*

Ex. C

STATUTE I.
Sept. 24, 1789.

CHAP. XX.—*An Act to establish the Judicial Courts of the United States.*(a)

Supreme court to consist of a chief justice, and five associates.

Two sessions annually.

Precedence.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the supreme court of the United States shall consist of a chief justice and five associate justices,(b) any four of whom shall be a quorum, and shall hold annually at the seat of government two sessions, the one commencing the first Monday of February, and the other the first Monday of August. That the associate justices shall have precedence according to the date of their commissions, or when the commissions of two or more of them bear date on the same day, according to their respective ages.

Thirteen districts.

Maine.

N. Hampshire.

Massachusetts.

Connecticut.

New York.

New Jersey.

Pennsylvania.

Delaware.

Maryland.

Virginia.

Kentucky.

South Carolina.

Georgia.

SEC. 2. *And be it further enacted,* That the United States shall be, and they hereby are divided into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine District; one to consist of the State of New Hampshire, and to be called New Hampshire District;(c) one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts district; one to consist of the State of Connecticut, and to be called Connecticut District; one to consist of the State of New York, and to be called New York District; one to consist of the State of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania, and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called Delaware District; one to consist of the State of Maryland, and to be called Maryland District; one to consist of the State of Virginia, except that part called the District of Kentucky, and to be called Virginia District; one to consist of the remaining part of the State of Virginia, and to be called Kentucky District; one to consist of the State of South Carolina, and to be called South Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

A district court in each district.

SEC. 3. *And be it further enacted,* That there be a court called a District Court, in each of the afore mentioned districts, to consist of one judge, who shall reside in the district for which he is appointed, and shall be called a District Judge, and shall hold annually four

(a) The 3d article of the Constitution of the United States enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only where the subject is submitted to it by a party who asserts his right in a form prescribed by law. It then becomes a case. Osborn et al. v. The Bank of the United States, 9 Wheat. 738; 5 Cond. Rep. 741.

(b) By the act of April 29, 1802, chap. 31, the Supreme Court was declared to consist of a Chief Justice and six associate Justices, and by the act of March 3, 1837, chap. 34, it was made to consist of a Chief Justice and eight associate Justices.

By the act of April 29, 1802, chap. 31, the provision of the act of September 24, 1789, requiring two annual sessions of the Supreme Court, was repealed, and the 2d section of that act required that the associate Justice of the fourth circuit should attend at Washington on the first Monday of August annually, to make all necessary rules and orders, touching suits and actions depending in the court. This section was repealed by the 7th section of the act of February 28, 1839, chap. 36.

By an act passed May 4, 1826, chap. 37, the sessions of the Supreme Court were directed to commence on the second Monday in January annually, instead of the first Monday in February; and by an act passed June 17, 1844, the sessions of the Supreme Court were directed to commence on the first Monday in December annually.

(c) The jurisdiction and powers of the District Courts have been declared and established by the following acts of Congress: Act of September 24, 1789; act of June 5, 1794, sec. 6; act of May 10, 1800; act of December 31, 1814; act of April 16, 1816; act of April 20, 1818; act of May 15, 1820; act of March 3, 1823.

The decisions of the Courts of the United States on the jurisdiction of the District Courts have been: The Thomas Jefferson, 10 Wheat. 428; 6 Cond. Rep. 173. M'Donough v. Danery, 3 Dall. 188; 1 Cond. Rep. 94. United States v. La Vengeance, 3 Dall. 297; 1 Cond. Rep. 132. Glass et al. v. The Betsey, 3 Dall. 6; 1 Cond. Rep. 10. The Alerta v. Blas Moran, 9 Cranch, 359; 3 Cond. Rep. 425. The Merino et al., 9 Wheat. 391; 5 Cond. Rep. 623. The Josefa Segunda, 10 Wheat. 312; 6 Cond. Rep. 111. The Bolina, 1 Gallis. C. C. R. 75. The Robert Fulton, Paine's C. C. R. 620. Jansen v. The Vrow Christiana Magdalena, Bee's D. C. R. 11. Jennings v. Carson, 4 Cranch, 2; 2 Cond. Rep. 2. The Sarah, 8 Wheat. 391; 5 Cond. Rep. 472. Penhallow et al. v. Doane's Adm'rs, 3 Dall. 54; 1 Cond. Rep. 21. The United States v. Richard Peters, 3 Dall. 121; 1 Cond. Rep. 60. M'Lellan v. the United States,

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or vice consul, shall be a party.(a) And the trial of issues in fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the several states, in the cases herein after specially provided for;(b) and shall have power to issue writs of prohibition(c) to the district courts, when proceeding as courts of admiralty and maritime jurisdiction, and writs of *mandamus*,(d) in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.

Sup. Court appellate jurisdiction.

Writs of Prohibition.

Of Mandamus.

SEC. 14. *And be it further enacted*, That all the before-mentioned courts of the United States, shall have power to issue writs of *scire facias, habeas corpus*,(e) and all other writs not specially provided for

Courts may issue writs scire facias, habeas corpus, &c.

(a) The United States v. Ortega, 11 Wheat. 467; 6 Cond. Rep. 394. Davis v. Packard, 6 Peters, 41.

