

amendment, text read as follows: "An appeal to the Supreme Court from a State court shall be taken in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree appealed from had been rendered in a court of the United States."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment 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 before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of this title.

§ 2105. Scope of review; abatement

There shall be no reversal in the Supreme Court or a court of appeals for error in ruling upon matters in abatement which do not involve jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 879 (R.S. § 1011; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318).

The revised language is substituted for the provisions of section 879 of title 28, U.S.C., 1940 ed., to avoid any construction that matters of fact are not reviewable in nonjury cases. Such section 879 related to review upon a writ of error which applied only to actions at law. (See Rule 52(a) of the Federal Rules of Civil Procedure limiting the review of questions of fact which renders unnecessary any statutory limitation.)

Rule 7(c) of the Federal Rules of Civil Procedure abolished all pleas, and the rules adopted the motion as a substitute therefor.

Words "matters in abatement" were, therefore, substituted for the abolished "plea in abatement" and "plea to the jurisdiction."

Changes were made in phraseology.

§ 2106. Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

(June 25, 1948, ch. 646, 62 Stat. 963.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 344, 876, 877 (R.S. § 701; Mar. 3, 1891, ch. 517, §§ 10, 11, 26 Stat. 829; Mar. 3, 1911, ch. 231, §§ 231, 236, 237, 291, 36 Stat. 1156, 1167; Dec. 23, 1914, ch. 2, 38 Stat. 790; Sept. 16, 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).

Section consolidates part of section 344 of title 28, U.S.C., 1940 ed., with sections 876 and 877 of said title. Other provisions of said section 344 are incorporated in sections 1257 and 2103 of this title.

Words "or a court of appeals" were inserted after "Supreme Court" upon authority of *United States v. Illinois Surety Co.*, C.C.A. 1915, 226 F. 653, affirmed 37 S.Ct. 614, 244 U.S. 376, 61 L.Ed. 1206, wherein it was held that this section also applied to the courts of appeals in view of section 11 of the Circuit Court of Appeals Act of Mar. 3, 1891, ch. 517, 28 Stat. 829.

The revised section will cover instances where the Supreme Court remands a case to the highest court of a State and to the United States Tax Court. It will also

cover a remand of a case to the Court of Claims or the Court of Customs and Patent Appeals. For authority to remand a case to The Tax Court, see *Equitable Life Assurance Society of U.S. v. Commissioner of Internal Revenue*, 1944, 64 S.Ct. 722, 321 U.S. 560, 88 L.Ed. 927.

Revised section will also permit a remand by the Supreme Court to a court of appeals inasmuch as such latter court then would be a lower court. The revised section is in conformity with numerous holdings of the Supreme Court to the effect that such a remand may be made. See especially, *Maryland Casualty Co. v. United States*, 1929, 49 S.Ct. 484, 279 U.S. 792, 73 L.Ed. 960; *Krauss Bros. Co. v. Mellon*, 1928, 48 S.Ct. 358, 276 U.S. 386, 72 L.Ed. 620 and *Buzyski v. Luckenbach S. S. Co.*, 1928, 48 S.Ct. 440, 277 U.S. 226, 72 L.Ed. 860.

The last sentence of section 876 of title 28, U.S.C., 1940 ed., providing that the Supreme Court should not issue execution but should send a special mandate to the inferior court to award execution, was omitted. See rule 34 of the revised rules of the Supreme Court relating to Mandates, and section 1651 of this title authorizing the Supreme Court to issue all writs necessary in aid of its jurisdiction.

Changes were made in phraseology.

§ 2107. Time for appeal to court of appeals

(a) Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.

(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

- (1) the United States;
- (2) a United States agency;
- (3) a United States officer or employee sued in an official capacity; or

(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee.

(c) The district court may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause. In addition, if the district court finds—

- (1) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and
- (2) that no party would be prejudiced,

the district court may, upon motion filed within 180 days after entry of the judgment or order or within 14 days after receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(d) This section shall not apply to bankruptcy matters or other proceedings under Title 11.

(June 25, 1948, ch. 646, 62 Stat. 963; May 24, 1949, ch. 139, §§ 107, 108, 63 Stat. 104; Pub. L. 95-598, title II, § 248, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 102-198, § 12, Dec. 9, 1991, 105 Stat. 1627; Pub. L.