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NOTES ON RECENT LEGISLATION

ACT ABOLISHING WRITS OF ERROR IN FEDERAL CASES. On January 31, 1928, Public Law number ten of the Seventieth Congress (S. 1801) was approved and by virtue thereof writs of error in the Federal Courts were abolished. This is no doubt a step forward, although to what extent, no one can do more than hazard at this time.

The statute itself reads as follows: "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Section Two. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order, or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: Provided, however, that the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error in such courts."

Prior to the passage of this act statutes then in force prescribed that writs of error when wrongly taken, were to be considered as appeals or as applications for *certiorari*. 39 Stat. 726, 727 (1916), 43 Stat. 936, 937 (1925), 28 U. S. C. A. (1927), 344, 861. For this reason it has been contended that the force and effect of Public Law number ten has only been to bring about a change of name,—a progress of nomenclature as it were. However, it is well to note that should the appeal come from a Federal court the allowance of an appeal is no longer necessitated. 41 Harv. L. R. 674, See U. S. Daily, Feb. 15, 1928, p. 3; *ibid*., Fev. 18, 1928, p. 1.

Such an act has repeatedly been advocated and recommended by the American Bar Association, (46 A. B. A. Rep. (1921) 387, 88, 396; 47 A. B. A. Rep. (1922) 356; 48 A. B. A. Rep. (1923) 332, 336; 49 A. B. A. Rep. 341; 50 A. B. A. Rep. (1925) 409-10; 51 A. B. A. Rep. (1926) 430; 52 A. B. A. Rep. (1927) 306. Hearings, 67th Cong., ser. 25, p. 18.) In the original recommendation

(1921 *supra*) it was urged that a statute be passed allowing for a complete interchangeability of appeals and writs of error and of *certiorari,* or that a statute be enacted abolishing the writ of error. The statute under consideration follows the latter course as can be seen at once. Such a bill was passed in the Senate in 1924, (65 Cong. Rec. 8593-94,) and that bill was in the same form as the one finally adopted, (compare with S. 1801, *supra.*)

Security and stays upon appeal, the scope of review, preparation of the record in accordance with equity rules and security or protection of writs of error then pending were the subject of amendments to the Bill in the House, (66 Cong. Rec. 3960-61.—1925). The Senate refused to agree to the House amendments and the matter was not acted upon again favorably for some years, indeed until the present Congress convened, when the bill without amendment was passed by both Houses and without debate.

It can hardly be doubted that the statute will foster litigation concerning the matters which were embodied in the House amendments of 1925, and that therefore the scope of review, stays, security, form of record will provide matters to be adjudicated in the future.

—*J. P. McN.*