

RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES

Promulgated by the
SUPREME COURT
OF THE UNITED STATES

NOVEMBER 4, 1912



PRESENTED BY MR. OVERMAN
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RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

RULE 1.

DISTRICT COURT ALWAYS OPEN FOR CERTAIN PURPOSES—ORDERS AT CHAMBERS.

The district courts, as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein.

Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

RULE 2.

CLERK'S OFFICE ALWAYS OPEN, EXCEPT, ETC.

The clerk's office shall be open during business hours on all days, except Sundays and legal holidays, and the clerk shall be in attendance for the purpose of receiving and disposing of all motions, rules, orders, and other proceedings which are grantable of course.

RULE 3.

BOOKS KEPT BY CLERK AND ENTRIES THEREIN.

The clerk shall keep a book known as "equity docket," in which he shall enter each suit, with a file number corresponding to the folio in the book. All papers and orders filed with the clerk in the suit, all process issued and returns made thereon, and all appearances shall be noted briefly and chronologically in this book on the folio assigned to the suit and shall be marked with its file number.

The clerk shall also keep a book entitled "order book," in which shall be entered at length, in the order of their making, all orders made or passed by him as of course and also all orders made or passed by the judge in chambers.

He shall also keep an "equity journal," in which shall be entered all orders, decrees, and proceedings of the court in equity causes in term time.

Separate and suitable indices of the equity docket, order book, and equity journal shall be kept by the clerk, under the direction of court.

RULE 4.

NOTICE OF ORDERS.

Neither the noting of an order in the equity docket nor its entry in the order book shall of itself be deemed notice to the parties or their solicitors; and when an order is made without prior notice to, and in the absence of, a party, the clerk, unless otherwise directed by the court or judge, shall forthwith send a copy thereof, by mail, to such party or his solicitor and a note of such mailing shall be made in the equity docket, which shall be taken as sufficient proof of due notice of the order.

RULE 5.

MOTIONS GRANTABLE OF COURSE BY CLERK.

All motions and applications in the clerk's office for the issuing of mesne process or final process to enforce and execute decrees, for taking bills pro confesso, and for other proceedings in the clerk's office which do not require any allowance or order of the court or of a judge shall be deemed motions and applications grantable of course by the clerk; but the same may be suspended, or altered, or rescinded by the judge upon special cause shown.

RULE 6.

MOTION DAY.

Each district court shall establish regular times and places, not less than once each month, when motions requiring notice and hearing may be made and disposed of; but the judge may at any time and place, and on such notice, if any, as he may consider reasonable, make and direct all interlocutory orders, rulings, and proceedings for the advancement, conduct, and hearing of causes. If the public interest permits, the senior circuit judge of the circuit may dispense with the motion day during not to exceed two months in the year in any district.

RULE 7.

PROCESS, MESNE AND FINAL.

The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the bill; and unless otherwise provided in these rules or specially ordered by the court a writ of attachment and, if the defendant can not be found, a writ of sequestration or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

RULE 8.

ENFORCEMENT OF FINAL DECREES.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the district court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall in all cases prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party can not be found, a writ of sequestration shall issue against his estate, upon the return of non est inventus, to compel obedience to the decree. If a mandatory order, injunction, or decree for the specific performance of any act or contract be not complied with, the court or a judge, besides, or instead of, proceeding against the disobedient party for a contempt or by sequestration, may by order direct that the act required to be done be done, so far as practicable, by some other person appointed by the court or judge, at the cost of the disobedient party, and the act, when so done, shall have like effect as if done by him.

RULE 9.

WRIT OF ASSISTANCE.

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

RULE 10.

DECREE FOR DEFICIENCY IN FORECLOSURES, ETC.

In suits for the foreclosure of mortgages, or the enforcement of other liens, a decree may be rendered for any balance that may be found due to the plaintiff over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in rule 8 when the decree is solely for the payment of money.

RULE 11.

PROCESS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, may enforce

obedience to such order by the same process as if he were a party; and every person, not being a party, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party.

RULE 12.

