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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

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

The Impact of Revised Title 28, U. S. Code on the Admiralty Practice

TO THE MARITIME LAW ASSOCIATION:

The undersigned were appointed in October 1948 as a special committee to consider various difficulties arising from the revision of Title 28, United States Code, entitled "Judicial Code and Judiciary", effective September 1, 1948. We made a Preliminary Report, Document 322, in October 1948, to lay at rest doubts about the right to take depositions *de bene esse*. After a meeting with the Revisors and the Sub-committee of Judges of the Judicial Conference, we made a Second Preliminary Report, Document 326, in November 1948, in which we stated a proposed General Admiralty Rule as requested by the Sub-committee of Judges, on depositions. That rule was forwarded to the Chief Justice with the suggestion that it could, if found acceptable, be reported to Congress with a view to becoming effective when the current session ends. The Chief Justice, however, decided that the previous and present deposition practice under R. S. 863, 864 and 865, *which are not repealed,* is satisfactory, and does not require restatement. Hence he did not send any report on a new Admiralty rule to Congress. Our suggested text has been withdrawn. *At this time, there is no Admiralty rule pending or under discussion.* This position appears to us to be satisfactory. It leaves our Admiralty practice unchanged.

The situation as to *commissions to take testimony*—both open and closed commissions for oral or written testimony—remains as it was prior to the Revision; the District Courts have the same power and discretion in these respects as formerly. The same is true of *letters rogatory.*

Discovery. Several members wish the "discovery" rules broadened like the Civil rules; others do not. Your committee takes no position.

The time for appeals from interlocutory appeals is now 90 days, instead of 15 days. This is a convenience when foreign clients have to be consulted, and there seems to be no interest in reducing the time to the former limit. However, the Revisors have introduced a Bill—H.R. 3762 (substituted for H.R. 2168) which, if enacted, would restore the old 15-day time limit.

The re-statement of the *grant of admiralty power* and jurisdiction to the District Courts—former sec. 41 (3), new sec. 1333—appears to be satisfactory. The old words "of all civil causes of admiralty and maritime jurisdiction" and the new words "of any civil case of admiralty or maritime jurisdiction" seem to be adequately equivalent for practical purposes. There seems to be no intent to make any change.

The re-statement of *the "saving" of the common-law remedy* seems, however, to bring some new propositions into the law. The old words—former sec. 41 (3)—saved "the right of a common-law remedy where the common law is competent to give it"—words written by the Founding Fathers in the first Judiciary Act of 1789, and which have until now survived every revising blue pencil during the intervening 160 years. To the old language Congress added the phrases of 1917 and 1922 intended to save the State workmen's compensation act remedies. This lengthy paragraph was reduced by the Revisors to the following 18 words:

> "Saving to the libellant or petitioner in every case any other remedy to which he is otherwise entitled."

The following comments have been noted:

(a) The words *libellant or petitioner* are narrower than the old word *suitors*. They exclude respondents, cross-libellants, third-parties-impleaded, claimants of property, damage-claimants. The Revisors promptly agreed that no such narrowing was intended or desirable. They undertook to place in an amending Bill a passage apt to restore the word *suitors*.

The amending Bill is H.R. 3762 (substituted for H.R. 2168) and the amending passage, in section 79, at present reads as follows:

> § 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 suitors in all cases all other remedies to which they are otherwise entitled.

The amending Bill contains over 100 other amendments, of varying importance, and it seems probable that it will receive consideration and will pass. It passed the House on April 4, 1949.

(b) The old statute saved "the right of a remedy". The new statute saves only "any other remedy", or "all other remedies". It may be noticed that the old statute saved both a right and a remedy, despite the constitutional grant of exclusive admiralty jurisdiction in maritime cases. There may of course be a right without a remedy in a certain court. In the view of many students, the Act of 1789 was the legislative expression of a compromise reached in the Constitutional Convention between the ship-owners and the landsmen. The compromise was that the Constitution granted exclusive admiralty and maritime jurisdiction to the Federal courts (which the ship-owners desired), and the Judiciary Act saved to suitors the rights and remedies of the common law where the common-law courts —thinking chiefly of the State courts—were competent (which the shipbuilders and supplymen and merchants desired). The compromise worked out satisfactorily and the lines of decision became settled through the years. The adjustments made in *Langnes* v. *Green,* 282 U. S. 531, 1931 A. M. C. 511, and *Ex Parte Green,* 286 U. S. 437, 1932 A. M. C. 802, will come to mind, as well as many others.

