AMENDMENTS TO
RULES OF CIVIL PROCEDURE
FOR THE
UNITED STATES DISTRICT COURTS

Effective July 1, 1963

The following amendments to the Rules of Civil Procedure for the United States District Courts were prescribed by the Supreme Court of the United States on January 21, 1963, pursuant to 28 U. S. C. § 2072, and they were reported to Congress by THE CHIEF JUSTICE on the same day, *post*, p. 863. An additional amendment fixing the effective date was adopted on March 18, 1963, and reported to Congress by THE CHIEF JUSTICE on March 19, 1963, *post*, p. 871.

The amendments became effective on July 1, 1963, as provided in amended Rule 86 (e), *post*, p. 893.

For earlier publications of the Rules of Civil Procedure and the amendments thereto, see 308 U. S. 645, 308 U. S. 642, 329 U. S. 839, 335 U. S. 919, 341 U. S. 959, 368 U. S. 1009.

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

JANUARY 21, 1963.

To the Senate and House of Representatives of the United States of America in Congress assembled:

By direction of the Supreme Court, I have the honor to report to the Congress the attached amendments to the Rules of Civil Procedure for the United States District Courts, which have been adopted by the Supreme Court, pursuant to Title 28, U. S. C., Sec. 2072.

Accompanying these amendments is the Report of the Judicial Conference of the United States, submitted to the Court for its consideration pursuant to Title 28, U. S. C., Sec. 331.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS have filed the attached statement.

Respectfully,

(Signed) EARL WARREN,
Chief Justice of the United States.

699-272 O-63-40

SUPREME COURT OF THE UNITED STATES

MONDAY, JANUARY 21, 1963.

ORDERED:

1. That the Rules of Civil Procedure be, and they hereby are, amended by including therein Forms Number 30, 31 and 32, and the amendments to Rules 4, 5, 6, 7, 12, 13, 14, 15, 24, 25, 26, 28, 30, 41, 49, 50, 52, 56, 58, 71A, 77, 79, 81, and 86 and to Forms Number 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 21, 22–A and 22–B, as hereinafter set forth.

2. That THE CHIEF JUSTICE be authorized to transmit these amendments to Congress in accordance with the provisions of Title 28, U. S. C., Sec. 2072.

Statement of MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS are opposed to the submission of these rules [1] to the Congress under a statute which permits them to "take effect" and to repeal "all laws in conflict with such rules" without requiring any affirmative consideration, action, or approval of the rules by Congress or by the President.[2] We believe that while some of the Rules of Civil Procedure are simply housekeeping details,[3] many determine matters so

[1] See our earlier statements in 368 U. S. 1012–1014 and 346 U. S. 946–947.

[2] 28 U. S. C. § 2072 gives this Court the power to prescribe rules of practice and procedure for Federal District Courts and further provides that such rules

"shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.

"All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."

[3] See 368 U. S. 1012.

substantially affecting the rights of litigants in lawsuits that in practical effect they are the equivalent of new legislation which, in our judgment, the Constitution requires to be initiated in and enacted by the Congress [4] and approved by the President.[5] The Constitution, as we read it, provides that all laws shall be enacted by the House, the Senate, and the President, not by the mere failure of Congress to reject proposals of an outside agency. Even were there not this constitutional limitation, the authorizing statute itself qualifies this Court's power by imposing upon it a solemn responsibility not to submit rules that "abridge, enlarge or modify any substantive right" and by specifically charging the Court with the duty to "preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution." [6] Our chief objections to the rules relate essentially to the fact that many of their provisions do "abridge, enlarge or modify" substantive rights and do not "preserve the right of trial by jury" but actually encroach upon it.

(1) (a) Rule 50 (a) is amended by making the order of a judge granting a motion for a directed verdict effective without submitting the question to the jury at all. It was pointed out in *Galloway* v. *United States,* 319 U. S. 372, 396, 401–407 (dissenting opinion), how judges have whittled away or denied the right of trial by jury through the devices of directed verdicts and judgments notwithstanding verdicts. Although the amendment here is not itself a momentous one, it gives formal sanction to the process by which the courts have been wresting from juries the power to render verdicts. Since we do not

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[4] "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." U. S. Const., Art. I, § 1.

