UNITED STATES CODE ANNOTATED

Title 22

Foreign Relations
and
Intercourse

UNITED STATES CODE ANNOTATED

The Code of the Laws of the United States in force
December 7, 1925, as Enacted by Congress
June 28 and Approved June 30, 1926

Annotated from all the Cases Construing these Laws

Prepared by the Editorial Staffs of
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Title 22

Foreign Relations and Intercourse

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PREFACE

TO

THE CODE OF THE LAWS OF THE UNITED STATES

This Code is the official restatement in convenient form of the general and permanent laws of the United States in force December 7, 1925, now scattered in 25 volumes—i. e., the Revised Statutes of 1878, and volumes 20 to 43, inclusive, of the Statutes at Large. No new law is enacted and no law repealed. It is prima facie the law. It is presumed to be the law. The presumption is rebuttable by production of prior unrepealed Acts of Congress at variance with the Code. Because of such possibility of error in the Code and of appeal to the Revised Statutes and Statutes at Large, a table of statutes repealed prior to December 7, 1925, is published herein together with the Articles of Confederation; The Declaration of Independence; Ordinance of 1787; the Constitution with amendments and index; tables of cross references to the Revised Statutes, the Statutes at Large, the United States Compiled Statutes, Annotated, of the West Publishing Co., and the Federal Statutes, Annotated, of the Edward Thompson Co.; an appendix with the general and permanent laws of the first session of the Sixty-ninth Congress; and finally an exhaustive index of the laws in the Code and appendix.

The first official codification of the general and permanent laws of the United States was made in 1874 and followed by a perfected edition in 1878. From 1897 to 1907 a commission was engaged in an effort to codify the great mass of accumulating legislation. The work of the commission involved an expenditure of over $300,000, but was never carried to completion. More recently the task of codification was undertaken by the late Hon. Edward C. Little as chairman of the Committee on the Revision of the Laws of the House of Representatives, who labored indefatigably from 1919 to the day of his death, June 24, 1924. The volumes which represented the result of his labors were embodied in bills which passed the House of Representatives in three successive Congresses unanimously but failed of action in the Senate.

The Code now set forth has resulted from the hearty cooperation of the Committee of the House of Representatives on the Revision of the Laws, and the Select Committee of the United States Senate consisting of Richard P. Ernst, chairman, George Wharton Pepper, and William Cabell Bruce. Under the auspices of the committees of the House and the Senate the actual work of assembling and classifying

the mass of material has been done by the West Publishing Co. and the Edward Thompson Co. These two houses have subordinated their private interests to the public good and have produced a result which would have been impossible without them. Acknowledgment of valuable assistance is given to W. H. McClenon, of the Legislative Reference Division of the Library of Congress, and to the law officers and other representatives of the several departments, bureaus, and commissions of the Government. Appreciation is also expressed of the interest in the work taken by the Committee on the Revision of the Federal Statutes of the American Bar Association.

Scrutiny of this Code is invited. Constructive criticism is solicited. It is the ambition of the Committee on the Revision of the Laws of the House of Representatives gradually to perfect the Code by correcting errors, eliminating obsolete matter, and restating the law with logical completeness and with precision, brevity, and uniformity of expression.

Address criticisms to Chairman of the Committee on the Revision of the Laws of the House of Representatives, Washington, D. C.

ROY G. FITZGERALD, *Chairman.*

Washington, June 30, 1926.

FOREWORD

THE publishers of this annotated edition of the Code of the Laws of the United States are rendering a notable service to the public in general and to the legal profession in particular.

Cooperation between the publishers and the Committees of the Senate and House on Revision of the Laws made possible the preparation of the Code adopted by the Sixty-ninth Congress. The Code thus adopted is evidence of the law. After the correction of errors, inevitable in a work of this sort, the Code will no doubt be enacted into law and all the other legislation of Congress will be repealed. Meanwhile it is of the highest importance to bring together for ready reference all the legislation embodied in the Code and the mass of judicial decisions which have construed the legislation. This can best be done by distributing the Code through a series of volumes of convenient size, each volume containing a designated portion of the legislative text together with annotations of relevant judicial decisions. This task of division and addition has now been completed in a satisfactory way. The volume embodying legislation on a given subject can readily be taken from the library shelf or from the book-rack beside the desk and carried to court or wherever it is intended to be consulted. Mahomet need no longer seek the mountain. The mountain has distributed itself into foothills and all of them have come to him.

As a member of the Senate Committee on the Revision of Laws I have had something to do with the evolution of the Code. Members of the two Committees can appreciate, as few others can do, the magnitude of the problem of which the Code is a solution. While the annotations and other auxiliary matter account for the number of volumes in the present edition, it is well to remember that the Code itself, as issued from the Government Printing Office, is included within the limits of a single volume. That all the permanent and general legislation of a century and a half can be thus compressed is a fact to be borne in mind whenever it is charged that there has been an unreasonable multiplication of federal statutes. In spite of the popular impression to the contrary, I believe that a critical study of this body of law will disclose the Congress of the United States as the most conservative of the important legislatures of the world. I further believe that no set of volumes in the law library will be found more serviceable than those now made available for general use.

GEORGE WHARTON PEPPER.

Washington, D. C., December 16, 1926.

PUBLISHERS' PREFACE

THE "Code of the Laws of the United States," as passed by Congress in June, 1926, incorporates all of the laws of a general and permanent nature in force at the beginning of that session, that is, December 7, 1925.

Congress, in preparing the Code, had in mind the necessity for an arrangement of the laws which was convenient and accessible, and one which would also make provision for future growth.

To this end all of the existing laws are logically arranged under fifty titles. Many of these titles are subdivided into chapters, and lesser subdivisions wherever the matter lends itself to such arrangement.

The Code does not contain consecutive section numbers from beginning to end, as was the case in the Revised Statutes of 1878. The fifty titles comprising the Code are independently numbered, each title beginning with section 1. Gaps are left in the numbering, between the chapters and other subdivisions, so that new and amendatory acts may be inserted with due regard to their relation to the basic matter contained in the Code.

The purpose of this Annotated Edition is to add to this framework of the law, as represented by the text of the statutes, the constructions which the courts have placed upon these laws; for, as the Supreme Court has well said, "after a statute has been settled by judicial construction, the construction becomes * * * as much a part of the statute as the text itself." Without these constructions no man can know the law.

In addition, there has been supplied a great mass of historical data, showing the antecedents of the particular acts or sections, with comments on the sources and the character of the changes.

Many other editorial features have been supplied, which are designed to make the text and annotations more accessible or useful, not the least of which are Reference Tables showing where the laws have previously been placed in the Revised Statutes of 1878, the subsequent Statutes at Large, the Federal Statutes Annotated and the United States Compiled Statutes Annotated.

The entire work is supplemented by a most exhaustive and comprehensive index.

The editorial staffs of the two publishers, with the knowledge and experience gained over a long period of time in preparing annotated editions of the United States laws, have brought to this enterprise the background, the ability, and the judgment necessary to produce the character of work which the importance of the task demands.

In so far as the size of the title and the volume of annotations will permit, each title of the laws is comprised within a single volume of this set. It is felt that the advantages accruing from such a method

of publication will materially increase the value of the set for reference purposes.

A great step forward has been taken in the adoption of the plan for adding later laws and annotations to each title, through Supplementary Parts, which fit into the pocket at the back of each book, thus doing away with the necessity for publishing later matter in supplemental volumes, with all of their unavoidable inconveniences. These pocket parts are to be issued annually and cumulated from year to year.

Supplementing these pocket parts are Quarterly Pamphlets, which will contain all the laws and annotations which become available after the publication of the latest pocket part. These also are cumulated from quarter to quarter, the final cumulation supplied each year being in the form of pocket parts to be slipped into the backs of each volume of the set.

W. P. Co.
E. T. Co.

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UNITED STATES CODE ANNOTATED

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THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA

TITLE 22

FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 1.—DIPLOMATIC AND CONSULAR SERVICE GENERALLY

ORGANIZATION OF "FOREIGN SERVICE OF UNITED STATES"

ORGANIZATION OF "FOREIGN SERVICE OF UNITED STATES"

Section 1. Establishment of "Foreign Service." The Diplomatic and Consular Service of the United States shall be known as the Foreign Service of the United States. (May 24, 1924, c. 182, § 1, 43 Stat. 140.)

Historical Note

The act cited to the text, which was the source of this subchapter, was entitled, "An act for the reorganization and improvement of the Foreign Service of the United States, and for other purposes."

§ 2. "Foreign Service officer" defined; assignment to duty generally. The official designation "Foreign Service officer" as employed throughout sections 3 to 23, inclusive, of this chapter shall be deemed to denote permanent officers in the Foreign Service below the grade of minister, all of whom are subject to promotion on merit, and who may be assigned to duty in either the diplomatic or the consular

branch of the Foreign Service at the discretion of the President. (May 24, 1924, c. 182, § 2, 43 Stat. 140.)

§ 3. Grading, classification, and salaries; details for purpose of inspection. The officers in the Foreign Service shall be graded and classified as follows, with the salaries of each class herein affixed thereto, but not exceeding in number for each class a proportion to the total number of officers in the service represented in the following percentage limitations: Ambassadors and ministers as now or hereafter provided; Foreign Service officers as follows: Class 1, 6 per centum, $9,000; class 2, 7 per centum, $8,000; class 3, 8 per centum, $7,000; class 4, 9 per centum, $6,000; class 5, 10 per centum, $5,000; class 6, 14 per centum, $4,500; class 7, $4,000; class 8, $3,500; class 9, $3,000; unclassified, $3,000 to $1,500: *Provided,* That as many Foreign Service officers above class 6 as may be required for the purpose of inspection may be detailed by the Secretary of State for that purpose. (May 24, 1924, c. 182, § 3, 43 Stat. 140.)

Cross-References

Salaries while receiving instruction or in transit, see section 121, post, of this title.
Salaries while absent from post on leave or otherwise, see section 123, post, of this title.

§ 4. Appointment of Foreign Service officers as diplomatic secretaries or as consular officers; official acts under respective commissions. Foreign Service officers may be appointed as secretaries in the Diplomatic Service or as consular officers or both: *Provided,* That all such appointments shall be made by and with the advice and consent of the Senate: *Provided further,* That all official acts of such officers while on duty in either the diplomatic or the consular branch of the Foreign Service shall be performed under their respective commissions as secretaries or as consular officers. (May 24, 1924, c. 182, § 4, 43 Stat. 140.)

§ 5. Appointment of Foreign Service officers; examination and probation; transfers from State Department; citizenship requirement; reinstatement. Appointments to the position of Foreign Service officer shall be made after examination and a suitable period of probation in an unclassified grade or, after five years of continuous service in the Department of State, by transfer therefrom under such rules and regulations as the President may prescribe: *Provided,* That no candidate shall be eligible for examination for Foreign Service officer who is not an American citizen: *Provided further,* That reinstatement

of Foreign Service officers separated from the classified service by reason of appointment to some other position in the Government service may be made by Executive order of the President under such rules and regulations as he may prescribe. (May 24, 1924, c. 182, § 5, 43 Stat. 141.)

Historical Note

This section and section 6 of this title, post, were section 5 of the act cited to the text.

§ 6. Appointment to class, assignment to post; classification as diplomatic secretaries and as consular officers abolished. All appointments of Foreign Service officers shall be by commission to a class and not by commission to any particular post, and such officers shall be assigned to posts and may be transferred from one post to another by order of the President as the interests of the service may require: *Provided,* That the classification of secretaries in the Diplomatic Service and of consular officers existing on July 1, 1924, is abolished as of that date, without, however, in anywise impairing the validity of the then existng commissions of secretaries and consular officers. (May 24, 1924, c. 182, § 5, 43 Stat. 141.)

Historical Note

See note to section 5 of this title, ante.

§ 7. Reports and recommendations for promotions and appointments. The Secretary of State is directed to report from time to time to the President, along with his recommendations, the names of those Foreign Service officers who by reason of efficient service have demonstrated special capacity for promotion to the grade of minister and the names of those Foreign Service officers and employees and officers and employees in the Department of State who by reason of efficient service, an accurate record of which shall be kept in the Department of State, have demonstrated special efficiency, and also the names of persons found upon taking the prescribed examination to have fitness for appointment to the lower grades of the service. (Feb. 5, 1915, c. 23, § 5, 38 Stat. 806; May 24, 1924, c. 182, § 6, 43 Stat. 141.)

Historical Note

This section was amended by Act May 24, 1924, c. 182, § 6, cited to the text, to read as set forth above.

§ 8. Recommissioning diplomatic and consular officers. On July 1, 1924, the Secretary of State shall certify to the President, with his

recommendation in each case, the record of efficiency of the several secretaries in the Diplomatic Service, consuls general, consuls, vice consuls of career, consular assistants, interpreters, and student interpreters then in office and shall, except in cases of persons found to merit reduction in rank or dismissal from the service, recommend to the President the recommissioning, without further examination, of those then in office as follows:

Secretaries of class 1 designated as counselors of embassy, and consuls general of classes 1 and 2 as Foreign Service officers of class 1.

Secretaries of class 1 designated as counselors of legation and consuls general of class 3 as Foreign Service officers of class 2.

Secretaries of class 1 not designated as counselors, consuls general of class 4, and consuls general at large as Foreign Service officers of class 3.

Secretaries of class 2, consuls general of class 5, consuls of classes 1, 2, and 3, and Chinese, Japanese, and Turkish secretaries as Foreign Service officers of class 4.

Consuls of class 4 as Foreign Service officers of class 5.

Secretaries of class 3, consuls of class 5, and Chinese, Japanese, and Turkish assistant secretaries as Foreign Service officers of class 6.

Consuls of class 6 as Foreign Service officers of class 7.

Secretaries of class 4 and consuls of class 7 as Foreign Service officers of class 8.

Consuls of classes 8 and 9 as Foreign Service officers of class 9.

Vice consuls of career, consular assistants, interpreters, and student interpreters as Foreign Service officers, unclassified. (May 24, 1924, c. 182, § 7, 43 Stat. 141.)

Editorial comment.—This section appears to be temporary and to have been executed.

§ 9. Inspection of diplomatic and consular offices; expenses of inspector; suspension of consuls, etc.; penal liability of inspectors. Foreign Service officers detailed for the purpose of inspection, shall, under the direction of the Secretary of State, inspect the work of offices in the Foreign Service, both in the diplomatic and the consular branches. Each office shall be inspected at least once in every two years. Whenever the President has reason to believe that the business of a consulate or a consulate general is not being properly conducted and that it is necessary for the public interest, he may authorize any Foreign Service officer detailed for the purpose of inspection to suspend the consul or consul general, and administer the office in his stead for a period not exceeding ninety days. In such case the Foreign Service officer so authorized shall have power to suspend any vice consular officer or clerk in said office during the period aforesaid. The provisions of section 103 of this chapter shall apply to Foreign Service officers detailed for the purpose of inspection. (Apr. 5, 1906, c. 1366, § 4, 34 Stat. 100; May 24, 1924, c. 182, § 10, 43 Stat. 142.)

Editorial comment.—The last sentence of this section, making section 103 of this title applicable to Foreign Service officers detailed for the purpose of inspection, should probably also make section 102 of this title applicable to such officers. See the last sentence of section 4 of Act April 5, 1906, c. 1366, quoted in the historical note hereunder.

Historical Note

The first sentence of this section was derived from section 10 of Act May 24, 1924, c. 182, cited to the text, which, as enacted, read as follows: "The provisions of section 4 of the Act of April 5, 1906, relative to the powers, duties, and prerogatives of consuls general at large are hereby made applicable to Foreign Service officers detailed for the purpose of inspection, who shall, under the direction of the Secretary of State, inspect the work of officers in the Foreign Service, both in the diplomatic and the consular branches."

The remainder of this section comprises the provisions, adopted as directed by section 10 of the 1924 act, from section 4 of Act April 5, 1906, c. 1366, cited to the text.

Said section 4 of Act April 5, 1906, also cited to the text, read as follows: "There shall be five inspectors of consulates, to be designated and commissioned as consuls-general at large, who shall receive an annual salary of five thousand dollars each, and shall be paid their actual and necessary traveling and subsistence expenses while traveling and inspecting under instructions from the Secretary of State. They shall be appointed by the President, with the advice and consent of the Senate, from the members of the consular force possessing the requisite qualifications of experience and ability. They shall make such inspections of consular offices as the Secretary of State shall direct, and shall report to him. Each consular office shall be inspected at least once in every two years. Whenever the President has reason to believe that the business of a consulate or a consulate-general is not being properly conducted and that it is necessary for the public interest, he may authorize any consul-general at large to suspend the consul or consul-general, and administer the office in his stead for a period not exceeding ninety days. In such case the consul-general at large so authorized shall have power to suspend any vice or deputy consular officer or clerk in said office during the period aforesaid. The provisions of law relating to the official bonds of consuls-general, and the provisions of sections seventeen hundred and thirty-four, seventeen hundred and thirty-five, and seventeen hundred and thirty-six, Revised Statutes of the United States, shall apply to consuls-general at large."

Cross-References

Authority to detail Foreign Service officers for the purpose of inspection, see section 3 of this title, ante.

For provisions relative to traveling and subsistence expenses of any Foreign Service officer detailed for duty not at his post with a further provision authorizing a per diem allowance in lieu of subsistence for Foreign Service officers on special duty or Foreign Service inspectors, see section 16 of this title, post.

§ 10. Abolition of grade of consular assistants; recommissioning as Foreign Service officers. The grade of consular assistant is abolished, as of July 1, 1924, and all consular assistants as of that date in the service are recommissioned as Foreign Service officers unclassified. (May 24, 1924, c. 182, § 8, 43 Stat. 142.)

Historical Note

An additional provision contained in this section as originally enacted, providing against a reduction of the salaries of consuls of class 1 and consuls general of class 1 by their reclassification and recommissioning, has been omitted, doubtless, as temporary in nature.

§ 11. Bonds of officers of the Foreign Service. Every secretary, consul general, consul, vice consul of career, or Foreign Service officer, before he receives his commission or enters upon the duties of his office, shall give to the United States a bond, in such form as the President shall prescribe, with such sureties, who shall be permanent residents of the United States, as the Secretary of State shall approve, in a penal sum not less than the annual compensation allowed to such officer, conditioned for the true and faithful accounting for, paying over and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property which shall come to his hands or to the hands of any other person to his use as such officer under any law now or hereafter enacted, and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer: *Provided*, That the operation of no bond existing July 1, 1924, shall in any wise be impaired by the provisions of sections 1 to 23, inclusive, of this chapter: *Provided further*, That such bond shall cover by its stipulations all official acts of such officer, whether as Foreign Service officer or as secretary in the Diplomatic Service, consul general, consul, or vice consul of career. The bonds herein mentioned shall be deposited with the Secretary of the Treasury. (R. S. § 1697;* May 24, 1924, c. 182, § 9, 43 Stat. 142.)

*"R. S. § 1698; Dec. 21, 1898, c. 36, §§ 1, 2, 30 Stat. 770, 771;" should be added to this citation.

Historical Note

Section 9 of Act May 24, 1924, c. 182, cited to the text, recited that it amended R. S. §§ 1697 and 1698 to read as set out here.

R. S. § 1697, provided for a bond for consuls general, consuls, and commercial agents, in a penal sum not less than $1,000 and in no case less than the officer's annual compensation. As amended by section 1 of Act Dec. 21, 1898, c. 36, 30 Stat. 770, to read as set out therein, the section permitted suit on the bond by any person injured by a breach thereof.

R. S. § 1698, provided for a bond for vice consuls in a sum not less than $2,000 nor more than $10,000. The section was changed in several particulars by amendment by section 2 of Act Dec. 21, 1898, c. 36, 30 Stat. 771, to read as therein set out. The amendment, among other things, extended the provision to include vice consuls general, and permitted suit on the bond by any person injured by a breach thereof.

Provision is now made for suit on the bond of any consular officer by any person injured by such officer's neglect of duty or malfeasance by section 103 of this title, post.

Cross-References

Officers' bonds required to be examined at least every two years and renewed at least every four years, see sections 2 and 3 of Title 6, Official and Penal Bonds.

Suit on bond of consular officer by person injured by neglect of duty or malfeasance, see section 103 of this title, post.

Penalty for violation of provision against transaction of private business in bond of consuls general or consuls, see section 108, post, of this title.

Notes of Decisions

1. **Necessity of bond.**—A consul or vice consul is not invested with the office until he gives the bond required by law; nor can he recover the salary of the office where he has neglected to give the bond. Daincse v. U. S. (1879) 15 Ct. Cl. 64.

The Secretary of State is not bound to issue his instructions to a foreign minister, nor order him to his post, until he has manifested his acceptance of the office and his ability to comply with the conditions precedent by the giving of a bond. Williams v. U. S. (1888) 23 Ct. Cl. 46.

The officer is entitled to compensation from the time of appointment, though his bond is not executed until some time later. U. S. v. Eaton (Ct. Cl. 1898) 18 S. Ct. 374, 380, 169 U. S. 331, 42 L. Ed. 767.

A person appointed consul general who takes the oath of office, but, failing to execute a bond as required, his commission was not delivered to him, is not qualified to receive the commission or to enter upon the duties of the office, and consequently is not entitled to pay as an incumbent of such office. (1885) 18 Op. Atty. Gen. 157.

2. **Form of bond.**—See (1885) 18 Op. Atty. Gen. 274, holding that, where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same.

3. **Attestation of bond.**—It is not essential to the validity of a consular bond that it should be attested. (1820) 1 Op. Atty. Gen. 378.

4. **Corporation surety.**—It is competent for the Secretary of State, under this section, to accept as sureties upon official bonds of United States consular officers, corporations organized under state or United States laws as surety or guaranty companies authorized by their charter to undertake such obligations. (1891) 20 Op. Atty. Gen. 16.

5. **Time of taking effect of bond.**—A consul's bond speaks and takes effect, not from its date, but from the time of its approval by the Secretary of State. (1872) 14 Op. Atty. Gen. 7.

Accordingly, where an appointee to a consulship was commissioned on the 18th of January, and his bond, though dated on the 13th of same month, was not approved by the Secretary until the 27th, held, that the bond was valid and sufficient under said act. Id.

6. **Liability of sureties.**—The neglect of the treasury department in claiming moneys paid to a consul in excess of his salary does not discharge the sureties on his bond from liability therefor, though such neglect continues long enough to afford the sureties a good defense against any but the government. U. S. v. Bee (Cal. 1893) 54 F. 112, 4 C. C. A. 219.

The surety of a consular officer cannot be held liable for the statutory penalty incurred by the principal under R. S. § 1723 (section 92 of this title, post), for charging excessive fees, where such fees, including the excess, have been charged against him in his account, and paid to the Treasury Department. U. S. v. Ballantine (N. Y. 1905) 138 F. 312, 70 C. C. A. 602.

A bond given by a public officer, as a consul general of the United States, con-

ditioned that he will faithfully discharge the duties of his office, and faithfully account for and pay over all moneys which shall come into his hands under any law, must be construed strictly, in favor of the sureties, with respect to the duties and obligations secured, and it cannot be held a breach of such bond that he failed to return to the treasury a sum overpaid him on his salary through mistake. U. S. v. Boyd (C. C. Mo. 1902) 118 F. 89.

The surety of a consul under Act April 14, 1792, is not responsible on account of moneys remitted to him for purposes not comprehended within his consular duties, as prescribed by such act. U. S. v. Bell (D. C. Pa. 1829) Fed. Cas. No. 14,565.

In an action on the official bond of a United States consul, the condition of which requires him to deliver up all fees and moneys which shall come to his hands, as provided by this section, he is not liable for money paid, under the direction of the state department, to a clerk appointed by the president, although R. S. § 1696 (section 58 of this title, post), provides that the only allowance to any vice consulate or consular agency for expenses shall be an amount sufficient to pay for stationery and postage on official letters. U. S. v. Owen (D. C. Vt. 1891) 47 F. 797.

§ 12. Representation allowances to diplomatic missions and consulates. The President is hereby authorized to grant to diplomatic missions and to consular offices at capitals of countries where there is no diplomatic mission of the United States representation allowances out of any money which may be appropriated for such purpose from time to time by Congress, the expenditure of such representation allowance to be accounted for in detail to the Department of State quarterly under such rules and regulations as the President may prescribe. (May 24, 1924, c. 182, § 12, 43 Stat. 142.)

§ 13. Fees; accounting; stamps. The provisions of sections 99 and 100 of this chapter relative to official fees and the method of accounting therefor shall include both branches of the Foreign Service. (May 24, 1924, c. 182, § 11, 43 Stat. 142.)

§ 14. Private secretaries to ambassadors; appointment; salaries. Appropriations are authorized for the salary of a private secretary to each ambassador who shall be appointed by the ambassador and hold office at his pleasure. (May 24, 1924, c. 182, § 13, 43 Stat. 143.)

§ 15. Assignment for duty in State Department. Any Foreign Service officer may be assigned for duty in the Department of State without loss of class or salary, such assignment to be for a period of not more than three years, unless the public interests demand further service, when such assignment may be extended for a period not to exceed one year. (May 24, 1924, c. 182, § 14, 43 Stat. 143.)

Historical Note

This section and section 16 of this title, post, were derived from section 14, cited to the text.

§ 16. Special details and inspectors; allowance for expenses. Any Foreign Service officer of whatever class detailed for special duty not

at his post or in the Department of State shall be paid his actual and necessary expenses for travel and not exceeding an average of $8 per day for subsistence during such special detail: *Provided*, That such special duty shall not continue for more than sixty days, unless in the case of trade conferences or international gatherings, congresses, or conferences, when such subsistence expenses shall run only during the period thereof and the necessary period of transit to and from the place of gathering: *Provided further*, That the Secretary of State is authorized to prescribe a per diem allowance not exceeding $6, in lieu of subsistence for Foreign Service officers on special duty or Foreign Service inspectors. (May 24, 1924, c. 182, § 14, 43 Stat. 143.)

Historical Note

See note to section 15, ante, of this title.

§ 17. Ordering officers to United States on statutory leave of absence; traveling expenses; duty while on leave. The Secretary of State is authorized, whenever he deems it to be in the public interest, to order to the United States on his statutory leave of absence any Foreign Service officer who has performed three years or more of continuous service abroad: *Provided*, That the expenses of transportation and subsistence of such officers and their immediate families, in traveling from their post to their homes in the United States and return, shall be paid under the same rules and regulations applicable in the case of officers going to and returning from their posts under orders of the Secretary of State when not on leave: *Provided further*, That while in the United States the services of such officers shall be available for trade conference work or for such duties in the Department of State as the Secretary of State may prescribe. (May 24, 1924, c. 182, § 15, 43 Stat. 143.)

§ 18. Counselor of embassy or legation. The President may, whenever he considers it advisable so to do, designate and assign any Foreign Service officer as counselor of embassy or legation. (*May 24, 1924, c. 182, § 16, 43 Stat. 143.)

* "July 1, 1916, c. 208, 39 Stat. 252;" should be added to this citation.

Historical Note

Act July 1, 1916, c. 208, 39 Stat. 252, was amended by Act May 24, 1924, c. 182, § 16, cited above, to read as set forth above. As originally enacted this section used the words "secretary of class one" instead of "Foreign Service Officer" as appearing herein.

§ 19. Commissioner, chargé d'affaires; minister resident and diplomatic agent; appointment and salary. Within the discretion of the President, any Foreign Service officer may be appointed to act as commissioner, chargé d'affaires, minister resident, or diplomatic agent for such period as the public interests may require without loss of grade, class, or salary: *Provided, however,* That no such officer shall receive more than one salary. (May 24, 1924, c. 182, § 17, 43 Stat. 143.)

Editorial comment.—Effect of proviso herein on section 30 of this title, post, see comment under that section.

Historical Note

Further provisions of the section cited to the text are embodied in section 20, post.

Cross-References

Appropriations unavailable for payment to any person receiving more than one salary when combined amounts exceed $2,000, unless otherwise specifically authorized by law, see section 58 of Title 5, Executive Departments and Government Officers and Employees.

§ 20. Compensation of Foreign Service officer acting as chargé d'affaires ad interim or in charge of consulate. For such time as any Foreign Service officer shall be lawfully authorized to act as chargé d'affaires ad interim or to assume charge of a consulate general or consulate during the absence of the principal officer at the post to which he shall have been assigned, he shall, if his salary is less than one-half that of such principal officer, receive in addition to his salary as Foreign Service officer compensation equal to the difference between such salary and one-half of the salary provided by law for the ambassador, minister, or principal consular officer, as the case may be. Vice consuls while in charge of a consulate general or consulate during the absence of the principal officer shall be entitled to additional compensation in the same manner and under the same conditions as Foreign Service officers as provided above in this section. (*May 24, 1924, c. 182, § 17, 43 Stat. 143; Feb. 27, 1925, c. 364, Title I, 43 Stat. 1016.)

* "R. S. § 1685; Mar. 2, 1909, c. 235, 35 Stat. 673; Feb. 5, 1915, c. 23, § 3, 38 Stat. 805;" should be added to this citation.

Historical Note

Section 17 of Act May 24, 1924, c. 182, cited to the text, recited that it amended R. S. § 1685, as amended by Act Feb. 5, 1915, c. 23, § 3, 38 Stat. 805, to read as set out in the first sentence of this section. The last sentence of this section is a provision from Act Feb. 27, 1925, c. 364, Title I, cited to the text.

R. S. § 1685, as enacted, was as follows: "For such time as any secretary of legation shall be lawfully authorized to act as chargé d'affaires ad interim at the post

to which he shall have been appointed, he shall be entitled to receive compensation at the rate allowed by law for a chargé d'affaires at such post; but he shall not be entitled to receive, for such time, the compensation allowed for his services as secretary of legation." It was amended by Act March 2, 1909, c. 235, 35 Stat. 673, so as to provide a compensation for any secretary of embassy or legation, authorized to act as chargé d'affaires ad interim, in addition to his salary, equal to the difference between such salary and 50 per cent. of the salary provided by law for the ambassador or minister of such post.

R. S. § 1685, was again amended in various particulars by Act Feb. 5, 1915, c. 23, § 3, 38 Stat. 805. That amendment added a provision relating, as does the last sentence of this section, to additional compensation of vice consuls in charge of a consulate general or consulate.

A provision of Act Feb. 25, 1885, c. 150, 23 Stat. 322, prohibiting additional compensation for service as chargé d'affaires during the absence of a minister without leave, was superseded by the 1909 amendment aforesaid.

The provision for remuneration of vice consuls added by Act Feb. 5, 1915, as above pointed out, superseded a portion of section 8 of Act April 5, 1906, c. 1366 (see historial note to section 99, post, of this title), providing for fixing such remuneration by regulation.

Notes of Decisions

1. Compensation.—A secretary of legation, when legally authorized to act in that capacity, is entitled, under Act Aug. 18, 1856, c. 127 (source of R. S. § 1685, which is quoted in historical note under this section), to receive the pay of a chargé d'affaires. (1860) 9 Op. Atty. Gen. 425.

A vice consul, acting during the absence of his superior or during a vacancy in the office, is compensated from the salary of that office. The same principle applies to a vice consul general. Boyd v. U. S. (1896) 31 Ct. Cl. 158, modified Eaton v. U. S. (1898) 33 Ct. Cl. 508.

A vice consul's compensation begins with his principal's absence, and not with the approval of his bond. Id.

§ 21. Retirement and disability system; establishment; rules and regulations. The President is authorized to prescribe rules and regulations for the establishment of a Foreign Service retirement and disability system to be administered under the direction of the Secretary of State and in accordance with the following principles, to wit:

(*a*) *Reports; appropriations.*—The Secretary of State shall submit annually a comparative report showing all receipts and disbursements on account of refunds, allowances, and annuities, together with the total number of persons receiving annuities and the amounts paid them, and shall submit annually estimates of appropriations necessary to continue this section in full force and such appropriations are hereby authorized: *Provided,* That in no event shall the aggregate total appropriations exceed the aggregate total of the contributions of the Foreign Service officers theretofore made, and accumulated interest thereon.

(*b*) *Foreign Service retirement and disability fund.*—There is hereby created a special fund to be known as the Foreign Service retirement and disability fund.

(*c*) *Deductions from salaries of Foreign Service officers.*—Five per centum of the basic salary of all Foreign Service officers eligible to retirement shall be contributed to the Foreign Service retirement and disability fund and the Secretary of the Treasury is directed on July 1, 1924, to cause such deductions to be made and the sums transferred on the books of the Treasury Department to the credit of the Foreign Service retirement and disability fund for the payment of annuities, refunds, and allowances: *Provided*, That all basic salaries in excess of $9,000 per annum shall be treated as $9,000.

(*d*) *Age and period of service for retirement.*—When any Foreign Service officer has reached the age of sixty-five years and rendered at least fifteen years of service he shall be retired: *Provided*, That the President may in his discretion retain any such officer on active duty for such period not exceeding five years as he may deem for the interest of the United States.

(*e*) *Annuities; amounts.*—Annuities shall be paid to retired Foreign Service officers under the following classification, based upon length of service and at the following percentages of the average annual basic salary for the ten years next preceding the date of retirement: Class A, thirty years or more, 60 per centum; class B, from twenty-seven to thirty years, 54 per centum; class C, from twenty-four to twenty-seven years, 48 per centum; class D, from twenty-one to twenty-four years, 42 per centum; class E, from eighteen to twenty-one years, 36 per centum; class F, from fifteen to eighteen years, 30 per centum.

(*f*) *Deductions from annuities.*—Those officers who retire before having contributed for each year of service shall have withheld from their annuities to the credit of the Foreign Service retirement and disability fund such proportion of 5 per centum as the number of years in which they did not contribute bears to the total length of service.

(*g*) *Investment of fund.*—The Secretary of the Treasury is directed to invest from time to time in interest-bearing securities of the United States such portions of the Foreign Service retirement and disability fund as in his judgment may not be immediately required for the payment of annuities, refunds, and allowances, and the income derived from such investments shall constitute a part of said fund.

(*h*) *Annuities; nonassignable; exemption from legal process.*—None of the moneys mentioned in this section shall be assignable, either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process.

(*i*) *Distribution of excess of accumulated contributions of annuitants without having received annuities equal to amounts contributed.*—In case an annuitant dies without having received in annuities an amount equal to the total amount of his contributions from salary with interest thereon at 4 per centum per annum compounded annually up to the time of his death, the excess of the said accumulated contributions over the said annuity payments shall be paid to his or her legal representatives; and in case a Foreign Service officer shall die without having reached the retirement age the total amount of his contributions with accrued interest shall be paid to his legal representatives.

(*j*) *Retirement for disability.*—Any Foreign Service officer who before reaching the age of retirement becomes totally disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the President, be retired on an annuity under paragraph (e) of this section: *Provided, however*, That in each case such disability shall be determined by the report of a duly qualified physician or surgeon designated by the Secretary of State to conduct the examination: *Provided further*, That unless the disability be permanent, a like examination shall be made annually in order to determine the degree of disability, and the payment of annuity shall cease from the date of the medical examination showing recovery.

Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Foreign Service retirement and disability fund.

When the annuity is discontinued under this provision, before the annuitant has received a sum equal to the total amount of his contributions with accrued interest, the difference shall be paid to him or to his legal representatives.

(*k*) *Residence at unhealthful tropical posts.*—The President is authorized from time to time to establish, by Executive order, a list of places in tropical countries which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty at such posts, while so classed, inclusive of regular leaves of absence, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purposes of retirement.

(*l*) *Return of contributions on separation from service before retirement.*—Whenever a Foreign Service officer becomes separated from the service except for disability before reaching the age of retirement, 75 per centum of the total amount of contribution from his salary without interest shall be returned to him.

(*m*) *Reduction of annuity of retired Foreign Service officers accepting other employment.*—Whenever any Foreign Service officer, after the date of his retirement, accepts a position of employment the emoluments of which are greater than the annuity received by him from the United States Government by virtue of his retirement under this section, the amount of the said annuity during the continuance of such employment shall be reduced by an equal amount: *Provided*, That all retired Foreign Service officers shall notify the Secretary of State once a year of any positions of employment accepted by them stating the amount of compensation received therefrom and whenever any such officer fails to so report it shall be the duty of the Secretary of State to order the payment of the annuity to be suspended until such report is received.

(*n*) *Expense of administering retirement system.*—The Secretary of State is authorized to expend from surplus money to the credit of the Foreign Service retirement and disability fund an amount not exceeding $5,000 for the expenses necessary in carrying out the provisions of this section, including actuarial advice.

(*o*) *Rights of diplomatic secretaries or consular officers promoted to grade of ambassador or minister or appointed to position in State Department.*—Any diplomatic secretary or consular officer who has been or any Foreign Service officer who may hereafter be promoted from the classified service to the grade of ambassador or minister, or appointed to a position in the Department of State shall be entitled to all the benefits of this section in the same manner and under the same conditions as Foreign Service officers.

(*p*) *Computation of period of service.*—For the purposes of this section the period of service shall be computed from the date of original oath of office as secretary in the Diplomatic Service, consul general, consul, vice consul, deputy consul, consular assistant, consular agent, commercial agent, interpreter, or student interpreter, and shall include periods of service at different times in either the Diplomatic or Consular Service, or while on assignment to the Department of State, or on special duty, but all periods of separation from the service and so much of any period of leave of absence as may exceed six

months shall be excluded: *Provided*, That service in the Department of State prior to appointment as a Foreign Service officer may be included in the period of service, in which case the officer shall pay into the Foreign Service retirement and disability fund a special contribution equal to 5 per centum of his annual salary for each year of such employment, with interest thereon to date of payment compounded annually at 4 per centum. (May 24, 1924, c. 182, § 18, 43 Stat. 144.)

Editorial comment.—The provisions of subsection (c) hereof for deductions and transfers on July 1, 1924, might have been omitted as temporary.

§ 22. Recall of retired officer to active duty; compensation. In the event of public emergency any retired Foreign Service officer may be recalled temporarily to active service by the President and while so serving he shall be entitled in lieu of his retirement allowance to the full pay of the class in which he is temporarily serving. (May 24, 1924, c. 182, § 19, 43 Stat. 146.)

§ 23. Other laws applicable to Foreign Service officers. All provisions of law enacted prior to July 1, 1924, relating to secretaries in the Diplomatic Service and to consular officers, which are not inconsistent with the foregoing provisions of this chapter, are hereby made applicable to Foreign Service officers when they are designated for service as diplomatic or as consular officers, and all Acts or parts of Acts, then in force, inconsistent with sections 1 to 23 inclusive of this chapter are repealed. (May 24, 1924, c. 182, § 20, 43 Stat. 146.)

Historical Note

A portion of section 22 of Act May 24, 1924, c. 182, cited to the text, relating to assistant secretaries of state, is represented in section 152 of Title 5, Executive Departments and Government Officers and Employees. A further portion of said section abolished the position of Director of the Consular Service.

DIPLOMATIC OFFICERS GENERALLY

§ 31. Restriction against creation of new ambassadorships. No new ambassadorship shall be created unless the same shall be provided for by Act of Congress. (March 2, 1909, c. 235, 35 Stat. 672.)

Historical Note

This was a provision of the diplomatic and consular appropriation act for the fiscal year 1910, cited above. Another provision of this act repealed a provision, authorizing the President to change the designation of diplomatic representatives, made by Act March 1, 1893, c. 182, § 1, 27 Stat. 497.

§ 32. Appointment and salaries of ambassadors, ministers, etc. Ambassadors, envoys extraordinary and ministers plenipotentiary,

ministers resident, and agents shall be entitled to compensation at the rates following, per annum, namely:

Ambassadors extraordinary and plenipotentiary to Argentina, Brazil, Chile, Cuba, France, Germany, Great Britain, Italy, Japan, Mexico, Peru, Spain, and Turkey, $17,500: *Provided*, That the salary of an envoy extraordinary and minister plenipotentiary to Turkey, in the event that the President should appoint a diplomatic representative of that grade, shall be $12,000;

Ambassador extraordinary and plenipotentiary to Belgium and envoy extraordinary and minister plenipotentiary to Luxemburg, $17,500;

Envoys extraordinary and ministers plenipotentiary to China, and the Netherlands, $12,000;

Envoys extraordinary and ministers plenipotentiary to Albania, Austria, Bolivia, Bulgaria, Czechoslovakia, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Haiti, Honduras, Hungary, Nicaragua, Norway, Panama, Paraguay, Persia, Poland, Portugal, Rumania, Salvador, Siam, Sweden, Switzerland, Uruguay, and Venezula,* $10,000, and to the Serbs, Croats, and Slovenes, $10,000;

Envoy extraordinary and minister plenipotentiary to Esthonia, Latvia, and Lithuania, $10,000;

Minister resident and consul general to Liberia, $5,000;

Agent and consul general at Tangier, $7,500;

Provided, That no salary herein appropriated shall be paid to any official receiving any other salary from the United States Government.

Ambassadors, and envoys extraordinary and ministers plenipotentiary to all other countries, unless where a different compensation is prescribed by law, shall be entitled to compensation each, at the rate of $10,000 per annum.

And, unless when otherwise provided by law, ministers resident and commissioners shall be entitled to compensation at the rate of 75 per centum, and chargés d'affaires at the rate of 50 per centum, of the amounts allowed to ambassadors, envoys extraordinary, and ministers plenipotentiary to the said countries, respectively. (R. S. § 1675; †Feb. 27, 1925, c. 364, 43 Stat. 1015.)

* Word misspelled.

† "Mar. 3, 1875, c. 153, 18 Stat. 483;" should be added to this citation.

Editorial comment.—Several of the provisions herein were drawn solely from the Departments of State and Justice, Judiciary, and Departments of Commerce and Labor appropriation act for the fiscal year, 1926, Act Feb. 27, 1925, c. 364, cited to the text, and may be temporary. See historical note hereunder.

The last paragraph of this section may in part be no longer in effect in view of section 3 of this title, grading, classifying, and providing the salaries of Foreign Service officers, section 19 of this title, authorizing the appointment of any Foreign Service officer as commissioner, chargé d'affaires, minister resident, or diplomatic agent without loss of grade, class, or salary, and section 20 of this title, providing additional compensation for any Foreign Service officer acting as chargé d'affaires ad interim or in charge of consulate.

The words "herein appropriated" (second proviso) seem to be inaccurate and perhaps might well be replaced by "herein enumerated."

Historical Note

R. S. § 1675, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 1, 11 Stat. 52; Act June 16, 1860, c. 135, § 1, 12 Stat. 40; and Act Feb. 22, 1873, c. 181, § 1, 17 Stat. 471, 472.

It read as follows: "Ambassadors, envoys extraordinary, and ministers plenipotentiary, ministers resident, agents, and secretaries, and second secretaries of legation, shall be entitled to salaries as hereinafter provided.

"Envoys extraordinary and ministers plenipotentiary to France, Germany, Great Britain, and Russia, seventeen thousand five hundred dollars each; to Austria, Brazil, China, Italy, Japan, Mexico, and Spain, twelve thousand dollars each; to Chili and Peru ten thousand dollars each.

"Minister-resident accredited to Guatemala, Costa Rica, Honduras, Salvador, and Nicaragua, ten thousand dollars.

"Minister-resident at Uruguay, ten thousand dollars.

"Ministers-resident at Portugal, Switzerland, Greece, Belgium, Netherlands, Denmark, Sweden and Norway, Turkey, Ecuador, Colombia, Bolivia, Venezuela, Hawaiian Islands, and the Argentine Republic, seven thousand five hundred dollars each.

"Minister-resident and consul-general at Hayti, seven thousand five hundred dollars.

"Minister-resident and consul-general at Liberia, four thousand dollars.

"Agent and consul-general at Alexandria, three thousand five hundred dollars.

"Secretaries of legation to London, Paris, Berlin, and Saint Petersburg, two thousand six hundred and twenty-five dollars each.

"Secretary of legation to Japan, two thousand five hundred dollars.

"Secretaries of legations to Austria, Brazil, Italy, Mexico, and Spain, one thousand eight hundred dollars each.

"Second secretaries of legations to France, Great Britain, and Germany, two thousand dollars each."

It was amended by Act March 3, 1875, c. 153, 18 Stat. 483, to read as follows: "Ambassadors and envoys extraordinary and ministers plenipotentiary shall be entitled to compensation at the rates following, per annum, namely:

"Those to France, Germany, Great Britain, and Russia, each, seventeen thousand five hundred dollars.

"Those to Austria, Brazil, China, Italy, Japan, Mexico, and Spain, each, twelve thousand dollars.

"Those to all other countries, unless where a different compensation is prescribed by law, each, ten thousand dollars.

"And, unless when otherwise provided by law, ministers resident and commissioners shall be entitled to compensation at the rate of seventy-five per centum, chargés d'affaires at rate of fifty per centum, and secretaries of legation at the rate fifteen per centum, of the amounts allowed to ambassadors, envoys extraordinary, and ministers plenipotentiary to the said countries respectively; except that the secretary of legation to Japan shall be entitled to compensation at the rate of twenty-five hundred dollars per annum.

"The second secretaries of the legations to France, Germany, and Great Britain shall be entitled to compensation at the rate of two thousand dollars each per annum."

R. S. § 1675, as so amended, was the source of the first, last, and next to the last paragraphs of this section.

The remaining paragraphs of this section were derived from the appropriations for the salaries of ambassadors, etc., for the fiscal year 1926, Act Feb. 27, 1925, c. 364, cited to the text.

Cross-References

Salaries of Foreign Service officers, see section 3, ante, of this title.

Notes of Decisions

1. Amount prescribed.—The salary of envoy extraordinary and minister plenipotentiary to Turkey held to be $7,500; Congress having appropriated that sum in 1882, and annually thereafter, for his salary, without otherwise creating the office. Wallace v. U. S. (Ct. Cl. 1890) 10 S. Ct. 251, 133 U. S. 180, 33 L. Ed. 571.

2. Legislative power.—The power to provide for the compensation of diplomatic officers is vested in the legislative branch alone; it may withhold compensation if it sees fit. Byers v. U. S. (1887) 22 Ct. Cl. 59.

3. Powers of President.—The appointment of a person on the 8th of July, 1882, as "minister resident and consul general to Portugal," was a recognition by the President of Act July 1, 1882 (c. 262, 22 Stat. 128), appropriating $5,000 per annum as the salary of the office. The incumbent held no other office and could receive no other salary. Francis v. U. S. (1887) 22 Ct. Cl. 403.

Neither the President nor Secretary of State can restrict the compensation of a diplomatic officer by the terms of his appointment to less than the salary of the office established by law. Foote v. U. S. (1888) 23 Ct. Cl. 443.

The President may appoint envoys at the places where the present minister is a minister resident and in that case the new envoy will be entitled to the salary prescribed by the act. (1855) 7 Op. Atty. Gen. 189.

The President may leave unchanged all the ministers resident, in which case they will each be entitled severally to the salary prescribed by the pre-existing acts of Congress. Id.

4. Effect of statutes.—Statute fixing annual salary not abrogated by subsequent acts appropriating less for services. U. S. v. Langston (Ct. Cl. 1886) 6 S. Ct. 1185, 118 U. S. 389, 30 L. Ed. 164.

When appropriation acts make changes in the salaries of officers, they have been held to supersede the provisions of the previous act with which they are in conflict. See U. S. v. Fisher (Ct. Cl. 1883) 3 S. Ct. 154, 109 U. S. 143, 27 L. Ed. 885. See also Mahoney v. U. S. (Ct. Cl. 1869) 10 Wall. 62, 19 L. Ed. 864; U. S. v. Langston (Ct. Cl. 1886) 6 S. Ct. 1185, 118 U. S. 389, 30 L. Ed. 164; Mathews v. U. S. (Ct. Cl. 1887) 8 S. Ct. 80, 123 U. S. 182, 31 L. Ed. 127; Wallace v. U. S. (Ct. Cl. 1890) 10 S. Ct. 251, 133 U. S. 180, 33 L. Ed. 571; U. S. v. Mosby (Ct. Cl. 1890) 10 S. Ct. 327, 133 U. S. 273, 33 L. Ed. 625.

The laws prescribing a rate of salary for ministers resident and chargés d'affaires, which existed at the time of the passage of Act March 1, 1855, c. 133, are not affected by that act, and continue in full force. (1855) 7 Op. Atty. Gen. 189.

Envoys extraordinary and secretaries of legation in office will, on the day fixed, be entitled to the benefits and subject to the deductions of the new provisions of that act regarding compensation, including salary, whether increased or not, and prohibition of outfit or infit, without reappointment by the President. Id.

Although Appropriation Act March 3, 1855, c. 175, in appropriating for the diplomatic service of the next ensuing fiscal year, provides in terms for envoys extraordinary only, still that appropriation is, by collation with express provision of previous laws, subject to draft for the compensation of diplomatic officers, of whatever rank, lawfully in office by appointment of the President. Id.

Diplomatic and Consular Act March 1, 1855, c. 133, simply regulated the compensation of ministers and consuls, and did not require that they should be reappointed. Under that act consuls were entitled to a salary during the time they remained at their posts of duty. (1857) 9 Op. Atty. Gen. 89.

The change of name from "interpreter to legation to China" to "Chinese secretary" in the appropriation act for the diplomatic and consular service, approved April 4, 1900 (31 Stat. 62), did not create a new office, but is merely a new name for the same office, and an appointment to this position by the President does not require the confirmation of the Senate. (1900) 23 Op. Atty. Gen. 136.

§ 33. Citizenship as requisite to compensation. No compensation provided for any officer mentioned in the preceding section, or any appropriation therefor, shall be applicable to the payment of the compensation of any person appointed to or holding any such office who shall not be a citizen of the United States; nor shall any other compensation be allowed in any such case. (R. S. § 1744.)

Historical Note

R. S. § 1744, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 21, 11 Stat. 60. The words "the preceding section," appearing herein, are a translation of a reference in R. S. § 1744, to R. S. § 1675. As to the relation of R. S. § 1675, to "the preceding section," see historical note to latter (section 32 of this title).

R. S. § 1744, also contained, preceding the words "or any appropriation therefor," of this section, the words "or for any assistant secretary of legation." These words were probably superseded by the reorganization of the Foreign Service by Act May 24, 1924, c. 182 (sections 1 to 23 of this title) which, by section 5 of this title, provides that no candidate not an American citizen shall be eligible for examination for Foreign Service officer.

Cross-References

Clerks at embassies and consular clerks to be citizens of the United States, see sections 35 and 57 of this title, post.

§ 34. Ambassador to Belgium. The President is authorized to appoint, as the representative of the United States, an ambassador to the Kingdom of Belgium, who shall receive as compensation the sum of $17,500 per annum. (Sept. 29, 1919, c. 72, 41 Stat. 291.)

Editorial comment.—This section seems to be in part inconsistent with paragraph 3 of section 32 of this title, ante.

Prior to Act May 25, 1924, c. 204, 43 Stat. 206, the appropriation acts conformed, as respects the Ambassador to Belgium, to this section, but that act contained the following: "For ambassador extraordinary and plenipotentiary to Belgium and envoy extraordinary and minister plenipotentiary to Luxemburg, $17,500."

The third paragraph of section 32 of this title, ante, is from an identically worded appropriation contained in Act Feb. 27, 1925, c. 364, 43 Stat. 1015.

Historical Note

This is a resolution entitled a "Joint Resolution authorizing the appointment of an ambassador to Belgium," cited to the text.

§ 35. Clerks at embassies and legations. Clerks at the embassies and legations, whenever appointed, shall be citizens of the United States, and so far as practicable shall be appointed under civil-service rules and regulations. (Feb. 27, 1925, c. 364, Title I, 43 Stat. 1016.)

Historical Note

From the Departments of State and Justice, Judiciary, and Departments of Commerce and Labor appropriation act for the year 1926, cited above. The same provisions are contained in prior acts.

Cross-References

Similar provision as to consular clerks, see sections 56 and 57 of this title, post.

§ 36. Compensation of persons filling two offices. When to any diplomatic office held by any person there is superadded another, such person shall be allowed additional compensation for his services in such superadded office, at the rate of 50 per centum of the amount allowed by law for such superadded office, and for such time as shall be actually and necessarily occupied in making the transit between the two posts of duty, at the commencement and termination of the period of such superadded office, and no longer; and such superadded office shall be deemed to continue during the time to which it is limited by the terms thereof. (R. S. § 1686.)

Editorial comment.—The proviso to section 19 of this title, ante, prohibiting the receipt of more than one salary by any Foreign Service officer, would seem to partially supersede this section.

Historical Note

R. S. § 1686, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 9, 11 Stat. 56.

Cross-References

Appropriations unavailable for payment to any person receiving more than one salary when combined amounts exceed $2,000, unless otherwise specifically authorized by law, see section 58 of Title 5, Executive Departments and Government Officers and Employees.

Notes of Decisions

1. Application.—The appointment of a consul general, to discharge the duties of a secretary of legation and dragoman, does not entitle him to compensation for discharging the additional duties under this statute, which provides for the case "when to any diplomatic office held by any person there is superadded another," because the office of consul-general which he had held was not a diplomatic one. Brown's Case (1860) 9 Op. Atty. Gen. 507.

§ 37. Special allowance to messenger of embassy at Paris. The Secretary of State is authorized to allow and pay to the messenger of the embassy in Paris, from the moneys collected at the embassy for the transmission of consular invoices, an amount not to exceed in the aggregate $160 in any one year, provided that the surplus receipts are sufficient for that purpose. (June 11, 1874, c. 275, § 1, 18 Stat. 67.)

Editorial comment.—No authority is discernible for the figure $160 in line 5 hereof. See historical note.

Historical Note

This section was derived from a provision of the diplomatic and consular appropriation act for the fiscal year 1875, cited above.

As enacted the provision read as follows: "The Secretary of State is authorized to allow and pay to the secretary of legation and to the second secretary of legation and to the messenger of the legation in Paris, from the moneys collected at the legation for the transmission of consular invoices, an amount not to exceed in the aggregate six hundred dollars in any one year, to be divided and distributed as the Secretary of State may direct, provided that the surplus receipts are sufficient for that purpose."

The portion of the provision applicable to the secretary and second secretary of legation in Paris was evidently superseded by reorganization of the Foreign Service.

Salaries of Foreign Service officers are provided in section 3 of this title, ante.

§ 38. Restriction against transaction of business by diplomatic officers. No ambassador, minister, minister resident, diplomatic agent, or secretary in the Diplomatic Service of any grade or class shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as an agent for any such person to, from, or within the country or countries to which he or the chief of his mission, as the case may be, is accredited, either in his own name or in the name or through the agency of any other person, nor shall he, in such country or countries, practice as a lawyer for compensation or be interested in the fees or compensation of any lawyer so practicing. (Feb. 5, 1915, c. 23, § 7, 38 Stat. 807.)

