

CHAP. XX.—An Act to establish the Judicial Courts of the United States.

1 SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of
2 America in Congress assembled, That the supreme court of the United States shall consist of a
3 chief justice and five associate justices, any four of whom shall be a quorum, and shall hold
4 annually at the seat of government two sessions, the one commencing the first Monday of
5 February, and the other the first Monday of August. That the associate justices shall have
6 precedence according to the date of their commissions, or when the commissions of two or more
7 of them bear date on the same day, according to their respective ages.

8 SEC . 2. And be it further enacted, That the United States shall be, and they hereby are divided
9 into thirteen districts, to be limited and called as follows, to wit: one to consist of that part of the
10 State of Massachusetts which lies easterly of the State of New Hampshire, and to be called Maine
11 District; one to consist of the State of New Hampshire, and to be called New Hampshire District;
12 one to consist of the remaining part of the State of Massachusetts, and to be called Massachusetts
13 district; one to consist of the State of Connecticut, and to be called Connecticut District; one to
14 consist of the State of New York, and to be called New York District; one to consist of the State
15 of New Jersey, and to be called New Jersey District; one to consist of the State of Pennsylvania,
16 and to be called Pennsylvania District; one to consist of the State of Delaware, and to be called
17 Delaware District; one to consist of the State of Maryland, and to be called Maryland District;
18 one to consist of the State of Virginia, except that part called the District of Kentucky, and to be
19 called Virginia District; one to consist of the remaining part of the State of Virginia, and to be
20 called Kentucky District; one to consist of the State of South Carolina, and to be called South
21 Carolina District; and one to consist of the State of Georgia, and to be called Georgia District.

22 SEC . 3. And be it further enacted, That there be a court called a District Court, in each of the
23 afore mentioned districts, to consist of one judge, who shall reside in the district for which he is
24 appointed, and shall be called a District Judge, and shall hold annually four sessions, the first of
25 which to commence as follows, to wit: in the districts of New York and of New Jersey on the
26 first, in the district of Pennsylvania on the second, in the district of Connecticut on the third, and
27 in the district of Delaware on the fourth, Tuesdays of November next; in the districts of
28 Massachusetts, of Maine, and of Maryland, on the first, in the district of Georgia on the second,
29 and in the districts of New Hampshire, of Virginia, and of Kentucky, on the third Tuesdays of
30 December next; and the other three sessions progressively in the respective districts on the like

31 Tuesdays of every third calendar month afterwards, and in the district of South Carolina, on the
32 third Monday in March and September, the first Monday in July, and the second Monday in
33 December of each and every year, commencing in December next; and that the District Judge
34 shall have power to hold special courts at his discretion. That the stated District Court shall be
35 held at the places following, to wit: in the district of Maine, at Portland and Pownalsborough
36 alternately, beginning at the first; in the district of New Hampshire, at Exeter and Portsmouth
37 alternately, beginning at the first; in the district of Massachusetts, at Boston and Salem
38 alternately, beginning at the first; in the district of Connecticut, alternately at Hartford and New
39 Haven, beginning at the first; in the district of New York, at New York; in the district of New
40 Jersey, alternately at New Brunswick and Burlington, beginning at the first; in the district of
41 Pennsylvania, at Philadelphia and York Town alternately, beginning at the first; in the district of
42 Delaware, alternately at Newcastle and Dover, beginning at the first; in the district of Maryland,
43 alternately at Baltimore and Easton, beginning at the first; in the district of Virginia, alternately at
44 Richmond and Williamsburgh, beginning at the first; in the district of Kentucky, at Harrodsburgh;
45 in the district of South Carolina, at Charleston; and in the district of Georgia, alternately at
46 Savannah and Augusta, beginning at the first; and that the special courts shall be held at the same
47 place in each district as the stated courts, or in districts that have two, at either of them, in the
48 discretion of the judge, or at such other place in the district, as the nature of the business and his
49 discretion shall direct. And that in the districts that have but one place for holding the District
50 Court, the records thereof shall be kept at that place; and in districts that have two, at that place in
51 each district which the judge shall appoint.

52 SEC . 4. And be it further enacted, That the before mentioned districts, except those of Maine and
53 Kentucky, shall be divided into three circuits, and be called the eastern, the middle, and the
54 southern circuit. That the eastern circuit shall consist of the districts of New Hampshire,
55 Massachusetts, Connecticut and New York; that the middle circuit shall consist of the districts of
56 New Jersey, Pennsylvania, Delaware, Maryland and Virginia; and that the southern circuit shall
57 consist of the districts of South Carolina and Georgia, and that there shall be held annually in
58 each district of said circuits, two courts, which shall be called Circuit Courts, and shall consist of
59 any two justices of the Supreme Court, and the district judge of such districts, any two of whom
60 shall constitute a quorum: Provided, That no district judge shall give a vote in any case of appeal
61 or error from his own decision; but may assign the reasons of such his decision.

