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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

PRELIMINARY REPORT OF THE COMMITTEE ON THE
REVISION OF TITLE 28, U. S. CODE

TO THE MARITIME LAW ASSOCIATION:

On June 25, 1948 the President signed Public Law No. 773, which is a complete revision and restatement of Title 28, U. S. Code, entitled "Judicial Code and Judiciary." The new Title came into force by its terms on September 1, 1948 (Sec. 38).

In the work of revision there was no consultation with this Association. It was the public understanding that the revision would not change the law. If there were public hearings, this Association does not seem to have been apprised of them.

However, when the "slip print" became available, during the month of August, it appeared to many that the law has in fact been changed in various respects as it affects the admiralty law and practice. The President and Executive Committee have received comments and inquiries from several sources. The undersigned committee was thereupon appointed to examine the situation.

PRELIMINARY RECOMMENDATIONS:

1. R. S. 863, 864 and 865 as to depositions *de bene esse* are NOT repealed; they are in effect today as previously, although no longer restated in the U. S. Code. They should be maintained in effect. Every effort to repeal them should be vigorously opposed.

2. The time for appeal from an interlocutory decree has probably been lengthened from 15 days to 90 days, with a possible 30 days' additional time. For the present, this should be accepted.

3. The restatement of the grant of admiralty jurisdiction to the district courts raises difficult questions which require further analysis.

Comments, criticisms and expressions of doubt and uncertainty have been received as to the following points, some of which go

beyond the field of admiralty practice as distinguished from civil practice:

1. What situation is produced by the deletion of former sections 639, 640, 641 of the U. S. Code Title 28 without however any repeal of R. S. 863, 864, 865?

This relates to the procedure for depositions *de bene esse* and by commission.

2. What is or will be the situation as to commissions to take testimony?
3. What is or will be the situation as to letters rogatory?
4. What has happened to the appeal from an interlocutory decree? Is the language of new section 2107 adequate to grant such appeals? The old and new texts are annexed (I).
5. Assuming that the appeal from an interlocutory decree still exists, the time limit seems to have been increased from the former 15 days to 90 days, plus a possible 30 days more. What are the members' views as to these new time limits?
6. The familiar grant of power in former section 41(3) has been entirely rewritten in new section 1333. What are the members' views as to the changes? The old and new texts are annexed (II).
7. The provisions for removal of causes from the State Courts are not suited for a State—such as New York—where actions are commenced by a summons without a complaint; the new Act requires a party to remove before the plaintiff has disclosed facts on which the right to remove depends. Consequently some offices are “removing” every case on the summons; and preparing to agree to a “remand” if it turns out that removal is not possible. This is apparently a serious difficulty.

The views of members on these and any other questions arising out of the new Title 28 are requested. Please send seven copies of a communication, if conveniently possible, so as to expedite the Committee's work.

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I

FORMER ADMIRALTY PRACTICE

28 U. S. Code 227, Judicial Code, § 129

“(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 admiralty 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.” (Act of April 3, 1926, c. 102; 44 Stat. at L. 233; 1926 A. M. C. 835.)

NEW PRACTICE

§ 2107. Time for Appeal to Court of Appeals

In *any* action, suit or proceeding in admiralty, the notice of appeal may be filed within *ninety days* after the entry of the order, judgment or decree appealed from.

The district court, in any such action, suit or proceeding, *may extend* the time for appeal *not exceeding thirty days* from the expiration of the original time herein prescribed, upon a showing of excusable neglect based on failure of a party to learn of the entry of the judgment, order or decree.

II

FORMER ADMIRALTY GRANT

41(3) Admiralty causes, seizures, and prizes

Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a ves-

NEW ADMIRALTY GRANT

§ 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to the libellant or petitioner in every case any other remedy to which he is otherwise entitled.

sel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive; of all seizures on land or water not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the condemnation of property taken as prize. The jurisdiction of the district courts shall not extend to causes arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, District, Territory, or possession of the United States.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.