EXPLANATION OF JURISDICTION, COURTS, POLITICAL STATUS (CITIZENSHIP)

EXCERPT FROM THEY BE PIRATES MATEY!, Published 2021, Written by "Graywolf"

ALL EXHIBITS ARE INCLUDED

Thus, in 2021, nor in the preceding years as far back as 1861, the people have been deprived of the Right of Court proceedings held in accord with the remedies of the Common Law in violation of the 7th Amendment. **Go read it!**

Based on a composite of cases, ***There are no Judicial courts in America and there has not been since 1789. Judges do not enforce Statutes and Codes. Executive Administrators enforce Statutes and Codes. "There have not been any Judges in America since 1789. There have just been Administrators."*** (See: 1 STAT. 138-178; FRC v. GE, 281 U.S. 464; Keller v. PE 261 U.S. 428; Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938)(Public Policy); Clearfield Trust Co. v. United States 318 U.S. 363-371 (1942)(Private Paper).

What has Changed?

They Be Pirates, Matey !

The following is a time line and a Brief as to **HOW** the Law and the provisions enacted by Congress, to cure America from the **FACTS** established in the Unanimous Declaration of Independence were overturned, placing America back under the providence of the Crown without the Peoples' knowledge or Consent or Assent.

A timeline of events: (brief, not all inclusive)

1776- In the Unanimous Declaration of 1776: The founding fathers established the fact that America was being subjected to a Jurisdiction foreign to the American law, the English Admiralty/Maritime Jurisdiction.

1777- 1st Constitution – Articles of Confederation.

1783- September 3, Definitive Treaty of Peace between the United States and Great Britain.- Breached by U.K. & Agents

1787- Sept 16th, Northwest Ordinance.

1787- Sept 17th, 2nd. Constitution for the united States of America.

1789- Judicial Act of 1789 Established the Federal Courts, defined their Jurisdiction of Admiralty/Maritime was exclusively Federal, could not be bestowed on the State Courts and defined all State Courts decisions shall be determined in accord with the Common Law, the Grant was fixed and inflexible.. (See: American Admiralty Jurisdiction and Practice § 10, Pgs. 12, 13 and §18, (App. Pgs. 7, 8 and App. Pg. 39.)

1810 - Proposed the **"Titles of Nobility" (T.O.N.A.) 13th Amendment" to the Bill of Rights, properly ratified by the proper number of States between 1810 – 1819.**

T.O.N.A. 13th: "If any citizen of the United States shall accept, claim, receive, or retain, any title of nobility or honor, or shall without the consent of Congress, accept or retain any present, pension, office or emolument, of any kind, from any person, King, Prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them." (Emphasis added)

1812 - War of 1812. To destroy TONA Amendment Archived documents, a breach of the Treaty of Peace 1783.

1814 - Treaty of Peace and Amity- December 24, 1814 - Breached by UK.

1816 - In Martin V. Hunter's Lessee, 14 U.S. (1 Wheat) 304 (1816): we are told by Justice Story that **Constitutional Powers expressly granted, cannot be reasonably restricted or enlarged.** (Emphasis added)

1840- Blackstone's Commentaries on the Common Laws of England, by William Blackstone, adapted to The Constitution for The United States of America.

1850 - **American Admiralty, Its Jurisdiction and Practice by Erastus C. Benedict** told us the Judicial Act of 1789 established the Admiralty/Maritime Jurisdiction, was exclusively Federal, is Fixed and inflexible **(See Exhibit 29, App. Pg. 39)** and could not be expanded and the State Courts decisions must be according to the Common Law.

Then the Freedom loving Federal Court Judges laid out the ground work and warned us about B.A.R. Attorney/Lawyers and HOW they were going to expand the admiralty upon the land, (See: Jackson v. Magnolia), even though it was stated in the Judicial Act of 1789, Congress could not expand or extend the Jurisdiction to the land. The Judicial Grant is fixed and inflexible.

1851- The Federal Court itself exposed that ***"if the power of regulating commerce can be made the foundation of jurisdiction in its courts, and new and extended admiralty jurisdiction beyond its heretofore know or admitted limits.....would justify the same exercise of power (admiralty) on the land."*** (Emphasis added) **Propeller Genesee Chief, et al. v. Fitzhugh, et al., 53 U.S. (12 How.) 443, 13 L.Ed. 1058 (1851).**

The powers that were, spent years to create a new and extended admiralty jurisdiction referenced in the above case, was created and is called **"Special Maritime Jurisdiction" found in Title 18 U.S.C. § 7.**

1852- The Federal Court itself once again expressed its concern: ***"Next to revenue (taxes) itself, the late extensions of the jurisdiction of the admiralty are our greatest grievance. The American Courts of Admiralty seem to be forming by degrees into a system that is to overturn our Constitution and deprive us of our best inheritance, the laws of the land."*** **Jackson v. Magnolia, 20 How. (U.S.) 296, 315, 342 (1852)** (Emphasis__added)

1861- Civil War, to determine who would control the issue of currency in America, the Rothschild's or the Rockefeller side of the family, Slavery was the offshoot to cover what was really going on behind the scenes.

1863 - Reconstruction Acts- reconstructed the Republics into Democracy.

1864- 65 Lieber Code- redefined purpose and position of Military in Civil matters.

1870- Federal Reserve Joint Stock Trust established to Issue the Currency by a Private Bank, not by the Treasury.

1871- Joint Stock Trusts made illegal by act of Congress.

1871- Creation of the Municipal Corporation, The District of Columbia, Inc. The start of the creation of the Democracy and overthrow of the Republic.

1903- Mankichi Case - The Supreme Court exposed: ***"It will then come about that we will have two governments over the peoples subject to the jurisdiction of the United States -- one, existing under a written Constitution, creating a government with authority to exercise only powers expressly granted and such as are necessary and appropriate to carry into effect those so granted; the other, existing outside of the written Constitution, in virtue of an unwritten law, to be declared from time to time by Congress, which is itself only a creature of that instrument. Indeed, it has been announced by some statesmen that the Constitution should be interpreted to mean not what its words naturally, or usually, or even plainly, import, but what the apparent necessities of the hour, or the apparent majority of the people at a particular time, demand at the hands of the judiciary. I cannot assent to any such view of the Constitution. Nor can I approve the suggestion that the status of Hawaii and the powers of its local government are to be "measured" by the resolution of 1898, without***

reference to the Constitution. It is impossible for me to grasp the thought that that which is admittedly contrary to the supreme law can be sustained as valid." - **Hawaii v. Mankichi, 190 U.S. 197 (1903), Page 190 U. S. 240-241;** (Emphasis_added) (The B.A.R. Asso. validated it!)

1913- Federal Reserve Act, 63rd Congress, illegally enacted, no Coram Paribus, no Quorum present in the House. Gave a private bank control of the issue of the currency for the Country.

1914- 1918 World War I

1929- The Great Depression, purposely "Bank" created, to lead to other purposes. (See: The Greatest Banking Scandal in History by Doug Clark, 1981)

1933- Bankruptcy of the United States of America, the Corporation created 1871.

1933- Federal Reserve, Inc., takes power as Central Bank of United States

1933- Emergency Banking Act, Public Law 1, Stat 1, amends Trading With The Enemy Act 1917, 12 U.S.C. 95(a), makes **all citizens of the United States, enemies** of the Government and Banks, by changing one word, "without" to "within".

1934- June 19, Congress legislates/ delegates, to a group of unelected Esquires in the Supreme Court, its authority to amend the Federal Civil Procedures and Rule of the Court. **(See Exhibit "27", "notes of Adv. Comm. #3," App. Pg. 37) (Congress has no authority to delegate, can only Legislate).**

1937- Adoption of NEW Rules of the Courts De Facto.

1938- Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938) places all **decisions of all the Courts under Negotiable Instruments Laws, Uniform Commercial Code, the U.C.C.**

1939 - 1945 World War II

1940 - The Habana Act, places American Republic's in Trust and sets the stage for creation of the United Nations, ratified on 24 October 1945.

1950- September 21, 1950, **(See Exhibit "23", App. Pgs. 31 & 32) COMMITTEE ON UN-AMERICAN ACTIVITIES**, U. S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. Eighty-First Congress, Second Session, John S. Wood, Georgia, Chairman, Union Calendar No.1078, Report No.3123.[Pursuant to H. Res. 5, 79th Cong., 1st sess.] "**The**

National Lawyers Guild is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions. Since its inception it has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents. It has consistently fought against national, State, and local legislation aimed at curbing the Communist conspiracy. It has been most articulate in its attacks upon all agencies of the Government seeking to expose or prosecute the subversive activities of the Communist network, including national, State, and local investigative committees, the Department of Justice, the FBI, and law enforcement agencies generally. Through its affiliation with the International Association of Democratic Lawyers, an international Communist-front organization, the National Lawyers Guild has constituted itself an agent of a foreign principal hostile to the interests of the United States." "The National Lawyers Guild was formally organized at a convention held in the Washington Hotel in Washington, D. C. on February 19-22, 1937. National headquarters were established in the Nation's Capital, where they remain today..... "the lawyers, who in many of the smaller communities are the nerve centers of political activities, will be an invaluable aid in galvanizing the latent liberal elements of the country into a political force." (Exhibit "23" App. Pg. 31, 32.)

That political force is namely the American B.A.R. Association, Inc. Chicago, Ill. and affiliate B.A.R. Associations in the Federal, State and Counties in the Union of Republics.

Almost Nine years later to the day, September 29, 1959 **Nikita Khrushchev,** leader of the U.S.S.R., stated to the American people, ***"Your children's children will live under communism, You Americans are so gullible. No, you won't accept communism outright; but we will keep feeding you small doses of socialism until you will finally wake up and find you already have Communism. We will not have to fight you; We will so weaken your economy, until you will fall like overripe fruit into our hands." "The democracy will cease to exist when you take away from those who are willing to work and give to those who would not."***

America in the year 2021 is now witnessing first hand, in front of your face, exactly what Khrushchev stated would happen in 1959!!!

How did we get where we find our Country in 2021?

Well, we should consider whether "Congress" has the ability to delegate power bestowed on "Congress" to the States or to any other entity?

Especially as to the Courts, as stated earlier on Pg. 34, Jefferson stated: ***"The original error (was in) establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they are meant to defend, and control and fashion their proceedings to its own will." Jefferson to John Wayles Epps, 1807.Fe 9:68.*** (Emphasis__added)

This statement by Jefferson is disclosing that the **Federal Judiciary is an independent foreign power operating outside the constructs of the constitution, "independent of the Nation."**

So how would it be possible for the Congress to then bestow its powers to **a Judiciary that "is independent of the nation," it (the Federal judiciary) would be independent of the Congress also, yes?**

So, could Esquires in Congress De Facto, conceivably have the ability to delegate, or legislate, to bestow lawfully or legally, its powers to the Supreme Court, a legislatively created body, independent of the nation to amend the Rules of the Court, to abrogate the Judicial grants under Article III, Section 2 and hijack the Rights of the People in Law, Law of the Land, into the Law of the Sea, Commerce??

The answer is an absolute **NO! They Be Pirates, Matey !**

Remember the original 13th T.O.N.A. Amendment: **"If any citizen of the United States shall accept, claim, receive, or retain, any title of nobility or honor, or shall without the consent of Congress, accept or retain any present, pension, office or emolument, of any kind, from any person, King, Prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them."** (Emphasis__added)

All Attorneys and Judges have accepted the Title of Nobility of "Esquire" and non-citizens are incapable of holding any office of trust or profit or either.

The American Admiralty, Its Jurisdiction and Practice, by Erastus C. Benedict 1850, the recognized authority on the Judicial Act of 1789, **6th Edition § 33 Pg. 75** states: **"Congress may not delegate to the States the legislative power which the Constitution bestows on Congress and which is in its nature non-delegable."**(Emphasis_added) **(See Exhibit "24", App. Pg. 33)**

This means all the powers Congress states it has "delegated" to all of the Agencies and N.G.O. agencies, are not valid delegations of authority, even if they were, they are only valid within the 10 Miles Sq., District of Columbia, See: Constitution Article I, Section 8, paragraph 17, Title 4 USC § 72, 2006.

I guess the B.A.R. Member Esquires in Congress never read what their Founding Fathers stated in writing, just like most kids don't listen to their fathers. They did not read the Federal Court decisions as stated above, either. And we let these people Lead us ?? Or should I say RULE OVER US !!!!

Keeping in mind all the FACTS established in the first part of this exposé, and keeping in mind that Congress may not delegate its powers to the States or to any other entity, **its powers are non-delegable** to the foreign Supreme Court, to amend the Rules of Court at will, to abrogate the rights of the People.

Let us now, turn our attention to the **Federal Civil Judicial Procedures and Rules, (FCJPR) 1993 Edition** and explore what is revealed concerning the conversion from Law of the Land in the courts into, as it is referred to by Judges as "**Modern Evolving Law**" or the "**Special Maritime Jurisdiction**" operated without the People's knowledge, assent or consent, for the benefit of the Profession of the Esquires and government at whatever level they fit into the profession.

The **1993 Edition** of the **Federal Civil Judicial Procedures and Rules (FCJPR) (See Exhibit "25", App. Pg. 34),** of the Courts and we will extrapolate from the **NOTES OF ADVISORY COMMITTEE ON RULES 1937 ADOPTION**, as a beginning. **(See Exhibit "27", App. Pg. 37)**

A committee and committees', pursuant to an Act of Congress, De Facto, [P.L. 85-513, 72 Stat. 356] July 11, 1958, [28 U.S.C.A. § 331] authorizing a Judicial Conference of the United States, [Inc.] of appointed, unelected Esquires, **"ineligible to hold any office of profit or trust or either of them"**, pursuant to the original ratified T.O.N.A. 13th Amendment 1814-1819, were delegated for the purpose they state, **"to make a continuous study of the Federal Rules."** The hidden purpose as we'll find, is really, to amend the Rules, which automatically become Law in ninety days unless the Congress acts adversely. **(See Exhibit "26", App. Pg. 35 & 36)**

We have uncovered their mischief!

Let's look at the Rules **(FCJPR) Pg. 17- Rule 1. Scope of Rules**: **"These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty,..... They shall be construed to secure the just, speedy and inexpensive determination of every action."** (Emphasis added) **(These rules apply to United States district courts only.) (See Exhibit "27", App. Pg. 37)**

What happened to an "inexpensive determination"? Hired an Attorney "Licensed" to practice before the Federal Courts lately?? Inexpensive compared to what? What happened to the District Courts of the united States of America??

Rule 1, sounds reasonable, until you go to the **NOTES OF ADVISORY COMMITTEE ON RULES 1937 ADOPTION**, #2, Pg. 17 "The expression "**district Courts of United States**" " appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure **does not include the district courts held in the territories and insular possessions." See: Mookini et al. v. United States, 1938, 58 S.Ct. 543.** Meaning inside the States. (Emphasis added) (So the rules do not apply to district courts of the United States) **(See Exhibit "27", App. Pg. 37)**

Let's look at the **NOTES OF THE ADVISORY COMMITTEE ON RULES 1937 ADOPTION** on Page 18, **1948 AMENDMENT**: **"The amendment effective October 20, 1949, substituted the words *"United States district courts"* for the words *"district courts of the United States."* (See Exhibit "28", App. Pg. 38)**

Then in #3. Pg.17, **Exhibit "27", App. Pg. 37**, they go on, "***the Court* has united the rules *prescribed for cases in Equity with those in actions at law so as to secure one form of action and procedure for both.***"

How can you lawfully or legally unite rules of two completely different Jurisdictions created by the Constitution and substantiated and reaffirmed in the Judicial Act of 1789, to unite the rules of the two different Jurisdictions established, and create a Jurisdiction unknown to the Constitution? Without a vote approving the changes from either "We, The People" of both Houses of Congress and the knowing Consent of "The People at Large"?

Who authorized that complete abrogation of the Law of the Land ?

Were the "People at Large" ever notified by "We, the People" the Congress and Senate, or asked if they would approve and consent to the abrogation of the Jurisdictions named in the Constitution and reaffirmed in the Judicial Act of 1789, which were granted to PROTECT THE PEOPLE, TO PROTECT THEIR RIGHTS AND RIGHTS TO PRIVATE PROPERTY, PROTECT THEIR LIBERTY from arbitrary decisions from Judges operating in a Jurisdiction foreign to the Law of the Land ?

Would the People have approved the changes if they were notified that changes to remove the protections afforded them were being altered???

The Constitution at Article III, Section 2, Grants the Judicial Power shall extend to all Cases, in Law and Equity"... "to all Cases of admiralty maritime jurisdiction..."

I do not read "one form of action to be known as a Civil Action", do you ? I read Law and Equity!!!!

Soooo, how is it that since the Constitution Article III, Section 2, and the Judicial Act of 1789 pursuant to the Constitution which grants the Jurisdictions of **Law and Equity** to State Courts and Admiralty/Maritime to Federal Courts..... Where did a group of unelected Esquires on the Advisory Committee on Rules, **(See Exhibit "26", App. Pg. 35)** operating in a body "**Independent of the Nation**", where did these Esquires get their authority to make said changes, mix the jurisdictions to eliminate the distinction between the well defined Jurisdictions of Law and Equity laid out in the **Constitution Article III, Section 2,** and **reaffirmed** and **defined** in the **Judicial Act of 1789**, without taking the changes to the People for approval?