62 SEC . 5. And be it further enacted, That the first session of the said circuit court in the several

63 districts shall commence at the times following, to wit: in New Jersey on the second, in New
64 York on the fourth, in Pennsylvania on the eleventh, in Connecticut on the twenty-second, and in
65 Delaware on the twenty-seventh, days of April next; in Massachusetts on the third, in Maryland
66 on the seventh, in South Carolina on the twelfth, in New Hampshire on the twentieth, in Virginia
67 on the twenty-second, and in Georgia on the twenty-eighth, days of May next, and the subsequent
68 sessions in the respective districts on the like days of every sixth calendar month afterwards,
69 except in South Carolina, where the session of the said court shall commence on the first, and in
70 Georgia where it shall commence on the seventeenth day of October, and except when any of
71 those days shall happen on a Sunday, and then the session shall commence on the next day
72 following. And the sessions of the said circuit court shall be held in the district of New
73 Hampshire, at Portsmouth and Exeter alternately, beginning at the first; in the district of
74 Massachusetts, at Boston; in the district of Connecticut, alternately at Hartford and New Haven,
75 beginning at the last; in the district of New York, alternately at New York and Albany, beginning
76 at the first; in the district of New Jersey, at Trenton; in the district of Pennsylvania, alternately at
77 Philadelphia and Yorktown, beginning at the first; in the district of Delaware, alternately at New
78 Castle and Dover, beginning at the first; in the district of Maryland, alternately at Annapolis and
79 Easton, beginning at the first; in the district of Virginia, alternately at Charlottesville and
80 Williamsburgh, beginning at the first; in the district of South Carolina, alternately at Columbia
81 and Charleston, beginning at the first; and in the district of Georgia, alternately at Savannah and
82 Augusta, beginning at the first. And the circuit courts shall have power to hold special sessions
83 for the trial of criminal causes at any other time at their discretion, or at the discretion of the
84 Supreme Court.

85 SEC . 6. And be it further enacted, That the Supreme Court may, by any one or more of its
86 justices being present, be adjourned from day to day until a quorum be convened; and that a
87 circuit court may also be adjourned from day to day by any one of its judges, or if none are
88 present, by the marshal of the district until a quorum be convened; and that a district court, in case
89 of the inability of the judge to attend at the commencement of a session, may by virtue of a
90 written order from the said judge, directed to the marshal of the district, be adjourned by the said
91 marshal to such day, antecedent to the next stated session of the said court, as in the said order
92 shall be appointed; and in case of the death of the said judge, and his vacancy not being supplied,
93 all process, pleadings and proceedings of what nature soever, pending before the said court, shall
94 be continued of course until the next stated session after the appointment and acceptance of the
95 office by his successor.

96 SEC . 7. And be it [further] enacted, That the Supreme Court, and the district courts shall have
97 power to appoint clerks for their respective courts, and that the clerk for each district court shall
98 be clerk also of the circuit court in such district, and each of the said clerks shall, before he enters
99 upon the execution of his office, take the following oath or affirmation, to wit: "I, A. B., being
100 appointed clerk of, do solemnly swear, or affirm, that I will truly and faithfully enter and record
101 all the orders, decrees, judgments and proceedings of the said court, and that I will faithfully and
102 impartially discharge and perform all the duties of my said office, according to the best of my
103 abilities and understanding. So help me God." Which words, so help me God, shall be omitted in
104 all cases where an affirmation is admitted instead of an oath. And the said clerks shall also
105 severally give bond, with sufficient sureties, (to be approved of by the Supreme and district courts
106 respectively) to the United States, in the sum of two thousand dollars, faithfully to discharge the
107 duties of his office, and seasonably to record the decrees, judgments and determinations of the
108 court of which he is clerk.

109 SEC . 8. And be it further enacted, That the justices of the Supreme Court, and the district judges,
110 before they proceed to execute the duties of their respective offices, shall take the following oath
111 or affirmation, to wit: "I, A. B., do solemnly swear or affirm, that I will administer justice without
112 respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and
113 impartially discharge and perform all the duties incumbent on me as, according to the best of my
114 abilities and understanding, agreeably to the constitution, and laws of the United States. So help
115 me God."