ISSUE OF SUBPŒNA—TIME FOR ANSWER.

Whenever a bill is filed, and not before, the clerk shall issue the process of subpœna thereon, as of course, upon the application of the plaintiff, which shall contain the names of the parties and be returnable into the clerk's office 20 days from the issuing thereof. At the bottom of the subpœna shall be placed a memorandum, that the defendant is required to file his answer or other defense in the clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpœna may, at the election of the plaintiff, be sued out separately for each defendant, or a joint subpœna against all the defendants.

RULE 13.

MANNER OF SERVING SUBPŒNA.

The service of all subpœnas shall be by delivering a copy thereof to the defendant personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member of or resident in the family.

RULE 14.

ALIAS SUBPŒNA.

Whenever any subpœna shall be returned not executed as to any defendant, the plaintiff shall be entitled to other subpœnas against such defendant until due service is made.

RULE 15.

PROCESS, BY WHOM SERVED.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court or judge for that purpose, and not otherwise. In the latter case the person serving the process shall make affidavit thereof.

RULE 16.

DEFENDANT TO ANSWER—DEFAULT—DECREE PRO CONFESSO.

It shall be the duty of the defendant, unless the time shall be enlarged, for cause shown, by a judge of the court, to file his answer or other defense to the bill in the clerk's office within the time named

in the subpoena as required by rule 12. In default thereof the plaintiff may, at his election, take an order as of course that the bill be taken pro confesso, and thereupon the cause shall be proceeded in ex parte.

RULE 17.

DECREE PRO CONFESSO TO BE FOLLOWED BY FINAL DECREE—SETTING ASIDE DEFAULT.

When the bill is taken pro confesso, the court may proceed to a final decree at any time after the expiration of 30 days after the entry of the order pro confesso, and such decree shall be deemed absolute, unless the court shall at the same term set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit. No such motion shall be granted, unless upon the payment of the costs of the plaintiff up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct and submit to such other terms as the court shall direct for the purpose of speeding the cause.

RULE 18.

PLEADINGS—TECHNICAL FORMS ABROGATED.

Unless otherwise prescribed by statute or these rules, the technical forms of pleadings in equity are abolished.

RULE 19.

AMENDMENTS GENERALLY.

The court may at any time, in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading, or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

RULE 20.

FURTHER AND PARTICULAR STATEMENT IN PLEADING MAY BE REQUIRED.

A further and better statement of the nature of the claim or defense, or further and better particulars of any matter stated in any pleading, may in any case be ordered upon such terms as to costs and otherwise as may be just.

RULE 21.

SCANDAL AND IMPERTINENCE.

The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, upon

motion or its own initiative, order any redundant, impertinent, or scandalous matter stricken out upon such terms as the court shall think fit.

RULE 22.

ACTION AT LAW ERRONEOUSLY BEGUN AS SUIT IN EQUITY—TRANSFER.

If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential.

RULE 23.

MATTERS ORDINARILY DETERMINABLE AT LAW WHEN ARISING IN SUIT IN EQUITY TO BE DISPOSED OF THEREIN.

If in a suit in equity a matter ordinarily determinable at law arises, such matter shall be determined in that suit according to the principles applicable, without sending the case or question to the law side of the court.

RULE 24.

SIGNATURE OF COUNSEL.

Every bill or other pleading shall be signed individually by one or more solicitors of record, and such signatures shall be considered as a certificate by each solicitor that he has read the pleading so signed by him; that upon the instructions laid before him regarding the case there is good ground for the same; that no scandalous matter is inserted in the pleading; and that it is not interposed for delay.

RULE 25.

BILL OF COMPLAINT—CONTENTS.

Hereafter it shall be sufficient that a bill in equity shall contain, in addition to the usual caption:

First, the full name, when known, of each plaintiff and defendant, and the citizenship and residence of each party. If any party be under any disability that fact shall be stated.

Second, a short and plain statement of the grounds upon which the court's jurisdiction depends.

Third, a short and simple statement of the ultimate facts upon which the plaintiff asks relief, omitting any mere statement of evidence.

