RULES OF THE SUPREME COURT OF THE UNITED STATES.[1]

THE COMMENCEMENT OF THE TERM OF COURT IS FIXED BY STATUTE.

An Act to fix the time for holding the annual session of the Supreme Court of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act the annual session of the Supreme Court of the United States shall commence on the second Monday of October, in each year, and all actions, suits, appeals, recognizances, processes, writs, and proceedings whatever, pending or which may be pending in said court, or returnable thereto, shall have day therein, and be heard, tried, proceeded with, and decided, in like manner as if the time of holding said sessions had not been hereby altered.

Approved, January 24, 1873, c. 64, 17 Stat. 419.

1.[2]

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to be clerk of this court.

See 1 Cranch, xv; 1 Wheat. xiii; 1 Pet. v; 1 How. xxiii; 21 How. v; 108 U. S. 573.

2. The clerk shall not permit any original record or paper

[1] For the general rules of the Supreme Court of the United States, as they have been revised and published in collected form in the Reports, see 1 Cranch, xv; 1 Wheat. xiii; 1 Pet. v; 1 How. xxiii; 21 How. v; 108 U. S. 573.

[2] The first rule or order actually promulgated by the court was on September 26, 1789, in regard to the seal of the court; it was as follows:

By the court:—I. *Ordered*, That the seal of the court shall be the arms of the United States, engraved on a piece of steel of the size of a dollar, with these words in the margin: "The Seal of the Supreme Court of the United

to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

3 Dall. 377; 1 Cranch, xvi; 1 Wheat. xv; 1 Pet. vii, xi; 106 U. S. vii; 1 How. xxv, xxxii; 21 How. v; 106 U. S. vii; 108 U. S. 573.

2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

3 Dall. 399, 400; 1 Cranch, xv, xvii; 1 Wheat. xiii; 1 Pet. vi, vii; 1 How. xxiii, xxiv, xxv; 21 How. v; 108 U. S. 573.

2. They shall respectively take and subscribe the following oath or affirmation, viz:

I, —— ——, do solemnly swear [or affirm] that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3 Dall. 399; 1 Cranch, xv; 1 Wheat. xiii, xiv, xvi; 1 Pet. vi; 21 How. v; 2 Wall. vii; 4 Wall. vii; 108 U. S. 573.

3.

PRACTICE.

This court considers the former practice of the courts of

States;" and that the seals of the Circuit Courts shall be the arms of the United States, engraven on circular pieces of silver of the size of ½ dollar, with these words in the margin, viz., in the upper part, "the Seal of the Circuit Court;" and in the lower part the name of the district for which it is intended.

May 31, 1904, *Ordered*, That the clerk of the court be, and he is hereby authorized and directed to procure a new seal for the court. Said seal shall be the arms of the United States, with these words in the margin, "Seal of the Supreme Court of the United States," engraved on a circular piece of steel, not exceeding two and one-fourth inches in diameter.

The act of September 29, 1889, c. 21, regulating processes in the courts of the United States, 1 Stat. 93, provided: "The seals of the Supreme Court and Circuit Courts to be provided by the Supreme Court and of the District Courts, by the respective judges of the same."

king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

3 Dall. 413; 1 Cranch, xvi; 1 Wheat. xiv; 1 Pet. vi; 1 How. xxiv; 21 How. v 108 U. S. 574.

4.

BILL OF EXCEPTIONS.

The judges of the Circuit and District Courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

6 Pet. iv; 1 How. xxxiv; 21 How. vi; 108 U. S. 574.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

3 Dall. 399; 1 Cranch, xv; 1 Wheat. xiii; 1 Pet. vi; 1 How. xxiv; 21 How. vi; 108 U. S. 574; 180 U. S. 641.

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

3 Dall. 335; 3 Pet. xvii; 12 Pet. 757; 1 How. xxiv; 21 How. vi; 108 U. S. 574.

3. Process of subpœna, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpœna, shall not appear at the

return day, the complainant shall be at liberty to proceed *ex parte*.