Historical Note

This was section 7 of an act entitled "An act for the improvement of the foreign service," cited above.

Cross-References

Somewhat similar provision as to consular officers, see section 106 of this title, post.

§ 39. Uniforms and official costumes prohibited. No person in the Diplomatic Service of the United States shall wear any uniform or official costume not previously authorized by Congress. (R. S. § 1688.)

Historical Note

R. S. § 1688, cited to the text, was derived from Res. March 27, 1867, No. 15, 15 Stat. 23.

§ 40. "Diplomatic officer" defined. "Diplomatic officer" shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, and ministers resident, and none others. (*Feb. 5, 1915, c. 23, § 6, 38 Stat. 806; July 1, 1916, c. 208, 39 Stat. 252; May 24, 1924, c. 182, § 2, 43 Stat. 140.)

* "R. S. § 1674;" should be added to this citation.

Editorial comment.—It has been suggested that the titles "Diplomatic officer" (this section) and "Foreign Service officer" (section 2 of this title, ante) are not necessarily

incompatible so as to justify so much curtailing of the original provision here. See historical note hereunder.

This section should evidently be read as though preceded by the introductory words of section 51 of this title, post, as it was originally paragraph "Fifth" of that section.

Historical Note

This section was derived from the "Fifth" paragraph of R. S. § 1674 as amended.

Paragraphs "First" to "Fourth" of R. S. § 1674, as amended, comprise section 51 of this title, post.

As enacted in the Revised Statutes, paragraph "Fifth" read as follows: "Fifth. 'Diplomatic officer' shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, agents, and secretaries of legation, and none others."

In R. S. § 1674, as amended by Act Feb. 5, 1915, c. 23, § 6, cited to the text, secretaries of embassy and secretaries in the Diplomatic Service were also included within the term "Diplomatic officer"; and Act July 1, 1916, c. 208, cited to the text, amended the paragraph by inserting the word "counselors"; so that the paragraph subsequent to the amendments of 1915 and 1916, aforesaid, read as follows: "Fifth. 'Diplomatic officer' shall be deemed to include ambassadors, envoys extraordinary, ministers plenipotentiary, ministers resident, commissioners, chargés d'affaires, counselors, agents, secretaries of embassy and legation, and secretaries in the Diplomatic Service, and none others."

Section 2 of Act May 24, 1924, c. 182 (section 2 of this title), defining "Foreign Service officer" to denote permanent officers in the Foreign Service below the grade of minister, was evidently deemed to have superseded this section in so far as it relates to officers below the grade of minister.

Notes of Decisions

1. Ambassadors.—The certificate of the ambassador of a foreign country to the United States as to the law of his country or the personnel and authority of officials of his government is admissible in the courts of the United States. Agency of Canadian Car & Foundry Co. v. American Can Co. (D. C. N. Y. 1918) 253 F. 152, modified (C. C. A. 1919) 258 F. 363, 6 A. L. R. 1182.

CONSULAR OFFICERS GENERALLY

§ 51. **Official designations in consular service.** The official designations employed throughout this chapter shall be deemed to have the following meanings, respectively:

First. "Consul general" and "consul" shall be deemed to denote full, principal, and permanent consular officers as distinguished from subordinates and substitutes.

Second. "Consular agent" shall be deemed to denote consular officers subordinate to such principals exercising the powers vested in them and performing the duties prescribed for them by regulation of the President at posts or places different from those at which such principals are located, respectively.

Third. "Vice consuls" shall be deemed to denote consular officers subordinate to such principals exercising and performing the duties within the limits of their consulates at the same or at different points and places from those at which the principals are located, ex-

cept that when vice consuls take charge of consulates general or consulates when the principal officers shall be temporarily absent or relieved from duty they shall be deemed to denote consular officers who shall be substituted, temporarily, to fill the places of said consuls general or consuls.

Fourth. "Consular officer" shall be deemed to include consuls general, consuls, vice consuls, interpreters in consular offices, student interpreters, and consular agents, and none others. (*Feb. 5, 1915, c. 23, § 6, 38 Stat. 806.)

* "R. S. § 1674;" should be added to this citation.

Historical Note

R. S. § 1674, from which this section and section 40 of this title were derived, read, except for paragraph "Fifth" which comprises said section 40, as follows:

"The official designations employed throughout this Title shall be deemed to have the following meanings, respectively:

"First. 'Consul-general,' 'consul,' and 'commercial agent,' shall be deemed to denote full, principal, and permanent consular officers, as distinguished from subordinates and substitutes.

"Second. 'Deputy consul' and 'consular agent' shall be deemed to denote consular officers subordinate to such principals, exercising the powers and performing the duties within the limits of their consulates or commercial agencies respectively, the former at the same ports or places, and the latter at ports or places different from those at which such principals are located respectively.

"Third. 'Vice-consuls' and 'vice-commercial agents' shall be deemed to denote consular officers, who shall be substituted, temporarily, to fill the places of consuls-general, consuls, or commercial agents when they shall be temporarily absent or relieved from duty.

"Fourth. 'Consular officer' shall be deemed to include consuls-general, consuls, commercial agents, deputy consuls, vice-consuls, vice-commercial agents, and consular agents, and none others."

Section 6 of Act Feb. 5, 1915, c. 23, cited to the text amended R. S. § 1674 to read as set forth in the text, except for the "Fifth" paragraph, which as before stated is section 40 of this title, ante.

Notes of Decisions

1. Consuls.—The offices of consul are not always established or regulated by statutory law. Mahony v. U. S. (1867) 3 Ct. Cl. 152, affirmed (1870) 10 Wall. 62, 19 L. Ed. 864.

Consuls, as international commercial agents, originated in the colonial municipalities of the Latin Christians in the Levant, which municipalities were self-governing through their "consuls," the ancient title of municipal magistrates in Italy. (1855) 7 Op. Atty. Gen. 342.

The rights of consuls and consular officials rest on international law as well as on treaty stipulations, and international law regards consuls and consular officials as mercantile agents of the government appointing them, authorized to protect the commercial interests of its citizens in the country to which they are accredited, and clothed only with authority for commercial purposes. Hamilton v. Erie R. Co. (1916) 114 N. E. 390, 219 N. Y. 343, Ann. Cas. 1918A, 928, affirming (Sup. 1915) 154 N. Y. S. 1125, 170 App. Div. 901. Writ of error dismissed Erie R. Co. v. Hamilton (1919) 39 S. Ct. 95, 248 U. S. 369, 63 L. Ed. 307.

2. Vice consuls.—Depositions for extradition having been authenticated by the vice consul of the United States, held, that the vice consul was the principal diplomatic consular officer, and authorized to authenticate such papers. In re Herres (C. C. Minn. 1887) 33 F. 165.

A vice consul is not a deputy, but an acting, consul. Id.

3. Consular agents.—A consular agent is the representative of the consul, to whom he is subordinate. Gould v. Staples (C. C. Me. 1881) 9 F. 159.

§ 52. Abolition of certain consular offices. The offices of vice consul general, deputy consul general, and deputy consul are abolished. (Feb. 5, 1915, c. 23, § 6, 38 Stat. 806.)

Historical Note

A preceding part of the section cited to the text amends R. S. § 1674; see sections 40 and 51 of this title, ante, and notes thereunder.

§ 53. General application of provisions to consular officers. The various provisions of this chapter which are expressed in terms of general application to any particular classes of consular officers, shall be deemed to apply as well to all other classes of such officers, so far as may be consistent with the subject matter of the same and with the treaties of the United States. (R. S. § 1689.)

Editorial comment.—The words herein, reading "this chapter," are a translation of the words "this title" (R. S. Title XVIII), in the section as enacted in the Revised Statutes.

Historical Note

R. S. § 1689, cited to the text, had its source in Act Aug. 18, 1856, c. 127, § 31, 11 Stat. 64.

§ 54. Commercial agents abolished. The grade of commercial agent is abolished. (Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100.)

Historical Note

This section is a part of section 3 of the Consular Reorganization Act of 1906, cited above. Said section 3 in its entirety was as follows:

"The offices of vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls shall be filled by appointment, as heretofore, except that whenever, in his judgment, the good of the service requires it, consuls may be designated by the President without thereby changing their classification to act for a period not to exceed one year as vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls; and when so acting they shall not be deemed to have vacated their offices as consuls. Consular agents may be appointed, when necessary, as heretofore. The grade of commercial agent is abolished."

However, section 6 of Act Feb. 5, 1915, c. 23 (section 52 of this title, ante) abolished the offices of vice-consuls-general, deputy consuls-general, and deputy consuls; and Act May 24, 1924, c. 182 (sections 1 to 23 of this title), reorganizing the Foreign Service, provides for the appointment, grading, classification, salaries, and assignment to posts of Foreign Service officers and abolishes (section 6 of this title) the classification of consular officers existing on July 1, 1924.

§ 55. Extent of consulates. The President is authorized to define the extent of country to be embraced within any consulate. (R. S. § 1695.)

Historical Note

R. S. § 1695, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 14, 11 Stat. 57. As enacted in the Revised Statutes it contained following the word "consulate," of this section, the additional words "or commercial agency"; and also contained provisions relative to the appointment and compensation of vice-consuls, vice-commercial agents, deputy consuls, and consular agents. The grade of commercial agents was abolished by the consular reorganization Act of April 5, 1906, c. 1366, § 3 (section 54 of this title, ante), which section also contained provisions relative to the appointment of vice consular officers (see historical note to section 54, aforesaid); and the office of deputy consul was abolished by Act Feb. 5, 1915, c. 23, § 6 (section 52 of this title, ante). The provisions of R. S. § 1695, above referred to, relative to the appointment and compensation of vice-consuls and consular agents evidently were superseded by the Act May 24, 1924, c. 182 (sections 1 to 23 of this title), reorganizing the Foreign Service, which provides (sections 3 to 6 of this title) for the appointment, classification and salaries of Foreign Service officers.

§ 56. Consular clerks; appointment. Consular clerks, whenever appointed, shall, so far as practicable, be appointed under civil-service rules and regulations. (Feb. 27, 1925, c. 364, 43 Stat. 1017.)

Historical Note

From the Departments of State and Justice, Judiciary, and Departments of Commerce and Labor appropriation act for the year 1926, cited above. The same provision is contained in prior acts.

Cross-References

Similar provision as to clerks at embassies and legations, see section 35 of this title, ante.

§ 57. Citizenship requirement as to consular clerks. No person who is not an American citizen shall be appointed in any consulate general or consulate to any clerical position the salary of which is $1,000 a year or more. (Apr. 5, 1906, c. 1366, § 5, 34 Stat. 101.)

Cross-References

Similar provisions as to clerks at embassies and legations, see section 35 of this title, ante.

Only citizens eligible for examination for positions as Foreign Service officers, see section 5 of this title, ante.

§ 58. Expense allowance to vice consulate or consular agency. The only allowance to any vice consulate or consular agency for expenses shall be an amount sufficient to pay for stationery and postage on official letters. (R. S. § 1696.)

Historical Note

R. S. § 1696, cited to the text, was derived from Act March 3, 1869, c. 125, § 6, 15 Stat. 322.

Notes of Decisions

1. Clerk hire.—See U. S. v. Owen (D. C. Vt. 1891) 47 F. 797, 798.

POWERS, DUTIES AND LIABILITIES OF CONSULAR OFFICERS GENERALLY

Cross-References

Powers and duties of consular officers with respect to merchant seamen, their wages, effects, discharge, and protection and relief, see sections 74 and 90 of this title, post, and chapter 18 of Title 46, Shipping.

Commanding officer of any fleet squadron or vessel of the United States Navy authorized to exercise all the powers of a consul in relation to mariners of the United States when upon the high seas or in a foreign port where there is no resident consul, see section 217 of Title 34, Navy.

See sections 83-85 of this title, and sections 334 et seq. of Title 19, Customs Duties, as to certification of invoices.

§ 71. General construction as to powers and duties. The specification in sections 72 to 109, inclusive, of this chapter of certain powers to be exercised and duties to be performed by consuls and vice consuls, shall not be construed as implying the exclusion of others resulting from the nature of their appointments, or prescribed by any treaty or convention under which they may act. (R. S. § 1714.)

Editorial comment.—The words "sections 72 to 109, inclusive, of this chapter," appearing herein, do not exactly correspond to the words "this Title" (R. S. Title XVIII), in the section as enacted in the Revised Statutes.

Historical Note

R. S. § 1714, cited to the text is from Act April 14, 1792, c. 24, § 9, 1 Stat. 257.

Notes of Decisions

1. Drafts.—An American consul at a foreign port is without authority to make an authenticated copy of a draft drawn here by the owner of a ship upon the consignees of such ship at such foreign port. Williams v. Crescent Mut. Ins. Co. (1860) 15 La. Ann. 651.

2. Sale of vessel.—A United States consul at a foreign port is without authority to direct the sale of an American vessel which has become unseaworthy at that port and whose master has notified him that he has abandoned the vessel. (1883) 17 Op. Atty. Gen. 552.

In such case the consul should notify the owners of the condition of their property and in the meantime care for it. Id.

The sales mentioned in the Consular Regulations of 1874 are sales under the authority of the master, the intervention by consul being for the purpose of ascertaining the existence of those conditions which under general law authorize the sale. Id.

Where, on application of the master, an American vessel, the brig Mary C. Comery, lying in a foreign port was condemned as unseaworthy by the port officers, the presumption in favor of the validity of those proceedings is a strong one, and it does not appear to be the duty of the American consul to do more than see that the foreign law as to jurisdiction, etc., is being observed. Id.

3. Survey of vessel.—A survey of a vessel is a matter of admiralty and maritime jurisdiction, but not exclusively so. "A survey may be made upon the mere private application of the master directly to the surveyors; and there does not seem any good reason why, if an American consul should interpose in behalf of the master, and with a view to assist him, should appoint the surveyors at his request, and thereby sanction their competency to the task, such an appointment should be deemed objectionable." Potter v. Ocean Ins. Co. (C. C. Mass. 1837) 3 Sumn. 27, 19 Fed. Cas. No. 11,335.

§ 72. Solemnization of marriages. Marriages in presence of any consular officer of the United States in a foreign country, between persons who would be authorized to marry if residing in the District of Columbia, shall be valid to all intents and purposes, and shall have the same effect as if solemnized within the United States. And such consular officer shall, in all cases, give to the parties married before them a certificate of such marriage, and shall send another certificate thereof to the Department of State, there to be kept; such certificate shall specify the names of the parties, their ages, places of birth, and residence. (R. S. § 4082.)

Historical Note

R. S. § 4082, cited to the text, was derived from Act June 22, 1860, c. 179, § 31, 12 Stat. 79.

Notes of Decisions

1. Decisions prior to statute.—See (1854) 7 Op. Atty. Gen. 18; (1855) 7 Op. Atty. Gen. 342.

§ 73. Protests. Consuls and vice consuls shall have the right, in the ports or places to which they are severally appointed, of receiving the protests or declarations which captains, masters, crews, passengers, or merchants, who are citizens of the United States, may respectively choose to make there; and also such as any foreigner may choose to make before them relative to the personal interest of any citizen of the United States. Copies of such acts duly authenticated by consuls or vice consuls, under the seal of their consulates, respectively, shall be received in evidence equally with their originals in all courts in the United States. (R. S. § 1707.)

Historical Note

R. S. § 1707, cited to the text, was derived from Act April 14, 1792, c. 24, § 2, 1 Stat. 255.

Cross-References

Properly certified copies of all official documents and papers in the office of consuls or vice-consul, and of all official entries in the books or records of any such office, made admissible in evidence in the courts of the United States, see section 677 of Title 28, Judicial Code and Judiciary.

Notes of Decisions

1. Unsworn statement as evidence.—An unsworn ex parte statement made abroad and deposited with a vice consul is in no sense the equivalent of a deposition under oath and taken where there was an opportunity to cross-examine the witness; and such a statement cannot be held to overcome the presumption of correctness in a collector's classification. Especially is this so when such ex parte statement lacks relevancy. U. S. v. National Aniline & Chemical Co. (1912) 3 Ct. Cust. App. 10.

2. Marine protests.—The authenticating, noting, etc., of marine protests are official consular services. (1888) 19 Op. Atty. Gen. 196.

§ 74. Lists and returns of seamen and vessels, etc. Every consular officer shall keep a detailed list of all seamen and mariners shipped and discharged by him, specifying their names and the names of the vessels on which they are shipped and from which they are discharged, and the payments, if any, made on account of each so discharged; also of the number of the vessels arrived and departed, the amounts of their registered tonnage, and the number of their seamen and mariners, and of those who are protected, and whether citizens of the United States or not, and as nearly as possible the nature and value of their cargoes, and where produced, and shall make returns of the same, with their accounts and other returns, to the Secretary of the Treasury.* (R. S. § 1708.)

* The words "the Secretary of the Treasury" should probably be changed to "the Secretary of Commerce" to conform to section 600 of Title 5, Executive Departments and Government Officers and Employees.

Historical Note

R. S. § 1708, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 27, 11 Stat. 62.

Cross-References

Other powers and duties of consular officers as to merchant seamen, their wages, effects, discharge, and protection and relief, see chapter 18 of Title 46, Shipping.

Consular powers as to seamen extended to United States Naval officers in certain instances, see section 217 of Title 34, Navy.

§ 75. Estates of decedents generally; General Accounting Office as conservator. It shall be the duty of consuls and vice consuls, where the laws of the country permit—

First. To take possession of the personal estate left by any citizen of the United States, other than seamen belonging to any vessel, who shall die within their consulate, leaving there no legal representative, partner in trade, or trustee by him appointed to take care of his effects.

Second. To inventory the same with the assistance of two merchants of the United States, or, for want of them, of any others at their choice.

Third. To collect the debts due the deceased in the country where he died, and pay the debts due from his estate which he shall have there contracted.

Fourth. To sell at auction, after reasonable public notice, such part of the estate as shall be of a perishable nature, and such further part, if any, as shall be necessary for the payment of his debts, and, at the expiration of one year from his decease, the residue.

Fifth. To transmit the balance of the estate to the Treasury of the United States, to be holden in trust for the legal claimant; except that if at any time before such transmission the legal representative of the deceased shall appear and demand his effects in their hands they shall deliver them up, being paid their fees, and shall cease their proceedings.

Sixth. The General Accounting Office shall act as conservator of such part of these estates as may be received at the Treasury, and for its protection the Secretary of the Treasury may order such effects to be sold as may consist of jewelry or other articles which have heretofore or may hereafter be received at the Treasury, and pay the expenses of such sale out of the proceeds, provided application for these effects shall not have been made by the legal claimant within two years after their receipt. The General Accounting Office is authorized to indorse all bills of exchange, promissory notes, and other evidences of indebtedness due to such estates, and to take such steps as may be necessary for their collection. The proceeds of such sales, together with such other moneys as may be collected by it, shall be deposited into the Treasury in trust for the legal claimant, and be reported to the Secretary of State. (R. S. § 1709; Mar. 3, 1911, c 223, 36 Stat. 1083; June 10, 1921, c. 18, § 304, 42 Stat. 24.)

Editorial comment.—Section 193 of this title, post, contains provisions giving, to the United States Court for China, "supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China;" thereby possibly amending this section.

The word "its," in the third line of paragraph 6 of this section, should possibly read "their," as in that paragraph as originally enacted.

Historical Note

R. S. § 1709, cited to the text, had its source in Act April 14, 1792, c. 24, § 2, 1 Stat. 255. As enacted in the Revised Statutes, this section did not contain the sixth paragraph set forth here. That paragraph was added by amendment by Act March 3, 1911, c. 223, cited to the text.

The words "The General Accounting Office," were apparently substituted in the last paragraph of this section in lieu of the words "The Auditor for the State and other Departments" and "The Auditor" which were used in that paragraph as added by amendment as aforesaid to conform to Act June 10, 1921, c. 18, § 304 (section 44 of Title 31, Money and Finance).

Cross-References

Duties of consular officers where seaman, dying out of United States, leaves money or effects not on board of his vessel, see section 624 of Title 46, Shipping.

Provisions relating to acceptance by consular officers of appointment from any foreign state as administrator, guardian, etc., see sections 78 and 79 of this title, post.

Provisions for the administration of estates of decedents in China, under the supervisory control of the United States court for China, see section 193 of this title, post.

Permanent appropriation for payment of the proceeds of the personal estates of American citizens who die abroad, to their legal representatives, see section 711 (1) of Title 31, Money and Finance.

Embezzlement by a consular officer of money, property, etc., of a citizen of the United States received by him made punishable, see section 102 of this title, post.

Notes of Decisions

1. Duty of consuls.—To conserve and guard the property within their territorial jurisdiction of their countrymen dying therein, is an important right and duty of consular officials; but the general law of nations does not sustain as valid the settlement by a consul general with a railroad for its negligent killing within his consular jurisdiction of a countryman of the consul. Hamilton v. Erie R. Co. (1916) 114 N. E. 399, 219 N. Y. 343, Ann. Cas. 1918A, 928, affirming (Sup. 1915) 154 N. Y. S. 1125, 170 App. Div. 901.

It is the duty of consuls, when their countrymen die in foreign lands, to guard the property from waste, their right to do so being by virtue of their office, irrespective of treaty or decree, and it exists until there is a legally constituted representative when the function is limited to one of co-operation and intervention. In re D'Adamo's Estate (1914) 106 N. E. 81, 212 N. Y. 214, reversing (1913) 144 N. Y. S. 429, 159 App. Div. 40, which affirmed (Sur. 1913) 141 N. Y. S. 1103.

2. Assets.—The face of a banker's circular letter of credit found in the possession of an American dying abroad is not assets to that amount to be administered by the consul. (1855) 7 Op. Atty. Gen. 542.

3. Extent of power.—The power of consuls is limited to collecting the assets abroad, discharging them of local liabilities, reducing them to money, and transmitting to the treasury, subject to the orders, both before and afterwards, of the lawful executor or administrator. (1855) 7 Op. Atty. Gen. 243.

4. Payment of debts.—A consul is not authorized to pay a claim, not reduced to a judgment, for damages for a wrongful act committed by the deceased. Sturgis v. Slocum (1836) 35 Mass. (18 Pick.) 36.

5. Fees.—Under this section, which makes it the duty of consuls and vice consuls to administer upon the personal estate left by Americans dying within their consulates, and under Consular Regulation 1888, par. 508, item 56, the fee of 5 per cent. allowed for such services is an official fee, to be accounted for to the treasury. U. S. v. Eaton (Ct. Cl. 1898) 18 S. Ct. 374, 382, 169 U. S. 331, 42 L. Ed. 767.

6. Failure to perform duties.—Action on bond of consul for failure to perform duties imposed on him by fifth paragraph of this section, see Cunningham v. Rodgers (App. D. C. 1920) 267 F. 609, affirmed (1922) 42 S. Ct. 140, 257 U. S. 466, 66 L. Ed. 319.

§ 76. Notification of death of decedent; transmission of inventory of effects. For the information of the representative of the deceased, the consul or vice consul, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consulate, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed. (R. S. § 1710.)

Historical Note

The source of R. S. § 1710, cited to the text, was Act April 14, 1792, c. 24, § 2, 1 Stat. 255.

Cross-References

Inventory directed to be taken, see paragraph "Second" of section 75 of this title, ante.

§ 77. Following testamentary directions; assistance to testamentary appointee. When any citizen of the United States, dying abroad, leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer of the port or place where he dies, of the personal property of which he dies possessed in such country, such officer shall, so far as the laws of the country permit, strictly observe such directions. When any such citizen so dying, appoints, by any lawful testamentary disposition, any other person than such officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so appointed, to give his official aid in whatever way may be necessary to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country permit, to protect the property of the deceased from any interference of the local authorities of the country where such citizen dies; and to this end it shall be the duty of such consular officer to place his official seal upon all of the personal property or effects of the deceased, and to break and remove such seal as may be required by such person, and not otherwise. (R. S. § 1711.)

Historical Note

The source of R. S. § 1711, cited to the text, was Act Aug. 18, 1856, c. 127, § 28, 11 Stat. 63.

§ 78. Bond as administrator or guardian; action on bond. No consular officer of the United States shall accept an appointment from any foreign state as administrator, guardian, or to any other office of trust for the settlement or conservation of estates of deceased persons or of their heirs or of persons under legal disabilities, without executing a bond, with security, to be approved by the Secretary of State, and in a penal sum to be fixed by him and in such form as he may prescribe, conditioned for the true and faithful performance of all his duties according to law and for the true and faithful accounting for, delivering, and paying over to the persons thereto entitled of all moneys, goods, effects, and other property which shall come to his hands or to the hands of any other person to his use as such administrator, guardian, or in other fiduciary capacity. Said bond shall be deposited with the Secretary of the Treasury. In case of a breach of any such bond, any person injured by the failure of

such officer faithfully to discharge the duties of his said trust according to law, may institute, in his own name and for his sole use, a suit upon said bond and thereupon recover such damages as shall be legally assessed, with costs of suit, for which execution may issue in due form; but if such party fails to recover in the suit, judgment shall be rendered and execution may issue against him for costs in favor of the defendant; and the United States shall in no case be liable for the same. The said bond shall remain, after any judgment rendered thereon, as a security for the benefit of any person injured by a breach of the condition of the same until the whole penalty has been recovered. (June 30, 1902, c. 1331, § 1, 32 Stat. 546.)

Historical Note

This section and the section 79 of this title, were an act entitled "An act to prevent any consular officer of the United States from accepting any appointment from any foreign state as administrator, guardian, or to any other office of trust, without first executing a bond, with security, to be approved by the Secretary of State."

Cross-References

General provisions as to bonds of officers of the Foreign Service, see section 11 of this title, ante.

§ 79. Penalty for failure to give bond and for embezzlement. Every consular officer who accepts any appointment to any office of trust mentioned in the preceding section without first having complied with the provisions thereof by due execution of a bond as therein required, or who shall willfully fail or neglect to account for, pay over, and deliver any money, property, or effects so received to any person lawfully entitled thereto, after having been requested by the latter, his representative or agent so to do, shall be deemed guilty of embezzlement and shall be punishable by imprisonment for not more than five years and by a fine of not more than $5,000. (June 30, 1902, c. 1331, § 2, 32 Stat. 547.)

Cross-References

General provisions making punishable embezzlement by consular officers, see section 102 of this title, post.

§ 80. Commercial and agricultural reports. Consuls of the United States in foreign countries shall procure and transmit to the Department of State authentic commercial information respecting such countries of such character and in such manner and form and at such times as the department may from time to time prescribe. And they shall also procure and transmit to the Department of State, for the

use of the Agricultural Department, monthly reports relative to the character, condition, and prospective yields of the agricultural and horticultural industries and other fruiteries of the country in which they are respectively stationed; and the Secretary of Agriculture is hereby required and directed to embody the information thus obtained, or so much thereof as he may deem material and important, in his monthly bulletin of crop reports. (*June 18, 1888, c. 393, 25 Stat. 186.)

*"R. S. § 1712;" should be added to this citation.

Editorial comment.—It has been suggested that the functions, defined in sections 80 to 82 of this title, have to some extent been transferred to the Department of Commerce; see the cross-references hereunder.

Historical Note

This section is from R. S. § 1712 as amended. As enacted in the Revised Statutes, it contained only the provision requiring consuls and commercial agents to procure and transmit commercial information. The further provisions, requiring reports of agricultural, etc., information to be embodied in the bulletins of crop reports of the Department of Agriculture, beginning with the words, "And they shall also procure and transmit," to the end of the section, as set forth here, were added by amendment by Act June 18, 1888, c. 393, cited to the text. R. S. § 1712 was an embodiment of Act Aug. 18, 1856, c. 170, § 2, 11 Stat. 139; and Act June 18, 1888, c. 393, 25 Stat. 186.

In the section as enacted in the Revised Statutes and as amended, as aforesaid, the word "consuls" was followed by the words "and commercial agents," but see section 54 of this title, ante.

The words "Secretary of Agriculture," appearing herein, read "Commissioner of Agriculture," in the section as enacted; but see section 512 of Title 5, Executive Departments and Government Officers and Employees, establishing the Department of Agriculture as an executive department under a Secretary of Agriculture.

Cross-References

Consular officers required to compile and report commercial information under direction of Secretary of State for use of Secretary of Commerce, see section 175 of Title 15, Commerce and Trade.

Person to be designated by Secretary of State to formulate, for direction of consular officers, the requests of Secretary of Commerce and to prepare information from consular officers for transmission to Secretary of Commerce, see section 162 of Title 5, Executive Departments and Government Officers and Employees.

Provisions as to printing of daily consular reports, see section 251 of Title 44, Public Printing and Documents. Provisions as to publication and sale of the consular and other commercial reports, see sections 188 to 190 of Title 15, Commerce and Trade.

§ 81. Reports as to exports, imports, and wages. It shall be the duty of consuls to make to the Secretary of State a quarterly statement of exports from, and imports to, the different places to which they are accredited, giving, as near as may be, the market price of the various articles of exports and imports, the duty and port charges, if any, on articles imported and exported, together with such general information as they may be able to obtain as to how, where, and

through what channels a market may be opened for American products and manufactures. In addition to the duties now imposed by law, it shall be the duty of consuls of the United States, annually, to procure and transmit to the Department of State, as far as practicable, information respecting the rate of wages paid for skilled and unskilled labor within their respective jurisdictions. (Jan. 27, 1879, c. 28, § 1, 20 Stat. 267.)

Editorial comment.—See the comment under section 80 of this title, ante, also applicable to this section.

Historical Note

This was a provision of the diplomatic and consular appropriation act for the fiscal year 1888, cited above.

The section as originally enacted contained, following the word "consuls" (in the last sentence of this section) the additional words "and commercial agents"; but see section 54 of this title, ante.

Cross-References

See cross-references under section 80, ante, of this title.

§ 82. **Reports as to current prices of merchandise, etc., and as to agricultural conditions.** Every consular officer shall furnish to the Secretary of the Treasury, as often as shall be required, the prices current of all articles of merchandise usually exported to the United States from the port or place in which he is situated; and he shall also furnish to the Secretary of the Treasury, at least once in twelve months, the prices current of all articles of merchandise, including those of the farm, the garden, and the orchard, that are imported through the port or place in which he is stationed. And he shall also report as to the character of agricultural implements in use, and whether they are imported to or manufactured in that country; as to the character and extent of agricultural and horticultural pursuits there. That part of the information thus obtained which pertains to agriculture shall be transmitted by the Secretary of the Treasury, as soon as the same shall have been received by him, to the Secretary of Agriculture, who shall include the same, or so much thereof as he may deem material and important, in his annual reports, stating the said prices in dollars and cents, and rendering tables of foreign weights and measures into their American equivalents. (*June 18, 1888, c. 393, 25 Stat. 186.)

* "R. S. § 1713;" should be added to this citation.

Editorial comment.—See the comment under section 80 of this title, ante, also applicable to this section.

Historical Note

This section, as enacted in the Revised Statutes (R. S. § 1713), contained only the provision requiring every consular officer to report prices current of all articles usually exported to the United States from the place in which he was situated. The further provisions, beginning with the words, "and he shall also furnish to the Secretary of the Treasury," to the end of the section as set forth here, were added by amendment by Act June 18, 1888, c. 393, cited to the text.

R. S. § 1713, above referred to, was an embodiment of section 27 of Act Aug. 18, 1856, c. 127, 11 Stat. 62.

As to the use herein of "Secretary" instead of "Commissioner" of Agriculture, as originally used, see historical note to section 80, ante, of this title.

Cross-References

See cross-references under section 80, ante, of this title.

§ 83. **Certification of invoices generally.** No consular officer shall certify any invoice unless he is satisfied that the person making oath thereto is the person he represents himself to be, that he is a credible person, and that the statements made under such oath are true; and he shall, thereupon, by his certificate, state that he was so satisfied. (R. S. § 1715.)

Historical Note

R. S. § 1715, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 27, 11 Stat. 62.

Cross-References

Further provisions concerning the certification of invoices, see sections 334 to 343, of Title 19, Customs Duties.

False certification of invoices and other papers, by consular officers, penalized, see section 127 of Title 18, Criminal Code and Criminal Procedure.

Notes of Decisions

1. **Presence of affiant.**—There is no legal objection to a consul issuing a certificate to an invoice when the person who makes the declaration and takes the oath does not in person present it to him for authentication. "I see nothing in the law which requires that the person making the declaration should be actually present before the consul, vice-consul, or commercial agent. * * * But if the consular officer before whom the invoice is produced with a declaration indorsed should have doubts as to the identity of the person making the declaration, as to his credibility, or as to the truthfulness of the statements set forth in the declaration, he would have the right, if necessary, to require the declarant to come personally before him." (1897) 21 Op. Atty. Gen. 571.

2. **Certifying invoices covering shipments of liquor.**—Under the Eighteenth Amendment to the Constitution, the consular officials of the United States should not certify invoices covering shipments of intoxicating liquors for beverage purposes into the Philippines and the Virgin Islands. Consuls may, however, certify invoices covering shipments to both the Philippines and the Virgin Islands of intoxicating liquors for nonbeverage purposes, provided the laws of those islands and the regulations issued thereunder are first complied with. (1920) 32 Op. Atty. Gen. 258.

§ 84. **Fees for certification of invoices.** Fees for the consular certification of invoices shall be, and they hereby are, included with the fees for official services for which the President is authorized by section 127 of this chapter to prescribe rates or tariffs. (Apr. 5, 1906, c. 1366, § 9, 34 Stat. 101.)

Historical Note

A further provision of this section repealed R. S. § 2851, which provided for certification of invoices of imported merchandise by the collector of the post, and R. S. § 1721, which prescribed a fee of one dollar to be charged by the consul-general for the British North American provinces, for certifying invoices of goods not exceeding $100 in value.

Cross-References

See cross-references under section 83, ante, of this title.

Notes of Decisions

1. Reciprocity treaty.—No more than 50 cents can be charged for certifying invoices, and for certifying the place of growth or production of goods made duty free by the reciprocity treaty with Great Britain, although such certificate may be accompanied by an attestation of the official character of a magistrate and of the value of the goods. (1860) 9 Op. Atty. Gen. 441.

Consuls, as well as consular officers and agents, are subject to this restriction. Id.

It applies to all the British North American provinces included in the reciprocity treaty. Id.

2. Importation of nondutiable goods without invoice.—As the fees authorized by R. S. § 2851 (repealed by the original text of this section) providing that, for every verification of an invoice and certificate, the consul shall be entitled to receive a fee of $2.50, belong to the United States, the importation of nondutiable goods without the same being invoiced, or entry thereof being made, and without declaration being made, is an act injurious to the government and fraudulent. Six Parcels of Placer Gold v. U. S. (1904) 76 P. 473, 8 Ariz. 389.

3. Voluntary payment.—Voluntary payment to the United States precludes recovery, irrespective of the question of his original right to the fees. U. S. v. Wilson (Ct. Cl. 1897) 18 S. Ct. 85, 163 U. S. 273, 42 L. Ed. 464, reversing (1900) 31 Ct. Cl. 471.

§ 85. Exaction of excessive fees for verification of invoices; penalty. The fee provided by law for the verification of invoices by consular officers shall, when paid, be held to a full payment for furnishing blank forms of declaration to be signed by the shipper, and for making, signing, and sealing the certificate of the consular officer thereto; and any consular officer who, under pretense of charging for blank forms, advice, or clerical services in the preparation of such declaration or certificate, charges or receives any fee greater in amount than that provided by law for the verification of invoices, or who demands or receives for any official services, or who allows any clerk or subordinate to receive for any such service any fee or reward other than the fee provided by law for such service, shall be punishable by imprisonment for not more than one year, or by a fine of not more than $2,000; and shall be removed from his office. (R. S. § 1716.)

Editorial comment.—It would seem that the word "be" should be inserted following the words "held to" (line 3), though, in this respect, this section follows the original text.

Historical Note

R. S. § 1716, cited to the text, was derived from Act March 3, 1869, c. 125, § 3, 15 Stat. 321.

Cross-References

Provisions for refunding excessive fees, with a penalty for the collection thereof, see section 92, post, of this title.

See, also, cross-references under section 83, ante, of this title.

§ 86. Destruction of old invoices. The Secretary of State is authorized to cause, from time to time, the destruction of invoices that have been filed in the consular offices for a period of more than five years. (Feb. 24, 1903, c. 753, 32 Stat. 854.)

Historical Note

This was an act to permit the destruction of invoices, cited above.

Cross-References

Original of invoice to be filed in office of consular officer by whom certified and kept until Secretary of State authorizes destruction, see section 342 of Title 19, Customs Duties.

See, also, cross-references under section 83, ante, of this title.

§ 87. Restriction as to certificate for goods from countries adjacent to United States. No consular officer of the United States shall grant a certificate for goods, wares, or merchandise shipped from countries adjacent to the United States, which have passed a consulate after purchase for shipment. (R. S. § 1717.)

Historical Note

R. S. § 1717, cited to the text, had its source in Act Feb. 22, 1873, c. 184, § 3, 17 Stat. 474.

A provision in almost identical language was made by R. S. § 2861 and is set out as section 339 of Title 19, Customs Duties.

Cross-References

See cross-references under section 83, ante, of this title.

§ 88. Retention of papers of American vessels until payment of demands and wages. All consular officers are authorized and required to retain in their possession all the papers of vessels of the United States, which shall be deposited with them as directed by law, till payment shall be made of all demands and wages on account of such vessels. (R. S. § 1718.)

Historical Note

Additional provisions of R. S. § 1718, cited to the text, requiring any master or commander of a vessel of the United States, who has occasion for any consular or other official service, to apply to the consular officer where such service is required, and to pay to the officer the fees chargeable for such service; and making every such master or commander omitting so to do liable to the United States for

the amount of the fees lawfully chargeable for such services when actually performed, were superseded by Act June 26, 1884, c. 121, § 12 (section 89, post, of this title).

R. S. § 1718, was derived from Act Aug. 18, 1856, c. 127, § 28, 11 Stat. 63.

Cross-References

Provisions relating to the deposit of ships' papers with consular officers by masters of vessels, see section 354 of Title 46, Shipping and sections 244 and 245 of Title 19, Customs Duties.

Notes of Decisions

1. Detention of ship's papers.—An American consul, under Act Feb. 28, 1803, c. 9, has no authority, by withholding a ship's paper, to compel payment of demands for which suit has been brought by a creditor, after her release in bond by the court. (1859) 9 Op. Atty. Gen. 384.

Such consul, under this section, has authority to detain the papers of a ship to enforce only the payment of wages in certain cases and consular fees; but he has not a general power of deciding upon all manner of disputed claims against American vessels. Id.

Such consul may receive the penalties incurred by the master of a vessel for neglecting to deposit his papers in a court of competent jurisdiction, but he has no right to enforce otherwise the payment of the penalties. Id.

An American consul in a foreign port has no power to retain the papers of vessels which he may suspect are destined for the slave trade. (1860) 9 Op. Atty. Gen. 426.

§ 89. Fees for services to American vessels or seamen prohibited. No fees named in the tariff of consular fees prescribed by order of the President shall be charged or collected by consular officers for the official services to American vessels and seamen. Consular officers shall furnish the master of every such vessel with an itemized statement of such services performed on account of said vessel, with the fee so prescribed for each service, and make a detailed report to the Secretary of the Treasury of such services and fees, under such regulations as the Secretary of State may prescribe; and the Secretary of the Treasury shall allow consular officers who are paid in whole or in part by fees such compensation for said services as they would have received but for the above prohibition: *Provided*, That such services, in the opinion of the Secretary of the Treasury have been necessarily rendered. (June 26, 1884, c. 121, § 12, 23 Stat. 56.)

Editorial comment.—A subsequent provision that "the sole and only compensation" of consular officers "shall be by salaries fixed by law," but not applying to consular agents, was made by the Consular Service Reorganization Act of April 5, 1906, c. 1366, § 8 (section 99 of this title).

Historical Note

This section was part of an act to remove certain burdens on the American merchant marine, etc., cited above.

A further provision of this section, appropriating a sum sufficient for the payment of the compensation herein mentioned, has been omitted as temporary.

Notes of Decisions

1. Vessels included.—"American vessels" includes foreign-built registered American vessels. (1885) 18 Op. Atty. Gen. 99.

Foreign-built vessels owned by citizens of the United States are not exempted by this section. (1885) 18 Op. Atty. Gen. 111 234.

A Porto Rican seaman in the American merchant marine, including that of Porto Rico, is an American seaman. (1901) 23 Op. Atty. Gen. 400, affirmed (1901) 23 Op. Atty. Gen. 414.

This section applies to services rendered to nationalized Porto Rican vessels. (1901) 23 Op. Atty. Gen. 414.

§ 90. Profits from dealings with discharged seamen; prohibition. No consular officer, nor any person under any consular officer shall make any charge or receive, directly or indirectly, any compensation, by way of commission or otherwise, for receiving or disbursing the wages or extra wages to which any seaman or mariner is entitled who is discharged in any foreign country, or for any money advanced to any such seaman or mariner who seeks relief from any consulate; nor shall any consular officer, or any person under any consular officer, be interested, directly or indirectly, in any profit derived from clothing, boarding, or otherwise supplying or sending home any such seaman or mariner. Such prohibition as to profit, however, shall not be construed to relieve or prevent any such officer who is the owner of or otherwise interested in any vessel of the United States, from transporting in such vessel any such seaman or mariner, or from receiving or being interested in such reasonable allowance as may be made for such transportation by law. (R. S. § 1719.)

Historical Note

R. S. § 1719, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 20, 11 Stat. 59.

In the section as originally enacted the words "or commercial agency" followed the word "consulate," herein, but see section 54, ante, of this title, abolishing the grade of commercial agent.

Cross-References

Provisions relating to the discharge and return by consular officers of seamen, see chapter 18 of Title 46, Shipping, and particularly sections 658, 678, 679, 682, 683, and 685, thereof.

Consul neglecting or omitting to perform the duties imposed by the laws regulating the shipment and discharge of seamen, etc., made liable, both civilly and criminally, see section 103 of this title, post.

§ 91. Valuation of foreign coins in payment of fees. Consuls, vice consuls, and consular agents in the Dominion of Canada, in the collection of official fees shall receive foreign moneys at the rate given in the Treasury schedule of the value of foreign coins. (R. S. § 1722.)

Historical Note

An additional provision in R. S. § 1722, cited to the text, providing that no consul, vice-consul, or consular agent in the Dominion of Canada should be allowed tonnage fees for any services rendered any vessel owned and registered in the United States, was probably omitted as superseded by the provision of section 12 of Act June 26, 1884, c. 121 (section 89 of this title) that no fees named in the tariff of consular fees prescribed by the President should be charged or collected for services to American vessels and seamen.

R. S. § 1722 was derived from Act March 3, 1869, c. 125, § 3, 15 Stat. 321.

Cross-References

All fees collected by consular officers to be collected in coin of the United States, or at its representative value in exchange, see section 126, post, of this title.

§ 92. Exaction of excessive fees generally; penalty of treble amount. Whenever any consular officer collects, or knowingly allows to be collected for any service, any other or greater fees than are allowed by law for such service, he shall, besides his liability to refund the same, be liable to pay to the person by whom or in whose behalf the same are paid, treble the amount of the unlawful charge so collected, as a penalty, to be recovered with costs, in any proper form of action, by such person for his own use. And in any such case the Secretary of the Treasury may retain out of the compensation of such officer, the amount of such overcharge, and of such penalty, and charge the same to such officer in account, and may thereupon refund such unlawful charge, and pay such penalty to the person entitled to the same if he shall think proper so to do. (R. S. § 1723.)

Historical Note

The source of R. S. § 1723, cited to the text, is Act Aug. 18, 1856, c. 127, § 17, 11 Stat. 58.

Cross-References

Exaction of excessive fees for verification of invoices made punishable, see section 85, ante, of this title.

Sole compensation of consular officers other than consular agents to be by salary fixed by law, see section 99, post, of this title.

Notes of Decisions

1. Payment of fees into treasury.—The surety of a consular officer cannot be held liable for the penalty for charging excessive fees, where such fees, including the excess, have been charged against him in his account and paid to the Treasury Department. U. S. v. Ballantine (N. Y. 1905) 138 F. 312, 70 C. C. A. 602.

2. Fees under other laws.—The penal provisions of this section only apply to the taking of greater fees than are allowed by the act itself, and do not therefore extend to the taking of greater fees than are allowed by the third section of Act March 3, 1859, c. 75. (1860) 9 Op. Atty. Gen. 500.

§ 93. Liability for uncollected fees. Every consul general, consul, or vice consul appointed to perform the duty of any such officer, who

omits to collect any fees which he is entitled to charge for any official service, shall be liable to the United States therefor, as if he had collected the same; unless, upon good cause shown therefor, the Secretary of the Treasury shall think proper to remit the same. (R. S. § 1724.)

Historical Note

R. S. § 1724, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 18, 11 Stat. 58.

As enacted it applied to "Every consul-general, consul, or commercial agent, mentioned in Schedules B and C, or vice-consul, or vice-commercial agent, appointed to perform the duty of any such officer mentioned in Schedules B and C, * * *." But the words "or commercial agent" and "or vice-commercial agent," in the language just quoted from R. S. § 1724, were superseded by the abolition of the grade of commercial agent by the Consular Reorganization Act of April 5, 1906, c. 1366, § 3 (section 54 of this title).

The words "mentioned in Schedules B and C," also quoted above from R. S. § 1724, were superseded by the reclassification of consular officers by subsequent acts. Section 3, ante, of this title, now provides the grading, classification, and salaries of Foreign Service officers.

Notes of Decisions

1. Official and unofficial services, distinguished.—See U. S. v. Mosby (Ct. Cl. 1890) 10 S. Ct. 327, 332, 133 U. S. 273, 33 L. Ed. 625.

§ 94. Returns as to fees by officers compensated by fees. All consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, shall make returns in such manner as the Comptroller General of the United States shall prescribe, of all such fees as they or any person in their behalf so collect. (R. S. § 1725; July 31, 1894, c. 174, § 5, 28 Stat. 206.*)

* "June 10, 1921, c. 18, § 304, 42 Stat. 24" should be added to the citation.

Historical Note

R. S. § 1725, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 18, 11 Stat. 58.

It read as follows: "All such consuls-general, consuls, commercial agents, and consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, and all such vice-consuls and vice-commercial agents appointed to perform the duties of such consuls-general, consuls, and commercial agents as are allowed for their compensation the whole or any part of such fees, shall make returns in such manner as the Secretary of State shall prescribe, of all such fees as they or any person in their behalf so collect." The words "commercial agents," "and vice-commercial agents," and "and commercial agents," in R. S. § 1725, just quoted, were superseded by the abolition of the grade of commercial agent by the Consular Reorganization Act of April 5, 1906, c. 1366, § 3 (section 54 of this title).

The section was further restricted so as to apply to consular agents, only, by section 8 of Act April 5, 1906, c. 1366 (section 99, post, of this title) which limited the compensation of consular officers other than consular agents to fixed salaries.

Section 5 of Act July 31, 1894, c. 174, cited to the text, provided that the return of fees mentioned in this section should be made as prescribed by the Comptroller of the Treasury, whose powers and duties were by Act June 10, 1921, c. 18, § 304, 42 Stat. 24, transferred to the General Accounting Office which, by section 301 of that Act, is under the control and direction of the Comptroller General of the United States.

Cross-References

General duty of consular officers to account for fees, see section 99, post, of this title.

President authorized to prescribe regulations not inconsistent with law, in relation to rendering of accounts and returns, etc., see section 132, post, of this title.

Notes of Decisions

1. Fees for certificates to invoice.—The new edition of the Consular Regulations of 1888 contains provisions making the fee for a consular certificate to an invoice of merchandise not subject to duty, official, and returnable to the treasury. (1889) 19 Op. Atty. Gen. 225.

The fee for such certificate may be rendered official by executive order, and specially included in the tariff of official fees under the Revised Statutes. Id.

§ 95. Receipt for fees; numbering receipts. Every consular officer shall give receipts for all fees collected for his official services, expressing the particular services for which the same were collected. He shall number all receipts given by him for fees received for official services, in the order of their dates, beginning with number one at the commencement of the period of his service, and on the first day of January in every year thereafter. (R. S. §§ 1726, 1727.)

Historical Note

This is a combination provision, the first sentence of which is R. S. § 1726. The last sentence is a portion of R. S. § 1727, the remainder of which is set out in section 96, post, of this title.

R. S. § 1726, was derived from section 17, and R. S. § 1727, from section 18, of Act Aug. 18, 1856, c. 127, 11 Stat. 58.

Cross-References

Provisions for official stamps for amount of fee, to be affixed to document and canceled, see section 100, post, of this title.

Notes of Decisions

1. Official and unofficial services distinguished.—See U. S. v. Mosby (Ct. Cl. 1890) 10 S. Ct. 327, 332, 133 U. S. 273, 33 L. Ed. 625.

§ 96. Registry of fees. Every consular officer shall also register in a book to be kept by him for that purpose all fees so received by him, in the order in which they are received, specifying each item of service and the amount received therefor, from whom, and the dates when received, and if for any service connected with any vessel, the name thereof, and indicating what items and amounts are embraced in each receipt given by him therefor, and numbering the same according to the number of the receipts, respectively, so that the receipts and register shall correspond with each other; and he shall, in such register, specify the name of the person for whom, and the date when he shall grant, issue, or verify any passport, certify any invoice, or perform any other official service in the entry of the receipt of the

fees therefor, and also number each consular act so receipted for with the number of such receipt, and as shown by such register. (R. S. § 1727.)

Historical Note

See historical note, under section 95, ante, of this title.

§ 97. Account of fees; verification; perjury. Every consular officer, in rendering his account of fees received, shall furnish a full transcript of the register which he is required to keep, and make oath that, to the best of his knowledge, the same is true, and contains a full and accurate statement of all fees received by him, or for his use, for his official services as such consular officer, during the period for which it purports to be rendered. Such oath may be taken before any person having authority to administer oaths at the port or place where the consular officer is located. If any such consular officer willfully and corruptly commits perjury, in any such oath, within the intent and meaning of any Act of Congress now or hereafter made, he may be charged, proceeded against, tried, and convicted, and dealt with in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, and shall be subject to the same punishment and disability therefor as are or shall be prescribed for such offense. (R. S. § 1728.)

Historical Note

R. S. § 1728, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 18, 11 Stat. 58.

Cross-References

Consular officers made guilty of embezzlement for neglect to render true and just quarterly accounts, etc., or to pay over any balance due at expiration of any quarter, see section 102, post, of this title.

Notes of Decisions

1. Unofficial services.—Consul held not required to account for fees received for unofficial services. U. S. v. Mosby (Ct. Cl. 1890) 10 S. Ct. 327, 332, 133 U. S. 273, 33 L. Ed. 625.

§ 98. Notarial acts, oaths, affirmations, affidavits, and depositions; fees. Every consular officer of the United States is hereby required, whenever application is made to him therefor, within the limits of his consulate, to administer to or take from any person any oath, affirmation, affidavit, or deposition, and to perform any other notarial act which any notary public is required or authorized by law to do within the United States; and for every such notarial act performed

he shall charge in each instance the appropriate fee prescribed by the President under section 127 of this chapter. (Apr. 5, 1906, c. 1366, § 7, 34 Stat. 101.)

Cross-References

Other provisions authorizing "Every secretary of embassy or legation and consular officer" to take oaths, affirmations, affidavits, or depositions, and punishing perjury, forgery of official seal or signature, or the tendering in evidence of any false document, see section 131, post, of this title.

Notes of Decisions

1. Depositions.—Depositions for extradition held properly authenticated by vice consul. In re Herres (C. C. Minn. 1887) 33 F. 165.

A United States consul whose salary exceeds $2,500 is entitled to be paid his fees as commissioner for taking depositions in an admiralty proceeding in a United States district court. (1860) 9 Op. Atty. Gen. 496.

2. Acknowledgment in adoption proceedings.—Where the adoptive father did not appear before the county judge as required by statute, because he was on the high seas, and his acknowledgment before the captain of the ship on which he was chief boatswain was not properly authenticated, under this section, section 131 of this title, and section 217 of Title 34, Navy, held, even though the adopted mother and natural mother duly appeared before the county judge and acknowledged their consent, the statute was not substantially complied with, and the adoption was therefore invalid. Murphy v. Brooks (1923) 199 N. Y. S. 669, 120 Misc. Rep. 704.

3. Power of attorney.—An acknowledgment of a power of attorney purporting to have been taken before a consul of the United States resident in a foreign country, certified by him in the proper form, and authenticated by his official seal, is sufficient proof of the execution of the power, without other evidence of the genuineness of the signature or the seal. St. John v. Croel (N. Y. 1843) 5 Hill, 573.

4. Admissibility of instruments in evidence.—A copy of a corporation contract filed in England, certified by the assistant registrar of joint-stock companies, and to which was attached the certificate of a London notary that the signature was genuine, and affixed in his presence, and that such person was the officer he purported to be, and stating the nature of his duties, to which was further added the certificate of the vice and deputy consul general of the United States at London, under his seal of office, that said notary public had been duly admitted and sworn, was properly certified, and hence properly received in evidence. Barber v. International Co. of Mexico (1901) 48 A. 758, 73 Conn. 587.

A Spanish notarial act attested by three notaries and the constitutional alcalde of the place, with the certificate and seal of the resident American consul, may be received on proof of the notary's signature. Ferrers v. Bosel (La. 1821) 10 Mart. (O. S.) 35.

Where the official capacity of the persons before whom certain documents from the republic of Texas were taken was certified by the consul of the United States under Acts La. 1837, p. 33, and their signatures proved by witnesses, they were correctly admitted as evidence. Andrews v. Chapman (La. 1845) 10 Rob. 188.

Documents properly authenticated by United States representatives abroad are admissible in evidence in the courts of this state, under the provisions of La. Act 38 of 1837. Jerman v. Tenneas (1892) 44 La. Ann. 620, 11 So. 80.

Certificates made from entries in registers kept by one bound to record certain facts, in a foreign country, are admissible in evidence to show those facts, when authenticated by the consular officer of that place. Succession of Justus (1896) 48 La. Ann. 1096, 20 So. 680.

§ 99. General duty to account for fees. All fees, official or unofficial, received by any officer in the Consular Service for services rendered in connection with the duties of his office or as a consular of-

ficer, including fees for notarial services, and fees for taking depositions, executing commissions or letters rogatory, settling estates, receiving or paying out moneys, caring for or disposing of property, shall be accounted for and paid into the Treasury of the United States, and the sole and only compensation of such officers shall be by salaries fixed by law; but this shall not apply to consular agents, who shall be paid by one half of the fees received in their offices, up to a maximum sum of $1,000 in any one year, the other half being accounted for and paid into the Treasury of the United States. (Apr. 5, 1906, c. 1366, § 8, 34 Stat. 101; *May 24, 1924, c. 182, § 11, 43 Stat. 142.)