Fourth, if there are persons other than those named as defendants who appear to be proper parties, the bill should state why they are not made parties—as that they are not within the jurisdiction of the court or can not be made parties without ousting the jurisdiction.

Fifth, a statement of and prayer for any special relief pending the suit or on final hearing, which may be stated and sought in alternative forms. If special relief pending the suit be desired the bill

should be verified by the oath of the plaintiff or some one having knowledge of the facts upon which such relief is asked.

RULE 26.

JOINDER OF CAUSES OF ACTION.

The plaintiff may join in one bill as many causes of action, cognizable in equity, as he may have against the defendant. But when there are more than one plaintiff, the causes of action joined must be joint, and if there be more than one defendant the liability must be one asserted against all of the material defendants, or sufficient grounds must appear for uniting the causes of action in order to promote the convenient administration of justice. If it appear that any such causes of action can not be conveniently disposed of together, the court may order separate trials.

RULE 27.

STOCKHOLDER'S BILL.

Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees and, if necessary, of the shareholders, and the causes of his failure to obtain such action or the reasons for not making such effort.

RULE 28.

AMENDMENT OF BILL AS OF COURSE.

The plaintiff may, as of course, amend his bill before the defendant has responded thereto, but if such amendment be filed after any copy has issued from the clerk's office, the plaintiff at his own cost shall furnish to the solicitor of record of each opposing party a copy of the bill as amended, unless otherwise ordered by the court or judge.

After pleading filed by any defendant, plaintiff may amend only by consent of the defendant or leave of the court or judge.

RULE 29.

DEFENSES—HOW PRESENTED.

Demurrers and pleas are abolished. Every defense in point of law arising upon the face of the bill, whether for misjoinder, non-joinder, or insufficiency of fact to constitute a valid cause of action in equity, which might heretofore have been made by demurrer or plea,

shall be made by motion to dismiss or in the answer; and every such point of law going to the whole or a material part of the cause or causes of action stated in the bill may be called up and disposed of before final hearing at the discretion of the court. Every defense heretofore presentable by plea in bar or abatement shall be made in the answer and may be separately heard and disposed of before the trial of the principal case in the discretion of the court. If the defendant move to dismiss the bill or any part thereof, the motion may be set down for hearing by either party upon five days' notice, and, if it be denied, answer shall be filed within five days thereafter or a decree pro confesso entered.

RULE 30.

ANSWER—CONTENTS—COUNTERCLAIM.

The defendant in his answer shall in short and simple terms set out his defense to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except as against an infant, lunatic, or other person non compos and not under guardianship, but the answer may be amended, by leave of the court or judge, upon reasonable notice, so as to put any averment in issue, when justice requires it. The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense.

The answer must state in short and simple form any counterclaim arising out of the transaction which is the subject matter of the suit, and may, without cross bill, set out any set-off or counterclaim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counterclaim so set up shall have the same effect as a cross suit, so as to enable the court to pronounce a final judgment in the same suit both on the original and cross claims.

RULE 31.

REPLY—WHEN REQUIRED—WHEN CAUSE AT ISSUE.

Unless the answer assert a set-off or counterclaim, no reply shall be required without special order of the court or judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by the plaintiff. If the answer include a set-off or counterclaim the party against whom it is asserted shall reply within 10 days after the filing of the answer, unless a longer time be allowed by the court or judge. If the counterclaim is one which affects the rights of other defendants they or their solicitors shall be served with a copy of the same within 10 days from the filing thereof, and 10 days shall be accorded to such defendants for filing a reply. In default of a reply, a decree pro confesso on the counterclaim may be entered as in default of an answer to the bill.

RULE 32.

ANSWER TO AMENDED BILL.

In every case where an amendment to the bill shall be made after answer filed, the defendant shall put in a new or supplemental answer within 10 days after that on which the amendment or amended bill is filed, unless the time is enlarged or it is otherwise ordered by a judge of the court; and upon a default, the like proceedings may be had as upon an omission to put in an answer.

RULE 33.