The American Admiralty its Jurisdiction and Practice, Pg. 13 § 10 The Grant of Judicial Power: **"The constitutional grant of judicial power was fixed and inflexible the moment the Constitution was adopted." (See Exhibit "29", App. Pg. 39)**

They Be Pirates, Matey !

Ohhhh, I know, the B.A.R. member Esquires "We, The People", who Control the De Facto Courts, Congress and Senate, assumed authority while the people were sleeping, believing the Congress and Senate were working to protect us and our property.

They, Congressional Esquires and the Esquires on the Supreme Courts Advisory Committee on Rules, were actually working to destroy the Rule of Law established in the Unanimous Declaration, the Constitution for the united States of America and the Bill of Rights.

It gets complicated, pay close attention here.

We next look to Page 736, Exhibit "30", App. Pg. 40, under **Jurisdiction & Venue - § 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. (2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize." (As amended May 24, 1949, c. 139, § 79, 63 Stat. 101.)

When we go to the REVISION NOTES 1948 ACT,... (See Exhibit "30", App. Pg. 40) "The saving to suitors" clause in sections 41(3) and 371(3) of Title 28, U.S.C., 1940 ed., *was changed by substituting the words "any other remedy to which he is otherwise entitled" for the words "the right of a common law remedy where the common law is competent to give it." "The substituted language is simpler and more expressive of the original*

intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity."

The Advisory Committee on Rules purposely changed the "Fixed and Inflexible Judicial Grant", (See Exhibit "29", App. Pg. 39) and the meaning of the rules by substituting the words originally established by an Act of Congress, and The Judicial Act of 1789, and hiding the original intent of Congress, the People have *"the right of a common law remedy where the common law is competent to give it" substituting* "any other remedy to which he is otherwise entitled", *is a blatant act of Subterfuge and Treason against the People.*

***The Right to a common law remedy is what the 7th Amendment is addressing, (See book* pages 24-25 above, Ohio, State v. Lafferty 1817.**

Notes of ***ADVISORY COMMITTEE ON RULES 1937 ADOPTION, Page 17, #3: (See Exhibit "27", App. Pg. 37)*** *states:*

"These rules are drawn under the authority of the Act of June 19, 1934 U.S.C., Title 28 § 2072, formerly §723b (Rules in actions at law; Supreme Court authorized to make) and § 2072, formerly § 723c (Union of equity and action at law rules;.....after the rules have taken effect all laws in conflict therewith are of no further force or effect. In accordance with § 2072, formerly § 723c, the Court has united the general rules prescribed for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both."

Who gave authority to unelected, appointed Esquire Judges, in a Court that is not part of the Nation, to change the rules that affected (hid from sight) the Peoples remedies, established by elected representatives of the People, without a vote from the People to authorize the changes, and then declare "all laws in conflict therewith are of no further force or effect, if the Esquire led Congress does not act adversely???"

They thereby effectively nullified the protections afforded the people under the Common Law laid out in the Constitution under the Law of The Land, as was pointed out above in Exhibit "8", App. Pg. 11, in Exhibit "10", App. Pg. 14, and in Exhibit "29", App. Pg. 39.

They Be Pirates, Matey !

That is until now, as we wake up the **sleeping GIANT, WE THE PEOPLE AT LARGE !**

Under the organic law the GIANT, "We the People at Large" have the authority:

"That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."- Unanimous Declaration July 4, 1776.

"The constitutions of most of our states assert that all power is inherent in the people; *that they may exercise it by themselves,* in all cases to which they think themselves competent, as in electing their functionaries executive and legislative, and *deciding by a jury of themselves, both fact and law, in all judiciary cases in which any fact is involved ..."* Thomas Jefferson, letter to John Cartwright; June 5, 1824.

Here, Jefferson is talking of the Independent Grand and Petit Juries operating under the Law of The Land, independent of the Executive, Legislative and Judiciary, **"in all judiciary cases in which any fact is involved"**, as revealed 168 years after Jefferson's statement, by Justice Scalia in the 1992 Supreme Court case U.S. v. Williams, ***112 S., Ct. 1735, 504 U.S. 36, 118 L.Ed 2d 352 (1992).***

The mixing of the Jurisdictions attempted to eliminate two very specific Jurisdictions, Law and Equity, exercised under specific Rules of the Court, to adjudicate each separate jurisdiction pursuant thereto, for the Protection of the People and Property, then the Committee on Rules of the Supreme Court merged the new "Civil Action" with Admiralty/Maritime into some unknown made up "**one form of civil action**" done by the unelected Esquire B.A.R. Members, which abrogates and circumvents the original grant, with no knowledge of or voice from the People!!!!

Isn't that exactly what was divulged above (pgs. 35-36) in **Hawaii v. Mankichi, 190 U.S. 197 (1903), 190 U. S. 240-241; one government under the written constitution and another government existing outside of the written constitution.**

Any act that is repugnant to the Constitution is VOID!! Marbury v. Madison, 5 U.S. 137 (1803).

Could it be the completion, evidenced earlier, to create ***"a new and extended Admiralty Jurisdiction beyond its heretofore known and admitted limits..."*** as Stated in **Propeller Genesee Chief, et al. v. Fitzhugh, et al., 53 U.S. (12 How.) 443, 13 L.Ed. 1058 (1851) (See Page 8)**

That is a reality, if you review the other things exposed in the above timeline.

Again, let us review the (**FCJPR**) **Federal Civil Judicial Procedures and Rules 1993 Edition** into the NOTES on **Rule 1.** skip to Pg. 18 to look at the: **1948 AMENDMENT: "The amendment effective October 20, 1949, "substituted the words *"United States district courts"* for the words *"district courts of the United States."* (See Exhibit "28", App. Pg. 38)**

*"**district courts of the United States**" are the courts created under the original grant of Authority in the Constitution and under the Judicial Act 1789.*

***District Courts of the United States** are the original courts Hidden from the American People. If they don't know the Courts exist, they, the People would not seek out the Jurisdictional REMEDY afforded to the people, the courts were created to provide! Would they?*

Now why change the name of the courts?

They did not just change the name. They brought into existence whole new courts, to operate under a mix of the old and a new Jurisdiction called "Special Maritime Jurisdiction" to control the decisions that can be made outside the Constitutional grant, not in favor of the People or the Nation.

They were, **"...establishing a judiciary independent of the nation, and which, from the citadel of the law, can turn its guns on those they are meant to defend, and control and fashion their proceedings to its own will."** Jefferson to John Wayles Epps, 1807.Fe 9:68. (Emphasis added)

"District Courts of the United States" were established under Constitutional authority, confirmed in the Judicial Act, 1789.

"United States district courts" operate as "Franchise Courts" under the new Municipal Corporation, **The District of Columbia, Inc. 1871**, operating under their new Charter and contrived Jurisdictions as "United States District Courts" which are franchisees of the Corporation government, District of Columbia, Inc., to extend and expand the admiralty/maritime jurisdictions, by changing words and phrases within the Rules, on an unsuspecting People.

Next, let us turn to the **FCJPR** pg.18, **(See Exhibit "28", App. Pg. 38)** the **1966 AMENDMENT**: **"This is the fundamental change necessary to *effect unification of the civil and admiralty procedure.* Just as the 1938 rules *abolished the distinction between actions at law and suits in Equity*, this change would *abolish the distinction between civil actions and suits in admiralty.*"** (Emphasis added)

BINGO, in writing from the **Federal Civil Judicial Procedure and Rules, 1993 edition**, Pages 17 & 18, **1948 and 1966 Amendments to Rules**, explains how they, Esquires, Attorney Judges, in the Committees on rules were able to overthrow, abrogate the Law of the Land and Rule of Law pursuant to the Constitution and replace it with ***"a Jurisdiction foreign to our laws." To be able to; "turn its guns on those they are meant to defend, and control and fashion their proceedings to its own will." Jefferson to John Wayles Epps, 1807.Fe 9:68.*** (Emphasis added)

The English Admiralty/ Maritime/"Special Maritime Jurisdiction", LEX MERCATORIA, re-establishing the FACTS disclosed and established in the unanimous Declaration of Independence, which the King's agents, perpetrating on the American People in the colonies in 1776, brought back on the Land in America between 1932 -1966 on the unsuspecting American People, and 2021.

The Rule changes were completed, one slow step at a time, over a time frame of 34 years, so the unsuspecting people would not see the Subversion, Subterfuge, Sedition and Treason against the Constitution, the Law of the Land, the Rule of Law under the Law of The Land by the People, being committed behind their backs, by the very people whom the "People at Large" put their trust with, the Judges and Judiciaries, to Protect and Defend those principles, laws and way of Life, Liberty and the Pursuit of Happiness the People thought they were preserving.

These actions of removing the distinctions and mixing the Jurisdictions in the rules of the court was a direct attack on the Law of The Land, and the Rule of Law under the Law of Land of the united States of America, by British Agent Esquires of the Crown, in direct violation of the ***Treaty of Peace and Amity 1814: Article I; "There shall be a firm and universal peace between His Britannic Majesty and the Unites States, and between their respective countries, territories, cities, towns, and people of every degree, without exception of places or persons. All hostilities, both by sea and land shall cease as soon as this treaty shall have been ratified by both parties, as hereinafter mentioned. December 24, 1814.*** (Emphasis__added)

People are attacked every day by Esquires, District Attorney Prosecutors and put in jail, for nonviolent crimes, with no injury to person or property, just breaches of Statute, which were never intended to be criminal offenses with jail time, but were to be civil offences with fines. ***More violations of the Treaty of Peace and Amity, 1814.***

Then in **FCJPR, Rule 2,** reflects the changes talked about in the **NOTES OF ADVISORY COMMITTEE, Page 18. (See Exhibit "28", App. Pg. 38)**

Rule 2. ONE FORM of ACTION; "There shall be *one form of action to be known as a "civil action".*

If we refer to the **NOTES OF ADVISORY COMMITTEE ON RULES 1937 ADOPTION, Page 18 # 2. Exhibit "28", App. Pg. 38. "Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules."**

We went from four (4) FORMS of actions or jurisdictions granted in Article III Section 2, with 4 sets of rules of court to adjudicate those actions defined in the Constitution, to Protect the Peoples Rights and Rights to Private Property, to one (1) form of action, operating outside (extra judicial) of the four (4) forms of actions defined and granted in the Constitution that have led us to where we find America today in the year 2021!

Is it any wonder that calamity and chaos is taking place in America? Most Americans cannot make any sense of the Laws, or what is happening, watching the collapse of the Rule of Law, the destruction of the Country taking place in front of their own eyes, in 2020!

Death by a thousand cuts!

People cannot connect the Dots leading to the culprits that control the Courts, the Banks, Wall Street, Insurance Companies, all the N.G.O. Corporate Bureaucracies, the Counsels, Councils, Legislatures, Governors, Congress, Senates, and the Media, causing and fomenting, for profit, the destruction of America from within our own institutions.

How does a man or woman or an Attorney, with lack of knowledge of the Facts you are being exposed to as you read this exposé, proceed to formulate a proper defense against an unknown jurisdiction wielding (s)words with twisted meanings, in twisted rules of the courts ?

Our Courts are operated by a hidden enemy, operating in CONTRADISTINCTION to the LAW OF THE LAND the Founding Fathers provided.

The RULE OF LAW under the LAW OF THE LAND, is the Common Law remedy, By and For the People, to protect the People's Rights and Rights to Private Property, in a Republican form of government.

Today we have a Hodge Podge of original Jurisdictions, a mixing of 4 jurisdictions into a newly undefined jurisdiction called a civil action? What is civil about that?

All, hidden in plain sight, in writing, they never figured any non B.A.R. Members would ever venture into their books, I guess.

An admitted mixing of the Law of the Land and Law of the Sea, in writing!

Done with no oversight, from or by the people!, outside of the BAR Associations. The worst Civil Code "dictated by the special interest and Particular influence ...of only one people" the BAR.

By unelected Esquires of the B.A.R., ineligible to hold positions of profit or trust or either, pursuant to the T.O.N.A. 13th Amendment 1814-1819.

These actions just disclosed, are they Repugnant to the original intent of the Grant ? You think? Void per Marbury v Madison ? You Think?

I know from my boyhood that when you mix land and water together you get MUD as a result, correct?

So, in reality we could call this newly created jurisdiction, the **MUD Jurisdiction**!

Nothing transparent about MUD, easy to hid things in MUD.

Easy to hide the effects that the changes to the Rules would have on the decisions of the hearings before the Courts.

Militaries are known to hide weapons in MUD, correct?

Is it possible that the Judiciaries were weaponized and turned against the American people to steal the wealth? Enslave us in a manner unknown to the people? Economic Slaves as Global Economic "Bio Assets" backing a Global Negotiable Instrument Fraud, in Fiat Money, Controlled by the same Banking and Finance Institutions that have collapsed the Global Economy and perpetrated the biggest Medical Hoax, Plan-demic, on the World for profit in 2020-2021??

This was all done in violation of **Article VI in Amendment of the Bill of Rights** which states: "**In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed,....*and to be informed of the nature and cause of the accusation*.....**"

Cause of Action. "A "cause of action" may mean one thing for one purpose and something different for another." "It may mean: accident, act causing injury, averment of facts sufficient to justify a court in rendering a judgment, breach of contract or agreement, breach of duty, concept of law of remedies".... *Black's Law 4th, Pg. 279.*

With our current **MUD Jurisdiction**, not being transparent, as the original grant required, it is easy to obfuscate the true nature and cause (see above) into the mix and call a civil action, a commercial crime, under an extended Admiralty/Maritime Jurisdiction, **"Special Maritime Jurisdiction," "Lex Mercatoria".** Then bring the action in the court under Vice Admiralty against the "enemy", who would know?

The changes to the **(FCJPR)** Rules with the elimination of the distinction between the Jurisdictions, Law and Equity, authorized in the Constitution at Article III, Section I and Defined in the Judicial Act of 1789, were not done to afford the people remedy.

Then the co-mingling of Law and Equity, with Admiralty/Maritime into a non distinct Jurisdiction called a "Civil Action", the Rights of People could then easily be abrogated by the operations of the Prosecutors and the Judges to come to a predetermined outcome if no one could tell exactly the nature and the cause and under what jurisdiction an action was being adjudicated. Under the Law of the Land? Common Law or Law of Equity? Law of the Sea? Law of the Merchant? Or Law of the Pirate?

Then extend that jurisdiction upon the people as "Things in Rem", try them in a court as if they were the Res (a Thing), as the enemy, in a Vice Admiralty cause of action "in Rem", without anyone realizing what is really taking place, in the muck and mire of the "**MUD Jurisdiction.**"

ENS LEGIS: ***Lat.*** **A creature of the law, an artificial being, as contrasted with a natural person. Applied to corporations, considered as deriving their existence entirely from the law. Black's Law 4th, Pg. 624.**

PERSON: "A man considered according to the rank he holds in society, with all the right to which the place he holds entitles him, and the duties which it imposes. "The word in its natural and usual signification includes women as well as men. Term may **include artificial beings, as corporations, territorial corporations, and foreign corporations, under statutes, forbidding the taking of property without due process of law and giving to all persons the equal protection of the laws, relating to taxation and the revenue laws, to attachments, and concerning the admissibility as a witness of a party in his own behalf when the opposite party is a living person, A corporation is also a person under a penal statute; Corporations are "persons" as that word is used in the first clause of the XIVth Amendment;** *Covington & L. Turnp. Co. v. Sandford,* 17 S.Ct. 198, 164 U.S. 578, 41 L.Ed. 560; *Smyth v. Ames,* 18 S.Ct. 418, 169 U.S.466, 42 L.Ed. 819;" (Other cites omitted) ***Black's Law 4th, Pg. 1299.***

Get it? You are not what you say you are, you are what they say you are, what the Public Record, the System says you are, and the (B.A.R.) Esquires say you are... not a **Natural (wo)man**. They say you are, and enjoin you in the action as a 14th Amendment "**PERSON**" an" ***Ens Legis" "Fictio"*** an enemy, (the Res, a Thing), a Fictional creation of the commercial law, named in the Statutes, as a franchise of THE STATE OF....., with a bill of lading called a Birth Certificate that registered "the Thing", you, as the **Ens Legis** in commerce, a Commodity, Cargo, which is guilty until proven innocent in an admiralty/vice admiralty/Lex Mercatoria cause of action for profit.

In Admiralty the rules of evidence and burden of proof are reversed, you are presumed guilty until you prove you are innocent, the opposite of how the Common Law works. In the Common Law, you are innocent until proven guilty in a Trial by Jury of peers, neighbors, or you are supposed to be.

In Common Law, the burden of proof of claim is on the Prosecution, be it Man/Woman, Corporation or State. The plaintiff has to PROVE their case, not just allege the case.

You, regarded as an "Ens Legis" "**PERSON**" become subject to **"Subrogation" (See Pg. 53)** in an "action in REM" in **Admiralty/ Special Maritime, Lex Mercatoria Jurisdiction,** that was overlaid upon the land by deception in bankruptcy between 1871-1966 and thereafter, 99 years to complete the overthrow.