116 SEC . 9. And be it further enacted, That the district courts shall have, exclusively of the courts of
117 the several States, cognizance of all crimes and offences that shall be cognizable under the
118 authority of the United States, committed within their respective districts, or upon the high seas;
119 where no other punishment than whipping, not exceeding thirty stripes, a fine not exceeding one
120 hundred dollars, or a term of imprisonment not exceeding six months, is to be inflicted; and shall
121 also have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction,
122 including all seizures under laws of impost, navigation or trade of the United States, where the
123 seizures are made, on waters which are navigable from the sea by vessels of ten or more tons
124 burthen, within their respective districts as well as upon the high seas; saving to suitors, in all
125 cases, the right of a common law remedy, where the common law is competent to give it; and
126 shall also have exclusive original cognizance of all seizures on land, or other waters than as

127 aforesaid, made, and of all suits for penalties and forfeitures incurred, under the laws of the
128 United States. And shall also have cognizance, concurrent with the courts of the several States, or
129 the circuit courts, as the case may be, of all causes where an alien sues for a tort only in violation
130 of the law of nations or a treaty of the United States. And shall also have cognizance, concurrent
131 as last mentioned, of all suits at common law where the United States sue, and the matter in
132 dispute amounts, exclusive of costs, to the sum or value of one hundred dollars. And shall also
133 have jurisdiction exclusively of the courts of the several States, of all suits against consuls or
134 vice-consuls, except for offences above the description aforesaid. And the trial of issues in fact, in
135 the district courts, in all causes except civil causes of admiralty and maritime jurisdiction, shall be
136 by jury.

137 SEC . 10. And be it further enacted, That the district court in Kentucky district shall, besides the
138 jurisdiction aforesaid, have jurisdiction of all other causes, except of appeals and writs of error,
139 hereinafter made cognizable in a circuit court, and shall proceed therein in the same manner as a
140 circuit court, and writs of error and appeals shall lie from decisions therein to the Supreme Court
141 in the same causes, as from a circuit court to the Supreme Court, and under the same regulations.
142 And the district court in Maine district shall, besides the jurisdiction herein before granted, have
143 jurisdiction of all causes, except of appeals and writs of error herein after made cognizable in a
144 circuit court, and shall proceed therein in the same manner as a circuit court: And writs of error
145 shall lie from decisions therein to the circuit court in the district of Massachusetts in the same
146 manner as from other district courts to their respective circuit courts.

147 SEC . 11. And be it further enacted, That the circuit courts shall have original cognizance,
148 concurrent with the courts of the several States, of all suits of a civil nature at common law or in
149 equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred
150 dollars, and the United States are plaintiffs, or petitioners; or an alien is a party, or the suit is
151 between a citizen of the State where the suit is brought, and a citizen of another State. And shall
152 have exclusive cognizance of all crimes and offences cognizable under the authority of the United
153 States, except where this act otherwise provides, or the laws of the United States shall otherwise
154 direct, and concurrent jurisdiction with the district courts of the crimes and offences cognizable
155 therein. But no person shall be arrested in one district for trial in another, in any civil action
156 before a circuit or district court. And no civil suit shall be brought before either of said courts
157 against an inhabitant of the United States, by any original process in any other district than that
158 whereof he is an inhabitant, or in which he shall be found at the time of serving the writ, nor shall

159 any district or circuit court have cognizance of any suit to recover the contents of any promissory
160 note or other chose in action in favour of an assignee, unless a suit might have been prosecuted in
161 such court to recover the said contents if no assignment had been made, except in cases of foreign
162 bills of exchange. And the circuit courts shall also have appellate jurisdiction from the district
163 courts under the regulations and restrictions herein after provided.

164 SEC . 12. And be it further enacted, That if a suit be commenced in any state court against an
165 alien, or by a citizen of the state in which the suit is brought against a citizen of another state, and
166 the matter in dispute exceeds the aforesaid sum or value of five hundred dollars, exclusive of
167 costs, to be made to appear to the satisfaction of the court; and the defendant shall, at the time of
168 entering his appearance in such state court, file a petition for the removal of the cause for trial
169 into the next circuit court, to be held in the district where the suit is pending, or if in the district of
170 Maine to the district court next to be holden therein, or if in Kentucky district to the district court
171 next to be holden therein, and offer good and sufficient surety for his entering in such court, on
172 the first day of its session, copies of said process against him, and also for his there appearing and
173 entering special bail in the cause, if special bail was originally requisite therein, it shall then be
174 the duty of the state court to accept the surety, and proceed no further in the cause, and any bail
175 that may have been originally taken shall be discharged, and the said copies being entered as
176 aforesaid, in such court of the United States, the cause shall there proceed in the same manner as
177 if it had been brought there by original process. And any attachment of the goods or estate of the
178 defendant by the original process, shall hold the goods or estate so attached, to answer the final
179 judgment in the same manner as by the laws of such state they would have been holden to answer
180 final judgment, had it been rendered by the court in which the suit commenced. And if in any
181 action commenced in a state court, the title of land be concerned, and the parties are citizens of
182 the same state, and the matter in dispute exceeds the sum or value of five hundred dollars,
183 exclusive of costs, the sum or value being made to appear to the satisfaction of the court, either
184 party, before the trial, shall state to the court and make affidavit if they require it, that he claims
185 and shall rely upon a right or title to the land, under a grant from a state other than that in which
186 the suit is pending, and produce the original grant or an exemplification of it, except where the
187 loss of public records shall put it out of his power, and shall move that the adverse party inform
188 the court, whether he claims a right or title to the land under a grant from the state in which the
189 suit is pending; the said adverse [party] shall give such information, or otherwise not be allowed
190 to plead such grant, or give it in evidence upon the trial, and if he informs that he does claim
191 under such grant, the party claiming under the grant first mentioned may then, on motion, remove
192 the cause for trial to the next circuit court to be holden in such district, or if in the district of