TESTING SUFFICIENCY OF DEFENSE.

Exceptions for insufficiency of an answer are abolished. But if an answer set up an affirmative defense, set-off, or counterclaim, the plaintiff may, upon five days' notice, or such further time as the court may allow, test the sufficiency of the same by motion to strike out. If found insufficient but amendable the court may allow an amendment upon terms, or strike out the matter.

RULE 34.

SUPPLEMENTAL PLEADING.

Upon application of either party the court or judge may, upon reasonable notice and such terms as are just, permit him to file and serve a supplemental pleading, alleging material facts occurring after his former pleading, or of which he was ignorant when it was made, including the judgment or decree of a competent court rendered after the commencement of the suit determining the matters in controversy or a part thereof.

RULE 35.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS—FORM.

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

RULE 36.

OFFICERS BEFORE WHOM PLEADINGS VERIFIED.

Every pleading which is required to be sworn to by statute, or these rules, may be verified before any justice or judge of any court of the United States, or of any State or Territory, or of the District of Columbia, or any clerk of any court of the United States, or of any Territory, or of the District of Columbia, or any notary public.

RULE 37.

PARTIES GENERALLY—INTERVENTION.

Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an ex-

press trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if his presence is necessary or proper to a complete determination of the cause. Persons having a united interest must be joined on the same side as plaintiffs or defendants, but when anyone refuses to join he may for such reason be made a defendant.

Anyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding.

RULE 38.

REPRESENTATIVES OF CLASS.

When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole.

RULE 39.

ABSENCE OF PERSONS WHO WOULD BE PROPER PARTIES.

In all cases where it shall appear to the court that persons, who might otherwise be deemed proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in its discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

RULE 40.

NOMINAL PARTIES.

Where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party, upon service of the subpoena upon him, need not appear and answer the bill unless the plaintiff specially requires him to do so by the prayer; but he may appear and answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer he shall be entitled to the costs of all the proceedings against him unless the court shall otherwise direct.

RULE 41.

SUIT TO EXECUTE TRUSTS OF WILL—HEIR AS PARTY.

In suits to execute the trusts of a will it shall not be necessary to make the heir at law a party; but the plaintiff shall be at liberty to make the heir at law a party where he desires to have the will established against him.

RULE 42.

JOINT AND SEVERAL DEMANDS.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

RULE 43.

DEFECT OF PARTIES—RESISTING OBJECTION.

Where the defendant shall by his answer suggest that the bill of complaint is defective for want of parties, the plaintiff may, within 14 days after answer filed, set down the cause for argument as a motion upon that objection only; and where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order to amend his bill by adding parties; but the court shall be at liberty to dismiss the bill or to allow an amendment on such terms as justice may require.

RULE 44.

DEFECT OF PARTIES—TARDY OBJECTION.

If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by motion or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court shall be at liberty to make a decree saving the rights of the absent parties.

RULE 45.

DEATH OF PARTY—REVIVOR.

In the event of the death of either party the court may, in a proper case, upon motion, order the suit to be revived by the substitution of the proper parties. If the successors or representatives of the deceased party fail to make such application within a reasonable time, then any other party may, on motion, apply for such relief, and the court, upon any such motion, may make the necessary orders for notice to the parties to be substituted and for the filing of such pleadings or amendments as may be necessary.

RULE 46.

TRIAL—TESTIMONY USUALLY TAKEN IN OPEN COURT—RULINGS ON
OBJECTIONS TO EVIDENCE.

In all trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules. The court shall pass upon the admissibility of all evidence offered as in actions at law. When evidence is offered and excluded, and the party against whom the ruling is made excepts thereto at the time, the court shall take and report so much thereof, or make such a statement respecting it, as will clearly show the character of the evidence, the form in which it was offered, the objection made, the ruling, and the exception. If the appellate court shall be of opinion that the evidence should have been admitted, it shall not reverse the decree unless it be clearly of opinion that material prejudice will result from an affirmance, in which event it shall direct such further steps as justice may require.

RULE 47.