They are not done yet! 2020-2021 is the final push to destroy the only example in the World, of Liberty, Freedom and Prosperity, of a Nation founded under the Principals and Laws laid down in the Holy Scriptures, now being destroyed from within our own institutions by evil Esquires, bureaucrats and followers of Satanism.

They Be Pirates, Matey !

The "**PERSON**" ***Ens Legis***, ***"citizen of the UNITED STATES"***, created from the NAME on your Birth Certificate, is "**the Enemy**" resulting from the 1933- Emergency Banking Act, Public Law 1, Stat 1, the Amendatory Act of March 9, 1933, 48 Stat. 112, which amended the ***Trading With Enemy Act of October 6, 1917, H.R. 4960, Public Law No. 91 & 12 U.S.C. 95(a),*** making all **"citizens of the United States", enemies** of the De Facto Governments, Inc. and Banks, by changing one word in the Trading with the Enemy Act, the word "**without**" to the word "**within**".

"It is a clearly established principle of law that an attorney must represent a corporate" Ens Legis" creature of the law, as a creature of the law cannot speak for itself.

When called upon, an Attorney is supposed to provide evidence in the form of contract authorizing representation of the Real Party of Interest pursuant to Rule 17 and provide proof of filing under the **"Foreign Agents Registration Act" F.A.R.A. (22 USC § 612 et seq.); Victor Rabinowitz, et. al. v. Robert F. Kennedy, 376 U.S. 605.**

UCC- § 9-307(h) "Location of United States; The United States is located in the District of Columbia."

"All persons *born in the United States* and *not subject to any foreign power* are *declared to be citizens of the United States*." (Revised Statutes section 1992, 8 U.S.C. annotated section 1)

Since the "United States" is located "in the District of Columbia", if you were not born "in the District of Columbia", you were not born "in the United States", therefore, if you were born in one of the several States, you are subject to a foreign power foreign to the United States, then you are not a "citizen of the United States."

GET IT?

"[T]he phrase 'subject to the jurisdiction thereof' was intended to exclude from its operation children of ministers, consuls, and citizens or subjects of foreign states, born within the United States." (States in the Union) **U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898) (Emphasis added)**

Under the Common Law, your father was considered the Minister of your family as the family was originally considered a religious group, a *tithing's (See Pg. 3)*, a church that practiced the Christian family religion and you as one of the children of a minister were excluded from "being subject to the jurisdiction thereof." Still, you can be under Statutory provisions, under proper declaration.

Each State De Jure, is foreign to the District of Columbia, Inc. and foreign to the UNITED STATES, Inc., located "within" the District of Columbia, Inc.

An "American National" or "State National" born in one of the several States in Union, is a "subject of a foreign state", which is foreign to the United States, Inc. pursuant to the Wong Kim Ark decision stated above, and **revised Statute**

Sec. 1992, 8 U.S.C. annotated Sec 1, therefore, should **NOT** be misidentified and misclassified as a "citizen of the UNITED STATES" Inc. or "U.S. citizen" or" enemy combatant."

You have purposely been misidentified as a "citizen of the UNITED STATES", a "Fictio" enemy, a Commodity, Civilly Dead Cargo, to gain Jurisdiction over YOU, your Rights, your Property, and Rights to Property, for profit.

But hey, you were never fully informed of the above in any school, and not by chance, you never corrected the Public Record in regards to your Status, Standing and Character, so they determine, from the Public record, Governments, Township, County, State and Federal, presume you are what the RECORD says that you are, a U.S. citizen, a Civilly Dead Entity. How you ask?

Pursuant to the **Congressional Record:** "The Legislative Act of February 21, 1871, Forty-first Congress, Session III, Chapter 62, page 419, chartered a Federal company entitled "United States," a/k/a "US Inc.," a "Commercial Agency" originally designated as "Washington, D.C.," in accordance with the so-called 14th Amendment, which the record indicates was never ratified (See Utah Supreme Court Cases, Dyett v Turner, (1968) 439 P2d 266, 267; State v Phillips, (1975) 540 P 2d 936; as well as Coleman v. Miller, 307 U.S. 448, 59 S. Ct. 972; 28 Tulane Law Review, 22; 11 South Carolina Law Quarterly 484; Congressional Record, June 13, 1967, pp. 15641-15646). We can conclude, **a "citizen of the United States" is a civilly dead entity operating as a co-trustee and co-beneficiary of the PCT**, the constructive, cestui que trust of US Inc. under the 14th Amendment, which upholds the debt in bankruptcy of the USA and US Inc. in Section 4.

"A 'citizen of the United States' is a civilly dead entity operating as a co-trustee and co-beneficiary of the P.C.T. of US Inc., and under Section 4. of the 14th Amendment", which upholds the unquestionable debt of the USA and US, Inc. under the 14th Amendment and you are recognized as a debtor "PERSON" under section 4, for the Public Debt. (**P.**ublic **C.**estui Qui **T.**rust)

You are presumed to be a Civilly Dead "Enemy Debtor" for the National Debt, there is nothing on the Public Record to quash the presumption.

Through the act of "**SUBROGATION**" with the "Birth Certificate" you, were made subject as an "**Ens Legis Fictio**" enemy under the Trading With The Enemy Act, to the Admiralty/Maritime/ "Special Maritime" "MUD Jurisdiction" of the UNITED STATES, Inc. and their franchisees THE STATE OF....., Inc. States and made subject to the foreign jurisdiction within the States of the parent corporation District of Columbia, Inc. D.B.A., The UNITED STATES, Inc.

SUBROGATION. "**The substitution of one person in the place of another with reference to a lawful claim, demand or right." Black's Law 4th, Pg. 1595.** (Emphasis added)

FICTIO. "Fictio" in the old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the defendant was not allowed to traverse; as that the plaintiff was a Roman citizen, when in truth he was a foreigner. The object of the fiction was to give the court jurisdiction." Black's Law 4th, Pg. 751. (Emphasis added)

As the Prosecutor, the plaintiff, is a U.S. Citizen, when in actuality he is an Esquire and is a "Foreigner" under the F.A.R.A. and under the original 13th T.O.N.A. Amendment to the Bill of Rights, is impersonating a government official.

(S)He, the Prosecutor, (all Attorneys and Lawyers) lost their Citizenship under the original T.O.N.A. 13th Amendment, when (s)he accepted the Title of Nobility of Esquire when (s)he became a member of the B.A.R. Association and an Officer of Court (FARA, 22 U.S.C. §612) of a Jurisdiction foreign to our Laws.

Special Maritime Jurisdiction is codified at **Title 18 U.S.C. Crimes and Criminal Procedure Part 1- CRIMES, CHAPTER 1, GENERAL PROVISIONS, Sec. 7**- "Special maritime and territorial jurisdiction of the United States.", as used in this title, includes; (1) ***The high seas, and other waters within the admiralty and maritime jurisdiction of the United States*** and out of the jurisdiction of any particular state, and any vessel belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States....., THE STATES OF ....., Inc.

Their Federal Jurisdiction operates "**within the 'District of Columbia' and not elsewhere." pursuant to Title 4 USC § 72.**

Without express authorization for the extension of the Jurisdiction under signature and seal of the Congress, defining, for what purpose, where, for how long, to whom the extension is granted and who is the subject of the extension, Jurisdiction does not exist.

The Courts cannot assume jurisdiction where it does not exist or deny jurisdiction where it does reside, to do either would be Treason to the Constitution.

"We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be Treason to the Constitution." Cohen v. Virginia, 19 U.S. 264, 404 (1821).

An Act of the Legislature, Congress, is required for operation of the Federal Jurisdiction outside of the District of Columbia.

We forgot to build a 40 foot high concrete wall around D.C. to contain them.

The De Facto Government Esquires forgot to tell all their agencies and agents with badges this fact, who are operating without grant, outside of the District, but within the Territorial corporate THE STATE OF..... States.

Title 4 USC § 72, 2006 states: ***"All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."***

> **"Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, *except by being naturalized*, either individually, as by proceedings under the naturalization acts, or collectively, as by the force of treaty by which foreign territory is acquired ." U.S. v. Wong Kim Ark, 169 U.S. 649, 18 S. Ct. 456, 42 Led 890.** (Emphasis__added)

In the case; **THE PEOPLE v. HERKIMER; 4 Cowen 345; 1825 N.Y. LEXIS 80** the court ruled: ***"The people have succeeded to the rights of the King, the former sovereign of this State. They are not, therefore, bound by general words in a statute restrictive of prerogative, without being expressly named. "*** (Emphsis__added)

The term "Person" in the Statute is never defined, therefore the general word "Person" in a Statute would indicate a Corporation, and do not apply or bind a sovereign, a natural man/woman born within in a De Jure State, without there being a definition within the statute that expressly identifies them as the "liable party" under the Statute.

A **"Statute"** is a type of a commercial Bond.

> ***"Statute":* also sometimes means *a kind of bond or obligation of record*, being an abbreviation for *"statute merchant"* or *"statute staple"*. Black's Law Dictionary 4th, Pg. 1581.**

> ***"Statute Staple.***- The statute of the staple, 27 Ed. III. stat. 2, General Law of the staple. Law administered in the court of the mayor of the staple; **the law-mer-chant**." 4 Inst. 235.

Lets us move on in Title 28 U.S.C. also known as the **Federal Civil Judicial Procedures and Rules (FCJPR)** to **Pg. 790, Exhibit "31", App. Pg. 41,** under heading, **PROCEDURE, § 1746, *"Unsworn declarations under penalty of perjury; .....such matter may, with like force and effect, be supported, evidenced, established, or proven by unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:"***

"(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the forgoing is true and correct. Executed on (date)."

"(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date)."

Notice what is missing in #2, **"under the laws of the United States of America" which takes the affidavit out of or "without" the "United States" the Corporation.**

Revealing, wouldn't you say?

Remember a few paragraphs ago, we discussed the changing of one word in the Trading with the Enemy Act, changing the word "without" to the word "within".

The way you make a declaration on an affidavit, your declaration, determines if the document is "**within**" the jurisdiction or "**without**" the jurisdiction of the United States, Inc. Look closely. **Read that again!**

If you are "**without**" the Jurisdiction, how are you presumed the enemy when the amendment to the Trading With The Enemy Act changed the word "**without**" to the word "**within**" to make you an enemy ?

Let's move on to Pg. 924 in **(FCJPR) Title 28 U.S.C., Exhibit "32", App. Pg. 42,**

Title 28 U.S.C. Particular Proceedings § 3002,

No. (15) "United States" means-

(A) a Federal Corporation;

(B) an agency, department, commission, board, or other entity of the United States;

(C) Any instrumentality of the United States.

This section above is identifying the "**United States**" as a "**Federal Corporation**", which is located in the Municipal Corporation **"The District of Columbia, Inc."** (1781), as found in the Uniform Commercial Code (UCC- § 9-307(h)), created by the Esquires in Congress, De Facto, to expand and extend the Admiralty/Maritime and **Special Maritime Jurisdiction, Lex Mercatoria,** doing business as the U.S., U.S.A., United States, United States of America, etc. et al., all corporations, for profit, as government services agencies, N.G.O. Esquire law firms etc. sucking the life blood, the wealth of our work energy, from the

American People, in violation of the Ratified 1810-1819 T.O.N.A. 13th Amendment to the Constitution.

Let us now move to **pg. 592** in **Title 28 U.S.C. Federal Civil Judicial Procedures and Rules, (FCJPR) (See Exhibit "33", App. Pg. 43),** Under the heading **Department of Justice,** most common ordinary people would be lead to believe that the DOJ, Department of Justice and all the people working there, would or should be somewhat **knowledgeable in the law, as Justice deals with the law**, you would think, yes?

The title would also cause one to believe that the Department of Justice, may, as well, be some part of the Judicial Branch of government, one would think, yes?

However when we read into the **FCJPR** sections we find on **Pg. 592 (1993 Edition) Exhibit "33", App. Pg. 43**:

PART II- DEPARTMENT OF JUSTICE

§ 501. Executive department, "The Department of Justice is *an executive department* of the United States at the seat of Government." (Emphasis added)

We would be wrong to believe the DOJ was part of the Judiciary. Remember, **Jefferson stated the Judiciary was no part of the Nation, Independent of the Nation.**

§ 502. Seal. "The Attorney General shall have a seal for the Department of Justice."

§ 503. Attorney General. 'The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice."

Now turn to **Page 593, Exhibit "34", App. Pg. 44.**

§ 504. Deputy Attorney General. "The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General."

No mention of anything about law, so far!

§ 504a. Associate Attorney General. "The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General."

Still no mention of law!

§ 505. Solicitor General. "The President shall appoint in the Department of Justice, by and with the advice and consent of the Senate, a Solicitor General, ***learned in the law***, to assist the Attorney General in the performance of his duties."

There it is, the Solicitor General is to be **"learned in the law"**.

§ 506. Assistant Attorneys General. "The President shall appoint, by and with the advice and consent of the Senate, ten Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties."

So, one would assume, presume from the above subsections that we are dealing with people, or at least one, who is required to be "learned in the law", which would tend to lead one to believe the others in the Department of Justice are at least knowledgeable in the law. Yes?

Let us turn the page to **Pg. 594** and review the continuation of Revision Notes from **Pg. 593, at the 3rd paragraph on page 594. (Exhibit "35", App. Pg. 45)**

In the (3rd) third paragraph, we find: ***"The words "learned in the law" are omitted as unnecessary. Such a requirement is not made of the Attorney General, United States Attorneys, or United States judges,"***

There you have the facts, **the Attorney General, United States Attorneys or United States Judges are NOT *required to be learned in the Law*!!!!! Read that again!!**

That proves, in America, there are NO COURTS OF LAW as we are led to believe, but only Administrative Courts of commerce where the People, themselves, are deemed to be commercial "Things", a "RES", an "Ens Legis" in Debitautis Assumpsit, the assumed enemy Debtor, in actions in REM, convened against the Ens Legis, in Lex Mercatoria, Law of Pirates.

The Courts have been subverted into Courts of "**Jurisdictions unknown to our Law**", as stated FACT in the **Declaration of Independence 1776**, exposed herein, out of the written Law of the **Judicial Act of 1789,** early court decisions and directly from, Title 28 United States Code the Federal Civil Judicial Procedure and Rules, telling how the law of the land of America has been, once again, overthrown from within the ranks of those who we put our trust with, who then abrogated the protection of our "**best inheritance, the law of the land.**"

Under Title 22 U.S.C., Foreign Relations and Intercourse, Section § 611, Public Officials are considered foreign agents.

"All "public servants," officials, Congressmen, politicians, judges, attorneys, law enforcement officers, States and their various agencies, etc., are the express agents of these foreign principals - see Foreign Agents Registration Act of 1938; 22 U.S.C. § 286 et seq., 263A, 185G, 267J, 611(C) (ii) & (iii); Old Treasury Delegation Order #91."

Read that again, law enforcement officers, and you thought the Patriots are wrong! You drank the Blue Kool-Aid of the Southern Poverty Law Center training, teaching that Patriots are the BAD GUYS.

All oaths of office fall under 22 C.F.R., Foreign Relations, Sections §§ 92.12 - 92.30, and anyone who holds public office falls under Title 8 U.S.C., Section §1481 "Loss of nationality by native-born or naturalized citizen; voluntary action; burden of proof; presumptions."

22 U.S.C. § 286, stated above, makes all "Judges" "Law Enforcement" and all "Public Officials" (De Facto) are express agents of foreign principals, acting against the American people, for profit, enforcing laws foreign to the Law of The Land, and are the real BAD GUYS not the Patriots.

Actions levied against the American People by Agents of a Foreign power, required to register as foreign agents under the Foreign Agents Registration Act 1938, Title 22 U.S.C.§ 7, who, as agents of the Crown, are in total violation of the Treaty of Peace 1791 and the Treaty of Peace & Amity 1814 with the British Crown of Great Britain.

However it appears, since the D.O.J. took over Foreign Affairs of the Secretary of State after the passage of the Habana Act, which opened the door to the creation of the United Nations, Esquires and others are no longer subject to the Foreign Agents Registration Act 1938, 22 C.F.R. 286 et seq. and other sections, gave themselves immunity from the laws, without knowledge or Consent of the People. Imagine that!

The American Admiralty its Jurisdiction and Practice, Pg. 16 § 25 - Constitutional Construction states: "For mutual aid, these states, in 1777, formed a league of articles of perpetual union of feeble character, known as the Articles of Confederation, creating a sort of general government; and finally, in 1789, to form a more perfect union, and especially to establish justice, the present General Government was formed by the Constitution of the United States, and to it was granted by that instrument a portion only of the powers previously existing in the states, and the people thereof."... (See Exhibit "36", App. Pg. 46)

This tells us that the Federal Government is not the omnipotent all powerful controller of the States and the people therein, as **only a portion of the power of the States and the people were granted**, not all the power. As the modern day Media would lead us to believe.

"The Constitution was made" to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty,"... § 27 pg. 17, The American Admiralty, Its Jurisdiction and Practice. (See Exhibit "37", App. Pg. 47)

Any act of any legislature that falls outside of the above stated provisions is no part of the "Law of the Land" to which the People at large are to be subject to, without our knowledgeable consent and assent.

