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JURISDICTION OF CIRCUIT COURTS OF APPEALS AND OF THE SUPREME COURT

JANUARY 6, 1925.—Referred to the House Calendar and ordered to be printed

Mr. GRAHAM, from the Committee on the Judiciary, submitted the following

REPORT

To accompany H. R. 8206]

The Committee on the Judiciary, to whom was referred the bill H. R. 8206, after hearings and consideration, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The committee amendments are as follows:

On page 2, line 11, strike out "Constituton" and insert "Constitution."

On page 5, in line 5, strike out "taken" and insert "applied for."

On page 8, after line 5, insert the following paragraph:

(5) Section 316 of "An act to regulate interstate and foreign commerce in livestock, livestock products, dairy products, poultry, poultry products, and eggs, and for other purposes," approved August 15, 1921.

On page 10, in line 11, strike out "writ of error or."

On page 11, in line 9, add the following sentence:

A circuit judge shall have the same power to grant writs of habeas corpus within his circuit that a district judge has within his district; and the order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

On page 13, in line 5, insert between "Supreme Court" and "before the court" the words "from a circuit court of appeals or the Court of Appeals of the District of Columbia."

On page 13, between lines 8 and 9, insert two paragraphs as follows:

(c) No writ of error or appeal intended to bring any judgment or decree before a circuit court of appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree.

(d) In any case in which the final judgment or decree of any court is subject to to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to apply for and to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of good and sufficient security, to be approved by such judge or

justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

On page 17, above line 1, insert the following:

An act entitled "An act to amend section 237 of the Judicial Code," approved February 17, 1922.

An act entitled "An act to amend the Judicial Code, in reference to appeals and writs of error," approved September 14, 1922.

On page 15, line 20, strike out "1916" and insert in lieu thereof "1917."

THE BILL

It is one prepared by justices of the Supreme Court, not as volunteers, but in answer to a proper request to do so. A committee of justices carefully considered the subject for a long time and then framed a tentative measure, which was submitted to all the justices and approved by them.

THE OBJECT

The bill is designed to lessen the number of cases which under existing law reach the Supreme Court. It will not lighten the burden or relieve the Supreme Court of work, but will remove from their consideration a class of cases which now burden the docket and have no public interest or value, and give the Supreme Court time to hear and determine those cases which should alone engage their attention. That court is more than a year behind on its list of pending cases, and this condition will surely be aggravated each year if the court is left without relief. It is hoped by this bill to enable the court to overtake its work, and keep up with it. Having to hear numbers of cases of a trivial character, or cases brought really for delay, or to wear out an adversary, the court is hindered from hearing and determining more important cases and from efficiently functioning in the performance of its highest duty of interpreting the Constitution and preserving uniformity of decision by the intermediate courts of appeals.

The Supreme Court will always have plenty to do whether this bill passes or not. The problem is whether the time and attention and energy of the court shall be devoted to matters of large public concern, or whether they shall be consumed by matters of less concern, without especial general interest, and only because the litigant wants to have the court of last resort pass upon his right.

Although final decisions will be multiplied in the intermediate courts of appeals by this bill, if it shall become a law, yet every case now reviewable by the Supreme Court under existing law will still be reviewable by that tribunal whenever a question is presented which is of sufficient importance in the opinion of the Supreme Court. The obligatory appeal and writ of error is limited, and a very broad and comprehensive discretionary power is given by certiorari. Through this discretionary power there can and will be a weeding out of all trivial and unimportant cases; cases brought for delay; cases which cover matters already decided, etc., so that rapidity of action will be achieved; and the public questions—the vital and important ones—will be reviewed, considered, and decided.

The change of many cases from the obligatory class to the certiorari class will enable the court by a denial of the writ to give immediate notice to the parties of the disposition of their cases. It will greatly reduce the number of those who have to wait until their cases are reached on the docket and relieve them of the needless suspense and delay to which they are now subjected. The opportunity of taking cases to the Supreme Court merely for delay will be almost entirely removed.

Lest it should be thought that the increase of discretionary jurisdiction might impair the administration of justice and lead to partial hearings and not secure a decision by the whole court, it is proper to call attention to the very thorough and complete system by which discretionary jurisdiction is exercised. In granting or refusing a prayer for a certiorari the petitioner gets the judgment of the whole court. The application is not disposed of by a single justice. The luminous and informing statement of Mr. Justice Van Devanter tells the whole story:

