

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. 8, 1911" in citation to this section should read "Feb. 18, 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. § 1001 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) 284 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. 499, 4 S. Ct. 601, 28 L. Ed. 496, 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 § 291 of said Act Mar. 3, 1911, c. 231, 36 Stat. 1167, 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, §§ 289, 291, 36 Stat. 1167.)

See note to § 879 of this title.

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

Chapter 19.—UNITED STATES AS PARTY DEFENDANT IN CERTAIN CASES.

Section 901. Foreclosure of mortgages or other liens; consent.— Upon the conditions herein prescribed for the protection of the United States, the consent of the United States is given, to be named a party in any suit which is now pending or which may hereafter be brought in any United States district court, including those for the districts of Alaska, Hawaii, and Porto Rico, and the Supreme Court of the District of Columbia, and in any State court having jurisdiction of the subject matter, for the foreclosure of a mortgage or other lien upon real estate, for the purpose of securing an adjudication touching any mortgage or other lien the United States may have or claim on the premises involved. (Mar. 4, 1931, c. 515, § 1, 46 Stat. 1528.)

The Act cited to the text was entitled "An Act to permit the United States to be made a party defendant in certain cases."

902. Same; service; appearance; pleadings.— Service upon the United States shall be made by serving the process of the court with a copy of the bill of complaint upon the United States Attorney for the district or division in which the suit has been or may be brought and by sending copies of the process and bill, by registered mail, to the Attorney General of the United States at Washington, District of Columbia. The United States shall have sixty days after service as above provided, or such further time as the court may allow, within which to appear and answer, plead or demur. (Mar. 4, 1931, c. 515, § 2, 46 Stat. 1528.)

For title of Act see note to § 901.

903. Same; removal of causes; procedure.— Any such suit brought against the United States in any State court may be removed by the United States to the United States district court for the district in which the suit may be pending. The removal shall be effected in the manner prescribed by section 72 of this title: *Provided*, That the petition for removal may be filed at any time before the expiration of thirty days after the time herein or by the court allowed to the United States to answer, and no removal bond shall be required. The court to which the cause is removed may, before judgment, remand it to the State court if it shall appear that there is no real dispute respecting the rights of the United States, or all the other parties shall concede of record the claims of the United States. (Mar. 4, 1931, c. 515, § 3, 46 Stat. 1529.)

For title of Act see note to § 901.

904. Same; judicial sales; affirmative relief.— Except as herein otherwise provided, a judicial sale made in pursuance of a judgment in such a suit shall have the same effect respecting the discharge of the property from liens and encumbrances held by the United States as may be provided with respect to

such matters by the law of the State, Territory, or District in which the land is situated, provided that a sale to satisfy a lien inferior to one of the United States shall be made subject to and without disturbing the lien of the United States, unless the United States, by its attorneys, consents that the property may be sold free of its mortgage or lien and the proceeds divided as the parties may be entitled: *And provided further*, That where a sale is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem. In any case where the debt owing the United States is due, the United States may ask, by way of affirmative relief, for the foreclosure of its own lien or mortgage and in any case where property is sold to satisfy a first mortgage or first lien held by the United States, the United States may bid at the sale such sum not exceeding the amount of its claim with expenses of sale, as may be directed by the chief of the department, bureau or other agency of the Government which has charge of the administration of the laws in respect of which the claim of the United States arises. (Mar. 4, 1931, c. 515, § 4, 46 Stat. 1529.)

For title of Act see note to § 901.

905. Same; junior liens; release.—If any person shall have a lien upon any real or personal property, duly filed of record in the jurisdiction in which the property is located, and a junior

lien (other than a lien for any tax) in favor of the United States attaches to such property, such person may make a written request to the officer of the United States charged with the administration of the laws in respect of which the lien of the United States arises, to have the same extinguished. If after appropriate investigation, it appears to such officer that the proceeds from the sale of the property would be insufficient to satisfy, in whole or in part, the lien of the United States, or that the claim of the United States has been satisfied, or by lapse of time or otherwise has become unenforceable, such officer shall so report to the Comptroller General who thereupon may issue a certificate of release, which shall operate to release the property from such lien. (Mar. 4, 1931, c. 515, § 5, 46 Stat. 1529.)

For title of Act see note to § 901.

906. Same; costs or other money judgments.—No judgment for costs or other money judgment shall be rendered against the United States in any suit or proceeding which may be instituted under the provisions of this chapter. Nor shall the United States be or become liable for the payment of the costs of any such suit or proceeding or any part thereof. (Mar. 4, 1931, c. 515, § 6, 46 Stat. 1529.)

For title of Act see note to § 901.