DEPOSITIONS—TO BE TAKEN IN EXCEPTIONAL INSTANCES.

The court, upon application of either party, when allowed by statute, or for good and exceptional cause for departing from the general rule, to be shown by affidavit, may permit the deposition of named witnesses, to be used before the court or upon a reference to a master, to be taken before an examiner or other named officer, upon the notice and terms specified in the order. All depositions taken under a statute, or under any such order of the court, shall be taken and filed as follows, unless otherwise ordered by the court or judge for good cause shown: Those of the plaintiff within 60 days from the time the cause is at issue; those of the defendant within 30 days from the expiration of the time for the filing of plaintiff's depositions; and rebutting depositions by either party within 20 days after the time for taking original depositions expires.

RULE 48.

TESTIMONY OF EXPERT WITNESSES IN PATENT AND TRADE-MARK CASES.

In a case involving the validity or scope of a patent or trademark, the district court may, upon petition, order that the testimony in chief of expert witnesses, whose testimony is directed to matters of opinion, be set forth in affidavits and filed as follows: Those of the plaintiff within 40 days after the cause is at issue; those of the defendant within 20 days after plaintiff's time has expired; and rebutting affidavits within 15 days after the expiration of the time for filing original affidavits. Should the opposite party desire the production of any affiant for cross-examination, the court or judge shall, on motion, direct that said cross-examination and any reexamination take place before the court upon the trial; and unless the affiant is produced and submits to cross-examination in compliance with such direction, his affidavit shall not be used as evidence in the cause.

RULE 49.

EVIDENCE TAKEN BEFORE EXAMINERS, ETC.

All evidence offered before an examiner or like officer, together with any objections, shall be saved and returned into the court. Depositions, whether upon oral examination before an examiner or like officer or otherwise, shall be taken upon questions and answers reduced to writing or in the form of narrative, and the witness shall be subject to cross-examination and reexamination.

RULE 50.

STENOGRAPHER—APPOINTMENT—FEES.

When deemed necessary by the court or officer taking testimony, a stenographer may be appointed who shall take down testimony in shorthand and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript.

RULE 51.

EVIDENCE TAKEN BEFORE EXAMINERS, ETC.

Objections to the evidence, before an examiner or like officer, shall be in short form, stating the grounds of objection relied upon, but no transcript filed by such officer shall include argument or debate. The testimony of each witness, after being reduced to writing, shall be read over to or by him, and shall be signed by him in the presence of the officer; provided, that if the witness shall refuse to sign his deposition so taken, the officer shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal. Objection to any question or questions shall be noted by the officer upon the deposition, but he shall not have power to decide on the competency or materiality or relevancy of the questions. The court shall have power, and it shall be its duty, to deal with the costs of incompetent and immaterial or irrelevant depositions, or parts of them, as may be just.

RULE 52.

ATTENDANCE OF WITNESSES BEFORE COMMISSIONER. MASTER, OR EXAMINER.

Witnesses who live within the district, and whose testimony may be taken out of court by these rules, may be summoned to appear before a commissioner appointed to take testimony, or before a master or examiner appointed in any cause by subpoena in the usual form, which may be issued by the clerk in blank and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same com-

pensation as for attendance in court, and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in, the court.

In case of refusal of witnesses to attend or be sworn or to answer any question put by the commissioner, master, or examiner, or by counsel or solicitor the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

RULE 53.

NOTICE OF TAKING TESTIMONY BEFORE EXAMINER, ETC.

Notice shall be given by the respective counsel or parties to the opposite counsel or parties of the time and place of examination before an examiner or like officer for such reasonable time as the court or officer may fix by order in each case.

RULE 54.

DEPOSITIONS UNDER REVISED STATUTES, SECTIONS 863, 865, 866, 867— CROSS-EXAMINATION.

After a cause is at issue depositions may be taken as provided by sections 863, 865, 866, and 867, Revised Statutes. But if in any case no notice has been given the opposite party of the time and place of taking the deposition, he shall, upon application and notice, be entitled to have the witness examined orally before the court, or to a cross-examination before an examiner or like officer, or a new deposition taken with notice, as the court or judge under all the circumstances shall order.