> While the authority of the Supreme Court to take cases on petition for certiorari is spoken of as a discretionary jurisdiction, this does not mean that the court is authorized merely to exercise a will in the matter but rather that the petition is to be granted or denied according to a sound judicial discretion. What actually is done may well be stated here with some particularity. The party aggrieved by the decision of the circuit court of appeals and seeking a further review in the Supreme Court is required to present to it a petition and accompanying brief, setting forth the nature of the case, what questions are involved, how they were decided in the circuit court of appeals, and why the case should not rest on the decision of that court. The petition and brief are required to be served on the other party, and time is given for the presentation of an opposing brief. When this has been done copies of the printed record as it came from the circuit court of appeals and of the petition and briefs are distributed among the members of the Supreme Court, and each judge examines them and prepares a memorandum or note indicating his view of what should be done.
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> In conference these cases are called, each in its turn, and each judge states his views in extenso or briefly as he thinks proper; and when all have spoken any difference in opinion is discussed and then a vote is taken. I explain this at some length because it seems to be thought outside that the cases are referred to particular judges, as, for instance, that those coming from a particular circuit are referred to the justice assigned to that circuit, and that he reports on them, and the others accept his report. That impression is wholly at variance with what actually occurs.
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> We do not grant or deny these petitions merely according to a majority vote. We always grant the petition when as many as four think that it should be granted and sometimes when as many as three think that way. We proceed upon the theory that, if that number out of the nine are impressed with the thought that the case is one that ought to be heard and decided by us, the petition should be granted.

PROPOSED CHANGES IN SUPREME COURT'S METHOD OF REVIEW

The great object of this bill is to reduce the number of cases in which there is an appeal or writ of error as of right, and increase those in which only a certiorari or a certificate can bring the case before the Supreme Court.

The courts over which the Supreme Court in this bill exercise a direct review are:

First. The State supreme courts.

Second. The district courts of the United States.

Third. The circuit courts of appeal.

Fourth. Court of Appeals of the District of Columbia.

Fifth. Court of Claims.

Sixth. Supreme Court of the Philippines.

The only cases in the proposed bill in which the Supreme Court exercises obligatory jurisdiction—that is, by writ of error or appeal—are:

First. Over the final judgments or decrees of State courts of last resort.

(*a*) In cases in which the validity of the statute of a State under the Federal Constitution has been drawn in question and its validity sustained.

(*b*) Where the validity of a Federal statute or treaty has been drawn in question and its validity denied.

Second. In four special classes of cases from the district court, which are:

(*a*) Appeals from decrees in equity in suits brought by the United States to enforce the antitrust or interstate commerce acts.

(*b*) Writs of error in criminal cases brought by the United States to judgments of the district courts in which the United States has been defeated by a ruling of the district court, and where the defendant has not been exposed to jeopardy or acquitted by a verdict of the jury.

(*c*) Appeals from interlocutory injunctions against enforcement of State statutes by any officer of the State, or against the exercise of an authority of a board acting under a State statute.

(*d*) Appeals from interlocutory and final decrees of injunction and suspension of orders of Interstate Commerce Commission in district courts.

In all other cases, to wit, (*a*) final judgments in the State supreme courts which involve Federal constitutional questions other than those above mentioned; (*b*) all cases in the circuit courts of appeals; (*c*) all cases in the Court of Appeals of the District of Columbia; (*d*) all cases in the Court of Claims; and (*e*) certain classes of cases from the Supreme Court of the Philippines, the only method of review is either by certiorari from the Supreme Court, or (except from the Philippines) by certificate by the inferior court of questions. Writs of certiorari to State supreme courts, to the Court of Claims, and to the Supreme Court of the Philippines, can only issue after final judgments in those courts. Such writs may issue to circuit courts of appeals and to the Court of Appeals of the District of Columbia, before or after judgment, but if before judgment, the application must be made before the hearing and submission in those courts.

It is impossible to estimate how many cases these changes will transfer from the obligatory jurisdiction of the Supreme Court, as it is under existing law, to the discretionary jurisdiction of the Supreme Court, but it will be such a substantial number as greatly to help the court to catch up with its docket and to keep up with it thereafter.

JURISDICTION OF THE CIRCUIT COURTS OF APPEALS

We come now to the present and the proposed jurisdiction of the circuit courts of appeal, from which we can get some idea of the change in the appellate jurisdiction of the Supreme Court of cases from the circuit court of appeals. Under the present law, the circuit court of appeals has appellate jurisdiction in respect to all

cases from the district court, except the four instances of direct appeal to the Supreme Court already mentioned, as still retained in the proposed bill, and also except in cases in which appeal can now be taken from the district court directly to the Supreme Court, on the sole question of jurisdiction of the district court as a Federal court, on a question involving the construction and application of the Constitution of the United States, or the construction of a treaty and in prize cases, and in suits therein against the United States for claims not exceeding $10,000 under what is known as the Tucker Act, a jurisdiction of the district courts concurrent with that of the Court of Claims. The new bill abolishes this direct review of the Supreme Court in all these except the four instances first mentioned and makes them subject to review by writ of error or appeal in the circuit court of appeals, and thence they are only reviewable by certiorari or certificate in the Supreme Court.