193 Maine, to the court next to be holden therein; or if in Kentucky district, to the district court next
194 to be holden therein; but if he is the defendant, shall do it under the same regulations as in the
195 before-mentioned case of the removal of a cause into such court by an alien; and neither party
196 removing the cause, shall be allowed to plead or give evidence of any other title than that by him
197 stated as aforesaid, as the ground of his claim; and the trial of issues in fact in the circuit courts
198 shall, in all suits, except those of equity, and of admiralty, and maritime jurisdiction, be by jury.

199 SEC . 13. And be it further enacted, That the Supreme Court shall have exclusive jurisdiction of
200 all controversies of a civil nature, where a state is a party, except between a state and its citizens;
201 and except also between a state and citizens of other states, or aliens, in which latter case it shall
202 have original but not exclusive jurisdiction. And shall have exclusively all such jurisdiction of
203 suits or proceedings against ambassadors, or other public ministers, or their domestics, or
204 domestic servants, as a court of law can have or exercise consistently with the law of nations; and
205 original, but not exclusive jurisdiction of all suits brought by ambassadors, or other public
206 ministers, or in which a consul, or vice consul, shall be a party. And the trial of issues in fact in
207 the Supreme Court, in all actions at law against citizens of the United States, shall be by jury. The
208 Supreme Court shall also have appellate jurisdiction from the circuit courts and courts of the
209 several states, in the cases herein after specially provided for; and shall have power to issue writs
210 of prohibition to the district courts, when proceeding as courts of admiralty and maritime
211 jurisdiction, and writs of mandamus, in cases warranted by the principles and usages of law, to
212 any courts appointed, or persons holding office, under the authority of the United States.

213 SEC . 14. And be it further enacted, That all the before-mentioned courts of the United States,
214 shall have power to issue writs of scire facias, habeas corpus, and all other writs not specially
215 provided for by statute, which may be necessary for the exercise of their respective jurisdictions,
216 and agreeable to the principles and usages of law. And that either of the justices of the supreme
217 court, as well as judges of the district courts, shall have power to grant writs of habeas corpus for
218 the purpose of an inquiry into the cause of commitment.—Provided, That writs of habeas
219 corpus shall in no case extend to prisoners in gaol, unless where they are in custody, under or by
220 colour of the authority of the United States, or are committed for trial before some court of the
221 same, or are necessary to be brought into court to testify.

222 SEC . 15. And be it further enacted, That all the said courts of the United States, shall have power
223 in the trial of actions at law, on motion and due notice thereof being given, to require the parties

224 to produce books or writings in their possession or power, which contain evidence pertinent to the
225 issue, in cases and under circumstances where they might be compelled to produce the same by
226 the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with such
227 order, to produce books or writings, it shall be lawful for the courts respectively, on motion, to
228 give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to
229 comply with such order, to produce books or writings, it shall be lawful for the courts
230 respectively on motion as aforesaid, to give judgment against him or her by default.

231 SEC . 16. And be it further enacted, That suits in equity shall not be sustained in either of the
232 courts of the United States, in any case where plain, adequate and complete remedy may be had at
233 law.

234 SEC . 17. And be it further enacted, That all the said courts of the United States shall have power
235 to grant new trials, in cases where there has been a trial by jury for reasons for which new trials
236 have usually been granted in the courts of law; and shall have power to impose and administer all
237 necessary oaths or affirmations, and to punish by fine or imprisonment, at the discretion of said
238 courts, all contempts of authority in any cause or hearing before the same; and to make and
239 establish all necessary rules for the orderly conducting business in the said courts, provided such
240 rules are not repugnant to the laws of the United States.

