

6, 1917, ch. 97, § 2, 40 Stat. 395; June 10, 1922, ch. 216, § 2, 42 Stat. 635).

This section reconciles provisions of sections 341 and 371(7), (8) of title 28, U.S.C., 1940 ed., with Article 3, section 2 and Amendment 11 of the Constitution.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., were not wholly consistent with such constitutional provisions. Said section 341 provided that the Supreme Court should have original jurisdiction of controversies between a State and citizens of other States or aliens, whereas the 11th Amendment prohibits an action in any Federal Court against a State by citizens of another State or aliens.

The original jurisdiction conferred on the Supreme Court by Article 3, section 2, of the Constitution is not exclusive by virtue of that provision alone. Congress may provide for or deny exclusiveness. *Ames v. Kansas*, 1884, 4 S.Ct. 437, 111 U.S. 449, 28 L.Ed. 442; *U.S. v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota*, D.C. Minn., 1939, 27 F.Supp. 167, affirmed 125 F.2d 636.

Sections 341 and 371 of title 28, U.S.C., 1940 ed., did not confer expressly exclusive jurisdiction on the Supreme Court in civil cases between States, *Louisiana v. Texas*, 1899, 20 S.Ct. 251, 176 U.S. 1, 44 L.Ed. 347, as has been provided in subsection (a)(1) of the revised section. The language at the beginning of said section 341, for which said subsection has been substituted, was ambiguous and made it appear that an action by a State against the United States would be within the exclusive jurisdiction of the Supreme Court. However, in *U.S. v. Louisiana*, 1887, 8 S.Ct. 17, 123 U.S. 32, 31 L.Ed. 69, the Supreme Court, in a case appealed from the Court of Claims, held to the contrary.

So, also, in actions by the United States to condemn lands of a State or to enforce penalties for violation of a Federal statute against a State-owned utility, the United States district courts have jurisdiction. See *United States v. State of Utah*, 1931, 51 S.Ct. 438, 283 U.S. 64, 75 L.Ed. 844; *United States v. 4,450.72 Acres of Land, Clearwater County, State of Minnesota*, D.C. Minn. 1939, 27 F.Supp. 167, affirmed 125 F.2d 636; *United States v. State of California*, 1936, 56 S.Ct. 421, 297 U.S. 175, 80 L.Ed. 567.

The intent of section 371(7), (8) of title 28, U.S.C., 1940 ed., that the jurisdiction of the courts of the United States should be exclusive of the courts of the States in controversies to which a State is a party, and suits against ambassadors, public ministers, consuls and vice consuls, is preserved and clarified by this section and section 1351 of this title.

The revised section preserves existing law with reference to foreign ambassadors, other public ministers and consuls. Under subsection (a)(2) the Supreme Court has exclusive jurisdiction of actions or proceedings against the ambassadors or public ministers of other nations.

Under subsection (b)(1) the Supreme Court has original but not exclusive jurisdiction of actions or proceedings brought by such ambassadors or other public ministers or to which consuls or vice consuls of other nations are parties.

Section 1351 of this title gives to United States district courts, exclusive of the courts of the States, jurisdiction of civil actions against such consuls and vice consuls.

This section and said section 1351 of this title have no application to ambassadors, public ministers, consuls or vice consuls representing the United States. See *Milward v. McSaul*, D.C.S.D.N.Y. 1846, 17 Fed.Cas.No. 9,623 and *State of Ohio ex rel. Popovici v. Alger*, 1930, 50 S.Ct. 154, 280 U.S. 379, 74 L.Ed. 489.

Changes were made in phraseology.

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-393, § 8(b)(1), designated introductory provision of subsec. (a) and (a)(1) as (a), and struck out “(2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations”.

Subsec. (b)(1). Pub. L. 95-393, § 8(b)(2), substituted “to which ambassadors, other public ministers, consuls,

or” for “brought by ambassadors or other public ministers of foreign states or to which consuls or”.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-393 effective at the end of the ninety-day period beginning on Sept. 30, 1978, see section 9 of Pub. L. 95-393, set out as an Effective Date note under section 254a of Title 22, Foreign Relations and Intercourse.

#### STATUTES GOVERNING WRITS OF ERROR TO APPLY TO APPEALS

Act Jan. 31, 1928, ch. 14, § 2, 45 Stat. 54, amended Apr. 26, 1928, ch. 440, 45 Stat. 466; June 25, 1948, ch. 646, § 23, 62 Stat. 990, provided that “All Acts of Congress referring to writs of error shall be construed as amended to the extent necessary to substitute appeal for writ of error.” See also, notes preceding section 1 of this title.

#### [§ 1252. Repealed. Pub. L. 100-352, § 1, June 27, 1988, 102 Stat. 662]

Section, acts June 25, 1948, ch. 646, 62 Stat. 928; Oct. 31, 1951, ch. 655, § 47, 65 Stat. 726; July 7, 1958, Pub. L. 85-508, § 12(e), (f), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, § 14(a), 73 Stat. 10, provided for direct appeals to Supreme Court from decisions invalidating Acts of Congress.

