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REVISED RULES

of the

Supreme Court of the United States

Adopted February 13, 1939. Effective February 27, 1939.
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(The Acts of February 13, 1925, c. 229, 43 Stat. 936, January 31, 1928, c. 14, 45 Stat. 54, April 26, 1928, c. 440, 45 Stat. 466, and August 24, 1937, c. 754, 50 Stat. 751, are printed in an Appendix.)

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Revised Rules of the Supreme Court of the United States.

Adopted February 13, 1939. Effective February 27, 1939.
Amended March 25, 1940, October 21, 1940 and May 26, 1941.

(The Acts of February 13, 1925, c. 229, 43 Stat. 936, January 31, 1928, c. 14, 45 Stat. 54, April 26, 1928, c. 440, 45 Stat. 466, and August 24, 1937, c. 754, 50 Stat. 751, are printed in an Appendix.)

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice as attorney or counsellor in any court, while he continues in office.

2. The clerk shall not permit any original record or paper to be taken from the office without an order from the court or one of the justices, except as provided by Rule 13, paragraph 4.

2.

ATTORNEYS AND COUNSELLORS.[1]

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest court of a State, Territory, District, or Insular Possession, and that their private and professional characters shall appear to be good.

2. Not less than two weeks in advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, (2) his personal statement under oath setting out the date and place of his birth, the names of his parents, his place of residence and office address, the courts of last resort to which he has been admitted, the places where he has been a practitioner, and, if he is not a native born citizen, the date and place of his naturalization, and information respecting any

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reprimand of any court pertaining to his conduct or fitness as a member of the bar, and (3) two letters or signed statements of members of the bar of this court, not related to the applicant, who are resident practitioners within the State, Territory, District, or Insular Possession (to which the application refers as provided in paragraph 1 of this rule) stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his personal statement and that they affirm that his personal and professional character and standing are good.

3. Admissions will be granted only upon oral motion by a member of the bar in open court, and upon his assurance that he has examined the credentials of the applicant filed in the office of the clerk in accordance with the foregoing requirement and that he is satisfied that the applicant possesses the necessary qualifications.

4. Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, viz:

I, ———— ————, do solemnly swear (or affirm) that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

5. Where it is shown to the court that any member of its bar has been disbarred from practice in any State, Territory, District, or Insular Possession, or has been guilty of conduct unbecoming a member of the bar of this court, he will be forthwith suspended from practice before this court, and unless, upon notice mailed to him at the address shown in the clerk's records and to the clerk of the highest court of the State, Territory, District or Insular Possession, to which he belongs, he shows good cause to the contrary within forty days he will be disbarred.

3.

CLERKS TO JUSTICES NOT TO PRACTICE.

No one serving as a law clerk or secretary to a member of this court shall practice as an attorney or counsellor in

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any court while continuing in that position; nor shall he after separating from that position practice as an attorney or counsellor in this court, or permit his name to appear on a brief filed in this court, until two years shall have elapsed after such separation.

4.

THE LIBRARY.

1. The library for the bar shall be open to members of the bar of this court; to members of Congress and to law officers of the executive or other departments of the Government, but books may not be removed from the building.

2. The library shall be open during such times as the reasonable needs of the bar require and be governed by such regulations as the librarian, with the approval of the court, may make effective.

5.

ORIGINAL ACTIONS.

Cases on the original docket shall be governed, as far as may be, by the rules applicable to cases on the appellate docket.

The initial pleading in any such action may be accompanied by a brief and shall be prefaced by a motion for leave to file, which motion will be presented to the court by the clerk on the first motion day following its lodgment in the clerk's office. If leave to file is granted the case will be placed on the original docket and the parties shall make such cash deposit with the clerk for the payment of his fees as he may require.

Additional pleadings shall be filed as the court directs.

6.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the given names, as well as the surnames, of the parties.

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2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney general, of such State.

3. Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of such process; and if the defendant, on such service of the subpœna, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

7.

MOTIONS—INCLUDING THOSE TO DISMISS OR AFFIRM—SUMMARY DOCKET—MOTION DAY.

1. Every motion to the court shall be printed, and shall state clearly its object and the facts on which it is based.

2. Oral argument will not be heard on any motion unless the court specially assigns it therefor, when not exceeding one-half hour on each side will be allowed.

3. No motion by respondent to dismiss a petition for writ of certiorari will be received. Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor.

A motion by appellee to dismiss an appeal will be received in advance of the court's ruling upon the jurisdictional statements only when presented in the manner provided by Rule 12, paragraph 3. When such a motion is made, the appellant shall have 20 days after service upon him within which to file in this court 40 printed copies of a brief opposing the motion, except that where his counsel resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be 25 days.

A motion by respondent to dismiss a writ of certiorari or by appellee to dismiss an appeal, after the court has ruled upon the jurisdictional statements and accompanying motions, if any (Rule 12, par. 5), will be received if

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not based upon grounds already advanced in opposition to the granting of the writ of certiorari or to the noting of jurisdiction of the appeal. Such motions, together with motions to dismiss certificates in case of questions certified, must be printed and 40 copies thereof must be filed with the clerk, accompanied by proof that a copy of the motion, and accompanying brief, if any, have been served upon counsel of record for the opposing party. The opposing party shall have 20 days from the date of such service within which to file a printed brief opposing the motion. When counsel for the opposing party resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, the time shall be 25 days. Upon the filing of the opposing brief, or the expiration of the time allowed therefor, or express waiver of the right to file, the motion and briefs thereon shall be distributed by the clerk to the court for its consideration.

The pendency of a motion to dismiss or affirm shall not preclude the placing of the cause upon the calendar of the court for oral argument or its being called for argument when reached.

4. The court will receive a motion to affirm on the ground that it is manifest that the appeal was taken for delay only, or that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument. The procedure provided in paragraph 3 of this rule for motions to dismiss shall apply to and control motions to affirm. A motion to affirm may be united in the alternative with a motion to dismiss.

5. Although the court upon consideration of a motion to dismiss or a motion to affirm may refuse to grant the motion, it may, if it concludes that the case is of such a character as not to justify extended argument, order the cause transferred for hearing to the summary docket. The hearing of causes on such docket will be expedited from time to time as the regular order of business may permit. A cause may be transferred to the summary

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docket on application, or on the court's own motion. (See Rule 28, par. 3 and 6.)

6. Monday of each week, when the court is in session, shall be motion day; and motions specially assigned for oral argument shall be entitled to preference over other cases.

8.

BILLS OF EXCEPTION—CHARGE TO JURY—OMISSION OF UNNECESSARY EVIDENCE.

The judges of the district courts in allowing bills of exception shall give effect to the following rules:

1. No bill of exceptions shall be allowed on a general exception to the charge of the court to the jury in trials at common law. The party excepting shall be required before the jury retires to state distinctly the several matters of law in such charge to which he excepts; and no other exceptions to the charge shall be allowed by the court or inserted in a bill of exceptions.

2. Only so much of the evidence shall be embraced in a bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein may be set forth in full or in condensed and narrative form.

See Rules of Civil Procedure 46, 51, 75, 76, and 81.

9.

ASSIGNMENT OF ERRORS.

Where an appeal is taken to this court from any court, the appellant shall file with the clerk of the court below, with his petition for appeal, an assignment of errors, which shall set out separately and particularly each error asserted. No appeal shall be allowed unless such an assignment of errors shall accompany the petition. (See Rule 36.)

10.

APPEAL—CITATION—RECORD—DESIGNATION OF PARTS TO BE INCLUDED IN TRANSCRIPT.

1. When an appeal is allowed a citation to the appellee shall be signed by the judge or justice allowing the appeal

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and shall be made returnable not exceeding forty days from the day of signing the citation, whether the return day fall in vacation or in term time, except in appeals from California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming and Montana, when the time shall be sixty days. The citation must be served before the return day.

2. The clerk of the court from which an appeal to this court may be allowed, shall make and transmit to this court under his hand and the seal of the court a true copy of the material parts of the record, always including the assignment of errors, and any opinions delivered in the case. The papers comprising the transcript shall be fastened together in one or more volumes of convenient size, paged consecutively and indexed.

To enable the clerk to perform such duty and for the purpose of reducing the size of transcripts and eliminating all papers not necessary to the consideration of the questions to be reviewed, it shall be the duty of the appellant, or his counsel, to file with the clerk of the lower court, promptly after an appeal is taken, together with proof or acknowledgment of service of a copy on the appellee, or his counsel, a praecipe indicating the portions of the record to be incorporated into the transcript. Within ten days thereafter (unless the time be enlarged by a judge of the lower court or a justice of this court), any other party to the appeal may serve and file a designation of additional portions of the record desired to be included. Sections (c), (e), and (h) of Rule 75 and Rule 76 of the Rules of Civil Procedure are incorporated herein by reference and are made applicable to an appeal to this court from a federal district court.

The clerk of the lower court shall transmit to this court as the transcript of the record only the portions of the record covered by such designations.