See 3 Dall. 335, 339; 1 Cranch, xvi; 1 Wheat. xv; 1 Pet. vi; 1 How. xxiv; 21 How. vi; 108 U. S. 574.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

1 Cranch, xvi; 12 Pet. viii; 1 How. xxxvii; 21 How. vi; 21 Wall. v; 108 U. S. 574.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

93 U. S. vii; 108 U. S. 575.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

6 Wall. v; 108 U. S. 575.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time

fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

See 13 Wall. xi; 108 U. S. 575.

5. There may be united with a motion to dismiss a writ of error or an appeal, a motion to affirm on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

91 U. S. vii; 97 U. S. vii; 108 U. S. 575.

6. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion-day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

9 Wheat. iv; 20 Wall. xv; 1 Pet. xi; 1 How. xxxii; 21 How. xv; 108 U. S. 575.

7.

LAW LIBRARY.

1. During the session of the court, any gentleman of the bar having a case on the docket, and wishing to use any book or books in the law library, shall be at liberty, upon application to the clerk of the court, to receive an order to take the same (not exceeding at any one time three) from the library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the clerk. It shall be the duty of the clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same

shall not be so returned, the party receiving the same shall be responsible for and forfeit and pay twice the value thereof, and also one dollar per day for each day's detention beyond the limited time.

7 Pet. iv; 1 How. xxxiv; 21 How. vi; 108 U. S. 575.

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, or arguments filed therein.

91 U. S. vii; 108 U. S. 576.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

See 7 Pet. iv; 1 How. xxxiv; xxxvii, 21 How. vii; 108 U. S. 576.

8.

WRIT OF ERROR, RETURN, AND RECORD.[1]

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

1 Cranch, xvi; 1 Wheat. xv; 1 Pet. vii; 1 How. xxv; 21 How. vii; 108 U. S. 576.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

15 Wall. v; 108 U. S. 576.

3. No case will be heard until a complete record, containing

[1] On May 29, 1850 it was ordered that the Reporter and Clerk digest a plan for making up the records. 9 How. iv.

in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

8 Wheat. vi; 1 Pet. x; 1 How. xxxi; 21 How. vii; 108 U. S. 577; 142 U. S. 704.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any Circuit Court, or District Court exercising Circuit Court jurisdiction, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

2 Wheat. vii; 1 Pet. ix; 1 How. xxix; 21 How. vii; 108 U. S. 577.

5.[1] All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return-day fall in vacation or in term time, and be served before the return-day.

See 3 Wall. vi; 108 U. S. 577; 137 U. S. 710.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

103 U. S. xiii; 108 U. S. 577.

9.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of

[1] For par. 5 of Rule 8, prior to its amendment, see 108 U. S. 577.

this court by or before the return-day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

1 Wheat. xv; 6 Wheat. vi; 1 Pet. viii, x; 9 Pet. vii; 10 Pet. 24; 15 Pet. 211; 1 How. xxvi, xxx, xxxv; 16 How. ix; 21 How. vii; 108 U. S. 577; 137 U. S. 710.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of the court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

16 How. ix; 21 How. viii; 108 U. S. 578; 137 U. S. 710.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

108 U. S. 578.

4. In all cases where the period of thirty days is mentioned in Rule 8, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii, and Porto Rico,

and to one hundred and twenty days from the Philippine Islands.

16 How. ix; 21 How. viii; 2 Wall. viii; 108 U. S. 578; 137 U. S. 711; 200 U. S. 626.

10.

PRINTING RECORDS.[1]

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

5 Pet. vii; 21 How. viii; 91 U. S. vii; 108 U. S. 578.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed.

93 U. S. vii; 108 U. S. 579.

3. Upon payment by either party of the amount estimated

[1] During the January Term, 1831, the court promulgated the following rule, 5 Pet. vii, and see at page 724, opinion of Mr. Justice Baldwin, giving his reasons for dissenting from the third paragraph of such rule. And see 1 How. xxxiii; 21 How. viii.

1. In all cases, the clerk shall take of the plaintiff a bond with competent security, to respond the costs, in the penalty of two hundred dollars; or a deposit of that amount, to be placed in bank subject to his draft.