[5] "Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; . . ." U. S. Const., Art. I, § 7.

[6] 28 U. S. C. § 2072.

approve of this sapping of the Seventh Amendment's guarantee of a jury trial, we cannot join even this technical *coup de grace*.

(b) The proposed amendment to 50 (c) in practical effect vests appellate courts with more power than they have had to grant or deny new trials. The Court in *Cone* v. *West Virginia Pulp & Paper Co.*, 330 U. S. 212, 217–218, and *Globe Liquor Co.* v. *San Roman*, 332 U. S. 571, refused to construe the federal rules then existing to allow Courts of Appeals to interfere with trial judges' discretion to grant new trials. To the extent that jury verdicts are to be set aside and new trials granted, we believe that those who hear the evidence, the trial judges, are the ones who should primarily exercise such discretion.

(c) The proposed amendment to Rule 56 (e) imposes additional burdens upon litigants to protect against summary judgments rendered without hearing evidence on the part of witnesses who are confronted by the persons against whom they testify so that these persons can subject the witnesses to cross-examination. The summary judgment procedure, while justified in some cases, is made a handy instrument to let judges rather than juries try lawsuits and to let those judges try cases not on evidence of witnesses subjected to cross-examination but on ex parte affidavits obtained by parties. Most trial lawyers would agree, we think, that a litigant can frequently obtain in an actual trial favorable testimony which could not have been secured by affidavits or even by depositions.

(d) If there are to be amendments, Rule 49 should be repealed. That rule authorizes judges to require juries to return "only a special verdict in the form of a special written finding upon each issue of fact" or to answer "written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict" in addition to rendering the general verdict. Such devices are used to impair or wholly take away the power of a jury to render a general verdict. One of the ancient, fundamental reasons for having general jury verdicts was to preserve the

right of trial by jury as an indispensable part of a free government. Many of the most famous constitutional controversies in England revolved around litigants' insistence, particularly in seditious libel cases, that a jury had the right to render a general verdict without being compelled to return a number of subsidiary findings to support its general verdict. Some English jurors had to go to jail because they insisted upon their right to render general verdicts over the repeated commands of tyrannical judges not to do so. Rule 49 is but another means utilized by courts to weaken the constitutional power of juries and to vest judges with more power to decide cases according to their own judgments. A scrutiny of the special verdict and written interrogatory cases in appellate courts will show the confusion that necessarily results from the employment of these devices and the ease with which judges can use them to take away the right to trial by jury. We believe that Rule 49 should be repealed, not amplified.

(2) There is a proposal to amend Rule 41, which provides for dismissal of actions. We believe that, if the rules are to be changed, a major amendment to this rule is required in the interest of justice. Before dismissing a plaintiff's action for failure of his lawyer to prosecute, the trial judge should be required to have notice served on the plaintiff himself. The hardship that can result from the absence of such requirement is shown by *Link* v. *Wabash R. Co.,* 370 U. S. 626. Link's lawyer failed to appear in response to a judge's order for a pre-trial conference, and the judge dismissed the case. As pointed out in the dissent, plaintiff had been severely injured, and a fair system of justice should not have penalized him because his lawyer, through neglect or any other reason, failed to appear when ordered. It would do a defendant no injury for the court to refuse to dismiss any apparently bona fide case until the plaintiff has actually had notice that some failure of his lawyer has irked the judge.

(3) MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS object to the changes in Rule 4, which for the first time permit a Federal District Court to obtain jurisdiction over a defendant by service of process outside the State or over his property by garnishment or attachment, under the circumstances and in the manner prescribed by state law. Those changes will apparently have little effect insofar as "federal question" litigation is concerned, since 28 U. S. C. § 1391 (b) requires such suits to be brought "only in the judicial district where all defendants reside . . . ." Diversity actions, however, may be greatly increased, for the effect of proposed 4 (e) is not limited to suits authorized by such statutes as the Federal Interpleader Act, 28 U. S. C. § 1335. See Proposed Amendments to the Rules of Civil Procedure for the United States District Courts, approved by the Judicial Conference of the United States on September 19–20, 1962, pp. 5–8; 28 U. S. C. § 1391 (a); Fed. Rules Civ. Proc. 1. We see no justification for an increase in the number of diversity cases. We also see no reason why the extent of a Federal District Court's personal jurisdiction should depend upon the existence or nonexistence of a state "long-arm" statute. Moreover, at present a state court action commenced by attachment or garnishment can get into a District Court only if a nonresident defendant chooses to appear and remove the case, see 28 U. S. C. § 1441, and there is no good reason, absent a congressional finding, why this should be changed.