The parties or their counsel may by written stipulation filed with the clerk of the lower court indicate the portions of the record to be included in the transcript, and the clerk

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shall then transmit only the parts designated in such stipulation.

In all cases the clerk shall include in the transcript all papers filed under authority of Rule 12. (See Rule 12, par. 4.)

If this court shall find that any portion of the record unnecessary to a proper presentation of the case has been incorporated into the transcript at the instance of either party, the whole or any part of the cost of printing and the clerk's fee for supervising the printing may be ordered to be paid by the offending party.

3. No case will be heard until a record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in the court from which the appeal is taken that original papers of any kind should be inspected in this court, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers along with the usual transcript.

5. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, findings of fact and conclusions of law thereon, opinions of the court, final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper determination of such questions.

11.

DOCKETING CASES.

1. It shall be the duty of the appellant to docket the case and file the record thereof with the clerk of this court

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by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, before its expiration, the order of enlargement to be filed with the clerk of this court. If the appellant shall fail to comply with this rule, the appellee may have the cause docketed and the appeal dismissed upon producing a certificate, whether in term or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such appeal has been duly allowed. And in no case shall the appellant be entitled to docket the cause and file the record after the appeal shall have been dismissed under this rule, unless by special leave of the court.

2. But the appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed by the appellant within the period of time prescribed by this rule, or by the appellee within forty days thereafter, the case shall stand for argument.

3. Upon the filing of the record brought up by appeal, the appearance of the counsel for the party docketing the case shall be entered.

12.

JURISDICTIONAL STATEMENTS.[1]

1. Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim

[1] See amendment on p. 41.

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or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

The statement shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and shall cite the cases believed to sustain the jurisdiction.

If the appeal is from a state court the statement shall include a statement of the grounds upon which it is contended the questions involved are substantial (*Zucht* v. *King*, 260 U. S. 174, 176, 177); specify the stage in the proceedngs in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears, (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. The provisions of this paragraph, with appropriate record page references, must be complied with when review of a state court judgment is sought by petition for writ of certiorari. (See Rule 38, par. 2.)

The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree.

If the appeal is from an interlocutory decree of a specially constituted district court of the United States, the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion

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in granting or denying the interlocutory injunction. (*Alabama* v. *United States*, 279 U. S 229.)

2. If the appeal is allowed, the appellant shall serve upon the appellee within 5 days after such allowance (a) a copy of the petition for and order allowing the appeal, together with a copy of the assignments of error and of the statement required by paragraph 1 of this rule, and (b) a statement directing attention to the provisions of paragraph 3 of this rule. Proof of service of the papers required by this paragraph to be served shall be filed forthwith with the clerk of the court possessed of the record, and shall be incorporated by him in the transcript of record prepared for this court upon the appeal.

3. Within 15 days after such service the appellee may file with the clerk of the court possessed of the record, and serve upon the appellant, a typewritten statement disclosing any matter or ground making against the jurisdiction of this court asserted by the appellant. There may be included in, or filed with, such opposing statement, a motion by appellee to dismiss or affirm. Where such a motion is made, it may be opposed as provided in Rule 7, paragraph 3.

4. The clerk of the court possessed of the record shall include the statements and motions, required and permitted to be filed under the provisions of this rule, in the transcript of record prepared for the use of this court on the appeal, anything in the praecipes or stipulations of the parties (Rule 10, par. 2) to the contrary notwithstanding.

5. After the case shall have been docketed in this court by the appellant, and the transcript of record filed (Rule 11, par. 1), the clerk of this court shall forthwith print the appellant's statement required by paragraph 1 of this rule and the opposing statement, and motions, if any, permitted by paragraph 3 of this rule, and the clerk shall thereupon distribute such printed papers to the court for its consideration.

At the time of docketing the case the appellant shall make such cash deposit with the clerk, in addition to such deposit as may be required under Rule 13, paragraph 1, as

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shall be necessary to defray the cost of printing 40 copies of his statement filed pursuant to paragraph 1 of this rule; and the appellee, upon demand, shall forthwith deposit with the clerk a sum sufficient to cover the cost of printing 40 copies of any statement or motions filed under paragraph 3 of this rule.

6. If either appellant or appellee fails to comply with the provisions of this rule, the clerk of this court shall report such failure to the court immediately so that this court may take such action as it deems proper.

13.

PRINTING RECORDS—DESIGNATION OF POINTS INTENDED TO BE RELIED UPON AND PARTS OF RECORD TO BE PRINTED[1]

1. In all cases the appellant, on docketing a case and filing the record, shall make such cash deposit with the clerk for the payment of his fees as he may require, or otherwise satisfy him in that behalf.

2. Immediately after the designation of the parts of the record to be printed or the expiration of the time allotted therefor (see par. 9 of this rule), the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. If such estimated sum be not paid on or before a date designated by the clerk of this court in each case, it shall be the duty of the clerk to report that fact to the court, whereupon the cause will be dismissed, unless good cause to the contrary is shown.

3. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be delivered by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 10, paragraph 4.

See amendment on p. 59.

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as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties. He shall also deposit in the law library of Congress to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions and briefs therein.

6. If the actual cost of printing the record, together with the fees of the clerk, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fees shall exceed the estimate, the excess shall be paid to the clerk within forty days after notice thereof, and if it be not paid the matter shall be dealt with as if it were a default under paragraph 2 of this rule, as well as by rendering a judgment against the defaulting party for such excess.

7. In case of reversal, affirmance, or dismissal, with costs, the cost of printing the record and the clerk's fees shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of a party or his surety, of having served on such party or surety a copy of the bill of fees due by him in this court, and showing that payment has not been made, an attachment shall issue against such party or surety to compel payment of such fees.

9. When the record is filed, or within fifteen days thereafter, the appellant shall file with the clerk a definite statement of the points on which he intends to rely and a designation of the parts of the record which he thinks necessary for the consideration thereof or a designation of those parts considered unnecessary, whichever is more convenient, with proof of service of the same on the adverse party. The

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adverse party, within ten days after service of the statement and designation required to be filed by appellant may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the appellant. The parts of the record so designated by one or both of the parties, and only those parts, shall be printed by the clerk. The statement of points intended to be relied upon and the designations of the parts of the record to be printed shall be printed by the clerk with the record. He shall, however, omit all duplication, all repetition of titles and all other obviously unimportant matter, and make proper note thereof. The court will consider nothing but the points of law so stated. If at the hearing it shall appear that any material part of the record has not been printed, the appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If either party shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 32, paragraph 6, shall be computed on the folios in the record as filed, and shall be in full for the performance of his duties in that regard.

14.

TRANSLATIONS.

Whenever any record transmitted to this court upon appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, without a translation of such document, paper, testimony, or other proceedings, made under the authority of the lower court, or admitted to be correct, the case shall be reported by the clerk, to the end that this court may order that a translation be supplied and printed with the record.

15.

FURTHER PROOF.

1. In all cases where further proof is ordered by this court, the depositions which may be taken shall be by a

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commission, to be issued from this court, or from any district court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any district court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, requiring him to file cross-interrogatories within twenty days from the service of such notice.

16.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence shall be entertained, unless such objection was taken in the court below and entered of record. Where objection was not so taken the evidence shall be deemed to have been admitted by consent.

17.

CERTIORARI TO CORRECT DIMINUTION OF RECORD.

No *certiorari* to correct diminution of the record will be awarded in any case, unless a printed motion therefor shall be made, and the facts on which the same is founded shall be shown, if not admitted by the other party, by affidavit. All such motions must be made not later than the first motion day after the expiration of sixty days from the printing of the record, unless for special cause shown the court receives the motion at a later time.

18.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in a case, and brought up to this

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court for its inspection, shall be placed in the custody of the marshal at least one week before the case is heard or submitted.

2. All such models, diagrams, and exhibits of material, placed in the custody of the marshal must be taken away by the parties within forty days after the case is decided. When this is not done, it shall be the duty of the marshal to notify counsel to remove the articles forthwith; and if they are not removed within a reasonable time after such notice, the marshal shall destroy them, or make such other disposition of them as to him may seem best.

19.

DEATH OF PARTY—REVIVOR—SUBSTITUTION.

1. Whenever, pending an appeal or writ of certiorari in this court, either party shall die, the proper representative in the personalty or realty of the deceased, according to the nature of the case, may voluntarily come in and be admitted as a party to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representative shall not voluntarily become a party, the other party may suggest the death on the record, and on motion obtain an order that, unless such representative shall become a party within a designated time, the party moving for such order, if appellee or respondent, shall be entitled to have the appeal or writ of certiorari dismissed; and if the party so moving be appellant or petitioner he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, District or Insular Possession, in which the case originated, for three successive weeks, at least sixty days before the expiration of the time designated for the representative of the deceased party to appear.