2. In all cases the clerk shall have fifteen copies of the record printed for the court: provided the government will admit the item in the expenses of the court.

3. In all cases the clerk shall deliver a copy of the printed record to each party; and in cases of dismission (except for want of jurisdiction), or affirmance; one copy of the record shall be taxed against the plaintiff; which charge includes the charge for the copy furnished him. In cases of reversal, and dismission for want of jurisdiction, each party shall be charged with one-half the legal fees for a copy.

by the clerk, twenty-five copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

See 91 U. S. vii; 106 U. S. vii; 108 U. S. 579.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

106 U. S. vii; 108 U. S. 579.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

106 U. S. vii; 108 U. S. 579.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

106 U. S. vii; 108 U. S. 579.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

See 106 U. S. vii; 108 U. S. 579.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by them, respectively, in this court, on such parties or their sureties, an at-

tachment shall issue against such parties or sureties, respectively, to compel payment of the said fees.

1 Wheat. xviii; 1 Pet. viii; 1 How. xxvii; 21 How. ix; 108 U. S. 579.

9. The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 24, section 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

120 U. S. 785.

11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceedings, made under the authority of the inferior court, or admitted to be correct, the

record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court, in order that a translation may be there supplied and inserted in the record.

12 How. xi; 21 How. ix; 108 U. S. 580.

12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any Circuit Court of the United States.

3 Dall. 120; 1 Cranch, xvi; 1 Wheat. xix; 1 Pet. ix; 1 How. xxviii; 21 How. ix; 108 U. S. 580.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any Circuit Court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: Provided, however, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

See 2 Wheat. vii; 4 Wheat. 84; 1 Pet. ix; 1 How. xxix; 21 How. x; 108 U. S. 580.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but

the same shall otherwise be deemed to have been admitted by consent.

9 Wheat. iv; 1 Pet. xi; 1 How. xxxi; 21 How. x; 108 U. S. 580.

14.

CERTIORARI.

No certiorari for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such certiorari must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

9 Wheat. iv; 1 Pet. x; 1 How. xxxi; 21 How. x; 108 U. S. 581; 142 U. S. 704.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, however, That a copy of every such order shall be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three successive

weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

6 Wheat. v, 260; 1 Pet. ix; 1 How. xxix; 13 How. v; 21 How. x; 100 U. S. ix; 108 U. S. 581.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

21 How. xi; 108 U. S. 582.

3. When either party to a suit in a Circuit Court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in the Circuit Court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representa-

tive shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: Provided, however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his reidence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And provided, also, That in every such case, if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: And provided, also, That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

20 Wall. xv; 108 U. S. 582.

16.

NO APPEARANCE OF PLAINTIFF.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

3 Cranch, 249; 3 Pet. xvii; 1 How. xxvii; 21 How. xi; 108 U. S. 583; see 142 U. S. 705.

17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the right of the case.

1 Cranch, xvii; 1 Wheat. xvi; 1 Pet. vii; 1 How. xxv; 21 How. xi; 108 U. S. 583.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

12 How. xi; 8 How. v; 21 How. xi; 108 U. S. 583.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

21 How. xii; 108 U. S. 583.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but twenty-five copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

7 Pet. iv; 16 Pet. viii; 1 How. xxxv, xxxviii; 8 How. vi; 21 How. xii; 2 Wall. viii; 3 Wall. viii; 21 Wall. v; 108 U. S. 584; 119 U. S. 703; 123 U. S. 759.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

11 Pet. vii; 1 How. xxxvi; 21 How. xii; 108 U. S. 584.

3. When a case is taken up for trial upon the regular call of

the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

10 How. v; 21 How. xii; 11 Wall. x; 108 U. S. 584.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

20 Wall. xvi; 108 U. S. 584.

21.