The Revisors argue that there is no substantial difference between the right to a remedy and a remedy,—that there is no remedy without a right thereto, and with that we may all agree. Your committee is not inclined to press an issue, although the change in language engenders some doubts.

(c) Beginning with the Field Code in New York a hundred years ago, numerous States have substituted "code" rights and remedies for common-law rights and remedies. The application of the savings clause of 1789 in the Code States therefore requires the reasoning—usually unexpressed—that the saving of the right to a common-law remedy necessarily saves the substituted right to a Code remedy. The new language "saving * * * in every case any other remedy" is thought by the Revisors to save (1) common-law remedies, (2) Code remedies, (3) equity, bankruptcy, penal and all other remedies administered by the courts, (4) workmen's compensation remedies (in the event that the Supreme Court should abandon the Jensen,

Knickerbocker Ice and Lawson cases) and other remedies administered by administrative agencies. This is somewhat broader than the former provision. Your committee is inclined to accept it.

(d) If the Jensen, Knickerbocker Ice and Dawson line of cases should be overturned, the new words are apt to save the workmen's compensation remedy for suitors. Whether this would give the plaintiff an option, or give the defendant the usual defense that workmen's compensation is the exclusive remedy, is unresolved.

The *"allowance" of an admiralty appeal* by the district judge seems to be a thing of the past. The practice was statutory and rested on R.S. 998 and 999, which have been found in 28 U. S. Code 868. These have been expressly repealed. Hence no judge has any present general power or authority to "allow" appeals or to sign citations. There are special powers in Bankruptcy (11 U. S. Code 47-a) and Habeas Corpus (28 U. S. Code [New] 2253); none in Admiralty cases.

The time for all admiralty appeals—whether from interlocutory or from final decrees—is now in all cases 90 days (*not 3 months*) after the entry of the order, judgment or decree appealed from. New section 2107, replacing old section 230 (final decrees), new sections 1292 and 2107, replacing old section 227 (interlocutory decrees). In either event, the court may extend the time for not exceeding 30 days "upon a showing of excusable neglect". New section 2107. As many admiralty cases concern foreign litigants, who must be consulted in such matters as the taking of appeals, it is very satisfactory that admiralty cases were not included in the general movement to cut the appeal time down to 30 days. However, the Revisors propose to restore the 15-days time for interlocutory appeals, in their pending Bill, H.R. 3762. Is that desired? Or should it be opposed?

Appeal Bonds. Former R.S. 1000 (former 28 U. S. Code 869), requiring appeal bonds, was omitted because, as the Revisor's comment states in the House Report (No. 308) at page A-240, the "provisions relate to a subject more appropriate for regulation by rule of court". However, there is no rule of court, admiralty, civil, or criminal. Hence appeals taken since September 1, 1948, have not required the bond. Whether the rule as to bonds should be (a) restored as statute or (b) restored by rules of court or (c) intentionally abolished or (d) limited to cases where the appellee shows cause why a bond is necessary or proper is now under consideration

by other sections of the bar. Your committee makes no recommendations, but suggests that in admiralty attachment (in personam) and arrest (in rem) cases, the District Court bond usually extends to all appellate proceedings. Hence the question of an appeals bond is important only in admiralty litigation in personam without a foreign attachment. The present situation does not seem to be disturbing to the admiralty bar.