2. When the death of a party is suggested, and the representative of the deceased does not appear by the second day of the term next succeeding the suggestion, and no

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measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a court of the United States shall desire to prosecute an appeal or writ of certiorari to this court from any final judgment or decree, rendered in that court, and at the time of applying for such appeal or writ of certiorari the other party to the suit shall be dead and have no proper representative within the jurisdiction of that court, so that the suit can not be revived in that court, but shall have a proper representative in some State, Territory or District of the United States, the party desiring such appeal or writ of certiorari may procure the same, if otherwise entitled thereto, and may have proceedings on such judgment or decree superseded or stayed in the manner allowed by law and shall thereupon proceed with such appeal or writ of certiorari as in other cases. And within thirty days after the time when such appeal or writ of certiorari is returnable, or if the court be not then in session within ten days after it next convenes, the appellant or petitioner shall make a suggestion to the court, supported by affidavit, that such party was dead when the appeal or writ of certiorari was allowed, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that such deceased party had a proper representative in some State, Territory or District of the United States—giving the name and character of such representative, and his place of residence; and, upon such suggestion and a motion therefor, an order may be obtained that, unless such representative shall make himself a party within a designated time the appellant or petitioner shall be entitled to open the record, and, on hearing have the judgment or decree reversed, if the same be erroneous: Provided, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the expiration of the time designated: And provided, also, That in every such case if the representative of the deceased party does not appear by the

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second day of the term next succeeding said suggestion, and the measures above provided to compel his appearance have not been taken as above required, by the opposite party, the case shall abate: And provided, also, That the representative may at any time before or after the suggestion, but before such abatement, come in and be made a party and thereupon the case shall be heard and determined as in other cases.

4. Where a public officer, by or against whom a suit is brought, dies or ceases to hold the office while the suit is pending in a federal court, either of first instance or appellate, the matter of abatement and substitution is covered by section 11 of the Act of February 13, 1925. Under that section a substitution of the successor in office may be effected only where a satisfactory showing is made within six months after the death or separation from office.

(a) When the court is in vacation the motion papers may be filed with the clerk but must be presented to the court promptly after it reconvenes.

20.

CALL AND ORDER OF THE DOCKET—MOTIONS TO ADVANCE.

1. Unless it otherwise orders, the court, on the second Monday of each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed with the argument, the case shall be continued to the next term or otherwise dealt with as provided in these rules.

2. Ten cases only shall be subject to call on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

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3. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons supporting the motion.

4. Criminal cases may be advanced by leave of the court on motion of either party.

5. Cases once adjudicated by this court upon the merits, and again brought up, may be advanced by leave of the court.

6. Revenue and other cases in which the United States is concerned, which also involve or affect some matter of general public interest, or which may be entitled to precedence under the provisions of any act of Congress, may be advanced by leave of the court on motion of the Attorney General.

7. Other cases may be advanced for special cause shown. When a case is advanced, under this or any other paragraph, it will be subject to hearing with any other case subsequently advanced and involving a like question, as if they were one case.

8. Two or more cases, involving the same question, may, by order of the court, be heard together, and argued as one case or on such terms as may be prescribed.

9. If, after a case has been continued under paragraph 1 of this rule, both parties desire to have it heard at the term of the continuance, they may file with the clerk their joint request to that effect accompanied by their affidavits or those of their counsel giving the reasons why they failed to present their argument when the case was called and why it should be reinstated. Such a request will be granted only when it appears to the court that there was good reason for the previous failure to proceed and that the request can be granted without prejudice to parties in other cases coming on regularly for hearing.

10. No stipulation to pass a case will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

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11. Cases on the summary docket will be heard specially as provided in paragraph 5 of Rule 7.

21.

NO APPEARANCE OF APPELLANT OR PETITIONER.

Where no counsel appears and no brief has been filed for the appellant or petitioner when the case is called for hearing, the adverse party may have the appellant or petitioner called and the appeal or writ of certiorari dismissed, or may open the record and pray for an affirmance.

22.

NO APPEARANCE OF APPELLEE OR RESPONDENT.

Where the appellee or respondent fails to appear when the case is called for hearing, the court may hear argument on behalf of the party appearing and give judgment according to the right of the case.

23.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call, and there is no brief or appearance for either party, the case shall be dismissed at the cost of the appellant or petitioner.

24.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the appellant or petitioner, unless strong cause is shown for further postponement.

25.

SUBMISSION ON BRIEFS BY ONE OR BOTH PARTIES WITHOUT ORAL ARGUMENT.

1. Any case may be submitted on printed briefs regardless of its place on the docket, if the counsel on both sides choose to submit the same in that manner, before the first Monday in May of any term. After that date cases may be submitted on briefs alone only as they are reached on the regular call.

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2. When a case is reached on the regular call, if a printed brief has been filed for only one of the parties and no counsel appears to present oral argument for either party, the case will be regarded as submitted on that brief.

3. When a case is reached on the regular call and argued orally in behalf of only one of the parties, no brief for the opposite party will be received after the oral argument begins, except as provided in the next paragraph of this rule.

4. No brief will be received through the clerk or otherwise after a case has been argued or submitted, except upon special leave granted in open court after notice to opposing counsel.

26.

FORM OF PRINTED RECORDS, PETITIONS, BRIEFS, ETC.

All records, petitions, motions and briefs, printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches, except that records in patent cases may be printed in such size as is necessary to utilize copies of patent documents. They and all quotations contained therein, and the matter appearing on the covers, must be printed in clear type (never smaller than small pica or 11-point type) adequately leaded; and the paper must be opaque and unglazed. The clerk shall refuse to receive any petition, motion or brief which has been printed otherwise than in substantial conformity to this rule.

27.

BRIEFS[1]

1. The counsel for appellant or petitioner shall file with the clerk, at least three weeks before the case is called for hearing, forty copies of a printed brief.

2. This brief shall be printed as prescribed in Rule 26 and shall contain in the order here indicated—

See amendment on p. 57.

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(a) A subject index of the matter in the brief, with page references, and a table of the cases (alphabetically arranged), text books and statutes cited, with references to the pages where they are cited.

(b) A reference to the official report of the opinions delivered in the courts below, if there were such and they have been reported.

(c) A concise statement of the grounds on which the jurisdiction of this court is invoked.

(d) A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate page references to the printed record, e. g., (R. 12).

(e) A specification of such of the assigned errors as are intended to be urged. (See Rule 38, par. 2.)

(f) The argument (preferably preceded by a summary) exhibiting clearly the points of fact and of law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such statutes, federal and state, as are deemed to have an important bearing. If the statutes are long they should be set out in an appendix.

3. Whenever, in the brief of any party, a reference is made to the record, it must be accompanied by the record page number. When the reference is to a part of the evidence, the page citation must be specific and if the reference is to an exhibit both the page number at which the exhibit appears and at which it was offered in evidence must be indicated.

4. The counsel for an appellee or respondent shall file with the clerk forty printed copies of his brief, at least one week before the case is called for hearing—such brief to be of like character with that required of the other party, except that no specification of errors need be given, and that no statement of the case need be made beyond what may be deemed necessary in correcting any inaccuracy or omission in the statement of the other side.

5. Reply briefs will be received up to the time the case is called for hearing.

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6. When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the court, at its option, may notice a plain error not assigned or specified.

7. When, under this rule, an appellant or petitioner is in default, the court may dismiss the cause; and when an appellee or respondent is in default, the court may decline to hear oral argument in his behalf.

8. No brief, required by this rule, shall be filed by the clerk unless the same shall be accompanied by satisfactory proof of service upon counsel for the adverse party.

9. A brief of an *amicus curiae* may be filed when accompanied by written consent of all parties to the case, except that consent need not be had when the brief is presented by the United States or an officer or agency thereof and sponsored by the Solicitor General, or by a State or a political subdivision thereof. Such brief must bear the name of a member of the bar of this court.

28.

ORAL ARGUMENT.

1. The appellant or petitioner shall be entitled to open and conclude the argument. But when there are cross-appeals or cross-writs of certiorari they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

3. Two counsel, and no more, will be heard for each party, save that in cases on the summary docket (see Rule 7, par. 5) only one counsel will be heard on the same side.

4. In cases on the regular docket (except where questions have been certified) one hour on each side, and no more, will be allowed for the argument, unless more time be granted before the argument begins. The time allowed may be apportioned between counsel on the same side, at

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their discretion; but a fair opening of the case shall be made by the party having the opening and closing.

5. In cases where questions have been certified to this court three-quarters of an hour shall be allowed to each side for oral argument.

6. In cases on the summary docket one-half hour on each side, and no more, will be allowed for the argument.

29.

OPINIONS OF THE COURT.

1. All opinions of the court shall be handed to the clerk immediately upon the delivery thereof. He shall cause the same to be printed and shall deliver a copy to the reporter.

2. The original opinions shall be filed by the clerk for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term he shall cause them to be bound in a substantial manner, and when so bound they shall be deemed to have been recorded.

30.

INTEREST AND DAMAGES.