BRIEFS.[1]

1. The counsel for the plaintiff in error or appellant shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

3 Dall. 120; 1 Cranch, xvi; 1 Wheat. xiv; 1 Pet. vi, ix; 6 Pet. iv; 14 Wall. xi; 1 How. xxiv, xxx; 2 Wall. viii; 11 Wall. x; 108 U. S. 584.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification

[1] Par. 9, Rule 21, May 1, 1871, 11 Wall. x, "The same (brief) shall be signed by an attorney or counsellor of this court."

shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

6 Wheat. v; 1 Pet. ix; 11 Wall. ix; 14 Wall. xi, xii; 108 U. S. 584.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

14 Wall. xi; 108 U. S. 585.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

11 Wall. ix, x; 14 Wall. xi; 108 U. S. 585.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

14 Wall. xi; 108 U. S. 585.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

21 How. xiii; 11 Wall. x; 14 Wall. xi; 108 U. S. 585; 150 U. S. 713.

22.

ORAL ARGUMENTS. [1]

1. The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

12 How. xiii; 108 U. S. 586.

2. Only two counsel will be heard for each party on the argument of a case.

7 Cranch, 2; 1 Wheat. xviii; 1 Pet. ix; 1 How. xxviii; 14 Wall. xi; 21 How. xii; 11 Wall. ix; 108 U. S. 586.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: Provided, always, That a fair opening of the case shall be made by the party having the opening and closing arguments.

7 How. v; 8 How. vi; 21 How. 12; 11 Wall. ix; 14 Wall. xi; 108 U. S. 586.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court,

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[1] January Term, 1850, 8 How. 5. *Ordered:* that no counsel will be permitted to speak, in the argument of any case in this court, more than two hours, without the special leave of the court, granted before the argument begins.

Counsel will not be heard, unless a printed abstract of the case be first filed, together with the points intended to be made, and the authorities intended to be cited in support of them arranged under the respective points. And no other book or case can be referred to in the argument.

If one of the parties omits to file such a statement, he cannot be heard, and the case will be heard *ex parte*, upon the argument of the party by whom the statement is filed.

This rule to take effect on the first day of December Term, 1894.

WAYNE, J., dissents from this rule.

WOODBURY, J., does not concur in this rule.

and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

Rule No. 62. In cases where a writ of error is prosecuted to the Supreme Court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

The same rule shall be applied to decrees for the payment of money, in cases in chancery, unless otherwise ordered by this court.

This rule to take effect on the first day of December Term, 1852. Promulgated December Term, 1851. 13 How. 5.

21 How. xiii; 108 U. S. 586.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

Rule XVII, 1803, February Term. 1 Cranch, 17. In all cases where a writ of error shall delay the proceedings on the judgment of the Circuit Court, and shall appear to have been sued out merely for delay, damages shall be awarded at the rate of ten per centum per annum, on the amount of the judgment.

Rule XVIII, 1803, February Term. 1 Cranch, 17. In such cases, where there exists a real controversy, the damages shall be only at the rate of six per centum per annum. In both cases, the interest is to be computed as part of the damages.

1 Wheat. xvi; 1 Pet. vi; 12 Pet. 84; 1 How. xxvi, xxvii; 21 How. xiii; 11 Wall. x; 108 U. S. 586.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

21 How. xiii; 108 U. S. 586.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

108 U. S. 586; 133 U. S. 711.

24.

COSTS.[1]

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2 Cranch, 249; 12 Pet. vii; 1 How. xxxvi; 21 How. xiii; 108 U. S. 587. And see February Term, 1808, 4 Cranch, 537.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

12 Pet. vii; 1 How. xxxvi; 21 How. xiv; 108 U. S. 587.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

12 Pet. vii; 1 How. xxxvii; 21 How. xiv; 1 Wall. vii; 108 U. S. 587.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

12 Pet. vii; 1 How. xxxvii; 21 How. xiv; 108 U. S. 587.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other

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[1] February Term, 1808, *Ordered*, That all parties in this court, not being residents of the United States, shall give security for the costs accruing in this court to be entered on the record. 1 Wheat. xvii; 1 Pet. viii; 1 How. xxvii.

February Term, 1810, *Ordered*, That upon the reversal of a judgment or decree of the Circuit Court, the party in whose favor the reversal is, shall recover his costs in the Circuit Court. 1 Wheat. xviii; 1 Pet. viii; 1 How. xxviii.