Removals from State to Federal courts. The new "removal" provisions—new sections 1441-1450—appear to be unworkable in New York, California, Massachusetts, Florida and various other states where the defendant is not necessarily apprised promptly of an action being initiated against him; it also seems that the new system is not fair in the increasing number of cases wherein a non-resident motorist, aviator, or other visitor is "served" by service on the Secretary of State or other official of the State in which he was a visitor when the alleged cause of action arose, accompanied by some form of mailing of notice. As this subject is not an admiralty or maritime topic, and has engaged the close attention of many other bar groups, your committee did not go into it further. The Revisors in their Bill H.R. 3762 propose to restore the 20-days rule in a modified form.

Some of our members consider that Removal is an admiralty subject as well as a "civil rules" subject; in other words, that a case in a State court should be removable by reason of the admiralty character of the right or remedy. The case of Hendry v. Moore, 318 U. S. 133, 1943 A. M. C. 156, bears on this problem; the Supreme Court allowed a State court to enforce a remedy in rem against a purse seine net—a ruling which has evoked wide comment. The Revisors in their Bill H.R. 3762 propose to restore the old rule (old sec. 71) that a remanding order is not appealable. Some of our members point out that this rule prohibiting appeals from remanding orders makes it impossible to press the admiralty question at the proper time—i.e., while the question of jurisdiction is being handled *in limine*. Those who are inclined to agree with that objection might address Professor James W. Moore at Yale University Law School, New Haven,—as Mr. Lane Summers has already done in the following language:

> "Specializing in maritime matters and admiralty litigation for many years, I have long felt that an action filed at law in the State Court, based upon a maritime claim (whether contract or tort) should be removable to the Federal Court at law, upon the ground that the same arises under the Constitution and laws

of the United States, being within the admiralty and maritime jurisdiction of the Federal Courts under the Constitutional grant —without regard to diversity of citizenship or amount involved. Being convinced of the soundness of the theory, I have in a number of cases attempted such removal, in the conviction that the common law remedy saved to suitors by the Act of 1789 was not denied by such a removal, since the common law remedy so preserved was available to the plaintiff not only in the State Court but also in the Federal Court—on the law side. However, I have been frustrated in my hope of presenting the question to the Supreme Court of the United States, very largely because of the old prohibition against appeal from a Federal Court order remanding the case.

"While as you have indicated the omission of the prohibition against appeal may have been inadvertent, the proposed amendment returning to the law prohibition against appeal is a controversial matter.

"From my own point of view, particularly as affecting maritime cases with which the State Courts are generally unfamiliar, the right of removal is an important and substantial right in which litigants have a vital interest at stake which should be subject to consideration by the Federal appellate courts. Hence, if the amendment contemplated by you be actually proposed, I should welcome the opportunity of more fully and formally expressing my opposition."

Jones Act cases may now be removable. The Employers' Liability Act of 1908, 45 U. S. Code 56, is amended by section 18 of the new Act (Public Law 773, 80th Congress) to read as follows:

> "The jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States."

This provision formerly read as above, *with the following addition, which has been repealed:*

> "* * * and no case arising under this Act and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

The repealed language now appears in new section 1445 of Title 28 *but is limited to suits against railroads.*

The Jones Act, 46 U. S. Code 688, which incorporates the Employers' Liability Act by reference, would seem to be amended by this statute. It may be thought that Jones Act cases, brought in State courts, are now removable to the Federal courts, because a ship-

owner or operator employer is obviously not a railroad. Yet the Jones Act adopted the statutes relating to railroad employee cases. This change, if it has occurred, might have raised many objections 20 years ago; it may now be of little importance.

United States as Defendant. New section 1346-a-2 reproduces the old Tucker Act, giving to District Courts jurisdiction of any *civil* action or claim not exceeding $10,000 in amount. The Revisor's comment (page A-123, lines 3-5) as to actions in admiralty seems to be misplaced; the Tucker Act does not deal with admiralty claims.

Corporation organized under Federal Law. New section 1349 forbids only *civil* suits by or against a Federal corporation in a District Court unless the government owns more than one-half the stock. Old section 42 forbade such suits *in all cases*. The Revisor's comment (page A-123) explains that this is in view of Civil Rule 2 merging common-law and equity actions. This clarifies the proposition that the District Court in admiralty is not forbidden to take normal admiralty jurisdiction of suits by or against such corporations, regardless of the percentage of government shareholdings.