Instead of recommending changes to the present rules, we recommend that the statute authorizing this Court to prescribe Rules of Civil Procedure, if it is to remain a law, be amended to place the responsibility upon the Judicial Conference rather than upon this Court. Since the statute was first enacted in 1934, 48 Stat. 1064, the Judicial Conference has been enlarged and improved and is now very active in its surveillance of the work of the federal courts and in recommending appropriate legisla-

tion to Congress. The present rules produced under 28 U. S. C. § 2072 are not prepared by us but by Committees of the Judicial Conference designated by THE CHIEF JUSTICE, and before coming to us they are approved by the Judicial Conference pursuant to 28 U. S. C. § 331.[7] The Committees and the Conference are composed of able and distinguished members and they render a high public service. It is they, however, who do the work, not we, and the rules have only our imprimatur. The only contribution that we actually make is an occasional exercise of a veto power. If the rule-making for Federal District Courts is to continue under the present plan, we believe that the Supreme Court should not have any part in the task; rather, the statute should be amended to substitute the Judicial Conference. The Judicial Conference can participate more actively in fashioning the rules and affirmatively contribute to their content and design better than we can. Transfer of the function to the Judicial Conference would relieve us of the embarrassment of having to sit in judgment on the constitutionality of rules which we have approved and which as applied in given situations might have to be declared invalid.

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[7] "The Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure now or hereafter in use as prescribed by the Supreme Court for the other courts of the United States pursuant to law. Such changes in and additions to those rules as the Conference may deem desirable to promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay shall be recommended by the Conference from time to time to the Supreme Court for its consideration and adoption, modification or rejection, in accordance with law."

LETTER OF TRANSMITTAL

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

MARCH 19, 1963.

To the Senate and House of Representatives of the United States of America in Congress assembled:

By direction of the Supreme Court, I have the honor to transmit the attached amendment to the amendments to the Rules of Civil Procedure for the United States District Courts, which I transmitted to the Congress January 21, 1963.

Respectfully,

(Signed) EARL WARREN,
Chief Justice of the United States.

SUPREME COURT OF THE UNITED STATES

MONDAY, MARCH 18, 1963

IT IS ORDERED (1) That paragraph (e) of Rule 86 of the Rules of Civil Procedure, as adopted January 21, 1963, is amended to read as follows:

> (e) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963, shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(2) That THE CHIEF JUSTICE be authorized to transmit this amendment to Congress in accordance with the provisions of Title 28, U. S. C., Sec. 2072.

(3) That this amendment shall take effect at the expiration of 90 days after it has been reported by THE CHIEF JUSTICE to Congress.

AMENDMENTS TO RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

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AMENDMENTS TO RULES OF CIVIL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

Rule 4. Process

(b) Same: Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When, under Rule 4 (e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(d) Summons: Personal Service.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(e) SAME: SERVICE UPON PARTY NOT INHABITANT OF OR FOUND WITHIN STATE. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 13 (h) or Rule 14, or as additional parties to a pending action pursuant to Rule 19, may be served in the manner stated in paragraphs (1)–(6)

of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) Return. Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

As used in this rule and in Rule 77 (c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50 (b), 52 (b), 59 (b), (d) and (e), 60 (b), and 73 (a) and (g), except to the extent and under the conditions stated in them.