1. Where judgments for the payment of money are affirmed, and interest is properly allowable, it shall be calculated from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where an appeal delays proceedings on the judgment of the lower court, and appears to have been sued out merely for delay, damages at a rate not exceeding 10 per cent., in addition to interest, may be awarded upon the amount of the judgment.

3. Paragraphs 1 and 2 of this rule shall be applicable to decrees for the payment of money in cases in equity, unless otherwise specially ordered by this court.

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4. In cases in admiralty, damages and interest may be allowed only if specially directed by the court.

31.

PROCEDENDO TO ISSUE ON DISMISSAL.

In all cases of the dismissal of any appeal or writ of certiorari in this court, the clerk shall issue a mandate, or other proper process, in the nature of a *procedendo,* to the court below, so that further proceedings may be had in such court as to law and justice may appertain. See Rules 34 and 35.

32.

COSTS.

1. In all cases where any appeal or writ of certiorari shall be dismissed in this court, costs shall be allowed to the appellee or respondent unless otherwise agreed by the parties, except where the dismissal shall be for want of jurisdiction, when only the costs incident to the motion to dismiss shall be allowed.

2. In all cases of affirmance of any judgment or decree by this court, costs shall be allowed to the appellee or respondent unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. In cases where questions have been certified costs shall be equally divided unless otherwise ordered by the court, but where the entire record has been sent up (Rule 37, par. 2), and a decision is rendered on the whole matter in controversy, costs shall be allowed as provided in paragraphs 2 and 3 of this rule.

5. No costs shall be allowed in this court either for or against the United States or an officer or agency thereof, except where specially authorized by statute and directed by the court.

See amendment on p. 61.

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6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, fifteen dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept and paid.

For an admission to the bar and certificate under seal, including filing of preliminary certificate and statements, fifteen dollars.

For preparing the record or a transcript thereof for the printer, in all cases, including records presented with petitions for certiorari, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, ten cents per folio of each one hundred words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision.

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For making a manuscript copy of the record, when required under Rule 13, fifteen cents per folio of each one hundred words, but nothing in addition for supervising the printing.

For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the Rules, or at the request of counsel when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, five dollars for each such petition, brief, jurisdictional statement or motion. Neither the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case.

For a mandate or other process, ten dollars.

For an order on petition for writ of certiorari, five dollars.

For filing briefs, ten dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

33.

REHEARING.[1]

A petition for rehearing may be filed with the clerk, in term time or in vacation, within twenty-five days after judgment is entered, unless the time is shortened or enlarged by order of the court, or of a justice thereof when the court is not in session; and must be printed, briefly and distinctly state its grounds, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Such a petition is not subject to oral argument, and will not be granted, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

34.

MANDATES.

Mandates shall issue as of course after the expiration of twenty-five days from the day the judgment is entered, irrespective of the filing of a petition for rehearing, unless the time is shortened or enlarged by order of the court, or

[1] See amendment on pp. 49, 50.

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of a justice thereof when the court is not in session. (See Rules 31 and 35.)

No mandate issues upon the denial of a petition for writ of certiorari. Whenever application for a writ of certiorari to review a decision of any court is denied, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record.

35.

DISMISSING CASES IN VACATION.

Whenever the appellant and appellee in an appeal, or the petitioner and respondent in a petition for or writ of certiorari, shall in vacation, by their attorneys of record, file with the clerk an agreement in writing that such appeal, petition for or writ of certiorari shall be dismissed, specifying the terms as respects costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter such dismissal and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue on such dismissal without an order of the court. (See Rules 31 and 34.)

36.

APPEALS—BY WHOM ALLOWED—SUPERSEDEAS.[1]

1. In cases where an appeal may be had from a district court to this court the same may be allowed, in term time or in vacation, by any judge of the district court, including a circuit judge assigned thereto, or by a justice of this court. In cases where an appeal may be had from a circuit court of appeals to this court the same may be allowed, in term time or in vacation by any judge of the circuit court of appeals or by a justice of this court. In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court. The judge or justice allowing the appeal shall take the proper security for costs and sign the requisite citation and he may also, on taking the requisite security therefor, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal. See Rev. Stat.,

[1] See amendment on p. 43.

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secs. 1000 and 1007, paragraph 1 of Rule 10, paragraph 2 of Rule 46, and Rule 62(c) of the Rules of Civil Procedure. For stay pending application for review on writ of certiorari see Rule 38, paragraph 6.

2. Supersedeas bonds must be taken, with good and sufficient security, that the appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal, unless, after notice and hearing and for good cause shown, the judge or justice allowing the appeal fixes a different amount or orders security other than the bond; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

37.

QUESTIONS CERTIFIED BY A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

(See Sec. 239 of the Judicial Code as amended by the Act of February 13, 1925.)

1. Where a circuit court of appeals or the United States Court of Appeals for the District of Columbia shall certify to this court a question or proposition of law, concerning which it desires instruction for the proper decision of a cause, the certificate shall contain a statement of the nature of the cause and of the facts on which such question or proposition of law arises. Questions of fact cannot be so certified. Only questions or propositions of law may be certified, and they must be distinct and definite.

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2. If in such a cause it appears that there is special reason therefor, this court may on application, or on its own motion, require that the entire record be sent up so that it may consider and decide the whole matter in controversy as upon appeal.

3. Where application is made for direction that the entire record be sent up, the application must be accompanied by a certified copy thereof.

38.

REVIEW ON WRIT OF CERTIORARI OF DECISIONS OF STATE COURTS, CIRCUIT COURTS OF APPEALS AND THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.[1]

(See Secs. 237 (b) and 240 (a) of the Judicial Code as amended by the Act of February 13, 1925; also Act of March 8, 1934, and Rules of Practice and Procedure, after plea of guilty, verdict or finding of guilt, in Criminal Cases brought in the District Courts of the United States and in the Supreme Court of the District of Columbia, promulgated May 7, 1934.)

1. A petition for review on writ of certiorari of a decision of a state court of last resort, a circuit court of appeals, or the United States Court of Appeals for the District of Columbia, shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed. For printing record see paragraph 7 of this rule.

2. The petition shall contain a summary and short statement of the matter involved; a statement particularly disclosing the basis upon which it is contended that this court has jurisdiction tc review the judgment or decree in question (See Rule 12, par. 1); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) A failure to comply with these requirements will be a sufficient reason for denying the petition. See *United States* v. *Rimer*, 220 U. S. 547; *Furness, Withy & Co.* v. *Yang Tsze Insurance Assn.*, 242 U. S. 430; *Houston Oil Co.* v. *Goodrich*, 245 U. S. 440; *Layne & Bowler Corporation* v. *Western Well Works*,

[1] See amendment on p. 53.

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261 U. S. 387, 392; *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163; *Southern Power Co.* v. *North Carolina Public Service Co.*, 263 U. S. 508. Forty printed copies of the petition and supporting brief shall be filed. The petition will be deemed in time when it, the record, and the supporting brief, are filed with the clerk within the period prescribed by section 8 of the Act of February 13, 1925, except that in cases of petition to this court for writ of certiorari to review a judgment of a circuit court of appeals or of the United States Court of Appeals for the District of Columbia in criminal cases within the provisions of the Act of March 8, 1934, the petition shall be made within the period prescribed pursuant to said Act in Rule XI of the Rules of Practice and Procedure, promulgated May 7, 1934 (292 U. S. 661, 666).

3. Notice of the filing of the petition, together with a copy of the petition, printed record and supporting brief, shall be served by the petitioner on counsel for the respondent within ten days after the filing (unless enlarged by the court, or a justice thereof when the court is not in session), and due proof of service shall be filed with the clerk. If the United States, or an officer or agency thereof, is respondent, the service of the petition, record and brief shall be made on the Solicitor General at Washington, D. C. Counsel for the respondent shall have twenty days, and where he resides in California, Oregon, Washington, Nevada, Idaho, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, or an outlying possession, shall have twenty-five days (unless enlarged by the court, or a justice thereof when the court is not in session), after notice, within which to file forty printed copies of an opposing brief, conforming to Rules 26 and 27. The brief must bear the name of a member of the bar of this court at the time of filing.

(a) If the date for filing a brief in opposition falls in the summer recess, the brief may be filed within forty days after the service of the notice, but this enlargement shall not extend the time to a later date than September 10th.

4. Upon the expiration of the period for filing the respondent's brief, or upon an express waiver of the right

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to file or the actual filing of such brief in a shorter time, the petition, record and briefs shall be distributed by the clerk to the court for its consideration.

(a) Timely reply briefs will be considered but distribution under this rule shall not be delayed pending the filing of such briefs.

5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

(c) Where the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court.

6. Section 8 (d) of the Act of February 13, 1925, prescribes the mode of obtaining a stay of the execution and enforcement of a judgment or decree pending an application for review on writ of certiorari. The stay may be

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granted by a judge of the court rendering the judgment or decree, or by a justice of this court, and may be conditioned on the giving of security as in that section provided. (See Rule 36.)