* "Feb. 5, 1915, c. 23, §§ 3, 6, 38 Stat. 805, 806;" should be added to this citation.

Editorial comment.—It has been suggested that the provisions of section 13, ante, of this title, might well have been set forth as an integral part of this section and section 100, post, of this title.

Historical Note

This section was derived from section 8 of Act April 5, 1906, c. 1366, cited to the text.

Section 11 of Act May 24, 1924, c. 182, also cited to the text, extended the provisions of this section and section 100 of this title, relative to official fees and the method of accounting therefor, to include both branches of the Foreign Service. Said section 11 is set out in section 13, ante, of this title.

As enacted, section 8 of Act April 5, 1906, c. 1366, aforesaid, contained an additional provision reading as follows: "And vice-consuls-general, deputy consuls-general, vice-consuls, and deputy consuls, in addition to such compensation as they may be entitled to receive as consuls or clerks, may receive such portion of the salaries of the consul-general or consuls for whom they act as shall be provided by regulation."

The provision just quoted was, however, superseded by section 6 of Act Feb. 5, 1915, c. 23 (section 52 of this title), abolishing the offices of vice consul general, deputy consul general, and deputy consuls; and by section 3 of the same act, which provided an additional compensation for any vice consul, assuming charge of a consulate general or consulate, equal to the difference between his salary and 50 per cent. of the salary of the principal officer at such post. Provision is now made for additional compensation for such officer by the last sentence of section 20 of this title. See note to that section.

Previous provisions relating to compensation and fees of various consular officers, made by R. S. §§ 1702, 1703, 1729, 1730, 1732, 1753, were superseded by the provisions of this section, and sections 2 and 3 of Act April 5, 1906, c. 1366, cited to the text. Said section 2 was superseded by sections 1 and 2 of Act Feb. 5, 1915, c. 23, which sections were in turn superseded by Act May 24, 1924, c. 182 (sections 1 to 23 of this title), which, by section 3 of this title, provides for the grading, classification, and salaries of Foreign Service officers. As to section 3 of Act April 5, 1906, aforesaid, see section 54 of this title and note thereto.

The provisions of this section as to accounting for fees probably superseded R. S. § 1747, which directed that the fees collected by certain grades of consular officers be accounted for to the Secretary of the Treasury, and held subject to his draft, or other directions, and also superseded a proviso, annexed to an appropriation for expenses of shipping and discharging seamen at Liverpool, London, Cardiff, Belfast, and Hamburg, "that the fees collected at those ports for shipping and discharging seamen shall be paid into the Treasury as required by law," made by Act Jan. 27, 1879, c. 28, 20 Stat. 273.

Cross-References

Provisions of this section and section 100, post, of this title, extended to both branches of the foreign service, see section 13 of this title, ante.

Other provisions for returns, accounts, and disposition of fees, see sections 94 to 97, ante, of this title.

No consular fees chargeable for official services to American vessels or seamen, see section 89, ante, of this title.

Notes of Decisions

1. Validity of section.—This section is valid, and not in conflict with Const. art. 2, § 2. U. S. v. Eaton (Ct. Cl. 1898) 18 S. Ct. 374, 379, 169 U. S. 331, 42 L. Ed. 767.

2. Regulations.—The proposed regulation of the State Department that consular agents, "as compensation for their services to American vessels and seamen and for other official acts, shall receive one-half the official fees collected for such services: Provided, such 'compensation shall not exceed in any fiscal year the sum of $1,000; and all such fees in excess of such compensation shall be remitted to the consul in whose district the agency is located," is consistent with R. S. §§ 1703, and 1733 (both superseded; see historical note to this section). (1898) 22 Op. Atty. Gen. 163.

3. Fees to be accounted for.—Consuls and vice consuls, administering the personal estate left by Americans dying within their consulates, held entitled to a fee of 5 per cent. for their services as an official fee, under Regulation 1888, par. 508, item 56, which fees must be accounted for to the United States treasury. U. S. v. Eaton (Ct. Cl. 1898) 18 S. Ct. 374, 382, 169 U. S. 331, 42 L. Ed. 767.

Fees received by the consul, acting under state authority, and wholly independent of the authority of the United States government, are not official fees as respects the federal government, but the private property of the consul, which he may retain for his own use, and for which he is not required to account to the government. U. S. v. Badeau (C. C. N. Y. 1887) 31 F. 697, affirmed (D. C. 1888) 33 F. 572, affirmed (1891) 11 S. Ct. 1029, 140 U. S. 701, 35 L. Ed. 597.

The several consuls for whom Act March 1, 1853, c. 133, provides annual salaries must collect and pay over all fees for consular service to the government. (1855) 7 Op. Atty. Gen. 243.

Consuls, commercial agents, vice consuls, and consular agents, for whom salaries are not provided by the act, are entitled to continue to receive fees for consular service. Id.

The act does not repeal any fees except those which it expressly mentions, and leaves all others as they now stand by act of congress or regulations of department. Id.

The fees of consular agents receivable under the act of 1856 are not returnable in the accounts of the consuls to whom they are subordinate under the act of 1866. (1866) 12 Op. Atty. Gen. 97.

The fees collected by consular agents which are payable under the act of 1856 to their principals are returnable in the accounts of such principals. Id.

Under the laws and usages governing the American consular service, the authentication, noting, etc., of marine protests are to be regarded as official consular service. (1888) 19 Op. Atty. Gen. 196.

4. Itemized accounts.—A consular agent cannot, by itemization of his account, change the character of the funds received by him. Mahin v. U. S. (1905) 41 Ct. Cl. 1.

§ 100. **Stamps for fees; effect of failure to affix stamps to documents.** Every consular officer shall be provided and kept supplied with adhesive official stamps, on which shall be printed the equivalent money value of denominations and to amounts to be determined by the Department of State, and shall account quarterly to the Department of State for the use of such stamps and for such of them as shall remain in his hands.

Whenever a consular officer is required or finds it necessary to perform any consular or notarial act he shall prepare and deliver to the party or parties at whose instance such act is performed a suitable and appropriate document as prescribed in the consular regulations and affix thereto and duly cancel an adhesive stamp or stamps of the denomination or denominations equivalent to the fee prescribed for such consular or notarial act, and no such act shall be legally valid within the jurisdiction of the Government of the United States unless such stamp or stamps is or are affixed and canceled. (Apr. 5, 1906, c. 1366, § 10, 34 Stat. 102; May 24, 1924, c. 182, § 11, 43 Stat. 142.)

Editorial comment.—See comment under section 99, ante, of this title, equally applicable to this section.

Historical Note

This section was derived from section 10 of Act April 5, 1906, c. 1366, cited to the text.

As to the effect of section 11 of Act May 24, 1924, c. 182, also cited to the text, on this section and section 99, ante, of this title, see historical note to said section 99.

Cross-References

See cross-references under section 99, ante, of this title.

§ 101. **Posting rates of fees.** It shall be the duty of all consular officers at all times to keep posted up in their offices, respectively, in a conspicuous place, and subject to the examination of all persons interested therein, a copy of such rates or tariffs as shall be in force. (R. S. § 1731.)

Historical Note

The source of R. S. § 1731, cited to the text, was Act Aug. 18, 1856, c. 127, § 16, 11 Stat. 57.

§ 102. **Embezzlement of fees or of effects of American citizens.** Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of said moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen, shall be deemed guilty of embezzlement, and shall be punishable by imprisonment for not more

than five years, and by a fine of not more than $2,000. (R. S. § 1734; Dec. 21, 1898, c. 36, § 3, 30 Stat. 771.)

Editorial comment.—As to the applicability of this section to Foreign Service officers detailed for purpose of inspection, see editorial comment under section 9, ante, of this title.

Historical Note

This section, as enacted in the Revised Statutes, was as follows: "Every consular officer who willfully neglects to render true and just quarterly accounts and returns of the business of his office, and of moneys received by him for the use of the United States, or who neglects to pay over any balance of such moneys due to the United States at the expiration of any quarter, before the expiration of the next succeeding quarter, shall be deemed guilty of embezzlement of the public moneys, and shall be punishable by imprisonment for not more than one year and by a fine of not more than two thousand dollars, and shall be forever disqualified from holding any office of trust or profit under the United States."

It was amended to read as set forth here by Act December 21, 1898, c. 36, § 3, last cited above, by inserting, after the words, "the next succeeding quarter," the words "or who shall receive money, property, or effects belonging to a citizen of the United States and shall not within a reasonable time after demand made upon him by the Secretary of State or by such citizen, his executor, administrator, or legal representative, account for and pay over all moneys, property, and effects, less his lawful fees, due to such citizen"; by omitting, after the word "embezzlement," the words "of the public moneys"; by making the term of imprisonment five years instead of one year; and by omitting the words at the end of the section, "and shall be forever disqualified from holding any office of trust or profit under the United States."

R. S. § 1734, cited to the text, was derived from Act March 3, 1869, c. 125, § 5, 15 Stat. 322.

Cross-References

Further provisions, declaring guilty of embezzlement and making punishable every consular officer who accepts any appointment from a foreign state as administrator, guardian, etc., without giving bond, or who fails to account for, etc., any money, property, etc., received in such capacity, see section 79, ante, of this title.

General provisions relating to embezzlement by officers, see section 176 of Title 18, Criminal Code and Criminal Procedure.

Punishment for perjury of consular officer, making false oath in accounting for fees, see section 97, ante, of this title.

Notes of Decisions

1. Failure to account.—Consuls not duly accounting for fees collected for consular service are subject to indictment for the statute crime of embezzlement. (1855) 7 Op. Atty. Gen. 243.

§ 103. Liability for neglect of duty or for malfeasance generally; action on bond; penalty. Whenever any consular officer willfully neglects or omits to perform seasonably any duty imposed upon him by law, or by any order or instruction made or given in pursuance of law, or is guilty of any willful malfeasance or abuse of power, or of any corrupt conduct in his office, he shall be liable to all persons injured by any such neglect, or omission, malfeasance, abuse, or corrupt conduct, for all damages occasioned thereby; and for all such damages, he and his sureties upon his official bond shall be responsi-

ble thereon to the full amount of the penalty thereof to be sued in the name of the United States for the use of the person injured. Such suit, however, shall in no case prejudice, but shall be held in entire subordination to the interests, claims, and demands of the United States, as against any officer, under such bond, for every willful act of malfeasance or corrupt conduct in his office. If any consul neglects or omits to perform seasonably the duties imposed upon him by the laws regulating the shipment and discharge of seamen, or is guilty of any malversation or abuse of power, he shall be liable to any injured person for all damage occasioned thereby; and for all malversation and corrupt conduct in office, he shall be punishable by imprisonment for not more than five years and not less than one, and by a fine of not more than $10,000 and not less than $1,000. (R. S. §§ 1735, 1736.)

Historical Note

This is a combination provision, the first two sentences of which are from R. S. § 1735, and the last sentence from R. S. § 1736.

R. S. § 1735, was derived from Act Aug. 18, 1856, c. 127, § 32, 11 Stat. 64, and R. S. § 1736, from Act July 20, 1840, c. 48, 5 Stat. 397.

R. S. § 1736 (source of the last sentence hereof) contained, following the word "consul," herein the words "or commercial agent"; but see section 54, ante, of this title.

It also contained, following the word "seamen," herein, the words, "and the reclamation of deserters on board or from vessels in foreign ports." These words were evidently omitted as superseded by the amendment of R. S. § 4000, by Act March 4, 1915, c. 153, § 8, 38 Stat. 1167. Prior to that amendment, R. S. § 4000, made it the duty of every consular officer to reclaim deserters; see section 703 of Title 46, Shipping.

Cross-References

This section made applicable to Foreign Service officers detailed for the purpose of inspection, see section 9 of this title, ante.

Relative to the bonds required of officers of the foreign service, see section 11 of this title, ante.

Other provisions as to duties of consular officers in regard to shipment and discharge, etc., of seamen, see chapter 18 of Title 46, Shipping, and particularly sections 658, 678, 679, 682, 683, and 685, thereof.

Notes of Decisions

1. Liability of officers and sureties; scope.—In ship captain's action, under this section, against consul for damages caused by latter's unwarranted refusal to visé passports, pursuant to regulations of Department of State promulgated under authority of section 150 of Title 5, Executive Departments and Government Officers and Employees, held, defendant's breach of duty was not excused by instructions from the State Department to render no service in unauthorized transfer of vessels to foreign registry, where captain's connection with ship had ended, and the visé was merely to enable him to return to United States. American Surety Co. of New York v. Sullivan (C. C. A. N. Y. 1925) 7 F.(2d) 605.

A consul, although not chargeable for the mistaken exercise of his actual powers, is responsible for keeping within them, and may not use his authority to excuse an action which it does not justify. Id.

2. Actions—Who may maintain.—An action on the bond of a consul for a failure

to perform the duties imposed by the fifth paragraph of section 75 of this title cannot be maintained by the next of kin as owner of a distributive share in an estate. The administrator is the legal claimant and he alone is entitled to receive the fund. Cunningham v. Rodgers (App. D. C. 1920) 267 F. 609, affirmed (1922) 42 S. Ct. 149, 257 U. S. 460, 66 L. Ed. 319.

3. —— **Admissions by failure to deny allegations.**—In damage action against consul, under this section for breach of official duty, where allegations that under the laws and consular regulations it was defendant's duty to visé citizen's passport were not denied, it must be taken as true that there were such regulations; there being no statute requiring such visé. American Surety Co. of New York v. Sullivan (C. C. A. N. Y. 1925) 7 F.(2d) 605.

4. —— **Judicial notice of officer's authority.**—An action was brought against the consul general of Egypt to recover the value of certain goods and credits which the defendant caused to be attached, in which action the declaration alleged usurpation and abuse of power. A plea by the defendant, asking the court to take judicial notice that his official character gave him the jurisdiction which he assumed to exercise, was held to be defective. While it is usual for ministers and consuls in pagan and Mohammedan countries to exercise judicial functions as between their fellow-subjects or citizens, the extent to which this power is exercised depends upon treaties and laws regulating such jurisdiction, of which the court cannot take judicial notice. Dainese v. Hale (Dist. Col. 1875) 91 U. S. 13, 23 L. Ed. 190.

5. **Governmental liability.**—By this section, Congress addressed itself with some care to the subject of providing security against the unfaithfulness of persons holding consular offices, and this legislation accords with the well-settled principle that the United States is not liable to its citizens for the consequences of the wrongs or shortcomings of its officers. For the action of the collector in collecting from the master the wages due to destitute seamen to pay for the necessary clothing supplied, whereas they were entitled, under R. S. § 4577 (section 678 of Title 46, Shipping), to have their necessaries supplied and to be sent home at the expense of the United States, the remedy, if any, would be against the consul on his bond, and not against the United States. (1887) 19 Op. Atty. Gen. 22.

§ 104. False certificate as to ownership of property. If any consul or vice consul falsely and knowingly certifies that property belonging to foreigners is property belonging to citizens of the United States, he shall be punishable by imprisonment for not more than three years and by a fine of not more than $10,000. (R. S. § 1737.)

Historical Note

R. S. § 1737, was derived from Act Feb. 28, 1803, c. 9, § 7, 2 Stat. 204.

As enacted it contained, following the words "vice consul," herein, the words "commercial agent, or vice-commercial agent"; but see section 54, ante, of this title.

Cross-References

False certification of invoice, or other paper, by a consular officer, made punishable, see section 127 of Title 18, Criminal Code and Criminal Procedure.

§ 105. Performance of diplomatic functions restricted. No consular officers shall exercise diplomatic functions, or hold any diplomatic correspondence or relation on the part of the United States, in, with, or to the government or country to which he is appointed, or any other country or government, when there is in such country any

officer of the United States authorized to perform diplomatic functions therein; nor in any case, unless expressly authorized by the President so to do. (R. S. § 1738.)

Historical Note

R. S. § 1738, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 12, 11 Stat. 56.

Cross-References

Carrying on correspondence with any foreign government with intent to influence its measures or conduct in relation to any dispute or controversies with the United States, or to defeat the measures of the Government of the United States, made punishable, see section 5 of Title 18, Criminal Code and Criminal Procedure.

Notes of Decisions

1. **Effect of authorization.**—A consul may be authorized to communicate directly with the government near which he resides; but he does not thereby acquire the diplomatic privileges of a minister. (1855) 7 Op. Atty. Gen. 342.

Nor does he, as consul, acquire such privileges by being appointed, as he may, at the same time chargé d'affaires. Id.

"When a consul is appointed chargé d'affaires, he has a double political capacity; but though invested with full diplomatic privileges, he becomes so invested as chargé d'affaires and not as consul, and though authorized as consul to communicate directly with the government in which he resides, he does not thereby obtain the diplomatic privileges of a minister." In re Baiz (N. Y. 1890) 135 U. S. 424, 10 S. Ct. 854, 34 L. Ed. 222.

§ 106. Restriction as to transaction of private business by consular officer generally. No consul general, consul, or consular agent receiving a salary of more than $1,000 a year shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as a clerk or other agent for any such person to, from, or within the port, place, or limits of his jurisdiction, directly or indirectly, either in his own name or in the name or through the agency of any other person; nor shall he practice as a lawyer for compensation or be interested in the fees or compensation of any lawyer; and he shall in his official bond stipulate as a condition thereof not to violate this prohibition. (*Apr. 5, 1906, c. 1366, § 6, 34 Stat. 101.)

* "R. S. § 1699;" should be added to this citation.

Historical Note

R. S. § 1699, from which this section was derived, had its source in Act Aug. 18, 1856, c. 127, § 5, 11 Stat. 55.

As enacted in the Revised Statutes, it was as follows: "No consul-general, consul, or commercial agent, embraced in schedule B, shall, while he holds his office, be interested in or transact any business as a merchant, factor, broker, or other trader, or as a clerk or other agent for any such person to, from, or within the port, place, or limits of his consulate or commercial agency, directly or indirectly, either in his own name, or in the name or through the agency of any other person; and he shall, in his official bond, stipulate, as a condition thereof, not to violate this prohibition."

It was amended to read as set forth here by the Consular Reorganization Act of April 5, 1906, c. 1366, § 6, cited to the text.

Cross-References

Extension of the restriction imposed hereby, see section 107, post, of this title.

Penalty for violation of restriction imposed by this section, see section 108, post, of this title.

For similar restriction as to diplomatic officers, see section 38, ante, of this title.

Notes of Decisions

1. Rights and liabilities.—The consul of a neutral state, residing in a belligerent country and carrying on trade as a merchant, will be regarded as domiciled in that country; and, if connected with neutral merchants as a partner in trade, his property is subject to capture and condemnation. Arnold v. United Ins. Co. (N. Y. 1800) 1 Johns. Cas. 363.

A consul in a foreign port, under whose authority a vessel is sold, cannot acquire an interest therein under the sale. Riley v. The Obell Mitchell (D. C. N. Y. 1861) Fed. Cas. No. 11,830.

§ 107. Extension of restriction as to transaction of business; action on bond. All consular officers whose respective salaries exceed $1,000 a year shall be subject to the prohibition against transacting business, practicing as a lawyer, or being interested in the fees or compensation of any lawyer contained in the preceding section. And the President may extend the prohibition to any consular agent whose salary does not exceed $1,000 a year or who may be compensated by fees, and may require such officer to give a bond not to violate the prohibition. (*Apr. 5, 1906, c. 1366, § 6, 34 Stat. 101.)

*"R. S. § 1700;" should be added to this citation.

Historical Note

This section, as enacted in the Revised Statutes (R. S. § 1700), was as follows: "All consular officers whose respective salaries exceed one thousand dollars a year, shall be subject to the prohibition against transacting business contained in the preceding section. And the President may extend the prohibition to any consul or commercial agent not embraced in Schedules B and C, and to any vice-consul, vice-commercial agent, deputy consul, or consular agent, and may require such officer to give bond not to violate the same."

Act April 5, 1906, c. 1366, § 6, cited to the text, amended the section to read as set forth here, except that, as so amended, the section contained, following the word "any" in the second sentence hereof, the words "consul-general, consul, or," and, following the word "fees," the words "and to any vice or deputy consular officer or consular agent."

In respect to the omissions aforesaid, it is to be observed that all officers of the Foreign Service receive more than $1,000 per year (section 3 of this title), and therefore come within the first sentence of this section; that the only compensation of consular officers other than consular agents is to be by salary fixed by law (section 99 of this title); and that the office of deputy consul has been abolished (section 52 of this title).

R. S. § 1700, was derived from Act Aug. 18, 1856, c. 127, § 15, 11 Stat. 57, and Act Feb. 4, 1862, c. 17, § 1, 12 Stat. 336.

Cross-References

See cross-references under section 106, ante, of this title.

§ 108. Penalty for violation of restriction as to transaction of business; action on bond. Every consul general or consul who violates

the prohibition against transacting business, required to be inserted in his official bond, shall be liable to a penalty therefor, for the use of the United States, equal in amount to the annual compensation specified for him which may be recovered in an action of debt at the suit of the United States either directly for the penalty, as such, against such consul general or consul, or upon his official bond, as liquidated damages, for the breach of such condition against such consul general or consul, and his sureties, or any one or more of them; and in every such case all such actions shall be open to the United States for the collection of such penalty till the same shall be collected in some one of such actions; and every such penalty, when collected, shall be paid into the Treasury of the United States. (R. S. § 1701.)

Historical Note

R. S. 1701, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 5, 11 Stat. 53.

As enacted, it contained, following the words "consul general or consul," wherever appearing in this section, the words "or commercial agent"; but see section 54, ante, of this title.

It also contained, following the words "specified for him," in this section, the words "in Schedule B"; but these words were superseded by reclassification of consular officers. Grading, classification, and salaries of consular officers are now covered by section 3, ante, of this title.

Cross-References

For provisions relating to the bonds of Foreign Service officers, see section 11, ante, of this title.

§ 109. Allowance for office rent of consulates. The President may allow consuls general and consuls, who are not allowed to trade, actual expenses of office rent, not to exceed, in any case, 20 per centum of the amount of the annual compensation allowed to such officer, whenever he shall think there is sufficient reason therefor. (R. S. § 1706.)

Historical Note

R. S. § 1706, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 22, 11 Stat. 60, and Act Feb. 22, 1873, c. 184, § 1, 17 Stat. 473.

As enacted it contained, following the word "consuls," herein, the words "and commercial agents"; but see section 54, ante, of this title.

Cross-References

Restrictions against the transaction of private business by consular officers, see sections 106 and 107, ante, of this title.

GENERAL PROVISIONS COMMON TO DIPLOMATIC AND TO CONSULAR OFFICERS

§ 121. When salary commences. No ambassador, envoy extraordinary, minister plenipotentiary, minister resident, commissioner,

chargé d'affaires, secretary of legation, assistant secretary of legation, interpreter to any legation or consulate, or consul general, consul, or vice consul shall be entitled to compensation for his services, except from the time when he reaches his post and enters upon his official duties to the time when he ceases to hold such office, and for such time as is actually and necessarily occupied in receiving his instructions, not to exceed thirty days, and in making the direct transit between the place of his residence, when appointed, and his post of duty, at the commencement and termination of the period of his official service, for which he shall in all cases be allowed and paid, except as hereinafter mentioned. And no person shall be deemed to hold any such office after his successor is appointed and actually enters upon the duties of his office at his post of duty, nor after his official residence at such post has terminated if not so relieved. But no such officer as is referred to in this section shall be allowed compensation for the time so occupied in such transit, at the termination of the period of his official service, if he has resigned or been recalled therefrom for any malfeasance in his office. (R. S. § 1740; Feb. 27, 1925, c. 364, 43 Stat. 1017.)

Editorial comment.—There is probably no authority in permanent legislation for the words "or vice consul," appearing in line 5 hereof. See historical note as to source of those words.

Historical Note

R. S. § 1740, cited to the text, which is the source of this section, was derived from Act Aug. 18, 1856, c. 127, § 8, 11 Stat. 55.

The section as enacted in the Revised Statutes differed from this section in the following particulars, to wit: It contained, in lieu of the words "or vice consul" (line 5 of this section), the words "or commercial agent, mentioned in Schedules B and C," and in lieu of the last sentence of this section a sentence reading as follows: "But no such allowance or payment shall be made to any consul-general, consul, or commercial agent, not embraced in Schedules B and C, or to any vice-consul, vice-commercial agent, deputy consul, or consular agent, for the time so occupied in receiving instructions, or in such transit as aforesaid; nor shall any such officer as is referred to in this section be allowed compensation for the time so occupied in such transit, at the termination of the period of his official service, if he has resigned or been recalled therefrom for any malfeasance in his office."

The grade of commercial agent was abolished by section 3 of the Act of April 5, 1906, c. 1366 (section 54 of this title); and the office of deputy consul by Act Feb. 5, 1915, c. 23, § 6 (section 52 of this title).

Schedules B and C, twice mentioned in R. S. § 1740, were superseded by the classification of consular officers by section 2 of Act April 5, 1906, c. 1366, 34 Stat. 99. Said section 2 was superseded by sections 1 and 2 of Act Feb. 5, 1915, c. 22, 38 Stat. 805, which sections were in turn superseded by the reorganization of the Foreign Service by Act May 24, 1924, c. 182 (sections 1 to 23 of this title), which, by section 3 thereof (section 3 of this title), provides the grading, classification, and salaries of Foreign Service officers.

The Departments of State and Justice, Judiciary, and Departments of Commerce and Labor appropriation act for the year 1926, Act Feb. 27, 1925, c. 364, cited to the text, accounts for the use of the words "or vice consuls" (line 5 of this section). It contains the following: "Salaries, Diplomatic, Consular, and Foreign Service Officers While Receiving Instructions and in Transit.—To pay the salaries of ambassadors, ministers, consuls, vice consuls, and other officers of the United States for the period actually and necessarily occupied in receiving instructions and in making transits to and from their posts, and while awaiting recognition and authority to act in pursuance with the provisions of section 1740 of the Revised Statutes, $30,000."

Cross-References

Establishment of a maximum time allowance between each post and Washington, and vice versa, see section 122, post, of this title.

Notes of Decisions

1. **Commencement.**—A person residing at Apia in the Friendly and Navigators' Islands, who received notice from the department of state in June, 1874, to proceed to San Francisco, and there await his instructions and commission as consul at Apia, and who left Apia July 3, 1874, arrived in San Francisco August 21st, took the oath of office September 14th, executed his bond September 15th, and sailed for Apia November 18th, arriving January 1, 1875, is not entitled to salary prior to January 1, 1875, except for the time he was awaiting instructions (from September 15th to October 14th), and for the time occupied in the voyage (from November 14th to January 1st). U. S. v. Bee (Cal. 1893) 54 F. 112, 4 C. C. A. 219.

A consul or vice consul is not invested with the office until he gives the bond required by law; nor can he recover the salary of the office where he has neglected to give the bond. Dainese v. U. S. (1879) 15 Ct. Cl. 64.

Instructions to consular officers in relation to their duties are recognized by statute as well as by consular regulations. Sampson v. U. S. (1895) 30 Ct. Cl. 365.

Under Act Aug. 18, 1856, c. 127, a consul was to receive a salary not only for the time spent at the place of his official duty, but, in addition to that, for the time occupied in awaiting his instructions, in traveling to his post of duty, and in returning home at the close of his services. (1857) 9 Op. Atty. Gen. 89.

The chargé d'affaires to Paraguay and Uruguay, whose office was raised to minister, but who did not receive his commission or take the oath of office until nearly two months after appointment, is entitled to salary as minister from the date on which he qualified and entered upon the duties of the office, and not from the date of his appointment. (1828) 2 Op. Atty. Gen. 27, 638; (1836) 3 Op. Atty. Gen. 105, 124, 641; (1842) 4 Op. Atty. Gen. 123, 250, 312, 348; (1849) 5 Op. Atty. Gen. 132; (1853) 7 Op. Atty. Gen. 304; (1862) 10 Op. Atty. Gen. 250, 308; (1889) 19 Op. Atty. Gen. 219.

2. **Time of displacement.**—The holder of a foreign mission is not displaced until the successor enters upon his duties. "On account of the distance of his post from the seat of Government, any other rule would often cause serious embarrassment, notwithstanding the means of speedy communication which we owe to modern science." (1870) 13 Op. Atty. Gen. 302.

3. **Recall of officers.**—There is no act of Congress warranting the practice of the government in paying foreign ministers a quarter's salary after they have presented their letters of recall and such practice is unwarranted. (1831) 2 Op. Atty. Gen. 470.

The provision in the eighth section of the act of 1856 (source of R. S. § 1740, cited to the text) forbidding the allowance of compensation for the time occupied in coming home by a consul who shall have resigned or been recalled for any malfeasance in office does not apply to the case of a consul who has resigned or been recalled without being guilty of any misconduct. The penalty of having to come home at his own expense is only to be inflicted upon the consul whose misbehavior has obliged the government to recall him, or who resigns simply to escape a recall which he is conscious of deserving. (1857) 9 Op. Atty. Gen. 89.

A public minister who was at home at the time of his recall, and who was paid his salary down to the date of his recall, is not entitled in addition to compensation for such further time as would be necessarily spent in coming home from the seat of his mission. (1858) 9 Op. Atty. Gen. 261.

§ 122. Fixing time allowance for travel to and from post. The Secretary of State shall, as soon as practicable, establish and determine the maximum amount of time actually necessary to make the transit between each diplomatic and consular post and the city of Washington, and vice versa, and shall make the same public. He may also, from time to time, revise his decision in this respect; but in each case the decision is to be in like manner made public. And the allowance for time actually and necessarily occupied by each diplomatic and consular officer who may be entitled to such allowance shall in no case exceed that for the time thus established and determined, with the addition of the time usually occupied by the shortest and most direct mode of conveyance from Washington to the place of residence in the United States of such officer. (June 11, 1874, c. 275, § 4, 18 Stat. 70.)

Historical Note

This section was a part of the diplomatic and consular appropriation act for the fiscal year 1875, cited to the text.

§ 123. Salary during absence generally; leave of absence. No diplomatic or consular officer shall receive salary for the time during which he may be absent from his post, by leave or otherwise, beyond the term of sixty days in any one year; but the time equal to that usually occupied in going to and from the United States in case of the return, on leave, of such diplomatic or consular officer to the United States may be allowed in addition to such sixty days. (R. S. § 1742.)

Historical Note

R. S. § 1742, cited to the text, was derived from Act March 3, 1869, c. 125, § 2, 15 Stat. 321.

Cross-References

Establishment of maximum time allowance between each post and Washington, see section 122, ante, of this title.

Notes of Decisions

1. Absence.—The compensation of a vice consular officer acting during his principal's absence is paid out of the compensation of his principal, and may extend beyond a period of 60 days. Boyd v. U. S. (1896) 31 Ct. Cl. 158.

Diplomatic Appropriation Act March 30, 1868, c. 38, disallows the salary of a diplomatic or consular officer in all cases of absence, where in any one year the officer shall already have enjoyed absence, with salary, equal to 60 days of time. (1868) 12 Op. Atty. Gen. 410.

§ 124. Absence without leave; compensation withheld; sickness. No ambassador, envoy extraordinary, minister plenipotentiary, min-

ister resident, commissioner to any foreign country, chargé d'affaires, secretary, interpreter to any legation in any foreign country, consul general, consul, consular pupils, or consular agent shall be absent from his post or the performance of his duties for a longer period than ten days at any one time, without the permission previously obtained of the President. And no compensation shall be allowed for the time of any such absence in any case except in cases of sickness. (June 17, 1874, c. 294, 18 Stat. 77.)

Historical Note

This section and section 126, post, of this title, were an act entitled "An act relating to ambassadors, consuls and other officers."

R. S. § 1741, of which this section is substantially a re-enactment, provided that "No ambassador, envoy extraordinary, minister plenipotentiary, minister resident, commissioner, chargé d'affaires, secretary of legation, assistant secretary of legation, interpreter for any legation or consulate, or consul general, consul, or commercial agent, mentioned in Schedules B and C, or consular agent, shall be absent from his post, or the performance of his duties, for a longer period than ten days at any one time, without the permission previously obtained of the President."

As enacted, this section contained, after the word "secretary," herein, the words "of legation, assistant secretary of legation"; and after the word "consul," herein, the words "commercial agent." The grade of commercial agent was abolished by Act April 5, 1906, c. 1366, § 3 (section 54 of this title), and the words "of legation, assistant secretary of legation," were probably omitted as superseded by the reclassification of "secretaries in the diplomatic service" by sections 1 and 2 of Act Feb. 5, 1915, c. 23, 38 Stat. 805. Said sections 1 and 2, however, were in turn superseded by Act May 24, 1924, c. 182 (sections 1 to 23 of this title), reorganizing the Foreign Service. See in particular sections 3 and 4, ante, of this title.

Notes of Decisions

1. Leave of absence.—The absence of a minister resident from his post, with permission of the President, is not an offense for which his salary, during the time of the absence, is to be withheld from him. (1858) 9 Op. Atty. Gen. 138.

Act Aug. 18, 1856, c. 127 (source of R. S. § 1741, quoted in historical note), does not forbid an absence of less than 10 days without permission, or of more than that time with leave of the President. (1857) Id.

Where a diplomatic officer of a class named in this act temporarily absented himself for a period of not over 10 days, the right to compensation is in no case affected. (1875) 14 Op. Atty. Gen. 534.

§ 125. Extra compensation prohibited. The compensation allowed by law to the various diplomatic and consular officers shall be in full for all the services rendered and personal expenses incurred by the persons respectively for whom such compensation is provided, of whatever kind such services or personal expenses may be, or by whatever treaty, law, or instructions they are required; and no allowance, other than such as is so provided, shall be made in any case for the outfit or return home of any such officer or person. (R. S. § 1743.)

Historical Note

R. S. § 1743, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 20, 11 Stat. 59.

Cross-References

Sole and only compensation of consular officers to be by salaries fixed by law, see section 99, ante, of this title.

No Foreign Service officer to receive more than one salary, see section 19, ante, of this title.

§ 126. Correspondence on affairs of foreign governments; recommendation for employment and acceptance of presents, etc. No diplomatic or consular officer shall correspond in regard to the public affairs of any foreign government with any private person, newspaper, or other periodical, or otherwise than with the proper officers of the United States; nor without the consent of the Secretary of State previously obtained, recommend any person at home or abroad for any employment of trust or profit under the Government of the country in which he is located; nor ask or accept, for himself or any other person, any present, emolument, pecuniary favor, office, or title of any kind from any such government. (June 17, 1874, c. 294, 18 Stat. 77.)

Historical Note

The provisions of this section and section 124, ante, of this title, constituted the act cited to the text.

The provision comprising this section is a re-enactment of R. S. § 1731, which was in practically the same language, except that it did not contain the words "without the consent of the Secretary of State previously obtained," which appear herein.

Cross-References

Carrying on correspondence with any foreign government with intent to influence its measures or conduct in relation to any dispute or controversies with the United States, or to defeat the measures of the Government of the United States, made punishable, see section 5 of Title 18, Criminal Code and Criminal Procedure.

§ 127. Regulation of fees by President. The President is authorized to prescribe from time to time, the rates or tariffs of fees to be charged for official services, and to designate what shall be regarded as official services, besides such as are expressly declared by law, in the business of the several embassies, legations, and consulates, and to adapt the same, by such differences as may be necessary or proper, to each embassy, legation, or consulate; and it shall be the duty of all officers and persons connected with such embassies, legations, and consulates to collect for such official services such and only such fees as may be prescribed for their respective embassies, legations, and consulates, and such rates or tariffs shall be reported annually to Congress. (R. S. § 1745.)

Historical Note

R. S. § 1745, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 16, 11 Stat. 57.

It contained, following the word "consulate" or "consulates," wherever appearing herein, either the words "and commercial agencies" or "or commercial agencies" or "or commercial agency," but these words were superseded by the abolition of the grade of commercial agent by Act April 5, 1906, c. 1360, § 3, 34 Stat. 100 (section 54 of this title).

The word "embassy" or "embassies," appearing several times herein, did not appear in the section as enacted in the Revised Statutes. The President was requested to revise the tariff of consular fees and prescribe such rates as would make them conform, as nearly as may be, to the fees charged by other commercial nations for similar service, by a provision of Act Jan. 27, 1879, c. 28, 20 Stat. 273. It was evidently omitted, as temporary merely.

Cross-References

Fees for consular certification of invoices included within the fees for which the President is authorized to prescribe rates or tariffs by this section, see section 84, ante, of this title.

For provision requiring all fees, official or unofficial, to be paid into the Treasury, and making salaries fixed by law the sole compensation of consular officers except consular agents, see section 99, ante, of this title.

Fees named in tariff of consular fees prescribed by order of the President are not to be charged or collected for official services to American vessels and seamen, see section 89, ante, of this title.

Notes of Decisions

1. Powers of President.—The President may at any time transfer a fee from the unofficial to the official, or vice versa; and he may increase, diminish, or abolish a fee. Stahel v. U. S. (1891) 26 Ct. Cl. 193.

There are but two limitations upon the power of the President to designate the official services of a consul: He cannot declare a fee to be unofficial which the law declares to be official, nor prescribe a fee for a service which the law declares shall be rendered gratuitously. Id.

The President may prescribe a fee as provided by this section, for the services of a consul in furnishing inspection cards to steerage passengers on vessels destined to the United States, as required by the quarantine regulations of April 1, 1903; but he has no authority to declare such a fee unofficial and to permit the consul to retain it as such. (1903) 24 Op. Atty. Gen. 672.

2. What are official services.—Fees received for "acknowledgments and authentication of instruments * * * certifying official character and signature of notary public" belong to the consul. U. S. v. Mosby (Ct. Cl. 1890) 10 S. Ct. 327, 332, 133 U. S. 273, 33 L. Ed. 625.

Commissions on settlement of private estate held to belong to consul. Id.

Fees for shipping and discharging seamen on foreign-built vessels sailing on China coast under United States flag held to belong to consul. Id.

Fees received by the consul for certificates of shipment of merchandise in transit through the United States to other countries held to belong to him. Id.

Fees received for "cattle disease certificates" held to belong to consul. Id.

Interest on "public moneys" deposited by the consul in banks belongs to the government, and not to the consul. Id.

Fees received by a consul for examination of Chinese emigrants to the United States on foreign vessel held to be his own property. Id.

Consul held entitled to allowance of claim for fees collected for "recording instruments" and paid into treasury. Id.

Fees received by consul for certificates to invoices of free goods imported held to be for official services, and hence belonged to the United States. Id.

Fees received for certificates to extra copies of quadruplicate invoices were for official services and the fees belonged to the United States. Id.

Interpretation by the state department of the regulations issued to consuls by the secretary of state, defining what acts are to be deemed official and what nonofficial, are controlling as to their meaning in case

of doubt, and should conclude accounting officers of the treasury department. U. S. v. Badeau (C. C. N. Y. 1887) 31 F. 697, 699, affirming (D. C. 1886) 33 F. 572.

Fees received for notarial acts for individuals, in transactions having no relation with the official business of the government, are the personal emoluments of the officer, for which he is not required to account to the treasury department. Id.

A consul in China is entitled to fees collected for shipping and discharging seamen on foreign-built vessels sailing under the American flag. Goldsborough v. U. S. (1889) 25 Ct. Cl. 73.

When certificates to invoices of merchandise shipped from one foreign port in transit through the United States in bond to another foreign port are procured, the certification is an unofficial act, and the fee the personal emolument of the consular officer. Wilson v. U. S. (1896) 32 Ct. Cl. 64, reversed on other grounds, U. S. v. Wilson (1897) 18 S. Ct. 85, 168 U. S. 273, 42 L. Ed. 464.

No service by a consul can be unofficial when the applicant has a right to demand it and the consul no right to refuse it. (1903) 24 Op. Atty. Gen. 672.

3. Illegal fees.—If the President directs the collection of fees illegally, the owner may have a right of recovery against the government; but the officer who performs the service and collects the fees has no claim to the money. Stahel v. U. S. (1891) 26 Ct. Cl. 193.

§ 128. Medium for payment of fees. All fees collected by diplomatic and consular officers for and in behalf of the United States shall be collected in the coin of the United States, or at its representative value in exchange. (R. S. § 1746.)

Historical Note

R. S. § 1746, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 30, 11 Stat. 63.

Cross-References

For provision that in the collection of official fees consular officers in the Dominion of Canada shall receive foreign moneys at the rate given in the Treasury schedules of the value of foreign coins, see section 91, ante, of this title.

§ 129. Office paraphernalia. The President is authorized to provide at the public expense all such stationery, blanks, record and other books, seals, presses, flags, and signs as he shall think necessary for the several embassies, legations, and consulates in the transaction of their business. (R. S. § 1748.)

Historical Note

R. S. § 1748, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 22, 11 Stat. 60.

It contained, following the word "consulates" herein, the words "and commercial agencies"; but see section 54, ante, of this title.

R. S. § 1748, did not contain the word "embassies" appearing herein.

Appropriations for contingent expenses of the several embassies and legations are made by the Department of State and Justice, Judiciary, and Departments of Commerce and Labor appropriation acts. The provisions for the fiscal year 1926 were by Act Feb. 27, 1925, c. 364, title I, 43 Stat. 1016.

§ 130. Allowance to widow of deceased officer. Whenever any diplomatic or consular officer of the United States dies in a foreign

country in the discharge of his duty, there shall be paid to his widow, or, if no widow survive him, then to his heirs at law, a sum of money equal to the allowance made to such officer for the time necessarily occupied in making the transit from his post of duty to his residence in the United States. (R. S. § 1749.)

Historical Note

R. S. § 1749, cited to the text, was derived from Act Feb. 22, 1873, c. 184, § 2, 17 Stat. 474.

Appropriations for payments, under the provisions of this section, to widows or heirs at law of diplomatic or consular officers dying in foreign countries, are made by the appropriation acts for each year. The provision for the fiscal year 1926 was by Act Feb. 27, 1925, c. 364, 43 Stat. 1018.

Appropriations are also made by those acts for "defraying the expenses of transporting the remains of diplomatic, consular, and foreign service officers of the United States, including clerks, who have died or may die abroad or in transit, while in the discharge of their official duties, to their former homes in this country for interment, and for the ordinary and necessary expenses of such interment, at their post or at home." The provision for the fiscal year 1926 was by Act Feb. 27, 1925, c. 364, 43 Stat. 1018.

§ 131. Depositions and notarial acts; perjury. Every secretary of embassy or legation and consular officer is hereby authorized, whenever he is required or deems it necessary or proper so to do, at the post, port, place, or within the limits of his embassy, legation, or consulate, to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to do within the United States. Every such oath, affirmation, affidavit, deposition, and notarial act administered, sworn, affirmed, taken, had, or done, by or before any such officer, when certified under his hand and seal of office, shall be as valid, and of like force and effect within the United States, to all intents and purposes, as if administered, sworn, affirmed, taken, had, or done, by or before any other person within the United States duly authorized and competent thereto. If any person shall willfully and corruptly commit perjury, or by any means procure any person to commit perjury in any such oath, affirmation, affidavit, or deposition, within the intent and meaning of any Act of Congress now or hereafter made, such offender may be charged, proceeded against, tried, convicted, and dealt with in any district of the United States, in the same manner, in all respects, as if such offense had been committed in the United States, before any officer duly authorized therein to administer or take such oath, affirmation, affidavit, or deposition, and shall be subject to the same punishment and disability therefor as are or shall be prescribed by any such act for

such offense; and any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal and signature of the officer administering or taking the same in testimony thereof, shall be admitted in evidence without proof of any such seal or signature being genuine or of the official character of such person; and if any person shall forge any such seal or signature, or shall tender in evidence any such document with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit he shall be deemed and taken to be guilty of a misdemeanor and on conviction shall be imprisoned not exceeding three years nor less than one year, and fined in a sum not to exceed $3,000, and may be charged, proceeded against, tried, convicted, and dealt with, therefor, in the district where he may be arrested or in custody. (R. S. § 1750.)

Historical Note

R. S. § 1750, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 24, 11 Stat. 61.

It did not contain the word "embassy," which appears twice herein.

The word "consulate" (line 5 of this section) was followed, in the section as enacted in the Revised Statutes, by the words "or commercial agency"; but see section 54, ante, of this title.

Cross-References

For provisions requiring consular officers to perform notarial acts, and to charge fees therefor, see section 98, ante, of this title.

The certificate of acknowledgment of assignments, grants, or conveyances of patents before any officer authorized by this section to administer oaths or perform notarial acts made prima facie evidence of the execution of such assignments, grants, or conveyances, see section 47 of Title 35, Patents.

Notes of Decisions

1. Acknowledgment in adoption proceedings.—Where the adoptive father did not appear before the county judge as required by statute, because he was on the high seas, and his acknowledgment before the captain of the ship on which he was chief boatswain was not properly authenticated, under this section, section 98 of this title, and section 217 of Title 34, Navy, held, even though the adopted mother and natural mother duly appeared before the county judge and acknowledged their consent, the statute was not substantially complied with, and the adoption was therefore invalid. Murphy v. Brooks (Sup. 1923) 199 N. Y. S. 660, 120 Misc. Rep. 704.

2. Depositions de bene esse.—"Depositions de bene esse in civil causes may be taken in a foreign country by any secretary of legation or consular officer," under this section and section 639 of Title 28, Judicial Code and Judiciary. Bischoffscheim v. Baltzer (C. C. N. Y. 1882) 10 F. 1.

But in The Alexandra (D. C. S. C. 1900) 104 F. 904, the court said that R. S. § 863 (section 639 of Title 28, Judicial Code and Judiciary), relates to the depositions of witnesses residing within the United States and designates officials before whom they may be taken, and must be strictly construed. "Among those named in section 863 as authorized to take such depositions are notaries public, and it is contended that by section 1750 [this section] secretaries of legation and consular officers are authorized to take oaths, affirmations, affidavits, and depositions. There is no doubt that ordinary depositions may be lawfully taken before them, but depositions de bene esse are not ordinary notarial acts, such as a notary public could perform simply by virtue of his office."

3. Instrument acknowledged before foreign notary.—A power of attorney, executed at Liverpool and acknowledged before a notary public there, was presented to the consul at Liverpool for his official certificate that the notary public was duly authorized, admitted, and sworn, and that full faith and credit were due to his notarial acts. The attorney general advised that such certificate does not fall within the functions of a notary, and besides, if it were a notarial act, the duty is not imperative. (1860) 12 Op. Atty. Gen. 1.

4. State practice.—"Section 1750 [this section] does not intend to authorize the consul to perform notarial acts in regard to matters of state practice or state law only, and which are governed by state law; and, in saying what shall be the force and effect of a consul's notarial act in London, it cannot mean its force in regard to business and subject-matter which belong to the states exclusively to regulate, since that would be usurpation. The construction given to such acts, drawn in general language, is that they relate to subjects that are within the province of the United States government, i. e., to subjects only that are within its jurisdiction." U. S. v. Badeau (D. C. N. Y. 1886) 33 F. 572, affirmed (C. C. 1887) 31 F. 697.

"Construing the section of the Civil Code [Ga. § 3621] which authorizes a consul to attest a deed in connection with the section of the Revised Statutes which defines the powers of a consul, it is clear that it was not intended that a consul could act, in relation to the matter of attesting deeds, at any other place than that at which the laws of the United States authorize him to perform such acts. Therefore, if a consul of the United States attest a deed in any other place than his consulate, such attestation would not be sufficient to authorize the record of the deed." McCandless v. Yorkshire Guarantee, etc., Corp. (1897) 101 Ga. 180, 28 S. E. 663.

A consul is a magistrate within the meaning of a state statute which requires that a deed be "acknowledged by the grantor, before a justice of peace in this state, or before a justice of peace or magistrate of some other of the United States, or in any other state or kingdom wherein the grantor or vendor may reside, at the time of making and executing the deed." Scanlon v. Wright (1833) 13 Pick. (Mass.) 523, 25 Am. Dec. 344. See, also, Savage v. Birckhead (1838) 20 Pick. (Mass.) 167.

"An officer who may perform any notarial act which a notary public may do is certainly invested with all the powers possessed by a notary under our statute, or under the statute of any of our sister states; and one who performs the duties of a notary, and who is invested by statute with power and authority so to do, falls within the meaning of our statute as such official as fully as though his warrant of appointment gave him that name, instead of some other official title. We conclude, therefore, that a United States consul, duly accredited by the federal government to a foreign power, may, under our statute, take affidavits or depositions for use in our courts." Browne v. Palmer (1902) 66 Neb. 287, 92 N. W. 315.

Under the state statute, it was held that a power of attorney to commence a suit in the state court was properly proved before a consul residing in a foreign country. St. John v. Croel (1843) 5 Hill (N. Y.) 573.

It was held that a United States commercial agent had authority to take the acknowledgment of a married woman in the execution of a letter of attorney. Moore v. Miller (1892) 147 Pa. 378, 23 A. 601.

"Consuls of the United States are authorized to take depositions without a commission, and a commission is needless. * * * And it is questionable whether the strict rules of taking depositions by commissioners ought to be applied in such a case, where the proper notice, as in this case, was given of the examination of certain witnesses whose residence is given in the notice before a consul of the United States in one of the provinces of Canada, and the time and place are also given in the notice." Semmens v. Walters (1882) 55 Wis. 675, 13 N. W. 889.

§ 132. General regulations by President for Diplomatic and Consular Service. The President is authorized to prescribe such regu-

lations, and make and issue such orders and instructions, not inconsistent with the Constitution or any law of the United States, in relation to the duties of all diplomatic and consular officers, the transaction of their business, the rendering of accounts and returns, the payment of compensation, the safe-keeping of the archives and public property in the hands of all such officers, the communication of information, and the procurement and transmission of the products of the arts, sciences, manufactures, agriculture, and commerce, from time to time, as he may think conducive to the public interest. It shall be the duty of all such officers to conform to such regulations, orders, and instructions. (R. S. § 1752.)

Historical Note

R. S. § 1752, cited to the text, was derived from Act Aug. 18, 1856, c. 127, § 22, 11 Stat. 60.

Notes of Decisions

1. Instructions.—Instructions to consular officers in relation to their duties are recognized by statute, as well as by consular regulations. Sampson v. U. S. (1895) 30 Ct. Cl. 365.

§ 133. Purchase of buildings for Diplomatic and Consular Service. The Secretary of State is hereby authorized to acquire in foreign countries such sites and buildings as may be appropriated for by Congress for the use of the diplomatic and consular establishments of the United States, and to alter, repair, and furnish the said buildings; suitable buildings for this purpose to be either purchased or erected, as to the Secretary of State may seem best, and all buildings so acquired for the diplomatic service shall be used both as the residences of diplomatic officials and for the offices of the diplomatic establishment: *Provided, however,* That not more than the sum of $500,000 shall be expended in any fiscal year under the authorization herein made: *And provided further,* That in submitting estimates of appropriation to the Secretary of the Treasury* for transmission to the House of Representatives, the Secretary of State shall set forth a limit of cost for the acquisition of sites and buildings and for the construction, alteration, repair, and furnishing of buildings at each place in which the expenditure is proposed (which limit of cost shall not exceed the sum of $150,000 at any one place) and which limit shall not thereafter be exceeded in any case, except by new and express authorization of Congress. (Feb. 17, 1911, c. 105, 36 Stat. 917.)

* The words "the Secretary of the Treasury" should probably be "the Bureau of the Budget" to conform to section 23 of Title 31, Money and Finance.

Historical Note

This was an act entitled "An act providing for the purchase or erection, within certain limits of cost, of embassy, legation, and consular buildings abroad."

Cross-References

For provision as to estimates of annual expenditure for rent of consular offices, see section 603 of Title 31, Money and Finance.

§ 134. Gifts of buildings, etc., for Diplomatic and Consular Service. The President is authorized in his discretion to accept on behalf of the United States unconditional gifts of land, buildings, furniture, and furnishings, or any of them, for the use of diplomatic and consular offices and residences. (Mar. 2, 1921, c. 113, § 1, 41 Stat. 1214.)

Historical Note

Other provisions of the section cited to the text, which have evidently been omitted as temporary, appropriated a sum for, and prescribed the manner of, the acquisition of buildings and grounds in given places for diplomatic or consular purposes.

CHAPTER 2.—CONSULAR COURTS

Section 141. Judicial authority generally. To carry into full effect the provisions of the treaties of the United States with certain foreign countries, the ministers and consuls of the United States in China, Siam, Turkey, Morocco, Muscat, Abyssinia, Persia, and the territories formerly a part of the former Ottoman Empire including Egypt, duly appointed to reside therein, shall, in addition to other

powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with judicial authority described in this chapter, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty, and in accordance with the usages of the countries in their intercourse with the Franks or other foreign Christian nations. (R. S. §§ 4083, 4125, 4126; June 14, 1878, c. 193, 20 Stat. 131.)

Editorial comment.—It has been suggested that the words "except as provided in chapter 3 of this title" should probably be inserted after "China" (line 4). Said chapter 3 restricts the jurisdiction of consular courts in China to certain minor cases, civil and criminal, and confers the remainder of the jurisdiction, previously exercised upon the United States Court for China, established thereby.

Historical Note

This section was derived from R. S. § 4083, cited to the text, which, in turn, had its source in Act June 22, 1860, c. 179, § 1, 12 Stat. 72, and Act July 28, 1866, c. 296, § 11, 14 Stat. 322.

R. S. § 4083, read as follows: "To carry into full effect the provisions of the treaties of the United States with China, Japan, Siam, Egypt, and Madagascar, respectively, the minister and the consuls of the United States, duly appointed to reside in each of those countries, shall, in addition to other powers and duties imposed upon them, respectively, by the provisions of such treaties, respectively, be invested with the judicial authority herein described, which shall appertain to the office of minister and consul, and be a part of the duties belonging thereto, wherein, and so far as, the same is allowed by treaty."

Consular courts in Japan were abolished by the Treaty of Nov. 22, 1894, art. 18, 29 Stat. 853.

By R. S. § 4125, cited to the text and set out as section 181, post, of this title, the provisions of Title 47 of the Revised Statutes so far as they related to crimes and offenses committed by citizens of the United States, were extended to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and were to be executed in the Ottoman dominions in conformity with the provisions of said treaty and said chapter by the ministers and consuls appointed to reside therein; and said ministers and consuls were ex officio vested with the powers conferred upon the ministers and consuls in China, so far as regarded the punishment of crime and, also for the exercise of jurisdiction in civil cases wherein the same was permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other Christian nations.

The provisions of that title were extended to Persia by R. S. § 4126 (section 183 of this title).

That title of the Revised Statutes, so far as it was in conformity with the stipulations in the existing treaties between the United States and Tripoli, Tunis, Morocco, Muscat, and the Samoan or Navigator Islands, was extended to those countries by R. S. § 4127, as amended by Act June 14, 1878, c. 193, 20 Stat. 131 (cited to the text and quoted in historical note to section 177 of this title).