241 SEC . 18. And be it further enacted, That when in a circuit court, judgment upon a verdict in a
242 civil action shall be entered, execution may on motion of either party, at the discretion of the
243 court, and on such conditions for the security of the adverse party as they may judge proper, be
244 stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office
245 of said court, a petition for a new trial. And if such petition be there filed within said term of
246 forty-two days, with a certificate thereon from either of the judges of such court, that he allows
247 the same to be filed, which certificate he may make or refuse at his discretion, execution shall of
248 course be further stayed to the next session of said court. And if a new trial be granted, the former
249 judgment shall be thereby rendered void.

250 SEC . 19. And be it further enacted, That it shall be the duty of circuit courts, in causes in equity
251 and of admiralty and maritime jurisdiction, to cause the facts on which they found their sentence
252 or decree, fully to appear upon the record either from the pleadings and decree itself, or a state of
253 the case agreed by the parties, or their counsel, or if they disagree by a stating of the case by the

254 court.

255 SEC . 20. And be it further enacted, That where in a circuit court, a plaintiff in an action,
256 originally brought there, or a petitioner in equity, other than the United States, recovers less than
257 the sum or value of five hundred dollars, or a libellant, upon his own appeal, less than the sum or
258 value of three hundred dollars, he shall not be allowed, but at the discretion of the court, may be
259 adjudged to pay costs.

260 SEC . 21. And be it further enacted, That from final decrees in a district court in causes of
261 admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three
262 hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court, to be held
263 in such district. Provided nevertheless, That all such appeals from final decrees as aforesaid, from
264 the district court of Maine, shall be made to the circuit court, next to be holden after each appeal
265 in the district of Massachusetts.

266 SEC . 22. And be it further enacted, That final decrees and judgments in civil actions in a district
267 court, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs,
268 may be reexamined, and reversed or affirmed in a circuit court, holden in the same district, upon a
269 writ of error, whereto shall be annexed and returned therewith at the day and place therein
270 mentioned, an authenticated transcript of the record, an assignment of errors, and prayer for
271 reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice
272 of the Supreme Court, the adverse party having at least twenty days' notice. And upon a like
273 process, may final judgments and decrees in civil actions, and suits in equity in a circuit court,
274 brought there by original process, or removed there from courts of the several States, or removed
275 there by appeal from a district court where the matter in dispute exceeds the sum or value of two
276 thousand dollars, exclusive of costs, be re-examined and reversed or affirmed in the Supreme
277 Court, the citation being in such case signed by a judge of such circuit court, or justice of the
278 Supreme Court, and the adverse party having at least thirty days' notice. But there shall be no
279 reversal in either court on such writ of error for error in ruling any plea in abatement, other than a
280 plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of
281 a demurrer, or for any error in fact. And writs of error shall not be brought but within five years
282 after rendering or passing the judgment or decree complained of, or in case the person entitled to
283 such writ of error be an infant, feme covert, non compos mentis, or imprisoned, then within five
284 years as aforesaid, exclusive of the time of such disability. And every justice or judge signing a

285 citation on any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff
286 in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his
287 plea good.

288 SEC . 23. And be it further enacted, That a writ of error as aforesaid shall be a supersedeas and
289 stay execution in cases only where the writ of error is served, by a copy thereof being lodged for
290 the adverse party in the clerk's office where the record remains, within ten days, Sundays
291 exclusive, after rendering the judgment or passing the decree complained of. Until the expiration
292 of which term of ten days, executions shall not issue in any case where a writ of error may be a
293 supersedeas; and whereupon such writ of error the Supreme or a circuit court shall affirm a
294 judgment or decree, they shall adjudge or decree to the respondent in error just damages for his
295 delay, and single or double costs at their discretion.

296 SEC . 24. And be it further enacted, That when a judgment or decree shall be reversed in a circuit
297 court, such court shall proceed to render such judgment or pass such decree as the district court
298 should have rendered or passed; and the Supreme Court shall do the same on reversals therein,
299 except where the reversal is in favour of the plaintiff, or petitioner in the original suit, and the
300 damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand
301 the cause for a final decision. And the Supreme Court shall not issue execution in causes that are
302 removed before them by writs of error, but shall send a special mandate to the circuit court to
303 award execution thereupon.