"This is especially evident in the constitutional grants of judicial power. They are not grants to this or that court of the United States. The Constitution does nothing but draw the line between the cases that belong to the United States Government and those which belong to the State Governments." The American Admiralty Its Jurisdiction and Practice, Pg. 18, § 28. (See Exhibit "38", App. Pg. 48)

All the attributes for the preservation of our Liberty and Freedoms named above are in jeopardy of collapse in 2021 if the People, the Christian People, and all the people, that want to maintain Liberty and Freedom in America don't get off their butts and get involved, NOW!

Even some of the Attorneys started to wake up in 2019; the following is an actual transcript of a letter from an Attorney to the Supreme Court of Ohio, who resigned from the BAR: (Name redacted to protect their security)

I'm announcing my resignation from whatever ties I have as a BAR attorney, effective July 4, 2019. This is being sent to Maureen O'Connor, who carries the title of Chief Justice of the corporate Supreme Court of Ohio, Here is a copy and paste of the letter. I signed the original, as a living human being, not as a corporation:

TO ALL CONCERNED:

This letter is for the purpose of publicly announcing that I am resigning as an attorney licensed to "practice law" in the State of Ohio. No one is pressuring me to make this decision. I have no reason to believe there are any attorney disciplinary proceedings pending or being initiated against me. My decision is based solely on my own conscience and sense of ethics. I understand it to be irrevocable.

As a follower of the teachings of our Lord Jesus Christ, I find I can no longer associate myself with those who have abandoned the pursuit of earthly justice in favor of money and power. In

particular, I can no longer rationalize the legal system's increasing disregard of basic Constitutional principles, such as the rights of Us the People to not have our lives, liberties, or properties taken from us without due process of law, the right to bear arms without government approval, the right to be free of unreasonable searches and seizures, and the multiple rights enshrined in the now increasingly ignored First Amendment. I took an oath to become an "officer of the court" and to support the Constitution, not corporate interests, during a mass swearing-in ceremony in Columbus in the spring of 1977. I can no longer tolerate seeing that Constitution besmirched by "courts" at every level. In particular, I can no longer stomach the prospect of ever again working in a system that disregards plain meaning of both its own corporate statutes it calls "law" as well as the principles of higher jurisdictions of Common Law, the Constitution, and holy scripture. I cannot be part of a system that exempts corrupt judges from liability for crimes they commit against their fellow men, women and children under color of law [Stump v. Sparkman, 435 U.S. 349 (1978)], a system that condones pedophilia [State v. Mole, 2016-Ohio-5124; In re CP, 131 Ohio St.3d 513 (2012)], a system that denies recovery of compensation for those whose lives are shattered by the well-connected and the corporations [Arbino v. Johnson & Johnson, 2007-Ohio-6948], a system that destroys attorneys such as Richard Fine who legitimately criticize "judges" [http://edition.cnn.com/2010/CRIME/05/24/jailed.lawyer.richard.fine/index.html], a system, in short, that is very much bifurcated into one kind of justice for the wealthy and another, very different one, for the rest of us.

The last straw for me occurred a few months ago when I finally began to learn about the giant hoax that has been perpetrated against the American people, a process that continues to be expedited by attorneys and judges. My previous belief that the judiciary was a branch of our Constitutionally mandated republic was destroyed when I read former attorney Melvin Stamper's book, Fruit from a Poisonous Tree and confirmed the truth of everything he disclosed and for which I could find documentation. What I now know, and which is still concealed from most of the American people, is that our "courts" are private, for-profit corporations that trade in on the churning of controversy for profit via systems such as CRIS (Court Registry Investment System). The most nauseating features of this type of corporate profiteering are not just the multiple frauds that support it, but the fact that it preys on the old, the young, and the disenfranchised of all races and genders. And it does so for dollars or should I say, for Federal Reserve Notes.

Finally, I require that my name be stricken from the rolls of the Ohio Supreme Court due to my recent discovery that any retention by me of "any title of nobility or honour [sic]", such as attorney at law, esquire, or any version thereof, may be prohibited by the original Thirteenth Amendment to the U.S. Constitution, which Amendment was apparently ratified in Ohio on January 31, 2011. (Emphasis added)

Sincerely,

Appendix
of
Exhibits
They Be Pirates, Matey !

Am. Ad. = American Admiralty.

App. Pg. No. = Appendix Page Number of Exhibits.

C. L. = Common Law.

Blackstone = Blackstone's Commentaries, by Sharswood.

F.C.J.P.R = Federal Civil Judicial Procedures & Rules, 1993.

Exhibit#	Book Pg. No.	Subject	Appendix Pg. No.
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COMMENTARIES

ON THE

LAWS OF ENGLAND.

IN FOUR BOOKS.

BY

SIR WILLIAM BLACKSTONE, KNT.

ONE OF THE JUSTICES OF HIS MAJESTY'S COURT OF COMMON PLEAS

WITH

NOTES SELECTED FROM THE EDITIONS OF ARCHBOLD, CHRISTIAN, COLERIDGE, CHITTY, STEWART, KERR, AND OTHERS,

BARRON FIELD'S ANALYSIS,

AND

Additional Notes, and a Life of the Author,

BY

GEORGE SHARSWOOD,

CHIEF JUSTICE OF THE SUPREME COURT OF PENNSYLVANIA

IN TWO VOLUMES.

VOL. I.—BOOKS I. & II.

PHILADELPHIA:

J. B. LIPPINCOTT COMPANY.

T. L. Lothrop

THE

AMERICAN ADMIRALTY

ITS

JURISDICTION AND PRACTICE

WITH

PRACTICAL FORMS AND DIRECTIONS.

By ERASTUS C. BENEDICT.

"The worst Civil Code would be one which should be intended for all nations indiscriminately.—The worst Maritime Code, one which should be dictated by the separate interests and inducement by the peculiar manners of only one people."—Pardessus.

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THE LAW OF AMERICAN ADMIRALTY

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SIXTH EDITION

REVISED AND ENLARGED IN SCOPE

BY

ARNOLD WHITMAN KNAUTH

OF THE NEW YORK BAR

VOLUME 1

THE AMERICAN ADMIRALTY.

CHAPTER I.

General View.

§ 1. As the commerce of the world has increased, so have the laws regulating its transactions, and prescribing the rights and duties of its agents, and the proper jurisdiction of the tribunals authorized to hear and decide causes arising out of those transactions, increased in importance. Not the least important of these, are causes connected with maritime commerce, which so often brings together in interest and in conflict, the people of different nations, speaking different languages, and familiar with different codes and usages. Most especially is this true in our country, where from the peculiar form of our institutions, there are two governments, with separate and independent judicial establishments, extending over the same territory and the same individuals, that territory acquired from other nations and originally subject to their laws; and those individuals consisting, in large part, of the citizens and subjects of the other great commercial nations of the world, domiciled among us.

§ 2. The character and pursuits of sea-faring life, and of maritime commerce, have in all countries been considered as of a peculiar nature. Their agents and instruments, animate and inanimate, have rights, privileges and liabilities which do not belong to those of the land, and there are rules of conduct and intercourse, and courts of justice, and codes of law, and modes of administering them, which are especially devoted to the rela-

been any dispute about the meaning of this act. The Admiral "shall not meddle of any thing done within the realm, except of a thing done upon the sea, as it hath been and in the time of King Edward I.," was evidently intended only to enforce the ancient maritime jurisdiction, and to cut off the new usurpations of the Admirals on the land, and not on the water, to the prejudice of the King's perquisites, in diminishing the franchises of the lords, and impoverishing the common people, who were thus subject to double exactions.(a)

§ 68. Between high and low water was, on all hands, held to be the sea when the tide was in, and the Admiral, it seems, took occasion, from his admitted right over the sea and between high and low water mark, to extend it to the land when the tide was out, and to claim the valuable perquisites of wrecks, always a *droit* of the King and not of the Admiralty, which were often on the land and the water alternately as the tide ebbed and flowed, and to the dams and weirs in the small rivers and streams, and to the ponds—and in the franchises, liberties, cities and boroughs within the bodies of the counties, as well on land as on water, they usurped the perquisites and privileges of the King and the Lords.(b)

§ 69. Another statute was accordingly passed two years after the last, evidently intended to remedy this abuse, and to protect the common law jurisdiction in the bodies of the counties, that is, on the land, when the tide was out and above high water mark, and in the tideless rivers and streams and ponds; as Chief Justice Anderson says, "the rivers which were in the counties," and to protect the King and the Lords in their perquisites. It was in these words:

A. D. 1391.—15 *Richard* 2, *cap.* 3.

§ 70. *Item.*—At the great and grievous complaint of all the commons, made to our lord the King in this present parlia-

(a) Prynne, 86.
(b) And. 88. Anne, art. 64. Coke Rep. part 8, 106. Prynne, 116.

An ORDINANCE for the GOVERNMENT of the TERRITORY of the UNITED STATES, North-West of the RIVER OHIO.

BE IT ORDAINED by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grand-child, to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them their deceased parents share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. ——— And until the governor and judges shall adopt laws as herein after mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be, (being of full age) and attested by three witnesses; — and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincent's, and the neighbouring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked, he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit.

The governor for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof — and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; provided that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, two hundred acres of land within the same; — Provided also, that a freehold in fifty acres of land having been a citizen of one of the states, and being resident in the district; or the like freehold and residence in the district shall be necessary to qualify a man as an elector of a representative.

The representatives thus elected, shall serve for the term of two years, and in case of the death or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

EXHIBIT 5

and upon which it bestowed the power to exercise certain judicial powers of the National Government. The constitutional grant to the nation was fixed and inflexible the moment the constitution was adopted. On the other hand, the organization and jurisdiction of the courts, and the distribution of judicial powers was left to the Congress, and has been always subject to such changes as the wants or the wisdom of successive, periods, may from year to year suggest. Thus the question of the American admiralty jurisdiction is not a question, as in England, between a Court of Admiralty, and a Court of Common Law, (for there is no court of admiralty proper in this country, nor is there any common law of the United States,) nor between trial by jury and trial by a judge, but it is only a question between the General Government and the State Governments. If it had always been considered in this light, the argument would have been found to turn upon considerations widely different from many of those which have been presented, and much of the difficulty which has been encountered on the subject, would have vanished away. It is in this point of view that I shall first consider it, inasmuch as upon this, every thing else depends. There is indeed a question as to what may be the proper court, but there lies behind it the more difficult and important question to what government or sovereignty we must resort. If any controversy belongs to the judicial cognizance of the United States Government, there can be no doubt or difficulty in ascertaining the proper tribunal which must decide it.(a)

§ 19. The constitution of the United States grants to the Federal Government, judicial power over * * * *all cases of admiralty and maritime jurisdiction.*" This is the whole of the grant of that branch of judicial power, and brief and simple as it is, upon its true construction depends the whole of the American admiralty jurisdiction. It has received five different constructions. It has been contended,

1. That this constitutional grant embraces only those few

(a) Const. Art. 3, § 2. 6 Pet. 659. 12 Pet. 721. 12 Pet. 721. 6 Pet. 858. 7 Cranch, 32.

cases of which the English High Court of Admiralty, was permitted to take cognizance at the time of the American Revolution.

2. That it embraces all cases of which the English Admiralty anciently had jurisdiction, before the common law courts had by prohibition prevented the exercise of most of its powers.

3. That it embraces only the cases which were within the acknowledged competency of the British colonial courts of Vice-Admiralty, as they existed at the time of the American Revolution.

4. That the actual jurisdiction of the State Courts of Admiralty, which were in existence at the adoption of the constitution of the United States, was alone embraced in the grant.

5. That the words admiralty and maritime, relate simply to subject matter, and were used in that general sense which embraces all those cases relating to ships and shipping, which arise under the municipal maritime regulations of each nation, and those which arise under the general maritime law.(a)

In endeavoring to ascertain which of these constructions ought to prevail, I shall in the first place recur to some general principles and well known facts connected with the constitution, which although their relation to this subject may not at first be apparent, cannot fail to aid us in our inquiry.

(a) 3 How. 473.

powers of government which especially affect our intercourse with foreign nations and their subjects or regulate matters of interstate concern and the rights in one State of citizens of another State, those powers in the exercise of which we were to be emphatically one people and clothed with equal rights, although in other and municipal respects we were to remain members of different communities, were granted to the general Government. By this distribution of power our intercourse with other nations was to be so regulated as to make us one of the family of nations, acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and the several States were to be prevented from making conflicting laws on subjects of national interest and so destroying the harmony which alone could make us and keep us a nation, the United States.[17]

In recent years the Supreme Court, confronted with the question of the applicability of State workmen's compensation acts to maritime employments and injuries occurring on vessels afloat in navigable waters, has expounded a broad doctrine of uniformity and harmony in the maritime law, in accordance with which common law courts are beginning to consider that they must apply at least some of the characteristic admiralty doctrines to the decision of such maritime causes as come before them under the saving clause of the Judiciary Act of 1789.[18]

[17] Constitution, Preamble, Art. I, §§ 8, 9, 10; id. Art. III, § 2, Art. IV; Martin v. Hunter's Lessee, (1816) 14 U.S. (1 Wheat.) 304, 336, 347, 348, 4 L.ed. 97; Story's Commentaries on the Constitution, (1833) § 1672 (5th ed., 1891); The Moses Taylor, (1866) 71 U.S. (4 Wall.) 411, 430, 18 L.ed. 397.

[18] Southern Pacific Co. v. Jensen, (1917) 244 U.S. 205, 61 L.ed. 1086, 37 Sup.Ct.Rep. 524, Chelentis v. Luckenbach S. S. Co., (1918) 247 U.S. 372, 62 L.ed. 1171, 38 Sup.Ct.Rep. 501; Knickerbocker Ice Co. v. Stewart, (1920) 253 U.S. 149, 64 L.ed. 834, 40 Sup.Ct. Rep. 438.

§ 122. Concurrent Jurisdiction Under Act of Congress.

The Judiciary Act of 1789 established the United States Courts and defined their jurisdiction as a contemporaneous construction' and implementation of the Constitution. It confirmed the jurisdiction of the common law courts by providing that the United States District Courts shall have "exclusive original cognizance 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."[2] This clause was "inserted, probably, from abun-

(Text continued on page 8-6)

dant caution, lest the exclusive terms in which the power is conferred on the District Courts might be deemed to have taken away the concurrent remedy which had before existed."[3]

The purport and intent of this provision have been the subject of judicial pronouncement on many occasions and some propositions are amply established. The saving to suitors of a common law remedy was not intended to inhibit the admiralty from taking cognizance of a case over which the common law courts had a concurrent jurisdiction.[4] Conversely, in cases of concurrent jurisdiction in admiralty and common law, the jurisdiction of the common law courts is not taken away.[5] The saving was for the benefit of suitors who sought to commence action. The provision gave the plaintiff and preserved for him the option to choose his forum if he sought a common law remedy. Although not free from doubt, it is generally thought that a plaintiff's choice of a state forum may not be defeated by removal to federal court where the only basis of federal jurisdiction is the admiralty nature of the case.[6]

intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity."

Supp. 264 (S.D. Fla. 1986); Meaux v. G & C Towing, Inc., 624 F. Supp. 1244 (S.D. W. Va. 1986); Grady v. Exxon Corp., 630 F. Supp. 202, 1987 A.M.C. 190 (S.D. Ia. 1986); Cana-

(Pages 8-3 & 8-6 composite)

by the appropriate courts having jurisdiction for that purpose, but the remedies and processes peculiar only to the admiralty cannot be granted by a court not possessing admiralty and maritime jurisdiction.

The common law courts always had jurisdiction of a cause of action against a shipowner in contract or in tort, when he could be reached personally and money damages only were demanded. That right was not excluded by the admiralty grant in the constitution, and the concurrent right also to hear such cases as well as other cases of admiralty jurisdiction was immediately given to the newly constituted federal judiciary. The jurisdiction of the admiralty and of the common law courts is therefore, to a certain extent, concurrent. The common law jurisdiction, when concurrent with admiralty jurisdiction, may be exercised by state courts or, within the limitations[2] of the Constitution and of the Acts of Congress, by United States District Courts.

Story, in his *Commentaries on the Constitution*, says of the grant of admiralty jurisdiction:

"It is exclusive in all matters of prize, for the reason that at the common law this jurisdiction is vested in courts of admiralty to the exclusion of the courts of common law. But in cases where the jurisdiction of the courts of common law and admiralty are concurrent (as in cases of possessory suits, mariner's wages, and marine torts) there is nothing in the constitution necessarily leading to the conclusion that the jurisdiction was intended to be exclusive; and there is as little ground upon general reasoning to contend for it. The reasonable interpretation of the constitution would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction, exactly according to the nature and extent and modifications in which it existed in the jurispru-dence of the common law.

(Text continued on page 8-3)

[2] There must ordinarily be diversity of citizenship and at least $10,000 in controversy, 28 U.S.C. § 1332, unless there is jurisdiction under any other statutory provision.