For costs in Circuit Court of Appeals established by the Supreme Court of the United States, pursuant to act of February 19, 1897, c. 263, 29 Stat. 536, see 168 U. S. 720; 169 U. S. 740.

proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

12 Pet. vii; 1 How. xxxvii; 21 How. xiv; 108 U. S. 587.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

12 Pet. vii; 1 How. xxxvii; 21 How. xiv; 108 U. S. 587.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every copy of any opinion of the court or any justice thereof, certified under seal, one dollar for every printed page, but not to exceed five dollars in the whole for any copy.

108 U. S. 587.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter as soon as the same shall be recorded.

3 Pet. 397; 1 How. xxxv; 21 How. xiv; 108 U. S. 588.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.[1]

21 How. xiv; 108 U. S. 588.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

108 U. S. 588.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will com-

[1] December Term, 1858, Par. 2, Rule No. 25. And all the opinions of the court, as far as practicable, shall be recorded during the term, so that the publication of the reports may not be delayed thereby. 21 How. xiv.

mence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order: (except as hereinafter provided;) and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

3 Pet. xvi; 1 How. xxxiii; 21 How. xv; 4 Wall. vii; 108 U. S. 589.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

1 How. xxxiii; 21 How. xv; 108 U. S. 589; 130 U. S. 706.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4 Wall. vii; 108 U. S. 589.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

108 U. S. 589.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also by leave of the court be advanced on motion of the attorney-general.

4 Wall. vii; 108 U. S. 589.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved with the reasons for the application.

21 Wall. v; 108 U. S. 589.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court.

Every case which shall have been called in its order and passed and put at the foot of the docket shall, if not again reached during the term it was called, be continued to the next term of the court.

14 Pet. xi; 8 How. vi; 108 U. S. 589.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

4 Wall. vii; 108 U. S. 589.

9. If, after a case has been passed under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

20 Wall. xvi; 108 U. S. 589.

10. No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

20 Wall. xvi; 108 U. S. 590.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

12 Pet. viii; 21 How. xv; 108 U. S. 590.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error

pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

20 How. iv; 21 How. xvi; 108 U. S. 590.

29.

SUPERSEDEAS.

Supersedeas bonds in the Circuit Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

6 Wall. v; 108 U. S. 590.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by

special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

108 U. S. 591.

31.[1]

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

100 U. S. ix; 108 U. S. 591; 178 U. S. 618.

32.[2]

WRITS OF ERROR AND APPEALS UNDER THE ACT OF FEBRUARY 25, 1889, CHAPTER 236, OR UNDER § 5 OF THE ACT OF MARCH 3, 1891, CHAPTER 517.

Cases brought to this court by writ of error or appeal, under the act of February 25, 1889, chapter 236, or under § 5 of the act of March 3, 1891, chapter 517, where the only question in

[1] Rule 31. All records and arguments printed for the use of the court must be in such form and size that they can be conveniently cut and bound so as to make an ordinary octavo volume. After the first day of October, 1880, the clerk will not receive or file records or arguments intended for distribution to the judges that do not conform to the requirements of this rule. 100 U. S. ix.

Whereas, upon an inspection of the printed argument of Thomas Washington, Esq., of counsel for the plaintiffs in error in this cause, it appears to the court that some of the passages thereof, and more particularly those on pages, etc., are reflecting on a member of the court, and thereby disrespectful to the whole court: It is thereupon now here ordered by this court, that the said passages or parts of said argument, and all others which may be deemed disrespectful to any member of the court, be, and the same are hereby, stricken out; and that this order be entered on the Minutes of this court. *Scott* v. *Reid*, 13 Pet. x.

[2] Rule 32 as originally promulgated, January 16, 1882, related to writs

issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals.

133 U. S. 711; 146 U. S. 707.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIALS.

1. Models, diagrams, and exhibits of material forming part

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of error and appeals under § 5 of the act of March 3, 1875, 18 Stat. 470 and was as follows:

RULE 32.

