

services such fees as shall be taxed therefor in the respective courts before which the suits or prosecutions shall be. And there shall also be appointed a meet person, learned in the law, to act as attorney-general for the United States, who shall be sworn or affirmed to a faithful execution of his office; whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.(a)

APPROVED, September 24, 1789.

Attorney General of the U. S.

Duties.

Act of May 29, 1830, ch. 153.

Compensation.

STATUTE I.

CHAP. XXI.—*An Act to regulate Processes in the Courts of the United States.*

Sept. 29, 1789.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all writs and processes issuing from a supreme or a circuit court shall bear test of the chief justice of the supreme court, and if from a district court, shall bear test of the judge of such court, and shall be under the seal of the court from whence they issue; and signed by the clerk thereof. The seals of the supreme and circuit courts to be provided by the supreme court, and of the district courts, by the respective judges of the same.

SEC. 2. *And be it further enacted,* That until further provision shall be made, and except where by this act or other statutes of the United States is otherwise provided, the forms of writs and executions, except their style, and modes of process and rates of fees, except fees to judges, in the circuit and district courts, in suits at common law, shall be the same in each state respectively as are now used or allowed in the supreme courts of the same.(b) And the forms and modes of proceedings in

Act of May 26, 1790. Obsolete.

Act of February 18, 1791. Repealed.

Writs to bear test of the Chief Justice.

To be under the seal of the Court from which they issue.

Act of May 8, 1792.

Act of May 19, 1823.

Forms of writs and executions

(a) The acts relating to the compensation of the Attorney General of the United States are: Act of March 2, 1797; act of March 2, 1799, chap. 38; act of February 20, 1804, chap. 12; act of February 20, 1819, chap. 27; act of May 29, 1830, chap. 153, sec. 10.

(b) The 34th section of the judiciary act of 1789, authorizes the courts of the United States to issue writs of execution as well as other writs. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

Whenever, by the state laws in force in 1789, a *capias* might issue from a state court, the acts of 1789 and 1792, extending in terms to that species of writ, must be understood to have adopted its use permanently in the federal courts. *Bank of the United States v. January*, 10 Wheat. 66—in note.

The process act of 1792, chap. 36, is the law which regulates executions issuing from the courts of the United States, and it adopts the practice of the supreme courts of the States existing in 1789, as the rule for governing proceedings on such executions, subject to such alterations as the Supreme Court of the United States may make; but not subject to the alterations which have since taken place in the State laws and practice. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

At an early period after the organization of the federal courts, the rules of practice in the State courts, which were similar to the English practice, were adopted by the judges of the Circuit Court. A subsequent change in the practice of the State courts will not authorize a departure from the rules first adopted in the Circuit Court. 1 Peters' C. C. R. 1.

Whenever by the laws of the United States a defendant may be arrested, the process of arrest employed in the State may be adopted. *Burr's trial*, 431.

The process act of 1823 was passed shortly after the decision of the Supreme Court of the United States, in the case of *Wayman v. Southard*, and the *Bank of the United States v. Halstead*, and was intended as a legislative sanction of the opinions of the court in those cases. The power given to the courts of the United States to make rules and regulations on final process, so as to conform the same to the laws of the States on the same subject, extends to future legislation; and as well to the modes of proceeding on executions as to the forms of writs. *Ross and King v. Duval et al.*, 13 Peters, 45.

The first judiciary act of 1789, chap. 20, does not contemplate compulsive process against any person, in any district, unless he be an inhabitant of, or found within the same district at the time of serving the writ. *Picquet v. Swann*, 5 Mason's C. C. R. 35.

Congress have by the constitution, exclusive authority to regulate proceedings in the courts of the United States, and the States have no authority to control those proceedings, except so far as the State process acts are adopted by Congress, or by the courts of the United States under the authority of Congress. *Wayman v. Southard*, 10 Wheat. 1; 6 Cond. Rep. 1.

The laws of the United States authorize the courts of the United States so to alter the form of process of execution used in the Supreme Court of the United States in 1789, as to subject to executions

to be the same as used in the Supreme Courts of the States.

Fees to be the same as in the Supreme Courts of the States.