The saving was of common law remedies. This expression meant that the common law courts could give all remedies known to common law including those established by statute as available in common law courts other than characteristically admiralty remedies. The decision of the Supreme Court in *The Moses Taylor*[7] uses language calculated to be construed as giving a restricted meaning to the term common law remedies as excluding statutory remedies. It was there stated:

"'The case before us is not within the saving clause of the 9th section. That clause only saves to suitors the right of a common-law remedy, where the common law is competent to give it.' It is not a remedy in the common-law courts which is saved, but a common-law remedy. A proceeding in *rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common-law courts, it is given by statute."[8]

Similarly, *The Hine v. Trevor* declares:

"But it could not have been the intention of Congress, by the exception in that section, to give the suitor all such remedies as might afterwards be enacted by state statutes, for this would have enabled the States to make the jurisdiction of their courts concurrent in all cases, by simply providing a

231 F. Supp. 938, 1965 A.M.C. 349 (S.D.N.Y. 1964); Victorina Milling Co. v. Hugo Neu Corp., 196 F. Supp. 64, 1961 A.M.C. 2359 (S.D.N.Y. 1961); Hall v. United Fruit Co., 149 F. Supp. 470 (S.D. Cal. 1957). *See, generally*, 1A *Moore's Federal Practice* ¶ 0.167[3] (1985). *But see* Crawford v. East Asiatic Co., 156 F. Supp. 571 (N.D. Cal. 1957) (removal allowed if defendant is not a citizen of State where action is brought); Currie, *The Silver Oar and All That*, 27 U. Chi. L. Rev. 1, 16-17 (1959). *See also* American Law Institute, *Study of the Division of Jurisdiction Between State and Federal Courts* 239-41 (1968). In Reeves v. Shoreline Marine Sightseeing Co., 1986 A.M.C. 1274 (N.D. Ill. 1986), the court allowed removal of a personal injury case where there was no diversity, apparently without objection by the plaintiff. In Nash v. Rose Barge Lines, 326 F. Supp. 170 (N.D. Ill. 1971), and Pacific Far E. Line v. Ogden Corp., 425 F. Supp. 1259, 1977 A.M.C. 2561 (N.D. Cal. 1977), the courts purported to follow *Crawford*, *supra*, but read it as also requiring diversity.

[7] 71 U.S. (4 Wall.) 411 (1866).

[8] *Id.* at 431.

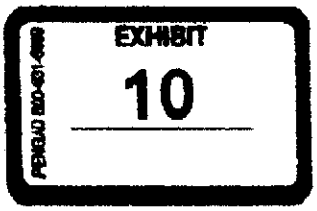
[9] 74 U.S. (7 Wall.) 555, 572 (1866). *See also* The Glide, 167 U.S. 606 (1897).

Chapter IV.

ADMIRALTY JURISDICTION, HOW FAR EXCLUSIVE—COMMON LAW JURISDICTION, HOW FAR CONCURRENT—ARBITRATION JURISDICTION.

§ 20. Concurrent Jurisdiction Under Constitution.

The Constitution of the United States provides that the judicial power of the United States shall extend to "all cases of admiralty and maritime jurisdiction." This does not mean that every case touching a ship or her affairs must necessarily be heard by a Federal court sitting in admiralty. The common law courts always had jurisdiction of a cause of action against a ship owner in contract or in tort, when he could be reached personally and money damages only were demanded. That right was not excluded by the admiralty grant in the Constitution and the concurrent right also to hear such cases as well as other cases of admiralty jurisdiction was immediately given to the newly constituted Federal judiciary. The jurisdiction of the admiralty and of the common law courts is therefore to a certain extent concurrent. The common law jurisdiction, when concurrent with admiralty jurisdiction, may be exercised by State



§ 23. Exclusive Admiralty Jurisdiction In Rem.

The right to proceed *in rem* is the distinctive remedy of the admiralty and hence administered exclusively by the United States courts in admiralty; no State can confer jurisdiction upon its courts to proceed *in rem*,[17] nor could Congress give such power to a State, since it would be contrary to the constitutional grant of such power to

the Federal Government. The saving clause of the Judiciary Act and of the Judicial Code does not contemplate admiralty remedies in a common law court. Its meaning is that in cases of concurrent jurisdiction in admiralty and at common law, the jurisdiction in the latter is not taken away.[18] The remedy which State courts may administer, though it may be subject of regulation and modification by State statute,[19] must be according to the general course of the common law. The proceeding *in rem*, according to methods of maritime law, is the exclusive prerogative of all civil admiralty and maritime jurisdiction conferred upon the United States courts.[20] So liens given by the laws of the States for matters which are subjects of admiralty jurisdiction are enforceable against the *res* only in the Federal courts though the debt on which the lien is founded may be sued for *in personam* in a State court.[21] The common law is wholly incompetent to give the peculiar remedy afforded by the Limited Liability Act,[22] although when there is but one possible damage claimant, the shipowner has been able to obtain the advantage of the Act of Congress in a State court, by setting up the privilege in his pleading.[23]

(Page 38 & 39 composite)

EXHIBIT
11 1 of 2

74th Congress, 2d Session | SENATE | Document No. 232

THE CONSTITUTION

OF THE

UNITED STATES OF AMERICA

(ANNOTATED)

ANNOTATIONS OF CASES DECIDED BY THE
SUPREME COURT OF THE UNITED STATES
TO JANUARY 1, 1938

EXTENT OF STATE JURISDICTION.

It was argued in Waring *v.* Clarke,[1] that the test of admiralty jurisdiction was the competency of a court of common law to give a remedy in a given case in a trial by jury; or, that in all cases except in seamen's wages, where the courts of common law had concurrent jurisdiction with the admiralty, and could try the case and give relief, that alone took away admiralty jurisdiction. This test was rejected. What at the time of the adoption of the Constitution were cases in admiralty (considered as a class) were still cases in admiralty; and while the Constitution guarantees jury trial of all crimes, including those within admiralty jurisdiction, the Seventh Amendment, guaranteeing that right in suits at common law involving over $20, cannot be construed to affect the jurisdiction of admiralty courts, wherein the trial may in the discretion of Congress be either with or without jury.

[1] 5 How. 441 [1847].

§ 23 pg 39
*Exception is
IN CONCURRENT Jurisdiction
the Law is Not TAKEN
away.
Admiralty ONLY in REM
§16 pg 26 6th Ad
§ 23 pg 38

The saving of a common law remedy by section 9 of the Judiciary Act of 1789 ("* * * saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it") meant that the jurisdiction of common law courts was not taken away; it was a saving for the benefit of both plaintiff and defendant, not of defendant alone.[1] What was saved was a common law remedy, not merely a remedy in the common law courts; a proceeding *in rem*, as used in the admiralty courts, is not such a remedy[2] nor was a statutory proceeding to wind up a corporation.[3] But an action of trespass for damages caused by negligence of defendant's servant in cutting loose from the wharf a burning scow and allowing it to drift against plaintiff's vessel, was held within the saving clause,[4] and a bill in equity to foreclose a common law lien upon a raft of lumber for towage services was upheld.[5]

[1] Waring *v.* Clarke, 5 How. 441, 460, 461 [1847].

[2] The "Moses Taylor" *v.* Hammons, 4 Wall. 411, 431 [1867]; The "Hine" *v.* Trevor, 4 Wall. 555 [1867]; The "Glide," 167 U. S. 606 [1897]; but where the State law authorized suit against the owner by name, even though incidentally accompanied by an attachment, it was held not a proceeding *in rem*, Garcia y Leon *v.* Galceran, 11 Wall. 185 [1871].

[3] Moran *v.* Sturges, 154 U. S. 256, 277 [1894].

[4] Chappell *v.* Bradshaw, 128 U. S. 132 [1888].

[5] Knapp, S. & Co. *v.* McCaffrey, 177 U. S. 638 [1900].

In Red Cross Line *v.* Atlantic Fruit Co.,[1] the Court declared that the right so saved includes all means other than proceedings in admiralty which may be employed to enforce the right or to redress the injury involved. It includes remedies *en pais*, as well as proceedings in court, judicial remedies conferred by statute as well as those existing at the common law, remedies in equity as well as those enforceable in a court of law. This opinion upholding a New York

The plaintiff being, by hypothesis, a seaman, no stipulation for plaintiff's costs is required by the clerk of any Federal court; the defendant, in answering, however, must give the stipulation or make the deposit for costs as is usual in that district. But if the complaint is dismissed, the plaintiff seaman will be liable for any costs decreed against him by the court. See § 421, *ff post.*

The effect of International Labor Convention No. 55 concerning shipowner's liability for sickness, injury or death is discussed at §§ 620, 627, *post.*

§ 26. Maritime Law, How Far Applied in Common Law Action.

Apart at least from an Act of Congress—and to avoid a question of its constitutionality, such an Act will be construed if possible to intend a uniform rule at law and in admiralty,[71] the substantive rights conferred by maritime law must be recognized equally in an action brought at common law, whether in Federal or State courts, both upon maritime contract and also for tort where there is a contractual relation between the parties such that the contract contemplates the application of the maritime law to the breach of duty and the maritime law prescribes the measure of recovery and the apportionment of damages in case of contributory negligence.[72] In the

[71] Panama R. Co. v. Johnson, 1924 A.M.C. 551, 264 U.S. 375, 68 L.ed. 748, 44 Sup.Ct.Rep. 391.

[72] Chelentis v. Luckenbach S. S. Co., (1918) 247 U.S. 372, 62 L.ed. 1171, 38 Sup.Ct.Rep. 501; Carlisle Packing Co. v. Sandanger, (1920) 253 U.S. 255, 65 L.ed. 927, 42 Sup.Ct.Rep. 476; Knapp v. U. S. Transp. Co., (1918) 181 App.Div. 432, 170 N.Y.Supp. 384 (4th Dept.), (Accident on a Great Lakes steamer in Duluth harbor; point 3). Tysko v. Royal Mail S. P. Co., 1936 A.M.C. 365, 81 F.(2d) 360 (C.C.A.,9th).

In Canada, it has been said that a cause of action on a contract may not be alleged as a tort, unless it is entirely independent of the tort: Vita Food Products Co. v. Unus Shipping Co., Ltd. (The Barry Ou), 1939 A.M.C. 156, (Sup.Ct.Canada); this view was supported by the Lords of the Privy Council upon the appeal,

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) **Real Party In Interest.** Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same

EXHIBIT 13

effect as if the action had been commenced in the name of the real party in interest.

(b) **Capacity to Sue or be Sued.** The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by Title 28, U.S.C., §§ 754 and 959(a).

(c) **Infants or Incompetent Persons.** Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 25, 1988, eff. Aug. 1, 1988; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7049, 102 Stat. 4401.)

NOTES OF ADVISORY COMMITTEE ON RULES

1937 ADOPTION

Note to Subdivision (a). The real party in interest provision, except for the last clause which is new, is taken verbatim from former Equity Rule 37 (Parties Generally—Intervention), except that the word "expressly" has been omitted. For similar provisions see N.Y.C.P.A., 1937, § 210; Wyo.Rev.Stat.Ann., 1931, §§ 89-501, 89-502, 89-503; English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 8. See, also former Equity Rule 41 (Suit to Execute Trusts of Will—Heir as Party). For examples of statutes of the United States providing particularly for an action for the use or benefit of another in the name of the United States, see U.S.C., Title 40, § 270b (Suit by persons furnishing labor and material for work on public building contracts * * * [as] sue on a payment bond, 'in the name of the United States for the use of the person suing'), and U.S.C., Title 25, § 201 (Penalties under laws relating to Indians—how [1939], § 47a5te) (Suits for penalties, fines, and forfeitures, under this title, where not otherwise provided for, to be in name of United States).

Note to Subdivision (b). For capacity see generally Clark and Moore, A New Federal Civil Procedure—II Pleadings and Parties, 44 Yale L.J. 1291, 1312-1317, 1935, and specifically *Coppedge v. Clinton*, C.C.A.10, 1934, 72 F.2d 531 (natural person), *David Lupton's Sons Co. v. Automobile Club of America*, 1918, 32 S.Ct. 711, 225 U.S. 489, 56 L.Ed. 1177, Ann.Cas.1914A, 699 (corporation); *Puerto Rico v. Russell & Co.*, 1933, 53 S.Ct. 447, 288 U.S. 476, 77 L.Ed. 903 (unincorporated assn.); *United Mine Workers of America v. Coronado Coal Co.*, 1922, 42 Sup.Ct. 570, 259 U.S. 344, 66 L.Ed. 975, 27 A.L.R. 762 (federal substantive right enforced against unincorporated association by suit against the association in its common name without naming all its members as parties). This rule follows the existing law as to such associations, as declared in the case last cited above. Compare *Moffat Tunnel League v. United States*, 289 U.S. 113, 53 S.Ct. 543, 77 L.Ed. 1069 (1933). See note to Rule 23, clause (1).

Note to Subdivision (c). The provision for infants and incompetent persons is substantially former Equity Rule 70 (Suits by or Against Incompetents) with slight additions. Compare the more detailed English provisions, English Rules Under the Judicature Act (The Annual Practice, 1937) O. 16, r. 16, r. 19-21.

1946 AMENDMENT

Note. The new matter in subdivision (b) makes clear the controlling character of Rule 66 regarding suits by or against a federal receiver in a federal court.

1948 AMENDMENT

The amendment effective October 20, 1949, deleted the words "Rule 66" at the end of subdivision (b) and substituted the words "Title 28, U.S.C., §§ 754 and 959(a)."

1966 AMENDMENT

The minor change in the text of the rule is designed to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule. These illustrations, of course, carry no negative implication to the effect that there are not other instances of recognition as the real party in interest of one whose standing is such may be in doubt. The enumeration is simply of cases in which there might be substantial doubt as to the issue but for the specific enumeration. There are other potentially arguable cases that are not excluded by the enumeration. For example, the enumeration states that the promisee in a contract for the benefit of a third party may sue as real party in interest, it does not say, because it is obvious, that the third-party beneficiary may sue (when the applicable law gives him that right.)

The rule adds to the illustrative list of real parties in interest a bailee—meaning, of course, a bailee suing on behalf of the bailor with respect to the property bailed. (When the possessor of property other than the owner sues for an invasion of the possessory interest he is the real party in interest.) The word "bailee" is added primarily to preserve the admiralty practice whereby the owner of a vessel as bailee of the cargo, or the master of

A TREATISE

UPON SOME OF THE

GENERAL PRINCIPLES OF THE LAW,

WHETHER OF A

LEGAL, OR OF AN EQUITABLE NATURE,

INCLUDING THEIR

RELATIONS AND APPLICATION

TO

ACTIONS AND DEFENSES

IN GENERAL,

WHETHER IN

COURTS OF COMMON LAW, OR COURTS OF EQUITY;

AND EQUALLY ADAPTED TO

COURTS GOVERNED BY CODES.

By WILLIAM WAIT,

COUNSELLOR AT LAW.

VOLUME I.

ALBANY:
WILLIAM GOULD & SON,
LAW BOOKSELLERS AND PUBLISHERS.
1877.

§ 217. The District of Columbia.

The District of Columbia is a municipal body, having no sovereign character, and is not a department of the United States Government.[21] The District Court of the District of Columbia (formerly called the Supreme Court of the District of Columbia) has admiralty jurisdiction.[22]

[21] Metropolitan R. Co. v. District of Columbia, (1889) 132 U.S. 1, 33 L.ed. 231, 10 Sup.Ct. Rep. 19; Barnes v. District of Columbia, (1875) 91 U.S. (1 Otto) 540, 23 L.ed. 440.

[22] U. S. v. Sampson (The Infanta Maria Teresa), (1902) 19 App.D.C. 419, at 431 (a case of prize), reversed on the merits, (1903) 188 U.S. 293, 47 L.ed. 477, 23 Sup.Ct.Rep. 412; The Potomac and Seabird, 1930 A.M.C. 1296, 105 F.(2d) 94 (C.A., Dist. Col.).

last(s) the heralds rank all *colonels, serjeants at law, and doctors in the three learned professions. [*405

*Esquires and gentlemen are confounded together by Sir Edward Coke, who observes,(t) that every esquire is a gentleman, and a gentleman is defined to be one *qui arma gerit*, who bears coat armour, the grant of which adds gentility to a man's family: in like manner as civil nobility, among the Romans, was founded in the *jus imaginum*, or having the image of one ancestor at least, who had borne some curule office. It is indeed a matter somewhat unsettled, what constitutes the distinction, or who is a real *esquire*; for it is not an estate, however large, that confers this rank upon its owner. Camden, who was himself a herald, distinguishes them the most accurately; and he reckons up four sorts of them:(u) 1. The eldest sons of knights, and their eldest sons, in perpetual succession:(v) 2. The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession: both which species of esquires Sir Henry Spelman entitles *armigeri natalitii*.(w) 3. Esquires created [*406

(s) The rules of precedence in England may be reduced to the following table, in which those marked * are entitled to the rank here allotted them, by statute 31 Hen. VIII. c. 10; marked †, by statute 1 W. and M. c. 21, marked ‖ by letters-patent, 9, 10, and 14 Jac. I., which are in Seld. Tit. of Hon. 2, 5, 46, and 2, 11, 3; marked ‡ by ancient usage and established custom, for which see, among others, Camden's Britannia, tit. Ordines; Milles's Catalogue of Honour, edit. 1610; and Chamberlayne's Present State of England, b. 3, ch. 3.

TABLE OF PRECEDENCE.