#### EFFECTIVE DATE OF REPEAL

Repeal effective ninety days after June 27, 1988, except that such repeal not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered into before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

#### § 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

(June 25, 1948, ch. 646, 62 Stat. 928.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 47, 47a, 380 and 380a (Mar. 3, 1911, ch. 231, §§ 210, 266, 36 Stat. 1150, 1162; Mar. 4, 1913, ch. 160, 37 Stat. 1013; Oct. 22, 1913, ch. 32, 38, Stat. 220; Feb. 13, 1925, ch. 229, § 1, 43 Stat. 938; Aug. 24, 1937, ch. 754, § 3, 50 Stat. 752).

This section consolidates the provisions of sections 47, 47a, 380, and 380a of title 28, U.S.C., 1940 ed., relating to direct appeals from decisions of three-judge courts involving orders of the Interstate Commerce Commission or holding State or Federal laws repugnant to the Constitution of the United States.

For distribution of other provisions of the sections on which this revised section is based, see Distribution Table.

The language in section 380 of title 28, U.S.C., 1940 ed., referring to restraining the enforcement or execution of an order made by an administrative board or a State officer was omitted as covered by this revised section and section 2281 of this title.

Words in section 380a of title 28, U.S.C., 1940 ed., “This section shall not be construed to be in derogation of any right of direct appeal to the Supreme Court of the United States under existing provisions of law,” were omitted as unnecessary.

Section 217 of title 7, U.S.C., 1940 ed., Agriculture, provides for a three-judge court in proceedings to suspend or restrain the enforcement of orders of the Sec-

retary of Agriculture under the Packers and Stockyards Act of 1921.

The final proviso of section 502 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters, for direct appeal in certain criminal cases for failure to alter bridges obstructing navigation, is recommended for express repeal in view of its implied repeal by section 345 of title 28, U.S.C., 1940 ed. (See *U.S. v. Belt*, 1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1559. See reviser's note under section 1252 of this title.)

Section 28 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 44 of title 49, U.S.C., 1940 ed., Transportation, are identical and provide for convening of a three-judge court to hear and determine civil cases arising under the Sherman anti-trust law and the Interstate Commerce Act, respectively, wherein the United States is plaintiff and when the Attorney General deems such cases of general public importance.

Section 401(d) of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radiotelegraphs, made the provisions of sections 28 and 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, sections 44 and 45 of title 49, U.S.C., 1940 ed., Transportation, and section 345(1) of title 28, U.S.C., 1940 ed., relating to three-judge courts and direct appeals, applicable to orders of the Federal Communications Commission enforcing the Communications Act of 1934.

#### § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, ch. 646, 62 Stat. 928; Pub. L. 100-352, §2(a), (b), June 27, 1988, 102 Stat. 662.)

##### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§346 and 347 (Mar. 3, 1911, ch. 231, §§239, 240, 36 Stat. 1157; Feb. 13, 1925, ch. 229, §1, 43 Stat. 938; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28, U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement.

##### AMENDMENTS

1988—Pub. L. 100-352, §2(b), struck out "appeal;" after "certiorari;" in section catchline.

Pars. (2), (3). Pub. L. 100-352, §2(a), redesignated par. (3) as (2) and struck out former par. (2) which read as

follows: "By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;"

##### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-352, §7, June 27, 1988, 102 Stat. 664, provided that: "The amendments made by this Act [amending sections 1254, 1257, 1258, 2101, 2104, and 2350 of this title, section 136w of Title 7, Agriculture, section 1631e of Title 22, Foreign Relations and Intercourse, section 652 of Title 25, Indians, section 988 of Title 33, Navigation and Navigable Waters, section 1652 of Title 43, Public Lands, sections 719, 743, and 1105 of Title 45, Railroads, and section 30110 of Title 52, Voting and Elections, and repealing sections 1252 and 2103 of this title] shall take effect ninety days after the date of the enactment of this Act [June 27, 1988], except that such amendments shall not apply to cases pending in the Supreme Court on the effective date of such amendments or affect the right to review or the manner of reviewing the judgment or decree of a court which was entered before such effective date."

#### [[§ 1255, 1256. Repealed. Pub. L. 97-164, title I, § 123, Apr. 2, 1982, 96 Stat. 36]

Section 1255, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Claims by writ of certiorari and by certification of questions of law.

Section 1256, act June 25, 1948, ch. 646, 62 Stat. 928, authorized Supreme Court to review cases in Court of Customs and Patent Appeals by writ of certiorari.

##### EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as an Effective Date of 1982 Amendment note under section 171 of this title.

#### § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

(June 25, 1948, ch. 646, 62 Stat. 929; Pub. L. 91-358, title I, §172(a)(1), July 29, 1970, 84 Stat. 590; Pub. L. 100-352, §3, June 27, 1988, 102 Stat. 662.)

##### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §344 (Mar. 3, 1911, ch. 231, §§236, 237, 36 Stat. 1156; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 6, 1916, ch. 448, §2, 39 Stat. 726; Feb. 17, 1922, ch. 54, 42 Stat. 366; Feb. 13, 1925, ch. 229, §1, 43 Stat. 937; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Provisions of section 344 of title 28, U.S.C., 1940 ed., relating to procedure for review of decisions of State courts are incorporated in section 2103 of this title. Other provisions of such section 344 of title 28, U.S.C., 1940 ed., are incorporated in section 2106 of this title.

The revised section applies in both civil and criminal cases. In *Twitchell v. Philadelphia*, 1868, 7 Wall. 321, 19