Assigned Claims. There is no change in the Anti-Assignment Act, 31 U. S. Code 203, as to assignment of claims against the government.

The language of old section 41 (1) as to District Court jurisdiction of "suits to recover upon any chose of action in favor of any assignee or of any subsequent holder if the instrument be payable to bearer", etc., is redrafted in new section 1359—"Parties collusively joined or made". The Revisor's note cites a note in 35 Illinois Law Review, p. 569 (1941). "Order" bills of lading assigned in business transactions would seem to be unaffected in respect of admiralty jurisdiction.

Constitutional Questions. Old section 349-a permitted a direct appeal from the District Court to the Supreme Court "in *any* suit or proceeding in *any* court of the United States * * * in which the decision is against the constitutionality of any Act of Congress." That included admiralty cases.

New section 1252 limits the direct appeal to civil actions. That excludes admiralty suits. The Revisor frankly states (at page A-105) that the "words *civil action* were inserted in view of Rule 2 of the Federal Rules of Civil Procedure providing for but one form of

action". That comment relates to the fusion of law and equity; it overlooks the separate status of admiralty. It would seem that an admiralty decree denying the constitutionality of a statute would be appealed first to the Court of Appeals and thence to the Supreme Court.

Repeals. The new Act revising Title 28 does not contain any general repeal language. It repeals only those statutes which are listed in the Schedule of Laws Repealed.

As has been repeatedly noted, the Schedule of Laws Repealed *does not* mention R.S. 863, 864 and 865 as to the right of a party (in an admiralty suit) to take depositions *de bene esse* on short notice and before answer and, in certain circumstances, before appearance. These passages were formerly known by the old U. S. Code numbers, as sections 639, 640 and 641. Those numbers, however, may no longer be used. Since September 1, 1948, R.S. 863, 864 and 865 have been among those laws which are in full force and effect, but not incorporated in the current U. S. Code.

General. It will be noted that it is at present the policy of Congress to entrust the revision and re-statement of the Federal laws to the attorneys and employees of law publishing companies, with whom the Judicial Conference co-operates. Under these circumstances, it seems difficult to arrange for adequate examination of the work in progress by persons in closer touch with the actualities of litigation and practice from the point of view of the bar and the public.

At the present moment, the Congress is actually considering the revision of Title 46 of the United States Code—entitled "Shipping"—by the same processes and agencies which revised Title 28. Our Association has appointed committees to examine that work and make suggestions. Whether those suggestions have been heeded, and how the work is being presented to Congress, is, however, not clear to us. The attitude of the Revisors seems to be that the Bar should at its peril keep an eye on the work of revision, rather than that the Revisors should be alert to bring their proposals to the attention of the Bar. It is our view that it is far preferable to straighten out details beforehand, instead of relying on a subsequent Amending Bill as is being done in respect of Title 28. This could be attained by cir-

culating the proposed new texts much more widely throughout the shipping community and allowing a longer period of time to elapse before declaring new texts in effect.

We gratefully acknowledge the assistance of Professor George C. Sprague, of George F. Longsdorf, Esq., of San Francisco, and of others.

Table of Old and New Section Numbers. Appended is a table showing where most of the "old sections" of interest to the Admiralty Bar are now found in the revised title; and the Revisor's reasons for omitting various sections.

An eventual overhauling of the General Admiralty Rules seems to be in contemplation. However, such a labor is not being undertaken now. Such a task is beyond the purview of this committee.

It is our feeling that the purposes for which our committee was appointed have been fulfilled, and that the committee should be discharged.