7. Upon receipt of the certified transcript of the record the clerk shall make an estimate of the cost of printing the record, his fee for preparing it for the printer and supervising the printing, and other probable fees, and shall furnish the same to the party docketing the case. Upon payment of the amount estimated by the clerk, forty copies of the record shall be printed, under his supervision, for the use of the court and of counsel. But where the record has been printed for the use of the court below and the necessary copies as so printed are furnished, it shall not be necessary to reprint it for this court, but only to print such additions as may be necessary to show the proceedings in that court and the opinions there. When the petition is presented it will suffice to furnish ten copies of the record as printed below together with the proceedings and opinion in that court; but if the petition is granted the requisite additional printed copies must be promptly supplied, and if not available the record must be reprinted under the supervision of the clerk.

8. Where it is necessary to print the record for the use of this court counsel should stipulate to omit from the printed record all matter not essential to a consideration of the questions presented by the petition for the writ, and when it is shown that unnecessary parts of the record have been printed although a reasonable effort was made by one of the parties to secure the printing of a proper record, such order as to costs may be made as the court shall deem proper.

39.

CERTIORARI TO A CIRCUIT COURT OF APPEALS OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA BEFORE JUDGMENT.

(See sec. 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.)

Proceedings to bring up to this court on writ of certiorari a case pending in a circuit court of appeals or the

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United States Court of Appeals for the District of Columbia, before judgment is given in such court, should conform, as near as may be, to the provisions of Rule 38; and similar reasons for granting or refusing the application will be applied. That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.

40.

QUESTIONS CERTIFIED BY THE COURT OF CLAIMS.

(See sec. 3 (a) of the Act of February 13, 1925.)

Where the Court of Claims shall certify to this court a question of law, concerning which instructions are desired for the proper disposition of a case, the certificate shall contain a statement of the case and of the facts on which such question arises. Questions of fact cannot be certified. The certification must be confined to definite and distinct questions of law.

41.

JUDGMENTS OF THE COURT OF CLAIMS—PETITIONS FOR REVIEW ON CERTIORARI.[1]

(See sec. 3(b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.)

1. A petition to this court for a writ of certiorari to review a judgment of the Court of Claims shall be accompanied by a certified transcript of the record in that court, consisting of the pleadings, findings of fact, conclusions of law, judgment and opinion of the court, and such other parts of the record as are material to the errors assigned. The petition shall contain a summary and short statement of the matter involved; the relevant parts of statutes involved (see Rule 27(f)); the questions presented; and the reasons relied on for the allowance of the writ. Only the questions specifically brought forward by the petition for writ of certiorari will be considered. A supporting brief may be annexed to the petition or presented separately, but it must be direct and concise. (See Rules 26 and 27.) The petition, brief

[1] See amendment on p. 51.

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and record shall be filed with the clerk and forty copies shall be printed under his supervision. The record shall be printed in the same way and upon the same terms that records on appeal are required to be printed. The estimated costs of printing shall be paid within five days after the estimate is furnished by the clerk and if payment is not so made the petition may be summarily dismissed. When the petition, brief and record are printed the petitioner shall forthwith serve copies thereof on the respondent, or his counsel of record, and shall file with the clerk due proof thereof.

2. Within twenty days after the petition, brief and record are served (unless enlarged by the court, or a justice thereof when the court is not in session) the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs and record, shall be distributed by the clerk to the court for its consideration. (See Rule 38, par. 4(a).)

The provision of subdivision (a) of paragraph 3 of Rule 38 shall apply to briefs in opposition to petitions for writs of certiorari to review judgments of the Court of Claims.

3. The same general considerations will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims as are applied to applications for such writs to other courts. (See par. 5 of Rule 38.)

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42.

JUDGMENTS OF COURT OF CUSTOMS AND PATENT APPEALS OR OF SUPREME COURT OF THE COMMONWEALTH OF THE PHILIPPINES —PETITIONS FOR REVIEW ON CERTIORARI.

(See sec. 195 Judicial Code, as amended or sec. 7 of the Act of February 13, 1925.)

Proceedings to bring up to this court on writ of certiorari a case from the Court of Customs and Patent Appeals or from the Supreme Court of the Commonwealth of the Philippines should conform, as near as may be, to the provisions of Rule 38. The same general considerations which control when such writs to other courts are sought will be applied to them.

43.

ORDER GRANTING CERTIORARI.

Whenever application for a writ of certiorari to review a decision of any court is granted, the clerk shall enter an order to that effect, and shall forthwith notify the court below and counsel of record of the granting of the application. The order shall direct that the certified transcript of record on file here be treated as though sent up in response to a formal writ. A formal writ shall not issue unless specially directed.

44.

RULES, COSTS, FEES, ETC., ON CERTIORARI.

Where not otherwise specially provided, the rules relating to appeals, including those relating to costs, fees and interest, shall apply, as far as may be, to petitions for, and causes heard on, certiorari.

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45.

CUSTODY OF PRISONERS PENDING A REVIEW OF PROCEEDINGS IN HABEAS CORPUS.

(See Rev. Stat. sec. 765 and Act of February 13, 1925, sec. 6.)

1. Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.

3. Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judgment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

4. The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard.

46.

REVIEW ON APPEAL.

1. Appeals to this court from the district courts and the circuit courts of appeals are not affected by the Act of January 31, 1928, or the amendatory Act of April 26, 1928, both of which are copied in the appendix hereto. Such appeals, where admissible, must be sought, allowed and perfected as

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provided in other statutes and in the rules of this court. The Act of February 13, 1925, copied in the appendix hereto, shows when an appeal is admissible and when the mode of review is limited to certiorari.

2. Under the Act of January 31, 1928, as amended by the Act of April 26, 1928, the review which theretofore could be had in this court on writ of error may now be obtained on an appeal. But the appeal thereby substituted for a writ of error must be sought, allowed and perfected in conformity with the statutes theretofore providing for a writ of error. The appeal can be allowed only on the presentation of a petition showing that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, a review could be had in this court on writ of error. The petition must be accompanied by an assignment of errors (see Rule 9), and statement as to jurisdiction (see Rule 12), and the judge or justice allowing the appeal must take proper security for costs and sign the requisite citation to the appellee. See paragraph 1 of Rule 10 and paragraph 1 of Rule 36. The citation must be served on the appellee or his counsel and filed, with 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.

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 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.

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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.

49.

NO SESSION ON SATURDAY.

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

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.

51.

ABROGATION OF PRIOR RULES.

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

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

ORDER.

It is ordered that paragraph 1 of Rule 12 of the Rules of this Court be amended so as to read as follows:

"1. Upon the presentation of a petition for the allowance of an appeal to this court, from any court, to any judge or justice empowered by law to allow it, there shall be presented by the applicant a separate typewritten statement particularly disclosing the basis upon which it is contended that this court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, (b) to the statute of the state, or statute or treaty of the United States, the validity of which is involved (giving the volume and page where the statute or treaty may be found in the official edition), setting it out verbatim or appropriately summarizing its pertinent provisions; and (c) to the date of judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.

"The statement shall show that the nature of the case and the rulings of the court were such as to bring the case within the jurisdictional provisions relied on and shall cite the cases believed to sustain jurisdiction. It shall also include a statement of the grounds upon which it is contended that the questions involved are substantial (*McArthur* v. *United States*, 315 U. S. —; *Zucht* v. *King*, 260 U. S. 174, 176-77).

"If the appeal is from a state court, the statements shall in addition specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e. g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e. g., ruling on exception, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provision believed to confer jurisdiction on this court. The provisions of this paragraph, with appropriate record page references, must be complied with when review of a state court judgment is sought by petition for writ of certiorari. (See Rule 38, par. 2.)

"The applicant shall append to the statement a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including earlier opinions in the same case, or opinions in companion cases, reference to which may be necessary to ascertain the grounds of the judgment or decree.

"If the appeal is from an interlocutory decree of a specially constituted district court of the United States, the statement must also include a showing of the matters in which it is claimed that the court has abused its discretion in granting or denying the interlocutory injunction (*Alabama* v. *United States*, 279 U. S. 229)."

Not Current - 1950

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1942.

ORDER.

It is ordered that paragraph 1 of Rule 36 of the Rules of this Court be and the same hereby is amended by adding as the first sentence thereof the following:

"An appeal will be out of time unless, within the period fixed by statute, application for allowance is presented to the judge or justice who allows it. A prior timely application to another judge or justice does not extend the statutory period. See *Matton Steamboat Co., Inc.* v. *Murphy*, 319 U. S. —."

June 7, 1943.

Not Current - 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943.

ORDER.

IT IS ORDERED that Paragraph 2 of Rule 2 of the Rules of this Court be, and the same is hereby, amended to read as follows:

"2. Not less than two weeks in advance of application for admission, each applicant shall file with the clerk (1) a certificate from the presiding judge or clerk of the proper court showing that he possesses the foregoing qualifications, (2) his personal statement, on the form approved by the court and furnished by the clerk, and (3) two letters or signed statements of members of the bar of this court, not related to the applicant, who are resident practitioners within the State, Territory, District, or Insular Possession (to which the application refers as provided in paragraph 1 of this rule) stating that the applicant is personally known to them, that he possesses all the qualifications required for admission to the bar of this court, that they have examined his personal statement and that they affirm that his personal and professional character and standing are good."