* The king's children and grandchildren.
* " " brethren.
* " " uncles.
* " " nephews.
* Archbishop of Canterbury.[10]
* Lord Chancellor or Keeper, if a baron.
* Archbishop of York.
* Lord Treasurer, } if barons.
* Lord President of the Council, } if barons.
* Lord Privy Seal, } if barons.
* Lord Great Chamberlain. But see private stat. 1 Geo. I. c. 3,] above all peers of their own degree.
* Lord High Constable,]
* Lord Marshal,]
* Lord Admiral,]
* Lord Steward of the Household,]
* Lord Chamberlain of the Household,]
* Dukes.
* Marquesses.
‡ Dukes' eldest sons.
* Earls.
‡ Marquesses' eldest sons.
‡ Dukes' younger sons.
* Viscounts.
‡ Earls' eldest sons.
‡ Marquesses' younger sons.
* Secretary of State, if a bishop.
* Bishop of London.
* " " Durham.
* " " Winchester.
* Bishops.
* Secretary of State, if a baron.
* Barons.
† Speaker of the House of Commons.
† Lords Commissioners of the Great Seal.
‡ Viscounts' eldest sons.
‡ Earls' younger sons.
‡ Barons' eldest sons.
‡ Knights of the Garter.
‡ Privy Counsellors.
‡ Chancellor of the Exchequer.
‡ Chancellor of the Duchy.
‡ Chief Justice of the King's Bench.[11]
‡ Master of the Rolls.
‡ Chief Justice of the Common Pleas.
‡ Chief Baron of the Exchequer.
‡ Judges, and Barons of the Coif.
‖ Knights Bannerets, royal.
‖ Viscounts' younger sons.
‖ Barons' younger sons.
‖ Baronets.
‖ Knights Bannerets.
‡ Knights of the Bath.
‡ Knights Bachelors.
‖ Baronets' eldest sons.
‡ Knights' eldest sons.
‖ Baronets' younger sons.
‡ Knights' younger sons.
‡ Colonels.
‡ Serjeants-at-law.
‡ Doctors.
‡ Esquires.
‡ Gentlemen.
‡ Yeomen.
‡ Tradesmen.
‡ Artificers.
‡ Labourers.

N.B. Married women and widows are entitled to the same rank among each other as their husbands would respectively have borne between themselves, except such rank is merely professional or official; and unmarried women to the same rank as their eldest brothers would bear among men during the lives of their fathers.

(t) 2 Inst. 668.
(u) 2 Inst. 666.
(v) 2 Inst. 667.
(w) Gloss. 43.

[10] It is said that before the conquest, by a constitution of pope Gregory, the two archbishops were equal in dignity, and in the number of bishops subject to their authority, and that William the Conqueror thought it prudent to give precedence and superiority to the archbishop of Canterbury; but Thomas, archbishop of York, was unwilling to acknowledge his inferiority to Lanfranc, archbishop of Canterbury, and appealed to the pope, who referred the matter to the king and barons; and in a council held at Windsor Castle, they decided in favour of the archbishop of Canterbury. Godw. Com. de Præsul. 665.

But the archbishops of York long afterwards refused to acquiesce in this decision; for bishop Godwin relates a curious and ludicrous struggle, which took place in the reign of Hen. II., above one hundred years afterwards, between Roger, archbishop of York, and Richard, archbishop of Canterbury, for the chair on the right hand of the pope's legate. Ib. 79. Perhaps to this decision, and their former equality, we may refer the present distinction between them; viz., that the archbishop of Canterbury is primate of all England, and the archbishop of York is primate of England.—CHRISTIAN.

[11] Vice-chancellor, by stat. 53 Geo. III. c. 24.—CHITTY.

man, and a gentleman is defined to be one *qui arma gerit*,[a] who bears coat armour, the grant of which adds gentility to a man's family; in like manner as civil nobility, among the Romans, was founded in the *jus imaginum*, or having the image of one ancestor at least, who had borne some curule office. It is indeed a matter somewhat unsettled, what constitutes the distinction, or who is a real *esquire*; for it is not an estate, however large, that confers this rank upon its owner. Camden, who was himself a herald, distinguishes them the most accurately; and he reckons up four sorts of them:[b] 1. The eldest sons of knights, and their eldest sons in perpetual succession.[c] 2. The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession: both which species of esquires Sir Henry Spelman entitles *armigeri natalitii*.[d] 3. Esquires created by the king's letters patent or other investiture, and their eldest sons. 4. Esquires by virtue of their offices: as justices of the peace, and others who bear any office of trust under the Crown. To these may be added 'barristers-at-law,'[e] and the esquires of knights of the bath, each of whom constitutes three at his installation: and all foreign 'noblemen;' for not only these, but the eldest sons of peers of Great Britain, though frequently titular lords, are only esquires in the law, and must be so named in all legal proceedings.[f] As for *gentlemen*, says Sir Thomas Smith,[g] they be made good cheap in this kingdom: for whosoever studieth the laws of the realm, who studieth in the universities, who professeth the liberal sciences, and (to be short) who can live idly, and without manual labour, and will bear the port, charge, and countenance of a gentleman, he shall be called master, and shall be taken for a gentleman. A *yeoman* is he that hath free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus et legalis homo*.[h]

Yeomen.

[407]

Tradesmen, artificers, and labourers.

The rest of the commonalty are *tradesmen*, *artificers*, and *labourers*; who (as well as all others) were required by the statute 1 Hen. V. c. 5, to be styled by the name and addition

[a] 2 Inst. 668.
[b] 2 Inst. 668.
[c] 2 Inst. 667.
[d] Glum. 45.
[e] *Rex v. Brough, Esq.* 1 Wils. 244.
[f] 3 Inst. 30; 2 Inst. 667.
[g] Commonw. of England, b. 1, c. 20.
[h] 2 Inst. 668.

IN THE

COURTS OF COMMON PLEAS,

IN THE

FIFTH CIRCUIT OF THE STATE OF OHIO;

COMMENCING WITH MAY TERM, 1816.

TO WHICH IS ADDED,

The opinion of Judge M'Lean in the case of Landerbaek vs. Moore.

BY BENJAMIN TAPPAN,

PRESIDENT JUDGE OF SAID COURTS.

STEUBENVILLE:
PRINTED BY JAMES WILSON.

1831.

Ohio vs. Lafferty.

Harrison.
March, 1817.

Ohio
v.
Lafferty.

The common law of England, so far as is compatible with our principles and form of government, is a part of the law of Ohio.

Offences at common law, are within the jurisdiction of the courts of common pleas.

LAFFERTY was convicted, on three several indictments, for selling unwholesome provisions.

WRIGHT, for the defendant, moved, in arrest of judgment "for that there is no law of this state against selling unwholesome provisions." He observed, that the indictment was bottomed upon the common law of England, which was not in force in this state, it never having been adopted by our constitution or recognized by our laws or judicial decisions: that the 4th section of the 3d article of the constitution, limited and confined the jurisdiction of the court to offences declared such by the statute laws. He admitted that the offence charged, was an offence against the public, which at common law was indictable and punishable where the common law was in force; but that, in this state, as the common law was not in force, and no statute had declared it criminal, it was not an act which could be prosecuted criminally.

BREDE, contra. That the section of the constitution quoted and relied upon by Wright, as limiting the jurisdiction of the court to statutory offences, was not fairly construed; it should be considered as referring the courts to the statute law, for the extent of their several jurisdictions in criminal cases; and so considered the statute law which gave to the supreme court jurisdiction in all capital cases, and to the courts of common pleas jurisdiction in all cases not capital, without any specification of indictable offences; did point out the manner and the cases in which this section of the constitution intended the duties of the courts should be divided, and that it did not exclude a common law jurisdiction.

PRESIDENT.—The question raised on this motion, whether the common law is a rule of decision in this state? is one of very great interest and importance, and one upon which contradictory opinions have been holden both at the bar and upon the bench.

Chapter II.

SOURCE OF THE JURISDICTION.

§ 5. The Constitutional Grant of Jurisdiction.

The Constitution of the United States provides that "the judicial power" of the United States "shall extend to all cases of admiralty and maritime jurisdiction." Art. III, sec. 2. The Constitution not only confers admiralty jurisdiction but the word "maritime" is superadded, seemingly *ex industria*, to remove every latent doubt. There is a peculiar propriety in the incorporation of the term "maritime" into the Constitution. The disputes and discussions, respecting what the admiralty jurisdiction was, could not but be well known to the framers of that instrument. It was wise, therefore, to dissipate all question by giving cognizance of all cases of maritime jurisdiction, i.e., all maritime cases. Upon any other construction the word "maritime" would be mere tautology, but in this sense it has a peculiar and appropriate force. The language of the Constitution will therefore warrant the most liberal interpretation and has reference to that jurisdiction which, with local variances, the maritime law has exercised in Europe generally.[1] The use of both terms—"admiralty and

[1] De Lovio v. Boit, (1815) 2 Gall. 398, Fed. Cas. No. 3776 (C.C.Mass.), Story, J.; cf. Martin v. Hunter's Lessee, (1816) 14 U.S. (1 Wheat.) 304, 335, 4 Led. 97; Detroit Trust Co. v. The

maritime" excluded indeed that jurisdiction which the English admiralty anciently exercised over non maritime cases arising beyond the sea. The word "all" in the constitutional grant seems designed, in the delimitation of the jurisdiction, to preclude a resort to those English instances in which common law courts encroached upon the jurisdiction of admiralty as earlier exercised in England and as generally acknowledged in Europe.[2] The limits of the jurisdiction are to be ascertained by a reasonable and just construction of the words used in the Constitution, taken in connection with the whole instrument, and the purposes for which admiralty and maritime jurisdiction was granted to the Federal Government.[3]

§ 6. The Term Admiralty.

The word *admiralty* is derived from the Arabic word for ruler—a word commonly represented in English by ameer or emir—the article "al" (the), normally followed by a substantive, *e.g.*, "bahr" (sea), as amir-al-bahr, ruler of the sea, and the usual English form of the suffix which in French is "té" and in Latin "tas".[4] Originally, admiralty jurisdiction was but another phrase for the power of the admiral, a naval officer of the highest dignity and station, holding his authority directly from the sovereign, subordinate to the monarch alone and clothed with many of the prerogatives of royalty. Every maritime nation has certain rules or laws in relation to ships, shipping and maritime matters—rules peculiar to itself, such as its navigation acts, the municipal

Thomas Barlum, 1934 A.M.C. 1417, at 1433, 293 U.S. 21, 79 L.ed. 176, 55 Sup.Ct.Rep. 31.

[2] Waring v. Clarke, (1847) 46 U.S. (5 How.) 441, 467, 12 L.ed. 226, 234. See also The Moses Taylor, (1866) 71 U.S. (4 Wall.) 411, 18 L.ed. 397.

[3] The St Lawrence, (1862) 66 U.S. (1 Black) 522, 17 L.ed. 180; Detroit Trust Co. v. The Thomas Barlum, 1934 A.M.C. 1417, 1431, 1432, 293 U.S. 21, 79 L.ed. 176, 55 Sup.Ct.Rep. 31.

[4] See The New English Dictionary, The Century Dictionary.

apology for some obvious departures from the common standard of excellence, which professional, as well as literary criticism, may find occasion to censure. They were adopted as a part of his plan, and, in general manner and substance, the book is what he intended to make it. If it fails to give to the reader, a theoretical and practical view of "*Cases of Admiralty and Maritime Jurisdiction*," and of the Practice of "*Courts of Admiralty, as contradistinguished from Courts of Common Law*," the author has not accomplished his purpose.

In printing a new work from manuscript, verbal and typographical errors seem to be unavoidable—a few of them are noticed in the *Errata*, and the reader is requested to make the corrections with a pen.

E. C. B.

New York, 1850.

PREFACE TO SIXTH EDITION.

IT is ninety years since Mr. Erastus C. Benedict wrote and published the First Edition of this work. At that time there were other works on admiralty practice which were also popular: Parsons (1859), and Conkling (1848), with Betts' Practice (1838), and Dunlap's Practice (1836 and 1850) in common use.

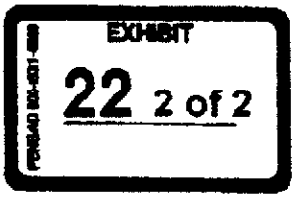
With the passing of the years, Mr. Benedict's work outstripped all its competitors, and became firmly fixed as an authority upon the publication of the Second Edition in 1870. His nephew, Robert Dewey Benedict, prepared a Third Edition in 1894 (1900), and his grandnephew, Edward Grenville Benedict, prepared the Fourth Edition in 1910. With the Fifth Edition the work passed from the hands of the Benedict family, and the work was done by Mr. George V. A. McCloskey, of the New York Bar, in 1925.

The past fifteen years have witnessed an extraordinary activity and growth in American admiralty practice. The appellate practice has been entirely revised; the Longshoremen's Compensation Act presented new problems; the Limitation of Liability statutes have been further interpreted by the courts and revised by Congress; a series of Merchant Marine statutes came from Congress; and numerous treaties and international conventions standardizing law and procedure were presented to the Senate, where many were ratified, frequently accompanied by implementing statutes.

The work of scholars in law review articles and text books has developed many points hitherto left untouched and thrown new light on the history of admiralty,

iii

2748



both ancient and modern. The promulgation of the Rules of Civil Procedure for the District Courts of the United States in cases at common law and in equity has closed the ancient gap between admiralty and common law practice; indeed, the common law practice has now not only caught up with the admiralty practice, but has in some instances exceeded it in practical usefulness. There may now be a definite challenge requiring the consideration of a revision and standardization of Admiralty Rules of Practice in the District Courts.

Drastic revision of the text has been necessitated by these changes in a great many instances. The text as a whole, however, has not been rewritten. The well known phrases of the former editions have been preserved wherever possible. Bench and Bar have long relied on the successive editions of Benedict as a basic authority and nothing has been done to disturb the time-tested statements wherever they are still true. Likewise, the annotations have not been disturbed, but merely enlarged so as to include the new cases with the old. Some of the footnotes may seem to have become somewhat unwieldy in size, but it has been deemed wiser to leave the old collections of authorities intact. They are familiar to Bench and Bar and have been relied on for many years. No one can presume to remove any of the old cases without risk of diminishing the value of the work to the lawyer and judge who turn to the familiar section in search of the familiar authority.

The English cases have not been retained as heretofore as authorities; in a few instances they are preserved because of their historical interest. Mr. Benedict equipped the First and Second Editions with a number of English citations, largely on points where the American material did not at that time afford a satisfactory citation. But with the passing of years an American

Union Calendar No. 1078

81st Congress, 2d Session . . . . . House Report No. 3123

REPORT ON

THE NATIONAL LAWYERS GUILD

Legal Bulwark of the Communist Party

SEPTEMBER 17, 1950
(Original release date)

September 21, 1950.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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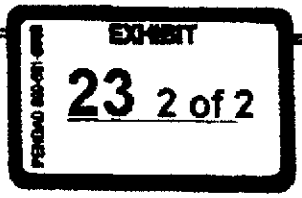
Prepared and Released by the

COMMITTEE ON UN-AMERICAN ACTIVITIES, U. S. HOUSE OF REPRESENTATIVES

WASHINGTON, D.C.

Union Calendar No. 1078

81ST CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 3123



REPORT ON THE NATIONAL LAWYERS GUILD—LEGAL BULWARK OF THE COMMUNIST PARTY

SEPTEMBER 21, 1950.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WOOD, from the Committee on Un-American Activities, submitted the following

REPORT

[Pursuant to H. Res. 5, 79th Cong., 1st sess.]

The National Lawyers Guild is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions. Since its inception it has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents. It has consistently fought against national, State, and local legislation aimed at curbing the Communist conspiracy. It has been most articulate in its attacks upon all agencies of the Government seeking to expose or prosecute the subversive activities of the Communist network, including national, State, and local investigative committees, the Department of Justice, the FBI, and law enforcement agencies generally. Through its affiliation with the International Association of Democratic Lawyers, an international Communist-front organization, the National Lawyers Guild has constituted itself an agent of a foreign principal hostile to the interests of the United States. It has gone far afield to oppose the foreign policies of the United States, in line with the current line of the Soviet Union.

These aims—the real aims of the National Lawyers Guild, as demonstrated conclusively by its activities for the past 13 years of its existence—are not specified in its constitution or statement of avowed purpose. In order to attract non-Communists to serve as a cover for its actual purpose as an appendage to the Communist Party, the National Lawyers Guild poses benevolently as "a professional organization which shall function as an effective social force in the service of the people to the end that human rights shall be regarded as more sacred than property rights." In the entire history of the guild there is no record of its ever having condemned such instances

tion and uniformed in a maritime employment, the workmen's compensation laws of the several States which prescribe exclusive rights and liabilities and provide novel remedies.[30] Congress may not delegate to the States the legislative power which the Constitution bestows upon Congress and which is in its nature nondelegable. To preserve adequate harmony and appropriate, uniform rules relating to maritime matters and to bring them within the control of the Federal Government was the fundamental purpose and within that sphere and to that definite end Congress was empowered to legislate: it may not defeat the purpose for which the power was conferred. The only powers over completely maritime matters now remaining entirely in the hands of the States of the Union are those concerning pilots and pilotage,[31] and harbor masters.[32]

§ 34. State Legislation; How Far Inoperative.

No State legislation concerning navigation is valid if it contravenes the essential purpose expressed by an Act of Congress or works material prejudice to the characteristic features of the general maritime law or

[30] Knickerbocker Ice Co. v. Stewart, (1920) 253 U.S. 149, 64 Led. 831, 40 Sup.Ct.Rep. 438; Washington v. W. C. Dawson & Co., 264 U.S. 219, 68 Led. 646, 44 Sup.Ct.Rep. 302, 1924 A.M.C. 401.