Respectfully submitted,

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TABLES OF OLD AND NEW SECTION NUMBERS

Title 28, U. S. Code
Relating to Admiralty Practice

Old No. 1926-1948	*Subject*	*New No. Sept. 1, 1948*
13 302	U. S. Court always deemed open	452
574	U. S. Marshal's fees	553 1921
597 597-a	U. S. Commissioner's fees	633
346 347	U. S. Supreme Court's appellate and certiorari jurisdiction	1254
349-a	U. S. Supreme Court's jurisdiction in cases raising constitutional questions (see comments)	1252
225-a 230	U. S. Courts of Appeals, appeals from final decrees—right—time for	1291 2107 (3)
227 230	U. S. Courts of Appeals, appeals from interlocutory appeals—right—time	1292 (3) 2107 (3)
41 (3)	U. S. District Courts—admiralty jurisdiction	1333
41 (20) 931-a 932	Same—jurisdiction of suits against the Government (Tucker Act)	1346
765 931-a 932	Interest rate against Government—4%	2411
945	List of causes where Government not suable	2680
41 (17)	Alien's action for treaty tort	1350
41 (9) 371 (2)	Jurisdiction of federal fines, penalties, forfeitures	1355
41 (3) 371 (4)	Jurisdiction of federal seizures upon waters not within admiralty and maritime jurisdiction	1356
NEW	Venue of actions for fines, penalties, forfeitures against a vessel ("added for completeness and clarity")	1395-d

Old No. 1926-1948	*Subject*	*New No. Sept. 1, 1948*
106	Venue—seizure on high seas	1391 1406
107	Venue—forfeiture of vessel passing to or from area of insurrection	1395 (e)
108	Venue—forfeiture of vessel or cargo entering "closed" port	1395 (e)
41 (25) 41 (26) 43, 105-121 762, 931-a	Venue in District Courts, generally	1391-1406
119 163	Change of venue of any *civil* action	1404
NEW	Cure or waiver of defects of venue	1406
Title 45, sec. 51-60	Actions against railroads, not removable	1445
695	Evidence—records made in regular course of business	1732
653	Letters rogatory—Commissions to take testimony	1781
600-c	Witness fees—per diem—mileage (600-d is repealed)	1821
770	Great Lakes—admiralty jury right	1873
837	Seamen's suits—fees and costs	1916
571 572	Admiralty docket fees—brief costs	1923
NEW	Taxation of admiralty costs "drafted to make possible the promulgation of comprehensive and uniform rules governing costs in admiralty. Various enactments of Congress, all over 100 years old, relate to particular features of the matter, but do not set forth any comprehensive and uniform procedure. See for example, sections 818, 826 and 827 of Title 28 (old) 1940 ed." (Note: No new rule has been drafted, nor can any now become effective before the end of the 2nd session of the 81st Congress, at the end of 1950.)	1925

Old No. 1926-1948	*Subject*	*New No. Sept. 1, 1948*
637	Mode of proof in admiralty cases	2072
723 730 NEW	Admiralty rules for District Courts —Supreme Court empowered to make, superseding Acts of Congress (Note: Paragraphs 2, 3 and 4 are new. No new rule can become effective until (a) reported to Congress at the beginning of a session and (b) until the end of that session.)	2073
219, 263, 296 307, 725, 731 761	General rule-making power of each court	2071
347, 350	Certiorari, writ to U. S. Supreme Court—time for, 90 days (formerly 3 months)	2101 (c)
350	Stay, pending certiorari	2101 (e)
227-a, 230	Appeals to Courts of Appeals, time in Admiralty cases, 90 days	2107 (3)
41 (20), 258 401, 748, 749 750, 765, 766 774, 780-a, 781 839, 870, 901 902, 904, 905 931-a, 932, 942	Suits against the Government—Tucker Act—U. S. as party generally	2401-2414
250, 286	Court of Claims procedure	2501-2520
921-945	Tort claims against the Government procedure (Federal Tort Claims Act of 1946)	1346 2402 2671-2680

COST AND FEE PROVISIONS

Benedict lists the Acts of Congress applicable to Costs and Fees in Chapter XLV, sections 421-444-a. Running down that list, the present situation as to each item is apparently as follows:

