

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

L.Ed. 223, it was expressly held that the provisions of section 25 of the Judiciary Act of 1789, 1 Stat. 85, on which title 28, U.S.C., 1940 ed., §344, is based, applied to criminal cases, and many other Supreme Court decisions impliedly involve the same holding inasmuch as the Court has taken jurisdiction of criminal cases on appeal from State courts. See, for example, *Herndon v. Georgia*, 1935, 55 S.Ct. 794, 295 U.S. 441, 79 L.Ed. 1530 and *Ashcraft v. Tennessee*, 1944, 64 S.Ct. 921, 322 U.S. 143, 88 L.Ed. 1192.

Provision, in section 344(b) of title 28, U.S.C., 1940 ed., for review and determination on certiorari "with the same power and authority and with like effect as if brought up by appeal" was omitted as unnecessary. The scope of review under this section is unrestricted.

Words "and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied," in said section 344(b), were omitted as surplusage.

The last sentence in said section 344(b) relating to the right to relief under both subsections of said section 344, was omitted as unnecessary.

Changes were made in phraseology.

AMENDMENTS

1988—Pub. L. 100-352 struck out "appeal;" before "certiorari" in section catchline and amended text generally. Prior to amendment, text read as follows: "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 as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

"(3) 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 State statute 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, treaties or statutes of, or commission held or authority exercised under, the United States. "For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals."

1970—Pub. L. 91-358 provided that for the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

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.

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-358, title I, §199(a), July 29, 1970, 84 Stat. 597, provided that: "The effective date of this title (and the amendments made by this title) [enacting sections 1363, 1451, and 2113 of this title and amending this section, sections 292 and 1869 of this title, section 5102 of Title 5, Government Organization and Employees, and section 260a of Title 42, The Public Health and Welfare] shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act [July 29, 1970]."

§ 1258. Supreme Court of Puerto Rico; certiorari

Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto

Rico 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 the Commonwealth of Puerto Rico 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.

(Added Pub. L. 87-189, §1, Aug. 30, 1961, 75 Stat. 417; amended Pub. L. 100-352, §4, June 27, 1988, 102 Stat. 662.)

AMENDMENTS

1988—Pub. L. 100-352 struck out "appeal;" before "certiorari" in section catchline and amended text generally. Prior to amendment, text read as follows: "Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

"(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

"(2) By appeal, where is drawn in question the validity of a statute of the Commonwealth of Puerto Rico on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity.

"(3) 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 the Commonwealth of Puerto Rico 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, treaties, or statutes of, or commission held or authority exercised under, 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.

§ 1259. Court of Appeals for the Armed Forces; certiorari

Decisions of the United States Court of Appeals for the Armed Forces may be reviewed by the Supreme Court by writ of certiorari in the following cases:

(1) Cases reviewed by the Court of Appeals for the Armed Forces under section 867(a)(1) of title 10.

(2) Cases certified to the Court of Appeals for the Armed Forces by the Judge Advocate General under section 867(a)(2) of title 10.

(3) Cases in which the Court of Appeals for the Armed Forces granted a petition for review under section 867(a)(3) of title 10.

(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Appeals for the Armed Forces granted relief.

(Added Pub. L. 98-209, §10(a)(1), Dec. 6, 1983, 97 Stat. 1405; amended Pub. L. 101-189, div. A, title XIII, §1304(b)(3), Nov. 29, 1989, 103 Stat. 1577; Pub.