

718. Opening judgment when rendered upon service by publication.—Any judgment rendered pursuant to sections 711 to 717 of this title upon service by publication only may be opened for answer within the time and in the manner provided in section 118 of this title. (July 3, 1926, c. 702, § 8, 44 Stat. 836.)

For title of Act see note to § 711.

Chapter 18.—PROCEDURE.

★ Section 738. Attachment in postal suits; application for warrant.—

"738" in line 9 of this section should read "737."

752. Same; sale after condemnation.—All vessels, goods, wares, or merchandise which shall be condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording or the enrolling and licensing of vessels, and for which bonds shall not have been given by the claimant, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder, at public auction, by order of such court, and at such place as the court may appoint, giving at least fifteen days' notice (except in cases of perishable merchandise) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed. (As amended May 20, 1930, c. 355, 46 Stat. 485.)

★ 770. Trial of issues of fact; by jury.—

"exceptions" in heading of this section should be omitted.

773. Same; by court.—Issues of fact in civil cases in any district court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, agree to waive a jury by a stipulation in writing filed with the clerk or by an oral stipulation made in open court and entered in the record. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury. (As amended May 20, 1930, c. 357, 46 Stat. 480.)

★ 774. Suits by United States against individuals; credits.—

"of the treasury" in lines 4 and 5 of this section should be omitted by authority of § 44 of Title 31.

★ 778. Death of parties; substitution of executor or administrator.—

"Stat. 324" in second citation to this section should read "42 Stat. 323, 324."

★ 781. Delinquents for public money; judgment.—

"of the treasury" in line 11 of this section should be omitted by authority of § 44 of Title 31.

JUDGMENTS, COSTS, EXECUTIONS, AND MONEYS PAID INTO COURT

★ 816. Costs of keeping vessels or other property attached or libeled in admiralty.—

This section should be omitted from the Code as it is temporary legislation repeated from year to year in Appropriation Acts.

★ 831. Costs; bill of; sworn to.—

"of the Treasury" in lines 2 and 3 of this section should be omitted by authority of § 44 of Title 31.

★ 837. Suits by seamen without prepayment of or bond for costs.—

"July 12" in the first citation to this section should read "June 12."

★ 844. Imprisonment for debt; discharge according to State laws.—

"Commissioners of the circuit court" in lines 11 and 12 of this section should read "United States commissioners" by authority of § 526 of this title.

PROCEDURE ON ERROR AND APPEAL

861. Dismissal of appeal or writ of error because of error in procedure.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

861a. Writ of error abolished; substitution of appeal.—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. (Jan. 31, 1928, c. 14, § 1, 45 Stat. 54.)

The Act cited to the text was entitled "An Act in reference to writs of error."

861b. Statutes governing writs of error to apply to appeals.—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. (Jan. 31, 1928, c. 14, § 2, 45 Stat. 54, as amended Apr. 26, 1928, c. 440, 45 Stat. 466.)

This section prior to its amendment read as follows: "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."

862. Removal of causes by writ of error.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

863. Transcripts on appeals.—

"Supreme Court" in lines 6, 7, and 11 of this section should probably now read "circuit court of appeals."

866. Printed record as part of transcript on appeal to Supreme Court.—

"Feb. 3, 1911" in citation to this section should read "Feb. 13, 1911."

867. Citation.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

868. Citation on writ of error to district court by Supreme Court.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

869. Bond in error and on appeal.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

★ 870. Same; not required of United States.—

This section is a restatement of R. S. § 1007 with the exception that "circuit court of appeals" is substituted for "circuit court" those courts having been abolished by § 289 of Act Mar. 3, 1911, c. 231, 36 Stat. 1167. It was evidently thought by the compiler of this title that R. S. § 1001 related solely to appeals as he did not include district courts in the substitution. But in *U. S. v. Kinney* (D. C. E. D. 1920) 204 Fed. 542, it is held that "while the section is allocated with others dealing with appeals, its terms are broad enough to cover any process in law issuing from a Circuit [District] Court." The decision is based on *U. S. v. Bryant*, 111 U. S. 490, 4 S. Ct. 601, 28 L. Ed. 406, which holds to the same

effect, and of course is controlling. It follows that the enumeration of courts should include district courts. In fact by virtue of § 201 of said Act Mar. 3, 1911, c. 231, 36 Stat. 1107, providing that "wherever, in any law not embraced within this Act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this Act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts." It would seem that "Circuit Court of Appeals" should be eliminated from this section. It may be, however, that § 228 of this title would be construed as broad enough to make this section apply to Circuit Courts of Appeals.

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

871. Writs of error to State courts, manner of issue.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

872. Writs of error returnable to Supreme Court or to circuit courts of appeals.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

873. Amendment of writ of error.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

874. Supersedeas.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

875. Review in cases tried without jury.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

★ 876. Judgment or decree on review from district court in prize causes.—

R. S. § 701 constituting this section of the Code is incompletely stated. It reads in the Revised Statutes as follows: "The Supreme Court may affirm, modify, or reverse any judgment, decree, or order of a circuit court, or district court acting as a circuit court, or of a district court in prize causes, lawfully brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the inferior court, as the justice of the case may require. The Supreme Court shall not issue execution in a cause removed before it from such courts, but shall send a special mandate to the inferior court to award execution thereupon."

877. Remand by Supreme Court or circuit court of appeals.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

878. Damages and costs on affirmance.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

879. Reversal on error limited.—

The writ of error has been abolished by § 861a of this title and appeal substituted therefor.

★ 880. Appeals from district courts; applicability of same rules, etc., as writs of error.—Appeals from the district courts shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error. (R. S. § 1012; Mar. 3, 1911, c. 231, §§ 280, 291, 36 Stat. 1107.)

See note to § 870 of this title.

This section seems to have been made obsolete in part at least by § 861b of this title.