Title 28 Old Section No.	*Subject*	*Title 28 New Section No.*	*House Report No. 308 Revisors' Comment Page*
548	District Court clerks' fees—general	See 1914	A-160
549	Same: $5 filing first pleading taxing fees as costs	1914	A-160
550	Same: $5 filing first answer, $2 later answer	dropped	no comment
551	Same: $5 entry of decree, final order	missing	no comment
552	Same: $5 petition for appeal	1917	A-161
554	Same: $5 new hearing after reversal	missing	no comment
555 (1) to (15)	Same: Miscellaneous services	1914	A-160
556	(R.S. 828) Same: Books open to inspection	missing	"Suitable for a rule of court."
557	(Act 1919) Same: Fees paid to U. S. Treasury quarterly	604, 751	Travel-subsistence A-75, A-88/91
569	Clerks: No other emoluments	751	A-88/91
571	R.S. 823 as amended 1925, Proctor's fee	1923	A-163/4
572	Docket fee—$20 Deposition fee—$2.50 Appeals fee—$20/$75	1923	A-163
574 (1) to (24)	Marshal: Fees enumerated R.S. 823, 829, am. 1896	{553 {1921	A-72 A-163
578	Emoluments of U. S. Attorneys	1923	no comment
582	Marshal: Salaries: Fees in Alaska	552 553	A-71 A-73
590	Penalty for accepting other pay	to Title 18	Criminal Code

Title 28 Old Section No.	*Subject*	*Title 28 New Section No.*	*House Report No. 308 Revisors' Comment Page*
597	U. S. Commissioners: Fees	633	A-80
599	" " How paid	636	A-81
599-a	" " Account within year	636	A-81
600-a	Witnesses: Per diem—mileage	1871	A-158
600-c	" Amount—$2 per day 5¢ per mile	1821 1825	A-154 A-155
600-d	" Same—Mountain states	dropped	"unnecessary" see secs. 1821, 1825, 1871
601	" Enumeration of fees	dropped	no comment
603	Witness fees—none for court officers	1823	A-154
605	Seamen-witness in criminal cases—travel from overseas	missing	A-237 "obsolete & unworkable"
606	Printers' fees—40¢ per folio	missing	Recommend transfer to Title 44—Public Printing & Documents
607	Same: Folio defined; see A-163—100 words	missing	A-237 "obsolete"; officials are now salaried

SECTIONS OF TITLE 28 REPEALED OR TRANSFERRED

The Revisor's explanations are in quotation marks.

Old No.	*Subject*
102	Venue—trial of offence on high seas Transferred to Criminal Code Title 18, new 3238
123	Oath of appraiser of goods or vessels seized for breach of U. S. law "obsolete and unnecessary in view of new sec. 637 and 953".
165	Judge may change venue in any cause "surplusage; unnecessary".
228, 228-a	Allowance of appeal "covered by Rule 73, Fed. Rules Civil Procedure". [Note: Rule 73 is not applicable to admiralty: Rule 81 (a).]
348	Certification of question to U. S. Supreme Court "superfluous, in view of new sec. 1254".
378, 381-384	Power of District Court to issue injunction "surplusage and now covered by Fed. Rules Civil Procedure" (namely Rule 65): "section obsolete in view of Rules 1 and 2 of Fed. Rules Civil Procedure abolishing the distinction between actions at law and suits in equity". (Comment disregards occasions for use of injunction in admiralty.)
600-d	Witness and juror fees in all U. S. Courts (See new sections 1821, 1825, 1871.)
605	Travel of witness from abroad "obsolete and unworkable; attendance of foreign witness can be obtained only by special arrangement for payment of adequate compensation".
631	Competency of witness determined by State law "governed by Rule 43, Fed. Rules Civil Procedure". [Note: Admiralty practice never conformed to State practice.]
636	Production of books and writings "superseded by Rules 34 and 35, Fed. Rules Civil Procedure". [Note: In admiralty cases, it is superseded by General Admiralty Rule 32.]