RULE 55.

DEPOSITION DEEMED PUBLISHED WHEN FILED.

Upon the filing of any deposition or affidavit taken under these rules or any statute, it shall be deemed published unless otherwise ordered by the court.

RULE 56.

ON EXPIRATION OF TIME FOR DEPOSITIONS, CASE GOES ON TRIAL CALENDAR.

After the time has elapsed for taking and filing depositions under these rules, the case shall be placed on the trial calendar. Thereafter no further testimony by deposition shall be taken except for some strong reason shown by affidavit. In every such application the reason why the testimony of the witness can not be had orally on the trial, and why his deposition has not been before taken shall be set forth, together with the testimony which it is expected the witness will give.

RULE 57.

CONTINUANCES.

After a cause shall be placed on the trial calendar it may be passed over to another day of the same term by consent of counsel or order of the court, but shall not be continued beyond the term save in exceptional cases by order of the court upon good cause shown by affidavit and upon such terms as the court shall in its discretion impose. Continuances beyond the term by consent of the parties shall be allowed on condition only that a stipulation be signed by counsel for all the parties and that all costs incurred theretofore be paid. Thereupon an order shall be entered dropping the case from the trial calendar, subject to reinstatement within one year upon application to the court by either party, in which event it shall be heard at the earliest convenient day. If not so reinstated within the year, the suit shall be dismissed without prejudice to a new one.

RULE 58.

DISCOVERY—INTERROGATORIES—INSPECTION AND PRODUCTION OF DOCUMENTS—ADMISSION OF EXECUTION OR GENUINENESS.

The plaintiff at any time after filing the bill and not later than 21 days after the joinder of issue, and the defendant at any time after filing his answer and not later than 21 days after the joinder of issue, and either party at any time thereafter by leave of the court or judge, may file interrogatories in writing for the discovery by the opposite party or parties of facts and documents material to the support or defense of the cause, with a note at the foot thereof stating which of the interrogatories each of the parties is required to answer. But no party shall file more than one set of interrogatories to the same party without leave of the court or judge.

If any party to the cause is a public or private corporation, any opposite party may apply to the court or judge for an order allowing him to file interrogatories to be answered by any officer of the corporation, and an order may be made accordingly for the examination of such officer as may appear to be proper upon such interrogatories as the court or judge shall think fit.

Copies shall be filed for the use of the interrogated party and shall be sent by the clerk to the respective solicitors of record, or to the last known address of the opposite party if there be no record solicitor.

Interrogatories shall be answered and the answers filed in the clerk's office within 15 days after they have been served, unless the time be enlarged by the court or judge. Each interrogatory shall be answered separately and fully and the answers shall be in writing, under oath, and signed by the party or corporate officer interrogated. Within 10 days after the service of interrogatories, objections to them, or any of them, may be presented to the court or judge, with proof of notice of the purpose so to do, and answers shall be deferred until the objections are determined, which shall be at as early a time as is practicable. In so far as the objections are sustained, answers shall not be required.

The court or judge, upon motion and reasonable notice, may make all such orders as may be appropriate to enforce answers to interrogatories or to effect the inspection or production of documents in the possession of either party and containing evidence material to the cause of action or defense of his adversary. Any party failing or refusing to comply with such an order shall be liable to attachment, and shall also be liable, if a plaintiff, to have his bill dismissed, and, if a defendant, to have his answer stricken out and be placed in the same situation as if he had failed to answer.

By a demand served 10 days before the trial, either party may call on the other to admit in writing the execution or genuineness of any document, letter, or other writing, saving all just exceptions; and if such admission be not made within five days after such service, the costs of proving the document, letter, or writing shall be paid by the party refusing or neglecting to make such admission, unless at the trial the court shall find that the refusal or neglect was reasonable.

RULE 59.

REFERENCE TO MASTER—EXCEPTIONAL, NOT USUAL.