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) PLEADINGS. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

RULE 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON PLEADINGS

(a) WHEN PRESENTED. A defendant shall serve his answer within 20 days after the service of the summons

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and complaint upon him, except when service is made under Rule 4 (e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 20 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

Rule 13. Counterclaim and Cross-Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by

which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make his defenses to the third-party plaintiff's claim as provided in Rule 12 and his counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert his defenses as provided in Rule 12 and his counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any

person not a party to the action who is or may be liable to him for all or part of the claim made in the action against the third-party defendant.

RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(d) SUPPLEMENTAL PLEADINGS. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

RULE 24. INTERVENTION

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U. S. C., § 2403.

RULE 25. SUBSTITUTION OF PARTIES

(a) DEATH.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representa-

tives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

Rule 26. Depositions Pending Action

(e) Objections to Admissibility. Subject to the provisions of Rules 28 (b) and 32 (c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

Rule 28. Persons Before Whom Depositions May Be Taken

(b) In Foreign Countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the

deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

(f) CERTIFICATION AND FILING BY OFFICER; COPIES; NOTICE OF FILING.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

RULE 41. DISMISSAL OF ACTIONS

(b) INVOLUNTARY DISMISSAL: EFFECT THEREOF. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the

court shall make findings as provided in Rule 52 (a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue or for lack of an indispensable party, operates as an adjudication upon the merits.

RULE 49. SPECIAL VERDICTS AND INTERROGATORIES

(b) GENERAL VERDICT ACCOMPANIED BY ANSWER TO INTERROGATORIES. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

RULE 50. MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT

(a) MOTION FOR DIRECTED VERDICT: WHEN MADE; EFFECT. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer

evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

(b) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(c) SAME: CONDITIONAL RULINGS ON GRANT OF MOTION.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it

should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after entry of the judgment notwithstanding the verdict.

(d) SAME: DENIAL OF MOTION. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling him to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

RULE 52. FINDINGS BY THE COURT

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions

the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41 (b).

RULE 56. SUMMARY JUDGMENT

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54 (b): (1) upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court; (2) upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79 (a). Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

Rule 71A. Condemnation of Property

(d) Process.

(3) Service of Notice.

(i) Personal service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4 (c) and (d) upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known.

RULE 77. DISTRICT COURTS AND CLERKS

(c) CLERK'S OFFICE AND ORDERS BY CLERK. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a district court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) NOTICE OF ORDERS OR JUDGMENTS. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 73 (a).

RULE 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

(a) CIVIL DOCKET. The clerk shall keep a book known as "civil docket" of such form and style as may be prescribed by the Director of the Administrative Office of the

United States Courts with the approval of the Judicial Conference of the United States, and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order or judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered the clerk shall enter the word "jury" on the folio assigned to that action.

Rule 81. Applicability in General

(a) To What Proceedings Applicable.

(4) These rules do not alter the method prescribed by the Act of February 18, 1922, c. 57, § 2 (42 Stat. 388), U. S. C., Title 7, § 292; or by the Act of June 10, 1930, c. 436, § 7 (46 Stat. 534), as amended, U. S. C., Title 7, § 499g (c), for instituting proceedings in the United States district courts to review orders of the Secretary of Agriculture; or prescribed by the Act of June 25, 1934, c. 742, § 2 (48 Stat. 1214), U. S. C., Title 15, § 522, for instituting proceedings to review orders of the Secretary of the Interior; or prescribed by the Act of February 22, 1935, c. 18, § 5 (49 Stat. 31), U. S. C., Title 15, § 715d (c), as extended, for instituting proceedings to review orders of petroleum control boards; but the conduct of such proceedings in the district courts shall be made to conform to these rules so far as applicable.

(6) These rules apply to proceedings for enforcement or review of compensation orders under the Longshoremen's and Harbor Workers' Compensation Act, Act of March 4, 1927, c. 509, §§ 18, 21 (44 Stat. 1434, 1436), as amended, U. S. C., Title 33, §§ 918, 921, except to the extent that matters of procedure are provided for in that Act. The provisions for service by publication and for answer in proceedings to cancel certificates of citizenship under the Act of June 27, 1952, c. 477, Title III, c. 2, § 340 (66 Stat. 260), U. S. C., Title 8, § 1451, remain in effect.