EXISTING LAW AS TO REVIEW OF CASES IN CIRCUIT COURTS OF APPEALS

Circuit courts of appeal now have final appellate jurisdiction in all cases from the district courts wherein the amount involved does not exceed $1,000, in diverse citizenship cases, in patent cases, in copyright cases, in revenue cases, in criminal cases, in admiralty cases, in trade-mark cases, and in bankruptcy proceedings, controversies, and cases, in cases under the employers' liability act, in cases under the hour of service act and cases under the safety appliance act, and also in habeas corpus cases. These can under existing law only reach the Supreme Court by certiorari or certificate. In all other cases coming up to the circuit court of appeals from the district courts, there is, by existing law, an appeal or writ of error as of right to the Supreme Court.

WRITS OF ERROR AND APPEALS FROM CIRCUIT COURTS OF APPEALS TO THE SUPREME COURT CUT OFF BY THE BILL

Just what cases may, by existing law, be taken to the Supreme Court from the circuit court of appeals by writ of error or appeal it is difficult to state in a brief way. Section 24 of the Judicial Code contains a list of 25 classes of civil suits that are cognizable by district courts of the United States and are reviewable by the circuit court of appeals. They embrace suits so rarely brought as to be regarded as nearly obsolete, e. g., "suits arising under any law relating to the slave trade." On the other hand, they do include such classes as civil suits.

(1) Brought by the United States, or by any officer thereof authorized by law to sue.

(2) Between citizens of the same State claiming lands under grants from different States.

(3) Where more than $3,000 is involved and the suit arises under the Constitution or laws or treaties of the United States.

(4) Seizures on land or waters not within admiralty or maritime jurisdiction.

(5) Cases arising under the postal laws.

(6) Suits and proceedings under any law regulating commerce, except such as may be covered by special statutes already mentioned.

(7) Civil suits and proceedings for enforcement of penalties and forfeitures incurred under any law of the United States.

(8) Suits for damages by officers and persons for injury done him in protection or collection of United States revenue or to enforce right of citizens to vote.

(9) Suits for damages by citizens injured in their Federal constitutional rights.

(10) Suits against consuls and vice consuls.

(11) Suits under immigration and contract labor laws.

(12) Private suits under the antitrust act.

(13) Suits by Indians or part blood Indians for allotment under any law or treaty.

(14) Suits by tenants in common or joint tenant for partition of land in which the United States is also tenant in common or joint tenant.

All these cases can now be heard in review by the circuit court of appeals and then in the Supreme Court as of right, unless, as may happen, they are also patent, revenue, criminal, or admiralty cases, or in some other class now made final in the circuit court of appeals. Under the proposed bill, the decisions in them in the circuit court of appeals are to be final and they can only reach the Supreme Court by certiorari or certificate.

REVIEW OF COURTS OF ALASKA AND DEPENDENCIES

Under existing law, appellate jurisdiction over the courts of our dependencies (except those of the Philippines), and over the district court of the Territory of Alaska, and over the United States court for China, is distributed between first, third, fifth, and ninth circuit courts of appeals. Cases from the Supreme Courts of Hawaii and Porto Rico, as distinguished from United States district courts, so called therein, are now reviewable in the Supreme Court of the United States when they present questions similar to those which are reviewable in that court from State courts of last resort; and some cases from the district court of Alaska also go to the Supreme Court direct. All these cases from the dependencies, from Alaska, and from the United States Court for China, under the new bill, which are reviewable at all, no matter what they involve, are to be carried by appeal or writ of error to the designated circuit court of appeals. This final jurisdiction of circuit courts of appeals under the new bill includes Porto Rico, Hawaii, both supreme and district courts, the District Court of the Virgin Islands, the Court of the Canal Zone, the United States Court for China, and the United States District Court for Alaska. The review of these is final in the designated circuit court of appeals, except that there is the same opportunity for review by certiorari and certificate in the Supreme Court as in other cases in such circuit courts of appeals. A few changes have been made in the limit of the pecuniary amount involved in cases which may be appealed from these dependency and territorial courts, for the purpose of uniformity, but this is not important.

EFFECT OF BILL ON REVIEW OF CASES IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

All cases from the Supreme Court of the District of Columbia are, by the proposed law, appealable to the Court of Appeals of the District, including all forms of cases, controversies, and proceedings in

bankruptcy and cases in habeas corpus, and the judgments of the Court of Appeals of the District are final therein, to be reviewed by the Supreme Court only by certiorari and certificate.

EFFECT OF BILL ON REVIEW OF CASES FROM COURT OF CLAIMS

The decisions of the Court of Claims are final, only to be reviewed in the Supreme Court by certiorari or certificate.