June 5, 1944.

Not Current - 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

ORDER

It is ordered that Rule 2 of the Rules of this Court be, and the same is hereby, amended by adding the following paragraph:

"6. An attorney, barrister, or advocate who is qualified to practice in the highest court of any foreign state which extends a like privilege to members of the bar of this Court, may be specially admitted for purposes limited to a particular case. He shall not, however, be authorized to act as attorney of record. In the case of such applicants, the oath shall not be required and there shall be no fee. Such admissions shall be only on motion of a member of the bar of this Court, notice of which signed by such member and reciting all relevant facts shall be filed with the Clerk at least three days prior to the motion."

November 18, 1946.

Not Current - 1950

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

ORDER.

It is ordered that Rule 33 of the Rules of this Court be, and it hereby is, amended to read as follows:

"33

REHEARING

1. *Of judgments or decisions other than those denying or granting certiorari.* A petition for rehearing may be filed with the clerk, in term time or in vacation, when accompanied by proof of service on the adverse party, within fifteen days after judgment or decision, unless the time is shortened or enlarged by the court or a justice thereof. Such petition must be printed and forty copies thereof furnished. It must briefly and distinctly state its grounds, and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. A petition for rehearing is not subject to oral argument, and will not be granted, unless a justice who concurred in the judgment or decision desires it, and a majority of the court so determines.

(a) A response, if printed and forty copies thereof furnished, accompanied by proof of service, may be filed with the clerk within ten days after service of petition, unless the time is shortened or enlarged by the court or a justice thereof. Such response is not required, and the court will not delay its action upon a petition for rehearing to await a response thereto, unless a response is requested by the court.

2. *Of orders on petitions for writs of certiorari.* A petition for rehearing may be filed with the clerk in term

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time or in vacation, subject to the requirements respecting time, service, printing and number of copies furnished as provided in paragraph 1 of this rule. Any petition filed under this paragraph must briefly and distinctly state grounds which are confined to intervening circumstances of substantial or controlling effect (e. g., *Sanitary Refrigerator Co.* v. *Winters,* 280 U. S. 30, 34, footnote 1; *Massey* v. *United States,* 291 U. S. 608), or to other substantial grounds available to petitioner although not previously presented (e. g., *Schriber-Schroth Co.* v. *Cleveland Trust Co.,* 305 U. S. 47, 50). Such petition is not subject to oral argument. A petition for rehearing filed under this paragragh must be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay, and counsel must also certify that the petition is restricted to the grounds above specified.

(a) A response, if printed and forty copies thereof furnished, accompanied by proof of service, may be filed with the clerk within ten days after service of petition, unless the time is shortened or enlarged by the court or a justice thereof."

It is further ordered that the Rule as herein amended shall be applicable to all cases in which the action of the Court is taken after January 1, 1948.

October 13, 1947.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

ORDER.

IT IS ORDERED that Paragraph 2 of Rule 41 of the Rules of this Court be, and the same is hereby, amended to read as follows:

"2. Within thirty days after the petition, brief, and record are served (unless enlarged by the court or a justice thereof) the respondent may file with the clerk forty printed copies of an opposing brief, conforming to Rules 26 and 27. Upon the expiration of that period, or upon an express waiver of the right to file or the actual filing of such brief in a shorter time, the petition, briefs, and record shall be distributed by the clerk to the court for its consideration. (See Rule 38, par. 4 (a).)"

May 17, 1948.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

ORDER.

IT IS ORDERED that Paragraph 3 of Rule 38 of the Rules of this Court be, and the same is hereby, amended to read as follows:

"3. Notice of the filing of the petition, together with a copy of the petition, printed record, and supporting brief shall be served by the petitioner on counsel for the respondent within ten days after the filing (unless enlarged by the court or a justice thereof), and due proof of service shall be filed with the clerk. If the United States, or an officer or agency thereof, is respondent, the service of the petition, record, and brief shall be made on the Solicitor General at Washington, D. C. Counsel for the respondent shall have thirty days (unless enlarged by the court or a justice thereof), after notice, within which to file forty printed copies of an opposing brief, conforming to Rules 26 and 27. The brief must bear the name of a member of the bar of this court at the time of filing."

May 17, 1948.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

ORDER.

IT IS ORDERED that the Rules of this Court be amended by adding thereto Rule 38½, to read as follows:

38½

"STATE CRIMINAL CASES—TIME FOR TAKING APPEAL OR FILING PETITION FOR WRIT OF CERTIORARI.

"An appeal taken, or petition for writ of certiorari filed, seeking review of a judgment of a state court of last resort in a criminal case, shall be taken or filed within the ninety days prescribed in 28 United States Code, section 2101 (c), Approved June 25, 1948.

"So far as applicable, the general considerations and provisions of Rules 36 and 38 will control in respect to an appeal taken or petition for writ of certiorari filed in a criminal case from a state court of last resort."

November 15, 1948.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

ORDER.

IT IS ORDERED that Paragraph 9 of Rule 27 of the Rules of this Court be, and it hereby is, amended to read as follows:

"9. (a)—*Brief of an amicus curiae in cases before the Court on the merits:*—A brief of an *amicus curiae* may be filed only after order of the Court or when accompanied by written consent of all parties to the case and presented promptly after announcement postponing or noting probable jurisdiction on appeal, granting certiorari, or pertinent action in a case upon the original docket.

"(b)—*Brief of an amicus curiae prior to consideration of jurisdictional statement or a petition for writ of certiorari:*—A brief of an *amicus curiae* filed with consent of the parties, or motion, independent of the brief, for leave to file when consent is refused may be filed only if submitted a reasonable time prior to the consideration of a jurisdictional statement or a petition for writ of certiorari. Such motions are not favored. Distribution to the Court under the applicable rules of a jurisdictional statement or a petition for writ of certiorari and its consideration thereof will not be delayed pending the receipt of such brief or the filing of such motion.

"(c)—*Motion for leave to file:*—When consent to the filing of a brief of an *amicus curiae* is refused by a party to the case, a motion, independent of the brief, for leave to file may timely be presented to the Court. It shall concisely state the nature of the applicant's interest, set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposi-

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tion of the case. A party served with such motion may seasonably file in this Court an objection concisely stating the reasons for withholding consent.

"(d)—*Consent not required:*—Consent to the filing of a brief of an *amicus curiae* need not be had when the brief is presented for the United States sponsored by the Solicitor General; for any agency of the United States authorized by law to appear in its own behalf, sponsored by its appropriate legal representative; for a State sponsored by its Attorney General; or for a political subdivision of a State sponsored by the authorized law officer thereof.

"(e)—*Signature of a member of the bar of this Court and proof of service required:*—All briefs and/or motions filed under this Rule shall bear the signature of a member of the Bar of this Court, and shall be accompanied by proof of service on all parties to the case."

November 14, 1949.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

ORDER.

IT IS ORDERED that the concluding sentence of paragraph 9 of Rule 13 of the Rules of this Court be amended so as to read as follows:

"The fees of the clerk under Rule 32, paragraph 7, shall be computed on the folios in the record as printed, and shall be in full for the performance of his duties in that regard."

IT IS FURTHER ORDERED that this order shall apply to cases docketed on or after May 1, 1950.

April 24, 1950.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

ORDER.

IT IS ORDERED that paragraph 7 of Rule 32 of the Rules of this Court be amended so as to read as follows:

"7. In pursuance of Section 1911 of Title 28 of the United States Code, the fees to be charged by the Clerk of this Court are fixed as follows:

"(a) For docketing a case on appeal or petition for writ of certiorari or docketing any other proceeding, $100.00, to be increased to $150.00 in a case on appeal or writ of certiorari when oral argument is permitted.

"(b) For preparing the record for the printer, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the library, and the parties or their counsel, 20 cents per folio of each 100 words; but where the necessary printed copies of the record as printed for the use of the court below are furnished, charges under this item will be limited to any additions printed here under the clerk's supervision, plus a handling charge of $25.00 in cases in which oral argument is permitted.

"(c) For preparing, on filing, for the printer, petitions for writs of certiorari, briefs, jurisdictional statements or motions when required by the Rules, or at the request of counsel, when, in the opinion of the clerk, circumstances require, indexing the same, changing record references to conform to the pagination of the printed record, and supervising the printing, 20 cents per folio of each 100 words. Neither

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the expense of printing nor the clerk's supervising fee shall be allowed as costs in the case.

"(d) For making a copy (except a photographic reproduction) of any record or paper, and comparison thereof, 40 cents per page of 250 words or fraction thereof; for comparing for certification a copy (except a photographic reproduction) of any record or paper when such copy is furnished by the person requesting its certification, 10 cents for each page of 250 words or fraction thereof.