(c) Removed Actions. These rules apply to civil actions removed to the United States district courts from the state courts and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is longest. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury under Rule 38 shall be accorded it, if his demand therefor is served within 10 days after the petition for removal is filed if he is the petitioner, or if he is not the petitioner within 10 days after service on him of the notice of filing the petition. A party who, prior to removal, has made an express demand for trial by jury in accordance with state law, need not make a demand after removal. If state law applicable in the court from which the case is removed does not require the parties to make express demands in order to claim trial by jury, they need not make demands after removal unless the court directs that they do so within a

specified time if they desire to claim trial by jury. The court may make this direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

(f) REFERENCES TO OFFICER OF THE UNITED STATES. Under any rule in which reference is made to an officer or agency of the United States, the term "officer" includes a district director of internal revenue, a former district director or collector of internal revenue, or the personal representative of a deceased district director or collector of internal revenue.

RULE 86. EFFECTIVE DATE

(e) EFFECTIVE DATE OF AMENDMENTS. The amendments adopted by the Supreme Court on January 21, 1963, and transmitted to the Congress on January 21, 1963, shall take effect on July 1, 1963. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

FORM 3. COMPLAINT ON A PROMISSORY NOTE

1. Allegation of jurisdiction.

2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of ..... dollars with interest thereon at the rate of six percent. per annum].

3. Defendant owes to plaintiff the amount of said note and interest.

Wherefore plaintiff demands judgment against defendant for the sum of ..... dollars, interest, and costs.

Signed: .....
Attorney for Plaintiff.

Address: .....

[Explanatory Note unchanged.]

FORM 4. COMPLAINT ON AN ACCOUNT

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ..... dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

FORM 5. COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ..... dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936.

Wherefore (etc. as in Form 3).

[Explanatory Note unchanged.]

FORM 6. COMPLAINT FOR MONEY LENT

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ..... dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3).

FORM 7. COMPLAINT FOR MONEY PAID BY MISTAKE

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ..... dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity—see Rule 9 (b)].

Wherefore (etc. as in Form 3).

FORM 8. COMPLAINT FOR MONEY HAD AND RECEIVED

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ..... dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

FORM 9. COMPLAINT FOR NEGLIGENCE

[Amend the "Wherefore" clause to read as follows:]

Wherefore plaintiff demands judgment against defendant in the sum of ..... dollars and costs.

FORM 10. COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

[Amend the "Wherefore" clause to read as follows:]

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ..... dollars and costs.

FORM 11. COMPLAINT FOR CONVERSION

1. Allegation of jurisdiction.

2. On or about December 1, 1936, defendant converted to his own use ten bonds of the ..... Company (here insert brief identification as by number and issue) of the value of ..... dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ..... dollars, interest, and costs.

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FORM 12. COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

[Amend the "Wherefore" clause to read as follows:]

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ..... dollars.

FORM 13. COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18 (b)

[Amend the "Wherefore" clause to read as follows:]

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for ..... dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

FORM 16. COMPLAINT FOR INFRINGEMENT OF PATENT

[Amend the "Wherefore" clause to read as follows:]

Wherefore plaintiff demands a preliminary and final injunction against continued infringement, an accounting for damages, and an assessment of interest and costs against defendant.

FORM 18. COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

[Amend the second paragraph of the complaint to read as follows:]

2. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ..... dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

FORM 21. ANSWER TO COMPLAINT SET FORTH IN FORM 8, WITH COUNTERCLAIM FOR INTERPLEADER

[Amend the first paragraph of the Counterclaim for Interpleader to read as follows:]

1. Defendant received the sum of ..... dollars as a deposit from E. F.

FORM 22–A. SUMMONS AND COMPLAINT AGAINST THIRD-PARTY DEFENDANT

[The contents of Form 22 are eliminated down to and including the words "Exhibit A," thus eliminating the motion and notice of motion.]

United States District Court for the Southern District of New York

Civil Action, File Number .....