The United States, as a result of treaties and conventions, has not exercised extraterritorial jurisdiction in Tripoli since 1913; in Tunis, since the convention with France on March 15, 1905; and in the Samoan Islands, since the convention of 1899, between the United States, Germany, and Great Britain, went into effect.

Madagascar, which in 1862 was an independent kingdom, is now a French colony, and the United States no longer exercises extraterritorial jurisdiction there.

Cross-References

Provisions of this chapter extended to any country of like character with which the United States may enter into treaty relations, see section 177, post, of this title.

Notes of Decisions

1. **Decisions under prior acts.**—See (1849) 5 Op. Atty. Gen. 67; (1855) 7 Op. Atty. Gen. 496.

2. **Purpose of act.**—This legislation secures a regular and fair trial to American criminals. Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 901, 140 U. S. 453, 35 L. Ed. 581.

3. **Constitutionality.**—The judicial system created by the treaty between the United States and China, of July 3, 1844, and the act of Congress carrying it into effect, is constitutional. Forbes v. Scannell (1859) 13 Cal. 242.

4. **Treaty provisions.**—The treaty of the United States with Japan of June 17, 1857, provided that Americans committing offenses "in Japan" should be tried by the American consul general. The treaty of July 29, 1858, provided that Americans committing offenses "against Japanese" should be so tried, and that the treaty of 1857 was revoked, as all its provisions were incorporated in the treaty of 1858. Held that, as the treaty of 1857, in so far as it allowed a trial for offenses committed "in Japan," without regard to nationality of the person against whom they might be committed, was not incorporated in the treaty of 1858, such provision was not revoked. Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 140 U. S. 453, 35 L. Ed. 581, affirming In re Ross (C. C. 1890) 44 F. 185.

5. **Jurisdiction.**—The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese government for duties. (1855) 7 Op. Atty. Gen. 496.

In controversies between citizens of the United States and subjects of China, the case is to be tried by the court of the defendant's nation; and so in controversies between citizens of the United States and those of any friendly foreign government. Id.

A United States consular court in Japan cannot, in the case of a suit by a person not a citizen of the United States against an American merchant, entertain a plea of set-off further than to the extent of the claim asserted by the plaintiff, since such a court cannot, under the treaty with Japan and this act, render a judgment against a person of foreign birth not a citizen of the United States. (1866) 11 Op. Atty. Gen. 474.

6. **Vice consuls.**—Vice consuls are competent to act, when duly appointed or approved as such by the Secretary of State. (1855) 7 Op. Atty. Gen. 496.

7. **Effect of judgments.**—Under Const. art. 6, § 2, the judgments of the consular courts of China, to effectuate the treaty with China, are entitled to the same weight in the state court as the judgments of other federal courts located outside the state of the forum. Newman v. Basch (N. Y. City Ct. 1915) 152 N. Y. S. 456, 89 Misc. Rep. 622.

§ 142. General jurisdiction in criminal cases. The officers mentioned in the preceding section are fully empowered to arraign and try, in the manner provided in this chapter, all citizens of the United States charged with offenses against law, committed in such countries, respectively, and to sentence such offenders in the manner in this chapter authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution. (R. S. § 4084.)

Historical Note

R. S. § 4084, cited to the text, was derived from section 2 of Act June 22, 1860, c. 179, 12 Stat. 72.

Notes of Decisions

1. **Decisions under prior acts.**—See (1857) 8 Op. Atty. Gen. 380.

2. **Persons subject to jurisdiction.**—The law providing that the trial of all offenses committed on the high seas shall be in the district where the offender is found, or into which he is first brought, does not exclude the jurisdiction of the consular tribunal to try offenses committed on an American vessel in the waters of Japan. Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 901, 140 U. S. 453, 35 L. Ed. 581, affirming In re Ross (C. C. 1890) 44 F. 185, 186.

The criminal jurisdiction conferred upon United States consular officers by this section is limited to "citizens" of the United States charged with offenses committed in the countries therein referred to. It does not extend to subjects of foreign powers. (1886) 18 Op. Atty. Gen. 498.

3. **Crimes on shipboard.**—A citizen or subject of a foreign government, who enlists as one of the crew of an American ship, becomes a temporary subject of the United States, so as to give the consular tribunal of the United States in a foreign country jurisdiction to try offenses committed by him on board the ship. Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 901, 140 U. S. 453, 35 L. Ed. 581, affirming In re Ross (C. C. 1890) 44 F. 185, 186.

§ 143. General jurisdiction in civil cases; venue. Such officers are also invested with all the judicial authority necessary to execute the provisions of such treaties, respectively, in regard to civil rights, whether of property or person; and they shall entertain jurisdiction in matters of contract, at the port where, or nearest to which, the contract was made, or at the port at which, or nearest to which, it was to be executed, and in all other matters, at the port where, or nearest to which, the cause of controversy arose, or at the port where, or nearest to which, the damage complained of was sustained, provided such port be one of the ports at which the United States are represented by consuls. Such jurisdiction shall embrace all controversies between citizens of the United States, or others, provided for by such treaties, respectively. (R. S. § 4085.)

Historical Note

R. S. § 4085, cited to the text, was derived by section 3 of Act June 22, 1860, c. 179, 12 Stat. 73.

Notes of Decisions

1. **Decisions under prior acts.**—See (1855) 7 Op. Atty. Gen. 496.

2. **Extent of jurisdiction.**—The consular court in Japan cannot render a judgment against a person of foreign birth, not a citizen of the United States. (1866) 11 Op. Atty. Gen. 474.

3. **Pleading jurisdictional facts.**—The consular court is a court of limited jurisdiction, and all the jurisdictional facts must be alleged in a libel or petition. The Spark v. Lee Choi Chum (C. C. Cal. 1872) Fed. Cas. No. 13,206.

4. **Suits by foreign government.**—The consular court has no authority by the treaty or the statute to entertain jurisdiction of a suit by the Chinese government for duties. (1855) 7 Op. Atty. Gen. 496.

§ 144. Vice consul at Shanghai to exercise judicial functions of consul general. The judicial authority and jurisdiction in civil and

criminal cases vested in and reserved to the consul general of the United States at Shanghai, China, under section 192 of chapter 3 of this title, shall be vested in and exercised by a vice consul of the United States at Shanghai, China. (Mar. 2, 1909, c. 235, 35 Stat. 679; Mar. 4, 1915, c. 145, 38 Stat. 1122.)

Editorial comment.—It has been suggested that the provisions of section 198, post, of this title, supersede this section.

Historical Note

The provision of the Act March 4, 1915, c. 145, cited to the text, is here set out as being explanatory of the history of this section: "The judicial authority and jurisdiction in civil and criminal cases vested in and reserved to the consul general of the United States at Shanghai, China, by the Act of June thirtieth, nineteen hundred and six, entitled "An Act creating a United States Court for China, and prescribing the jurisdiction thereof," and vested by the diplomatic and consular appropriation Act approved March second, nineteen hundred and nine, in the vice consul general of the United States to be designated from time to time by the Secretary of State, shall subsequent to the approval of this Act be vested in and exercised by a vice consul of the United States at Shanghai, China."

The provision of the Act March 2, 1909 (cited to the text), mentioned in the provision quoted from the 1915 Act, has been omitted from the Code as superseded thereby.

§ 145. System of laws to be applied. Jurisdiction in both criminal and civil matters shall, in all cases, be exercised and enforced in conformity with the laws of the United States, which are hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over such citizens and others in those countries; and if neither the common law, nor the law of equity or admiralty, nor the statutes of the United States, furnish appropriate and sufficient remedies, the ministers in those countries, respectively, shall, by decrees and regulations which shall have the force of law, supply such defects and deficiencies. (R. S. § 4086.)

Historical Note

R. S. § 4086, cited to the text, was derived from section 4 of Act June 22, 1860, c. 179, 12 Stat. 73.

Notes of Decisions

1. **Right to jury trial.**—The federal constitution does not give a citizen or a temporary subject the right to a grand or petty jury when tried before a consular tribunal for an offense committed in a foreign country. Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 901, 140 U. S. 453, 35 L. Ed. 581, affirming In re Ross (C. C. 1890) 44 F. 185, 186.

2. **Regulations.**—As to such matters as probate of wills, divorce, intestacy, copartnership, chancery, admiralty, proceedings de re or in rem, personal or prerogative writs, division of lands, and the like, the statute makes no specific provision, leaving them to regulations of the commissioner and consuls. (1855) 7 Op. Atty. Gen. 496.

§ 146. Rules and regulations for consular court generally. In order to organize and carry into effect the system of jurisprudence demanded by such treaties, respectively, the ministers, with the advice of the several consuls in each of the countries, respectively, or of so many of them as can be conveniently assembled, shall prescribe the forms of all processes to be issued by any of the consuls; the mode of executing and the time of returning the same; the manner in which trials shall be conducted and how the records thereof shall be kept; the form of oaths for Christian witnesses, and the mode of examining all other witnesses; the costs to be allowed to the prevailing party, and the fees to be paid for judicial services; the manner in which all officers and agents to execute process, and to carry this chapter into effect, shall be appointed and compensated; the form of bail bonds, and the security which shall be required of the party who appeals from the decision of a consul; and shall make all such further decrees and regulations from time to time, under the provisions of this chapter, as the exigency may demand. (R. S. § 4117.)

Historical Note

R. S. § 4117, cited to the text, and R. S. 4118 (section 147, post, of this title), were derived from section 5 of Act June 22, 1860, c. 179, 12 Stat. 73.

Notes of Decisions

1. **Decisions under prior statute.**—See (1849) 5 Op. Atty. Gen. 67.

2. **Indictment and trial by jury.**—Indictment and jury trial not essential. In re Ross (C. C. N. Y. 1890) 44 F. 185, 186, affirmed Ross v. McIntyre (N. Y. 1891) 11 S. Ct. 897, 140 U. S. 453, 35 L. Ed. 581.

3. **Appeal bond.**—A sum of money deposited in the registry of the consular court in lieu of a bond is sufficient security on an appeal to the circuit court, where the deposit was taken without objection. The Ping-On (C. C. Cal. 1882) 11 F. 607, 611.

4. **Interest on judgments.**—Consular court regulations of 1864, allowing 12 per cent. interest on judgments, do not apply to interest allowed as damages. Andersen, Meyer & Co. v. Fur & Wool Trading Co. (C. C. A. China, 1926) 14 F.(2d) 586.

§ 147. Dissent of consuls to and publication of rules, etc. All such regulations, decrees, and orders shall be plainly drawn up in writing, and submitted, as in the preceding section provided, for the advice of the consuls, or as many of them as can be consulted without prejudicial delay or inconvenience, and such con-

sul shall signify his assent or dissent in writing, with his name subscribed thereto. After taking such advice, and considering the same, the minister in each of those countries may, nevertheless, by causing the decree, order, or regulation to be published with his signature thereto, and the opinions of his advisers inscribed thereon, make it binding and obligatory, until annulled or modified by Congress; and it shall take effect from the publication or any subsequent day thereto named in the act. (R. S. § 4118.)

Historical Note

See historical note to section 146, ante, of this title.

§ 148. Transmission of rules, etc., to Secretary of State. All such regulations, orders, and decrees shall, as speedily as may be after publication, be transmitted by the ministers, with the opinions of their advisers, as drawn up by them severally, to the Secretary of State, to be laid before Congress for revision. (R. S. § 4119.)

Historical Note

R. S. § 4119, cited to the text, was derived from section 6 of Act June 22, 1860, c. 179, 12 Stat. 73.

§ 149. Warrant, arrest, trial, and sentence by consul generally. Each of the consuls mentioned in section 141 of this chapter, at the port for which he is appointed, is authorized upon facts within his own knowledge, or which he has good reason to believe true, or upon complaint made or information filed in writing and authenticated in such way as shall be prescribed by the minister, to issue his warrant for the arrest of any citizen of the United States charged with committing in the country an offense against law; and to arraign and try any such offender; and to sentence him to punishment in the manner prescribed in this chapter. (R. S. § 4087.)

Historical Note

R. S. § 4087, cited to the text, was derived from section 7 of Act June 22, 1860, c. 179, 12 Stat. 74.

§ 150. Jurisdiction of consul in criminal cases when sitting alone; when decision final. Any consul, when sitting alone for the trial of offenses or misdemeanors, shall decide finally all cases where the fine imposed does not exceed $100, or the term of imprisonment does not exceed sixty days. (R. S. § 4105.)

Historical Note

R. S. § 4105, cited to the text, was derived from section 8 of Act June 22, 1860, c. 179, 12 Stat. 74.

§ 151. Jurisdiction of consul in criminal cases when sitting alone; when appeal to minister lies. Any consul when sitting alone may also decide all cases in which the fine imposed does not exceed $500, or the term of imprisonment does not exceed ninety days; but in all such cases, if the fine exceeds $100, or the term of imprisonment for misdemeanor exceeds sixty days, the defendants or any of them, if there be more than one, may take the case, by appeal, before the minister, if allowed jurisdiction, either upon errors of law or matters of fact, under such rules as may be prescribed by the minister for the prosecution of appeals in such cases. (R. S. § 4089.)

Historical Note

R. S. § 4089, cited to the text, was derived from section 9 of Act June 22, 1860, c. 179, 12 Stat. 74.

Notes of Decisions

1. Decisions under prior statute.—See (1855) 7 Op. Atty. Gen. 496.

§ 152. Calling in associates in criminal cases; reference to minister on disagreement. Whenever, in any case, the consul is of opinion that, by reason of the legal questions which may arise therein, assistance will be useful to him, or whenever he is of opinion that severer punishments than those specified in the preceding sections will be required, he shall summon, to sit with him on the trial, one or more citizens of the United States, not exceeding four, and in capital cases not less than four, who shall be taken by lot from a list which had previously been submitted to and approved by the minister, and shall be persons of good repute and competent for the duty. Every such associate shall enter upon the record his judgment and opinion, and shall sign the same; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the decision shall, in all cases, except of capital offenses and except as provided in the preceding section, be final. If any of the associates differ in opinion from the consul, the case, without further proceedings, together with the evidence and opinions, shall be referred to the minister for his adjudication, either by entering up judgment therein, or by remitting the same to the consul with instructions how to proceed therewith. (R. S. § 4106.)

Historical Note

R. S. § 4106, cited to the text, was derived from section 10 of Act June 22, 1860, c. 179, 12 Stat. 74.

Cross-References

Provisions of this section and section 153, post, of this title, allowing consuls in certain cases to summon associates, to have no application to the United States Court for China, see section 196, post, of this title.

Notes of Decisions

1. Decisions under prior statute.—See (1855) 7 Op. Atty. Gen. 496.

§ 153. Jurisdiction of consuls in civil cases; finality; associates in civil cases; reference to minister on disagreement. Each of the consuls mentioned in section 141 of this chapter shall have at the port for which he is appointed, jurisdiction as herein provided, in all civil cases arising under such treaties, respectively, wherein the damages demanded do not exceed the sum of $500; and, if he sees fit to decide the same without aid, his decision thereon shall be final. But whenever he is of opinion that any such case involves legal perplexities, and that assistance will be useful to him, or whenever the damages demanded exceed $500, he shall summon, to sit with him on the hearing of the case, not less than two nor more than three citizens of the United States, if such are residing at the port, who shall be taken from a list which had previously been submitted to and approved by the minister, and shall be of good repute and competent for the duty. Every such associate shall note upon the record his opinion, and also, in case he dissents from the consul, such reasons therefor as he thinks proper to assign; but the consul shall give judgment in the case. If the consul and his associates concur in opinion, the judgment shall be final. If any of the associates differ in opinion from the consul, either party may appeal to the minister, under such regulations as may exist; but if no appeal is lawfully claimed, the decision of the consul shall be final. (R. S. § 4107.)

Historical Note

R. S. § 4107, cited to the text, was derived from section 11 of Act June 22, 1860, c. 179, 12 Stat. 74.

Cross-References

See reference under section 152, ante, of this title.

Notes of Decisions

1. Decisions under prior statute.—See (1855) 7 Op. Atty. Gen. 496.

2. Jurisdiction over appeals.—Appeals to the minister were allowed by this section only in the class of cases over which appellate jurisdiction was given to that officer by R. S. § 4092 (superseded, see note to section 192 of this title), and in any case wherein the judgment exceeded $2,500 an appeal lay to the circuit court for the district of California. The Ping On (C. C. Cal. 1882) 11 F. 607, 610.

§ 154. Evidence; how taken. In all cases, criminal and civil, the evidence shall be taken down in writing in open court, under such regulations as may be made for that purpose; and all objections to the competency or character of testimony shall be noted, with the ruling in all such cases, and the evidence shall be part of the case. (R. S. § 4097.)

Historical Note

R. S. § 4097, cited to the text, was derived from section 12 of Act June 22, 1860, c. 179, 12 Stat. 75.

§ 155. Punishment generally; contempt. In all cases, except as, in this chapter, otherwise provided, the punishment of crime provided for by this chapter shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations in this chapter contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country. (R. S. § 4101.)

Historical Note

R. S. § 4101, cited to the text, was derived from section 14 of Act June 22, 1860, c. 179, 12 Stat. 75.

Notes of Decisions

1. Service of sentence.—The Attorney General advised that sentence of imprisonment imposed in any of the consular courts of China may be served out in any portion of China and not necessarily within the limits of the consul's ordinary jurisdiction. (1892) 20 Op. Atty. Gen. 391.

§ 156. Capital offenses; requisites for convictions; conviction of lesser offense. Insurrection or rebellion against the government of either of the countries mentioned in section 141 of this chapter, with intent to subvert the same, and murder, shall be capital offenses, punishable with death; but no person shall be convicted of either of those crimes, unless the consul and his associates in the trial all concur in opinion, and the minister also approves of the conviction. But it shall be lawful to convict one put upon trial for either of these crimes, of a less offense of a similar character, if the evidence justifies it, and to punish, as for other offenses, by fine or imprisonment, or both. (R. S. § 4102.)

Historical Note

R. S. § 4102, cited to the text, was derived from section 15 of Act June 22, 1860, c. 179, 12 Stat. 75.

§ 157. Punishment for contempt of court. No fine imposed by a consul for a contempt committed in presence of the court, or for failing to obey a summons from the same, shall exceed $50; nor shall the imprisonment exceed twenty-four hours for the same contempt. (R. S. § 4104.)

Historical Note

R. S. § 4104, cited to the text, was derived from section 8 of Act June 22, 1860, c. 179, 12 Stat. 74.

Notes of Decisions

1. Powers of United States Court for China.—The United States Court for China, created by chapter 3 of this title, has the power, irrespective of any statute, to punish for contempt, even if it were not a court of the United States, within the meaning of section 385 of Title 28, Judicial Code and Judiciary, and it may impose a sentence of imprisonment for six months; not being limited by the power vested in consuls by this section. Fleming v. U. S. (C. C. A. China, 1922) 279 F. 615, certiorari dismissed (1922) 43 S. Ct. 10, 260 U. S. 732, 67 L. Ed. 496.

§ 158. Execution of criminals; pardons. Whenever any person is convicted of either of the crimes punishable with death, in either of the countries mentioned in section 141 of this chapter, it shall be the duty of the minister to issue his warrant for the execution of the convict, appointing the time, place, and manner; but if the minister is satisfied that the ends of public justice demand it, he may from time to time postpone such execution; and if he finds mitigating circumstances which authorize it, he may submit the case to the President for pardon. (R. S. § 4103.)

Historical Note

R. S. § 4103, cited to the text, was derived from section 16 of Act June 22, 1860, c. 179, 12 Stat. 75.

§ 159. Fees for judicial services; application of moneys; rendition of accounts. It shall be the duty of the minister in each of the countries mentioned in section 141 of this chapter to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of this chapter; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State. (R. S. § 4120.)

Historical Note

R. S. § 4120, cited to the text, was derived from section 17 of Act June 22, 1860, c. 179, 12 Stat. 75.

Notes of Decisions

1. Disposition of fees collected.—Fees received by a consul for unofficial and notarial services, fees and fines collected in the consular courts, not for services required by this section, belong to the consul. Boyd v. U. S. (1896) 31 Ct. Cl. 158, modified U. S. v. Eaton (1898) 18 S. Ct. 374, 169 U. S. 331, 42 L. Ed. 767.

§ 160. Settlement of criminal cases. In all criminal cases which are not of a heinous character, it shall be lawful for the parties aggrieved or concerned therein, with the assent of the minister in the country, or consul, to adjust and settle the same among themselves, upon pecuniary or other considerations. (R. S. § 4099.)

Historical Note

R. S. § 4099, cited to the text, was derived from section 18 of Act June 22, 1860, c. 179, 12 Stat. 76.

§ 161. Arbitration, reference, and compromise of civil cases. It shall be the duty of the ministers and the consuls in the countries mentioned in section 141 of this chapter to encourage the settlement of controversies of a civil character, by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; and the minister in each country shall prepare a form of submission for such cases, to be signed by the parties, and acknowledged before the consul. When parties have so agreed to refer, the referees may, after suitable notice of the time and place of meeting for the trial, proceed to hear the case, and a majority of them shall have power to decide the matter. If either party refuses or neglects to appear, the referees may proceed ex parte. After hearing any case such referees may deliver their award, sealed, to the consul, who, in court, shall open the same; and if he accepts it, he shall indorse the fact, and judgment shall be rendered thereon, and execution issue in compliance with the terms thereof. The parties, however, may always settle the same before return thereof is made to the consul. (R. S. § 4098.)

Historical Note

R. S. § 4098, cited to the text, was derived from section 19 of Act June 22, 1860, c. 179, 12 Stat. 76.

§ 162. Aid of local authorities invoked. The ministers and consuls shall be fully authorized to call upon the local authorities to sustain and support them in the execution of the powers confided to them by treaty, and on their part to do and perform whatever is necessary to carry the provisions of the treaties into full effect, so far as they are to be executed in the countries, respectively. (R. S. § 4100.)

Historical Note

R. S. § 4100, cited to the text, was derived from section 20 of Act June 22, 1860, c. 179, § 20, 12 Stat. 76.

§ 163. Where jurisdiction of minister exercised. The jurisdiction allowed by treaty to the ministers, respectively, in the countries named in section 141 of this chapter shall be exercised by them in those countries, respectively, wherever they may be. (R. S. § 4108.)

Historical Note

R. S. §§ 4108 and 4109 (this section and section 164, post, of this title) were derived from section 27 of Act June 22, 1860, c. 179, 12 Stat. 78.

§ 164. Jurisdiction of minister; when appellate and when original. The jurisdiction of such ministers in all matters of civil redress, or of crimes, except in capital cases for murder or insurrection against the governments of such countries, respectively, or for offenses against the public peace amounting to felony under the laws of the United States, shall be appellate only: *Provided*, That in cases where a consular officer is interested, either as party or witness, such minister shall have original jurisdiction. (R. S. § 4109.)

Historical Note

See historical note to section 163, ante, of this title.

Notes of Decisions

1. Jurisdiction over appeals.—In any case wherein the judgment exceeds $2,500, etc., an appeal lies to the circuit court for the district court of California. The Ping-On (C. C. Cal. 1882) 11 F. 607, 608.

§ 165. Appellate jurisdiction of minister; new trials. Each of the ministers mentioned in section 141 of this chapter shall, in the country to which he is appointed, be fully authorized to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of this chapter, and to issue all processes necessary to execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds. (R. S. § 4091.)

Historical Note

R. S. § 4091, cited to the text, was derived from section 13 of Act June 22, 1860, c. 179, 12 Stat. 75.

§ 166. Jurisdiction of minister to try capital and felony cases. Capital cases for murder or insurrection against the government of either of the countries hereinbefore mentioned in this chapter, by citizens of the United States, or for offenses against the public peace amounting to felony under the laws of the United States, may be tried before the minister of the United States in the country where the offense is committed if allowed jurisdiction. (R. S. § 4090.)

Historical Note

R. S. § 4090, source of this section and section 167, post, of this title, was derived from section 24 of Act June 22, 1860, c. 179, 12 Stat. 77.

§ 167. Prevention of American citizens from enlisting with foreign countries. Each such minister mentioned in the preceding section may issue all manner of writs, to prevent the citizens of the United States from enlisting in the military or naval service of either of the countries mentioned in section 141 of this chapter, to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against any other portion of the same people; and he may carry out this power by a resort to such force belonging to the United States as may at the time be within his reach. (R. S. § 4090.)

Historical Note

See historical note to section 166, ante, of this title.

§ 168. Marshals of consular courts; appointment and salary. The President is authorized to appoint marshals for such of the consular courts as he may think proper, not to exceed two in number, namely: One in Siam and one in Turkey, each of whom shall receive a salary of $1,000 a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries: *Provided*, That no salary shall be allowed the marshal at the consulate in Siam. (R. S. §§ 1693, 4111.)

Editorial comment.—The proviso in this section is inconsistent with the preceding provisions. The same inconsistency existed in the Revised Statutes.

Historical Note

This section, from the beginning thereof to the proviso, was derived from R. S. § 4111, cited to the text, which read as follows: "The President is authorized to appoint marshals for such of the consular courts in those countries as he may think proper, not to exceed seven in number, namely: one in Japan, four in China, one in Siam, and one in Turkey, each of whom shall receive a salary of one thousand dollars a year, in addition to the fees allowed by the regulations of the ministers, respectively, in those countries."

The office of marshal in China, existing

in pursuance of this section, was abolished by a provision of section 8 of the act establishing a United States court for China, which provided for a marshal of that court. See section 200, post, of this title, and historical note thereto. Consular courts in Japan were abolished by the Treaty of Nov. 22, 1894, art. 18, 29 Stat. 853, which provided for the exercise of jurisdiction by Japanese courts. R. S. § 4111 was derived from section 25 of Act June 22, 1860, c. 179, 12 Stat. 77.

The proviso to this section was derived from R. S. § 1693, also cited to the text, which read as follows: "The salary of the interpreter at the consulate of Bangkok, in Siam, shall not exceed the sum of five hundred dollars a year; and no salary shall be allowed the marshal at that consulate."

R. S. § 1693 was derived from section 7 of Act March 3, 1869, c. 125, 15 Stat. 322.

Notes of Decisions

1. Salary.—The salary of a person appointed marshal of the United States consular court at Shanghai begins to run from the time he enters upon such duties as are preliminary to his departure for the field of his service, after taking the oath of office and giving the bond prescribed by law. (1862) 10 Op. Atty. Gen. 259.

2. Qualifications and oath.—Subjects of a foreign nation may be appointed marshals of consular courts, and, when so appointed, need not, under the laws or regulations, take the oath prescribed by R. S. § 1756 or section 1757 (section 16 of Title 5, Executive Departments and Government Officers and Employees). In such cases the officer should take the oath prescribed, except as to allegiance. (1902) 23 Op. Atty. Gen. 608.

§ 169. Execution and return of process by marshal. It shall be the duty of the marshals, respectively, to execute all process issued by the minister of the United States in those countries, respectively, or by the consul at the port at which they reside, and to make due return thereof to the officer by whom it was issued, and to conform in all respects to the regulations prescribed by the ministers, respectively, in regard to their duties. (R. S. § 4112.)

Historical Note

The source of R. S. §§ 4111 to 4116 (sections 168 to 173 of this title) was section 25 of Act June 22, 1860, c. 179, 12 Stat. 77.

§ 170. Bond of marshal. Each marshal, before entering upon the duties of his office, shall give bond for the faithful performance thereof in a penal sum not to exceed $10,000, with two sureties to be approved by the Secretary of State. Such bond shall be transmitted to the Secretary of the Treasury, and a certified copy thereof be lodged in the office of the minister. (R. S. § 4113.)

Historical Note

See historical note to section 169, ante, of this title.

Notes of Decisions

1. Form of bond.—Where the form of the bond is not prescribed by statute, its form may be determined by the officer whose duty it is to approve the same. (1883) 18 Op. Atty. Gen. 274.

§ 171. Suit on bond of marshal. Whenever any person desires to bring suit upon the bond of any such marshal, it shall be the duty of the Secretary of the Treasury, or of the minister having custody of a copy of the same, to give to the person so applying a certified copy thereof, upon which suit may be brought and prosecuted with the same effect as could be done upon the original: *Provided*, The Secretary of the Treasury, or the minister to whom the application is made, is satisfied that there is probable cause of action against the marshal. (R. S. § 4114.)

Historical Note

See historical note to section 169, ante, of this title.

§ 172. Necessity for production of original bond. Upon a plea of non est factum, verified upon oath, or any other good cause shown, the court or the consul or minister trying the cause may require the original bond of the marshal to be produced; and it shall be the duty of the Secretary of the Treasury to forward the original bond to the court, or consul, or minister requiring the same. (R. S. § 4115.)

Historical Note

See historical note to section 169, ante, of this title.

§ 173. Service of process, etc., in suit on bond of marshal. All rules, orders, writs, and processes of every kind which are intended to operate or be enforced against any of the marshals, in any of the countries named in section 141 of this chapter, shall be directed to and executed by such persons as may be appointed for that purpose by the minister or consul issuing the same. (R. S. § 4116.)

Historical Note

See historical note to section 169, ante, of this title.

§ 174. Expenses of prisons in foreign countries. The President, when provision is not otherwise made, is authorized to allow, in the adjustment of the accounts of each of the ministers or consuls, the actual expenses of the rent of suitable buildings or parts of buildings to be used as prisons for American convicts in the countries mentioned in section 141 of this chapter, not to exceed in any case the rate of $600 a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed, in any case, the sum of $800 per annum. But no more than four prisons shall be hired in China, one in Turkey, and one in Siam, at such port or ports as the

minister, with the sanction of the President, may designate, and the entire expense of prison and prison keepers at the consulate of Bangkok, in Siam, shall not exceed the sum of $1,000 a year.

The President is authorized to allow, in the adjustment of the accounts of the consul general at Shanghai, the actual expense of the rent of a suitable building, to be used as a prison for American convicts in China, not to exceed $1,500 a year; and also the wages of the keepers of the same, and for the care of offenders, not to exceed $5,000 a year; and to allow, in the adjustment of the accounts of the consuls at other ports in China, the actual expense of the hire of constables and the care of offenders, not to exceed in all $5,000 a year. (R. S. §§ 4121, 4122.)

Historical Note

The first paragraph of this section was derived from R. S. § 4121 and the last paragraph from R. S. § 4122.

As enacted, R. S. § 4121 also prohibited the hiring of more than one prison in Japan, but consular courts in that country were abolished by the Treaty of Nov. 22, 1894, art. 18, 29 Stat. 853.

R. S. § 4121 was derived from Acts June 22, 1860, c. 179, § 20, 12 Stat. 77, and March 3, 1869, c. 125, § 7, 15 Stat. 322; and R. S. § 4122 from Act July 1, 1870, c. 194, § 9, 16 Stat. 184. The appropriation act for the Departments of State and Justice, the Judiciary, and the Departments of Commerce, and Labor, for the fiscal year ending June 30, 1926, Act Feb. 27, 1925, 43 Stat. 1025, contains the following in relation to prisons for American convicts: "For expenses of maintaining in China, the former Ottoman Empire, Egypt, and Persia institutions for incarcerating American convicts and persons declared insane by the United States Court for China or any consular court, including salaries of not exceeding $1,800 for the deputy marshal and $1,200 each for three assistant deputy marshals at Shanghai; wages of prison keepers; rent of quarters for prisons; and for the expenses of keeping, feeding, and transportation of prisoners and persons declared insane by the United States Court for China or any consular court in China, the former Ottoman Empire, Egypt, and Persia, so, much as may be necessary; in all, $20,000."

Notes of Decisions

1. Decisions under prior statutes.—See (1849) 5 Op. Atty. Gen. 67; (1853) 6 Op. Atty. Gen. 59.

2. Transportation of prisoners to United States.—The sentences of consular courts, pronounced in the exercise of their criminal jurisdiction, are to be executed only in the country where the trial and conviction were had. (1875) 14 Op. Atty. Gen. 522.

There is no statute which authorizes a convict, sentenced to prison by a consular court of the United States, to be brought to the United States for imprisonment and there held to serve out his sentence; and in the absence of such a statute, the removal of the convict to this country for that purpose would be unlawful. (1875) 14 Op. Atty. Gen. 522; (1889) 19 Op. Atty. Gen. 377.

3. Expenses of prisoners.—The expenses of arrest and support in prison must be paid from the fund created by the execution of the act. (1849) 5 Op. Atty. Gen. 67.

The appropriation act of 1891 (26 Stat. 1061) does not authorize the expenditure of any money for a prison house in China except at Shanghai. (1892) 20 Op. Atty. Gen. 391.

§ 175. Allowance for keeping and feeding prisoners. No more than 50 cents per day for the keeping and feeding of each prisoner while

actually confined shall be allowed or paid for any such keeping and feeding. This is not to be understood as covering cost of medical attendance and medicines when required by such prisoners. (Mar. 2, 1901, c. 802, 31 Stat. 893.)

Historical Note

This language accompanied an appropriation for the keeping and feeding of prisoners in China, Korea, Siam, and Turkey.

Several previous acts made a similar provision except that the amount to be allowed was fixed at 75 cents per prisoner.

This provision was repeated in subsequent appropriation acts down to Act Apr. 15, 1918, c. 52, 40 Stat. 529, and omitted from that and subsequent acts.

The provision made by Act Feb. 27, 1925, 43 Stat. 1025, for the keeping and feeding of prisoners, is quoted in the historical note under section 174, ante, of this title.

Notes of Decisions

1. Decisions under prior statute.—See (1853) 6 Op. Atty. Gen. 59.

§ 176. Secretary of State to exercise judicial duties when no minister. If at any time there be no minister in either of the countries mentioned in section 141 of this chapter, the judicial duties which are imposed by this chapter upon the minister shall devolve upon the Secretary of State, who is authorized and required to discharge the same. (R. S. § 4128.)

Historical Note

R. S. § 4128, cited to the text, was derived from Acts June 22, 1860, c. 179, § 2, 12 Stat. 76, and July 1, 1870, c. 194, § 2, 16 Stat. 183.

§ 177. General extension of chapter to unnamed countries. The provisions of this chapter relating to the jurisdiction of consular and diplomatic officers over civil and criminal cases in the countries mentioned in section 141 of this chapter, shall extend to any country of like character with which the United States may after July 1, 1870, enter into treaty relations. And whenever the United States shall negotiate a treaty with any foreign government, in which the American consul general or consul shall be clothed with judicial authority, and securing the right of trial to American citizens residing therein before such consul general or consul, and containing provisions similar to or like those contained in the treaties with the governments named in section 141 of this chapter, then this chapter, so far as the same may be applicable, shall have full force in reference to said treaty, and shall extend to the country of the government negotiating the same. (R. S. §* 4129; June 14, 1878, c. 193, 20 Stat. 131.)

*"§ 4127," should be added to this citation.

Historical Note

This is a combination provision, the first sentence of which is from R. S. § 4129, cited to the text.

The remainder of this section was derived from the last sentence of R. S. § 4127, as amended by Act June 14, 1878, c. 193, cited to the text.

R. S. § 4127, as so amended read as follows: "The provisions of this title, so far as the same are in conformity with the stipulations in the existing treaties between the United States and Tripoli, Tunis, Morocco, Muscat, and the Samoan or Navigator Islands, respectively, shall extend to those countries, and shall be executed in conformity with the provisions of the treaties and of the provisions of this title by the consuls appointed by the United States to reside therein, who are hereby ex officio invested with the powers herein delegated to the ministers and consuls of the United States appointed to reside in the countries named in section four thousand and eighty-three, so far as the same can be exercised under the provisions of treaties between the United States and the several countries mentioned in this section, and in accordance with the usages of the countries in their intercourse with the Franks or other foreign Christian nations. And whenever the United States shall negotiate a treaty with any foreign government, in which the American consul-general or consul shall be clothed with judicial authority, and securing the right of trial to American citizens residing therein before such consul-general or consul, and containing provisions similar to or like those contained in the treaties with the governments named in this act, then said title, so far as the same may be applicable, shall have full force in reference to said treaty, and shall extend to the country of the government negotiating the same." The effect of the amendment by Act June 14, 1878, c. 193, was to insert after the word "Muscat," the words "and the Samoan or Navigator Islands," and by adding at the end of the section, as originally enacted, the provisions beginning with the words, "And whenever the United States shall negotiate a treaty," etc., to the end of the section. In regard to the portion of R. S. § 4127, as amended, here omitted, see note under section 141, ante, of this title.

§ 178. **"Minister" and "consul" defined.** The word "minister," when used in this chapter shall be understood to mean the person invested with, and exercising, the principal diplomatic functions. The word "consul" shall be understood to mean any person invested by the United States with, and exercising, the functions of consul general, consul, or vice consul. (*Feb. 1, 1876, c. 6, 19 Stat. 2.)

* "R. S. § 4130;" should be added to this citation.

Historical Note

This section, as enacted in the Revised Statutes, was amended by inserting after the words "consul-general" the words "vice consul-general," by Act Feb. 1, 1876, c. 6, cited above, but those words were superseded by the abolition of the office of vice consul general by Act Feb. 5, 1915, c. 23, § 6 (section 52, ante, of this title). R. S. § 4130 was derived from Acts June 22, 1860, c. 179, § 22, 12 Stat. 76, and July 1, 1870, c. 194, § 2, 16 Stat. 183.

Notes of Decisions

1. Minister.—An American citizen who had charge of a legation ad interim, as custodian, through whom it was by courtesy arranged that necessary communications might be sent, held not a public minister entitled to immunity from suit in a district court. In re Baiz (N. Y. 1890) 10 S. Ct. 854, 858, 135 U. S. 403, 34 L. Ed. 222; Hollander v. Baiz (D. C. N. Y. 1890) 41 F. 732, 734.

2. Consul.—The word "consul" has two meanings: (1) It denotes an officer of a particular grade in the consular service; (2) it has a broader generic sense, embracing all consular officers. Dainese v. U. S. (1879) 15 Ct. Cl. 64.

3. Vice consul.—The Congressional definition of the office of vice consul not changed by this section. U. S. v. Eaton (Ct. Cl. 1898) 18 S. Ct. 374, 376, 169 U. S. 331, 42 L. Ed. 767.

Under Consular Regulations 1888, § 87, authorizing the diplomatic representative to appoint a vice consul in case of emergency, the consul general on being disqualified and unable to perform his duties because of illness may appoint a vice consul general; the fact that he is unable to perform his duties not depriving him of the power to make such an emergency appointment. Id.

§ 179. **Responsibility as judicial officers.** All such officers shall be responsible for their conduct to the United States, and to the laws thereof, not only as diplomatic or consular officers, but as judicial officers, when they perform judicial duties, and shall be held liable for all negligences and misconduct as public officers. (R. S. § 4110.)

Historical Note

R. S. § 4110, cited to the text, was derived from section 23 of Act June 22, 1860, c. 179, 12 Stat. 76.

§ 180. **Power of consuls in uncivilized countries or countries not recognized by treaties.** The consuls of the United States at islands or in countries not inhabited by any civilized people, or recognized by any treaty with the United States, are authorized to try, hear, and determine all cases in regard to civil rights, whether of person or property, where the real debt or damages do not exceed the sum of $1,000, exclusive of costs, and upon full hearing of the allegations and evidence of both parties, to give judgment according to the laws of the United States, and according to the equity and right of the matter, in the same manner as justices of the peace are,* prior to June 22, 1860, authorized and empowered where the United States have exclusive jurisdiction. They are also invested with the powers conferred by the provisions of sections 145 and 149 of this chapter for trial of offenses or misdemeanors. (R. S. § 4088.)

* It would seem that "are" should be "were."

Historical Note

R. S. § 4088, cited to the text, was derived from section 30 of Act June 22, 1860, c. 179, 12 Stat. 78.

As enacted it contained, following the word "consuls," of this section, the words "and commercial agents," but see section 54, ante, of this title.

Notes of Decisions

1. Decisions under prior statute.—See (1855) 7 Op. Atty. Gen. 342.

2. Nature of power.—Consuls in barbarous or semibarbarous states are to be regarded as investing with extraterritoriality the place where their flag is planted, and if justice is to be administered at all, so far as concerns civilized foreigners

visiting such states, it must be by tribunals such as are named in this section. (1885) 18 Op. Atty. Gen. 219.

3. Jurisdiction of consuls.—The consular courts of the United States at Honolulu have the right and power, without interference from the local courts, to determine, as between citizens of the United States, who comprise the crew of an American vessel, and are bound to fulfill the obligations imposed by the shipping articles. (1866) 11 Op. Atty. Gen. 508.

Where a citizen of the United States, trading in the island of Guap, a barbarous or semicivilized country, was charged with cruelly and inhumanly punishing a boy on said island, the case is cognizable by a consul or commercial agent under the provisions of this section, and a special commercial agent might be sent to the island for the trial of the accused. (1885) 18 Op. Atty. Gen. 219.

§ 181. Provisions of chapter extended to Turkey. The provisions of this chapter, so far as the same relate to crimes and offenses committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and shall be executed in the Ottoman dominions in conformity with the provisions of the treaty, and of this chapter, by the minister and the consuls appointed to reside therein, who are hereby ex-officio vested with the powers in this chapter conferred upon ministers and consuls in China, for the purposes above expressed, so far as regards the punishment of crime, and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other foreign Christian nations. (R. S. § 4125.)

Historical Note

R. S. § 4125, cited to the text, was derived from section 21 of Act June 22, 1860, c. 179, 12 Stat. 76.

As to its effect on section 141, ante, of this title, to the text of which it is also cited, see historical note to that section. In regard to the reference herein to the powers "in this chapter conferred upon ministers and consuls in China," see section 191, post, of this title, establishing a United States court for China and transferring to it, except as provided in sections 192 and 193 of this title the jurisdiction formerly exercised by consuls and ministers in China.

Notes of Decisions

1. Basis of jurisdiction.—Judicial powers of consuls accredited to any nation depend upon the express provisions of the treaties entered into with that nation, and the laws of the nation which the consul represents. Dainese v. Hale (Dist. Cal. 1875) 91 U. S. 13, 23 L. Ed. 190.

That American consuls in Mohammedan countries exercise judicial powers is a part of the public law of this country, and is not dependent upon the text of a treaty. Dainese v. U. S. (1879) 15 Ct. Cl. 64.

2. Rights of citizens prior to statute.—Before the enactment of this statute citizens of the United States, in common with all other foreign Christians, enjoyed the privilege of exterritoriality in Turkey, including Egypt; the same in the Turkish regencies of Tripoli and Tunis; and also in the independent Arabic states of Morocco and Muscat. (1855) 7 Op. Atty. Gen. 565.

§ 182. Suspension by President of consular courts in Turkey and in Egypt. Whenever the President of the United States shall receive satisfactory information that the Ottoman Government, or that of Egypt, has organized other tribunals on a basis likely to secure to citizens of the United States, in their dominions, the same impartial justice which they now enjoy there under the judicial functions exercised by the minister, consuls, and other functionaries of the United States, pursuant to this chapter, he is hereby authorized to suspend the operations of this chapter as to the dominions in which such tribunals may be organized, so far as the jurisdiction of said tribunals may embrace matters now cognizable by the minister, consuls, or other functionaries of the United States in said dominions, and to notify the Government of the Sublime Porte, or that of Egypt, or either of them, that the United States, during such suspension will, as aforesaid, accept for their citizens the jurisdiction of the tribunals aforesaid over citizens of the United States which has heretofore been exercised by the minister, consuls, or other functionaries of the United States. (Mar. 23, 1874, c. 62, § 1, 18 Stat. 23.)

Editorial comment.—It has been suggested that this provision is obsolete or substantially so, at least with respect to Egypt.

Historical Note

This section was the first section of an act entitled "An act to authorize the President to accept for citizens of the United States the jurisdiction of certain tribunals in the Ottoman Dominions, established, or to be established, under the authority of the Sublime Porte and of the Government of Egypt." Section 2 of the act authorized the President to accept the law of the Ottoman Porte ceding the right to possess immovable property in said dominions to foreigners. Said section 2 has been omitted as executed.

In pursuance of this section, the President issued his proclamation March 27, 1876, 19 Stat. 652, suspending the jurisdiction of the consular courts in Turkey and Egypt. Consular courts are, however, again exercising jurisdiction in the former Ottoman Empire and in Egypt.

§ 183. Extension of provisions of chapter to Persia; suits between American citizens and subjects of Persia and other countries. The provisions of this chapter shall extend to Persia, in respect to all suits and disputes which may arise between citizens of the United States therein; and the minister and consuls who may be appointed to reside in Persia are hereby invested, in relation to such suits and disputes, with such powers as are by this chapter conferred upon ministers and consuls in China. All suits and disputes arising in Persia between Persian subjects and citizens of the United States shall be carried before the Persian tribunal to which such matters are usually referred, at the place where a consul or agent of the

United States may reside, and shall be discussed and decided according to equity, in the presence of an employee of the consul or agent of the United States; and it shall be the duty of the consular officer to attend the trial in person, and see that justice is administered. All suits and disputes occurring in Persia between the citizens of the United States and the subjects of other foreign powers, shall be tried and adjudicated by the intermediation of their respective ministers or consuls, in accordance with such regulations as shall be mutually agreed upon by the minister of the United States for the time being, and the ministers of such foreign powers, respectively, which regulations shall from time to time be submitted to the Secretary of State. (R. S. § 4126.)

Historical Note

R. S. § 4126, cited to the text, was derived from section 28 of Act June 22, 1860, c. 179, 12 Stat. 78. As to the effect of R. S. § 4126 on section 141, ante, of this title, where it is also cited to the text, see historical note to that section. As to the reference herein to the powers "by this chapter conferred upon ministers and consuls in China," see section 191, post, of this title, establishing a United States court for China and transferring to it, except as provided in sections 192 and 193 of this title, the jurisdiction formerly exercised by consuls and ministers in China.

CHAPTER 3.—UNITED STATES COURT FOR CHINA

Section 191. Establishment of court; sessions; seal; writs, processes, etc. A court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may have been exercised, prior to June 30, 1906, by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by sections 192 and 193 of this chapter. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

That the seal of the said United States Court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court, and all transcripts, records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal, may be authenticated by said seal, and shall be signed by the clerk of said court. All processes issued from the said court shall bear test from the day of such issue. (June 30, 1906, c. 3934, § 1, 34 Stat. 814.)

Historical Note

This chapter, with the exception of sections 198 and 201, was derived from Act June 30, 1906, c. 3934, which was entitled "An act creating a United States court for China and prescribing the jurisdiction thereof."

Cross-References

For provisions defining the jurisdiction, mentioned in this section as exercised, prior to June 30, 1906, by United States consuls and ministers in China, and prescribing the mode of its exercise, see chapter 2 of this title.

Notes of Decisions

1. **Purpose of chapter.**—The intention of Congress in creating the United States Court for China, in so far as the court is given criminal jurisdiction, was to throw around American citizens residing or sojourning in China, and there charged with crime, the beneficent principles of the laws of the United States relating to the trial of persons charged with crime, the rules of evidence, the presumption of innocence, the degree of proof necessary to convict, the right of the accused to be confronted with witnesses against him, exemption from being compelled to incriminate himself, etc.; but, while securing these privileges, the chapter at the same time made them subject to punishment for acts made criminal by any law of the United States, or for acts recognized as crimes under the common law. Biddle v. U. S. (China, 1907) 156 F. 759, 761, 84 C. C. A. 415.

2. **Offenses punishable.**—In view of the legislation of Congress making the obtaining of money or property by false pretenses a crime in Alaska and the District of Columbia and in other territory subject to the criminal jurisdiction of the United States, such act is an offense against the laws of the United States, within the meaning of this section, and an American citizen guilty of the commission of such act in China is subject to trial and punishment therefor by that court. Biddle v. U. S. (China, 1907) 156 F. 759, 84 C. C. A. 415.

3. **Jurisdiction.**—Under this section the court has jurisdiction of suits between citizens of the United States in controversies which arose in China. Swayne & Hoyt v. Everett (C. C. A. China, 1919) 255 F. 71.

That bank exchange credit was to be opened by buyer in New York held sufficient to show that buyer was not doing business in China, and subject to jurisdiction of United States Court for China. Neuss, Hesslein & Co. v. Van der Stegen (C. C. A. China, 1926) 10 F.(2d) 772, certiorari denied L. Van der Stegen v. Neuss, Hesslein & Co. (1926) 46 S. Ct. 632, 271 U. S. 681, 70 L. Ed. 1149.

Service of summons on person not authorized to close contracts for foreign corporation held not to give court jurisdiction. Id.

Petition alleging that New York corporation made contract through branch office at Shanghai held insufficient to show New York corporation was subject to jurisdiction of United States Court for China. Id.

Whether United States Court for China obtained jurisdiction of New York corporation of New York corporation held federal question determined by Supreme Court's rule. Id.

Action by Russian corporation against partners, citizens of United States, on contracts made and breached in China, held within jurisdiction of United States Court for China. Wulfsohn v. Russo-Asiatic Bank (C. C. A. China, 1926) 11 F.(2d) 715.

Russian government's impounding defendants' books and papers, and refusal to permit necessary witness to leave Russia or give evidence, held not grounds for dismissing action by Russian corporation in United States Court for China. Id.

Alleged illegality of contracts sued on by Russian corporation in United States Court for China held not ground for dismissing action. Id.

4. —— **Presumption against jurisdiction.**—United States Court for China is presumed without jurisdiction of cause, unless contrary affirmatively appears. Neuss, Hesslein & Co. v. Van der Stegen (C. C. A. China 1926) 10 F.(2d) 772, certiorari denied Van der Stegen v. Neuss, Hesslein & Co. (1926) 46 S. Ct. 632, 271 U. S. 681, 70 L. Ed. 1149.

Burden of proving foreign corporation was doing business in China, and subject to jurisdiction of United States Court for China, held on plaintiff. Id.

5. **Contempt.**—The United States Court for China has the power, irrespective of any statute, to punish for contempt, even if it were not a court of the United States, within the meaning of section 385 of Title 28, Judicial Code and Judiciary, and it may impose a sentence of imprisonment for six months; not being limited by the power vested in consuls by section 157, ante, of this title. Fleming v. U. S. (C. C. A. China 1922) 279 F. 613, writ of error dismissed (1922) 43 S. Ct. 10, 260 U. S. 752, 67 L. Ed. 496.

§ 192. **Jurisdiction of consular courts restricted; appeal from consular courts.** Consuls of the United States in the cities of China to which they are respectively accredited shall have the same jurisdiction as they, prior to June 30, 1906, possessed in civil cases where the sum or value of the property involved in the controversy does not exceed $500 United States money and in criminal cases where the punishment for the offense charged can not exceed by law $100 fine or sixty days' imprisonment, or both, and shall have power to arrest, examine, and discharge accused persons or commit them to the said court. From all final judgments of the consular court either party shall have the right of appeal to the United States Court for China. (June 30, 1906, c. 3934, § 2, 34 Stat. 814.)

Historical Note

This section and section 193, post, of this title, were both derived from the section cited to the text.

In the section as originally enacted the last sentence hereof read as follows: "From all final judgments of the consular court either party shall have the right of appeal to the United States court for China: Provided, also, That appeal may be taken to the United States court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States."

This proviso has been omitted for the reason apparently that extraterritoriality no longer obtains in favor of the United States in Korea. Before the enactment of the act cited to the text, appeals from consular courts in China were provided for by R. S. §§ 4092-4096, superseded by this section and section 194, post, of this title.

§ 193. **Administration of estates of decedents.** The United States Court for China shall have and exercise supervisory control over the discharge by consuls and vice consuls of the duties prescribed by the

laws of the United States relating to the estates of decedents in China. Within sixty days after the death in China of any citizen of the United States, or any citizen of any territory belonging to the United States, the consul or vice consul whose duty it becomes to take possession of the effects of such deceased person under the laws of the United States shall file with the clerk of said court a sworn inventory of such effects, and shall as additional effects come from time to time into his possession immediately file a supplemental inventory or inventories of the same. He shall also file with the clerk of said court within said sixty days a schedule under oath of the debts of said decedent, so far as known, and a schedule or statement of all additional debts thereafter discovered. Such consul or vice consul shall pay no claims against the estate without the written approval of the judge of said court, nor shall he make sale of any of the assets of said estate without first reporting the same to said judge and obtaining a written approval of said sale, and he shall likewise within ten days after any such sale report the fact of such sale to said court, and the amount derived therefrom. The said judge shall have power to require at any time reports from consuls or vice consuls in respect of all their acts and doings relating to the estate of any such deceased person. The said court shall have power to require where it may be necessary a special bond for the faithful performance of his duty to be given by any consul or vice consul into whose possession the estate of any such deceased citizen shall have come in such amount and with such sureties as may be deemed necessary, and for failure to give such bond when required, or for failure to properly perform his duties in the premises, the court may appoint some other person to take charge of said estate, such person having first given bond as aforesaid. A record shall be kept by the clerk of said court of all proceedings in respect of any such estate under the provisions hereof. (June 30, 1906, c. 3934, § 2, 34 Stat. 814.)

Historical Note

See note to section 192, ante, of this title.

Cross-References

For provisions referred to herein as prescribing the duties of consuls and vice consuls with relation to the estates of decedents in China, see sections 75 to 79, ante, of this title.

Notes of Decisions

1. **Jurisdiction to administer estate.**—Where an American citizen died in China, where she had acquired a domicile, the United States District Court for China had jurisdiction to administer upon her estate. In re Coppock's Estate (1925) 234 P. 258, 72 Mont. 431, 39 A. L. R. 1152.

§ 194. Appeals and writs of error for review of judgments, etc., of court. Appeals shall lie from all final judgments or decrees of the United States Court for China to the United States Circuit Court of Appeals of the Ninth Judicial Circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district courts of the United States. Said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken. (June 30, 1906, c. 3934, § 3, 34 Stat. 815.)

Editorial comment.—This section is apparently amended, in so far as it relates to appeals and writs of error to the Supreme Court from the judgments and decrees of the circuit court of appeals, by section 347 of Title 28, Judicial Code and Judiciary.

Historical Note

The word district (line 11 hereof) was followed, in the section as originally enacted by the words "and circuit"; but circuit courts were abolished by Act March 3, 1911, c. 231, § 289, 36 Stat. 1167.

See, also, portion of historical note to section 192, ante, of this title, relative to R. S. §§ 4092–4096.

Notes of Decisions

1. **Decisions under prior statute.**—See The Ping-On (C. C. N. Y. 1882) 11 F. 607, 608.

2. **Mode of review.**—This act recognizes the distinction between cases at law and in equity and admiralty, and requires the appellate procedure to conform to that of the Circuit and District Courts, and that a judgment of such court in an action at law is reviewable only on writ of error. Toeg v. Suffert (China 1909) 167 F. 125, 92 C. C. A. 577; Price v. U. S. (China, 1909) 169 F. 791, 95 C. C. A. 257.