"For comparing with the original thereof any photographic reproduction of any record or paper, when furnished by the person requesting its certification, 5 cents for each page.

"(e) For a certificate and seal, $3.00.

"(f) For an admission to the Bar and certificate under seal, $25.00.

"(g) For a duplicate certificate of an admission to the Bar under seal, $10.00."

IT IS FURTHER ORDERED that this order shall apply to cases docketed on or after May 1, 1950.

April 24, 1950.

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APPENDIX TO RULES.

ACT OF FEBRUARY 13, 1925.

Chapter 229, 43 Stat. 936.

(Amendments to May 22, 1939, included.)

An Act To amend the Judicial Code, and to further define the jurisdiction of the circuit courts of appeals and of the Supreme Court, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are severally, amended and reenacted to read as follows:

[1] SEC. 128. (a) The circuit court of appeals shall have appellate jurisdiction to review by appeal final decisions—

First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 238.

Second. In the United States District Courts for Hawaii and for Puerto Rico, in all cases.

Third. In the District Court for the District of Alaska, or any division thereof, and in the District Court of the Virgin Islands, in all cases; and in the United States District Court for the District of the Canal Zone in the cases and modes prescribed in sections 61 and 62, title 7, Canal Zone Code (48 Stat. 1122).

Fourth. In the Supreme Courts of the Territory of Hawaii and of Puerto Rico. In all cases, civil or criminal, wherein the Constitution or a statute or treaty of the United States or any authority exercised thereunder is involved; in all other civil cases wherein the value in controversy, exclusive of interests and costs, exceeds $5,000, and in all habeas corpus proceedings.

Fifth. In the United States Court for China, in all cases.

(b) The circuit court of appeals shall also have appellate jurisdiction—

[2] First. To review the interlocutory orders or decrees of the district courts, including the District Courts of Alaska, Hawaii, Virgin Islands and Canal Zone, which are specified in section 129.

[3] Second. To review decisions of the district courts, under section 9 of the Railway Labor Act.

(c) The circuit courts of appeal shall also have an appellate and supervisory jurisdiction under sections 24 and 25 of the Bankruptcy Act of July 1, 1898, over all proceedings, controversies, and cases had or brought in the district courts under that Act or any of its amendments, and shall exercise the same in the manner pre-

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[1] Amended, Act of June 20, 1938, Chapter 526, 52 Stat. 779.

[2] Amended by sec. 1, Act of April 11, 1928, Chapter 354, 45 Stat. 422.

[3] Amended by sec. 13(a), Act of May 20, 1926, Chapter 347, 44 Stat. 587.

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scribed in those sections; and the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit in this regard shall cover the courts of bankruptcy in Alaska and Hawaii, and that of the Circuit Court of Appeals for the First Circuit shall cover the court of bankruptcy in Porto Rico.

(d) The review under this section shall be in the following circuit courts of appeal: The decisions of a district court of the United States within a State in the circuit court of appeals for the circuit embracing such State; those of the District Court of Alaska or any divisions thereof, the United States district court, and the Supreme Court of Hawaii, and the United States Court for China, in the Circuit Court of Appeals for the Ninth Circuit; those of the United States district court and the Supreme Court of Porto Rico in the Circuit Court of Appeals for the First Circuit; those of the District Court of the Virgin Islands in the Circuit Court of Appeals for the Third Circuit; and those of the District Court of the Canal Zone in the Circuit Court of Appeals for the Fifth Circuit.

(e) The circuit courts of appeal are further empowered to enforce, set aside, or modify orders of the Federal Trade Commission, as provided in section 5 of 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914; and orders of the Interstate Commerce Commission, the Federal Reserve Board, and the Federal Trade Commission, as provided in section 11 of 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914.

SEC. 129. Where, upon a hearing in a district court, or by a judge thereof in vacation, an injunction is granted, continued, modified, refused, or dissolved by an interlocutory order or decree, or an application to dissolve or modify an injunction is refused, or an interlocutory order or decree is made appointing a receiver, or refusing an order to wind up a pending receivership or to take the appropriate steps to accomplish the purposes thereof, such as directing a sale or other disposal of property held thereunder, an appeal may be taken from such interlocutory order or decree to the circuit court of appeals; and sections 239 and 240 shall apply to such cases in the circuit courts of appeals as to other cases therein: *Provided*, That the appeal to the circuit court of appeals must be applied for within thirty days from the entry of such order or decree, and shall take precedence in the appellate court; and the proceedings in other respects in the district court shall not be stayed during the pendency of such appeal unless otherwise ordered by the court, or the appellate court, or a judge thereof: *Provided, however*, That the district court may, in its discretion, require an additional bond as a condition of the appeal.

[4](a) In all cases where an appeal from a final decree in admiralty to the circuit court of appeals is allowed an appeal may also be taken to said court from an interlocutory decree in ad-

[4] Act of April 3, 1926, Chapter 102, 44 Stat. 233.

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miralty determining the rights and liabilities of the parties: *Provided,* That the same is taken within fifteen days after the entry of the decree: *And provided further,* That within twenty days after such entry the appellant shall give notice of the appeal to the appellee or appellees; but the taking of such appeal shall not stay proceedings under the interlocutory decree unless otherwise ordered by the district court upon such terms as shall seem just.

[5](b) That when in any suit in equity for the infringement of letters patent for inventions, a decree is rendered which is final except for the ordering of an accounting, an appeal may be taken from such decree to the circuit court of appeals: *Provided,* That such appeal be taken within thirty days from the entry of such decree or from the date of this act; and the proceedings upon the accounting in the court below shall not be stayed unless so ordered by that court during the pendency of such appeal.

SEC. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

(b) It shall be competent for the Supreme Court, by certiorari to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States, or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

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[5] Act of Febraury 28, 1927, Chapter 228, 44 Stat. 1261.

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(c) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed: *Provided,* That where in such a case there appears to be no reasonable ground for granting a petition for certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs, as provided in section 1010 of the Revised Statutes.

SEC. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

(1) Section 2 of the Act of February 11, 1903, 'to expedite the hearing and determination' of certain suits brought by the United States under the antitrust or interstate commerce laws, and so forth.

(2) The Act of March 2, 1907, 'providing for writs of error in certain instances in criminal cases' where the decision of the district court is adverse to the United States.

(3) An Act restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, approved March 4, 1913, which Act is hereby amended by adding at the end thereof, '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 Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit.'

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money.

(5) Section 316 of 'An Act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes' approved August 15, 1921.

SEC. 239. In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and there-

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upon shall decide the whole matter in controversy in the same manner as if it had been brought there by writ of error or appeal.

SEC. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

(b) Any case in a circuit court of appeals where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against its validity, may, at the election of the party relying on such State statute, be taken to the Supreme Court for review on writ of error or appeal; but in that event a review on certiorari shall not be allowed at the instance of such party, and the review on such writ of error or appeal shall be restricted to an examination and decision of the Federal questions presented in the case.

(c) No judgment or decree of a circuit court of appeals or of the Court of Appeals of the District of Columbia shall be subject to review by the Supreme Court otherwise than as provided in this section.

[6] SEC. 2. That cases in a circuit court of appeals under section 9 of the Railway Labor Act; under section 5 of "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914; and under section 11 of "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, are included among the cases to which sections 239 and 240 of the Judicial Code shall apply.

SEC. 3. (a) That in any case in the Court of Claims, including those begun under section 180 of the Judicial Code, that court at any time may certify to the Supreme Court any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the cause; and thereupon the Supreme Court may give appropriate instructions on the questions certified and transmit the same to the Court of Claims for its guidance in the further progress of the cause.

[7] (b) In any case in the Court of Claims, including those begun under section 180 of the Judicial Code, it shall be competent for the Supreme Court, upon the petition of either party, whether Government or claimant, to require, by certiorari, that the cause be certified to it for review and determination of all errors assigned, with the same power and authority, and with like effect, as if the cause

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[6] Amended by sec. 13(b) of Act of May 20, 1926, Chapter 347, 44 Stat. 587.
[7] Amended by Act of May 22, 1939, Chapter 140, 53 Stat. part 2, 752.

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had been brought there by appeal. In such event, the Court of Claims shall include in the papers certified by it the findings of fact, the conclusions of law, and the judgment or decree, as well as such other parts of the record as are material to the errors assigned, to be settled by the Court.

The Court of Claims shall promulgate rules to govern the preparation of such record in accordance with the provisions of this section.

In such cases the Supreme Court shall have authority to review, in addition to other questions of law, errors assigned to the effect that there is a lack of substantial evidence to sustain a finding of fact; that an ultimate finding or findings are not sustained by the findings of evidentiary or primary facts; or that there is a failure to make any finding of fact on a material issue.

(c) All judgments and decrees of the Court of Claims shall be subject to review by the Supreme Court as provided in this section, and not otherwise.