[31] State ex rel. Foss v. Kelly, 1936 A.M.C. 1343, 1346, 186 Wash. 589, 59 P.(2d) 373, reversed on other grounds, 1937 A.M.C. 1490, 302 U.S. 1, 82 Led. 3, 58 Sup.Ct.Rep. 87.

[32] Mayor of Vidalia v. McNeely, 1927 A.M.C. 1078, 274 U.S. 676, 71 Led. 1262, 47 Sup.Ct.Rep. 758; Clyde Mallory Line v. Alabama, 1936 A.M.C. 1, 298 U.S. 261, 80 Led. 215, 56 Sup.Ct.Rep. 194; Vincent v. Foss and Crabtree, 1935 A.M.C. 724, 150 So. 49 (Fla.).

But see City of Milwaukee v. American S. S. Co., 1936 A.M.C. 991, 76 F.(2d) 343 (C.C.A.,7th).

See also Streckfus Steamers v. Fox, Tax Commr., 1936 A.M.C. 1153, 14 F.Supp. 312 (S.D.W. Va.).

The regulation of wharfage has now passed into the hands of the federal Maritime Commission:

McNeely & Price Co. v. Philadelphia Piers, Inc., (1938) 1939 A.M.C. 1435, 196 Atl. 846, 861 (Pa.).

1993 EDITION

FEDERAL CIVIL JUDICIAL PROCEDURE and RULES

as amended to February 1, 1993

ST. PAUL, MINN.
WEST PUBLISHING CO.

Committees on Rules
OF
PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES

Announcement of the Chief Justice of the United States

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C.

April 4, 1960

The Chief Justice of the United States announced today the appointment of six nationally-organized committees of judges, lawyers, and legal scholars whose job it will be to study and to recommend to the Supreme Court improvement in the rules of practice and procedure in the Federal courts.

The Committees were appointed pursuant to an Act passed by Congress [P.L. 85-513, 72 Stat. 356] July 11, 1958 [28 U.S.C.A. § 331], authorizing the Judicial Conference of the United States, of which the Chief Justice is Chairman, to make a continuous study of the Federal rules.

"The rules of court," Chief Justice Earl Warren said, "are the most important tools of the courtroom lawyer. So long as we have the inevitable changes in our social, economic and political lives, the demand for amendments in the rules, and also for new rules, by which we resolve conflicts in the courts is equally inevitable.

"It is essential that our rules of court be up-to-date and all amendments should be studied and recommended by committees with as broad an outlook and base as possible. Accordingly these committees include representatives of the bar, the judiciary and the legal scholars and for their ideas they will draw upon the bench and bar of the country as a whole and particularly the Judicial Conferences in all eleven of the Federal circuits.

"Experience has shown that in order to promote simplicity in procedure, the just determination of litigation and the elimination of unjustifiable expense and delay, it is essential that the operation and effect of the Federal rules of practice and procedure should be the subject of continuous study. Such study is the objective of the committees being announced today, and every judge, practicing lawyer, and legal scholar will be afforded the

opportunity to participate—to state his views—with assurances that those views will be given consideration."

The Committees, and the Committee Chairmen, are:

Standing Committee on Rules of Practice and Procedure

ALBERT B. MARIS, *Chairman*

Advisory Committee on Civil Rules

DEAN ACHESON, *Chairman*

Advisory Committee on Criminal Rules

JOHN C. PICKETT, *Chairman*

Advisory Committee on Admiralty Rules

WALTER L. POPE, *Chairman*

Advisory Committee on General Orders in Bankruptcy

PHILLIP FORMAN, *Chairman*

Advisory Committee on Appellate Rules

E. BARRETT PRETTYMAN, *Chairman*

The Advisory Committees will conduct the basic studies and develop reports and recommendations in the respective fields. These will be forwarded to the standing Committee on Rules of Practice and Procedure which, in turn, will report to the Judicial Conference of the United States. If approved, the Judicial Conference will formally forward the report and recommendations to the Supreme Court of the United States. The Supreme Court will approve, modify, or disapprove of the changes in the Federal rules, and those adopted will be transmitted by the Supreme Court to the Congress. In such cases, the rules automatically become law in ninety days unless the Congress acts adversely.

Memberships on the Committees are for 2 and 4 year terms, with each member entitled to one additional term. This will have the effect of bringing new ideas to the Committees and keeping pace with developments in the law.

Headquarters Secretariat for the rules study will be in the Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C., under the direction of Warren Olney III, Director. * * *.

14, 15, 16, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38, 41, 43, 44, 44.1, 45, 46, 49, 50, 51, 53, 54, 55, 56, 60, 62, 63, 65, 65.1, 68, 69, 71, 71A, 73, 75, 77, 78, 81, and to the Supplemental Rules for Certain Admiralty and Maritime Claims, Rules B, C, E, and F, as hereinafter set forth:

[See amendments made thereby under respective rules, post.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure and the Supplemental Rules for Certain Admiralty and Maritime Claims shall take effect on August 1, 1987.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments in accordance with the provisions of Section 2072 of Title 28, United States Code.

ORDER OF APRIL 25, 1988

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein amendments to Civil Rules 17 and 71, as hereinafter set forth:

[See amendments made thereby under respective rules, post.]

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on August 1, 1988.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing amendments in accordance with the provisions of Section 2072 of Title 28, United States Code.

ORDER OF APRIL 30, 1991

1. That the Federal Rules of Civil Procedure for the United States District Courts be, and they hereby are, amended by including therein new chapter headings VIII and IX, amendments to Rules C and E of the Supplemental Rules for certain Admiralty and Maritime Claims, new Forms 1A and 1B to the Appendix of Forms, the abrogation of Form 18A, and amendments to Civil Rules 5, 15, 24, 34, 35, 41, 44, 45, 47, 48, 50, 52, 53, 63, 72, and 77, as hereinafter set forth.

[See additions and amendments made thereby under respective rules and forms, post.]

2. That the foregoing additions to and changes in the Federal Rules of Civil Procedure, the Supplemental Rules for Certain Admiralty and Maritime Claims, and the Civil Forms shall take effect on December 1, 1991, and shall govern all proceedings in civil actions thereafter commenced and, insofar as just and practicable, all proceedings in civil actions then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing addition to and changes in the Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

[Congress may postpone the proposed rule and form additions and amendments effective December 1, 1991, may decline to approve such additions and amendments, or may make changes to the additions and amendments.]

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity or in admiralty, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966.)

NOTES OF ADVISORY COMMITTEE ON RULES

1937 ADOPTION

1. Rule 81 states certain limitations in the application of these rules to enumerated special proceedings.

2. The expression "district courts of the United States" appearing in the statute authorizing the Supreme Court of the United States to promulgate rules of civil procedure does not include the district courts held in the territories and insular possessions. See *Mookini et al.* v. *United States*, 1938, 58 S.Ct. 543, 303 U.S. 201, 82 L.Ed. 748.

3. These rules are drawn under the authority of the Act of June 19, 1934, U.S.C., Title 28, § 2072, formerly § 723b (Rules in actions at law; Supreme Court authorized to make), and § 2072, formerly § 723c (Union of equity and action at law rules; power of Supreme Court) and also other grants of rule making power to the Court. See Clark and Moore, A New Federal Civil Procedure—I, The Background, 44 Yale L.J. 387, 391 (1935). Under § 2072, formerly § 723b after the rules have taken effect all laws in conflict therewith are of no further force or effect. In accordance with § 2072, formerly § 723c, the Court has united the general rules prescribed for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both. See Rule 2 (One Form of Action). For the former practice in equity and at law see U.S.C., Title 28, §§ 2071 and 2073, formerly §§ 723 and 730 (conferring power on the Supreme Court to make rules of practice in equity) and the Equity Rules promulgated thereunder; U.S.C., Title 28, formerly § 724 (Conformity Act); former Equity Rule 22 (Action at Law Erroneously Begun as Suit in Equity—Transfer); former Equity Rule 23 (Matters Ordinarily Determinable at Law When Arising in Suit in Equity to be Disposed of Therein); U.S.C., Title 28, former §§ 397 (Amendments to

pleadings when case brought to wrong side of court), and 398 (Equitable defenses and equitable relief in actions at law).

4. With the second sentence compare U.S.C., Title 28, former § 777 (Defects of form; amendments), former § 767 (Amendment of process); former Equity Rule 19 (Amendments Generally).

1948 AMENDMENT

The amendment effective October 20, 1949, substituted the words "United States district courts" for the words "district courts of the United States."

1966 AMENDMENT

This is the fundamental change necessary to effect unification of the civil and admiralty procedure. Just as the 1938 rules abolished the distinction between actions at law and suits in equity, this change would abolish the distinction between civil actions and suits in admiralty. See also Rule 81.

Rule 2. One Form of Action

There shall be one form of action to be known as "civil action".

NOTES OF ADVISORY COMMITTEE ON RULES
1937 ADOPTION

1. This rule modifies U.S.C., Title 28, former § 384 (Suits in equity, when not sustainable). U.S.C., Title 28, §§ 2071–2073, formerly §§ 723 and 730 (conferring power on the Supreme Court to make rules of practice in equity, are unaffected in so far as they relate to the rule making power in admiralty. These sections, together with § 2072, formerly § 723b (Rules in actions at law; Supreme Court authorized to make) are continued in so far as they are not inconsistent with § 2072, formerly § 723c (Union of equity and action at law rules; power of Supreme Court). See Note 3 to Rule 1. U.S.C., Title 28, former §§ 724 (Conformity Act), 397 (Amendments to pleadings when case brought to wrong side of court) and 398 (Equitable defenses and equitable relief in actions at law) are superseded.

2. Reference to actions at law or suits in equity in all statutes should now be treated as referring to the civil action prescribed in these rules.

3. This rule follows in substance the usual introductory statements to code practices which provide for a single action and mode of procedure, with abolition of forms of action and procedural distinctions. Representative statutes are N.Y.Code 1848, Laws 1848, ch. 379, § 62; N.Y.C.P.A.1937, § 8; Calif.Code Civ.Proc. 1937, § 307; 2 Minn.Stat.Ann.1945, § 540.01; 2 Wash.Rev.Stat.Ann. Remington, 1932, §§ 153, 255.

II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. Commencement of Action

A civil action is commenced by filing a complaint with the court.

NOTES OF ADVISORY COMMITTEE ON RULES
1937 ADOPTION

1. Rule 5(e) defines what constitutes filing with the court.

2. This rule governs the commencement of all actions, including those brought by or against the United States or an officer or agency thereof, regardless of whether service is to be made personally pursuant to Rule 4(d), or otherwise pursuant to Rule 4(e).

3. With this rule compare former Equity Rule 12 (Issue of Subpoena—Time for Answer) and the following statutes (and other similar statutes) which provide a similar method for commencing an action:

U.S.C., Title 28 former:

§ 45 (District courts; practice and procedure in certain cases under interstate commerce laws)

§ 762 (Petition in suit against United States)

§ 766 (Partition suits where United States is tenant in common or joint tenant)

4. This rule provides that the first step in an action is the filing of the complaint. Under Rule 4(a) this is to be followed forthwith by issuance of a summons and its delivery to an officer for service. Other rules providing for dismissal for failure to prosecute suggest a method available to attack unreasonable delay in prosecuting an action after it has been commenced. When a federal or state statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute, or whether any further step is required, such as, service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations. The requirement of Rule 4(a) that the clerk shall forthwith issue the summons and deliver it to the marshal for service will reduce the chances of such a question arising.

COMMENTARIES

See 28 U.S.C.A. Rule 3, Federal Rules of Civil Procedure, for Commentary by David D. Siegel.

Rule 4. Process

(a) **Summons: Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff sepa-

§ 10. The Grant of Judicial Power: The Essential Harmony of the Maritime Law.

This preventive purpose is especially evident in the constitutional grant of judicial power. The Constitution drawn the line between cases which belong to the United States Government and those which belong to the State governments but makes no grant of jurisdiction to this or that court beyond defining the original jurisdiction of the Supreme Court. The Constitution, in numerous classes of cases affecting our national relations or requiring a nation-wide uniformity of law and administration[18a] or demanding a freedom from local pre-possessions, has transferred from the States to the Federal Government the judicial attribute of sovereignty to be exercised by such courts and in such manner as the Congress should provide. The constitutional grant of judicial power was fixed and inflexible the moment the Constitution was adopted. The grant, however, was to the nation. The organization of the Federal courts and the distribution of judicial power among them (aside from the original jurisdiction of the Supreme Court) were left to Congress and have been subject to change from time to time.[18b] With the exception of the original jurisdiction of the Supreme Court, an Act of Congress is necessary to vest in a Federal Court any part of the judicial power which the Constitution bestows upon the Federal Government: the Constitution and the statute must concur. Subjects of jurisdiction, embraced in the Constitution, may lie dormant until Congress authorizes

[18a] Holmes, J., dissenting in Knickerbocker Ice Co. v. Stewart, (1920) 253 U.S. 149, 64 L.ed. 834, 40 Sup.Ct.Rep. 438, expressed the view that the only matters with regard to which uniformity of law is provided for in the Constitution are duties, imposts and excises, naturalization, and bankruptcy.

[18b] The admiralty jurisdiction in respect of appeals has been rearranged by Congress on several occasions, notably by the Circuit Court of Appeals Act of March 3, 1891, the Act abolishing the Circuit Courts of March 3, 1911, and the Supreme Court Act of February 13, 1925.

day after the date of enactment of this title [Nov. 19, 1988]."

COMMENTARIES

See 28 U.S.C.A. § 1332, for Commentary by David D. Siegel.

§ 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.

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

(As amended May 24, 1949, c. 139, § 79, 63 Stat. 101.)

REVISION NOTES

1948 ACT

Based on title 28, U.S.C. 1940 ed., §§ 41(3) and 371(3), (4) (Mar. 3, 1911, ch. 231, §§ 24, par. 3, 256, pars. 3, 4, 36 Stat. 1091, 1160; Oct. 6, 1917, ch. 97, §§ 1, 2, 40 Stat. 395; June 10, 1922, ch. 216, §§ 1, 2, 42 Stat. 634).

Section consolidates certain provisions of sections 41(3), 371(3) and 371(4) of title 28, U.S.C., 1940 ed. Other provisions of sections 41(3) and 371(4), relating to seizures, are incorporated in section 1356 of this title. (See reviser's note thereunder.)

The "saving to suitors" clause in sections 41(3) and 371(3) of title 28, U.S.C., 1940 ed., was changed by substituting the words "any other remedy to which he is otherwise entitled" for the words "the right of a common law remedy where the common law is competent to give it." The substituted language is simpler and more expressive of the original intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity.

Provisions of section 41(3) of title 28, U.S.C., 1940 ed., based on the 1917 and 1922 amendments, relating to remedies under State workmen's compensation laws, were deleted. Such amendments were held unconstitutional by the Supreme Court. (See *Knickerbocker Ice Co. v. Stewart*, 1920, 40 S.Ct. 438, 253 U.S. 149, 64 L.Ed. 834, and *State of Washington v. W.C. Dawson & Co.*, 1924, 44 S.Ct. 302, 264 U.S. 219, 68 L.Ed. 646.)

Words "libellant or petitioner" were substituted for "suitors" to describe moving party in admiralty cases.

Changes were made in phraseology.

1949 ACT

This section amends section 1333(a)(1) of title 28, U.S.C., by substituting "suitors" for "libellant or petitioner" to conform to the language of the law in existence at the time of the enactment of the revision of title 28.

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain or not to abstain made under this subsection is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

(As amended July 10, 1984, Pub.L. 98-353, Title I, § 101(a), 98 Stat. 333; Oct. 27, 1986, Pub.L. 99-554, Title I, § 144(e), 100 Stat. 3096; Dec. 1, 1990, Pub.L. 101-650, Title III, § 309(b), 104 Stat. 5113.)

REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(19) and 371(6) (Mar. 3, 1911, ch. 231, §§ 24, par. 19, 256, par. 6, 36 Stat. 1098, 1160).

Changes in phraseology were made.

EDITORIAL NOTES

Codification. Section 238 of Pub.L. 95-598, Nov. 6, 1978, 92 Stat. 2667, amended this section to read as follows:

"§ 1334. Bankruptcy appeals

patent offices belonging to the United States Patent Office, certified in the manner provided by section 1744 of this title are prima facie evidence of their contents and of the dates indicated on their face.

(Formerly § 1746. Renumbered § 1745, May 24, 1949, c. 139, § 92(e), 63 Stat. 103, amended Oct. 3, 1964, Pub.L. 88–619, § 7(a), 78 Stat. 996.)

REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 674 (R.S. § 893). Changes were made in phraseology.

EDITORIAL NOTES

Change of Name. The Patent Office was redesignated the Patent and Trademark Office by Pub.L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949.

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(Added Pub.L. 94–550, § 1(a), Oct. 18, 1976, 90 Stat. 2534.)

CHAPTER 117—EVIDENCE; DEPOSITIONS

Sec.