4. **Judgments reviewable.**—A judgment of the United States Court for China, overruling a demurrer to a plea in abatement, was not a final judgment, and therefore not reviewable by the Circuit Court of Appeals. Cunningham v. Rodgers (China, 1909) 171 F. 835, 96 C. C. A. 507.

5. **Record on appeal.**—On an appeal from the consular and ministerial courts of China and Japan to the circuit court of the United States of the district of California, the record must show an allowance of the appeal. The Spark v. Lee Choi Chum (C. C. Cal. 1872) Fed. Cas. No. 13,206; Tazaymon v. Twombley (C. C. Cal. 1878) Fed. Cas. No. 13,810.

The record on appeal from a consular court of Japan to the circuit court for the district of California consists of a transcript of the libel, bill, answer, depositions, and all other proceedings in the case, which transcript should be properly authenticated. Tazaymon v. Twombley (C. C. Cal. 1878) Fed. Cas. No. 13,810.

6. **Necessity of exceptions.**—See, also, notes of decisions under section 196, post, of this title.

Under Act June 30, 1906, c. 3934 (sections 191 to 197, 199, 200, and 202) creating

the United States Court for China, practice and procedure therein conforms to that of district and circuit courts, so that, under Rev. St. §§ 649, 700 (sections 773 and 875 of Title 28, Judicial Code and Judiciary) for review in a case tried by it without a jury, its rulings must be excepted to at the time and preserved by bill of exceptions. China Press v. Webb (C. C. A. China, 1925) 7 F.(2d) 581.

§ 195. Law applicable to determination of cases. Jurisdiction of the United States Court for China, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, shall in all cases be exercised in conformity with the treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States court, shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same subject to the terms of any treaties between the United States and China. (June 30, 1906, c. 3934, § 4, 34 Stat. 815.)

Notes of Decisions

1. Decisions under prior statute.—The sentence of imprisonment imposed in any of the consular courts of China may be served out in the prison at Shanghai, and not necessarily within the limits of the consul's ordinary jurisdiction. (1892) 20 Op. Atty. Gen. 391.

2. "Common law" defined.—The provisions of such statute, making the common law applicable to criminal offenses committed by American citizens in China, are to be construed as referring to the common law in force in the several American colonies at the time of their separation from England, and this included not only the ancient common or unwritten law, but also statutes which had theretofore been passed amendatory of or in aid of the common law, among which was St. 30 Geo. II, c. 24, enacted in 1757, creating the offense of obtaining money or goods under false pretenses, and the subsequent amendments thereto. Biddle v. U. S. (China, 1907) 156 F. 759, 84 C. C. A. 415.

§ 196. Procedure generally; exclusion of associate aids. The procedure of the United States Court for China shall be in accordance, so far as practicable, with the procedure prescribed for consular courts in China in accordance with chapter 2 of this title: *Provided, however*, That the judge of the said United States Court for China shall have authority from time to time to modify and supplement said rules of procedure. The provisions of sections 152 and 153 of chapter 2 of this title allowing consuls in certain cases to summon associates shall have no application to said court. (June 30, 1906, c. 3934, § 5, 34 Stat. 816.)

Notes of Decisions

1. Plea in abatement.—In an action by plaintiff as an administrator, an objection that plaintiff was not and never had been administrator of the effects of deceased, may be taken by a special plea in bar or by plea in abatement. Cunningham v. Rodgers (China, 1909) 171 F. 835, 96 C. C. A. 507.

2. Necessity of objections and exceptions.—See, also, notes of decisions under section 194, ante, of this title.

Objections and exceptions to testimony are necessary to present for review questions relating thereto. American China Development Co. v. Boyd (C. C. Cal. 1906) 148 F. 258, 261, 269.

§ 197. Officers of court; appointment and salaries. There shall be a district attorney, a marshal, and a clerk of the United States Court for China, with authority possessed by the corresponding officers of the district courts in the United States as far as may be consistent with the conditions of the laws of the United States and the treaties between the United States and China. The judge of said court and the district attorney, who shall be lawyers of good standing and experience, marshal, and clerk shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive as salary, respectively, the sums of $8,000 per annum for said judge, $4,000 per annum for said district attorney, $3,000 per annum for said marshal, and $3,000 per annum for said clerk. (June 30, 1906, c. 3934, § 6, 34 Stat. 816.)

Historical Note

As to the last sentence of section 6 of Act June 30, 1906, c. 3934, cited to the text, here omitted, see note to section 201, post, of this title.

§ 198. Commissioner for court; appointment; powers and compensation; district of Shanghai. The judge of the United States Court for China is authorized to appoint, as in the district courts of the United States and with similar powers and tenure of office, a United States commissioner who shall be an attorney regularly admitted to practice before the said United States Court for China and who, when appointed, shall be an attorney regularly admitted to practice before the said* district of Shanghai, with all of the authority and jurisdiction exercised by the vice consul acting in pursuance of section 144 of chapter 2 of this title, which authority and jurisdiction are hereby transferred: *Provided*, That at the discretion of the judge of said court, he may appoint the clerk of the court to perform the duties of commissioner without additional compensation therefor. In the event that it is not practicable or desirable so to appoint the clerk to act as commissioner, the judge may, with approval of the Secretary of State appoint some qualified attorney to act as commissioner who shall, if not an officer of the court, receive such compensation as may

be fixed by the Secretary of State not exceeding $5 for each day of service actually rendered. (June 4, 1920, c. 223, 41 Stat. 746.)

* The words "an attorney regularly admitted to practice before the said," should be stricken and there should be inserted in lieu thereof the words "in addition ex officio judge of the consular court for the."

Editorial comment.—It has been suggested that the words "are hereby transferred," herein, should be revised. It would seem, also, that the reference herein to section 144 of this title should be obviated since that section is probably superseded by this section (see editorial comment under said section 144).

To achieve these two ends it would seem that the words of this section reading, "with all of the authority and jurisdiction exercised by the vice consul acting in pursuance of section 144 of chapter 2 of this title, which authority and jurisdiction are hereby transferred," might be omitted and the following words inserted in their stead, "with all the judicial authority and jurisdiction exercised prior to June 4, 1920 by the vice consul at Shanghai."

Historical Note

This section is a part of the diplomatic and consular service appropriation act for the fiscal year 1921, cited above.

§ 199. Tenure of office of judge; removal of other officers by President. The tenure of office of the judge of the United States Court for China shall be ten years, unless sooner removed by the President for cause; the tenure of office of the other officials of the court shall be at the pleasure of the President. (June 30, 1906, c. 3934, § 7, 34 Stat. 815.*)

* "815" should read "816."

§ 200. Bond of marshal and clerk; deputies; bond and compensation of deputies. The marshal and the clerk of the United States Court for China shall be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court. They shall each appoint, with the written approval of said judge, deputies at Canton and Tientsin, who shall also be required to furnish bonds for the faithful performance of their duties, which bonds shall be subject, both as to form and sufficiency of the sureties, to the approval of the said judge. Such deputies shall receive compensation at the rate of $5 for each day the sessions of the court are held at their respective cities. (June 30, 1906, c. 3934, § 8, 34 Stat. 816.)

Historical Note

The last sentence of section 8 of Act June 30, 1906, c. 3934, 34 Stat. 816, here omitted, abolished the office of marshal in China, then existing pursuant to R. S. § 4111 (section 168 of this title and historical note thereto).

§ 201. Expenses of judge and of district attorney in attendance on sessions in other cities than Shanghai. The judge of the United States Court for China and the district attorney shall, when the sessions of the court are held at other cities than Shanghai, receive in addition to their salaries their necessary actual expenses during such sessions, not to exceed $8 per day each. (Feb. 27, 1925, c. 364, Title I, 43 Stat. 1025.)

Historical Note

Section 6 of Act June 30, 1906, c. 3934, 34 Stat. 816 (section 197 of this title), as originally enacted, concluded with a sentence in the language of this section except that the expense allowance was "not to exceed ten dollars per day for the judge and five dollars per day for the district attorney;" whereas the allowance by this section is "not to exceed $8 per day each."

The provision in its present form appears in the diplomatic and consular appropriation act for the fiscal year 1920, Act March 4, 1919, c. 123, 40 Stat. 1331, and each subsequent appropriation act including the act cited to the text.

§ 202. Fees of marshal and clerk; payment into Treasury. The tariff of fees of the marshal and clerk of the United States Court for China shall be the same as the tariff fixed prior to July 30, 1906, for the consular courts in China, subject to amendment from time to time by order of the President, and all fees taxed and received shall be paid into the Treasury of the United States. (June 30, 1906, c. 3934, § 9, 34 Stat. 816.)

Cross-References

Provisions for establishing a tariff of fees in consular courts, see section 159, ante, of this title.

CHAPTER 4.—PASSPORTS

Section 211. Issuance of passports authorized; manner of issuing. The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by such diplomatic or consular officers of the United States, and by such chief or other executive officer of the insular possessions of the United States, and under such rules as the President shall designate and prescribe for and on behalf of the United States; and no other person shall grant, issue, or verify any such passport. Where an embassy or a legation of the United States is established in any country, no person other than the diplomatic representative of the United States at such place shall be permitted to grant or issue any passport, except in the absence therefrom of such representative. (R. S. § 4075; June 14, 1902, c. 1088, § 1, 32 Stat. 386.)

Historical Note

This section, as enacted in the Revised Statutes, did not contain the clause "and by such chief or other executive officer of the insular possessions of the United States." Those words were inserted by amendment by Act June 14, 1902, c. 1088, § 1, last cited above.

R. S. § 4075 was derived from Act May 30, 1866, c. 102, 14 Stat. 54. The words "an embassy or" (lines 8 and 9 hereof), were not contained in the section as enacted and amended as aforesaid.

Notes of Decisions

1. Duty to issue passport.—The granting of passports is not obligatory in any case, but is only permitted where not prohibited by law. (1869) 13 Op. Atty. Gen. 90.

This section and the one following are not in terms mandatory, and the Secretary of State may, in his discretion, either grant or withhold a passport as the public interests may require. (1901) 23 Op. Atty. Gen. 509.

2. False affidavit as ground for disbarment of attorney.—An attorney, who signs an affidavit for purpose of procuring a passport under the rules promulgated by the President of the United States, under this section and section 212, post, of this title, without a belief that the statement sworn to by him is true, may be disbarred under Or. Laws, § 1091, providing for disbarment when it shall appear that the conduct of an attorney has been such that he would be denied admission to the bar, such attorney being guilty of perjury, under section 231 of Title 18, Criminal Code and Criminal Procedure. State v. Woerndle (1922) 209 P. 604, 220 P. 744, 109 Or. 461.

3. Who may issue passports.—The governor of Porto Rico may be authorized to issue passports under the provisions of this section. (1917) 31 Op. Atty. Gen. 151.

§ 212. Who entitled to passport. No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States. (*June 14, 1902, c. 1088, § 2, 32 Stat. 386.)

* "R. S. § 4076;" should be added to this citation.

Historical Note

This section, as enacted in the Revised Statutes (R. S. § 4076), was as follows:

"No passport shall be granted or issued to or verified for any other persons than citizens of the United States."

It was amended to read as set forth here by Act June 14, 1902, c. 1088, § 2, last cited above.

R. S. § 4076 was derived from Act May 30, 1866, c. 102, 14 Stat. 54.

Notes of Decisions

1. Decisions under prior statute.—See (1859) 9 Op. Atty. Gen. 350; (1863) 10 Op. Atty. Gen. 517; (1876) 15 Op. Atty. Gen. 115.

2. Duty to issue passport.—This and the preceding section are not in terms mandatory, and the Secretary of State may, in his discretion, either grant or withhold a passport as the public interests may require. (1901) 23 Op. Atty. Gen. 509.

3. Persons entitled to passports.—Persons residing in the island of Curaçoa four of whom were born in that island, and one in the island of St. Thomas, and all of whom were children of native citizens of the United States, but none of whom had ever resided or intended to reside in the United States, are not entitled to passports. (1869) 13 Op. Atty. Gen. 90.

A naturalized citizen is entitled to a passport, though with a view to traveling or residing in the country of his former nationality, just as much as if he were a native-born citizen intending to go to the same country. (1876) 15 Op. Atty. Gen. 114.

The allegiance mentioned in this section is permanent allegiance, and not the temporary allegiance owing from a resident. (1907) 26 Op. Atty. Gen. 376.

Citizens of Panama, who were residents of the Canal Zone at the time of the treaty between the United States and Panama, and who have not taken any affirmative action to retain citizenship in that republic, owe allegiance to the United States and are entitled to passports. Id.

4. Passport as evidence.—A passport issued to a Chinese person by the Secretary of State is not evidence of the citizenship of such person in the United States. Edsell v. Mark (Wash. 1910) 179 F. 292, 103 C. C. A. 121; In re Gee Hop (D. C. Cal. 1895) 71 F. 274, 276.

Validity of alien's claim that he belonged to non-quota class was to be determined on his arrival despite statement of American vice consul on his passport. U. S. v. Curran (D. C. N. Y. 1923) 4 F.(2d) 613.

A passport is not evidence of citizenship. In re Gee Hop (D. C. Cal. 1895) 71 F. 274, 276.

5. False affidavits.—See State v. Woerndle (1922) 209 P. 604, 220 P. 744, 109 Or. 461; note under section 211 of this title.

§ 213. Application for passport; fees for taking. Before a passport is issued to any person by or under authority of the United States such person shall subscribe to and submit a written application duly verified by his oath before a person authorized and empowered to administer oaths, which said application shall contain a true recital of each and every matter of fact which may be required by law or by any rules authorized by law to be stated as a prerequisite to the issuance of any such passport. Clerks of United States courts, agents of the Department of State, or other Federal officials authorized, or who may be authorized, to take passport applications and administer oaths thereon, shall collect, for all services in connection therewith, a fee of $1, and no more, in lieu of all fees prescribed by any statute of the United States, whether the application is executed singly, in duplicate, or in triplicate. (June 15, 1917, c. 30, Title IX, § 1, 40 Stat. 227.)

Editorial comment.—The second sentence of this section seems to be superseded by section 214 of this title.

Historical Note

This section and sections 220-222, post, of this title, were part of "An act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," cited above. Said sections constituted Title IX of said act, and were preceded in the act as enacted by the subtitle "Passports."

§ 214. Fees for passport; persons excused from payment. There shall be collected and paid into the Treasury of the United States quarterly a fee of $1 for executing each application for a passport and $9 for each passport issued to a citizen or person owing allegiance to or entitled to the protection of the United States: *Provided*, That nothing herein contained shall be construed to limit the right of the Secretary of State by regulation to authorize the retention by State officials of the fee of $1 for executing an application for a passport: *And provided further*, That no fee shall be collected for passports issued to officers or employees of the United States proceeding abroad in the discharge of their official duties, or to members of their immediate families, or to seamen, or to widows, children, parents, brothers, and sisters of American soldiers, sailors, or marines, buried abroad whose journey is undertaken for the purpose and with the intent of visiting the graves of such soldiers, sailors, or marines, which facts shall be made a part of the application for the passport. (June 4, 1920, c. 223,* 41 Stat. 750.)

* "§ 1," should be inserted.

Historical Note

This section and sections 215-217, post, of this title, were a part of the diplomatic and consular service appropriation act for the fiscal year 1921, cited above.

§ 215. Fees for visa of alien's passport. There shall be collected and paid into the Treasury of the United States quarterly a fee of $1 for executing each application of an alien for a visa and $9 for each visa of the passport of an alien: *Provided*, That no fee shall be collected from any officer of any foreign Government, or members of his immediate family, its armed forces, or of any State, district, or municipality thereof, traveling to or through the United States. (June 4, 1920, c. 223,* 41 Stat. 750.)

* "§ 2," should be inserted.

Editorial comment.—The words "except as the following fees are reduced or abolished by the President under paragraph (1) of section 202 of Title 8, Aliens and Citizenship," might well be inserted at the beginning of this section.

Paragraph (1) of section 202 of Title 8, aforesaid, authorizes the reduction or abolition of visa fees as to aliens who are not immigrants and whose countries grant similar privileges.

Historical Note

As originally enacted, this section contained the following additional words, which were evidently omitted as obsolete: "Or of any soldiers coming within the terms of the public resolution approved October 19, 1918 (Fortieth Statutes at Large, part 1, page 1014)." See, also, historical note to section 214, ante, of this title.

Cross-References

For provisions relating to immigration visas, applications therefor, and fees, see sections 202-209 of Title 8, Aliens and Citizenship.

§ 216. Return of fees on refusal to visa. Whenever the appropriate officer within the United States of any foreign country refuses to visa a passport issued by the United States, the Department of State is hereby authorized upon request in writing and the return of the unused passport within six months from the date of issue to refund to the person to whom the passport was issued the fees which have been paid to Federal officials, and the money for that purpose is hereby appropriated and directed to be paid upon the order of the Secretary of State. (June 4, 1920, c. 223,* 41 Stat. 751.)

* "§ 4," should be inserted.

Historical Note

See historical note to section 214, ante, of this title.

§ 217. Time limitation as to validity of passport or visa. The validity of a passport or visa shall be limited to two years, unless the

Secretary of State shall by regulation limit the validity of such passport or visa to a shorter period. (June 4, 1920, c. 223,* 41 Stat. 751.)

* "§ 3," should be inserted.

Historical Note

See historical note to section 214, ante, of this title.

§ 218. **Returns as to passports issued, etc.** All persons who shall be authorized to grant, issue, or verify passports, shall make return of the same to the Secretary of State, in such manner and as often as he shall require; and such returns shall specify the names and all other particulars of the persons to whom the same shall be granted, issued, or verified, as embraced in such passport. (R. S. § 4077.)

Historical Note

R. S. § 4077, cited to the text, was derived from Act May 30, 1866, c. 102, 14 Stat. 54.

Notes of Decisions

Passport as evidence of citizenship, see notes of decisions under section 212, ante, of this title.

§ 219. **Issuance of false passport; penalty.** If any person acting or claiming to act in any office or capacity under the United States, its possessions, or any of the States of the United States, who shall not be lawfully authorized so to do, shall grant, issue, or verify any passport or other instrument in the nature of a passport to or for any person whomsoever, or if any consular officer who shall be authorized to grant, issue, or verify passports shall knowingly and willfully grant, issue, or verify any such passport to or for any person not owing allegiance, whether a citizen or not, to the United States, he shall be imprisoned for not more than one year or fined not more than $500, or both; and may be charged, proceeded against, tried, convicted, and dealt with therefor in the district where he may be arrested or in custody. (*June 14, 1902, c. 1088, § 3, 32 Stat. 386.)

* "R. S. § 4078;" should be added to this citation.

Historical Note

This section, as enacted in the Revised Statutes (R. S. § 4078) was amended by adding, after the words "under the United States," the words "its possessions," and by substituting for the words "not a citizen of the United States," contained in the original section, the words "not owing allegiance, whether a citizen or not, to the United States," making the section read as set forth here, by Act June 14, 1902, c. 1088, § 3, cited to the text.

R. S. § 4078 was derived from Act May 30, 1866, c. 102, 14 Stat. 54.

Notes of Decisions

1. **Form of unauthorized passport.**—A passport issued by an unauthorized person substantially in the form used by the state department is within the letter of this section. (1859) 9 Op. Atty. Gen. 350.

There is no form of certificate in the nature of a passport which can be issued lawfully by a state officer. Id.

Certain papers issued by the mayor of Savannah, Ga., and also by a notary public at Cedar Keys, Fla., containing the essentials of a passport, and intended to be used in traveling in a foreign country, held a violation of this section. (1884) 17 Op. Atty. Gen. 674.

2. **Officers prohibited from issuing passports.**—The prohibition contained in this section is not confined to the issuing and verifying of such passports or certificates in foreign countries, but applies equally to state and federal functionaries residing here. (1859) 9 Op. Atty. Gen. 350.

§ 220. **False statement in application; use of passport obtained by false statement; penalty.** Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than $2,000 or imprisoned not more than five years or both. (June 15, 1917, c. 30, Title IX, § 2, 40 Stat. 227.)

Historical Note

See historical note to section 213, ante, of this title.

§ 221. **Unlawful use of passport; penalty.** Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of, or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be fined not more than $2,000 or imprisoned not more than five years, or both. (June 15, 1917, c. 30, Title IX, § 3, 40 Stat. 227.)

Historical Note

See historical note to section 213, ante, of this title.

§ 222. **Forging, alteration, etc., of passport; penalty.** Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with

intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same, shall be fined not more than $2,000 or imprisoned not more than five years, or both. (June 15, 1917, c. 30, Title IX, § 4, 40 Stat. 227.)

Historical Note

See historical note to section 213, ante, of this title.

§ 223. War-time restrictions generally. When the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this section, and the three following, be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section and the three following;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid. (May 22, 1918, c. 81, § 1, 40 Stat. 559.)

Historical Note

This section and sections 224–226, post, of this title, were "An act to prevent in time of war departure from or entry into the United States contrary to the public safety," cited above.

See section 227, post, of this title, continuing said sections in force and effect in so far as they relate to requiring passports and visas from aliens seeking to come to the United States.

Provisions similar to those of this section and sections 225 and 226, post, of this title, but relating solely to the entry of aliens into the United States, were made by Act Nov. 10, 1919, c. 104, 41 Stat. 353. That act, by express provision therein, was to take effect upon the date when the 1918 act, cited to the text, ceased to be operative; and was to continue in effect until and including the 4th day of March, 1921. The section of the Act Nov. 10, 1919, c. 104, aforesaid, corresponding to section 225, post, of this title, prescribed a fine of not more than $5,000 or imprisonment for not more than five years, or both.

Notes of Decisions

Extent to which sections 223–226 of this title are continued in effect, see notes of decisions under section 227, post, of this title.

1. Validity.—This act (sections 223–226 of this title), was supported by the power of Congress to regulate the entry of aliens, as well as by the war powers of Congress. Sichofsky v. U. S. (C. C. A. Cal. 1922) 277 F. 762, affirming Ex parte Sichofsky (D. C. 1921) 273 F. 694.

2. Repeal.—Sections 223–226 of this title were not repealed by Act Nov. 10, 1919 (see historical note), covering the same subject, and providing that it should go into effect when said sections should cease to be operative, and continue in force until March 4, 1921; such sections not having ceased to be operative. Sichofsky v. U. S. (C. C. A. Cal. 1922) 277 F. 762, affirming (D. C. 1921) Ex parte Sichofsky (D. C. Cal. 1921) 273 F. 694.

2. Affidavits as equivalent of passport.—An alien, entering the United States without a passport required by regulations made pursuant to Act May 22, 1918, § 1 (this section) continued in force by Act March 2, 1921 (section 227 of this title) cannot rely on affidavits made before departing from the United States, and before returning thereto, as the equivalent of a passport, nor can the government be estopped by any representations made by its consular agent in the country from which such alien came. Takeyo Koyama v. Burnett (C. C. A. Hawaii, 1925) 8 F.(2d) 940.

4. Application.—Action of a special board of inquiry approved in excluding aliens applying for admission as temporary visitors, on the ground that they were without passports visaed by an American consul; the consul to whom they applied having refused visas. U. S. v. Phelps (D. C. Vt. 1926) 14 F.(2d) 679.

Aliens resident in the United States, who are not "hostile aliens," within the regulations adopted pursuant to this section, are free to go to and return from Canada without passports, and the arrest and an order for deportation of such aliens, because of their return to the United States without inspection was without warrant of law and void. In re Wysback (D. C. Mass. 1923) 292 F. 761.

5. Deportation of violator.—The Department of Labor is without authority to order an alien deported on ground, not charged in the warrant of arrest, and on which the alien has not had a hearing, that she entered on a passport not issued or designed for her use, in violation of Act May 22, 1918, § 1e [this section par. (e)]. Throumoulopolou v. U. S. (C. C. A. Me. 1925) 3 F.(2d) 803.

§ 224. Passport required of citizens. After such proclamation as is provided for by the preceding section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport. (May 22, 1918, c. 81, § 2, 40 Stat. 559.)

Editorial comment.—This section may have ceased to be operative as not coming within the extension provision contained in section 227, post, of this title.

Historical Note

See historical note to section 223, ante, of this title.

§ 225. Penalty for violation of war-time restrictions. Any person who shall willfully violate any of the provisions of the two preceding sections, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. (May 22, 1918, c. 81, § 3, 40 Stat. 559.)

Historical Note

See historical note to section 223, ante, of this title.

Notes of Decisions

1. Whether continued in force by section 227, post, of this title.—See, also, notes of decisions under section 227 of this title.

Criminal liability under this section held not extended beyond war period by Act March 2, 1921, § 1 (section 227 of this title), that act merely extending the regulatory provisions of Act May 22, 1918, c. 81 (sections 223-226 of this title). Flora v. Rustad (C. C. A. Minn. 1925) 8 F.(2d) 335.

Act March 2, 1921, § 1 (section 227 of this title) continued in force indefinitely into the peace period, Act May 22, 1918, including the penal provisions thereof, in so far as the same related to requiring passports and visés from aliens seeking to enter the United States. Thereafter it was lawful to impose restrictions upon all aliens seeking to enter the United States and to impose penalties for a violation thereof. Bennedsen v. Nelson (D. C. Minn. 1924) 2 F.(2d) 296.

2. Effect of resolution terminating wartime legislation.—Under sections 223-226 of this title, defendant's entry without a proper passport required by an executive order thereunder was within the saving clause of the Joint Resolution of March 3, 1921, declaring certain wartime acts, regulations, and prohibitions terminated, but providing that this should not exempt

from prosecution or relieve from punishment for offenses committed in violation of the acts repealed. Sichofsky v. U. S. (C. C. A. Cal. 1922) 277 F. 762, affirming Ex parte Sichofsky (D. C. Cal. 1921) 273 F. 694.

§ 226. "United States" and "person" as used in war-time restriction defined. The term "United States" as used in the three preceding sections includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used herein shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic. (May 22, 1918, c. 81, § 4, 40 Stat. 559.)

Historical Note

See historical note to section 223, ante, of this title.

§ 227. Regulations as to alien passport requirements continued. The provisions of the Act approved May 22, 1918, being the four preceding sections, shall, in so far as they relate to requiring passports and visas from aliens seeking to come to the United States, continue in force and effect until otherwise provided by law. (Mar. 2, 1921, c. 113, § 1, 41 Stat. 1217.)

Historical Note

From the Diplomatic and Consular Service Appropriation Act for the year 1922, cited above.

Notes of Decisions

1. Effect of this section in general.—Alien unlawfully entering United States in July, 1924, held not subject to criminal liability therefor under Act May 22, 1918 (sections 223-226 of this title), such liability not being extended beyond war period, by this section; and Immigration Act May 26, 1924, continuing policy of deportation, and manifesting no intention that an alien shall be subjected in times of peace, first to a term of imprisonment, and then deported on its expiration. Flora v. Rustad (C. C. A. Minn. 1925) 8 F.(2d) 335; wherein the court said: "Plainly, the clause relied on by the district attorney (this section) does not continue in express terms criminal liability of an alien under the Act of May 22, 1918 (sections 223-236 of this title), for entering without a passport, when the United States is not at war. We are asked to so construe it. A statute passed for a special purpose and effective during named conditions and for a limited time may be extended, of course, by a later statute to be effective without limit and without conditions. It may be extended in its entirety or in part, or as to all of its subject-matter or part thereof. It is clear that the whole act was not extended as a peace measure, nor were the limitations and restrictions on the departure and entry of citizens extended by the Act of March 2, 1921 (this section). By section 2 of the Act of May 22, 1918 (section 224 of this title), a citizen was subject to prosecution, fine and imprisonment if he departed from or entered the United States after the issuance of the President's proclamation and his order imposing restrictions and limitations, unless he bore a valid passport. The effect of the

proviso (this section) was to except, by necessary implication, from regulatory control under the Act of May 22, 1918, all citizens who might thereafter enter, continuing in force, however, the requirement that only aliens having passports might enter; and that was retained for regulatory purposes, without any legislative expression on the subject of criminal liability for entry without a passport."

Executive order of the President of January 12, 1925, requiring all aliens, being nonimmigrants, to present as a condition of entry into the country passports duly visaed by consular officers of the United States, and rule 42 of the Secretary of State of September 30, 1925, made pursuant to such order, instructing consuls, before issuing visitors visas, to satisfy themselves of the temporary nature of the proposed visit, held authorized by Act March 2, 1921 (this section), and effective, and under them the issuance of a visa by a consul is not a ministerial act, but involves discretion and his discretion cannot be controlled or reviewed by the courts. U. S. v. Phelps (D. C. Vt. 1926) 14 F.(2d) 679.

Petitioner entered the United States clandestinely from Canada, in July, 1924. Act May 22, 1918 (sections 223–226 of this title), provided that, while the United States was at war, the President should be authorized to impose restrictions upon the entry of aliens into the United States, or upon their departure therefrom. By appropriate action, President Wilson restricted the entry from Canada of hostile aliens only, unless on presentation of passport duly visaed by a proper officer of the United States. Held, that Act March 2, 1921, § 1 (this section) continued in force indefinitely into the peace period, Act May 22, 1918, including the penal provisions thereof, in so far as the same related to requiring passports and visés from aliens seeking to enter the United States. Thereafter it was lawful to impose restrictions upon all aliens seeking to enter the United States and to impose penalties for a violation thereof. Bennedsen v. Nelson (D. C. Minn. 1924) 2 F.(2d) 296.

2. Effect of "Immigration Act of 1924" (section 201 et seq., of Title 8, Aliens and Citizenship).—The power given the President by the War Act of May 22, 1918, § 1 (section 223 of this title) by proclamation to impose additional restrictions on the departure of persons from and their entry into the United States, continued in effect by this section, "until otherwise provided by law," was terminated as to immigrants by Immigration Act 1924 (section 201 et seq. of Title 8, Aliens and Citizenship). Johnson v. Keating ex rel. Tarantino (C. C. A. Mass. 1926) 17 F.(2d) 50.

The Immigration Act of 1924 (section 201 et seq. of Title 8, Aliens and Citizenship) appears to cover fully the subject of entry of aliens into the United States. Flora v. Rustad (C. C. A. Minn. 1925) 8 F. (2d) 335.

3. Effect of resolution terminating wartime legislation.—Act May 22, 1918, § 1 (section 223 of this title) making it unlawful during war for any alien to enter or depart from United States, except under regulations prescribed by the President, which was continued in force by this section, and the passport regulations prescribed pursuant thereto, were not abrogated by Joint Resolution of March 3, 1921, 41 Stat. 1359 (omitted from the Code as obsolete) fixing date of termination of war. Takeyo Koyama v. Burnett (C. C. A. Hawaii, 1925) 8 F.(2d) 940.

The effect of this section was to remove provisions relating to requiring passports and visés from aliens seeking to come to the United States, from the class of so-called "war legislation," so that they were not terminated by the Joint Resolution of March 3, 1921, providing that any act or provision by its terms in force only during the existence of a state of war should be construed as if the war terminated on the date the resolution became effective. U. S. v. Wallis (D. C. N. Y. 1921) 278 F. 838, affirmed (C. C. A. 1921) 278 F. 840.

4. Effect of termination of hostilities.—Sections 223–226 of this title had not become inoperative, where, at the time sentence was imposed on defendant, no treaty of peace had been made, the declaration of war had not been repealed, and American troops were still on German soil. Sichofsky v. U. S. (C. C. A. Cal. 1922) 277 F. 762, affirming Ex parte Sichofsky (D. C. Cal. 1921) 273 F. 694.

CHAPTER 5.—PRESERVATION OF FRIENDLY FOREIGN RELATIONS GENERALLY

Cross-References

For provisions penalizing possession or control of property or papers, in aid of foreign government, designed or intended for violating penal statutes, treaty rights or obligations of United States, or rights under the law of nations, see section 98 of Title 18, Criminal Code and Criminal Procedure.

See, also, cross-reference under section 231, post, of this title.

Section 231. Making false statement to influence conduct of foreign government toward United States. Whoever, in relation to any dispute or controversy between a foreign government and the United States, shall willfully and knowingly make any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both. (June 15, 1917, c. 30, Title VIII, § 1, 40 Stat. 226.)

Historical Note

This section and sections 232-235, post, of this title, were part of "An act to punish acts of interference with the foreign relations, the neutrality, and the for-

eign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," cited to the text. Said sections constituted title VIII of said act, and were preceded in the act as enacted by the subtitle "Disturbance of Foreign Relations."

Cross-References

For provision punishing correspondence, by citizen, directly or indirectly, with any foreign government, with intent to influence the measures or conduct of such government in relation to disputes or controversies with the United States, see section 5 of Title 18, Criminal Code and Criminal Procedure.

§ 232. Wrongful assumption of character of diplomatic or consular officer. Whoever within the jurisdiction of the United States shall falsely assume or pretend to be a diplomatic or consular, or other official of a foreign government duly accredited as such to the Government of the United States with intent to defraud such foreign government or any person, and shall take upon himself to act as such, or in such pretended character shall demand or obtain, or attempt to obtain from any person or from said foreign government, or from any officer thereof, any money, paper, document, or other thing of value, shall be fined not more than $5,000, or imprisoned not more than five years, or both. (June 15, 1917, c. 30, Title VIII, § 2, 40 Stat. 226.)

Historical Note

See historical note to section 231, ante, of this title.

§ 233. Acting as foreign governmental agent without notice to Secretary of State. Whoever, other than a diplomatic or consular officer or attaché, shall act in the United States as an agent of a foreign government without prior notification to the Secretary of State shall be fined not more than $5,000, or imprisoned not more than five years, or both. (June 15, 1917, c. 30, Title VIII, § 3, 40 Stat. 226.)

Historical Note

See historical note to section 231, ante, of this title.

§ 234. Conspiracy to injure property of foreign government; indictment. If two or more persons within the jurisdiction of the United States conspire to injure or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated, and if one or more such persons commits an act within the jurisdiction of the United States to effect the object of the conspira-

cy, each of the parties to the conspiracy shall be fined not more than $5,000, or imprisoned not more than three years, or both. Any indictment or information under this section shall describe the specific property which it was the object of the conspiracy to injure or destroy. (June 15, 1917, c. 30, Title VIII, § 5, 40 Stat. 226.)

Historical Note

See historical note to section 231, ante, of this title.

§ 235. "Foreign government" defined. The words "foreign government," as used in the four preceding sections, shall be deemed to include any government, faction, or body of insurgents within a country with which the United States is at peace, which government, faction, or body of insurgents may or may not have been recognized by the United States as a government. (June 15, 1917, c. 30, Title VIII, § 4, 40 Stat. 226.)

Historical Note

As enacted, this section made the definition herein contained applicable to various sections of the Criminal Code and to other sections of the act cited to the text; therefore this same provision is set out in sections 98, 238, and 349 of Title 18, Criminal Code and Criminal Procedure, and in section 41 of Title 50, War.

See, also, historical note to section 231, ante, of this title.

§ 236. Exportations of munitions of war restricted. Whenever the President finds that in any American country, or in any country in which the United States exercises extraterritorial jurisdiction, conditions of domestic violence exist, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export, except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress. (Jan. 31, 1922, c. 44, § 1, 42 Stat. 361.)

Historical Note

This section, and section 237 of this title, are sections 1 and 2 of a resolution entitled a "Joint resolution to prohibit the exportation of arms or munitions of war from the United States to certain countries, and for other purposes," cited to the text. Section 3 of said resolution repealed Res. April 22, 1898, No. 25, 30 Stat. 739, as amended by Res. March 14, 1912, No. 10, 37 Stat. 630.

As amended by Res. March 14, 1912, aforesaid, section 1 of Res. April 22, 1898 No. 25, was practically identical with this section, except that it did not contain the words herein, reading, "or in any country in which the United States exercises extraterritorial jurisdiction."

Section 2 of Res. April 22, 1898, No. 25, as amended by Res. March 14, 1912, read as follows: "Any shipment of material hereby declared unlawful after such a proclamation shall be punishable by fine

not exceeding ten thousand dollars, or imprisonment not exceeding two years, or both."

Prior to the 1912 amendment, Res. April 22, 1898, No. 25, authorized the President to prohibit the export of coal or other material used in war from any seaport of the United States.

Notes of Decisions

1. Validity.—Joint Resolution No. 10, March 14, 1912 (see historical note), prohibiting the exportation of arms or munitions of war to an American country in which the President has proclaimed the existence of domestic violence promoted by the use of arms or munitions of war imported from the United States held valid. Talbott v. U. S. (Tex. 1913) 208 F. 144, 125 C. C. A. 360, certiorari denied (1914) 34 S. Ct. 331, 232 U. S. 722, 58 L. Ed. 815.

2. Attempt as offense.—This section and section 237 of this title, prohibiting exportation of arms or munitions to "any country in which the United States exercises extraterritorial jurisdiction" after proclamation by the President, and the President's proclamation thereunder of March 4, 1922 (42 Stat. 2264), applying the prohibition to China and declaring that "whoever exports any arms or munitions of war in violation of section 1 [this section] shall on conviction be punished," constitute a valid and effective law, but do not make an "attempt" to make such exportation an offense. U. S. v. Lucas (D. C. Wash. 1925) 6 F.(2d) 327.

3. Exportation.—The act of sending from the United States to a foreign and prohibited country, without reference to the completion of such act by the landing or delivery of the merchandise at its destination, is condemned by Joint Resolution No. 10, March 14, 1912 (see historical note). U. S. v. Chavez (Tex. 1913) 33 S. Ct. 595, 228 U. S. 525, 57 L. Ed. 950, reversing (D. C. 1912) 199 F. 518.

Resort to personal carriage to move prohibited articles from the United States to a foreign and prohibited country will not render inapplicable the prohibitions of the Joint Resolution aforesaid. Id.

4. Articles prohibited.—The words "arms or munitions of war" embrace weapons used for the destruction of life, together with ammunition and equipment useful in connection with them, and explosives and other equipment of a military character, or articles used for the construction of such equipment. (1912) 29 Op. Atty. Gen. 375.

Foodstuffs, ordinary clothing, and ordinary articles of peaceful commerce are not included in the prohibition. Id.

Whether certain air rifles are "arms or munitions of war" is purely a question of fact, which the Attorney General does not feel qualified to decide. (1913) 30 Op. Atty. Gen. 9.

Air rifles, if wholly innocuous, and incapable of use for destruction of life, are not "arms." Id.

Clothes and provisions are not munitions of war. (1913) 30 Op. Atty. Gen. 213.

Ordinary, as distinguished from military, riding saddles, stirrups, girths, hay, and other foodstuffs, and horses are not munitions of war. (1913) 30 Op. Atty. Gen. 227.

The exportation of saddles, bridles, canteens, and carbine scabbards by merchants in the United States to other merchants in Mexico falls within the purview of the President's proclamation of March 14, 1912, prohibiting the export of arms or munitions of war to that country. (1912) 29 Op. Atty. Gen. 394.

Gun grease is within the prohibition of the President's proclamation of March 14, 1912, issued pursuant to the joint resolution of the same date (see historical note), forbidding the exportation of arms or munitions of war to Mexico. (1912) 29 Op. Atty. Gen. 414.

Paper caps for toy cap pistols could hardly be considered within the prohibition of the President's proclamation of March 4, 1912, forbidding the exportation of arms and munitions of war to Mexico, whereas air rifles might well be regarded within the prohibition. The question, however, is one of fact, dependent upon the character of the articles sought to be imported. (1912) 29 Op. Atty. Gen. 570.

Under Act July 6, 1812, § 2, prohibiting any citizen of the United States from transporting overland or otherwise any arms or munitions of war, or any article of provision from the United States to Canada, living oxen were included. U. S. v. Sheldon (Vt. 1817) 2 Wheat. 119, 120, 4 L. Ed. 199.

Under that act fat cattle were provisions or munitions of war. U. S. v. Barber (Vt. 1815) 9 Cranch, 243, 244, 3 L. Ed. 719. But the driving of live oxen on foot was not a transportation within the act. U. S. v. Sheldon (Vt. 1817) 2 Wheat. 119, 120, 4 L. Ed. 199.

5. Proclamation.—The President's proclamation of October 14, 1905 (34 Stat. 3183), prohibiting the export of arms, ammunition, and munitions of war to the Dominican Republic, pursuant to a joint resolution of April 22, 1898, is still operative under the joint resolution of March 14, 1912. (1912) 29 Op. Atty. Gen. 387.

6. Exportation to China.—Prior to the extension of this section to apply to countries in which the United States exercises extraterritorial jurisdiction, it was the opinion of the Attorney General that the Department of Justice could do nothing to restrict the exportation of arms and warlike material to China during the then existing insurrectionary movements in that country. (1902) 24 Op. Atty. Gen. 26.

§ 237. Penalty for exportation of munitions of war. Whoever exports any arms or munitions of war in violation of the preceding section shall, on conviction, be punished by fine not exceeding $10,000, or by imprisonment not exceeding two years, or both. (Jan. 31, 1922, c. 44, § 2, 42 Stat. 361.)

Historical Note

See historical note to section 236, ante, of this title.

Notes of Decisions

1. Articles prohibited.—See notes of decisions under section 236 of this title.

2. Indictment.—An indictment alleging a shipment of munitions of war from New Haven, Conn., to Tucson, Ariz., to be there transshipped to the state of Sonora, Mexico, merely charged an intent to violate the law and was therefore fatally defective. U. S. v. Albert Steinfeld & Co. (D. C. Ariz. 1913) 209 F. 904.

3. —— Venue.—An indictment charging that defendants made and caused to be made a shipment of munitions of war from New Haven, Conn., to Tucson, Ariz., to be shipped from there to Mexico, held to show the commission of the offense, if any, in Connecticut and not in Arizona. U. S. v. Albert Steinfeld & Co. (D. C. Ariz. 1913) 209 F. 904.

4. —— Destination of shipment.—See, also, notes of decisions under section 236, ante, of this title, particularly note 3.

An indictment alleging a shipment of munitions of war to Tucson, Ariz., with the state of Sonora in Mexico as the ultimate destination, was fatally defective for failure to charge a place in Mexico to which the shipment was to be made. U. S. v. Albert Steinfeld & Co. (D. C. Ariz. 1913) 209 F. 904.

An indictment merely alleging a shipment of munitions of war to Sonora, Mexico, as the ultimate destination, held fatally defective for failure to specify a definite point of destination or to charge that the destination in the state of Sonora was to the grand jury unknown. U. S. v. Phelps-Dodge Mercantile Co. (D. C. Ariz. 1913) 209 F. 910.

5. Evidence to sustain conviction.—Evidence held to sustain a conviction for conspiracy to export arms to Mexico without license. Holmes v. U. S. (C. C. A. Tex. 1920) 267 F. 529, certiorari denied (1920) 41 S. Ct. 13, 254 U. S. 640, 65 L. Ed. 452.

Evidence that accused was taking some 2,000 rounds of ammunition on a mule toward a river crossing on the Mexican boundary, from which he was some 300 yards distant, etc., held to sustain conviction. Sotello v. U. S. (C. C. A. Tex. 1919) 256 F. 721.

§ 238. Seizure of munitions of war, etc., intended for export generally; forfeiture. Whenever an attempt is made to export or ship

from or take out of the United States any arms or munitions of war, or other articles, in violation of law, or whenever there shall be known or probable cause to believe that any such arms or munitions of war, or other articles, are being or are intended to be exported, or shipped from, or taken out of the United States, in violation of law, the several collectors, naval officers,* surveyors, inspectors of customs, and marshals, and deputy marshals of the United States, and every other person duly authorized for the purpose by the President, may seize and detain any articles or munitions of war about to be exported or shipped from, or taken out of the United States, in violation of law, and the vessels or vehicles containing the same, and retain possession thereof until released or disposed of as hereinafter in this chapter directed. If upon due inquiry as hereinafter in this chapter provided the property seized shall appear to have been about to be so unlawfully exported, shipped from, or taken out of the United States, the same shall be forfeited to the United States. (June 15, 1917, c. 30, Title VI, § 1, 40 Stat. 223.)

* The words "naval officers" (line 8) should read "comptrollers"; see section 38 of Title 19, Customs Duties.

Historical Note

This section and sections 239 to 245 of this title, were part of "An act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," cited to the text. Said sections constituted title VI of said act, and were preceded in the act as enacted by the subtitle "Seizure of Arms and Other Articles Intended for Export."

The President was authorized to sell, through the Secretary of War, the arms and ammunition then in the hands of the War Department, which had been seized under the provisions of this section and sections 239-245, post, of this title, by Act Sept. 22, 1922, c. 390, 42 Stat. 1012. That act has been omitted as temporary.

Notes of Decisions

1. What constitutes embargo violations.—See The Mary (R. I. 1815) 9 Cranch, 126, 3 L. Ed. 678; The Aeolus (Mass. 1818) 3 Wheat. 392, 4 L. Ed. 418; U. S. v. Hall (Pa. 1810) 6 Cranch, 171, 3 L. Ed. 189.

It was no offense against the embargo laws of the United States to take goods out of one vessel and put them into another, in the port of Baltimore, unless it were with an intent to export them. The Juliana (Md. 1810) 10 U. S. (6 Cranch) 327, 3 L. Ed. 238.

The evidence must be clear and positive of that necessity which will excuse a violation of the embargo laws. The James Wells v. U. S. (Conn. 1812) 11 U. S. (7 Cranch) 22, 3 L. Ed. 256.

A vessel actually and bona fide carried by force to a foreign port is not liable to forfeiture under Act Jan. 9, 1808. The William King (N. Y. 1817) 15 U. S. (2 Wheat.) 148, 4 L. Ed. 206.

Under a statute allowing a drawback "on the exportation" of certain articles, goods placed on board a vessel bound for a foreign port, to be used on board its vessel during its voyage, are not exported. Swan & Finch Co. v. U. S. (Ct. Cl. 1903) 190 U. S. 143, 23 S. Ct. 702, 47 L. Ed. 984.

The necessity which will excuse the master of a vessel for a breach of the embargo laws must be instant and imminent, and it must be such as cannot allow a different course without the greatest jeopardy to life and property. The Argo (C. C. Mass. 1812) Fed. Cas. No. 516. On a libel against a vessel for having proceeded to a foreign port in violation of Act Jan. 9, 1809 (2 Stat. 453), supplementary to the general embargo act, necessity arising from stress of weather and the condition of the vessel is no defense. U. S. v. The James Wells (C. C. Conn. 1808) Fed. Cas. No. 15,467, affirmed The James Wells v. U. S. (1812) 11 U. S. (7 Cranch) 202, 3 L. Ed. 256.

A vessel, obliged from irresistible necessity to put into a foreign port and sell her cargo, is not guilty of a violation of the embargo laws. The William Gray (C. C. N. Y. 1810) Fed. Cas. No. 17,694.

§ 239. Warrant for detention of property seized. It shall be the duty of the person making any seizure under sections 238 to 245, inclusive, of this chapter to apply, with due diligence, to the judge of the district court of the United States, or to the judge of the United States district court of the Canal Zone, or to the judge of a court of first instance in the Philippine Islands, having jurisdiction over the place within which the seizure is made, for a warrant to justify the further detention of the property so seized, which warrant shall be granted only on oath or affirmation showing that there is known or probable cause to believe that the property seized is being or is intended to be exported or shipped from or taken out of the United States in violation of law; and if the judge refuses to issue the warrant, or application therefor is not made by the person making the seizure within a reasonable time, not exceeding ten days after the seizure, the property shall forthwith be restored to the owner or person from whom seized. If the judge is satisfied that the seizure was justified under the provisions of sections 238 to 245, inclusive, of this chapter, and issues his warrant accordingly, then the property shall be detained by the person seizing it until the President, who is hereby expressly authorized so to do, orders it to be restored to the owner or claimant, or until it is discharged in due course of law on petition of the claimant, or on trial of condemnation proceedings, as provided in the following sections. (June 15, 1917, c. 30, Title VI, § 2, 40 Stat. 224.)

Historical Note

See historical note to section 238, ante, of this title.

Notes of Decisions

1. Necessity of warrant.—The provision of this section, that the officer seizing property as about to be unlawfully taken out of the United States shall apply within ten days to the District Judge for a warrant to justify its further detention, otherwise "the property shall forthwith be restored to the owner," is mandatory, and, if such application is not made within the time limited, the owner is entitled to return of the property. U. S. v. Two Hundred and Sixty-Seven Twenty-Dollar Gold Pieces (D. C. Wash. 1919) 255 F. 217.

§ 240. Petition for restoration of property seized. The owner or claimant of any property seized under sections 238 to 245, inclusive,

of this chapter may, at any time before condemnation proceedings have been instituted, as provided in the following sections, file his petition for its restoration in the district court of the United States, or the district court of the Canal Zone, or the court of first instance in the Philippine Islands, having jurisdiction over the place in which the seizure was made, whereupon the court shall advance the cause for hearing and determination with all possible dispatch, and, after causing notice to be given to the United States attorney for the district and to the person making the seizure, shall proceed to hear and decide whether the property seized shall be restored to the petitioner or forfeited to the United States. (June 15, 1917, c. 30, Title VI, § 3, 40 Stat. 224.)

Historical Note

See historical note to section 238, ante, of this title.

§ 241. Libel and sale of property seized. Whenever the person making any seizure under sections 238 to 245, inclusive, of this chapter applies for and obtains a warrant for the detention of the property, and (a) upon the hearing and determination of the petition of the owner or claimant restoration is denied, or (b) the owner or claimant fails to file a petition for restoration within thirty days after the seizure, the United States attorney for the district wherein it was seized, upon direction of the Attorney General, shall institute libel proceedings in the United States district court or the district court of the Canal Zone or the court of first instance of the Philippine Islands having jurisdiction over the place wherein the seizure was made, against the property for condemnation; and if, after trial and hearing of the issues involved, the property is condemned, it shall be disposed of by sale, and the proceeds thereof, less the legal costs and charges, paid into the Treasury. (June 15, 1917, c. 30, Title VI, § 4, 40 Stat. 224.)

Historical Note

See historical note to section 238, ante, of this title.

§ 242. Method of trial; right to jury trial; bond for redelivery. The proceedings in such summary trials upon the petition of the owner or claimant of the property seized, as well as in the libel cases in the preceding sections provided for, shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in such libel cases, and all such proceedings shall be at the suit of and in the name of the United

States: *Provided*, That upon the payment of the costs and legal expenses of both the summary trials and the libel proceedings in the preceding sections provided for, and the execution and delivery of a good and sufficient bond in an amount double the value of the property seized, conditioned that it will not be exported or used or employed contrary to the provisions of sections 238 to 245, inclusive, of this chapter, the court, in its discretion, may direct that it be delivered to the owners thereof or to the claimants thereof. (June 15, 1917, c. 30, Title VI, § 5, 40 Stat. 224.)

Historical Note

See historical note to section 238, ante, of this title.

Cross-References

The Admiralty Rules annotated are set out under section 723 of Title 28, Judicial Code and Judiciary.

Notes of Decisions

1. Construction of statute in general.—Where the United States libeled gold coin, on the ground that it was delivered for export and shipment and for the purpose of being taken out of the United States, in violation of title 7 of Act June 15, 1917, c. 30, and of the presidential proclamation of September 7, 1917, held that, as the proceeding fell within title 7 of the act dealing with exports, return of the coin on the giving of bond, etc., could not be allowed, under this section, which is part of the general provision relating to seizure of arms, etc. U. S. v. Fernandez (C. C. A. Tex. 1918) 254 F. 302. Title 7 of Act June 15, 1917, c. 30, 40 Stat. 225, referred to in the foregoing decision, was limited to the duration of the World War and has been omitted from the Code as obsolete. (Compiler's Note.)

§ 243. General extent of interference with foreign trade. Except in those cases in which the exportation of arms and munitions of war or other articles is forbidden by proclamation or otherwise by the President, as provided in section 238 of this chapter, nothing contained in sections 238 to 245, inclusive, of this chapter shall be construed to extend to, or interfere with any trade in such commodities, conducted with any foreign port or place wheresoever, or with any other trade which might have been lawfully carried on before June 15, 1917, under the law of nations, or under the treaties or conventions entered into by the United States, or under the laws thereof. (June 15, 1917, c. 30, Title VI, § 6, 40 Stat. 225.)

Historical Note

See historical note to section 238, ante, of this title.

§ 244. Discretion of President in ordering release of property seized. Upon payment of the costs and legal expenses incurred in the summary trial provided for in the preceding sections for posses-

sion or libel proceedings, the President is hereby authorized, in his discretion, to order the release and restoration to the owner or claimant, as the case may be, of any property seized or condemned under the provisions of sections 238 to 245, inclusive, of this chapter. (June 15, 1917, c. 30, Title VI, § 7, 40 Stat. 225.)

Historical Note

See historical note to section 238, ante, of this title.

§ 245. **Use of land and naval forces to prevent exportation.** The President may employ such part of the land or naval forces of the United States as he may deem necessary to carry out the purposes of the preceding seven sections. (June 15, 1917, c. 30, Title VI, § 8, 40 Stat. 225.)

Historical Note

See historical note to section 238, ante, of this title.

§ 246. **Wearing without authority uniform, etc., of friendly nation; punishment.** It shall be unlawful for any person, with intent to deceive or mislead, within the United States or Territories, possessions, waters, or places subject to the jurisdiction of the United States, to wear any naval, military, police, or other official uniform, decoration, or regalia of any foreign state, nation, or government with which the United States is at peace, or any uniform, decoration, or regalia so nearly resembling the same as to be calculated to deceive, unless such wearing thereof be authorized by such state, nation, or government.

Any person who violates the provisions of this section shall upon conviction be punished by a fine not exceeding $300 or imprisonment for not exceeding six months, or by both such fine and imprisonment. (July 8, 1918, c. 138, 40 Stat. 821.)

Historical Note

This section was an act entitled "An act providing for the protection of the uniform of friendly nations, and for other purposes," cited to the text.

§ 247. **Facilitating work of foreign traveling salesmen; licenses and certificates of identification.—**

Whereas the United States has entered into conventions with the Governments of Uruguay, Guatemala, Salvador, Panama, and Venezuela which were signed on August 27, 1918, December 3, 1918, January 28, 1919, February 8, 1919, and July 3, 1919, respectively, for facilitating the work of traveling salesmen; and

Whereas Articles I and II of each of said conventions read as follows:

"Article I. Manufacturers, merchants, and traders domiciled within the jurisdiction of one of the high contracting parties may operate as commercial travelers either personally or by means of agents or employees within the jurisdiction of the other high contracting party on obtaining from the latter, upon payment of a single fee, a license which shall be valid throughout its entire territorial jurisdiction.