Limitation.

causes of equity, and of admiralty and maritime jurisdiction,<sup>(a)</sup> shall be according to the course of the civil law; and the rates of fees the same as are or were last allowed by the states respectively in the court exercising supreme jurisdiction in such causes.<sup>(b)</sup> *Provided*, That on judgments in any of the cases aforesaid where different kinds of executions are issuable in succession, a *capias ad satisfaciendum* being one, the plaintiff shall have his election to take out a *capias ad satisfaciendum* in the first instance and be at liberty to pursue the same until a tender of the debt and costs in gold or silver shall be made.

SEC. 3. *And be it further enacted*, That this act shall continue in force until the end of the next session of Congress, and no longer.

APPROVED, September 29, 1789.

#### STATUTE I.

Sept. 29, 1789.

CHAP. XXII.—*An Act to explain and amend an Act, intituled "An Act for registering and clearing Vessels, regulating the Coasting Trade, and for other purposes."*

Act of Sept. 1, 1789, ch. 11.  
Repealed by Act of February 18, 1793, ch. 8.  
Goods unladen by permit and transported to a landing in the same district, to be accompanied with a certificate from the inspector or other proper officer.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any goods, wares or merchandise of foreign growth or manufacture, shall be unladen from any ship or vessel in virtue of a permit obtained for that purpose, and shall be put into a craft or vessel, with intent to be transported to a landing within the same district, it shall be the duty of the inspector, or other officer attending the unloading of such goods, wares and merchandise, to deliver to the master or commander of every such craft or vessel, a certificate of such goods, wares and merchandise having been duly entered, and a permit granted therefor; and such certificate shall contain a description of all the packages with their marks and numbers, and shall authorize the transportation and landing of the same, at any landing within the same district, without any further fee or permit, any thing in the said recited act to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That so much of the twenty-second section of the said recited act, as exempts vessels of less than twenty,

issuing out of the courts of the United States, lands and other property not thus subject by the State laws in force at that time. *Bank of the United States v. Halsted*, 10 Wheat. 51; 6 Cond. Rep. 22.

See *Fullerton v. The Bank of the United States*, 1 Peters, 604. *Yeaton v. Lenox*, 8 Peters, 123. *Toland v. Sprague*, 12 Peters, 300.

The process act of 1828, expressly adopts the mesne process and modes of proceeding in suits at common law, then existing in the highest State court, under the State laws, which of course included all the regulations of the State laws as to bail, and exemption of the party from arrest and imprisonment. In regard also to writs of execution, and other final process, and "the proceedings thereupon," it adopts an equally comprehensive language, and declares they shall be the same as were then used in the courts of the State. *Beers v. Houghton*, 9 Peters, 329. *The Lessee of Walden v. Craig's heirs*, 14 Peters, 147. *The United States v. Knight*, 14 Peters, 401. *Amis v. Smith*, 16 Peters, 303.

So far as the acts of Congress have adopted the forms of process and modes of proceeding and pleading in the State courts, or have authorized the courts to adopt them, and have actually adopted them, they are obligatory; and no further. But no court of the United States is authorized to adopt by rule any provision of State laws which are repugnant to, or incompatible with the positive enactment of Congress upon the jurisdiction, or practice, or proceedings of such courts. *Keary et al. v. The Farmers and Mechanics Bank of Memphis*, 16 Peters, 89. *Duncan v. Darst*, 17 Peters, 209.

(a) The act regulating processes in the courts of the United States, provides that the forms and modes of proceeding in the courts of equity, and in those of admiralty and maritime jurisdiction, shall be according to the principles, rules, and usages which belong to courts of equity, and to courts of admiralty, respectively, as contradistinguished from the courts of common law, subject, however, to alterations by the courts. This act has been generally understood to adopt the principles, rules, and usages of the court of chancery in England. *Manro v. Almedia*, 10 Wheat. 473; 6 Cond. Rep. 190.

(b) The compensation to clerks of courts are regulated by the acts of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 28, 1799, chap. 19, sec. 3; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 16. Compensation of Marshals, act of March 3, 1791, chap. 22, sec. 1; act of May 8, 1792, chap. 36, sec. 3; act of February 28, 1799, chap. 19, sec. 2; act of April 18, 1814, chap. 79; act of March 8, 1824, chap. 26; act of March 3, 1841, chap. 16.