

heard and determined because of the absence of a quorum of qualified justices, the Chief Justice of the United States may order it remitted to the court of appeals for the circuit including the district in which the case arose, to be heard and determined by that court either sitting in banc or specially constituted and composed of the three circuit judges senior in commission who are able to sit, as such order may direct. The decision of such court shall be final and conclusive. In the event of the disqualification or disability of one or more of such circuit judges, such court shall be filled as provided in chapter 15 of this title.

In any other case brought to the Supreme Court for review, which cannot be heard and determined because of the absence of a quorum of qualified justices, if a majority of the qualified justices shall be of opinion that the case cannot be heard and determined at the next ensuing term, the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court.

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

#### HISTORICAL AND REVISION NOTES

Based on portions of section 29 of title 15, U.S.C., 1940 ed., Commerce and Trade, and section 45 of title 49, U.S.C., 1940 ed., Transportation (Feb. 11, 1903, ch. 544, § 2, 32 Stat. 823; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272).

Section consolidates portions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., with changes of substance and phraseology.

The revised section includes the principal provisions of sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, in case of the absence of a quorum of qualified Justices of the Supreme Court.

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively, were identical and were applicable only to decisions of three-judge courts in antitrust cases under section 107 of said title 15 and Interstate Commerce cases under sections 1, 8, and 12 of said title 49, "or any other acts having a like purpose that may hereinafter be enacted." The revised section broadens and extends the application of such provisions to include "any case involving a direct appeal to the Supreme Court from the decision of a district court or a district court of three judges which cannot be heard and determined because of the absence of a quorum of qualified justices." It includes direct appeals in criminal cases under section 3731 of title 18 (H.R. 1600, 80th Cong.).

Sections 29 and 45 of titles 15 and 49, U.S.C., 1940 ed., respectively provided that the Supreme Court certify the case to the Circuit Court of Appeals and that the Senior Circuit Judge, qualified to participate should designate himself and two other circuit judges next in order of seniority. Other provisions were made for designation of circuit judges from other circuits in case of insufficient circuit judges being available in the circuit.

The revised section permits the Chief Justice of the United States to designate the "court of appeals" to hear the case in banc or by means of a specially constituted court of appeals composed of the three circuit judges senior in commission who are able to sit. In case of disqualification or disability, the court shall be filled by designation and assignment as provided in chapter 15 of this title.

The provisions of section 29 of title 15, U.S.C., 1940 ed., and section 45 of title 49, U.S.C., 1940 ed., relating to time for appeal are incorporated in section 2101 of this title. The provisions of said sections for direct appeal to the Supreme Court are retained in said titles 15 and 49.

The second paragraph of the revised section is new. It recognizes the necessity of final disposition of litigation in which appellate review has been had and further review by the Supreme Court is impossible for lack of a quorum of qualified justices.

#### [§ 2110. Repealed. Pub. L. 97-164, title I, § 136, Apr. 2, 1982, 96 Stat. 41]

Section, acts June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 109, 63 Stat. 105, provided that appeals to the Court of Claims in tort claims cases, as provided in section 1504 of this title, be taken within 90 days after the entry of the final judgment of the district court.

#### 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.

#### § 2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(Added May 24, 1949, ch. 139, § 110, 63 Stat. 105.)

#### HISTORICAL AND REVISION NOTES

##### 1949 ACT

Incorporates in title 28, U.S.C., as section 2111 thereof, the harmless error provisions of section 269 of the Judicial Code (now repealed), which applied to all courts of the United States and to all cases therein and therefore was superseded only in part by the Federal Procedural Rules, which apply only to the United States district courts.

#### § 2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons insti-