304 SEC . 25. And be it further enacted, That a final judgment or decree in any suit, in the highest
305 court of law or equity of a State in which a decision in the suit could be had, where is drawn in
306 question the validity of a treaty or statute of, or an authority exercised under the United States,
307 and the decision is against their validity; or where is drawn in question the validity of a statute of,
308 or an authority exercised under any State, on the ground of their being repugnant to the
309 constitution, treaties or laws of the United States, and the decision is in favour of such their
310 validity, or where is drawn in question the construction of any clause of the constitution, or of a
311 treaty, or statute of, or commission held under the United States, and the decision is against the
312 title, right, privilege or exemption specially set up or claimed by either party, under such clause of
313 the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed
314 in the Supreme Court of the United States upon a writ of error, the citation being signed by the

315 chief justice, or judge or chancellor of the court rendering or passing the judgment or decree
316 complained of, or by a justice of the Supreme Court of the United States, in the same manner and
317 under the same regulations, and the writ shall have the same effect, as if the judgment or decree
318 complained of had been rendered or passed in a circuit court, and the proceeding upon the
319 reversal shall also be the same, except that the Supreme Court, instead of remanding the cause for
320 a final decision as before provided, may at their discretion, if the cause shall have been once
321 remanded before, proceed to a final decision of the same, and award execution. But no other error
322 shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as
323 appears on the face of the record, and immediately respects the before mentioned questions of
324 validity or construction of the said constitution, treaties, statutes, commissions, or authorities in
325 dispute.

326 SEC . 26. And be it further enacted, That in all causes brought before either of the courts of the
327 United States to recover the forfeiture annexed to any articles of agreement, covenant, bond, or
328 other speciality, where the forfeiture, breach or non-performance shall appear, by the default or
329 confession of the defendant, or upon demurrer, the court before whom the action is, shall render
330 judgment therein for the plaintiff to recover so much as is due according to equity. And when the
331 sum for which judgment should be rendered is uncertain, the same shall, if either of the parties
332 request it, be assessed by a jury.

333 SEC . 27. And be it further enacted, That a marshal shall be appointed in and for each district for
334 the term of four years, but shall be removable from office at pleasure, whose duty it shall be to
335 attend the district and circuit courts when sitting therein, and also the Supreme Court in the
336 District in which that court shall sit. And to execute throughout the district, all lawful precepts
337 directed to him, and issued under the authority of the United States, and he shall have power to
338 command all necessary assistance in the execution of his duty, and to appoint as there shall be
339 occasion, one or more deputies, who shall be removable from office by the judge of the district
340 court, or the circuit court sitting within the district, at the pleasure of either; and before he enters
341 on the duties of his office, he shall become bound for the faithful performance of the same, by
342 himself and by his deputies before the judge of the district court to the United States, jointly and
343 severally, with two good and sufficient sureties, inhabitants and freeholders of such district, to be
344 approved by the district judge, in the sum of twenty thousand dollars, and shall take before said
345 judge, as shall also his deputies, before they enter on the duties of their appointment, the

PRIMARY SOURCE

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THE JUDICIARY ACT OF 1789

346 following oath of office: "I, A. B., do solemnly swear or affirm, that I will faithfully execute all
347 lawful precepts directed to the marshal of the district of under the authority of the United States,
348 and true returns make, and in all things well and truly, and without malice or partiality, perform
349 the duties of the office of marshal (or marshal's deputy, as the case may be) of the district of ,
350 during my continuance in said office, and take only my lawful fees. So help me God."

351 SEC . 28. And be it further enacted, That in all causes wherein the marshal or his deputy shall be
352 a party, the writs and precepts therein shall be directed to such disinterested person as the court,
353 or any justice or judge thereof may appoint, and the person so appointed, is hereby authorized to
354 execute and return the same. And in case of the death of any marshal, his deputy or deputies shall
355 continue in office, unless otherwise specially removed; and shall execute the same in the name of
356 the deceased, until another marshal shall be appointed and sworn: And the defaults or
357 misfeasances in office of such deputy or deputies in the mean time, as well as before, shall be
358 adjudged a breach of the condition of the bond given, as before directed, by the marshal who
359 appointed them; and the executor or administrator of the deceased marshal shall have like remedy
360 for the defaults and misfeasances in office of such deputy or deputies during such interval, as they
361 would be entitled to if the marshal had continued in life and in the exercise of his said office, until
362 his successor was appointed, and sworn or affirmed: And every marshal or his deputy when
363 removed from office, or when the term for which the marshal is appointed shall expire, shall have
364 power notwithstanding to execute all such precepts as may be in their hands respectively at the
365 time of such removal or expiration of office; and the marshal shall be held answerable for the
366 delivery to his successor of all prisoners which may be in his custody at the time of his removal,
367 or when the term for which he is appointed shall expire, and for that purpose may retain such
368 prisoners in his custody until his successor shall be appointed and qualified as the law directs.

