

RULES OF PRACTICE

FOR THE

COURTS OF EQUITY OF THE UNITED STATES.

UNDER the authority given to this court, by the Act of May 8th, 1792, c. 137, § 2, the following rules were ordered by the court, at the present term, to be the rules of practice for the courts of equity of the United States :

RULE I. Rules shall be held monthly in the clerk's office, on the first Monday in every month, for the purpose of entering all proceedings and orders which may be entered at the rules, and which are not taken or made in open court. The rules shall be held under the direction of the clerk ; but either of the judges of the court may make or allow any special orders in any cause, not inconsistent with the regulations herein prescribed, which shall be entered in the rule-book, and take effect accordingly.

II. All process shall be made returnable to the next succeeding term, or to any intermediate rule-day, at the election of the party praying the same, and the return of the said process "executed," shall be effectual whereon to ground any subsequent proceedings. If the party be not found, a copy, served by the person leaving the same, shall be left with his wife, or any free white person who is a member of his or her family, at his or her dwelling-house or usual place of abode, and the truth of the case shall be returned ; and where such process shall not be executed, the clerk is directed to issue other similar process, if the same be required by the party at whose instance the original process was sued out ; and if, upon such second process, the party be not found, a copy shall be again left in like manner as is hereinbefore directed, and upon a second return, that the party is not found, and that a copy has been left as herein directed, the same proceedings may be had as on process returned executed.

III. Where any person, either plaintiff or defendant, in any suit, shall be dead, it shall be lawful for the clerk, during the recess of the court, upon application, to issue process to bring into court the representative of such deceased person.

IV. The plaintiff shall file his bill before or at the time of taking out the *subpoena*.

V. The plaintiff may amend his bill, before the defendant or his attor-

ney or solicitor hath taken out a copy thereof, or, in a small matter, afterwards, without paying costs ; but if he amend in a material point, after such copy obtained, he shall pay the defendant all costs occasioned thereby.

VI. The day of appearance shall be the rule-day after the process is returned executed, or after the second return of a copy left, if the process shall not be executed, when the process is returnable to the rules, or the rule-day next succeeding the term, where the process shall be returnable to a term of the court ; and if the defendant shall not appear and file his answer, within three months after, the day of appearance, and after the bill shall have been filed, the plaintiff may proceed to take his bill for confessed, and the matter thereof shall be decreed accordingly ; which decree shall be absolute, unless cause be shown, at the term next succeeding that to which the process shall be returned executed.

VII. If the defendant cannot be found, it shall be sufficient service of any decree *nisi*, to leave a copy thereof with his wife, or any free white person who is a member of his or her family ; and if no such person be found, then it shall be sufficient service to publish the same in such paper of the district as may be designated by the court, for such time as the court shall direct.

VIII. All process shall be executed by a sworn officer, or affidavit must be made of the service thereof, when executed by any other person.

IX. Every defendant may swear to his answer, before any justice or judge of the United States, or a commissioner or master, or other person appointed by the court, or judge of any court of a state or territory, or justice of the peace, or notary-public, of any state or territory.

X. If the defendant does not file his answer, within three months after the *subpoena* be returned executed, or after a second return of a copy left having been made, at least three months, the plaintiff may either proceed on his bill as confessed, or have a general commission to take depositions, or he may move the court for an attachment to bring in the defendant to answer interrogatories, at his election, and may proceed to a hearing in the last two cases, as if the answer had been filed and the cause was at issue : Provided, that the court may, on cause shown, allow the answer to be filed, and grant a further day for such hearing. And when a party is in custody on such writ of attachment, he shall be detained in custody, until he shall file his answer, or be discharged by order of the court, or one of the judges thereof.

XI. No special replication to an answer shall be filed, but by leave of the court, or one of the judges thereof, for cause shown ; and if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same, with or without costs, at the discretion of the court.

XII. When a cross-bill shall be exhibited, the defendant or defendants to the first bill shall answer thereto, before the defendant or defendants to the cross-bill shall be compelled to answer such cross-bill.

XIII. The complainant shall put in the general replication, or file exceptions, within two calendar months after the answer shall have been put in. If he fails so to do, the defendant may leave a rule to reply with the clerk of the court, which being expired, and no replication or exceptions filed, the suit may be dismissed with costs ; but the court may, for cause, order the same to be retained, on payment of costs.

XIV. If the plaintiff's attorney or solicitor shall except against any answer as insufficient, he may file his exceptions, and leave a rule with the clerk to make a better answer within two calendar months; and if, within that time, the defendant shall put in a sufficient answer, the same shall be received, without costs; but if any defendant insists on the sufficiency of his answer, or neglects or refuses to put in a sufficient answer, or shall put in another insufficient answer, the plaintiff may set down his exceptions, to be argued at the next term; and after the expiration of that rule, or any second insufficient answer put in, no further or other answer shall be received, but on payment of costs.