"In case either of the high contracting parties shall be engaged in war, it reserves to itself the right to prevent from operating within its jurisdiction under the provisions of this treaty, or otherwise, enemy nationals or other aliens whose presence it may consider prejudicial to public order and national safety.

"Art. II. In order to secure the license above mentioned the applicant must obtain from the country of domicile of the manufacturers, merchants, and traders represented a certificate attesting his character as commercial traveler. This certificate, which shall be issued by the authority to be designated in each country for the purpose, shall be visaed by the consul of the country in which the applicant proposes to operate, and the authorities of the latter shall, upon the presentation of such certificate, issue to the applicant the national license as provided in Article I."

Now, therefore, the Secretary of Commerce, or any person in the Department of Commerce designated by him, is hereby authorized to issue the licenses and certificates of identification which are provided for by the said Articles I and II, respectively, of the said conventions, or which may be provided for by similar articles in any convention or treaty that may, after September 22, 1922, be concluded by the United States with a foreign government, and is further authorized to collect a reasonable fee for each license and certificate of identification issued. The amount of such fee shall be fixed by regulations made by the Secretary of Commerce and shall be paid into the Treasury of the United States quarterly. (Sept. 22, 1922, c. 414, 42 Stat. 1028.)

Historical Note

This section is an act entitled "An act to give effect to certain provisions of conventions with foreign governments for facilitating the work of traveling salesmen," cited to the text.

CHAPTER 6.—FOREIGN DIPLOMATIC AND CONSULAR OFFICERS

Section 251. Violation of safe conduct; penalty. Every person who violates any safe conduct or passport duly obtained and issued under authority of the United States, shall be imprisoned for not more than three years, and fined, at the discretion of the court. (R. S. § 4062.)

Historical Note

As enacted, R. S. § 4062, contained, after the words "United States," appearing herein, the additional words "or who assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of a public minister, in violation of the law of nations." These provisions are incorporated in section 255, post, of this title. R. S. § 4062, was derived from Act April 30, 1790, c. 9, § 28, 1 Stat. 118.

Notes of Decisions

See, also, notes of decisions under section 255, post, of this title.

1. Source of statute.—Sections 251-255 of this title were originally drawn from the statute of 7 Anne, c. 12, which was declaratory of the law of nations, but did not and could not alter that law. In re Baiz (N. Y. 1890) 10 S. Ct. 854, 858, 135 U. S. 403, 34 L. Ed. 222.

§ 252. Suits against ministers and their domestics prohibited. Whenever any writ or process is sued out or prosecuted by any person in any court of the United States, or of a State, or by any judge or justice, whereby the person of any ambassador or public minister of any foreign prince or State, authorized and received as such by the President, or any domestic or domestic servant of any such minister, is arrested or imprisoned, or his goods or chattels are distrained, seized, or attached, such writ or process shall be deemed void. (R. S. § 4063.)

Historical Note

R. S. § 4063, cited to the text, was derived from Act April 30, 1790, c. 9, § 25, 1 Stat. 117.

Cross-References

Supreme Court given exclusive jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their domestics, such as a court of law can have consistently with the law of nations, and original jurisdiction of all suits brought by ambassadors, etc., see section 341 of Title 28, Judicial Code and Judiciary.

Notes of Decisions

1. Nature of privilege.—The laws of the United States, which punish those who violate the privileges of a foreign minister, are equally obligatory on the state courts as on those of the United States. Ex parte Cabrera (C. C. Pa. 1805) Fed. Cas. No. 2,278.

The provision of the constitution which secures to the accused in criminal prosecutions the right to have compulsory process for obtaining witnesses in his favor does not authorize the issuing of such process to ambassadors, who by public law, or to consuls, who by treaty, are not amenable to the process of the courts. In re Dillon (D. C. Cal. 1854) Fed. Cas. No. 3,914.

An ambassador is not liable in any case, according to the law of nations, to answer, either criminally or civilly, before any court of the foreign nation to which he is sent. Conformable to this principle is this section. (1797) 1 Op. Atty. Gen. 71; (1849) 5 Op. Atty. Gen. 69.

The rights and privileges of consuls rest on the general law of nations, as well as on treaty stipulations. Carpigiani v. Hall (1911) 55 So. 248, 172 Ala. 287, Ann. Cas. 1913D, 651.

The privileges of foreign ministers have their origin and support in the law of nations. They are founded on the right of embassies between nations, and the inviolability of ambassadors is a certain consequence of that right, and is indispensable to its perfect enjoyment. The act of congress of April, 1790 (incorporated in part in this section) was not necessary or intended to confer privileges, nor does it limit their extent. Its object was to enforce the privileges of ambassadors, and to punish all violations of it. Holbrook v. Henderson (1851) 6 N. Y. Super. Ct. (4 Sandf.) 619.

2. Persons entitled to privilege—Ambassador or minister.—The privileges of a foreign minister are not extended to a person having a commission from a revolutionary government not acknowledged by the United States. U. S. v. Skinner (C. C. N. Y. 1818) Fed. Cas. No. 16,309.

An ambassador or foreign minister is not amenable to the laws of the nation to which he is sent. State v. De La Foret (S. C. 1820) 2 Nott & McC. 217.

3. —— Attaché.—That one served with the summons and complaint as agent of a de facto government exercising authority in a portion of the former Russian Empire was an attaché of the Russian Embassy did not invalidate the service, under this section. Nankivel v. Omsk All Russian Government (1922) 197 N. Y. S. 467, 203 App. Div. 740, reversed on other grounds (1923) 237 N. Y. 150, 142 N. E. 569.

Foreign diplomatic attaché, accredited to another foreign power, is entitled to immunity from arrest, but is not entitled, under principles of international law, to exemption from civil process while traveling in this country to or from scene of his duties. Carbone v. Carbone (1924) 206 N. Y. S. 40, 123 Misc. Rep. 656.

Foreign diplomatic attaché, accredited to another foreign power cannot, while traveling in this country, claim immunity from service of process or from arrest under federal Judicial Code (Part I of Title 28, Judicial Code and Judiciary), which applies only to those of diplomatic status accredited to United States government. Id.

One who is an attaché of the French legation at Washington, and commissioner of France to the Centennial Exhibition, is privileged from arrest here on a capias in an action of malicious prosecution instituted by another. In re Aufrye (Pa. 1876) 3 Wkly. Notes Cas. 188.

An attaché to a foreign legation is a public minister, within Act 1790 (incorporated in part in this section) prohibiting an officer from executing process on a public minister. U. S. v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

4. —— Secretary.—The secretary of a legation is entitled to the protection of

the laws of nations against any civil or criminal prosecution. Ex parte Cabrera (C. C. Pa. 1805) Fed. Cas. No. 2,278. See, also, U. S. v. Lafontaine (C. C. Dist. Col. 1831) Fed. Cas. No. 15,550.

5. —— **Chargé d'affaires.**—A chargé d'affaires is entitled to privilege from arrest until his return home, although he has been for some months superseded by a minister plenipotentiary; a detention of the former being occasioned by his official business. Du Pont v. Pichon (Pa. 1805) 4 Dall. 321, 323, 324, 1 L. Ed. 851.

An American citizen, who had charge of a legation ad interim, as custodian, through whom it was by courtesy arranged that necessary communications might be sent, held not a public minister, entitled to immunity from suit in a District Court. Hollander v. Baiz (D. C. N. Y. 1890) 41 F. 732, 734.

6. —— **Consuls.**—A foreign consul is not privileged from prosecution for a misdemeanor by virtue of his consular appointment. U. S. v. Ravara (C. C. Pa. 1793) Fed. Cas. No. 16,122, 2 Dall. 297, 1 L. Ed. 388; U. S. v. Ravara (C. C. Pa. 1794) Fed. Cas. No. 16,122a, 2 Dall. 299, note.

Certificates of French ambassador that no position of vice consul existed held not to affect treaty with France, granting immunity from civil action to vice consuls. The Lonsdale Shop v. Bibily (Sup. 1925) 213 N. Y. S. 170, 126 Misc. Rep. 445.

Certificate of Secretary of State held not to entitle chancellor of French consulate general to immunity from civil action. Id.

Service on chancellor at office of consulate general held void. Id.

Chancellor attached to French consulate general of New York held not exempt from service of process made at proper place. Tailored Woman, Inc., v. Bibily (Mun. Ct. 1925) 212 N. Y. S. 704, 126 Mic. Rep. 359.

Chancellor of French consulate general held not entitled to immunity from civil action. Moracchini v. Moracchini (Sup. 1925) 213 N. Y. S. 168, 126 Misc. Rep. 443.

A foreign consul, notwithstanding his official character, is indictable in this country and triable in the federal court for the common-law offense of sending anonymous and threatening letters with intent to extort money. U. S. v. Ravara (C. C. Pa. 1794) Fed. Cas. No. 16,122a, 2 Dall. 299, note.

A consul is not entitled, by the laws of nations, to the immunities and privileges of an ambassador or public minister. He is liable to civil suits, like any other individual, in the tribunals of the country in which he resides. Gittings v. Crawford (C. C. N. Y. 1838) Fed. Cas. No. 5,465.

A consul is not, as such, privileged from legal process by the law of nations, nor is the French consul general by the consular convention of 1788 between the United States and France (1797) 1 Op. Atty. Gen. 77.

Foreign consuls and vice consuls are not public ministers within the law of nations or the acts of Congress, but are amenable to the civil jurisdiction of our courts. (1820) 1 Op. Atty. Gen. 406.

Foreign consuls in the United States are entitled to no immunities beyond those enjoyed by foreigners coming to this country in a private capacity, except that of being sued and prosecuted exclusively in the Federal courts. (1835) 2 Op. Atty. Gen. 725.

A foreign consul, resident in the United States, must look for protection in his personal and property rights to the laws of the state in which he resides. (1887) 19 Op. Atty. Gen. 16.

7. —— **Public trustee.**—In proceedings by Alien Property Custodian for seizure of the property of an alien enemy, under Trading with the Enemy Act, § 17, 40 Stat. 425 (omitted from Code as obsolete), refusal to pass on claims asserted in the property by the British Public Trustee held proper, since the trustee's remedy for the determination of such claims was under section 9 as amended by Act July 11, 1919, § 1, and Act June 5, 1920, in view of section 7 (c), as amended by Act Nov. 4, 1918, specifying the remedy of any "person" having any claim; the British trustee being a "person" within such statute, notwithstanding Const. art. 3, and this section. Miller v. Kallwerke Aschersleben Aktien-Gesellschaft (C. C. A. N. Y. 1922) 283 F. 746.

8. —— **Servants.**—It is a breach of diplomatic privilege for an officer to enter the dwelling house of a secretary of legation, and seize there a runaway slave. U. S. v. Jeffers (C. C. Dist. Col. 1836) Fed. Cas. No. 15,471.

If a slave, employed by the representative of a foreign government, without the owner's authority, be reclaimed by the owner with or without legal process, the

reclamation is not a breach of diplomatic privilege. (1837) 9 Op. Atty. Gen. 7.

An indictment of a domestic servant of a foreign minister, for assault and battery, was quashed on motion and affidavit in U. S. v. Lafontaine (C. C. Dist. of Col. 1831) 4 Cranch, 173, 26 Fed. Cas. No. 15,-550.

The comites or those of the train of a minister partake of his inviolability. Respublica v. De Longchamps (Pa. 1784) 1 Dall. 111.

9. —— **House.**—The entering a public minister's house to serve an execution will either be absorbed in the arrest, as being necessarily associated with it, if that should be found criminal; or, if the arrest be admissible such entering must be punished, if at all, under the law of nations, as being left untouched by the statute. (1792) 1 Op. Atty. Gen. 27.

A minister plenipotentiary of a foreign power is not exempt from the application of the mechanic's lien law of this state, as to any house or building which is not used as a mansion for purposes connected with his representative character; and, where exemption is claimed, it must appear by the proof that he is entitled to a suspension of the rule that the lex rei sitæ controls. Byrne v. Herran (N. Y. 1863) 1 Daly, 344.

The reasons that establish the independence and inviolability of the person of a minister apply also to secure the immunities of his house. Respublica v. De Longchamps (Pa. 1784) 1 Dall. 111.

10. —— **Personal effects.**—It is unlawful for the keeper of a hotel in Washington with whom the attaché of the legation of France is a boarder to oppose by force, in any manner, the removal therefrom of any of his personal effects. (1849) 5 Op. Atty. Gen. 69.

11. —— **Privilege of transit.**—A person coming to this government as the pretended diplomatic minister of a foreign state, and not recognized or received as such, has no diplomatic privilege, except of transit, and that by comity, not of right, which qualified privilege is subject to be withdrawn from him, leaving him amenable to the municipal law, if he engage in or contemplate any act not consonant with the laws, peace, or public honor of the United States. (1855) 8 Op. Atty. Gen. 471.

The obligation to permit the minister to pass through the country without restraint on his personal liberty is positive upon the intermediate nation, and its refusal would be a clear violation of the free right of embassy, secured by international law though he has not secured a passport, as the practice of granting passports for the safe conduct is unknown in this country except in time of war. Holbrook v. Henderson (1851) 6 N. Y. Super. Ct. (4 Sandf.) 619. Nor is it necessary that he should otherwise have obtained the express permission of the government to entitle him to the privilege. Id.

An ambassador from one sovereign state to another, while traveling through the territories of a state to which he is not accredited, in the execution of the duties of his mission, is privileged from arrest on civil process. Id; Wilson v. Blanco (1889) 56 N. Y. Super. Ct. (24 Jones & S.) 582, 4 N. Y. S. 714.

12. —— **Privilege of consuls.**—In a prosecution against private individuals for violating the neutrality laws of the United States by fitting out a warlike vessel to aid a rebellion against a foreign power, the vice consul of that power cannot be compelled by legal process to attend as a witness in behalf of the United States, when it appears that the insurgent party has been successful, and the government established by it has been recognized by the United States. U. S. v. Trumbull (D. C. Cal. 1891) 48 F. 94.

If a foreign consul fails to obey an order of a state tribunal for his appearance and examination as judgment debtor, he is not subject to an attachment. Griffin v. Dominguez (N. Y. 1853) 2 Duer, 656.

A foreign consul may be summoned as garnishee in foreign attachment. Kidderlin v. Meyer (Pa. 1838) 2 Miles, 242.

13. **Termination of privilege.**—A vice consul of a foreign nation, who possesses an unrevoked exequatur issued by the president of the United States, must still be recognized by the courts as the accredited representative of his country, entitled to all the privileges appertaining to that office, notwithstanding that the government which sent him has been overthrown, and an apparently successful revolutionary government established in its place. U. S. v. Trumbull (D. C. Cal. 1891) 48 F. 94.

Where a foreign minister announces to the government of the United States that his diplomatic functions have ceased by virtue of the termination in fact of the government which appointed him, and subsequently a minister appointed by the new foreign government is duly recognized, upon which the government of the United States grants a passport to the first, styling him as "having resided here, etc., in the United States, as chargé d'affaires," his privilege as returning minister has not been divested. D'Azambuja v. Pereira (Pa. 1830) 1 Miles, 360.

A suit brought by a newly-appointed diplomatic agent as chargé d'affaires against the agent whom he succeeded to recover the archives and documents of the diplomatic mission, commenced by service on defendant while returning to his native country, is not evidence that the sovereign of the foreign country has deprived the latter of his privileges; and such suit does not ipso facto deprive defendant of the privileges attached to him as a returning officer. Id.

14. Proof of official character.—A certificate by the secretary of state, under seal, that a person has been recognized by the department of state as a foreign minister, is sufficient to prove his immunity from arrest. U. S. v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

A suit cannot be dismissed on motion, except on incontrovertible evidence that defendant is a public minister. Hollander v. Baiz (D. C. N. Y. 1890) 41 F. 732, 734.

15. Waiver of privilege.—A foreign minister cannot waive his privileges or immunities, and his submission or consent to an arrest is no justification. U. S. v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

16. Redress for breach of privilege.—It is the duty of the state court to quash proceedings therein in violation of the privilege of a foreign minister. Ex parte Cabrera (C. C. Pa. 1805) Fed. Cas. No. 2,278.

Though the transaction which gave rise to a suit instituted against the French consul general was of a public nature, in which he acted as agent of his government, the President has no constitutional right to interpose his authority, but must leave the matter to the tribunals of justice. (1797) 1 Op. Atty. Gen. 77.

It is not incumbent on the Secretary of State to interfere to prevent a breach of the privilege of a minister. The statute which forbids the act and prescribes the penalty refers them to the judiciary. (1849) 5 Op. Atty. Gen. 69.

For injuries done by private persons to the representatives of foreign governments, the government of the United States affords redress through its judicial tribunals, and the executive department has no power to redress such injuries. (1857) 9 Op. Atty. Gen. 7.

§ 253. Penalty for wrongful suit. Whenever any writ or process is sued out in violation of the preceding section, every person by whom the same is obtained or prosecuted, whether as party or as attorney or solicitor, and every officer concerned in executing it, shall be deemed a violator of the laws of nations and a disturber of the public repose, and shall be imprisoned for not more than three years, and fined at the discretion of the court. (R. S. § 4064.)

Historical Note

R. S. § 4064, cited to the text, was derived from Act April 30, 1790, c. 9, § 26, 1 Stat. 118.

Notes of Decisions

1. Acts constituting offense.—The issuance of a writ of execution against the person or chattels of a foreign minister is a "suing out" within the meaning of this section, and renders the party obtaining such writ liable to the penalty prescribed. (1883) 17 Op. Atty. Gen. 563.

The marshal in whose hands a writ is placed for execution is not an "officer concerned in executing it" under the statute, where he merely serves notice upon the minister, but does not in fact execute the writ. Id.

2. Prosecution.—To support an indictment under this section it is not necessary that defendant, who executed the process, should know the person arrested to be a foreign minister, or that he was in fact an officer. U. S. v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

Cases within this section should be prosecuted by the United States attorney of the proper district as other misdemeanors are prosecuted. (1883) 17 Op. Atty. Gen. 563.

§ 254. Exceptions as to suits against servants, etc., of minister; listing servants. The two preceding sections shall not apply to any case where the person against whom the process is issued is a citizen or inhabitant of the United States, in the service of an ambassador or a public minister, and the process is founded upon a debt contracted before he entered upon such service; nor shall the preceding section apply to any case where the person against whom the process is issued is a domestic servant of an ambassador or a public minister, unless the name of the servant has, before the issuing thereof, been registered in the Department of State, and transmitted by the Secretary of State to the marshal of the District of Columbia, who shall upon receipt thereof post the same in some public place in his office. All persons shall have resort to the list of names so posted in the marshal's office, and may take copies without fee. (R. S. §§ 4065, 4066.)

Historical Note

This is a combination of R. S. §§ 4065 and 4066, the last sentence only being derived from the latter.

Both of the sections aforesaid were from section 27 of Act April 30, 1790, c. 9, 1 Stat. 118.

The words "an ambassador," appearing twice herein, were not contained in R. S. § 4065.

§ 255. Assaulting, etc., foreign minister. Every person who assaults, strikes, wounds, imprisons, or in any other manner offers violence to the person of an ambassador or a public minister, in violation of the law of nations, shall be imprisoned for not more than three years, and fined, at the discretion of the court. (R. S. § 4062.)

Historical Note

See historical note to section 251, ante, of this title.

Notes of Decisions

1. Nature of offense.—The willful injury to the dwelling of a foreign minister is an attack on the minister and his sovereign, and punishable as such. U. S. v. Hand (C. C. Pa. 1810) Fed. Cas. No. 15,297.

Impliedly, the law of nations, although not specially adopted by the Constitution or any municipal act, is considered by this section as being in force, and some of its subjects thrown under particular provisions. (1792) 1 Op. Atty. Gen. 27.

As a secretary of legation is entitled to all the immunities of a minister, an assault on such secretary is punishable as a violation of the law of nations. So of threats of harm to his person in the domicile of the minister. Respublica v. De Longchamps (Pa. 1784) 1 Dall. 111.

2. Jurisdiction of courts.—A prosecution under Crimes Act of 1790 (incorporated in part in this section) for infracting the law of nations by offering violence to a foreign minister was held to be not a case "affecting ambassadors, other public ministers, and consuls," within the federal constitution. U. S. v. Ortega (Pa. 1826) 11 Wheat. 467, 468, 6 L. Ed. 521.

See also section 341 of Title 28, Judicial Code and Judiciary, and notes of decisions thereunder.

3. Evidence.—Upon an indictment for assaulting a member of legation, the certificate of the secretary of state, dated subsequently to the assault, is the best evidence to prove the diplomatic character of the person assaulted. But parol evidence is admissible to prove the period when a person was considered by the United States government as a minister. U. S. v. Liddle (C. C. Pa. 1808) Fed. Cas. No. 15,598.

Upon an indictment for an assault committed on a foreign minister, proof that the person assaulted is received and recognized by the executive of the United States is conclusive as to his public character. U. S. v. Ortega (C. C. Pa. 1825) Fed. Cas. No. 15,971, certified questions answered (1826) 11 Wheat. 467, 6 L. Ed. 521.

A certificate by the secretary of state, under seal of office, that a person has been recognized by the department of state as a foreign minister is full evidence that he has been authorized and received as such by the President. U. S. v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

4. Defenses.—It is no defense to an indictment for an assault on a foreign minister that defendant was ignorant of his public character. U. S. v. Ortega (C. C. Pa. 1825) Fed. Cas. No. 15,971, certified questions answered (1826) 11 Wheat. 467, 6 L. Ed. 521; Same v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

If a foreign minister commits the first assault, he forfeits his immunity so far as to excuse defendant for returning it. U. S. v. Liddle (C. C. Pa. 1808) Fed. Cas. No. 15,598; Same v. Ortega (C. C. Pa. 1825) Fed. Cas. No. 15,971, certified questions answered (1826) 11 Wheat. 467, 6 L. Ed. 521; Same v. Benner (C. C. Pa. 1830) Fed. Cas. No. 14,568.

5. Consuls.—A riot before the house of a foreign consul is not an offense within this section, and cannot be prosecuted in the courts of the United States. (1794) 1 Op. Atty. Gen. 41.

A foreign consul, resident in the United States, must look for protection in his person and property to the laws of the state in which he resides. (1887) 19 Op. Atty. Gen. 16.

§ 256. Jurisdiction of consular officers in disputes between seamen. Whenever it is stipulated by treaty or convention between the United States and any foreign nation that the consul general, consuls, vice consuls, or consular or commercial agents of each nation, shall have exclusive jurisdiction of controversies, difficulties, or disorders arising at sea or in the waters or ports of the other nation, between the master or officers and any of the crew, or between any of the crew themselves, of any vessel belonging to the nation represented by such consular officer, such stipulations shall be executed and enforced within the jurisdiction of the United States as in the two following sections declared. But before this section shall take effect as to the vessels of any particular nation having such treaty with the United States, the President shall be satisfied that similar provisions have been made for the execution of such treaty by the

other contracting party, and shall issue his proclamation to that effect, declaring this section to be in force as to such nation. (R. S. § 4079.)

Historical Note

R. S. §§ 4079–4081 (sections 256–258 of this title) were derived from sections 1 and 2 of Act June 11, 1864, c. 116, 13 Stat. 121.

Notes of Decisions

1. Constitutionality.—The provision of Const. art. 3, § 2, that "the judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction" is not to be so construed as to annul the provisions of a treaty giving consular representatives of another nation jurisdiction over controversies between officers and seamen of vessels of such nation, the word "all" in such provision being used for the purpose of excluding jurisdiction of the states over admiralty and maritime causes. The Koenigin Luise (D. C. N. J. 1910) 184 F. 170.

2. Effect of statute.—The statute does not affect the force of treaty provisions excluding the admiralty courts from jurisdiction of controversies between masters and crews of foreign vessels. The Ester (D. C. S. C. 1911) 190 F. 216.

3. Nature of jurisdiction.—The admiralty jurisdiction exercised by foreign consuls in the United States was not of right; such jurisdiction could only be exercised by virtue of a treaty. The Betsey (Md. 1794) 3 Dall. 6, 16, 1 L. Ed. 485.

This statute, having been passed for the purpose of executing treaties, must be regarded as the only means proper to be adopted for that purpose. Dallemagne v. Moisan (Cal. 1905) 25 S. Ct. 422, 424, 197 U. S. 169, 49 L. Ed. 709.

A German, on being duly enrolled and signing articles as a seaman on a Swedish ship, became for the time being, for all purposes of consideration by the courts of the United States in his relations to the ship, a subject of the Kingdom of Sweden. The Ester (D. C. S. C. 1911) 190 F. 216.

When a consul intervenes in a controversy between master and seamen, by mutual consent of the disputants, he acts as an arbitrator and not as consul. (1895) 21 Op. Atty. Gen. 201.

4. Jurisdiction of court of admiralty.—Whether the court shall take jurisdiction of a suit by a foreign seaman against a foreign ship for wages is a matter largely in its own discretion, and it may do so notwithstanding a request to the contrary by the consul of the country to which the ship belongs. Steindl v. The Lady Furness (D. C. N. Y. 1897) 84 F. 679.

A number of British seamen who shipped in England on a British vessel for a voyage to the United States and return made repeated complaint of the insufficiency of the food furnished. On arriving at New York a partial examination of the matter was made by the British consul on the oral complaint of the men, and he directed their return to the ship. Upon subsequent complaint he directed that a written complaint be filed, and that a thorough examination be made thereon. The men filed no such complaint, but left the ship, and brought suit in a court of admiralty to recover their wages. Held, that in the absence of proof of oppression or gross hardship, or that they would not be accorded a fair and impartial hearing by the consul in accordance with the British shipping act, the court should decline jurisdiction. The Heathcraig (D. C. N. Y. 1901) 108 F. 419.

What circumstances will influence a court of admiralty to take jurisdiction of a suit between a foreign seaman and a foreign vessel, in the absence of applicable treaty stipulations, over the protest of the consul of the country to which the vessel belongs, is a matter to be determined on the particular facts of each case. Where treaty stipulations exist with regard to the right of the consul of a foreign country to adjudge controversies arising between the master and crew of ships of such country or other matters occurring on the ship, such stipulations are the law of the land and must be faithfully and fairly observed. Assuming that such treaties do not exclude the jurisdiction of a court of admiralty absolutely, but that it may assume such jurisdiction in its discretion, it should not do so over

the objection of a consul indorsed by the minister from that country. The Ester (D. C. S. C. 1911) 190 F. 216.

5. Particular treaties.—The imprisonment of an insubordinate seaman on a French vessel, pursuant to article 8 of the treaty with France of August 12, 1853 (10 Stat. 992, 996), providing that such persons may be arrested on the written requisition of the consul, supported by an official extract from the register of the ship or the list of the crew, and shall be held, during the whole time of their stay in the port, at the disposal of the consuls, need not end with the departure of the vessel from the port at which the seaman was taken from the vessel, but may last until the expiration of the two months, which is the limit prescribed by Act June 11, 1864, c. 116, 13 Stat. 121, carried forward in substance as R. S. §§ 4079–4081 (this section and sections 257 and 258 of this title), enacted to provide for the execution of treaties respecting consular jurisdiction over the crews of foreign vessels in the waters and ports of the United States. Dallemagne v. Moisan (Cal. 1905) 25 S. Ct. 422, 197 U. S. 169, 49 L. Ed. 709.

Only a federal marshal can make an arrest on the requisition of a French consul, charging a seaman on a French vessel with insubordination, conformably to article 8 of the treaty with France of Aug. 12, 1853 (10 Stat. 992, 996), since this, being the mode of arrest specified by Act June 11, 1864, c. 116, 13 Stat. 121, enacted to provide for the execution of treaties respecting consular jurisdiction over the crews of foreign vessels in the waters and ports of the United States, and re-enacted in substance in R. S. §§ 4079–4081 (this section and sections 257 and 258 of this title), must be regarded as the only means proper to be adopted for this purpose. Id.

Under the treaty with Prussia of May 1, 1828, the district court has no jurisdiction of a suit in rem for wages by the crew of a Prussian vessel, where the Prussian consul has previously adjudicated on the claim. The Elwine Kreplin (C. C. N. Y. 1872) Fed. Cas. No. 4,426, reversing (D. C. 1870) Fed. Cas. No. 4,427.

Under the treaty between the United States and the free Hanseatic towns, the federal courts have no jurisdiction of a dispute in respect to wages between the master of a vessel belonging to Bremen and a seaman who is a citizen thereof. Kendept v. The Theodore Korner (D. C. Md. 1854) Fed. Cas. No. 7,693.

The thirteenth article of the treaty between Sweden and the United States, of July 4, 1827 (8 Stat. 340, 352), provides "that each country shall have the right to appoint consuls, vice consuls, etc., in the commercial ports and places of the other country," and that such consuls, etc., "shall have the right, as such, to sit as judges and arbiters in such differences as may arise between the captain and crews of the vessel belonging to the nation whose interests are committed to their charge, without the interference of the local authorities." Held, that the district court was not thereby debarred from exercising its authority in a case within the terms of such treaty, where there was no consul, or other officer of Sweden, within the territorial jurisdiction of the court. The Amalia (D. C. Me. 1880) 3 F. 652.

In the treaty between the United States and the kingdom of Norway and Sweden, by which the consuls of either nation have a right "to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nations whose interests are committed to their charge, without the interference of the local authorities," the term "crews" includes all of the ship's seamen and officers, except the captain. The Marie (D. C. Or. 1892) 49 F. 286.

Any person who, in pursuance of any contract, for a long or a short period or voyage, is on board of a Norwegian vessel, aiding in her navigation, is a member of the crew of such vessel, within the purview of article 13 of the treaty of 1827 between the United States and the kingdom of Norway and Sweden, and the consul of that country has exclusive jurisdiction of any difference arising between him and the master of such vessel, though such person is an American citizen, and shipped at an American port. Id.

The Norwegian consul has by treaty exclusive jurisdiction to hear and determine complaints of ill treatment of seamen shipping from an American port for a voyage on a Norwegian vessel. The Welhaven (D. C. Ala. 1892) 55 F. 80.

Article 13 of the treaty of December 11, 1871, between the German empire and the United States (17 Stat. 928), which gives

the consular officers of each country exclusive power to determine differences between the captains and crews of vessels of their own nation, and prohibits the courts of the other country from interfering therein, does not expressly or by implication grant privileges or confer powers which exempt a German vessel employing seamen in a port of this country from the obligation to observe the restrictive provisions of section 24 of the act of Dec. 21, 1898 (section 599 of Title 46, Shipping); nor does it deprive the admiralty courts of the United States of jurisdiction to determine the rights of an American seaman who enters and leaves the service of a German vessel within this country. The Neck (D. C. Wash. 1905) 138 F. 144.

A court of admiralty of the United States is without jurisdiction of a suit against a German vessel to recover wages, brought by seamen who are not citizens of the United States, but who signed before a German consul in a port thereof and were discharged in another port after completing their term of service without objection; and such jurisdiction is not conferred merely by the fact that they were paid wages in advance, in violation of Act Dec. 21, 1898, § 24 (section 599 of Title 46, Shipping). The Bound Brook (D. C. Mass. 1906) 146 F. 160.

The provision of the treaty between the German Empire and the United States, does not include a claim by a seaman against a vessel or owner for a tort so as to exclude the jurisdiction of a United States court of admiralty of a suit on such a claim against a German vessel. The Baker (D. C. N. Y. 1907) 157 F. 485.

The treaty of July 4, 1827 (8 Stat. 353, art. 13), between the kingdom of Norway and the United States provides that "the consuls, vice consuls or commercial agents * * * shall have the right as such to sit as judges and arbitrators in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities, unless the conduct of the crews or of the captain should disturb the order or tranquillity of the country." Held, that giving such provision the liberal construction required in case of treaties, it governs in all matters of difference between the captain of a Norwegian vessel lying in a port of the United States, or the officer then in command of the vessel, and members of the crew relating to a matter of the ship's discipline whether the occurrences complained of took place on the vessel or on the wharf at which she lay, and that where all parties concerned were citizens of Norway, and the affair was not of such seriousness as to disturb the public peace, the local courts were without jurisdiction to arrest and detain officers of the ship on warrants issued at the instance of a seaman whether before or after his discharge from the vessel. Ex parte Anderson (D. C. Me. 1910) 184 F. 114.

Under the provisions of the treaty of July 4, 1827, between Sweden and Norway and the United States (8 Stat. 352, art. 13), and that of June 1, 1910, between Sweden and the United States, both of which vest in the consular officers of each country exclusive jurisdiction to hear and determine "differences" which may arise between the officers and crews of merchant vessels of such country either at sea or in port without interference by the local authorities unless in case of breach of the peace, etc., a court of admiralty of the United States is without jurisdiction of a suit by a foreign seaman on a Swedish vessel against such vessel based on the alleged negligence of the master by which libelant was injured in an American port and compelled to leave the vessel. The Ester (D. C. S. C. 1911) 190 F. 216.

By the consular convention between the United States and the German empire, proclaimed June 1, 1872 (17 Stat. 125), vesting jurisdiction of all things convenient and necessary to the foreign commerce of Germany, while its merchant vessels are in our ports, in the commercial representative and agent of that empire, and providing that "neither any court nor authority shall, on any pretext, interfere in these differences, except in cases where the differences on board ship are of a nature to disturb the peace and public order in port or on shore, or when persons other than the officers and crew of the vessel are parties to the disturbance," the further exercise by the state courts of a discretional or any other jurisdiction over merchant vessels or the ship's company is taken away. Petersen v. Brockelmann (N. Y. 1874) 1 City Ct. R. 193.

6. —— Suits for seamen's wages.—Foreign seamen should show good reason for

not obtaining approval of their country's commercial representative. The Infanta (D. C. N. Y. 1848) Fed. Cas. No. 7,030.

Ordinarily seamen belonging to a foreign ship are not allowed to sue for wages without the consent of the commercial representative of their country. Jelly v. Tiddeman (D. C. N. Y. 1848) Fed. Cas. No. 7,250a.

The approval of a consul is not absolutely necessary to the maintaining of a suit by foreign seamen. Bueker v. Klorkgeter (D. C. N. Y. 1849) Fed. Cas. No. 2,083.

The admiralty court will not proceed against a foreign vessel without the consent of the commercial representative of the foreign government, in the absence of strong circumstances. Hay v. The Bloomer (D. C. Mass. 1859) Fed. Cas. No. 6,255.

The court will take jurisdiction of a suit by a foreign seaman against a foreign vessel for wages, where the foreign consul consents thereto. Reynolds v. The Simoon (D. C. N. Y. 1863) Fed. Cas. No. 11,733.

The court will entertain jurisdiction of a libel for seamen's wages against a Nova Scotia vessel, notwithstanding the protest of the British consul, where the seamen did not belong in Nova Scotia, and the itinerancy of the vessel was uncertain. The Lilian M. Vigus (D. C. N. Y. 1879) Fed. Cas. No. 8,346.

So long as the relation of seaman to a foreign vessel is not terminated, the courts of the United States cannot entertain a libel for wages, and construe the contract of shipment, but must remit the whole matter to the foreign consul for adjudication. The Burchard (D. C. Ala. 1890) 42 F. 608; The Welhaven (D. C. Ala. 1892) 55 F. 80.

Where special treaty stipulations exist with a foreign country which on their face exclude the jurisdiction of a court of admiralty over a cause and vest it in a consul of such country, the court is not empowered to proceed and take jurisdiction because there is no such consul within the district nor because of any other special circumstances. The Ester (D. C. S. C. 1911) 190 F. 216. But see The Amalia (D. C. Me. 1880) 3 F. 652.

When there is a treaty, or even where there is no treaty, and the official representative of the country to which a vessel attached in a suit for seamen's wages belongs objects to the litigation proceeding further, the court should dismiss the suit and leave the seaman at liberty to seek relief through his counsel or in the courts of his own nation. Petersen v. Brockelmann (N. Y. 1874) 1 City Ct. R. 193.

7. General powers of consuls.—Consuls represent the subjects of their respective nations, if not otherwise represented, where such consuls reside. Gernon v. Cochran (D. C. S. C. 1804) Fed. Cas. No. 5,368.

8. Estates of deceased aliens.—Article 8 of the consular convention between Germany and the United States, of December 11, 1871, authorizing German consuls to act as legal representatives of the German Emperor's subjects, does not constitute such consuls administrators of deceased persons, or authorize a consul to recover wages due a deceased seaman who was in life a German subject, unless he represents heirs who are entitled to the money and who are German subjects. The General McPherson (D. C. Wash. 1900) 100 F. 800.

Neither under the law of nations, nor the laws of the United States, nor any treaty with the king of Sweden and Norway, can the consul of the latter take from an administrator the succession of a Swede opened in this state, in which, though not domiciled, the deceased has left property, since such a right would be incompatible with the sovereignty of the state, whose jurisdiction extends over the property of foreigners as well as citizens, found within its limits. Succession of Thompson (1854) 9 La. Ann. 96.

A treaty between the United States and France secured to the consuls of both nations the right to apply "to the authorities of their respective governments whether federal or local," etc., "for the purpose of protecting informally the rights and interests of their countrymen, and especially in cases of business." Held that where the establishment of the right to administer on an estate of a decedent depended on facts which occurred in France, the person claiming administration having been born and resided there, the French consul, on the strength of the treaty and comity, ought to be heard, as the national agent of the parties interested. Ferrie v. Public Administrator (N. Y. 1855) 3 Bradf. Sur. 249.

A consul of a foreign country in the United States has authority to receive the distributive shares to which persons residing in his country are entitled from the estate of a person dying in the United States. In re Tartaglio's Estate (Surr. 1895) 12 Misc. Rep. 245, 33 N. Y. S. 1121.

§ 257. Arrest of seamen; procedure generally. In all cases within the purview of the preceding section the consul general, consul, or other consular or commercial authority of such foreign nation charged with the appropriate duty in the particular case, may make application to any court of record of the United States, or to any judge thereof, or to any commissioner of a district court,* setting forth that such controversy, difficulty, or disorder has arisen, briefly stating the nature thereof, and when and where the same occurred, and exhibiting a certified copy or extract of the shipping articles, roll, or other proper paper of the vessel, to the effect that the person in question is of the crew or ship's company of such vessel; and further stating and certifying that such person has withdrawn himself, or is believed to be about to withdraw himself, from the control and discipline of the master and officers of the vessel, or that he has refused, or is about to refuse, to submit to and obey the lawful jurisdiction of such consular or commercial authority in the premises; and further stating and certifying that, to the best of the knowledge and belief of the officer certifying, such person is not a citizen of the United States. Such application shall be in writing and duly authenticated by the consular or other sufficient official seal. Thereupon such court, judge, or commissioner shall issue his warrant for the arrest of the person so complained of, directed to the marshal of the United States for the appropriate district, or in his discretion to any person, being a citizen of the United States, whom he may specially depute for the purpose, requiring such person to be brought before him for examination at a certain time and place. (R. S. § 4080.)

* The words, "commissioner of a district court," should read "United States commissioner." See Historical Note hereunder.

Historical Note

Prior to its incorporation into the Code, this section referred to any commissioner of a "circuit court" instead of "district court." The office of commissioner of the circuit court was abolished by Act May 28, 1896, c. 252, § 19, 29 Stat. 184, and by a further provision of that section incorporated in section 526 of Title 28, Judicial Code and Judiciary, the district court was required to appoint persons to be known as United States Commissioners with the powers and duties of commissioners of the circuit court.

See, also, historical note to section 258, post, of his title, particularly with reference to the proviso therein.

Cross-References

See proviso in section 258, post, of this title, also applicable to this section.

Notes of Decisions

1. **Effect of statute.**—The statute does not affect the force of treaty provisions excluding the admiralty courts from jurisdiction of controversies between masters and crews of foreign vessels. The Ester (D. C. S. C. 1911) 190 F. 216.

2. **Acts of state officers.**—Only a federal marshal can make an arrest on the requisition of consul of a foreign nation, charging a seaman on a vessel of that nation with insubordination, conformably to a treaty provision; but arrest by a state official on such requisition does not entitle the seaman to his discharge on habeas corpus when brought before a federal district court, the irregularity being obviated by the action of that court in examining into the case. Dallemagne v. Moisan (Cal. 1905) 25 S. Ct. 422, 424, 197 U. S. 169, 49 L. Ed. 709.

A justice of the peace has no power to issue a warrant for the arrest of seamen under this section. The Salomoni (D. C. Ga. 1886) 29 F. 534, 536.

A treaty between the United States and Chili provided that the consuls of either country might require the assistance of the authorities of the country where they resided for the arrest, detention, and custody of deserters from the public and private vessels of their country, "and for that purpose they shall address themselves to the courts, judges, and officers competent." Held, it is not competent for a state officer to cause such arrest; that can only be done by an officer of the federal government. The power being, under the constitution, in the federal courts, must be exclusive in them, because the state courts had no pre-existing jurisdiction. In re Leon (N. Y. 1846) 1 Edm. Sel. Cas. 311.

3. **Sufficiency of proceedings.**—The proceedings for the delivery of deserters from foreign vessels in the ports of the United States, must state that the person proceeded against deserted from a vessel in some port of the United States, in order to show jurisdiction in the officer receiving the complaint. In re Bruni (N. Y. 1847) 1 Barb. 157.

§ 258. **Commitment and discharge.** If, on such examination, it is made to appear that the person so arrested is a citizen of the United States, he shall be forthwith discharged from arrest, and shall be left to the ordinary course of law. But if this is not made to appear, and such court, judge, or commissioner finds, upon the papers in the preceding section referred to, a sufficient prima facie case that the matter concerns only the internal order and discipline of such foreign vessel, or, whether in its nature civil or criminal, does not affect directly the execution of the laws of the United States, or the rights and duties of any citizen of the United States, he shall forthwith, by his warrant, commit such person to prison, where prisoners under sentence of a court of the United States may be lawfully committed, or, in his discretion, to the master or chief officer of such foreign vessel, to be subject to the lawful orders, control, and discipline of such master or chief officer, and to the jurisdiction of the consular or commercial authority of the nation to which such vessel belongs, to the exclusion of any authority or jurisdiction in the premises of the United States or any State thereof. No person shall be detained more than two months after his arrest, but at the end of that time shall be set at liberty and shall not again be arrested for

the same cause. The expenses of the arrest and the detention of the person so arrested shall be paid by the consular officers making the application: *Provided*, That nothing in this or the preceding section shall authorize the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment. (R. S. § 4081; Mar. 4, 1915, c. 153, §§ 16, 17, 38 Stat. 1184.)

Editorial comment.—The words "and the cooperation" (line 5 of the proviso herein) might perhaps better have been made to read "or the cooperation."

Historical Note

The first portion of this section to the proviso was derived from R. S. § 4081, which in turn was from section 2 of Act June 11, 1864, c. 116, 13 Stat. 121.

The proviso itself was derived from sections 16 and 17 of Act March 4, 1915, c. 153, cited to the text, which sections, for the purpose of clarity are here set forth.

Section 16, aforesaid, read as follows:

"In the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries, and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and the Territories and possessions thereof, and for the cooperation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provision in conflict with the provisions of this Act, ought to be terminated, and to this end the President be, and he is hereby, requested and directed, within ninety days after the passage of this Act, to give notice to the several Governments, respectively, that so much as hereinbefore described of all such treaties and conventions between the United States and foreign governments will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions."

Section 17, aforesaid, read: "Upon the expiration after notice of the periods required, respectively, by said treaties and conventions and of one year in the case of the independent State of the Kongo, so much as hereinbefore described in each and every one of said articles shall be deemed and held to have expired and to be of no force and effect, and thereupon section fifty-two hundred and eighty and so much of section four thousand and eighty-one of the Revised Statutes as relates to the arrest or imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and Territories and possessions thereof, and for the co-operation, aid, and protection of competent legal authorities in effecting such arrest or imprisonment, shall be, and is hereby, repealed."

R. S. § 5280, repealed by section 17 of Act March 4, 1915, c. 153, just quoted, provided for the arrest and return of seamen deserting from foreign vessels upon the application of a consul or vice-consul of the nation to which the vessel from which the seamen deserted belonged.

Notes of Decisions

1. **Effect of the statute.**—The statute does not affect the force of treaty provisions excluding the admiralty courts from jurisdiction of controversies between masters and crews of foreign vessels. The Ester (D. C. S. C. 1911) 190 F. 216.

2. **Duration of imprisonment.**—The imprisonment of insubordinate seamen on a foreign vessel under treaty provisions need not end with departure of the vessel, but may last until expiration of two months prescribed by statute. Dal-

lemagne v. Moisan (Cal. 1905) 25 S. Ct. 422, 424, 197 U. S. 169, 49 L. Ed. 709.

2. Validity of state statute authorizing arrest and delivery of deserters.—Repeal of Rev. St. §§ 4598, 4599, by Act Dec. 21, 1898, § 25, and of section 5280 by section 17 of Act Mar. 4, 1915, c. 153 (cited to the text and quoted in historical note) held in view of section 713 of Title 46, Shipping, to prevent in the absence of treaty or convention, arrest and delivery to masters of seamen deserting from foreign vessels; therefore Code Va. 1904, §§ 2004, 2005, cannot be enforced. Ex parte Larsen (D. C. Va. 1916) 233 F. 708.

4. Abrogation of treaty provisions inconsistent with Seamen's Act.—The provisions of Seamen's Act, abolishing the right of arrest for desertion and giving civil courts of the United States jurisdiction over wage controversies arising within its jurisdiction, amply account for the provision (section 16 of Act Mar. 4, 1915, c. 153, cited to the text and quoted in the historical note), for abrogation of inconsistent treaty provisions. Sandberg v. McDonald (Ala. 1918) 39 S. Ct. 84, 248 U. S. 185, 63 L. Ed. 200.

Under section 16 of Act March 4, 1915, c. 153 (cited to the text and quoted in historical note), terminating certain provisions of treaties, section 13 of Treaty with Norway and Sweden, giving consuls the right to sit on disputes between captain and crews of vessels of those nations, held inapplicable where seamen shipped for round voyage from San Francisco on Norwegian vessel, which was being operated by resident American citizens. The Sinaloa (D. C. Cal. 1923) 292 F. 640.

CHAPTER 7.—INTERNATIONAL BUREAUS, CONGRESSES, ETC.

Section 261. Policy as to settlement of disputes and disarmament. It is hereby declared to be the policy of the United States to adjust and settle its international disputes through mediation or arbitration, to the end that war may be honorably avoided. It looks with apprehension and disfavor upon a general increase of armament throughout the world, but it realizes that no single nation can disarm, and that without a common agreement upon the subject every considerable power must maintain a relative standing in military strength. (Aug. 29, 1916, c. 417, 39 Stat. 618.)

Historical Note

From the Naval appropriation act for the fiscal year 1917, cited above.

§ 262. President's participation in international congresses restricted. The Executive shall not extend or accept any invitation to participate in any international congress, conference, or like event, without first having specific authority of law to do so. (Mar. 4, 1913, c. 149,* 37 Stat. 913.)

* "§ 1," should be inserted.

Historical Note

This was a provision of the deficiency appropriation act for the fiscal year 1913, cited above.

Notes of Decisions

1. Chief of vital statistics.—In view of this section, sections 66 and 83 of Title 5, Executive Departments and Government Officers and Employees, and section 673 of Title 31, Money and Finance, the Chief Statistician for Vital Statistics of the Census Bureau may be granted leave of absence without pay for a period sufficient to enable him to attend in an unofficial capacity an international commission which is to meet in Paris for the purpose of revising the nomenclature of diseases and causes of death, no expense to the government being entailed thereby. (1920) 32 Op. Atty. Gen. 309.

§ 263. International Prison Commission. The United States shall continue as an adhering member of the International Prison Commission and participate in the work of said commission.

The Secretary of the Treasury be, and he is hereby, authorized annually to pay the pro rata share of the United States in the administration expenses of the International Prison Commission and the necessary expenses of a commissioner to represent the United States on said commission at its annual meetings, together with necessary clerical and other expenses, out of any money which shall be appropriated for such purposes from time to time by Congress. (Feb. 28, 1913, c. 86, 37 Stat. 692.)

Historical Note

These were provisions of the diplomatic and consular appropriation act for the fiscal year 1914, cited above.

The same provisions were made in the similar appropriation act for the preceding year, Act April 30, 1912, c. 97, 37 Stat. 100.

An appropriation is made annually for the subscription of the United States as an adhering member of the International Prison Commission.

§ 264. Pan American Union; direction of Secretary of State. The Pan American Union shall be placed under the control and direction of the Secretary of State. (Aug. 18, 1894, c. 301, § 1, 28 Stat. 418.)

Editorial comment.—The accuracy at the present time of the words "shall be placed," (line 2 hereof) has been questioned.

Historical Note

This section was derived from a provision of the sundry civil appropriation act for the fiscal year 1895, cited above.

A further provision thereof, which required the Secretary of State to report to Congress upon the propriety of continuing said institution is omitted, as temporary merely.

In the provision as enacted, the words "Pan American Union," herein, read, "Bureau of American Republics." See the historical note to section 265, post, of this title.

Notes of Decisions

1. **Appointment of director.**—The Secretary of State of the United States is authorized to appoint the Director of the Bureau of American Republics without the assent of the other countries contributing to the support of the Bureau, and to remove such director and appoint another in his place without such assent. (1893) 20 Op. Atty. Gen. 558.

2. **Bulletin.**—It is competent for the Secretary of State to prohibit the publication in the Monthly Bulletin of the Bureau of American Republics of advertisements of private firms or corporations. (1897) 21 Op. Atty. Gen. 514.

§ 265. Disposition of receipts for support of Pan American Union. Any moneys received from other American Republics for the support of the Pan American Union shall be paid into the Treasury as a credit, in addition to any appropriation, and may be drawn therefrom upon requisitions of the chairman of the governing board of the union for the purpose of meeting the expenses of the union and of carrying out the orders of the said governing board. (Feb. 27, 1925, c. 364, Title I, 43 Stat. 1020.)

Editorial comment.—The original provision may have been temporary.

Historical Note

This was a provision of the appropriation act for the Departments of State, and Justice, Judiciary, and Departments of Commerce, and Labor for the fiscal year 1926, cited to the text.

The diplomatic and consular service appropriation act for the fiscal year 1895, Act July 26, 1894, c. 166, 28 Stat. 151, contained the following provision:

"Commercial Bureau of American Republics: * * * That any moneys received from the other American Republics for the support of the Bureau, or from the sale of the Bureau publications, from rents, or other sources shall be paid into the Treasury as a credit in addition to the appropriation, and may be drawn therefrom upon requisitions of the Secretary of State for the purpose of meeting the expenses of the Bureau."

This provision was repeated in the diplomatic and consular service appropriation acts for prior years following, down to and including the fiscal year 1908. See Act Feb. 22, 1907, c. 1184, 34 Stat. 921. The provision for the fiscal year 1909 was to the same effect, except that the heading was changed from "Commercial Bureau of American Republics" to "International Bureau of American Republics." See Act May 21, 1908, c. 183, 35 Stat. 177. Beginning with the appropriation act for the fiscal year 1912, Act March 3, 1911, c. 208, 36 Stat. 1032, the provision was as follows: "Pan American Union: * * * That any moneys received from the other American Republics for the support of the Union shall be paid into the Treasury, as a credit, in addition to the appropriation, and may be drawn therefrom upon requisitions of the Secretary of State for the purpose of meeting the expenses of the Union." See, also, Act April 27, 1912, c. 96, 37 Stat. 100, and Act Feb. 27, 1913, c. 85, 37 Stat. 693. The provisions for the fiscal years 1915 and 1916, by Act June 30, 1914, c. 132, 38 Stat. 447, and Act March 4, 1915, c. 145, 38 Stat. 1121, were identical with the original text of this section. The provision for the succeeding fiscal years was similar to the one last quoted, except that the words "upon requisitions of the Secretary of State for the purpose of meeting the expenses of the Union" were changed to read as follows: "upon requisitions of the chairman of the governing board of the Union for the purpose of meeting the expenses of the Union and of carrying out the orders of said governing board." A like provision was contained in Act June 1, 1922, c. 204, Title I, 42 Stat. 606; Act Jan. 3, 1923, c. 21, Title I, 42 Stat. 1074; Act May 28, 1924, c. 204, Title I, 43 Stat. 212; and Act Feb. 27, 1925, c. 364, Title I, 43 Stat. 1020.

§ 266. International commission of congresses of navigation; appropriation for expenses. The sum of $3,000 a year is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the support and maintenance of the permanent international commission of the congresses of navigation and for the payment of the actual expenses of the properly accredited national delegates of the United States to the meetings of the congresses and of the commission; and the Secretary of War is authorized to draw his warrant each year upon the Secretary of the Treasury for such sum, not to

exceed $3,000, as may in his opinion be proper to apply to the purposes above mentioned, and the said sum shall be disbursed under such regulations as may be prescribed by the Secretary of War.

The national delegates aforesaid from the United States shall serve without compensation, but shall be reimbursed for their actual expenses incurred while traveling to and from the meetings, and while in attendance thereon, from the funds herein appropriated and authorized to be expended. (June 28, 1902, c. 1306, 32 Stat. 485.)

Historical Note

This was an act to appropriate the sum of $3,000 a year for the support and maintenance of the Permanent International Commission of the Congresses of navigation, and for other purposes.

§ 267. Permanent Commission of International Geodetic Association; representative of United States. The duly appointed representative of the United States on the permanent commission of the International Geodetic Association is hereby granted authority to vote with the representatives on the permanent commission from other nations on all matters coming before the association, including the extension of its existence, subject to the approval of Congress. (Mar. 3, 1917, c. 161, 39 Stat. 1055.)

Historical Note

This was a provision of the diplomatic and consular service appropriation act for the fiscal year 1918, cited above. It superseded a similar provision in Act July 1, 1916, c. 208, 39 Stat. 260.

The invitation of the Imperial German Government to the Government of the United States to become a party to the International Geodetic Association was accepted, and the President authorized to appoint a delegate, who should be an officer of the United States Geodetic and Coast Survey, to attend the next meeting thereof, by joint resolution No. 3 of Feb. 5, 1889, 25 Stat. 1019.

The diplomatic and consular appropriation act for the fiscal year 1921, Act June 4, 1920, c. 223, 41 Stat. 748, contained the following:

"To enable the Government of the United States to pay its quota as an adhering member of the International Geodetic Association for the Measurement of the Earth, $1,500: Provided, however, That the sums expended by the United States for the maintenance of the International Latitude Observatory at Ukiah, California, and for the continuance of the international latitude work there until the International Geodetic Association shall find it possible to resume its support of the observatory, shall be deducted from the quota due from the United States as such adhering member."

A similar provision was contained in prior acts.

Act Dec. 15, 1921, c. 1, 42 Stat. 337, and Act June 1, 1922, c. 204, 42 Stat. 609 each contain an appropriation in the following language: "For the maintenance of the International Latitude Observatory at Ukiah, California, and for the continuance of the work thereof until the station is turned over to the Geodetic and Geophysical Union, $2,000."