Save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it. When such a reference is made, the party at whose instance or for whose benefit it is made shall cause the order of reference to be presented to the master for a hearing within 20 days succeeding the time when the reference was made, unless a longer time be specially granted by the court or judge; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

RULE 60.

PROCEEDINGS BEFORE MASTER.

Upon every such reference, it shall be the duty of the master, as soon as he reasonably can after the same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties, or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed *ex parte*, or, in his discretion, to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with the least practicable delay, and either party shall be at liberty to apply to the court, or a judge thereof, for an order to the master to speed the proceedings and to make his report, and to certify to the court or judge the reason for any delay.

RULE 61.

MASTER'S REPORT—DOCUMENTS IDENTIFIED BUT NOT SET FORTH.

In the reports made by the master to the court, no part of any state of facts, account, charge, affidavit, deposition, examination, or answer

brought in or used before him shall be stated or recited. But such state of facts, account, charge, affidavit, deposition, examination, or answer shall be identified and referred to, so as to inform the court what state of facts, account, charge, affidavit, deposition, examination, or answer were so brought in or used.

RULE 62.

POWERS OF MASTER.

The master shall regulate all the proceedings in every hearing before him, upon every reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, or by deposition, according to the acts of Congress, or otherwise, as here provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

RULE 63.

FORM OF ACCOUNTS BEFORE MASTER.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, as the master shall direct.

RULE 64.

FORMER DEPOSITIONS, ETC., MAY BE USED BEFORE MASTER.

All affidavits, depositions, and documents which have been previously made, read, or used in the court upon any proceeding in any cause or matter may be used before the master.

RULE 65.

CLAIMANTS BEFORE MASTER EXAMINABLE BY HIM.

The master shall be at liberty to examine any creditor or other person coming in to claim before him, either upon written interrogatories or *viva voce*, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examinations shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

RULE 66.

RETURN OF MASTER'S REPORT—EXCEPTIONS—HEARING.

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the equity docket. The parties shall have 20 days from the time of the filing of the report to file exceptions thereto, and if no exceptions are within that period filed by either party, the report shall stand confirmed. If exceptions are filed, they shall stand for hearing before the court, if then in session, or, if not, at the next sitting held thereafter, by adjournment or otherwise.

RULE 67.

COSTS ON EXCEPTIONS TO MASTER'S REPORT.

In order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay \$5 costs to the other party, and for every exception allowed shall be entitled to the same costs.

RULE 68.

APPOINTMENT AND COMPENSATION OF MASTERS.

The district courts may appoint standing masters in chancery in their respective districts (a majority of all the judges thereof concurring in the appointment), and they may also appoint a master pro hac vice in any particular case. The compensation to be allowed to every master shall be fixed by the district court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

RULE 69.

PETITION FOR REHEARING.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the circuit court of appeals or the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

RULE 70.

SUITS BY OR AGAINST INCOMPETENTS.

Guardians ad litem to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable of suing for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami*; subject, however, to such orders as the court or judge may direct for the protection of infants and other persons.

RULE 71.

FORM OF DECREE.

In drawing up decrees and orders neither the bill nor answer nor other pleadings nor any part thereof nor the report of any master nor any other prior proceeding shall be recited or stated in the decree or order, but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:" (Here insert the decree or order.)

RULE 72.

CORRECTION OF CLERICAL MISTAKES IN ORDERS AND DECREES.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may at any time before the close of the term at which final decree is rendered be corrected by order of the court or a judge thereof upon petition without the form or expense of a rehearing.

RULE 73.

PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS.

No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted without notice to the opposite party unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than 10 days from the date of the order, and shall take precedence of all matters except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the

opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

RULE 74.

INJUNCTION PENDING APPEAL.

When an appeal from a final decree in an equity suit granting or dissolving an injunction is allowed by a justice or a judge who took part in the decision of the cause he may, in his discretion, at the time of such allowance make an order suspending, modifying, or restoring the injunction during the pendency of the appeal upon such terms as to bond or otherwise as he may consider proper for the security of the rights of the opposite party.

RULE 75.

RECORD ON APPEAL—REDUCTION AND PREPARATION.