§ 1781. Transmittal of letter rogatory or request

(a) The Department of State has power, directly, or through suitable channels—

(1) to receive a letter rogatory issued, or request made, by a foreign or international tribunal, to transmit it to the tribunal, officer, or agency in the United States to whom it is addressed, and to receive and return it after execution; and

(2) to receive a letter rogatory issued, or request made, by a tribunal in the United States, to transmit it to the foreign or international tribunal, officer, or agency to whom it is addressed, and to receive and return it after execution.

(b) This section does not preclude—

(1) the transmittal of a letter rogatory or request directly from a foreign or international tribunal to the tribunal, officer, or agency in the United States to whom it is addressed and its return in the same manner; or

(2) the transmittal of a letter rogatory or request directly from a tribunal in the United States to the foreign or international tribunal, officer, or agency to whom it is addressed and its return in the same manner.

(As amended Oct. 3, 1964, Pub.L. 88–619, § 8(a), 78 Stat. 996.)

REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 653 (R.S. § 875; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 241; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Word "officer" was substituted for "commissioner" to obviate uncertainty as to the person to whom the letters or commission may be issued.

The third sentence of section 653 of title 28, U.S.C., 1940 ed., providing for admission of testimony "so taken and returned" without objection as to the method of return, was omitted as unnecessary. Obviously, if the method designated by Congress is followed, it cannot be objected to.

The last sentence of section 653 of title 26, U.S.C., 1940 ed., relating to letters rogatory from courts of foreign countries, is incorporated in section 1782 of this title.

The revised section extends the provisions of section 63 of title 28, U.S.C., 1940 ed., which applied only to cases wherein the United States was a party or was interested, so as to insure a uniform method of taking foreign depositions in all cases.

Words "courts of the United States" were inserted to make certain that the section is addressed to the Federal rather than the State courts as obviously intended by Congress.

Changes were made in phraseology.

(2) "Court" means any court created by the Congress of the United States, excluding the United States Tax Court.

(3) "Debt" means—

(A) an amount that is owing to the United States on account of a direct loan, or loan insured or guaranteed, by the United States; or

(B) an amount that is owing to the United States on account of a fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond forfeiture, reimbursement, recovery of a cost incurred by the United States, or other source of indebtedness to the United States, but that is not owing under the terms of a contract originally entered into by only persons other than the United States;

and includes any amount owing to the United States for the benefit of an Indian tribe or individual Indian, but excludes any amount to which the United States is entitled under section 3011(a).

(4) "Debtor" means a person who is liable for a debt or against whom there is a claim for a debt.

(5) "Disposable earnings" means that part of earnings remaining after all deductions required by law have been withheld.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(7) "Garnishee" means a person (other than the debtor) who has, or is reasonably thought to have, possession, custody, or control of any property in which the debtor has a substantial nonexempt interest, including any obligation due the debtor or to become due the debtor, and against whom a garnishment under section 3104 or 3205 is issued by a court.

(8) "Judgment" means a judgment, order, or decree entered in favor of the United States in a court and arising from a civil or criminal proceeding regarding a debt.

(9) "Nonexempt disposable earnings" means 25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act.

(10) "Person" includes a natural person (including an individual Indian), a corporation, a partnership, an unincorporated association, a trust, or an estate, or any other public or private entity, including a State or local government or an Indian tribe.

(11) "Prejudgment remedy" means the remedy of attachment, receivership, garnishment, or sequestration authorized by this chapter to be granted before judgment on the merits of a claim for a debt.

(12) "Property" includes any present or future interest, whether legal or equitable, in real, personal (including choses in action), or mixed property, tangible or intangible, vested or contingent, wherever located and however held (including community property and property held in trust (including spendthrift and pension trusts)), but excludes—

(A) property held in trust by the United States for the benefit of an Indian tribe or individual Indian; and

(B) Indian lands subject to restrictions against alienation imposed by the United States.

(13) "Security agreement" means an agreement that creates or provides for a lien.

(14) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, or any territory or possession of the United States.

* (15) "United States" means—

(A) a Federal corporation;

(B) an agency, department, commission, board, or other entity of the United States; or

(C) an instrumentality of the United States.

(16) "United States marshal" means a United States marshal, a deputy marshal, or an official of the United States Marshals Service designated under section 564.

(Added Pub.L. 101-647, Title XXXVI, § 3611, Nov. 29, 1990, 104 Stat. 4933.)

EDITORIAL NOTES

References in Text. Section 303 of the Consumer Credit Protection Act, referred to in par. (9), is classified to section 1673 of Title 15, Commerce and Trade.

Effective Date. Section to take effect 180 days after Nov. 29, 1990, except as otherwise provided, see section 3631 of Pub.L. 101-647, set out as a note under section 3001 of this title.

§ 3003. Rules of construction

(a) **Terms.**—For purposes of this chapter—

(1) the terms "includes" and "including" are not limiting;

(2) the term "or" is not exclusive; and

(3) the singular includes the plural.

PART II—DEPARTMENT OF JUSTICE

CHAPTER 31—THE ATTORNEY GENERAL

EDITORIAL NOTES

Change of Name. References to United States Claims Court deemed to refer to United States Court of Federal Claims and references to Claims Court deemed to refer to Court of Federal Claims, see section 902(b) of Pub.L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 501. Executive department

The Department of Justice is an executive department of the United States at the seat of Government.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 611.)

REVISION NOTES

Derivation	U.S.Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 291 (less last 10 words).	R.S. § 346 (less last 10 words).

The words "There shall be", referring to the establishment of the Department, are omitted as executed.

§ 502. Seal

The Attorney General shall have a seal for the Department of Justice. The design of the seal is subject to the approval of the President.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 611.)

REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 292.	R.S. § 353.

The section is rewritten to conform to other statutes authorizing departmental seals. The words "The seal heretofore provided for the office of the Attorney General shall be" are omitted as obsolete.

§ 503. Attorney General

The President shall appoint, by and with the advice and consent of the Senate, an Attorney General of the United States. The Attorney General is the head of the Department of Justice.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

REVISION NOTES

Derivation	U.S.Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 291 (last 10 words).	R.S. § 346 (last 10 words).

The words "The President shall appoint, by and with the advice and consent of the Senate" have been added to conform the section with the Constitution. See article II, section 2, clause 2.

§ 504. Deputy Attorney General

The President may appoint, by and with the advice and consent of the Senate, a Deputy Attorney General.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

REVISION NOTES

Derivation	U.S.Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 294.	Mar. 3, 1903, ch. 1006, § 1 (so much of 2d par. under "Department of Justice" as provides for appointment, pay, and duties of an assistant to the Attorney General), 32 Stat. 1062.
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 3, eff. May 24, 1950, 64 Stat. 1261.

The words "may appoint" are substituted for "is authorized to appoint". So much of the Act of Mar. 3, 1903, as relates to pay is omitted as superseded by § 303(c) of the Act of Aug. 14, 1964, Pub.L. 88–426, 78 Stat. 416, which is codified in section 5314 of title 5, United States Code.

§ 504a. Associate Attorney General

The President may appoint, by and with the advice and consent of the Senate, an Associate Attorney General.

(Added Pub.L. 95–139, § 1(a), Oct. 19, 1977, 91 Stat. 1171.)

§ 505. Solicitor General

The President shall appoint in the Department of Justice, by and with the advice and consent of the Senate, a Solicitor General, learned in the law, to assist the Attorney General in the performance of his duties.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 293.	R.S. § 347 (less last sentence).

So much of R.S. § 347 as relates to the pay of the Solicitor General is omitted as superseded by § 303(c) of the Act of Aug. 14, 1964, Pub.L. 88–426, 78 Stat. 416, which is codified in section 5314 of title 5, United States Code.

§ 506. Assistant Attorneys General

The President shall appoint, by and with the advice and consent of the Senate, ten Assistant Attorneys General, who shall assist the Attorney General in the performance of his duties.

(Added Pub.L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 612, and amended Pub.L. 95–598, Title II, § 218, Nov. 6, 1978, 92 Stat. 2662.)

REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 295.	R.S. § 348.
		July 11, 1890, ch. 667, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 26 Stat. 265.
		Mar. 3, 1903, ch. 1006, § 1 (so much of 2d par. under "Department of Justice" as provides for appointment, pay, and duties of an additional Assistant Attorney General), 32 Stat. 1062.
		July 16, 1914, ch. 141, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 38 Stat. 497.
		Mar. 4, 1915, ch. 141, § 1 (words between 3d and 4th semicolons under "Department of Justice"), 38 Stat. 1038.
		June 16, 1933, ch. 101, § 16(b), 48 Stat. 308.
		Mar. 2, 1943, ch. 7, 57 Stat. 4.
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 4, eff. May 24, 1950, 64 Stat. 1261.
.....	[Uncodified].	1953 Reorg. Plan No. 4, § 2, eff. June 20, 1953, 67 Stat. 636.
.....	5 U.S.C. 295–1.	Sept. 9, 1957, Pub.L. 85–315, § 111, 71 Stat. 637.

The words "There shall be in the Department of Justice" are omitted as unnecessary as the title of the positions establishes their location in the Department of Justice.

The position of sixth Assistant Attorney General, referred to in the Acts of July 16, 1914, and Mar. 4, 1915, was made a permanent position by the Act of Mar. 4, 1915, ch. 141, § 6, 38 Stat. 1049.

The number of Assistant Attorneys General referred to in the Act of Mar. 2, 1943, is changed from "six" to "nine" to reflect the three additional Assistant Attorneys General authorized by 1950 Reorg. Plan No. 2, 1953 Reorg. Plan No. 4, and the Act of Sept. 9, 1957.

The words "learned in the law" are omitted as unnecessary. Such a requirement is not made of the Attorney General, United States attorneys, or United States judges. (See reviser's note under 28 U.S.C. 501, 1964 ed.)

The reference in former section 295 of title 5 to the Assistant Attorneys General assisting the Solicitor General are omitted on authority of the transfer of functions made by 1950 Reorg. Plan No. 2 and 1953 Reorg. Plan No. 4.

Provisions of 1950 Reorg. Plan No. 2, § 4, and 1953 Reorg. Plan No. 4, § 2, abolishing positions and transferring incumbents are omitted as executed.

Provisions relating to pay of Assistant Attorneys General are omitted as superseded by § 303(d) of the Act of August 14, 1964, Pub. L. 88-426, 78 Stat. 418, which is codified in section 5315 of title 5, United States Code.

§ 507. Assistant Attorney General for Administration

(a) The Attorney General shall appoint, with the approval of the President, an Assistant Attorney General for Administration, who shall perform such duties as the Attorney General may prescribe.

(b) The position of Assistant Attorney General for Administration is in the competitive service.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 612.)

REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	1950 Reorg. Plan No. 2, § 5 eff. May 24, 1950, 64 Stat. 1261.

The title of the position was changed to "Assistant Attorney General for Administration" by § 307 of the Act of Aug. 14, 1964, Pub. L. 88-426, 78 Stat. 432.

The words "competitive service" are substituted for "classified civil service" because the term "classified civil service" formerly used to designate the merit system established by the Civil Service Act of 1883 has become ambiguous due to the creation of the "classified" pay system. The term "competitive service" is now customarily used, and appears throughout title 5, United States Code, in place of "classified civil service".

The words "There shall be in the Department of Justice" are omitted as unnecessary as the title of the position and the fact of appointment by the Attorney General establish the location of the position in the Department of Justice.

The last 12 words of section 5 of the Reorganization Plan are omitted on authority of the Act of June 5, 1952, ch. 369, § 1101 (3d proviso), 66 Stat. 121. The salary of the position is now fixed by § 303(e) of the Act of Aug. 14, 1964, Pub. L. 88-426, 78 Stat. 420, which is codified in section 5316 of title 5, United States Code.

§ 508. Vacancies

(a) In case of a vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General may exercise all the duties of that office, and for the purpose of section 3345 of title 5 the Deputy Attorney General is the first assistant to the Attorney General.

(b) When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall act as Attorney General. The Attorney General may designate the Solicitor General and the Assistant Attorneys General, in further order of succession, to act as Attorney General.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 612, and amended Pub.L. 95-139, § 2, Oct. 19, 1977, 91 Stat. 1171.)

REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	[Uncodified].	R.S. § 347 (last sentence). 1953 Reorg. Plan No. 4, § 1, eff. June 20, 1953, 67 Stat. 636.

The last sentence of R.S. § 347 is cited as authority inasmuch as the function contained therein was the function transferred to the Deputy Attorney General by 1953 Reorg. Plan No. 4. The word "may" is substituted for "have the power". The words "During any period of time" are omitted as unnecessary.

§ 509. Functions of the Attorney General

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions—

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 612, and amended Pub.L. 95-251, § 2(a)(6), Mar. 27, 1978, 92 Stat. 183; Pub.L. 98-473, Title II, § 228(a), Oct. 12, 1984, 98 Stat. 2030.)

foreign to the other states of the Union, as well as to other nations. It was competent for the people of the states, although thus foreign to each other and independent, to create by common consent, a General Government, and to invest it with all the powers which they might deem proper and necessary to extend or restrain these powers according to their own good pleasure, and to give them a permanent and supreme authority.(a)

§ 25. For mutual aid, these states, in 1777, formed a league or articles of perpetual union of feeble character, known as the Articles of Confederation, creating a sort of general government; and finally, in 1789, to form a more perfect union, and especially to establish justice, the present General Government was formed by the Constitution of the United States, and to it was granted by that instrument a portion only of the powers previously existing in the states, and the people thereof. It was a government made by taking from the states, and the people thereof, and transferring to the United States, and the people thereof, certain portions of sovereignty; so that while under most other constitutional governments, including those of the States of this Union, the legislature or supreme power may lawfully do any thing which is not forbidden in their constitutions, the government of the United States, having no powers except such as are granted to it directly or indirectly in its constitution, can do nothing except those things for which it can show a constitutional authority.(b)

§ 26. Some of these grants convey elemental powers of government in all their fulness and force, while others are conveyed in a modified and restricted form. They were grants by governments already organized, and possessing and actually exercising, with few restrictions, unlimited sovereignty. They were made by the "People of the United States," but not by the people as a primary and unorganized mass solely, but by the people already formed into regular communities, and acting through or under their established constitutions; they were thus, direct grants by the people, of these primitive powers, which, on the

(a) 1 Wheat. 304, 326. 8 Pet. 464.
(b) 12 Pet. Rep. 720. 7 Cranch, 32.

theory of our governments, are supposed to emanate from the People, and they were also grants, by established popular governments, of powers constituting a part of their own acknowledged functions; and while they were the act of the constituted authorities, in the name of the People, they were also ratified by the People as the ultimate source of political power. They are therefore, all of them, to their proper extent, and for the accomplishment of their proper purpose, of the most uncontrollable and irresistible character, and they are without any limit, except such as is prescribed by the constitution itself. Thus the power of peace and war, of international negotiation, of coinage, the judicial power over all cases affecting ambassadors, and over all cases of admiralty and maritime jurisdiction, and others are transferred to the general government, free from all restriction and limitation.(a)

§ 27. All the powers in the constitution were conferred upon the general government for purposes expressed in the constitution, in view of which purposes they are respectively to be construed. The constitution was made "to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty," to all the people of all the states. Its grand purpose was to *unify* the whole in the relations of internationality, and all its minor purposes were subordinate and ancillary to this. Its grants therefore consist of great classes of powers. Those which should especially regulate our intercourse with foreign nations and their subjects, and with the sister states and their citizens, and those in the exercise of which we were ourselves to be emphatically one people, and to be clothed with equal rights, although in other respects we were to remain members of different communities, were granted to the General Government, that our intercourse with foreign powers, might be so regulated as to make us one of the great family of nations, acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and that

(a) 4 Wend. 472. 4 Wheat. 316. Const. Art. 1, § 8, 10. Ibid. Art. 3, § 2.

the separate States might not by jarring, inconstant and antagonizing laws, destroy the harmony which could alone make us, and keep us the United States.(a)

§ 28. This is especially evident in the constitutional grants of judicial power. They are not grants to this or that court of the United States. The Constitution does nothing but draw the line between the cases which belong to the United States Government and those which belong to the State Governments. It transfers from the States and the people of the states to the General Government, the judicial sovereignty in great national classes of cases to be exercised, not necessarily by courts constituted like the British Admiralty, or the British courts of common law or equity, but by such courts, and in such manner as the congress of the newly created Government should provide. When the Constitution was made, there were no courts of the United States of any sort, nor was it certain that there would be here, (as there never has been,) a purely Admiralty Court, but it was certain that in the multifarious transactions on the ocean, seas, lakes and rivers, which were to be the highways of our intercourse and commerce, between the several states and the various nations of the world, a thousand questions might continually arise, when the law of nations and the law of maritime commerce—the maritime law of the world—ought to take the place of the numerous conflicting and changing rules which could not fail to result from the various legislation and adjudication of the states, and in no manner could a uniform administration of that great branch of the law of nations, known as the general maritime law, be secured, except by the transfer of all cases of admiralty and maritime jurisdiction, to the cognizance of the National Judiciary.(b)

§ 29. A fruitful source of error in relation to the Government of the United States, is its supposed relation to the British Government. The United States is sometimes said to be, and in

(a) Const. Preamble. Art. 1, § 8, 9, 10. Ibid. Art. 3, § 2, Art. 4. 1 Wheat. 324, 325, 347, 348.

(b) Const. Art. 3, § 2. 6 Howard, 451 to 457.