It will be noted that these later acts make no mention of the quota of the United States as an adhering member of the Association.

The appropriation act for the Departments of State, and Justice, the Judiciary and Departments of Commerce, and Labor

for the fiscal year 1926, Act Feb. 27, 1925, c. 364, 43 Stat. 1045, contains under the head Coast and Geodetic Survey, an appropriation for the maintenance and operation of the observatory at Ukiah without mention of the Association or Union.

§ 268. International Joint Commission; salaries; powers. The salaries of the members of the International Joint Commission on the part of the United States shall be fixed by the President. Said commission or any member thereof shall have power to administer oaths and to take evidence on oath whenever deemed necessary in any proceeding or inquiry or matter within its jurisdiction under said treaty, and said commission shall be authorized to compel the attendance of witnesses in any proceedings before it or the production of books and papers when necessary by application to the district court of the United States for the district within which such session is held, which court is hereby empowered and directed to make all orders and issue all processes necessary and appropriate for that purpose. (Mar. 4, 1911, c. 285,* 36 Stat. 1364.)

* "§ 1," should be inserted.

Editorial comment.—The words "International Joint Commission," herein, being thought not sufficiently explicit, the following sentence is suggested in lieu of the first sentence hereof: "The salaries of the members on the part of the United States, of the International Joint Commission, established and maintained under the treaty of January 11, 1909 (36 Stat. 2448) between the United States and Great Britain, concerning the use of boundary waters between the United States and Canada, and for other purposes, shall be fixed by the President."

The use of the suggested sentence would also furnish an antecedent for the words "said treaty" (line 6 of this section).

Historical Note

From the sundry civil appropriation act for the fiscal year 1912, cited to the text.

Other provisions of the same paragraph, which have been omitted as temporary, appropriated a sum for salaries and expenses, including salaries of Commissioners, and salaries of clerks appointed by the Commissioners on the part of the United States with the approval solely of the Secretary of State, including rental and furnishing after the passage of the act, of offices at Washington, and necessary traveling expenses, and for one half of all reasonable and necessary joint expenses of the Commission incurred under the terms of the treaty.

FOREIGN SERVICE

See Title 22, Foreign Relations and Intercourse.

FORESTS

See Title 16, Conservation.

FORFEITURES

See Title 18, Criminal Code and Criminal Procedure.

FORTIFICATIONS

See Title 50, War.

FREEDMEN

See Title 8, Aliens and Citizenship.

FREEDMEN'S HOSPITAL AND ASYLUM

See Title 24, Hospitals, Asylums, and Cemeteries.

FUR-BEARING ANIMALS

See Title 16, Conservation.

GAME ANIMALS AND BIRDS

See Title 16, Conservation.

GARNISHMENT

See Title 28, Judicial Code and Judiciary.

GENERAL ACCOUNTING OFFICE

See Title 31, Money and Finance.

GENERAL LAND OFFICE

See Title 43, Public Lands.

GEODETIC SURVEY

See Title 33, Navigation and Navigable Waters.

GEOLOGICAL SURVEY

See Title 43, Public Lands.

GIFT TAX

See Title 26, Internal Revenue.

GOVERNMENT BUILDINGS

See Title 40, Public Buildings, Property, and Works.

GOVERNMENT OFFICERS AND EMPLOYEES

See Title 5, Executive Departments and Government Officers and Employees.

GOVERNMENT PRINTING OFFICE

See Title 44, Public Printing and Documents.

GRAIN FUTURES

See Title 7, Agriculture.

GRAIN STANDARDS

See Title 7, Agriculture.

GRAND ARMY OF THE REPUBLIC

See Title 36, Patriotic Societies and Observances.

GUANO ISLANDS

See Title 48, Territories and Insular Possessions.

HABEAS CORPUS

See Title 28, Judicial Code and Judiciary.

HAWAII

See Title 48, Territories and Insular Possessions.

HELIUM GASES

See Title 50, War.

[END OF VOLUME]

UNITED STATES CODE ANNOTATED

Title 22

Foreign Relations and Intercourse

1942
Cumulative Annual Pocket Part

Laws and Amendments to Oct. 3, 1942

Replacing prior pocket part in back of volume

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EXPLANATION

This Cumulative Annual Pocket Part contains all the statutes of a general and permanent nature to October 3, 1942, Second Session of 77th Congress, as well as Executive Orders and Proclamations.

The statutes are classified to the United States Code.

Under the same classification will be found the annotations from the decisions of State and Federal courts construing the statutes.

The annotations close with cases reported in:

Supreme Court Reporter - - - - - - - - vol.	62
United States Reports - - - - - - - - -	316
Lawyers' Edition - - - - - - - - - - -	86
Federal Reporter, Second Series - - - - -	129
Federal Supplement - - - - - - - - -	45
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Later statutes and annotations will be cumulated in subsequent pamphlets and annual pocket parts.

CITE THIS POCKET PART BY TITLE NUMBER AND SECTION THUS: — U.S.C.A. § —

TITLE 22

FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 1.—DIPLOMATIC AND CONSULAR SERVICE GENERALLY

ORGANIZATION OF FOREIGN SERVICE OF UNITED STATES

Proclamations respecting war and neutrality, see notes preceding section 1 of appendix of Title 50, War.

§ 1. Establishment of Foreign Service

The Diplomatic and Consular Service of the United States shall be known as the Foreign Service of the United States. May 24, 1924, c. 182, § 1, 43 Stat. 140, renumbered § 8 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1207.

Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 2. Foreign Service officer defined; assignment to duty generally

The official designation "Foreign Service officers," as employed throughout sections 3–23, 23f–23*l* of this title, shall be deemed to denote permanent officers in the Foreign Service below the grade of minister, all of whom are subject to promotion on merit and who may be appointed to either diplomatic or consular positions or assigned to serve in the Department of State subject to section 15 of this title, at the discretion of the President. (May 24, 1924, c. 182, § 2, 43 Stat. 140, renumbered § 9 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1207.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 3. Grading, classification, and salaries; details for purpose of inspection; transfer of ambassadors and ministers

(a) The officers in the Foreign Service shall hereafter be graded and classified as follows, with the salaries of each class herein affixed thereto, except as increases in salaries are authorized in section 3a of this title, but not exceeding in number for each class a proportion of the total number of officers in the service represented in the following percentage limitations:

Ambassadors and Ministers as now or hereafter provided; Foreign Service officers as follows: Class 1, 6 per centum, $9,000 to $10,000; class 2, 7 per centum, $8,000 to $8,900; class 3, 8 per centum, $7,000 to $7,900; class 4, 9 per centum, $6,000 to $6,900; class 5, 10 per centum, $5,000 to $5,900; class 6, 14 per centum, $4,500 to $4,900; class 7, $4,000 to $4,400; class 8, $3,500 to $3,900; unclassified, $2,500 to $3,400: *Provided*, That as many Foreign Service officers above class 6 as may be required for the purpose of inspection may be detailed by the Secretary of State for that purpose.

(b) Any person appointed an Ambassador or a Minister by the President, by and with the advice and consent of the Senate, who has taken his oath of office and entered upon his official duties as required by law, may be thereafter transferred in accordance with a subsequent appointment as Ambassador or Minister by the President, by and with the advice and consent of the Senate; and notwithstanding the provisions of section 121 of this title, he shall be entitled to be paid salary at the rate prescribed by law for the Ambassador or Minister at the post from which he is transferred to the date he takes oath of office under his new appointment, and thereafter at the rate prescribed by law for the Ambassador or Minister at the new post, including in either case such period as he may be necessarily in transit traveling under orders, receiving instruction, or on authorized leave of absence, as provided by law for officers and employees of the Foreign Service of the United States. The taking of his oath by an Ambassador or Minister appointed to a post shall not operate to deprive the retiring Ambassador or Minister at such post of salary up to the date of his departure therefrom, while traveling under orders, during transit to his home in the United States and while on authorized leave of absence, as provided by the law for officers and employees of the Foreign Service of the United States. Appropriations are hereby authorized to pay salaries in such cases. May 24, 1924, c. 182, § 3, 43 Stat. 140, as renumbered § 10 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1207; Apr. 24, 1939, c. 84, § 2, 53 Stat. 583.

Section 5 of Act April 24, 1939, cited to text, provided as follows: "This Act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Total number of Foreign Service officers, for purposes of percentage limitation of this section, not to include Foreign Commerce Service and Foreign Agricultural Service officers who acquire status of Foreign Service officers by transfer and by appointment, see Reorg. Plan No. II, § 1(c), set out in note under section 1331 of Title 5, Executive Departments and Government Officers and Employees.

Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 3a. Same; salary increases

Notwithstanding the provisions of section 3 of this title all Foreign Service officers having a rating of satisfactory or better who shall have

been in classes 5, 6, 7, or 8 for a continuous period of nine months or more, shall, on the first day of each fiscal year receive an increase of salary of $100, except that no officer shall receive a salary above the maximum of his class and all such officers in classes 1, 2, 3, or 4 shall in the same circumstances receive an increase of $200: *Provided*, That the Secretary of State is authorized to fix the salary of Foreign Service officers in the unclassified grade within the salary range specified in section 3 of this title; and, within the limits of appropriation therefor, to grant to Foreign Service officers in any class additional promotion in salary within the salary range established for the classes in which they are serving, based upon especially meritorious service. Increases in salary under the terms of this section shall be paid to Foreign Service officers only as the right to such increases accrues after the effective date of this section. May 24, 1924, c. 182, § 33, as added Feb. 23, 1931, c. 276, § 7, 46 Stat. 1215 and amended Apr. 24, 1939, c. 84, § 4, 53 Stat. 588.

Section 5 of Act April 24, 1939, cited to text, provided as follows: "This Act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Effective date of Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 4. Appointment of Foreign Service officers as diplomatic secretaries or as consular officers; official acts under respective commissions

All appointments and promotions of Foreign Service officers shall be made by the President by and with the advice and consent of the Senate and such officers may be commissioned as diplomatic or consular officers or both: *Provided*, That Foreign Service officers now or hereafter appointed or promoted during a recess of the Senate shall be paid the compensation of the position to which appointed or promoted from the date of such appointment or promotion until the end of the next session of the Senate if they have not theretofore been confirmed by the Senate, or until their rejection by the Senate before the end of its next session: *Provided further*, That if the Senate should reject or fail to confirm the promotion of a Foreign Service officer during the session following the date of such promotion, the Foreign Service officer shall automatically be reinstated in the position from which he was promoted, such reinstatement to be effective, in the event of rejection of the nomination, from the date of rejection; and in the event of failure of the Senate to act on the nomination during the session following a promotion, from the termination of that session: *And provided further*, That all official acts of such officers while serving under diplomatic or consular commissions in the Foreign Service shall be performed under their respective commissions as secretaries or as consular officers. (May 24, 1924, c. 182, § 4, 43 Stat. 140, as renumbered § 11 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1215; June 29, 1935, c. 337, 49 Stat. 436.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 5. Appointment of Foreign Service officers; examination and probation; transfers from State Department; citizenship requirement; reinstatement. Appointments to the position of Foreign Service officer shall be made after examination and officers so appointed shall serve a suitable period of probation in an unclassified grade or, under such rules and regulations as the President may prescribe, after five years of continuous service in an executive or quasiexecutive position in the Department of State, by transfer therefrom, *Provided*, that no candidate shall be eligible for examination for Foreign Service officer who is not an American citizen and who shall not have been such at least fifteen years: *Provided further*, That reinstatement of Foreign Service officers separated from the classified service by reason of appointment to some other position in the Government service may be made by Executive order of the President under such rules and regulations as he may prescribe. Except that the number of such officers

reinstated shall not affect the number of the percentage of the class provided in section 3 of this title. (May 24, 1924, c. 182, § 5, 43 Stat. 141 as renumbered § 12 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1208.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 6. Appointment to class, assignment to post; classification as diplomatic secretaries and as consular officers abolished. All appointments of Foreign Service officers shall be by commission to a class and not by a commission to a particular post, and such officers shall be assigned to posts and may be transferred from one post to another by order of the President as the interests of the service may require: *Provided*, That the classification of secretaries in the Diplomatic Service and of consular officers is abolished without, however, in any wise impairing the validity of the present commissions of secretaries and consular officers. (May 24, 1924, c. 182, § 5, 43 Stat. 141 as renumbered § 12 and amended by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1208.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 7. Reports and recommendations for promotions and appointments. The Secretary of State is directed to report from time to time to the President, along with his recommendations, the names of those Foreign Service officers who by reason of efficient service have demonstrated special capacity for promotion to the grade of minister and the names of those Foreign Service officers and clerks and officers and employees in the Department of State who by reason of efficient service, an accurate record of which shall be kept in the Department of State, have demonstrated special efficiency, and also the names of persons found upon taking the prescribed examination to have fitness for appointment to the service, and any Foreign Service officer who may hereafter be promoted to a higher class within the classification prescribed in section 3 of this title shall have the status and receive the compensation attaching to such higher class from the date stated in his commission as the effective date of his promotion to such higher class. (May 24, 1924, c. 182, § 14, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1208.)

Act Feb. 5, 1915, c. 23, § 5, 38 Stat. 806, from which this section was originally derived, was repealed by Act Feb. 23, 1931, c. 276, § 13, 46 Stat. 1208 which was an amendment of Act May 24, 1924, c. 182, 43 Stat. 140. Section 6 of Act May 24, 1924, amending section 5 of Act Feb. 5, 1915, was substantially reenacted by this section.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 8. Recommissioning diplomatic and consular officers on July 1, 1924 [Executed]

This section is executed.

§ 9. Inspection of diplomatic and consular offices; expenses of inspector; suspension of consuls, etc.; penal liability of inspectors

Foreign Service officers detailed for the purpose of inspection shall, under the direction of the Secretary of State, inspect in a substantially uniform manner the work of diplomatic and consular offices. Each office shall be inspected at least once in every two years. Whenever the President has reason to believe that the business of a consulate or a consulate general is not being properly conducted and that it is necessary for the public interest, he may authorize any Foreign Service officer detailed for the purpose of inspection to suspend the consul or consul general, and administer the office in his stead for a period not exceeding ninety days. In such case the Foreign Service officer so authorized shall have power to suspend any vice consular officer or clerk in said office during the period aforesaid. The provisions of sections 102 and 103 of this title shall

apply to Foreign Service officers detailed for the purpose of inspection. Apr. 5, 1906, c. 1366, § 4, 34 Stat. 100; May 24, 1924, c. 182, § 10, 43 Stat. 142, as renumbered § 17 and amended by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 10. Abolition of grade of consular assistants

Section, Acts May 24, 1924, c. 182, § 8, 43 Stat. 142, as redesignated § 14 and amended Feb. 23, 1931, c. 276, § 7 (14), 46 Stat. 1208, abolished the grade of consular assistant.

§ 11. Bonds of officers of the Foreign Service. Every secretary, consul general, consul, vice consul of career, or Foreign Service officer, before he receives his commission or enters upon the duties of his office, shall give to the United States a bond, in such form as the President shall prescribe, with such sureties, who shall be permanent residents of the United States, as the Secretary of State shall approve, in a penal sum not less than the annual compensation allowed to such officer, conditioned for the true and faithful accounting for, paying over, and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property which shall come to his hands or to the hands of any other person to his use as such officer under any law now or hereafter enacted, and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer: *Provided*, That the operation of no existing bond shall in any wise be impaired by the provisions of sections 1–23, 231–231 of this title: *Provided further*, That such bond shall cover by its stipulations all official acts of such officer, whether commissioned as diplomatic or consular officer or Foreign Service officer. The bonds herein mentioned shall be deposited with the Secretary of the Treasury. (May 24, 1924, c. 182, § 16, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1208.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 12. Representation allowances; post allowances; approval of expenditures; report to Congress. Under such regulations as the President may prescribe, and within the limitations of such appropriations as may be made therefor, which appropriations are authorized, ambassadors, ministers, diplomatic, consular, and Foreign Service officers may be granted allowances for representation; and also post allowances wherever the cost of living may be proportionately so high that in the opinion of the Secretary of State such allowances are necessary to enable such diplomatic, consular, and Foreign Service officers to carry on their work efficiently: *Provided*, That all such allowances shall be accounted for to the Secretary of State in such manner and under such rules and regulations as the President may prescribe and the authorization and approval of such expenditures by the Secretary of State, as complying with such rules and regulations, shall be binding upon all officers of the Government: *Provided further*, That the Secretary of State shall report all such expenditures annually to the Congress with the Budget estimates of the Department of State. (May 24, 1924, c. 182, § 12, 43 Stat. 142, as renumbered § 19 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 13. Fees; accounting; stamps. The provisions of sections 99 and 100 of this title, relative to official fees and the method of accounting therefor shall apply to diplomatic officers below the grade of minister and to consular officers. (May 24, 1924, c. 182, § 11, 43 Stat. 142, as renumbered § 18 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 14. Private secretaries to ambassadors; appointment; salaries. Appropriations are authorized for the salary of a private secretary to each ambassador to be appointed by the ambassador and hold office at his pleasure. (May 24, 1924, c. 182, §. 13, 43 Stat. 143, as renumbered § 20 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 15. Assignment for duty in State Department

Credit should read "May 24, 1924, c. 182, § 14, 43 Stat. 143, as renumbered § 21 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209".

Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 16. Special details; salary and expenses. Any ambassador or minister or any Foreign Service officer of whatever class detailed for duty in connection with trade conferences or international gatherings, congresses, or conferences, or for other special duty not at his post or in the Department of State, except temporarily for purposes of consultation, shall be paid his salary and expenses for travel and subsistence at the rates prescribed by law. (May 24, 1924, c. 182, § 14, 43 Stat. 143, as renumbered § 21 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1209.)

Provision of this section as amended by Act Feb. 23, 1931, cited to the text, "Notwithstanding the provisions of section 1742 of the Revised Statutes of the United States" is omitted, since R.S. § 1742 is repealed by Act Feb. 23, 1931, c. 276, § 22, 46 Stat. 1210.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 17. Ordering personnel to United States on statutory leave; traveling expenses; duties while on leave

The Secretary of State is authorized, whenever he deems it to be in the public interest, to order to the United States on his statutory leave of absence any Foreign Service officer or American employee who has performed three years or more of continuous service abroad: *Provided*, That the expenses of transportation and subsistence of such officers and employees and their immediate families, in traveling from their posts to their homes in the United States and return, shall be paid under the same rules and regulations applicable in the case of officers and employees going to and returning from their posts under orders of the Secretary of State when not on leave: *And provided further*, That while in the United States the services of such officers and employees shall be available for trade conference work or for such duties in the Department of State as the Secretary of State may prescribe, but the time of such work or duties shall not be counted as leave. May 24, 1924, c. 182, § 15, 43 Stat. 143, as redesignated § 22 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1210, and amended Mar. 17, 1941, c. 20, 55 Stat. 44.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 17a. Leaves of absence; sick leaves. The Secretary of State is authorized, in his discretion and subject to such regulations as may be issued by the President to grant to any officer or employee of the Foreign Service not to exceed sixty days annual leave of absence with pay. If such officer or employee returns to the United States, the leave of absence granted under the provisions of this section and section 17 of this title shall be exclusive of the time actually and necessarily occupied in going to and from the United States, and such time as may be necessarily occupied in awaiting sailing. Any portion of sixty days annual leave not granted or availed of in any one year may be cumulative, not to exceed exclusive of time in transit and awaiting sailing, one hundred and twenty days in three years or one hundred and eighty days in four years. *Provided further*, That employees, not American citizens, may be granted not to exceed thirty days leave of absence with pay in any one year.

The Secretary of State is also authorized to grant to any officer or employee of the Foreign Service on account of personal illness or on account of exposure to a contagious disease which would render presence at a post of duty hazardous to the health of fellow employees, sick leave of absence with pay at the rate of fifteen days a year, the unused portion of such sick leave to be cumulative not to exceed one hundred and twenty days.

No Foreign Service officer shall be absent from his post with pay for more than forty-eight hours without permission, except as provided in this section and section 17 of this title. (May 24, 1924, c. 182, § 22, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1210.)

Proviso in original text of second paragraph of this section provided that not more than thirty days of additional sick leave of absence with pay might be granted.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 18. Counselor of embassy or legation

Credit should read: "July 1, 1916, c. 208, 39 Stat. 252; May 24, 1924, c. 182, § 16, 43 Stat. 143, as renumbered § 23 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1210."

Act Feb. 23, 1931, cited to text see note under section 2 of this title.

§ 19. Commissioner, chargé d'affaires; minister resident, and diplomatic agent; appointment and salary. Within the discretion of the President, any Foreign Service officer may be assigned to act as commissioner, chargé d'affaires, minister resident, or diplomatic agent for such period as the public interests may require without loss of grade, class, or salary: *Provided, however*, That no such officer shall receive more than one salary. (May 24, 1924, c. 182, § 17, 43 Stat. 143, as renumbered § 24 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1210.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

Compensation for filling two offices, see section 56 of this title.

§ 20. Compensation of Foreign Service officer acting as chargé d'affaires ad interim or in charge of consulate

For such times as any Foreign Service officer shall be lawfully authorized to act as chargé d'affaires ad interim or to assume charge of a consulate general or consulate during the absence of the principal officer at the post to which he shall have been assigned, he shall, if his salary is less than one-half that of such principal officer, receive in addition to his salary as Foreign Service officer, compensation equal to the difference between such salary and one-half of the salary provided by law for the ambassador, minister, or principal consular officer, as the case may be. Vice consuls while in charge of a consulate general or consulate during the absence of the principal officer shall be entitled to additional compensation in the same manner and under the same conditions as Foreign Service officers as provided above in this section. R.S. § 1685; Mar. 2, 1909, c. 235, 35 Stat. 673; Feb. 5, 1915, c. 23, § 3, 38 Stat. 805; May 24, 1924, c. 182, § 17 (25), 43 Stat. 143; Feb. 27, 1925, c. 364, Title I, 43 Stat. 1016; Feb. 23, 1931, c. 276, § 7, 46 Stat. 1210.

R. S. § 1685 cited to the original text is from Act Aug. 10, 1865, c. 127, § 10, 13 Stat. 56.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

Second sentence was from Act Feb. 27, 1925, c. 364, Title I, 43 Stat. 1016. First sentence was from other acts cited to text.

Extra compensation to diplomatic and consular officers prohibited, see section 125 of this title.

§ 21. Retirement and disability system; establishment; rules and regulations

The President is authorized to prescribe rules and regulations for the establishment of a Foreign Service retirement and disability system to be administered under the direction of the Secretary of State and in accordance with the following principles, to wit:

Reports; appropriations

(a) The Secretary of State shall submit annually a comparative report showing all receipts and disbursements on account of refunds, allowances, and annuities, together with the total number of persons receiving annuities and the amounts paid them, and shall submit annually estimates of appropriations necessary to continue this section in full force and such appropriations are hereby authorized.

Foreign Service retirement and disability fund

(b) There is hereby created a special fund to be known as the Foreign Service retirement and disability fund.

Contributions from salaries; optional additional deposits

(c) Five per centum of the basic salary of all Foreign Service officers eligible to retirement shall be contributed to the Foreign Service retirement and disability fund, and the Secretary of the Treasury is directed on the date on which this section takes effect to cause such deductions to be made and the sums transferred on the books of the Treasury Department to the credit of the Foreign Service retirement and disability fund for the payment of annuities, refunds, and allowances: *Provided*, That all basic salaries in excess of $10,000 per annum shall be treated as $10,000 and any Ambassador, Minister, or Foreign Service officer appointed to a position in the Department of State, as provided in paragraph (n) of this section, at a lower basic salary than he was receiving on the date of such appointment shall be considered for all purposes of this section as continuing to draw the higher salary and salary deductions authorized under this paragraph shall be on that basis: *And provided further*, That any Foreign Service officer may at his option and under such regulations as may be prescribed by the President, deposit additional sums in multiples of 1 per centum of his basic salary, but not to exceed 10 per centum of such basic salary, which amounts together with interest thereon at 3 per centum per annum compounded on June 30 of each year, shall, at the date of his retirement, be returned to him in a lump sum; or the officer may elect to use the accumulated amount of his additional deposits and interest to purchase an additional annuity which shall, if he so desires, carry with it a proviso that upon his death a cash benefit shall be paid in such amount as he may elect under regulations to be prescribed by the President, to a beneficiary designated in writing and filed in accordance with instructions of the Secretary of State. The amount of such cash benefit shall not exceed the accumulated amount of the officer's additional deposits with interest to the date of retirement: *Provided, however*, That in lieu of such cash benefit, the officer may direct that beginning at the time of his death his beneficiary shall be paid a life annuity of such amount as may be purchasable with the amount of the cash benefit and such annuity shall provide for the guaranteed return of at least the amount of the cash benefit. The calculation of the amount of the additional annuity purchasable by the retired officer under the provisions of this option shall be based upon such tables of annuity values as may from time to time be prescribed for this purpose by the Secretary of the Treasury. In case an officer shall become separated from the service for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum compounded annually, made by him under the provisions of this paragraph shall be refunded in the manner provided elsewhere in this section for the return of contributions and interest in the case of death or withdrawal from active service. Any benefits payable to an officer, or to his beneficiary, in respect to the additional deposits provided under this paragraph, shall be in addition to the benefits otherwise provided under this section.

Age and period of service for retirement

(d) When any Foreign Service officer has reached the age of sixty-five years and rendered at least fifteen years of service he shall be retired on an annuity computed as prescribed in paragraph (e) of this section: *Provided*, That any Foreign Service officer who has reached the age of fifty years and rendered at least thirty years of service may, in the discretion of the Secretary of State, be retired on an annuity computed as prescribed under paragraph (e) of this section; or if any Foreign Service officer has reached the age of fifty years and has rendered at least fifteen but less than thirty years of actual service, exclusive of extra service credit as provided in paragraph (k) of this section, he may, at the instance of the Secretary of State, be retired on an annuity based on such actual period of service: *And provided further*, That the President may in his discretion retain any Foreign Service officer on active duty for such period prior to his reaching seventy years of age as he may deem for the interests of the United States.

Annuities; amounts

(e) The annuity of a retired Foreign Service officer shall be equal to 2 per centum of his average annual basic salary for the ten years next preceding the date of retirement, multiplied by the number of years of service not exceeding thirty years and in determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, in the total service shall be eliminated: *Provided*, That at the time of his retirement a Foreign Service officer, if the husband of a wife to whom he has been married for at least five years, may elect to receive a reduced annuity and designate his wife as his beneficiary, to whom will be paid any portion up to two-thirds of his reduced annuity, at the option of the officer, as long as she may live after his death: *Provided, however*, That the annuity payable to the widow shall in no case exceed 25 per centum of the officer's average annual basic salary for the ten years next preceding the date of retirement. If the age of the officer is less than the age of the wife or exceeds her age by not more than eight years, the annuity of the officer will be reduced by an amount equal to one-half the annuity which he elects to have paid to his widow. If the age of the officer exceeds the age of the wife by more than eight years, the annuity of the officer will be reduced by an amount equal to one-half the annuity which he elects to have paid to his widow plus an additional reduction equal to 2 per centum of such widow's annuity for each year, or fraction thereof, that the difference in age exceeds eight: *Provided further*, That the officer may at his option also elect to have his annuity reduced by an additional 5 per centum of the amount which he elects to have paid to his widow, with a provision that, from and after the death of his wife, if the officer shall survive her, the annuity payable to the officer shall be that amount which would have been payable if no option had been elected: *Provided further*, That a retired officer who is receiving an annuity on the effective date of this section, if the husband of a wife to whom he was married at the time of his retirement and for a total period of at least five years, shall be entitled under the same terms and conditions set forth above, to elect to receive a reduced annuity, a portion of which will be continued on his death throughout the life of his surviving widow, but all such elections by retired officers shall be made within six months following the effective date of this section, and they shall all be effective on the same date, to be prescribed by the President: *And provided further*, That no increases in annuities under sections 1–21, 22, 23f–23l of this title, sections 152a, 154, and 297 of Title 5, and section 334 of Title 28 shall operate retroactively and nothing in such sections shall be interpreted as reducing the rate of the annuity received by any retired officer on the effective date of this section, unless the officer voluntarily elects to receive a reduced annuity as provided in this subsection.

Death of officer prior to establishment of claim

(f) In case a Foreign Service officer shall die without having established a valid claim for annuity, the total amount of his deductions with interest thereon at 4 per centum per annum compounded on June 30 of each year, except as provided in paragraph (c) of this section, shall be paid upon the establishment of a valid claim therefor in the order of precedence given under paragraph (i) of this section: *Provided, however,* That if the deceased officer rendered at least fifteen years of service and is survived by a widow to whom he was married for at least five years, such widow shall be paid an annuity equal to the annuity which she would have been entitled to receive if her husband had been retired on the date of his death, under the provisions of paragraph (j) of this section, and had elected to receive the reduced joint and survivorship annuity, under paragraph (e) hereof, providing the maximum annuity for his widow, unless prior to the date of his death he shall have elected, in lieu of such widow's annuity, and with the approval of the Secretary of State, the return of his deductions with interest as provided in the first part of this paragraph covering officers dying without having established a valid claim for annuity.

Investment of fund

(g) The Secretary of the Treasury is directed to invest from time to time in interest-bearing securities of the United States such portions of the Foreign Service retirement and disability fund as in his judgment may not be immediately required for the payment of annuities, refunds, and allowances, and the income derived from such investments shall constitute a part of said fund.

Assignability of moneys; exemption from legal process

(h) None of the moneys mentioned in this section shall be assignable either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process.

Distribution of excess of officer's contributions over annuity payments

(i) In case the total contributions of the retired officer, exclusive of additional voluntary contributions made under paragraph (c) of this section, together with interest at 4 per centum per annum compounded annually up to the date at which annuity payments cease under the terms of the annuity, exceed the annuity payments exclusive of any additional annuity purchased with voluntary contributions made under paragraph (c) hereof, accumulated at the same rate of interest up to such date, the excess of said accumulated contributions over said accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor:

First, to the beneficiary or beneficiaries designated in writing by such annuitant or Foreign Service officer and recorded in compliance with instructions of the Secretary of State, which are hereby authorized;

Second, if there be no such beneficiary, to the duly appointed executor or administrator of the estate of such annuitant or Foreign Service officer;

Third, if there be no such beneficiary, or executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of the annuitant or Foreign Service officer, to such person or persons as may appear in the judgment of the Secretary of State to be legally entitled thereto, and such payment shall be a bar to recovery by any other person.

Retirement for total disability

(j) Any Foreign Service officer who, after serving for a total period of not less than fifteen years, becomes totally disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own

application or upon order of the President, be retired on an annuity under paragraph (e) of this section: *Provided, however,* That in each case such disability shall be determined by the report of a duly qualified physician or surgeon designated by the Secretary of State to conduct the examination: *Provided further,* That unless the disability be permanent, a like examination shall be made annually until the annuitant has reached the retirement age as defined in paragraph (d) of this section, and the payment of annuity shall cease from the date of the medical examination showing recovery.

Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Foreign Service retirement and disability fund.

When the annuity is discontinued under this provision before the annuitant has received a sum equal to the total amount of his contributions, with accrued interest, the difference shall be paid to him or to his legal representatives.

Unhealthful posts; computation of length of service

(k) The President is authorized from time to time to establish, by Executive order, a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to January 1, 1900, at such posts inclusive of regular leaves of absence, of officers already retired or hereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service: *Provided, however,* That the President may at any time cancel the designation of any places as unhealthful without affecting any credit which has accrued for service at such posts prior to the date of the cancelation.

Return of contributions on separation from service before retirement

(*l*) Whenever a Foreign Service officer becomes separated from the service before becoming eligible for an annuity, except under section 231 of this title, the total amount of contributions from his salary with interest thereon at 4 per centum per annum compounded annually up to the date of such separation, except as provided in paragraph (c) of this section, shall be returned to him.

Estimates of required appropriations; actuarial valuations

(m) The Treasury Department shall prepare the estimates of the annual appropriations required to be made to the Foreign Service retirement and disability fund, and shall make actuarial valuations of such fund at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury. The Secretary of State is authorized to expend from money to the credit of the Foreign Service retirement and disability fund an amount not exceeding $5,000 per annum for the expenses necessary in carrying out the provisions of this section, including actuarial advice.

Rights upon promotion to Ambassador or Minister, or appointment to position in State Department

(n) Any diplomatic secretary or consular officer who has been, or any Foreign Service officer who may hereafter be, promoted from the classified service to the grade of Ambassador or Minister, or appointed to a position in the Department of State, shall be entitled to all the benefits of this section in the same manner and under the same conditions as Foreign Service officers: *Provided,* That any officer now included under the Act of May 24, 1924, ch. 182, 43 Stat. 140, and the amendment thereto of July 3, 1926, ch. 798, § 1, 44 Stat. 902, shall be entitled to the benefits of this section: *And provided further,* That hereafter an Ambassador or Minister, or a former Ambassador or Minister, or a person appointed to a position in the Department of State after serving as Am-

Federal Rules of Civil Procedure

Execution, see Rules of Civil Procedure, Rule 69, following Title 28, Judicial Code and Judiciary, § 723c.

Continuation of section under Rule 69, see note by Advisory Committee under said Rule 69.

1. In general

Congress has placed no limitation on annuities granted under the Foreign Service Act. Brunswick v. U. S., 1940, 90 Ct.Cl. 285.

An officer of the Consular Service, State Department, separated therefrom before retirement for reasons not due to disability, is entitled to a return of 75 per cent. only of his contributions to the statutory annuity fund. Snyder v. U. S. (1932) 74 Ct. Cl. 157.

2. Retention in service

Section 715a of Title 5, supersedes subsection (d) of this section, insofar as such subsection authorizes President to continue persons in the service of the United States. 1934, 38 Op.Atty.Gen. 40.

3. Age for automatic separation

Although foreign service officer becomes eligible for retirement on August 6, 1934, under subsection (n) of this section, such officer does not reach the age prescribed for automatic separation from the service until September 1, 1934, under section 715a of Title 5. 1934, 38 Op. Atty.Gen. 40.

4. Temporary re-employment

There is no statutory provision against plaintiff receiving an annuity under the this section and being employed at the same time in a temporary position not under that act. Brunswick v. U. S., 1940, 90 Ct.Cl. 285.

Where a Foreign Service officer, retired for disability under this section and drawing retired pay, was subsequently employed at different times in three temporary positions in the executive branch of the Government, it is held that he is not prohibited from drawing both the salary of such temporary position and the annuity as a retired Foreign Service officer. Brunswick v. U. S., 1940, 90 Ct.Cl. 285.

5. "Retired pay" as annuity

In the instant case, there is no question of "double salary," but only one salary and one annuity. Brunswick v. U. S., 1940, 90 Ct.Cl. 285.

"Retired pay" does not constitute salary, but is in the nature of an annuity. Brunswick v. U. S., 1940, 90 Ct.Cl. 285.

§ 21a. Chief of Division of Western European Affairs. The Chief of the Division of Western European Affairs shall be entitled to participate in and have the benefits of the Foreign Service retirement and disability fund provided by section 21 of this title. (July 3, 1926, c. 798, § 2, 44 Stat. 903.)

§ 22. Recall of retired officer to active duty; compensation. In the event of public emergency any retired Foreign Service officer may be recalled temporarily to active service by the President, and while so serving he shall be entitled in lieu of his retirement allowance to the full pay of the class in which he is temporarily serving. (May 24, 1924, c. 182, § 19, 43 Stat. 146, as renumbered § 27 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1213.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23. Other laws applicable to Foreign Service officers. All provisions of law enacted prior to February 23, 1931, relating to diplomatic secretaries and to consular officers, which are not inconsistent with the provisions of sections 1–21, 22, 23, 23f–23*l* of this title, are made applicable to Foreign Service officers when they are designated for service as diplomatic or consular officers, and that all Acts or parts of Acts inconsistent with said sections are hereby repealed. May 24, 1924, c. 182, § 20, 43 Stat. 146, as renumbered § 28 and amended Feb. 23, 1931, c. 276, § 7, 46 Stat. 1213.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23a. Clerks in Foreign Service; grades and classification; compensation. The clerks in the Foreign Service of the United States of America shall be graded and classified as follows, and shall receive, within the limitation of such appropriations as the Congress may make, the basic compensations specified:

Senior clerks. Class 1, $4,000; class 2, $3,750; class 3, $3,500; class 4, $3,250; class 5, $3,000.

Junior clerks. Class 1, $2,750; class 2, $2,500; class 3, all clerks whose compensation as fixed by the Secretary of State is less than $2,500 per annum. Feb. 23, 1931, c. 276, § 1, 46 Stat. 1207.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23b. Same; promotions; qualifications. Appointments to the grade of senior clerks and advancement from class to class in that grade shall be by promotion for efficient service, and no one shall be promoted to the grade of senior clerk who is not an American citizen and has not served as a clerk in a diplomatic mission or a consulate, or both, or as a clerk in the Department of State for at least five years. Feb. 23, 1931, c. 276, § 2, 46 Stat. 1207.

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23c. Same; additional compensation to meet excessive costs of living at certain posts

The Secretary of State is hereby authorized, at posts where in his judgment it is required by the public interests for the purpose of meeting the unusual or excessive costs of living ascertained by him to exist, to grant compensation to clerks assigned there in addition to the basic rates specified in section 23a of this title, and also to other employees in the Foreign Service of the United States who are American citizens in addition to the basic rates of their salaries as fixed by the Secretary of State, within such appropriations as Congress may make for such purpose: *Provided, however*, That all such additional compensation with the reasons therefor shall be reported to Congress with the annual Budget. Feb. 23, 1931, c. 276, § 3, 46 Stat. 1207, as amended Apr. 24, 1939, c. 84, § 1, 53 Stat. 583.

Section 5 of Act April 24, 1939, cited to text, provided as follows: "This Act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 23d. Same; appointment to service in diplomatic mission; citizenship. No clerk who is not an American citizen shall be appointed to serve in a diplomatic mission. (Feb. 23, 1931, c. 276, § 4, 46 Stat. 1207.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23e. Regulations as to clerks in Foreign Service

The President is authorized to prescribe regulations for the administration of sections 23a–23d of this title. (Feb. 23, 1931, c. 276, § 5, 46 Stat. 1207.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23f. Board of Foreign Service Personnel for Foreign Service; establishment; duties; recommendation of promotions; composition. There shall be in the Department of State a Board of Foreign Service Personnel for the Foreign Service, whose duty it shall be to recommend promotions in the Foreign Service and to furnish the Secretary of State with lists of Foreign Service officers who have demonstrated special capacity for promotion to the grade of minister. The board shall be composed of not more than three Assistant Secretaries of State, one of whom shall be the Assistant Secretary of State having supervision over the Division of Foreign Service Personnel, who shall be chairman. The Chief of the Division of Foreign Service Personnel and one other member of the division may attend the meetings of the board and one of them shall act as secretary, but they shall not be entitled to vote in its proceedings. (May 24, 1924, c. 182, § 31, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1214.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23g. Division of Foreign Service Personnel; assignment of Foreign Service Officers for duty in Division; effect of assignment on eligibility for promotion; nature of duty. No Foreign Service officer below class 1 shall be assigned for duty in the Division of Foreign Service Personnel. Foreign

Service officers assigned to the division shall not be eligible for recommendation by the Board of Foreign Service Personnel for promotion to the grade of minister or ambassador during the period of such assignment or for three years thereafter, nor shall such officers be given any authority except of a purely advisory character, over promotions, demotions, transfers, or separations from the service of Foreign Service officers. (May 24, 1924, c. 182, § 31, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1214.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23h. Same; duties; custodian of information affecting Foreign Service officers; efficiency ratings; recommendations for promotion; confidential character of correspondence and records

The Division of Foreign Service Personnel shall assemble, record, and be the custodian of all available information in regard to the character, ability, conduct, quality of work, industry, experience, dependability and general availability of Foreign Service officers, including reports of inspecting officers and efficiency reports of supervising officers. All such information shall be appraised at least once in two years and the result of such appraisal expressed in terms of excellent, very good, satisfactory, or unsatisfactory, accompanied by a concise statement of the considerations upon which they are based, shall be entered upon records to be known as the efficiency records of the officers, and shall constitute their efficiency ratings for the period. No charges against an officer that would adversely affect his efficiency rating or his value to the service, if true, shall be taken into consideration in determining his efficiency rating except after the officer shall have had opportunity to reply thereto. The Assistant Secretary of State supervising the Division of Foreign Service Personnel shall be responsible for the keeping of accurate and impartial efficiency records of Foreign Service officers and shall take all measures necessary to ensure their accuracy and impartiality. Not later than November 1 at least every two years, the Division of Foreign Service Personnel shall, under the supervision of the Assistant Secretary of State, prepare a list in which all Foreign Service officers shall be graded in accordance with their relative efficiency and value to the service. In this list officers shall be graded as excellent, very good, satisfactory, or unsatisfactory with such further subclassification as may be found necessary. All officers rated satisfactory or above shall be eligible for promotion in the order of merit to the minimum salary of the next higher class. This list shall not become effective in so far as it affects promotion until it has been considered by the Board of Foreign Service Personnel hereinbefore provided for and approved by the Secretary of State: *Provided*, That this list shall not be changed before the next succeeding list of ratings is approved except in case of extraordinary or conspicuously meritorious service or serious misconduct and any change for such reasons shall be made only after consideration by the Board of Foreign Service Personnel and approval by the Secretary of State, and the reasons for such change when made shall be inscribed upon the efficiency records of the officers affected. From this list of all Foreign Service officers recommendations for promotion shall be made in the order of their ascertained merit within classes. Recommendations shall also be made, in order of merit, as shown by ratings in the examinations for appointment to the unclassified grade, with commissions also as diplomatic secretaries and vice consuls, of those who have successfully passed the examinations. All such recommendations shall be submitted to the Secretary of State for his consideration and if he shall approve, for transmission to the President.

The correspondence and records of the Division of Foreign Service Personnel shall be confidential except to the President, the Secretary of State, the members of the Board of Foreign Service Personnel, the Assistant Secretary of State supervising the division, and such of its employees as may

be assigned to work on such correspondence and records. (May 24, 1924, c. 182, § 32, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1214.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23i. Separation of Foreign Service officers from Foreign Service; grounds; retirement pay; annuities and bonuses

The President is hereby authorized to establish by Executive order, regulations providing for the separation of Foreign Service officers from the Foreign Service, in accordance with the conditions hereinafter prescribed. Any Foreign Service officer so separated from the Foreign Service shall be retired from the Service, after a hearing by the Secretary of State, upon an annuity equal to 25 per centum of his salary at the time of retirement, in the case of an officer over forty-five years of age, or in the case of an officer under forty-five years of age with a bonus of one year's salary at the time of his retirement, either annuity or one year's salary to be payable out of the Foreign Service retirement and disability fund and except as herein provided, subject to the same provisions and limitations as other annuities payable out of such fund; but no return of contributions shall be made under paragraph (1)[1] of section 21 of this title in the case of any Foreign Service officer retired under the provisions of this section: *Provided, however*, That any officer entitled to the bonus of one year's salary will receive in lieu of such bonus the amount of his contributions and interest under paragraph (1)[1] of section 21 of this title if such amount exceeds one year's salary. Whenever it is determined that the efficiency rating of an officer is unsatisfactory, thereby meaning below the standard required for the service, and such determination has been confirmed by the Secretary of State, the officer shall be notified thereof, and if, after a reasonable period to be determined by the circumstances in each particular case, the rating of such officer continues to be found unsatisfactory and such finding is confirmed by the Secretary of State after a hearing accorded the officer, such officer shall be separated from the service with the annuity or bonus provided in this section, but no officer so separated from the service shall receive the said annuity or bonus unless at the time of separation he shall have served at least fifteen years. He shall, however, if he has not served at least fifteen years, have returned to him the full sum of his contributions to the annuity fund, with interest thereon at 4 per centum compounded annually, except as provided in paragraph (c) of section 23d[2] of this title. The benefits of this section, except, at the option of the Secretary of State, the return of an officer's contributions to the annuity fund, shall not be given to Foreign Service officers separated from the Foreign Service on account of malfeasance in office. May 24, 1924, c. 182, § 33, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1215; Apr. 24, 1939, c. 84, § 4, 53 Stat. 588.

1 So in original. Probably should refer to paragraph (1).

2 So in original. Probably should refer to paragraph (c) of section 21 of this title.

Section 5 of Act April 24, 1939, cited to text, provided as follows: "This Act shall take effect on the first day of the calendar month following the expiration of sixty days from the date of its approval by the President."

Effective date of Act Feb. 23, 1931, cited to text, see note under section 2 of this title.

§ 23j. Provisions as reducing salary of promoted officers. Nothing in sections 1–21, 22, 23, 231–237 of this title shall be construed to reduce the salary of any Foreign Service officer upon promotion to a higher class. (May 24, 1924, c. 182, § 34, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1216.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23k. Fiscal districts; establishment; district accounting and disbursing offices; personnel; duties. The President is hereby authorized,

whenever the necessity for such offices with a view to effecting economies in accounting procedure is apparent, to prescribe certain fiscal districts or areas and to establish within each such district as a part of the Department of State service, a district accounting and disbursing office to exercise control over the accounts and returns of all diplomatic missions and consular offices within the district in such manner as the President may direct. To each such office may be assigned the administrative accounting responsibility for receipts and expenditures of the diplomatic missions and consular offices within the district. Each district office shall be in charge of an accountable officer, to whom all fees, and other official monies, received by any diplomatic, consular, or Foreign Service officer may be accounted for, under such rules and regulations as may be prescribed by the Secretary of State, all such fees and monies, or the residue thereof after the payment of salaries, allowances, and current expenses of the diplomatic missions and consular offices within the district, to be paid by the district accounting and disbursing officer into the Treasury of the United States. Such district accounting and disbursing officers accountable for public monies may entrust monies to other bonded officers for the purpose of having them make disbursements as his agent, and the officer to whom the monies are entrusted, as well as the officer who entrusts the monies to him, shall be held pecuniarily responsible therefor to the United States. All diplomatic, consular or Foreign Service officers on duty within the area covered by such district offices may be required to render accounts of their disbursements to the officer in charge of such district office to be included in his accounts. Said district accounting and disbursing officers and their agents shall be bonded respectively to the United States for the faithful performance of their duties in such penal amounts as the President may require.

Provided further, That the Secretary of State is authorized to appoint such district accounting and disbursing officers and their assistants in the same manner as clerks in diplomatic missions and consular offices are appointed.

Section 496 of Title 31, and any other existing statutes, in so far as they conflict with this section are hereby amended. (May 24, 1924, c. 182, § 35, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1216.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

§ 23*l*. Fees and official monies from diplomatic missions, consular offices and district accounting and disbursing offices; disposition. All fees and other official monies received by diplomatic missions or consular offices or by the district accounting and disbursing offices provided in section 23k of this title, may be transmitted through the Department of State for deposit in the United States Treasury, or may be used in payment of salaries, allowances, and current expenses of said missions and offices, under such rules and regulations as the President may from time to time prescribe; the residue, if any, to be transmitted through the Department of State for deposit in the United States Treasury. (May 24, 1924, c. 182, § 36, added by Feb. 23, 1931, c. 276, § 7, 46 Stat. 1216.)

Section 37 of Act Feb. 23, 1931, c. 276, provided "That this Act shall take effect on July 1, 1931."

DIPLOMATIC OFFICERS GENERALLY

§ 32. Appointment and salaries of ambassadors, ministers, etc.

Second proviso should be omitted.

The seventh paragraph of this section reading "Minister resident and consul general to Liberia, $5,000." was repealed by Act Jan. 21, 1931, c. 42, 46 Stat. 1040.

Former proviso of this section provided that no salary enumerated in this section should be paid to any official receiving any other salary from the Government. Judge Advocate General's opinion declared this proviso to be temporary. See JAG 010.3, No. 12, 1929, p. 4.

Belgium, appointment and compensation of ambassador, see section 34 of this title.

Foreign Service officer, assignment to act as diplomatic officer, and compensation, see sections 19 and 20 of this title.

§ 32a. Salary of minister to Liberia.

Section, Act Jan. 21, 1931, c. 42, 46 Stat. 1040, which related to salary of envoy extraordinary and minister plenipotentiary to Liberia, has been omitted from the Code.

Salaries of ambassadors, ministers, etc., see section 32 of this title.

§ 33. Citizenship as requisite to compensation

The words "the preceding section" in line 2 should read "section 32 of this title."

§ 34a. Ambassador to Poland. The President is authorized to appoint, as the representative of the United States, an ambassador to the Republic of Poland, who shall receive as compensation the sum of $17,500 per annum. (Jan. 22, 1930, c. 22, 46 Stat. 57.)

The Resolution cited to the text was entitled "Joint Resolution Authorizing the appointment of an ambassador to Poland."

§ 34b. Minister to Union of South Africa. The President is authorized to appoint, as the representative of the United States, an envoy extraordinary and minister plenipotentiary to the Union of South Africa, who shall receive as compensation the sum of $10,000 per annum. (June 5, 1930, c. 404, 46 Stat. 502.)

The resolution cited to the text was entitled "Joint Resolution Authorizing the appointment of an envoy extraordinary and minister plenipotentiary to the Union of South Africa."

§ 34c. Minister to Egypt

The President is hereby authorized to appoint as the representative of the United States an envoy extraordinary and minister plenipotentiary to Egypt, who shall receive as compensation the sum of $10,000 per annum. June 1, 1922, c. 204, Title I, 42 Stat. 600.

§ 35. Clerks at embassies and legations

The word "hereafter" should be inserted after the word "whenever" in the second line.

"Apr. 29, 1926, c. 195, Title I, 44 Stat. 331; Feb. 24, 1927, c. 189, Title I, 44 Stat. 1180; Feb. 15, 1928, c. 57, Title I, 45 Stat. 65; Jan. 25, 1929, c. 102, Title I, 45 Stat. 1096; Apr. 18, 1930, c. 184, Title I, 46 Stat. 175" should be added to the citation.

§ 36. Compensation of persons filling two offices

Double salaries not be in paid government employees when combined amount exceeds $2,000.00 per annum, see section 58 of Title 5, Executive Departments, Government Officers and Employees.

Foreign Service officer to receive only one salary though assigned other duties, see section 19 of this title.

§ 37. Special allowance to messenger of embassy at Paris

The figure "$160" in line 5 should read "$600".

In the opinion of the Secretary of State this section is no longer operative.

§ 40. "Diplomatic officer" defined

R. S. § 1674 cited to the orighal text is from Act Aug. 18, 1856, c. 127, § 31, 11 Stat. 64; Act June 20, 1864, c. 156, § 1, 13 Stat. 138; Act July 25, 1866, c. 223, 14 Stat. 225; Act Jan. 8, 1874, c. 1, 18 Stat. 285.

§ 41. Ambassador or minister unable to serve because of emergent conditions abroad; appointment as Foreign Service officer; compensation

During the period of the existing state of emergency proclaimed by the President on September 8, 1939, any Ambassador or Minister whose salary as such as payable from the appropriation "Salaries, Ambassadors and Ministers" and who, prior to appointment as Ambassador or Minister was legally appointed and served as a diplomatic or consular officer or as a Foreign Service officer, and who, on account of emergent conditions abroad, is unable properly to serve the United States at his regular post of duty, or, on account of such emergent conditions abroad, it shall be or has been found necessary in the public interest to terminate his appointment as Ambassador or Minister at such post, may be appointed or assigned to serve in any capacity in which a Foreign Service officer is authorized by

law to serve, and, notwithstanding the provisions of any other law, the payment from such appropriation for the fiscal year 1943 of the salary of such officer, while serving under such assignment, is hereby authorized: *Provided*, That no person, while serving under such emergency appointment or assignment, shall receive compensation in excess of $9,000 per annum while serving in the continental United States or in excess of $10,000 per annum while serving elsewhere. Apr. 1, 1941, c. 32, Title I, § 1, 55 Stat. 71; July 2, 1942, c. 472, Title I, 56 Stat. 470.

Proclamation of emergency. See Proc. No. 2352, Sept. 8, 1939, 4 Fed.Reg.3851, 54 Stat. 2643, set out in note preceding section 1 of appendix to Title 50, War.

CONSULAR OFFICERS GENERALLY

§ 51. Official designations in Consular Service

Words "this chapter" in opening paragraph should read "sections 11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73–77, 80, 82, 83, 85, 87, 88, 90–97, 101–109, 121, 123, 125, 127–132, and 168 of this title."

R. S. § 1674 cited to the original text is from Act Aug. 18, 1856, c. 127, § 31, 11 Stat. 64; Act June 20, 1864, c. 130 § 1, 13 Stat. 138; Act July 25, 1866, c. 233, 14 Stat. 225; Act Jan. 8, 1874, c. 1, 18 Stat. 285.

§ 51a. Appointment of vice-consuls and consular agents

The President is authorized to provide for the appointment of vice-consuls and consular agents in such manner and under such regulations as he shall deem proper. No vice-consul or consular agent shall be appointed otherwise than under such regulations as have been or may be prescribed by the President. R.S. § 1695; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Feb. 5, 1915, c. 23, § 6, 38 Stat. 806.

§ 53. General application of provisions to consular officers

Words "this chapter" should read "sections 11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73–77, 80, 82, 83, 85, 87, 88, 90–97, 101–109, 121, 123, 125, 127–132, and 168 of this title."

§ 56. Consular clerks; appointment

After the word "whenever" in the first line there should be inserted the word "hereafter."

Repealed. Act April 29, 1926, c. 195, Title I, 44 Stat. 333, and Act Feb. 24, 1927, c. 189, Title I, 44 Stat. 1182.

§ 57. Citizenship requirement as to consular clerks. [Repealed.]

This section was repealed by Act Feb. 23, 1931, c. 276, § 6, 46 Stat. 1207, to take effect July 1, 1931.

§ 58. Expense allowance to vice consulate or consular agency

In the opinion of the Secretary of State this section is obsolete.

POWERS, DUTIES, AND LIABILITIES OF CONSULAR OFFICERS GENERALLY

§ 71. General construction as to powers and duties

Reference "72 to 109, inclusive, of this chapter" should read "11, 20, 32, 33, 36, 39, 51, 53, 55, 58, 71, 73–77, 80, 82, 83, 85, 87, 88, 90–97, 101–109, 121, 123, 125, 127–132 and 168 of this title.

§ 74. Lists and returns of seamen and vessels, etc.

At the end of the section the words "Secretary of the Treasury" should read "Secretary of Commerce."

"Feb. 14, 1903, c. 552, § 10, 32 Stat. 829" should be added to the citation.