SEC. 4. That in cases in the district courts wherein they exercise concurrent jurisdiction with the Court of Claims or adjudicate claims against the United States the judgments shall be subject to review in the circuit courts of appeals like other judgments of the district courts; and sections 239 and 240 of the Judicial Code shall apply to such cases in the circuit courts of appeals as to other cases therein.

SEC. 5. That the Court of Appeals of the District of Columbia shall have the same appellate and supervisory jurisdiction over proceedings, controversies, and cases in bankruptcy in the District of Columbia that a circuit court of appeals has over such proceedings, controversies, and cases within its circuit, and shall exercise that jurisdiction in the same manner as a circuit court of appeals is required to exercise it.

[8] SEC. 6. (a) In a proceeding in habeas corpus in a district court, or before a district judge or a circuit judge, the final order shall be subject to review, on appeal, by the circuit court of appeals of the circuit wherein the proceeding is had: *Provided, however,* That there shall be no right of appeal from such order in any habeas corpus proceeding to test the validity of a warrant of removal issued pursuant to the provisions of section 1014 of the Revised Statutes (U. S. C., title 18, sec. 591) or the detention pending removal proceedings. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit that a district judge has within his district. The order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) In such a proceeding in the District Court of the United States for the District of Columbia, or before a justice thereof, the final order shall be subject to review on appeal, by the United States Court of Appeals for the District of Columbia: *Provided, however,* That there shall be no right of appeal from such order in

[8] Amended, Act of June 29, 1938, Chapter 806, 52 Stat. 1232.

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any habeas corpus proceeding to test the validity of a warrant of removal issued pursuant to the provisions of section 1014 of the Revised Statutes (U. S. C., title 18, sec. 591) or the detention pending removal proceedings.

(c) Sections 239 and 240 of the Judicial Code shall apply to habeas corpus cases in the circuit courts of appeals and in the Court of Appeals of the District of Columbia as to other cases therein.

(d) The provisions of sections 765 and 766 of the Revised Statutes, and the provisions of an Act entitled "An Act restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings," approved March 10, 1908, shall apply to appellate proceedings under this section as they have heretofore applied to direct appeals to the Supreme Court.

SEC. 7. That in any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review.

SEC. 8. (a) That no writ of error, appeal, or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree, excepting that writs of certiorari to the Supreme Court of the Philippine Islands may be granted where application therefor is made within six months: *Provided,* That for good cause shown either of such periods for applying for a writ of certiorari may be extended not exceeding sixty days by a justice of the Supreme Court.

(b) Where an application for a writ of certiorari is made with the purpose of securing a removal of the case to the Supreme Court from a circuit court of appeals or the Court of Appeals of the District of Columbia before the court wherein the same is pending has given a judgment or decree the application may be made at any time prior to the hearing and submission in that court.

(c) No writ of error or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree.

(d) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved

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to apply for and to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of good and sufficient security, to be approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

SEC. 9. That in any case where the power to review, whether in the circuit courts of appeals or in the Supreme Court, depends upon the amount or value in controversy, such amount or value, if not otherwise satisfactorily disclosed upon the record may be shown and ascertained by the oath of a party to the cause or by other competent evidence.

SEC. 10. That no court having power to review a judgment or decree of another shall dismiss a writ of error solely because an appeal should have been taken, or dismiss an appeal solely because a writ of error should have been sued out; but where such error occurs the same shall be disregarded and the court shall proceed as if in that regard its power to review were properly invoked.

SEC. 11. (a) That where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession, and relating to the present or future discharge of his official duties, such officer dies, resigns, or otherwise ceases to hold such office, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or separation from the office it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved.

(b) Similar proceedings may be had and taken where an action, suit, or proceeding brought by or against an officer of a State, or of a county, city, or other governmental agency of a State, is pending in a court of the United States at the time of the officer's death or separation from the office.

(c) Before a substitution under this section is made, the party or officer to be affected, unless expressly consenting thereto, must be given reasonable notice of the application therefor and accorded an opportunity to present any objection which he may have.

SEC. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: *Provided*, That

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this section shall not apply to any suit, action, or proceeding brought by or against a corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock.

SEC. 13. That the following statutes and parts of statutes be, and they are, repealed:

Sections 130, 131, 133, 134, 181, 182, 236, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, and 252 of the Judicial Code.

Sections 2, 4 and 5 of "An Act to amend an Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March 3, 1911," approved January 28, 1915.

Sections 2, 3, 4, 5, and 6 of "An Act to amend the Judicial Code, to fix the time when the annual term of the Supreme Court shall commence, and further to define the jurisdiction of that court," approved September 6, 1916.

Section 27 of "An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands," approved August 29, 1916.

So much of sections 4, 9, and 10 of "An Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, as provides for a review by the Supreme Court on writ of error or appeal in the cases therein named.

So much of "An Act restricting in certain cases the right of appeal to the Supreme Court in habeas corpus proceedings," approved March 10, 1908, as permits a direct appeal to the Supreme Court.

So much of sections 24 and 25 of the Bankruptcy Act of July 1, 1898, as regulates the mode of review by the Supreme Court in the proceedings, controversies, and cases therein named.

So much of "An Act to provide a civil government for Porto Rico, and for other purposes," approved March 2, 1917, as permits a direct review by the Supreme Court of cases in the courts in Porto Rico.

So much of the Hawaiian Organic Act, as amended by the Act of July 9, 1921, as permits a direct review by the Supreme Court of cases in the courts in Hawaii.

So much of section 9 of the Act of August 24, 1912, relating to the government of the Canal Zone as designates the cases in which, and the courts by which, the judgments and decrees of the district court of the Canal Zone may be reviewed.

Sections 763 and 764 of the Revised Statutes.

An Act entitled "An Act amending section 764 of the Revised Statutes," approved March 3, 1885.

An Act entitled "An Act to prevent the abatement of certain actions," approved February 8, 1899.

An Act entitled "An Act to amend section 237 of the Judicial Code," approved February 17, 1922.

An Act entitled "An Act to amend the Judicial Code in reference to appeals and writs of error," approved September 14, 1922.

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All other Acts and parts of Acts in so far as they are embraced within and superseded by this Act or are inconsistent therewith.

SEC. 14. That this Act shall take effect three months after its approval; but it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to a review, or the mode or time for exercising the same, as respects any judgment or decree entered prior to the date when it takes effect.

Approved, February 13, 1925.

ACT OF JANUARY 31, 1928.

Chapter 14, 45 Stat. 54.

An Act In reference to writs of error

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

SEC. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts.

ACT OF APRIL 26, 1928.

Chapter 440, 45 Stat. 466.

An Act To amend section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"SEC. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

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Act of August 24, 1937.
Chapter 754, 50 Stat. 751.

An Act To provide for intervention by the United States, direct appeals to the Supreme Court of the United States, and regulation of the issuance of injunctions, in certain cases involving the constitutionality of Acts of Congress, and for other purposes.

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

Sec. 2. In any suit or proceeding in any court of the United States to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is a party, or in which the United States has intervened and become a party, and in which the decision is against the constitutionality of any Act of Congress, an appeal may be taken directly to the Supreme Court of the United States by the United States or any other party to such suit or proceeding upon application therefor or notice thereof within thirty days after the entry of a final or interlocutory judgment, decree, or order; and in the event that any such appeal is taken, any appeal or cross-appeal by any party to the suit or proceeding taken previously, or taken within sixty days after notice of an appeal under this section, shall also be or be treated as taken directly to the Supreme Court of the United States. 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.

Sec. 3. 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

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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 times 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.

SEC. 4. Section 13 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 17), is hereby amended to read as follows:

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"SEC. 13. Whenever any district judge by reason of any disability or absence from his district or the accumulation or urgency of business is unable to perform speedily the work of his district, the senior circuit judge of that circuit, or, in his absence, the circuit justice thereof, shall designate and assign any district judge of any district court within the same judicial circuit to act as district judge in such district and to discharge all the judicial duties of a judge thereof for such time as the business of the said district court may require. Whenever it is found impracticable to designate and assign another district judge within the same judicial circuit as above provided and a certificate of the needs of any such district is presented by said senior circuit judge or said circuit justice to the Chief Justice of the United States, he, or in his absence the senior associate justice, shall designate and assign a district judge of an adjoining judicial circuit if practicable, or if not practicable, then of any judicial circuit, to perform the duties of district judge and hold a district court in any such district as above provided: *Provided, however,* That before any such designation or assignment is made the senior circuit judge of the circuit from which the designated or assigned judge is to be taken shall consent thereto. All designations and assignments made hereunder shall be filed in the office of the clerk and entered on the minutes of both the court from and to which a judge is designated and assigned, as well as on the minutes of the Supreme Court of the United States, to the clerk of which both of such other clerks shall immediately report the fact and period of assignment."

SEC. 5. As used in this Act, the term "court of the United States" means 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; the term "district court of the United States" includes the District Court of the United States for the District of Columbia; the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia; the term "circuit" includes the District of Columbia; the term "senior circuit judge" includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term "judge" includes justice.

Approved August 24, 1937.