Old No.	*Subject*
642	Acknowledgment of deposition "covered by Rules 28, Fed. Rules Civil Procedure, and Title 5, sec. 92 and 92-a".
643	Depositions, taken according to State law "covered by Rule 26 et seq., Fed. Rules Civil Procedure". [Note: Not applicable in admiralty: Rule 81 (a).]
644	Deposition under dedimus potestatem (commission) and in perpetuam rei memoriam "superseded by Rule 26 et seq., Fed. Rules Civil Procedure". [Note: Rule is not applicable in admiralty: Rule 81 (a).]
645	Deposition in perpetuam rei memoriam "covered by Rule 27-a-4, Fed. Rules Civil Procedure". [Note: Rule is not applicable in admiralty: Rule 81 (a).]
646	Deposition dedimus potestatem (commission to take testimony in any district or territory of the U. S.) "covered by Rule 26 et seq., Fed. Rules Civil Procedure". [Note: Rule is not applicable in admiralty: Rule 81 (a).]
647	Subpoena duces tecum within 100 miles of court "covered by Rule 17, Fed. Rules Criminal Procedure, and Rule 45, Fed. Rules Civil Procedure". [Note: Neither of these rules applies in admiralty.]
648	Witnesses—when required to attend within 40 miles "covered by Rule 17, Fed. Rules Criminal Procedure, and Rule 45, Fed. Rules Civil Procedure". Same comment.
654	Subpoena may run in another district within 100 miles "superseded Rule 17-e, Fed. Rules Criminal Procedure, and Rule 45-d, Fed. Rules Civil Procedure". Same comment.
655	Subpoena—form; attendance under, on behalf of United States "superseded by Rule 17, Fed. Rules Criminal Procedure, and Rule 45, Fed. Rules Civil Procedure". Same comment.
722	Process shall bear teste "covered by Rule 4, Fed. Rules Civil Procedure".

Old No.	*Subject*
724	Conformity to State Court practice "provisions are in conflict with Rule 4, Fed. Rules Civil Procedure and therefore are no longer of any force or effect". [Note: Admiralty practice never conformed to State practice.]
726	Attachment—as provided by State laws "covered by Rule 64, Fed. Rules Civil Procedure". [Note: Admiralty attachments have not conformed to State practice.]
727	Execution—as provided by State laws "covered by Rule 69, Fed. Rules Civil Procedure". [Note: Federal Civil Rules do not apply in admiralty: Rule 81 (a).]
732	Penalty and forfeiture suits respecting imports, tonnage, registry, enrolling or licensing of vessels, shall be brought in the name of the United States "section is obsolete" [Query: Could suits be brought in name of informer?]
733	Consolidation of revenue seizures "obsolete in civil actions. In admiralty proceedings, the Admiralty Court has power to consolidate under Rule 16 of such Court".
734	Orders to save costs in seizure cases "as to civil actions, is superseded by the Fed. Rules Civil Procedure. And in Admiralty proceedings, the provisions are unnecessary".
735	Service of process when marshal is a party to cause "covered by Rule 4, Fed. Rules Civil Procedure; by Rules 4 and 9, Fed. Rules Criminal Procedure; by Rule 1, General Admiralty Rules".
736	Seizure of vessel for forfeiture—14 days' notice "covered by Title 19 (Customs Laws), s. 1607 and s. 1610".
746	Attachments dissolved in accordance with State practice "covered by Rule 64, Fed. Rules Civil Procedure".
751	Property seized under customs laws "covered by Title 19 (Customs Laws), s. 1605".
752	Same: Sale after condemnation "covered by Title 19 (Customs Laws), s. 1607 and s. 1610; and by Title 46 (Shipping Laws), s. 327".