§ 75. Estates of decedents generally; General Accounting Office as conservator

It shall be the duty of a consular officer, or, if no consular officer is present, a diplomatic officer, under such procedural regulations as the Secretary of State may prescribe—

First. To take possession and to dispose of the personal estate left by any citizen of the United States, except a seaman who is a member

of the crew of an American vessel, who shall die within or is domiciled at time of death within his jurisdiction: *Provided*, That such procedure is authorized by treaty provisions or permitted by the laws or authorities of the country wherein the death occurs, or the decedent is domiciled, or that such privilege is accorded by established usage: *Provided further*, That the decedent shall leave in the country where the death occurred or where he was domiciled, no legal representative, partner in trade, or trustee by him appointed to take care of his personal estate. A consular officer or, in his absence, a diplomatic officer shall act as the provisional conservator of the personal property within his jurisdiction of a deceased citizen of the United States but, unless authorized by treaty provisions, local law, or usage, he shall not act as administrator of such personal property. He shall render assistance in guarding, collecting, and transmitting the property to the United States to be disposed of according to the law of the decedent's domicile.

Second. After having taken possession of the personal property, as provisional conservator, to inventory and carefully appraise the effects, article by article, with the assistance of two competent persons who, together with such officer, shall sign the inventory and annex thereto an appropriate certificate as to the accuracy of the appraised value of each article.

Third. To collect the debts due to the decedent in his jurisdiction and pay from the estate the obligations owed there by the decedent.

Fourth. To sell at auction, after reasonable public notice, unless the amount involved does not justify such expenditure, such part of the estate as shall be of a perishable nature, and after reasonable public notice and notice to next of kin if they can be ascertained by reasonable diligence such further part, if any, as shall be necessary for the payment of the decedent's debts incurred in such country, and funeral expenses, and expenses incident to the disposition of the estate. If, at the expiration of one year from the date of death (or for such additional period as may be required for final settlement of the estate), no claimant shall appear, the residue of the estate, with the exception of investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value, shall be sold.

Fifth. To transmit to the General Accounting Office the proceeds of the sale (and any unsold effects, such as investments of bonds, shares of stocks, notes of indebtedness, jewelry or heirlooms, or other articles having a sentimental value), there to be held in trust for the legal claimant. If, however, at any time prior to such transmission, the decedent's legal representative should appear and demand the proceeds and effects in the officer's hands, he shall deliver them to such representative after having collected the prescribed fee therefor.

The Comptroller General of the United States, or such member of the General Accounting Office as he may duly empower to act as his representative for the purpose, shall act as conservator of such parts of these estates as may be received by the General Accounting Office or are in its possession, and may, when deemed to be in the interest of the estate, sell such effects, including bonds, shares of stock, notes of indebtedness, jewelry, or other articles, which have heretofore or may hereafter be so received, and pay the expenses of such sale out of the proceeds: *Provided*, That application for such effects shall not have been made by the legal claimant within six years after their receipt. The Comptroller General is authorized, for and in behalf of the estate of the deceased, to receive any balances due to such estates, to draw therefor on banks, safe deposits, trust or loan companies, or other like institutions, to endorse all checks, bills of exchange, promissory notes, and other evidences of indebtedness due to such estates, and take such other action as may be deemed necessary for the conservation of such estates. The net proceeds of such sales, together with such other moneys as may be collected by him, shall be deposited into the Treasury to a fund in trust for the legal claimant and reported to the Secretary of State.

If no claim to the effects the proceeds of which have been so deposited shall have been received from a legal claimant of the deceased within six years from the date of the receipt of the effects by the General Accounting Office, the funds so deposited, with any remaining unsold effects, less transmittal charges, shall be transmitted by that office to the proper officer of the State or Territory of the last domicile in the United States of the deceased citizen, if known, or, if not, such funds shall be covered into the general fund of the Treasury as miscellaneous receipts on account of proceeds of deceased citizens, and any such remaining unsold effects shall be disposed of by the General Accounting Office in such manner as, in the judgment of the Comptroller General, is deemed appropriate, or they may be destroyed if considered no longer possessed of any value: *Provided*, That when the estate shall be valued in excess of $500, and no claim therefor has been presented to the General Accounting Office by a legal claimant within the period specified in this paragraph or the legal claimant is unknown, before disposition of the estate as provided herein, notice shall be given by publishing once a week for four consecutive weeks in a newspaper published in the county of the last known domicile of the deceased, in the United States, the expense thereof to be deducted from the proceeds of such estate, and any lawful claim received as the result of such advertisement shall be adjusted and settled as provided for herein. As amended July 12, 1940, c. 618, 54 Stat. 758.

Estates of Decedents, Department of State, Trust Fund see section 725s of Title 31, Money and Finance.

§ 76. Notification of death of decedent; transmission of inventory of effects

For the information of the representative of the deceased, the consular officer, or, if no consular officer is present, a diplomatic officer, in the settlement of his estate shall immediately notify his death in one of the gazettes published in the consular district, and also to the Secretary of State, that the same may be notified in the State to which the deceased belonged; and he shall, as soon as may be, transmit to the Secretary of State an inventory of the effects of the deceased taken as before directed. As amended July 12, 1940, c. 618, 54 Stat. 758.

Act July 12, 1940, cited to text, inserted "the consular officer, or, if no consular officer is present, a diplomatic officer," in lieu of "the consul or vice-consul,".

§ 77. Following testamentary directions; assistance to testamentary appointee

When a citizen of the United States dies in a foreign country and leaves, by any lawful testamentary disposition, special directions for the custody and management, by the consular officer, or in his absence a diplomatic officer, within whose jurisdiction the death occurred, of the personal property in the foreign country which he possessed at the time of death, such officer shall, so far as the laws of the foreign country permit, strictly observe such directions if not contrary to the laws of the United States. If such citizen has named, by any lawful testamentary disposition, any other person than a consular officer or diplomatic officer to take charge of and manage such property, it shall be the duty of the officer, whenever required by the person so named, to give his official aid in whatever way may be practicable to facilitate the proceedings of such person in the lawful execution of his trust, and, so far as the laws of the country or treaty provisions permit, to protect the property of the deceased from any interference by the authorities of the country where such citizen died. To this end it shall be the duty of the consular officer, or if no consular officer is present a diplomatic officer, to safeguard the decedent's property by placing thereon his official seal and to break and remove such seal only upon the request of the person designated by the deceased to take charge of and manage his property. As amended July 12, 1940, c. 618, 54 Stat. 758.

§ 80. Commercial and agricultural reports

"Feb. 9, 1889, c. 122, §§ 1, 4, 25 Stat. 659; July 14, 1890, c. 707, 26 Stat. 288; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

Gathering and compilation of statistics and useful and material information regarding subjects enumerated in section 26 of Title 5, Executive Departments, Government Officers and Employees, and furnishing of reports to Secretary of Commerce by consular officers, see section 175 of Title 15, Commerce and Trade.

Information pertaining to work of Department of Commerce to be obtained from consular officers, see section 162 of Title 5, Executive Departments, Government Officers and Employees.

§ 81. Reports as to exports, imports, and wages

The citations for this section should read as follows: "Jan. 27, 1879, c. 28, 20 Stat. 273; Apr. 5, 1906, c. 1366, § 3, 34 Stat. 101."

§ 82. Reports as to current prices of merchandise, etc., and as to agricultural conditions

"Feb. 9, 1889, c. 122, §§ 1, 4, 25 Stat. 659" should be added to the citation.

§ 83. Certification of invoices generally

Invoices covering merchandise exceeding $100 in value to be certified, see section 1482 of Title 19, Customs Duties.

§ 89. Fees for services to American vessels or seamen prohibited

Adjustments, see section 725a of Title 31, Money and Finance.

General duty to account for fees, see section 99 of this title.

§ 91. Valuation of foreign coins in payment of fees

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

§§ 93, 94.

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

§ 99. General duty to account for fees

The provisions of this section relative to official fees and the method of accounting therefor are made applicable to diplomatic officers below the grade of minister and to consular officers by section 13 of this title.

See section 725a of Title 31.

§ 100. Stamps for fees; effect of failure to affix stamps to documents

The provisions of this section relative to official fees and the method of accounting therefor are made applicable to diplomatic officers below the grade of minister and to consular officers by section 13 of this title.

§ 103. Liability for neglect of duty or for malfeasance generally; action on bond; penalty

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100." should be added to the citation.

6. Liability for defamatory statements in reports

Statement respecting plaintiff, contained in consul's confidential report of persons, engaged in business in his district, made under 15 USCA § 175, held absolutely privileged, and could not constitute basis of libel action, or action on consul's bond in name of United States, U. S. v. Brunswick (1934) 69 F.(2d) 383, 63 App. D. C. 65.

This section relates to transactions wherein consul is dealing directly with party injured and violates duty imposed by law, with respect to such persons. U. S. v. Brunswick (1934) 69 F.(2d) 383, 63 App. D. C. 65.

Public policy affords absolute protection from what may be said or written by officer, such as consul, in his official report to superior, as against contention that privilege is granted only to chief officer of government and not to subordinates. U. S. v. Brunswick (App. D. C. 1934) 69 F.(2d) 383.

§ 104. False certificate as to ownership of property

"Apr. 5, 1906, c. 1366 § 3, 34 Stat. 100" should be added to the citation.

§ 107. Extension of restriction as to transaction of business

The words "the preceding section" in line 5 should read "section 106 of this title."

§ 108. Penalty for violation of restriction as to transaction of business; action on bond

"Apr. 5, 1906, c. 1366 § 3, 34 Stat. 100" should be added to the citation.

§ 109. Allowance for office rent of consulates

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

In the opinion of the Secretary of State this section is obsolete.

GENERAL PROVISIONS COMMON TO DIPLOMATIC AND TO CONSULAR OFFICERS

§ 121. When salary commences

Words "in this section" should be inserted before "mentioned" at end of first sentence.

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100; Feb. 5, 1915, c. 23, § 6, 38 Stat. 806" should be added to the citation.

§ 122. Obsolete

The Secretary of State, in a communication of June 13, 1939, declared this section to be obsolete because "The practice of establishing and making public maximum transit periods under this provision was abandoned following the issuance of an Executive Order of February 25, 1915. The matter of transit time is now dealt with in Chapter V, section 42 (c) of the Foreign Service Regulations, which reads:

"'*Excess travel time.* No Foreign Service officer or employee traveling under orders or on leave with permission to visit the United States is entitled to salary in transit for any time in excess of that actually and necessarily occupied in proceeding by direct route and generally adopted method of transport from his post to his place of residence or destination in the United States, or *vice versa*, and such time as may be necessarily occupied in awaiting sailing, except when complying with specific orders issued by the Department of State (sec. XXIV-467, part II) (22 U.S.C. § 17a).'"

§ 123. Salary during absence generally; leave of absence. [Repealed.]

This section was repealed by Act Feb. 23, 1931, c. 276, § 22, 46 Stat. 1210, to take effect July 1, 1931.

§ 124. Absence without leave; compensation withheld; sickness

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

§ 125. Extra compensation prohibited

Extra compensation to Foreign Service officers while in charge of consulates, see section 20 of this title.

§ 127. Regulation of fees by President

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

§ 128. Medium for payment of fees

All coins and currencies of United States to be legal tender for payment of public charges, see section 462 of Title 31, Money and Finance.

§ 129. Office paraphernalia

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

§ 130a. Expenses of bringing home remains of personnel dying abroad

Payment shall be made for the preparation and transportation of the remains of those officers and employees of the Foreign Service, who have died or may die abroad or in transit while in the discharge of their official duties, to their former homes in this country or to a place not more distant for interment, and for the ordinary expenses of such interment. Apr. 27, 1938, c. 180, Title I, § 1, 52 Stat. 250; June 29, 1939, c. 248, Title I, 53 Stat. 887; May 14, 1940, c. 189, Title I, 54 Stat. 183; June 28, 1941, c. 258, Title I, 55 Stat. 267; July 2, 1942, c. 472, Title I, 56 Stat. 471.

Section is based upon provisions contained in all annual appropriation acts providing funds for the Foreign Service beginning with Act Feb. 26, 1883, c. 56, § 1, 22 Stat. 430. Although each of these provisions is by its terms limited to its specific appropriation, the Secretary of State, in a communication dated June 13, 1939, recommended its incorporation into the Code, saying: "As provision has been made in the annual appropriation acts for the past 50 years for the payment of expenses of this character, I believe that the continued repetition of this item in appropriation acts would amply justify the inclusion of this provision as a section of Title 22 in the next revision of the Code."

§ 130b. Expenses of transporting personnel, families and effects to and from posts; emergency conditions

Payment shall be made for the traveling expenses, including travel by airplane when specifically authorized by the Secretary of State, of Diplomatic, Consular, and Foreign Service officers, and other employees of the Foreign Service, including Foreign Service inspectors, and under such regulations as the Secretary of State may prescribe, of their families and expenses of transportation of effects, in going to and returning from their posts, and in removing the family and effects of any such officer or employee from any foreign post, and thereafter transporting such family and effects to his post of assignment, to whatever extent may be determined necessary by the Secretary of State by reason of emergency conditions in any country that in his opinion may endanger the life of such officer or employee or any member of his family, including automobiles as authorized by sections 73c and 823a of Title 5, section 824 of Title 10, and section 898 of Title 34, and storage of effects while such officers or employees are absent from their permanent posts of duty, including also expenses in connection with leaves of absence. Apr. 27, 1938, c. 180, Title I, § 1, 52 Stat. 250; June 29, 1939, c. 248, Title I, 53 Stat. 887; May 14, 1940, c. 189, Title I, 54 Stat. 183; June 28, 1941, c. 258, Title I, 55 Stat. 267; July 2, 1942, c. 472, Title I, 56 Stat. 470.

Section is based upon provisions contained in appropriation acts providing funds for the Foreign Service beginning with Act June 16, 1906, c. 3357, 34 Stat. 288. Although each of these provisions is by its terms limited to its specific appropriation, the Secretary of State, in a communication dated June 13, 1939, recommended its incorporation into the Code, saying: "As the original provision with respect to this matter has been in force for 32 years and the enactment in its present broader form has been repeated in acts of Congress for the past 20 years, I believe that you would be warranted in incorporating a section in the revised edition of the Code which would set forth this enactment with respect to the transportation of Foreign Service personnel in going to and returning from their posts and of their families and effects."

The Secretary of State, in the aforementioned communication of June 13, 1939, further requested that the following provision, which was incorporated in a Supplement to the Standardized Travel Regulations issued by the Secretary of State on April 27, 1927, after examination thereof by the Comptroller General, be set out as a note to this section: "The cost of packing and crating for shipment, as well as unpacking and uncrating, will be allowed in the case of effects shipped by freight, but not for those transported as baggage. The use of liftvans is authorized for the shipment of household effects when they can be used as economically as having the goods packed and crated in the ordinary manner."

§ 131. Depositions and notarial acts; perjury

"Apr. 5, 1906, c. 1366, § 3, 34 Stat. 100" should be added to the citation.

R. S. § 1741, set out in the historical note to this section, was repealed by Act Mar. 3, 1933, c. 202, § 1, 47 Stat. 1429.

4. State practice

A vice consul, being an officer having by virtue of his office authority to administer oaths and examine witnesses, is within the class authorized by Code Pub.Gen.Laws 1924, art. 35, §§ 16-18, to take depositions of witnesses residing outside the state. France v. Safe Deposit & Trust Co. of Baltimore, 1939, 4 A.2d 717, 176 Md. 306.

§ 133. Purchase of buildings for Diplomatic and Consular Service. [Repealed.]

This section has been repealed by Act May 7, 1926, c. 250, § 7, 44 Stat. 405.

§ 134. Gifts of buildings, etc., for Diplomatic and Consular Service

Citation for this section should read "Mar. 2, 1921, c. 113, 41 Stat. 1215."

Foreign Service buildings, see sections 291-299 of this title.

§ 135. Protection of diplomatic codes

Whoever, by virtue of his employment by the United States, shall obtain from another or shall have custody of or access to, or shall have had custody of or access to, any official diplomatic code or any matter prepared in any such code, or which purports to have been prepared in any such code, and shall willfully, without authorization or competent authority, publish or furnish to another any such code or matter, or any matter which was obtained while in the process of transmission between any foreign government and its diplomatic mission in the United

States, shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (June 10, 1933, c. 57, 48 Stat. 122.)

§ 136. Temporary assignment of American citizens in Foreign Service to Department of State during national emergency

During the period of the existing state of emergency proclaimed by the President on September 8, 1939, American citizens holding positions in the Foreign Service of the United States and who on account of emergent conditions abroad are unable properly to serve the United States at their regular posts of duty may be assigned to the Department of State to perform temporary services in that Department or to be detailed for temporary services of comparable importance, difficulty, responsibility, and value in any other department or agency of the United States, in cases where there is found to be a need of services for the performance of which such persons have the requisite qualifications. June 28, 1941, c. 258, Title I, 55 Stat. 270; July 2, 1942, c. 472, Title I, 56 Stat. 474.

CHAPTER 2.—CONSULAR COURTS

§ 141. Judicial authority generally

Words "this chapter" should read "sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50."

"R. S. § 4127" should be added to the citation.

R. S. § 4083 is from Act June 22, 1860, c. 179, § 1, 12 Stat. 72; Act July 28, 1866, c. 296, § 11, 14 Stat. 322; Act July 1, 1870, c. 194, § 1, 16 Stat. 183.

R. S. § 4125 is from Act June 22, 1860, c. 179, § 21, 12 Stat. 76.

R. S. § 4126 is from Act June 22, 1860, c. 179, § 28, 12 Stat. 78.

R. S. § 4127 is from Act June 22, 1860, c. 179, § 29, 12 Stat. 78.

United States Court for China, see section 191 et seq. of this title.

5. Jurisdiction

Jurisdictional facts held charged by information in United States Court for China for acts committed by defendant in such country while qualified district attorney for such court. Husar v. U. S. (C. C. A. China, 1928) 26 F.(2d) 847, certiorari denied (1928) 49 S. Ct. 27, 278 U. S. 625, 73 L. Ed. 545.

§ 142. General jurisdiction in criminal cases

The officers mentioned in section 141 of this title are fully empowered to arraign and try, in the manner provided in sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, all citizens of the United States charged with offenses against law, committed in such countries, respectively, and to sentence such offenders in the manner in such sections authorized; and each of them is authorized to issue all such processes as are suitable and necessary to carry this authority into execution. R.S. § 4084.

2. Persons subject to jurisdiction

Jurisdictional facts held charged by information in United States Court for China for acts committed by defendant in such country while qualified district attorney for such court. Husar v. U. S. (C. C. A. China, 1928) 26 F.(2d) 847, certiorari denied (1928) 49 S. Ct. 27, 278 U. S. 625, 73 L. Ed. 545.

§ 144. Vice consul at Shanghai to exercise judicial functions of consul general

Section is now set out as section 197c of this title.

Commissioner to act as ex officio judge of consular court for Shanghai with all judicial authority and jurisdiction exercised prior to June 4, 1920 by the vice-consul at Shanghai, to be appointed by United States Court for China, see section 198 of this title.

§ 145. System of laws to be applied

3. Law governing

Where extraterritorial Consular Court at Cairo, Egypt, after full hearing, judicially determined that first cousins of deceased American citizen domiciled in Cairo were his lawful heirs, such cousins were entitled to distribution of property in New York as the sole distributees, especially where they submitted independent common law proof that they were the only distributees under District of Columbia Code, 1929, T. 20, § 281 et seq., applicable in extraterritorial courts, and also under New York law. In re Blanchard's Estate, 1941, 29 N.Y.S.2d 359, 176 Misc. 796.

In extraterritorial courts of the United States, the law governing intestate succession is found in special acts of Congress providing for intestate succession in District of Columbia. In re Blanchard's Estate, 1941, 29 N.Y.S.2d 359, 176 Misc. 796.

§ 146. Rules and regulations for consular court generally

Words "this chapter", appearing twice in this section, should read "sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50" and "such sections" respectively.

§ 147. Dissent of consuls to and publication of rules, etc.

The words "the preceding section" in the third line should read "section 146 of this title".

§ 149. Warrant, arrest, trial, and sentence by counsel generally

Words "of this chapter" should read "of this title" and "this chapter" at end of section should read "sections 21-24 of Title 50."

§ 153. Jurisdiction of consuls in civil cases; finality; associates in civil cases; reference to minister on disagreement

3. Appointment of associates

Even if chargé d'affaires in Ethiopia, in absence of a minister, selected associate judges for United States consular court in Ethiopia not on an eligible list, such men selected by him were at least de facto judges, and their title to sit as such could not be attacked collaterally by a defeated party who appeared before them in answer to an appropriate summons. Dored v. Wells, Misc.1939, 11 N.Y.S.2d 258, affirmed, 1939, 15 N.Y.S.2d 137, 258 App.Div. 716, reargument denied, 1939, 16 N.Y.S.2d 101, 258 App.Div. 792, appeal denied, 1940, 25 N.E.2d 143, 282 N.Y. 590.

The chargé d'affaires in Ethiopia, in the absence of a minister, has full power to make a valid appointment of associate judges to United States consular court in Ethiopia. Dored v. Wells, Misc. 1939, 11 N.Y.S.2d 258, affirmed, 1939, 15 N.Y.S.2d 137, 258 App.Div. 716, reargument denied, 1939, 16 N.Y.S.2d 101, 258 App.Div. 792, appeal denied, 1940, 25 N.E. 2d 143, 282 N.Y. 590.

§ 154. Evidence; how taken

From Act July 1, 1870, c. 194, § 12, 16 Stat. 75.

§ 155. Punishment generally; contempt

In all cases, except as, in sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, otherwise provided, the punishment of crime provided for by such sections shall be by fine or imprisonment, or both, at the discretion of the officer who decides the case, but subject to the regulations in such sections contained, and such as may hereafter be made. It shall, however, be the duty of such officer to award punishment according to the magnitude and aggravation of the offense. Every person who refuses or neglects to comply with the sentence passed upon him shall stand committed until he does comply, or is discharged by order of the consul, with the consent of the minister in the country. R.S. § 4101.

§ 159. Fees for judicial services; application of moneys; rendition of accounts

It shall be the duty of the minister in each of the countries mentioned in section 141 of this title to establish a tariff of fees for judicial services, which shall be paid by such parties, and to such persons, as the minister shall direct; and the proceeds shall, as far as is necessary, be applied to defray the expenses incident to the execution of sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50; and regular accounts, both of receipts and expenditures, shall be kept by the minister and consuls and transmitted annually to the Secretary of State. R.S. § 4120.

§ 165. Appellate jurisdiction of minister; new trials

Each of the ministers mentioned in section 141 of this title shall, in the country to which he is appointed, be fully authorized to hear and decide all cases, criminal and civil, which may come before him, by appeal, under the provisions of sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, and to issue all processes necessary to

execute the power conferred upon him; and he is fully empowered to decide finally any case upon the evidence which comes up with it, or to hear the parties further, if he thinks justice will be promoted thereby; and he may also prescribe the rules upon which new trials may be granted, either by the consuls or by himself, if asked for upon sufficient grounds. R.S. § 4091.

§ 166. Jurisdiction of minister to try capital and felony cases

Words "hereinbefore mentioned in this chapter" should read "mentioned in section 141 of this title".

§ 167. Prevention of American citizens from enlisting with foreign countries

The words "the preceding section" in the second line should read "section 166 of this title" and "this chapter" should read "this title".

§ 168. Marshals of consular courts; appointment and salary

"June 30, 1906 c. 3934 § 8, 34 Stat. 816" should be added to the citation.

§ 176. Secretary of State to exercise judicial duties when no minister

If at any time there be no minister in either of the countries mentioned in section 141 of this title, the judicial duties which are imposed by sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50 upon the minister shall devolve upon the Secretary of State, who is authorized and required to discharge the same. R.S. § 4128.

§ 177. General extension to unnamed countries

The provisions of sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50 relating to the jurisdiction of consular and diplomatic officers over civil and criminal cases in the countries mentioned in section 141 of this title shall extend to any country of like character with which the United States may after July 1, 1870, enter into treaty relations. And whenever the United States shall negotiate a treaty with any foreign government, in which the American consul general or consul shall be clothed with judicial authority, and securing the right of trial to American citizens residing therein before such consul general or consul, and containing provisions similar to or like those contained in the treaties with the governments named in section 141 of this title, then such sections, so far as the same may be applicable, shall have full force in reference to said treaty, and shall extend to the country of the government negotiating the same. R.S. §§ 4127, 4129; June 14, 1878, c. 193, 20 Stat. 131.

R. S. § 4127 is from Act June 22, 1860, c. 179, § 29, 12 Stat. 78.

R. S. § 4129 is from Act July 1, 1870, c. 194, § 1, 16 Stat. 183.

§ 178. "Minister" and "consul" defined

The word "minister", when used in sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50 shall be understood to mean the person invested with, and exercising, the principal diplomatic functions. The word "consul" shall be understood to mean any person invested by the United States with, and exercising, the functions of consul general, consul, or vice consul. R.S. § 4130; Feb. 1, 1876, c. 6, 19 Stat. 2; Feb. 5, 1915, c. 23, § 6, 38 Stat. 806.

§ 180. Power of consuls in uncivilized countries or countries not recognized by treaties

The word "were" should be substituted for the word "are" in line 10 and "this chapter" in last sentence should read "this title".

"Apr. 5, 1906, c. 1360, § 3, 34 Stat. 100" should be added to the citation.

§ 181. Provisions of chapter extended to Turkey

The provisions of sections 72, 141–143, 145–159, 163–174, 176–181, 183, 211, 212, 218, 219, 251–258 of this title, sections 701–704 of Title 28, and sections 21–24 of Title 50, so far as the same relate to crimes and offenses committed by citizens of the United States, shall extend to Turkey, under the treaty with the Sublime Porte of May 7, 1830, and shall be executed in the Ottoman dominions in conformity with the provisions of the treaty, and of such sections, by the ambassador and the consuls appointed to reside therein, who are hereby ex-officio vested with the powers in such sections conferred upon ministers and consuls in China, for the purposes above expressed, so far as regards the punishment of crime, and also for the exercise of jurisdiction in civil cases wherein the same is permitted by the laws of Turkey, or its usages in its intercourse with the Franks, or other foreign Christian nations. R.S. § 4125; Feb. 27, 1925, c. 364, 43 Stat. 1015.

§§ 182, 183

Words "this chapter", appearing twice in these sections, should read sections 72, 141-143, 145-159, 163-174, 176-181, 183, 211, 212, 218, 219, 251-258 of this title, sections 701-704 of Title 28, and sections 21-24 of Title 50" and "such sections" respectively.

CHAPTER 3.—UNITED STATES COURT FOR CHINA

§ 191. Establishment of court; sessions; seal; writs; processes, etc.

A court is hereby established, to be called the United States Court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may have been exercised, prior to June 30, 1906, by United States consuls and ministers by law and by virtue of treaties between the United States and China except insofar as the said jurisdiction is qualified by sections 192 and 193 of this title; and to [1] concurrent jurisdiction of all offenses committed on the high seas in cases in which the person or persons charged with such offenses shall be found in or be brought first into China. The said court shall hold sessions at Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankau at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively.

The seal of the said United States Court for China shall be the arms of the United States, engraved on a circular piece of steel of the size of a half dollar, with these words on the margin, "The Seal of the United States Court for China."

The seal of said court shall be provided at the expense of the United States.

All writs and processes issuing from the said court and all transcripts [2], records, copies, jurats, acknowledgments, and other papers requiring certification or to be under seal may be authenticated by said seal, and shall be signed by the clerk of said court. All processes is-

sued from the said court shall bear test from the day of such issue. (As amended June 24, 1936, c. 757, 49 Stat. 1909.)

1 So in original. Word "to" is probably superfluous.

2 So in original. Probably should read "transcripts."

For transfer of United States Court for China to Department of Justice, see section 6 of Executive Order No. 6166 set out in note to section 132 of Title 5.

3. Jurisdiction

Jurisdictional facts held charged by information in United States Court for China for acts committed by defendant in such country while qualified district attorney for such court. Husar v. U. S. (C. C. A. China, 1928) 26 F.(2d) 847, certiorari denied (1928) 49 S. Ct. 27, 278 U. S. 625, 73 L. Ed. 545.

4. —— Presumption against jurisdiction

Jurisdiction of United States Court for China, being limited, must affirmatively appear. Husar v. U. S. (C. C. A. China, 1928) 26 F.(2d) 847, certiorari denied (1928) 49 S. Ct. 27, 278 U. S. 625, 73 L. Ed. 545.

6. Divorce decrees

Where husband by reason of his military service and detail in Shanghai, China, conformed with jurisdictional requirements and his wife by living there with him made it their matrimonial domicile, decree of divorce granted to the husband by United States court at Shanghai was valid, so that thereafter wife was legally capable of entering into another valid marriage. Newins v. Newins, Misc.1939, 13 N.Y.S.2d 377.

§ 192. Jurisdiction of consular courts restricted; appeal from consular courts

Commissioner of United States Court for China to be ex officio judge of consular court for district of Shanghai, see section 198 of this title.

§ 194. Appeals and writs of error for review of judgments, etc., of court

The words "and writs of error" in lines 4 and 5, 7 and 15 and the words "or writ of error" in lines 9 and 10 should be stricken out.

"Mar. 3, 1911, c. 231, § 291, 36 Stat. 1167; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54" should be added to the citation.

Certiorari in Supreme Court from Circuit Courts of Appeal, see section 347(a) of Title 28, Judicial Code and Judiciary.

6. Necessity of exceptions

To same effect as original annotation, see Yangtsze Rapid S. S. Co. v. Deutsch-Asiatische Bank (C. C. A. China 1932) 59 F.(2d) 8.

§ 196. Procedure generally; exclusion of associate aids

Words "chapter 2" in first sentence should read "sections 141-143, 145-159, 163-174, 176-181, 183" and "chapter 2 of" in second sentence should be omitted.

8. Limitations

Action commenced February 21, 1934, for breach of contract executed in China, which breach occurred after March 31, 1928, held not barred by limitation, since applicable prescription period was six-year limitation statute and not three-year limitation statute of District of Columbia. Chalaire v. Franklin (C.C.A. China 1936) 81 F.(2d) 105, certiorari denied Franklin v. Chalaire (1936) 56 S.Ct. 942, 298 U.S. 678, 80 L.Ed. 1390.

Two-year statute of limitations held not bar to action on written contracts by Russian banking corporation against partnership in United States Court for China. Wulfsohn v. Russo-Asiatic Bank (C. C. A. China, 1926) 11 F.(2d) 715.

§ 197. Officers of court; appointment and salaries

The figure "$10,000" should be substituted for the figure "$8,000" in line 10; after the word "judge" in the same line the words "to be pa'd in equal monthly installments" should be inserted.

"May 29, 1928, c. 904, §§ 1, 2, 45 Stat. 997" should be added to the citation.

§ 197a. Salary of judge

Subject matter of this section, Act May 29, 1928, c. 904, §§ 1, 2, 45 Stat. 997, has been incorporated into section 197 of this title.

§ 197b. Special judge; appointment and compensation

The President may appoint a special judge of the United States Court for China to act temporarily when necessary—

(a) During the absence of the judge of said court;

(b) During any period of disability or disqualification, from sickness or otherwise, to discharge his duties; or

(c) In the event of a vacancy in the office of judge.

Such special judge shall receive the same rate of compensation, and the same allowances for expenses and transportation when acting outside of Shanghai, as are paid and allowed the judge of said court. No compensation shall be paid to said judge excepting in the actual discharge of

his duties as provided by this section. (June 30, 1906, c. 3934, § 11, as added Aug. 7, 1935, c. 452, § 1, 49 Stat. 539.)

§ 197c. Vice consul at Shanghai to exercise judicial functions of consul general

The judicial authority and jurisdiction in civil and criminal cases vested in and reserved to the consul general of the United States at Shanghai, China, under section 192 of this title, shall be vested in and exercised by a vice consul of the United States at Shanghai, China. Mar. 2, 1909, c. 235, 35 Stat. 679; Mar. 4, 1915, c. 145, 38 Stat. 1122.

§ 198. Commissioner for court; appointment; powers and compensation; district of Shanghai

The words "the authority and jurisdiction exercised by the vice consul acting in pursuance of section 144 of chapter 2 of this title, which authority and jurisdiction are hereby transferred" in lines 8 to 11 should read "the judicial authority and jurisdiction exercised prior to June 4, 1920, by the vice consul at Shanghai".

See section 198a which makes provision for the appointment of a commissioner but makes no reference to this section. Section 2 of the Act cited to section 198a provided that "all laws and parts of laws in conflict herewith are hereby repealed."

§ 198a. Commissioner for court; judge of consular court; appointment; compensation; clerk as substitute

The judge of the United States Court for China is hereby authorized to appoint, as in the District Courts of the United States and with similar powers and tenure of office, a United States commissioner, who shall in addition to his other duties be judge of the consular court for the district of Shanghai, with all the authority and jurisdiction exercised prior to June 4, 1920, by the vice consul at Shanghai. Said commissioner shall receive for his services as commissioner and judge of said consular court such compensation as may be fixed by the Attorney General, not exceeding $10 per day for each day of service actually rendered. In the event of a vacancy in the office of said commissioner or the disability or disqualification or absence of said commissioner, the judge of the United States Court for China may appoint the clerk of said court temporarily to perform the duties of commissioner and judge of the consular court for the district of Shanghai without additional compensation therefor. (June 30, 1906, c. 3934, § 10, as added Aug. 7, 1935, c. 452, § 1, 49 Stat. 538.)

Appointment of commissioner under act June 4, 1920, see section 198 of this title.

§ 201. Expenses of judge and of district attorney in attendance on sessions in other cities than Shanghai [Temporary]

This section (Act Feb. 27, 1925, c. 364, Title I, 43 Stat. 1025; Act Apr. 29, 1926, c. 195, Title I, 44 Stat. 341; Feb. 24, 1927, c. 189, Title I, 44 Stat. 1192; Act Feb. 15, 1928, c. 57, Title I, 45 Stat. 76) is temporary.

CHAPTER 4.—PASSPORTS

§ 211. Issuance of passports authorized; manner of issuing. [Repealed.]

Repealed, Act of July 3, 1926, c. 772, § 4, 44 Stat. 887. The subject-matter of this section was re-enacted in part by § 1 of the repealing Act and constitutes § 211a of this title, post. Sections 2 and 3 constitute §§ 217a and 214a of this title, respectively.

§ 211a. Authority to grant, issue and verify passports

The Secretary of State may grant and issue passports, and cause passports to be granted, issued, and verified in foreign countries by diplomatic representatives of the United States, and by such consul generals, consuls, or vice consuls when in charge, as the Secretary of State may designate, and by the chief or other executive officer of the insular possessions of the United States, under such rules as the President shall designate and prescribe for and on behalf of the United States, and no other person shall grant, issue, or verify such passports. (July 3, 1926, c. 772, § 1, 44 Stat. 887.)

1. Nature of passport

A "passport" certifies that the person therein described is a citizen of the United States and requests for him while abroad permission to come and go as well as lawful aid and protection, and is a document which, from its nature and object, is addressed to foreign powers. U. S. v. Browder, C.C.A.N.Y.1940, 113 F.2d 97, certiorari granted 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. —, affirmed, 1941, 61 S.Ct. 599, 312 U.S. 335, 85 L.Ed. —.

§ 212. Who entitled to passport

6. Compelling issuance

A decree declaring plaintiff to be a natural born citizen of the United States should include Secretary of State whom plaintiff sought to enjoin from refusing to issue a passport on ground that she had lost her native born American citizenship, as well as Secretary of Labor and Acting Commissioner of Immigration, since decree would not interfere with exercise of discretion of Secretary of State with respect to issuing a passport but would simply preclude denial of a passport on sole ground that plaintiff had lost her American citizenship. Perkins v. Elg, 1939, 59 S.Ct. 884, 307 U.S. 325, 83 L.Ed. 1320, modifying 99 F.2d 408, 69 App. D.C. 175, certiorari granted, 1939, 59 S.Ct. 245, 305 U.S. 591, 83 L.Ed. 373; Elg v. Perkins, 1939, 59 S.Ct. 884, 307 U.S. 325, 83 L.Ed. 1320, modifying 99 F.2d 408, 69 App.D.C. 175, certiorari granted, 1939, 59 S.Ct. 245, 305 U.S. 591, 83 L.Ed. 373.

§ 213. Application for passport

The last sentence of this section should be stricken out.

§ 214. Fees for passport; persons excused from payment

This section so far as it fixes the charge for the issue of passports is superseded by section 217a of this title.

§ 214a. Fees erroneously charged and paid; refund. Whenever a fee is erroneously charged and paid for the issue of a passport to a person who is exempted from the payment of such a fee by section 214 of this title, the Department of State is hereby authorized to refund to the person who paid such fee the amount thereof, and the money for that purpose is hereby authorized to be appropriated. (July 3, 1926, c. 772, § 3, 44 Stat. 887.)

§ 215. Fees for visé of alien's passport

The word "visé" should be substituted for the word "visa" where used in this section.

President authorized to reduce or abolish visé fees for classes of aliens, who are not immigrants, desiring to visit United States if aliens are citizens of countries granting similar privileges to citizens of United States, see section 202 (i) of Title 8, Aliens and Nationality.

§ 216. Return of fees on refusal to visé

The word "visé" should be substituted for the word "visa" where used in this section.

Effective July 1, 1935, enumerated appropriation accounts appearing on the books of the Government were abolished and in lieu thereof there was established an account to be designated "Refund of Moneys Erroneously Received and Covered." See section 725q(b) of Title 31, Money and Finance.

§ 217. Time limitation as to validity of passport or visé. [Repealed.]

Repealed, Act July 3, 1926, c. 772, § 4, 44 Stat. 887. The subject-matter of this section was re-enacted as a part of § 217a, post.

§ 217a. Validity of passport or visé; limitation of time; renewal; charge for original passport. The validity of a passport or passport visé shall be limited to a period of two years: *Provided*, That a passport may be renewed under regulations prescribed by the Secretary of State for a period, not to exceed two years, upon payment of a fee of $5 for such renewal, but the final date of expiration shall not be more than four years

from the original date of issue: *Provided further*, That the Secretary of State may limit the validity of a passport, passport visé, or the period of renewal of a passport to less than two years: *Provided further*, That the charge for the issue of an original passport shall be $9. (July 3, 1926, c. 772, § 2, 44 Stat. 887, as amended July 1, 1930, c. 782, 46 Stat. 839; May 16, 1932, c. 187, 47 Stat. 157.)

§ 220. False statement in application; use of passport obtained by false statement; penalty

Whoever shall willfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall willfully and knowingly use or attempt to use, or furnish to another for use, any passport the issue of which was secured in any way by reason of any false statement, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than $2,000. As amended Mar. 28, 1940, c. 72, § 7, 54 Stat. 80.

Term of imprisonment was increased by Act March 28, 1940, cited to text.

1. Construction with other laws

The conclusion that the use of a passport secured by false statement to prove the bearer's citizenship on re-entry into the United States is a "use" within this section is not weakened by the fact that sections 223-226 of this title were permitted to expire after the war emergency, since thereafter the use of passports for re-entry became both convenient and customary. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 312 U.S. 335, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

2. Purpose

The purpose of this section was to punish the use of passports obtained by false statements, and the use of a passport to prove the bearer's citizenship on re-entry into the United States is clearly within the scope of the statute, even though at time of its passage passports were not customarily used by citizens to assure easy re-entry. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

3. In general

The crimes denounced by this section are not the securing or the use but either of such actions, made criminal only by false statements in the procurement of the passport, and if the misrepresentation is withdrawn, nothing culpable remains in the use. Browder v. U. S., N.Y. 1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming, C.C.A., U. S. v. Browder, 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

The reach of this section is not sustained or opposed by the fact that it is sought to bring new situations under its terms. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

Even though the use of a passport to prove citizenship on entry into the United States had not become customary in 1917, when this section was passed prohibiting use of passport issuance of which was secured by false statement, where such use was a sanctioned and recognized use in 1937 and 1938, such "use" of a passport obtained by false statement constituted a violation of section, provided the use was a willful and knowing one. U. S. v. Browder, C.C.A. N.Y.1940, 113 F.2d 97, certiorari granted 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 876, affirmed, 1941, 61 S.Ct. 599, 312 U.S. 335, 85 L.Ed. 401.

4. Intent

"Willfully and knowingly" within this section means deliberately and with knowledge, and not something which is merely careless or negligent or inadvertent, and it does not purport to punish fraudulent or dishonest use other than such as is involved in the use of a passport dishonestly obtained, and its words do not suggest that fraudulent use is an element of the crime. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

5. Use of passport

This section is aimed at the protection of the integrity of United States passports, and the crime of "use" is complete when a passport procured by a false statement is used willfully and knowingly. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

Under this section once the basic wrong is completed, that is, the securing of a passport by a false statement, any intentional use of that passport in travel is punishable. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

The plain meaning of the words of this section covers the "use" of a passport so secured to prove the bearer's citizenship on re-entry into the United States. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

A condemned use of a passport secured by fraud is within this section. Browder v. U. S., N.Y.1941, 61 S.Ct. 599, 85 L.Ed. 876, affirming U. S. v. Browder, C.C.A., 113 F.2d 97, certiorari granted, Browder v. U. S., 1941, 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401.

The presentation of a United States passport to immigrant inspector on re-

entry into the United States is "use of passport" within this section. U. S. v. Warszower, C.C.A.N.Y.1940, 113 F.2d 100, certiorari granted 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876.

The statute making it an offense to willfully and knowingly use passport, the issuance of which was secured by false statement, was not intended to apply solely to the misuse of American passports in foreign lands. U. S. v. Browder, C.C.A.N.Y.1940, 113 F.2d 97, certiorari granted 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 599, 312 U.S. 335, 85 L.Ed. 879.

6. Evidence, weight and sufficiency

In prosecution for using a passport, secured by false statements, for purpose of entering the United States, where the trial court instructed the jury that it might convict defendant if any one of the statements charged in the indictment to be false was found false, it was necessary before affirmance of conviction was justified to decide whether there was adequate evidence to support the charge of falsity as to each of the statements. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

In prosecution for using passport, secured by false statements, for purpose of entering the United States, defendant's statements, prior to use of passport, regarding foreign birth and residence outside of the United States, if believed by jury, were sufficient to prove falsity of statements to contrary in application for the passport, and justified submission of question of falsity of statements in the application to jury. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

In prosecution under this section evidence of defendant's presentation of passport was sufficient for submission to jury and justified jury's conclusion that defendant actually used his passport in securing admission to the United States. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

Where the crime charged is a false statement, and where it finds its only proof in admissions to the contrary prior to the act set out in the indictment, such evidence justifies submission of the question to the jury. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

In prosecution for using passport, secured by false statements, for purpose of entering the United States, admissions made by defendant prior to use of the passport regarding American citizenship and prior residence outside the United States were not required to be corroborated. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

Evidence that defendant had never been naturalized, that entry of birth in records of the United States was forged, and that manifest of vessel which had previously brought defendant to the United States, gave defendant a different name and his nationality as Russian and his birthplace as Russia, was sufficient to corroborate his earlier declarations that his name was different and that he was an alien and was born in Russia and to sustain conviction for willfully and knowingly using passport obtained by false statements concerning name, citizenship, place of birth and residence of defendant. U. S. v. Warszower, C.C.A. N.Y.1940, 113 F.2d 100, certiorari granted 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876.

Evidence warranted conviction for willfully and knowingly using passport obtained by false statements on ground that defendant presented passport to immigrant inspector on re-entry into United States. U. S. v. Warszower, C.C.A.N.Y.1940, 113 F.2d 100, certiorari granted 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876.

In prosecution for willfully and knowingly using passport obtained by false statements, evidence that defendant had stated on three previous entries into United States that he was an alien and was born in Russia was sufficient to show falsity of later statement made in obtaining passport that defendant was citizen and had never resided abroad. U. S. v. Warszower, C.C.A.N.Y.1940, 113 F.2d 100, certiorari granted 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876.

In prosecution against alien based on false statement in application for passport that he was citizen, evidence held to support conviction. Duncan v. U. S. (C. C. A. Cal. 1933) 68 F.(2d) 136, cert den (1934) 54 S. Ct. 780, 292 U. S. 646, 78 L. Ed. 1497.

7. Burden of proof

In prosecution under this section the prosecution had the burden of proving that the passport was obtained by use of false statements. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

8. Reasonable doubt

In prosecution for using passport, secured by false statements, for purpose of entering the United States, the jury was required to be convinced beyond a reasonable doubt of the defendant's guilt. Warszower v. U. S., N.Y.1941, 61 S.Ct. 603, 312 U.S. 342, 85 L.Ed. 876, affirming U. S. v. Warszower, C.C.A., 113 F.2d 100, certiorari granted, Warszower v. U. S., 1941, 61 S.Ct. 46, 311 U.S. 631, 85 L.Ed. 401.

9. Questions for jury

In prosecution on indictment charging that defendant having obtained a passport by false statement used passport by presenting it to an immigrant inspector to secure entry into the United States, question whether defendant's use of the passport was a willful and knowing use was for the jury. U. S. v. Browder, C.C.A.N.Y.1940, 113 F.2d 97, certiorari granted 61 S.Ct. 39, 311 U.S. 631, 85 L.Ed. 401, affirmed, 1941, 61 S.Ct. 599, 312 U.S. 335, 85 L.Ed. 876.

§ 221. Unlawful use of passport; penalty

Whoever shall willfully and knowingly use, or attempt to use, any passport issued or designed for the use of another than himself, or whoever shall willfully and knowingly use or attempt to use any passport in violation of the conditions or restrictions therein contained, or of the rules prescribed pursuant to the laws regulating the issuance of passports, which said rules shall be printed on the passport; or whoever shall willfully and knowingly furnish, dispose of, or deliver a passport to any person, for use by another than the person for whose use it was originally issued and designed, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than $2,000. As amended Mar. 28, 1940, c. 72, § 7, 54 Stat. 80.

Term of imprisonment was increased by Act March 28, 1940, cited to text.

§ 222. Forging, alteration, etc., of passport; penalty

Whoever shall falsely make, forge, counterfeit, mutilate, or alter, or cause or procure to be falsely made, forged, counterfeited, mutilated, or altered any passport or instrument purporting to be a passport, with intent to use the same, or with intent that the same may be used by another; or whoever shall willfully or knowingly use, or attempt to use, or furnish to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than $2,000. As amended Mar. 28, 1940, c. 72, § 7, 54 Stat. 80.

Term of imprisonment was increased by Act March 28, 1940, cited to text.

§ 223. War-time restrictions generally

When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941,[1] or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223–226b of this title be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful. As amended June 21, 1941, c. 210, § 1, 55 Stat. 252.

* * * * * * * * * * *

[1] Proc.No.2487, Unlimited National Emergency, see note preceding section 1, Title 50, War.

Act June 21, 1941, cited to text, amended first paragraph.

1. Validity

Statute originally passed as war measure and President's proclamation constituted law prescribing conditions on which alien might enter prior to General Immigration Act. Felich v. Meier (C. C. A. Utah, 1927) 23 F.(2d) 185.

2. Repeal

This and the three following sections were continued in effect by section 227 of this title. U. S. ex rel. Costea v. Smith (D. C. Ill. 1929) 36 F.(2d) 503, reversed on other grounds (C. C. A. 1931) 46 F.(2d) 229.

5. Deportation of violator

So much of this section as was extended to peace times does not carry, as one of the consequences of its violation, the deportation of an alien. The act and the proclamation contain provisions relating to passports and visas which are intended for the guidance of immigration officials. Neither the act nor the proclamation contain any mandate authorizing deportation. U. S. ex rel. Costea v. Smith (D. C. Ill. 1929) 36 F.(2d) 503, reversed on other grounds (C. C. A. 1931) 46 F.(2d) 229.

That alien may re-enter country under immigration act does not warrant deportation not otherwise authorized. U. S. ex rel. Swystun v. McCandless (D. C. Pa. 1928) 24 F.(2d) 211, affirmed without reference to this point (C. C. A. 1929) 33 F. (2d) 882.

Deportation of alien because of official's failure to sign passport visé held not warranted. U. S. ex rel. Swystun v. McCandless (D. C. Pa. 1928) 24 F.(2d) 211, affirmed without reference to this point (C. C. A. 1929) 33 F.(2d) 882.

Order of deportation by Department of Labor because of official's failure to sign passport visé held not conclusive on courts. U. S. ex rel. Swystun v. McCandless (D. C. Pa. 1928) 24 F.(2d) 211, affirmed without reference to this point (C. C. A. 1929) 33 F.(2d) 882.

See also the annotations under section 201 of title 8.

6. Fraudulently procured passport

The use of a fraudulently procured passport to gain admission to the United States is unlawful. U. S. v. Goldstein, D.C.N.Y.1939, 30 F.Supp. 771.

§ 224. Same; passport required of citizens

The words "the preceding section" should read "section 223 of this title."

Passports and visas for aliens, see section 227 of this title.

§ 225. Penalty for violation of war-time restrictions

Any person who shall willfully violate any of the provisions of sections 223–226b of this title, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle, vessel or aircraft, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States. As amended June 21, 1941, c. 210, § 2, 55 Stat. 253.

Act June 21, 1941, cited to text, reduced the fine from $10,000 to $5,000 and the term from twenty years to five years, and inserted "aircraft."

§ 226. "United States" and "person" as used in war-time restriction defined

The term "United States" as used in sections 223–226b of this title includes the Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used in sections 223, 224 and 225 of this title shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic. As amended June 21, 1941, c. 210, § 2a, 55 Stat. 253.

Act June 21, 1941, cited to text, inserted "Commonwealth of the Philippines" in the first paragraph.

§ 226a. Permit as guarantee of admission to the United States

Nothing in sections 223–226b of this title shall be construed to entitle an alien to whom a permit to enter the United States has been issued to enter the United States, if, upon arrival in the United States, he is found to be inadmissible to the United States under sections 223–226b of this title or any law relating to the entry of aliens into the United States. May 22, 1918, c. 81, § 5, as added June 21, 1941, c. 210, § 3, 55 Stat. 253.

§ 226b. Revocation of proclamation, rule, etc. as bar to prosecution

The revocation of any proclamation, rule, regulation, or order issued in pursuance of sections 223–226b of this title, shall not prevent prosecution for any offense committed or the imposition of any penalties or forfeitures, liability for which was incurred under sections 223–226b of this title prior to the revocation of such proclamation, rule, regulation, or order. May 22, 1918, c. 81, § 6, as added June 21, 1941, c. 210, § 3, 55 Stat. 253.

§ 227. Regulations as to alien passport requirements continued

The words "the Act approved May 22, 1918, being the four preceding sections" in lines 2 and 3 should read "sections 223, 224, 225, and 226 of this title."

1. Effect of this section in general

Provisions of sections 223–226 of this title in respect to power of deportation held not retained in this section. U. S. ex rel. Chila v. Hughes (D. C. Pa. 1928) 24 F.(2d) 707.

Presidential proclamation pursuant to sections 223 to 226 of this title requiring passport visé on penalty of deportation was not kept in force by this section in respect to deportation. U. S. ex rel. Swystun v. McCandless (D. C. Pa. 1928) 24 F.(2d) 211, affirmed without reference to this point (C. C. A. 1929) 33 F.(2d) 882.

Penal provision of War-Time Passport Act held not continued in force. U. S. v. One Airplane (D. C. Cal. 1927) 23 F.(2d) 500.

Statute originally passed as war measure and President's proclamation constituted law prescribing conditions on which alien might enter prior to General Immigration Act. Felich v. Meier (C. C. A. Utah, 1927) 23 F.(2d) 185.

Executive order, requiring alien visitors to present passports visaed by consul, held valid and applicable to British subject coming through Canada. U. S. ex rel. London v. Phelps (C. C. A. Vt. 1927) 22 F.(2d) 288, certiorari denied (1927) 48 S. Ct. 324, 276 U. S. 630, 72 L. Ed. 741.

Passport regulations under this section must be consistent with the immigration laws. U. S. v. Karnuth (C. C. A. N. Y. 1929) 30 F.(2d) 242, affirming (D. C. N. Y. 1928) 29 F.(2d) 314, certiorari denied (1929) 49 S. Ct. 346, 279 U. S. 850, 73 L. Ed. 993.

2. Effect of "Immigration Act of 1921" (section 201 et seq., of Title 8, Aliens and Citizenship)

In U. S. ex rel. Komlos v. Trudell (C. C. A. Vt. 1929) 35 F.(2d) 281, certiorari denied (1930) 50 S. Ct. 157, 280 U. S. 607, 74 L. Ed. 651, this section was apparently considered as keeping in effect the four preceding sections as applied to one claiming to be a nonimmigrant alien.

3. Effect of resolution terminating war-time legislation

Joint resolution terminating war held not to abrogate operation of presidential regulations relating to passports and visés. U. S. ex rel. London v. Phelps (C. C. A. Vt. 1927) 22 F.(2d) 288, certiorari denied (1927) 48 S. Ct. 324, 276 U. S. 630, 72 L. Ed. 741.

5. Nature of act of giving consular visé on visiting alien's passport

Giving of consular visé on passport of visiting alien is not ministerial act, but involves discretion, not reviewable by courts. U. S. ex rel. London v. Phelps (C. C. A. Vt. 1927) 22 F.(2d) 288, certiorari denied (1927) 48 S. Ct. 324, 276 U. S. 630, 72 L. Ed. 741.

§ 228. Refusal of visas to aliens whose admission might endanger public safety; reference to Secretary of State

Whenever any American diplomatic or consular officer knows or has reason to believe that any alien seeks to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States, he shall refuse to issue to such alien any immigration visa, passport visa, transit certificate, or other document entitling such alien to present himself for admission into the United States; but in any case in which a diplomatic or consular officer denies a visa or other travel document under the provisions of this section, he shall promptly refer the case to the Secretary of State for such further action as the Secretary may deem appropriate. June 20, 1941, c. 209, § 1, 55 Stat. 252.

§ 229. Same; rules and regulations

The President is hereby authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of section 228 of this title. June 20, 1941, c. 209, § 2, 55 Stat. 252.

CHAPTER 5.—PRESERVATION OF FRIENDLY FOREIGN RELATIONS GENERALLY

§ 231. Making false statement to influence conduct of foreign government toward United States

Whoever, in relation to any dispute or controversy between a foreign government and the United States, shall willfully and knowingly make any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence the measures or conduct of any foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than $5,000. As amended Mar. 28, 1940, c. 72, § 6, 54 Stat. 80.

Term of imprisonment was increased by Act March 28, 1940, cited to text.

1. Purpose

Congress in enacting this chapter requiring the agent of foreign principal who undertakes to disseminate foreign political propaganda in United States to register with the Secretary of State, did not intend to deprive citizens of United States of political information, even if