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Important Changes in Federal Appellate Jurisdiction

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IMPORTANT CHANGES IN FEDERAL APPELLATE JURISDICTION.—By an Act of Congress of February 13, 1925, effective three months from that date, important changes in the jurisdiction of the Supreme Court and the circuit courts of appeal come into being, to the end of facilitating work and clearing an overcrowded docket. The chief purpose of this Act is to relieve the Supreme Court from the burden of deciding cases involving questions of insufficient importance to take its time and thus prevent early decisions on serious constitutional interpretations. Other purposes are served, in that appellate procedure is simplified, no complicated machinery is set up to trap the unwary, the long waiting list of those to be heard is lessened by disposing of cases on the docket, and the writ of error or appeal prosecuted for the sole purpose of delay loses its prime object. In attaining the desired end the Supreme Court's jurisdiction is unaffected and at the same time its overcrowded docket is relieved. By a wider use of the writ of certiorari and by certificate of the lower court of questions for answer, any case heretofore reviewable by the Supreme Court is, if the Court finds

that it presents questions of sufficient moment, still subject to review there; but the Court now decides (with certain exceptions hereinafter enumerated) whether those questions should engage its attention. Obligatory appellate jurisdiction by writ of error or appeal is reduced to the minimum. A general analysis of the Act in question presents a new procedure, with unimportant omissions, as follows:

The only cases in which the Supreme Court exercises obligatory appellate jurisdiction by a direct review, that is, by writ of error or appeal, are:

First. Over the final judgments or decrees of state courts of last resort, (a) where a final judgment or decree in any suit in which a decision could be had, or is drawn in question, the validity of a treaty or statute of the United States, and the decision is against its validity. (b) 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.

Second. A direct review by the Supreme Court of an interlocutory or final judgment or a decree of a federal district court, (a) to expedite the hearing and determination of certain suits brought by the United States under the anti-trust or interstate commerce laws, (b) in certain criminal cases where the decision of the district court is adverse to the United States and where the defendant has not been exposed to jeopardy or acquitted by verdict of a jury, (c) appeals from the issuance of interlocutory injunctions to suspend the enforcement of a statute of a state or of an order made by an administrative board or commission created by and acting under a statute of a state, and from final decrees granting or denying permanent injunctions in such suits. (d) Appeals from 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, and (e) appeals from judgments and decrees in suits to enforce an act to regulate interstate and foreign commerce in live stock, live stock products, dairy products, poultry, poultry products, etc. The requirement respecting the presence of three judges applies to the final hearing in the district courts in the above suits except as to (b).

All other cases involving federal constitutional questions, other than those above mentioned, are reviewed by certiorari from the Supreme Court or by certificate by the inferior court of questions. Writs of certiorari to state courts of last resort can only

issue after final judgments in those courts. The writ may issue to the circuit courts of appeals before or after judgment, but if before judgment, the application must be made before the hearing and submission.

The circuit courts of appeals are given appellate jurisdiction to review by appeal or writ of error, final decisions in the district courts in all cases, save where a direct review of the decision may be had in the Supreme Court. They are also given appellate jurisdiction: (a) To review certain interlocutory orders or decrees of the district courts. Where 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 purpose 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, but the appeal in such case must be applied for within thirty days from the entry of such order or decree, and shall take precedence in the appellate court. The district court may, in its discretion, require an additional bond as a condition of the appeal. (b) To review decisions of the district courts sustaining or overruling exceptions to awards in arbitration, as provided in an act providing for mediation, conciliation and arbitration in controversies between certain employers and demployes. (c) To supervise and review all proceedings, controversies and cases had or brought in the district courts under the Federal Bankruptcy Act and its amendments.

All direct review in the Supreme Court by writ of error or appeal from the final judgments or decrees of the circuit courts of appeals is abolished.

In addition to the above certain remedial provisions are embodied in the Act. A further allowance of sixty days on the present limit of three months for application for writ of error or appeal or certiorari to the Supreme Court is provided; but only upon an order of a justice of the Supreme Court to be granted after a proper showing.

Where the jurisdictional amount in controversy is not adequately shown, either in the trial or the appellate court, it may be shown and ascertained by the oath of a party to the cause or by other competent evidence.

Where one takes out a writ of error from the Supreme Court of the United States to a State court of last resort, and it turns

out that it should have been a writ of certiorari, the writ of error will be considered by the Court as a writ of certiorari.

In suits brought by or against state, county or municipal officers who have ceased to be such, substitution of their successors in office as parties is provided.

Corporations organized by Congress are deprived of the right to seek the federal court on the ground of their federal authorization.

No attempt has been made herein to do anything more than call attention, in a general way, to the changes which should be of interest to the members of the bar. Many provisions as to appellate procedure from the courts of the District of Columbia, United States' territories and dependencies, have been purposely omitted. It appears that the Chief Justice of the Supreme Court, aided by the American Bar Association, in the drafting of this Act has performed a valuable service in the direction of reform of the appellate procedure of the federal courts. That the Supreme Court will be benefitted is hardly subject to question.

—C. R. S.