(b) As to the appellate jurisdiction of the Supreme Court, see the cases collected in Peters's Digest, "Supreme Court," "Appellate Jurisdiction of the Supreme Court," and the following cases: The United States v. Goodwin, 7 Cranch, 108; 2 Cond. Rep. 434. Wiscart v. Dauchy, 3 Dall. 321; 1 Cond. Rep. 144. United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 480. Owings v. Norwood's Lessee, 5 Cranch, 344; 2 Cond. Rep. 275. Martin v. Hunter's Lessee, 1 Wheat. 304; 3 Cond. Rep. 575. Gordon v. Caldcleugh, 3 Cranch, 269; 1 Cond. Rep. 524. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 225. Smith v. The State of Maryland, 6 Cranch, 286; 2 Cond. Rep. 377. Inglee v. Coolidge, 2 Wheat. 363; 4 Cond. Rep. 155. Nicholls et al. v. Hodges Ex'ors, 1 Peters, 562. Buel et al. v. Van Ness, 8 Wheat. 312; 5 Cond. Rep. 445. Miller v. Nicholls, 4 Wheat. 311; 4 Cond. Rep. 465. Matthews v. Zane et al., 7 Wheat. 164; 5 Cond. Rep. 205. M'Cluny v. Silliman, 6 Wheat. 598; 5 Cond. Rep. 197. Houston v. Moore, 3 Wheat. 433; 3 Cond. Rep. 286. Montgomery v. Hernandez et al., 12 Wheat. 129; 6 Cond. Rep. 475. Cohens v. Virginia, 6 Wheat. 264; 5 Cond. Rep. 90. Gibbons v. Ogden, 6 Wheat. 448; 5 Cond. Rep. 134. Weston et al. v. The City Council of Charleston, 2 Peters, 449. Hickie v. Starke et al., 1 Peters, 94. Satterlee v. Matthewson, 2 Peters, 380. M'Bride v. Hoey, 11 Peters, 167. Ross v. Barland et. al., 1 Peters, 655. The City of New Orleans v. De Armas, 9 Peters, 224. Crowell v. Randell, 10 Peters, 368. Williams v. Norris, 12 Wheat. 117; 6 Cond. Rep. 462. Menard v. Aspasia, 5 Peters, 505. Worcester v. The State of Georgia, 6 Peters, 515. The United States v. Moore, 3 Cranch, 159; 1 Cond. Rep. 480.

(c) Prohibition. Where the District Court of the United States has no jurisdiction of a cause brought before it, a prohibition will be issued from the Supreme Court to prevent proceedings. The United States v. Judge Peters, 3 Dall. 121; 1 Cond. Rep. 60.

(d) Mandamus. The following cases have been decided on the power of the Supreme Court to issue a mandamus. Marbury v. Madison, 1 Cranch, 137; 1 Cond. Rep. 267. M'Cluny v. Silliman, 2 Wheat. 369; 4 Cond. Rep. 162. United States v. Lawrence, 3 Dall. 42; 1 Cond. Rep. 19. United States v. Peters, 3 Dall. 121; 1 Cond. Rep. 60. Ex parte Burr, 9 Wheat. 529; 5 Cond. Rep. 660. Parker v. The Judges of the Circuit Court of Maryland, 12 Wheat. 561; 6 Cond. Rep. 614. Ex parte Roberts et al., 6 Peters, 216. Ex parte Davenport, 6 Peters, 661. Ex parte Bradstreet, 12 Peters, 174; 7 Peters, 634; 8 Peters, 588. Life and Fire Ins. Comp. of New York v. Wilson's heirs, 8 Peters, 291.

On a mandamus a superior court will never direct in what manner the discretion of the inferior tribunal shall be exercised; but they will, in a proper case, require an inferior court to decide. *Ibid.* Life and Fire Ins. Comp. of New York v. Adams, 9 Peters, 571. Ex parte Story, 12 Peters, 339. Ex parte Jesse Hoyt, collector, &c., 13 Peters, 279.

A writ of mandamus is not a proper process to correct an erroneous judgment or decree rendered in an inferior court. This is a matter which is properly examinable on a writ of error, or an appeal to a proper appellate tribunal. *Ibid.*

Writs of mandamus from the Circuit Courts of the United States. A Circuit Court of the United States has power to issue a mandamus to a collector, commanding him to grant a clearance. Gilchrist et al. v. Collector of Charleston, 1 Hall's Admiralty Law Journal, 429.

The power of the Circuit Court to issue the writ of mandamus is confined exclusively to those cases in which it may be necessary to the exercise of their jurisdiction. M'Intire v. Wood, 7 Cranch, 504; 2 Cond. Rep. 688.

The Circuit Courts of the United States have no power to issue writs of mandamus after the practice of the King's Bench; but only where they are necessary for the exercise of their jurisdiction. Smith v. Jackson, Paine's C. C. R. 453.

(e) Habeas corpus. Ex parte Burford, 3 Cranch, 448; 1 Cond. Rep. 594; Ex parte Bollman, 4 Cranch, 75; 2 Cond. Rep. 33.

The writ of habeas corpus does not lie to bring up a person confined in the prison bounds upon a capias ad satisfaciendum, issued in a civil suit. Ex parte Wilson, 6 Cranch, 52; 2 Cond. Rep. 300. Ex parte Kearney, 7 Wheat. 38; 5 Cond. Rep. 225.

The power of the Supreme Court to award writs of habeas corpus is conferred expressly on the court by the 14th section of the judicial act, and has been repeatedly exercised. No doubt exists respecting the power. No law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term used in the constitution is one which is well understood, and the judicial act authorizes the court, and all other courts of the United States and the judges thereof to issue the writ "for the purpose of inquiring into the cause of commitment." Ex parte Tobias Watkins, 3 Peters, 201.

As the jurisdiction of the Supreme Court is appellate, it must be shown to the court that the court has power to award a habeas corpus, before one will be granted. Ex parte Milburn, 9 Peters, 704.