WRITS OF ERROR AND APPEALS UNDER § 5 OF THE ACT OF MARCH 3, 1875.

1. Writs of error and citations under § 5 of the Act of March 3, 1875, "to determine the jurisdiction of the circuit courts of the United States, and to regulate the removal of causes from the state courts, and for other purposes," for the review of orders of the Circuit Courts dismissing suits, or remanding suits to a state court, must be made returnable within thirty days after date, and be served before the return-day.

2. In all cases where a writ of error or an appeal is brought to this court under the provisions of such act, it shall be the duty of the plaintiff in error or the appellant to docket the cause and file the record in this court within thirty-six days after the date of the writ, or the taking of the appeal, if there shall be a term of the court pending at that time; and, if not, then during the first six days of the next term. If default be made in this particular, proceedings to docket and dismiss may be had as in other cases.

3. As soon as such a case is docketed, the record shall be printed, unless the parties stipulate to the contrary, and file their stipulation with the clerk.

4. All such cases will be advanced on motion, and heard under the rules applicable to motions to dismiss.

5. When a writ of error or an appeal has already been brought, or may hereafter be brought before this rule takes effect, the defendant in error or the appellee may docket the cause and file the record without waiting for the return-day, and move under this rule.

6. In all cases where a period of thirty days is included in the times fixed by this rule it shall be extended to sixty days in writs of error and appeals from California, Oregon, and Nevada.

7. This rule shall take effect from and after the first day of May next. Promulgated January 16, 1882. 104 U. S. ix; but see also 108 U. S. 591.

October Term, 1883. Ordered that § 3, of Rule 32, be amended so as to read as follows:

3. All such cases will be advanced on motion. The motion may be made *ex parte*. If granted, the party on whose motion the case shall have been advanced may have the case submitted on printed briefs, on serving, with

of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

115 U. S. 701.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

106 U. S. vii; 108 U. S. 592; 115 U. S. 701.

34.[1]

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas corpus*, the custody of the prisoner shall not be disturbed.

117 U. S. 708.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

117 U. S. 708.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon

a copy of his brief, on the adverse party, a notice of intention to submit, such as is required by Rule 6, to be given upon motions to dismiss writs of error and appeals. 111 U. S. v; 108 U. S. 591.

[1] See § 765, Rev. Stat.

recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

117 U. S. 708.

35.[1]

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a District Court or a Circuit Court direct to this court, under § 5 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891,[2] the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

137 U. S. 709; 139 U. S. 705.

2. The plaintiff in error or appellant shall cause the record

[1] Originally adapted to writs of error under § 6 of the Act of February 6, 1889, c. 113, 25 Stat. 656. Rules 35, 36, 37, 38, were originally promulgated May 11, 1891, after the passage of the Circuit Court of Appeals Act; 139 U. S. 705, 707; see order, p. 707.

[2] 26 Stat. 826; and published at length, 138 U. S. 709.

to be printed, according to the provisions of §§ 2, 3, 4, 5, 6, and 9, of Rule 10.

137 U. S. 709; 139 U. S. 705.

36.

APPEALS AND WRITS OF ERROR.

1. An appeal or a writ of error from a Circuit Court or a District Court direct to this court, in the cases provided for in §§ 5 and 6 of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, may be allowed, in term time or in vacation, by any justice of this court, or by any Circuit Judge within his circuit, or by any District Judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

139 U. S. 706.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under said §§ 5 and 6, the Circuit Court or District Court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

139 U. S. 706; see 3 Dall. 120; 1 Cranch, xvi; 1 Wheat. xv; 1 Pet. vi; 1 How. xxiv.

37.

CASES FROM CIRCUIT COURT OF APPEALS.

1. Where, under § 6 of the said act, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

139 U. S. 706.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

139 U. S. 706.

3. Where application is made to this court under § 6 of the said act to require a case to be certified to it for its review and determination, a certified copy of the entire record of the case in the Circuit Court of Appeals shall be furnished to this court by the applicant, as part of the application.

139 U. S. 707.

38.

INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of §§ 5 and 6 of the said act.

139 U. S. 707.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

159 U. S. 709.