Old No.	*Subject*
753	Bail of property seized in vacation "section is obsolete; is now covered by new sec. 452 and by Admiralty Rules 6-8, 10, 12".
755	Special bail in suits for penalties "provisions relate to a subject more appropriate for regulation through the rule making power". [Note: No rule has been proposed to replace the repealed text.]
764	Opinions, finding and conclusions—second sentence provided: "If the suit be in * * * admiralty, the court shall proceed with the same according to the rules of such courts". Revisor's comment: "covered by Rules 52 and 75, Fed. Rules Civil Procedure". [Note: The Federal Civil Rules do not apply to admiralty: Rule 81 (a). The applicable rule would be General Admiralty Rule 46½.]
767	Process may be amended, if no party is prejudiced "covered by Rule 4-h, Fed. Rules Civil Procedure". [Note: There is no admiralty rule.]
769	In all civil actions, either party may notice for trial "covered by Rule 40, Fed. Rules Civil Procedure".
771	Admiralty court shall find facts and state conclusions; may impanel jury of 5 to 12 jurors to find facts "superseded or covered in part by General Admiralty Rule 46½".
776	Bill of exceptions "superseded by Rules 46, 63, 75, Fed. Rules Civil Procedure".
777	Same—defect of form "superseded by Rules 1, 15, 61, Fed. Rules Civil Procedure".
778	Death of a party—substitution of executor or administrator "superseded by Rules 25, 81, Fed. Rules Civil Procedure". [Note: Rules are not applicable to admiralty: Rule 81 (a).]
779	Death of one of several parties "superseded by Rules 25, 81, Fed. Rules Civil Procedure". Same comment.

Old No.	*Subject*
780	Survival of action against a government officer "superseded by Rules 25, 81, Fed. Rules Civil Procedure". Same comment.
790	Final record in admiralty—contents "superseded by General Admiralty Rule 49".
816	Cost of keeping vessels attached or libelled in admiralty (Appropriation acts of 1922, 1923, 1924, 1925) "provisions expired with appropriation acts of which they were a part".
825	One bill of costs when several actions might be joined "unnecessary. Covered by Rule 42, Fed. Rules Civil Procedure".
826	Several libels, with one bill of costs—one libel and several claims with several bills of costs "covered by the Supreme Court's power to promulgate rules for costs in admiralty". [Note: The Court has not exercised this power. No rule has been proposed.]
838	Executions run to all districts of a State "superseded by Rule 4-f, Fed. Rules Civil Procedure". [Note: There is no corresponding admiralty rule.]
863	Transcripts on appeals—new evidence in admiralty and prize cases "superseded by General Admiralty Rule 49. Also, there has been no such appeal to the Supreme Court since 1925".
865	Printed transcript of record in Court of Appeals "superseded * * * as to admiralty proceedings, by the rules of the Courts of Appeals". [Note: 1 CA, Rule 23 2 CA, Rule 17 3 CA, Rule 18 (2) 4 CA, Rule 10 5 CA, Rules 12, 23 6 CA, Rules 12, 22 7 CA, Rule 10 8 CA, Rule 13 9 CA, Rules (Admiralty) 5, 9—(General) 19 10 CA, Rule ..... CA, Dist. Col., Rule .....]

Old No.	*Subject*
866	Printed record as part of transcript to Supreme Court "provisions are unnecessary and covered by Supreme Court Rules" [Note: General Supreme Court Rules Nos. 10, 13.]
869	Bond on appeal "provisions relate to a subject more appropriate for regulation by rule of court". [Note: No rules of court have been proposed. Currently, appeals may be taken without bonds.]
880	Appeals from District Courts are subject to the same rules, regulations and restrictions as were, prior to January 31, 1928, prescribed in law in cases of writs of error "covered by a separate section—sec. 23—in the Bill to enact this revision". The new enactment (sec. 23 of the Title 28, Revision Act of 1948) reads as follows: "Sec. 23. Section 2 of the Act approved January 31, 1928 (Chapter 14; ..... 45 Stat. 54), as amended, is amended to read as follows: 'Sec. 2. All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute *appeal* for *writ of error*.'"

NOTE: The Suits in Admiralty Act and the Public Vessels Act, authorizing suits in admiralty against the government for the torts and contracts of government owned vessels, have not been disturbed; they are not found in the Judicial Code, but in the "Shipping" law title, Title 46, U. S. Code, sections 741 and 781.

FURTHER REPEALS PROPOSED IN PENDING BILLS H. R. 2168 AND 3762

Old No.	*Subject*
435	Effect of Repeals of March 3, 1911
584 (Note)	Marshal: Expenses
600	Grand and petit jurors; fees