XV. If, upon argument, the plaintiff's exceptions shall be overruled, or the defendant's answer adjudged insufficient, the plaintiff shall pay to the defendant, or the defendant to the plaintiff, such costs as shall be allowed by the court.

XVI. Upon a second answer being adjudged insufficient, costs shall be doubled by the court, and the defendant may be examined upon interrogatories, and committed until he or she answer them; or the plaintiff may move the court to take so much of his bill as is not answered for confessed, and may file his replication, obtain commissions, and proceed to hearing in the usual manner.

XVII. Rules to plead, answer, reply, rejoin, or other proceedings not before particularly mentioned, when necessary, shall be given, from month to month, with the clerk, in his office, and shall be entered in a rule-book for the information of all parties, attorneys or solicitors concerned therein, and shall be considered as sufficient notice thereof.

XVIII. The defendant may, at any time before the bill is taken for confessed, or afterwards, with the leave of the court, demur or plead to the whole bill, or part of it, and he may demur to part, plead to part, and answer as to the residue; but in any case in which the bill charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea, and explicitly denying the fraud and combination, and the fact on which the charge is founded.

XIX. The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

XX. If a plea or demurrer be overruled no other plea or demurrer shall be thereafter received, but the defendant shall proceed to answer the plaintiff's bill; and if he fail to do so, within two calendar months, the same, or so much thereof as was covered by the plea or demurrer, may be taken for confessed, and the matter thereof be decreed accordingly.

XXI. If the plaintiff shall not reply to, or set for hearing, any plea or demurrer, before the second term of the court after filing the same, the bill may be dismissed, with costs.

XXII. Upon a plea or demurrer being argued and overruled, costs shall be paid as where an answer is adjudged insufficient; but if adjudged good, the defendant shall have his costs.

XXIII. The defendant, instead of filing a formal demurrer or plea, may insist on any special matter in his answer, and have the same benefit thereof, as if he had pleaded the same matter, or had demurred to the bill.

XXIV. After any bill filed, and before the defendant hath answered,

upon oath made that any of the plaintiff's witnesses are aged, infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk may issue a commission for taking the examination of such witness or witnesses *de bene esse*, the party praying such commission giving reasonable notice to the adverse party of the time and place of taking such deposition.

XXV. Testimony may be taken according to the acts of congress, or under a commission. Whenever a general commission shall be issued for taking depositions, upon answer and replication, six months from the time of the replication shall be allowed the parties for taking their depositions; and either party, at the expiration of the said six months, may set the cause for hearing; and no deposition taken after that time shall be read as evidence on the hearing, unless the same was taken by consent of parties, by special order of the court, or out of the district.

XXVI. Commissions to take depositions may be executed by my person qualified to take testimony, according to the laws of the state, or by any person or persons, not exceeding three, appointed or named in the commission, by order of the court, or by any judge thereof in vacation. All testimony taken under a commission shall be taken on interrogatories and cross-interrogatories filed in the cause, unless the parties shall dispense therewith, which interrogatories shall be filed in the clerk's office, ten days previous to a rule-day, after which, the defendant shall be allowed five days to file his cross-interrogatories, unless he waives his right.

XXVII. Orders for the admission of a guardian *ad litem*, to defend a suit, may be made either by the court or one of the judges thereof.

XXVIII. Witnesses who live within the district may, upon due notice of the opposite party, be summoned to appear before the commissioners 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 commissioners, master or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioners, 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. But nothing herein contained shall prevent the examination of witnesses *viva voce*, when produced in open court.

XXIX. When a matter is referred to a master, to examine and report thereon, he shall assign a day and place therefor, and give reasonable notice thereof to the parties, or to the attorney or solicitor of such party as may not reside within the district, and if, either party shall fail to attend at the time and place, the master may adjourn the examination of the matter to some future day, and give notice thereof to the parties, in which notice it shall be expressed, that if the party fail again to appear, the master will proceed *ex parte*; and if, after receiving such notice, the party shall again fail to appear, the master may proceed to examine the matter to him referred, and to report the same to the court, that such proceedings may be had thereon, as to the court shall seem equitable and right.

XXX. The courts, in their sittings, may regulate all proceedings in the office, and may set aside any dismissions, and re-instate the suits, on such terms as may appear equitable.

XXXI. Every petition for a re-hearing shall contain the special matter or cause on which such re-hearing 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 some other person. No re-hearing 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 supreme court. But if no appeal lies, it may be admitted, at any time before the end of the next term of the court.

XXXII. The circuit courts may make further rules and regulations, not inconsistent with the rules hereby prescribed, in their discretion.

XXXIII. In all cases where the rules prescribed by this court, or by the circuit court, do not apply, the practice of the circuit court shall be regulated by the practice of the high court of chancery in England.

ORDERED by the Court, that the foregoing rules be the rules of practice for the Courts of Equity of the United States, from and after the first day of July next, and the clerk of the court is directed to have the same printed, and to transmit a printed copy thereof, duly certified, to the clerks of the several courts of the United States, and to each of the judges thereof.