369 SEC . 29. And be it further enacted, That in cases punishable with death, the trial shall be had in
370 the county where the offence was committed, or where that cannot be done without great
371 inconvenience, twelve petit jurors at least shall be summoned from thence. And jurors in all cases
372 to serve in the courts of the United States shall be designated by lot or otherwise in each State
373 respectively according to the mode of forming juries therein now practised, so far as the laws of
374 the same shall render such designation practicable by the courts or marshals of the United States;
375 and the jurors shall have the same qualifications as are requisite for jurors by the laws of the State
376 of which they are citizens, to serve in the highest courts of law of such State, and shall be

377 returned as there shall be occasion for them, from such parts of the district from time to time as
378 the court shall direct, so as shall be most favourable to an impartial trial, and so as not to incur an
379 unnecessary expense, or unduly to burthen the citizens of any part of the district with such
380 services. And writs of venire facias when directed by the court shall issue from the clerk's office,
381 and shall be served and returned by the marshal in his proper person, or by his deputy, or in case
382 the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by
383 such fit person as the court shall specially appoint for that purpose, to whom they shall administer
384 an oath or affirmation that he will truly and impartially serve and return such writ. And when
385 from challenges or otherwise there shall not be a jury to determine any civil or criminal cause, the
386 marshal or his deputy shall, by order of the court where such defect of jurors shall happen, return
387 jurymen de talibus circumstantibus sufficient to complete the pannel; and when the marshal or his
388 deputy are disqualified as aforesaid, jurors may be returned by such disinterested person as the
389 court shall appoint.

390 SEC . 30. And be it further enacted, That the mode of proof by oral testimony and examination of
391 witnesses in open court shall be the same in all the courts of the United States, as well in the trial
392 of causes in equity and of admiralty and maritime jurisdiction, as of actions at common law. And
393 when the testimony of any person shall be necessary in any civil cause depending in any district
394 in any court of the United States, who shall live at a greater distance from the place of trial than
395 one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or
396 out of such district, and to a greater distance from the place of trial than as aforesaid, before the
397 time of trial, or is ancient or very infirm, the deposition of such person may be taken de bene esse
398 before any justice or judge of any of the courts of the United States, or before any chancellor,
399 justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a
400 county court or court of common pleas of any of the United States, not being of counsel or
401 attorney to either of the parties, or interested in the event of the cause, provided that a notification
402 from the magistrate before whom the deposition is to be taken to the adverse party, to be present
403 at the taking of the same, and to put interrogatories, if he think fit, be first made out and served on
404 the adverse party or his attorney as either may be nearest, if either is within one hundred miles of
405 the place of such caption, allowing time for their attendance after notified, not less than at the rate
406 of one day, Sundays exclusive, for every twenty miles travel. And in causes of admiralty and
407 maritime jurisdiction, or other cases of seizure when a libel shall be filed, in which an adverse
408 party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a

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409 claim be put in, the like notification as aforesaid shall be given to the person having the agency or
410 possession of the property libelled at the time of the capture or seizure of the same, if known to
411 the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned,
412 and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her
413 given after the same shall be reduced to writing, which shall be done only by the magistrate
414 taking the deposition, or by the deponent in his presence. And the depositions so taken shall be
415 retained by such magistrate until he deliver the same with his own hand into the court for which
416 they are taken, or shall , together with a certificate of the reasons as aforesaid of their being taken,
417 and of the notice if any given to the adverse party, be by him the said magistrate sealed up and
418 directed to such court, and remain under his seal until opened in court. And any person may be
419 compelled to appear and depose as aforesaid in the same manner as to appear and testify in court.
420 And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in
421 which may be appealed from, if either party shall suggest to and satisfy the court that probably it
422 will not be in his power to produce the witnesses there testifying before the circuit court should
423 an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done
424 by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the
425 same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses
426 are then dead or gone out of the United States, or to a greater distance than as aforesaid from the
427 place where the court is sitting, or that by reason of age, sickness, bodily infirmity or
428 imprisonment, they are unable to travel and appear at court, but not otherwise. And unless the
429 same shall be made to appear on the trial of any cause, with respect to witnesses whose
430 depositions may have been taken therein, such depositions shall not be admitted or used in the
431 cause. Provided, That nothing herein shall be construed to prevent any court of the United States
432 from granting a dedimus potestatem to take depositions according to common usage, when it may
433 be necessary to prevent a failure or delay of justice, which power they shall severally possess, nor
434 to extend to depositions taken in perpetuum rei memoriam, which if they relate to matters that
435 may be cognizable in any court of the United States, a circuit court on application thereto made as
436 a court of equity, may, according to the usages in chancery direct to be taken.