A. B., Plaintiff
v.
C. D., Defendant and Third-Party Plaintiff
v.
E. F., Third-Party Defendant
} Summons

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon....., plaintiff's attorney whose address is ....., and upon ....., who is attorney for C. D., defendant and third-party plaintiff, and whose address is ....., an answer to the third-party complaint which is herewith served upon you within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint. There is also served upon you herewith a copy of the complaint of the plaintiff which you may but are not required to answer.

.....
Clerk of Court.

[Seal of District Court]
Dated .....

United States District Court for the Southern District of New York

Civil Action, File Number .....

A. B., Plaintiff
v.
C. D., Defendant and Third-Party Plaintiff
v.
E. F., Third-Party Defendant
} Third-Party Complaint

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit A."

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums [1] that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: .....
Attorney for C. D., Third-Party Plaintiff.

Address: .....

[1] Make appropriate change where C. D. is entitled to only partial recovery-over against E. F.

FORM 22–B. MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave, as third-party plaintiff, to cause to be served upon E. F. a summons and third-party complaint, copies of which are hereto attached as Exhibit X.

Signed: .....
Attorney for Defendant C. D.

Address: .....

Notice of Motion

(Contents the same as in Form 19. The notice should be addressed to all parties to the action.)

Exhibit X

(Contents the same as in Form 22–A.)

FORM 30. SUGGESTION OF DEATH UPON THE RECORD UNDER RULE 25 (a)(1)

[NEW]

A. B. [describe as a party, or as executor, administrator, or other representative or successor of C. D., the deceased party] suggests upon the record, pursuant to Rule 25 (a)(1), the death of C. D. [describe as party] during the pendency of this action.

FORM 31. JUDGMENT ON JURY VERDICT

[NEW]

United States District Court for the Southern District of New York

Civil Action, File Number .....

A. B., Plaintiff
v.
C. D., Defendant
} Judgment

This action came on for trial before the Court and a jury, Honorable John Marshall, District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of ....., with interest thereon at the rate of ... per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this ..... day of ....., 19..

.....
Clerk of Court.

EXPLANATORY NOTE

1. This Form is illustrative of the judgment to be entered upon the general verdict of a jury. It deals with the cases where there is a general jury verdict awarding the plaintiff money damages or finding for the defendant, but is adaptable to other situations of jury verdicts.

2. The clerk, unless the court otherwise orders, is required forthwith to prepare, sign, and enter the judgment upon a general jury verdict without awaiting any direction by the court. The form of the judgment upon a special verdict or a general verdict accompanied by answers to interrogatories shall be promptly approved by the court, and the clerk shall thereupon enter it. See Rule 58, as amended.

3. The Rules contemplate a simple judgment promptly entered. See Rule 54 (a). Every judgment shall be set forth on a separate document. See Rule 58, as amended.

4. Attorneys are not to submit forms of judgment unless directed in exceptional cases to do so by the court. See Rule 58, as amended.

FORM 32. JUDGMENT ON DECISION BY THE COURT

[NEW]

United States District Court for the Southern District of New York

Civil Action, File Number .....

A. B., Plaintiff
v.
C. D., Defendant
} Judgment

This action came on for [trial] [hearing] before the Court, Honorable John Marshall, District Judge, presiding, and the issues having been duly [tried] [heard] and a decision having been duly rendered,

It is Ordered and Adjudged

[that the plaintiff A. B. recover of the defendant C. D. the sum of ....., with interest thereon at the rate of .... per cent as provided by law, and his costs of action.]

[that the plaintiff take nothing, that the action be dismissed on the merits, and that the defendant C. D. recover of the plaintiff A. B. his costs of action.]

Dated at New York, New York, this ..... day of ....., 19..

.....
Clerk of Court.

EXPLANATORY NOTE

1. This Form is illustrative of the judgment to be entered upon a decision of the court. It deals with the cases of decisions by the court awarding a party only money damages or costs, but is adaptable to other decisions by the court.

2. The clerk, unless the court otherwise orders, is required forthwith, without awaiting any direction by the court, to prepare, sign, and enter the judgment upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied. The form of the judgment upon a decision by the court granting other relief shall be promptly approved by the court, and the clerk shall thereupon enter it. See Rule 58, as amended.

3. See also paragraphs 3–4 of the Explanatory Note to Form 31.