In case of appeal:

(a) It shall be the duty of the appellant or his solicitor to file with the clerk of the court from which the appeal is prosecuted, together with proof or acknowledgment of service of a copy on the appellee or his solicitor, a præcipe which shall indicate the portions of the record to be incorporated into the transcript on such appeal. Should the appellee or his solicitor desire additional portions of the record incorporated into the transcript, he shall file with the clerk of the court his præcipe also within 10 days thereafter, unless the time shall be enlarged by the court or a judge thereof, indicating such additional portions of the record desired by him.

(b) The evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form, all parts not essential to the decision of the questions presented by the appeal being omitted and the testimony of witnesses being stated only in narrative form, save that if either party desires it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. The duty of so condensing and stating the evidence shall rest primarily on the appellant, who shall prepare his statement thereof and lodge the same in the clerk's office for the examination of the other parties at or before the time of filing his præcipe under paragraph (a) of this rule. He shall also notify the other parties or their solicitors of such lodgment and shall name a time and place when he will ask the court or judge to approve the statement, the time so named to be at least 10 days after such notice. At the expiration of the time named or such further time as the court or judge may allow, the statement, together with any objections made or amendments proposed by any party, shall be presented to the court or the judge, and if the statement be true, complete, and properly prepared, it shall be approved by the court or judge, and if it be not true, complete, or properly prepared, it shall

be made so under the direction of the court or judge and shall then be approved. When approved it shall be filed in the clerk's office and become a part of the record for the purposes of the appeal.

(c) If any difference arise between the parties concerning directions as to the general contents of the record to be prepared on the appeal, such difference shall be submitted to the court or judge in conformity with the provisions of paragraph (b) of this rule and shall be covered by the directions which the court or judge may give on the subject.

RULE 76.

RECORD ON APPEAL—REDUCTION AND PREPARATION—COSTS—CORRECTION OF OMISSIONS.

In preparing the transcript on an appeal especial care shall be taken to avoid the inclusion of more than one copy of the same paper and to exclude the formal and immaterial parts of all exhibits, documents, and other papers included therein; and for any infraction of this or any kindred rule the appellate court may withhold or impose costs as the circumstances of the case and the discouragement of like infractions in the future may require. Costs for such an infraction may be imposed upon offending solicitors as well as parties.

If in the transcript anything material to either party be omitted by accident or error, the appellate court, on a proper suggestion or its own motion, may direct that the omission be corrected by a supplemental transcript.

RULE 77.

RECORD ON APPEAL—AGREED STATEMENT.

When the questions presented by an appeal can be determined by the appellate court without an examination of all the pleadings and evidence, the parties, with the approval of the district court or the judge thereof, may prepare and sign a statement of the case showing how the questions arose and were decided in the district court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such questions by the appellate court. Such statement, when filed in the office of the clerk of the district court, shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the decree from which the appeal is taken, and, together with such decree, shall be copied and certified to the appellate court as the record on appeal.

RULE 78.

AFFIRMATION IN LIEU OF OATH.

Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

RULE 79.

ADDITIONAL RULES BY DISTRICT COURT.

With the concurrence of a majority of the circuit judges for the circuit, the district courts may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts not inconsistent with the rules hereby prescribed, and from time to time alter and amend the same.

RULE 80.

COMPUTATION OF TIME—SUNDAYS AND HOLIDAYS.

When the time prescribed by these rules for doing any act expires on a Sunday or legal holiday, such time shall extend to and include the next succeeding day that is not a Sunday or legal holiday.

RULE 81.

THESE RULES EFFECTIVE FEBRUARY 1, 1913—OLD RULES ABROGATED.

These rules shall be in force on and after February 1, 1913, and shall govern all proceedings in cases then pending or thereafter brought, save that where in any then pending cause an order has been made or act done which can not be changed without doing substantial injustice the court may give effect to such order or act to the extent necessary to avoid any such injustice.

All rules heretofore prescribed by the Supreme Court, regulating the practice in suits in equity, shall be abrogated when these rules take effect,