437 SEC . 31. And be it [further] enacted, That where any suit shall be depending in any court of the
438 United States, and either of the parties shall die before final judgment, the executor or
439 administrator of such deceased party who was plaintiff, petitioner, or defendant, in case the cause
440 of action doth by law survive, shall have full power to prosecute or defend any such suit or action

441 until final judgment; and the defendant or defendants are hereby obliged to answer thereto
442 accordingly; and the court before whom such cause may be depending, is hereby empowered and
443 directed to hear and determine the same, and to render judgment for or against the executor or
444 administrator, as the case may require. And if such executor or administrator having been duly
445 served with a scire facias from the office of the clerk of the court where such suit is depending,
446 twenty days beforehand, shall neglect or refuse to become a party to the suit, the court may render
447 judgment against the estate of the deceased party, in the same manner as if the executor or
448 administrator had voluntarily made himself a party to the suit. And the executor or administrator
449 who shall become a party as aforesaid, shall, upon motion to the court where the suit is
450 depending, be entitled to a continuance of the same until the next term of the said court. And if
451 there be two or more plaintiffs or defendants, and one or more of them shall die, if the cause of
452 action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or
453 defendants, the writ or action shall not be thereby abated; but such death being suggested upon
454 the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the
455 surviving defendant or defendants.

456 SEC . 32. And be it further enacted, That no summons, writ, declaration, return, process,
457 judgment, or other proceedings in civil causes in any of the courts of the United States, shall be
458 abated, arrested, quashed or reversed, for any defect or want of form, but the said courts
459 respectively shall proceed and give judgment according as the right of the cause and matter in law
460 shall appear unto them, without regarding any imperfections, defects, or want of form in such
461 writ, declaration, or other pleading, return, process, judgment, or course of proceeding
462 whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit
463 down and express together with his demurrer as the cause thereof. And the said courts
464 respectively shall and may, by virtue of this act, from time to time, amend all and every such
465 imperfections, defects and wants of form, other than those only which the party demurring shall
466 express as aforesaid, and may at any time permit either of the parties to amend any defect in the
467 process or pleadings, upon such conditions as the said courts respectively shall in their discretion,
468 and by their rules prescribe.

469 SEC . 33. And be it further enacted, That for any crime or offence against the United States, the
470 offender may, by any justice or judge of the United States, or by any justice of the peace, or other
471 magistrate of any of the United States where he may be found agreeably to the usual mode of

472 process against offenders in such state, and at the expense of the United States, be arrested, and
473 imprisoned or bailed, as the case may be, for trial before such court of the United States as by this
474 act has cognizance of the offence. And copies of the process shall be returned as speedily as may
475 be into the clerk's office of such court, together with the recognizances of the witnesses for their
476 appearance to testify in the case; which recognizances the magistrate before whom the
477 examination shall be, may require on pain of imprisonment. And if such commitment of the
478 offender, or the witnesses shall be in a district other than that in which the offence is to be tried, it
479 shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to
480 issue, and of the marshal of the same district to execute, a warrant for the removal of the offender,
481 and the witnesses, or either of them, as the case may be, to the district in which the trial is to be
482 had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment
483 may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a
484 justice of the supreme court, or a judge of a district court, who shall exercise their discretion
485 therein, regarding the nature and circumstances of the offence, and of the evidence, and the
486 usages of law. And if a person committed by a justice of the supreme or a judge of a district court
487 for an offence not punishable with death, shall afterwards procure bail, and there be no judge of
488 the United States in the district to take the same, it may be taken by any judge of the supreme or
489 superior court of law of such state.

490 SEC . 34. And be it further enacted, That the laws of the several states, except where the
491 constitution, treaties or statutes of the United States shall otherwise require or provide, shall be
492 regarded as rules of decision in trials at common law in the courts of the United States in cases
493 where they apply.

494 SEC . 35. And be it further enacted, That in all courts of the United States, the parties may plead
495 and manage their own causes personally or by assistance of such counsel or attorneys at law as by
496 the rules of the said courts respectively shall be permitted to manage and conduct causes therein.
497 And there shall be appointed in each district a meet person learned in the law to act as attorney
498 for the United States in such district, who shall be sworn or affirmed to the faithful execution of
499 his office, whose duty it shall be to prosecute in such district all delinquents for crimes and
500 offences, cognizable under the authority of the United States, and all civil actions in which the
501 United States shall be concerned, except before the supreme court in the district in which that
502 court shall be holden. And he shall receive as compensation for his services such fees as shall be
503 taxed therefor in the respective courts before which the suits or prosecutions shall be. And there

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504 shall also be appointed a meet person, learned in the law, to act as attorney-general for the United
505 States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be
506 to prosecute and conduct all suits in the Supreme Court in which the United States shall be
507 concerned, and to give his advice and opinion upon questions of law when required by the
508 President of the United States, or when requested by the heads of any of the departments,
509 touching any matters that may concern their departments, and shall receive such compensation for
510 his services as shall by law be provided.

511 APPROVED , September 24, 1789.