REMEDIAL PROVISIONS

In addition to these changes in jurisdiction, there are in the proposed bill some remedial amendments of a general character.

First. The time for application for writ of error or appeal or certiorari to the Supreme Court has been enlarged from the present limit of three months, and six months for the Philippines, by a provision for a further allowance of 60 days upon order of a justice of the Supreme Court upon a proper showing.

Second. There is a reenactment of the present remedial provision as to parol proof of amount in controversy, where it is necessary for the jurisdiction and is not adequately shown either in the trial court or in the appellate court.

Third. There is the remedial provision that if a man takes out a writ or error when he should have taken out an appeal, or vice versa, it shall be considered by the court to be a right writ. This is at present the law; but in addition to this it is provided that where one takes out a writ of error from the Supreme Court of the United States to a State supreme court, and it turns out that it should have been a certiorari, the writ of error may be considered by the court as an application for certiorari and acted upon as such.

Fourth. There is a very necessary remedial provision for the substitution in suits in the Supreme Court for public officers who have ceased to be such, of their successors, as parties in suits brought by them or against them. This is now the case with respect to officers of the United States; but it is not the case with respect to officers of the States, of the counties, or of the municipalities who are plaintiffs or defendants in the Supreme Court. This is a great injustice, because one may begin a suit in a district court of the United States against officers of a State, county, or city, or such officers may bring a suit therein, and not reach the Supreme Court for review before their successors have been elected. Now, no substitution can be made, the case abates, and the action goes for nothing. Under this provision, the new State, county, and city officers may be substituted after notice to them and if such substitution is shown not to work them injustice.

Fifth. There is another provision that takes away all rights of corporations organized by Congress to seek the Federal court on that ground. This enlarges a present provision of a similar tenor which applies only to railway corporations.

THE WAY OF APPEAL WILL CEASE TO BE A "TRAP"

Besides the relief of the Supreme Court docket, and turning aside a large number of cases from that court and making the decisions of the circuit courts of appeals final in many cases and only reviewable

by certiorari—this bill should become a law because it clarifies and makes understandable the law governing appeal whether by writ of error, appeal, or certiorari.

It was well said by the Chief Justice at the hearing that the present laws are a "trap" in procedure.

This bill will simplify the law of appellate jurisdiction, relieve lawyers and litigants of uncertainties and perils which can not always be avoided even by the well-equipped and trained practitioner.

The statutes fixing the jurisdiction of the Supreme Court and the circuit courts of appeals are to-day fragmentary. They are scattered. Some are in the Revised Statutes of 1878; some in the Judicial Code of 1911; and others consist of amendments appearing here and there in many volumes of the Statutes at Large. They are difficult to find and when found are neither harmonious nor plain. Mr. Justice Van Devanter very forcefully pictured this state of the law when he said in the hearing:

> The circuit courts of appeals act passed in 1891, besides defining the jurisdiction of those courts, contained many provisions relating to the jurisdiction of the Supreme Court. Most of these provisions and many amendatory enactments were brought together advantageously in the Judicial Code of 1911. But that was not a complete revision. It left some statutes, old ones, untouched and did not bring them forward; so no one could examine the Judicial Code and act safely merely upon what appeared there. It would be necessary to go back and search the Revised Statutes and the intermediate Statutes at Large to determine what course to pursue in invoking a review by either a circuit court of appeals or the Supreme Court. Not only so, but the statutes when found left it uncertain in some classes of cases in the district courts whether the case could be carried directly to the Supreme Court or must go to the circuit court of appeals.
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> Since the Judicial Code of 1911 many statutes have been enacted which bear upon the jurisdiction of these courts—a statute would be adopted at one time with respect to one class of cases, and another statute would be adopted at another time with respect to another class. These statutes have been multiplied until now they are not harmonious. Neither do they follow a consistent plan or theory.
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> The situation now is that in the Supreme Court a good many cases have to be dismissed, their merits left untouched, because they have been brought there from a district court when they should have gone to a circuit court of appeals, or because they have been brought from a circuit court of appeals on writ of error or appeal when they could come up only on certiorari, or because they have been brought from a State court on writ of error where certiorari was the only admissible mode of bringing them up.
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> These mistakes are generally attributable to the fact that the practitioner has found a part of the statutes and not the rest. Sometimes the mistake is mere carelessness; but it not infrequently happens that lawyers who stand high in their profession at home mistake their remedy or the mode of invoking it either because they do not find the controlling statute or because they have difficulty in reconciling it with others.

Your committee expresses its deep obligation to the Chief Justice and justices of the Supreme Court for their help not only in preparing this bill but explaining it thoroughly.

The proposed legislation was recommended by the President in his message of December 3, 1924, to the Congress.

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