

RULES

OF THE

SUPREME COURT OF THE UNITED STATES,

REVISED AND CORRECTED AT DECEMBER TERM, 1858.

No. 1.

CLERK.

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 an attorney or counsellor in this court, or any other court, while he shall continue to be clerk of this court.

The clerk shall not permit any original record or paper to be taken from the Supreme Court room, or from the office, without an order from the court.

No. 2.

ATTORNEYS, ETC.

It shall be requisite to the admission of attorneys and 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.

They shall respectively take the following oath or affirmation, viz: "I do solemnly swear (or affirm, as the case may be) 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."

No. 3.

PRACTICE.

This court consider the practice of the Courts of King's Bench and of Chancery, in England, as affording outlines for

the practice of this court; and they will, from time to time, make such alterations therein as circumstances may render necessary.

No. 4.

BILL OF EXCEPTIONS.

Hereafter, 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 excepted; and that such matters of law, and those only, shall be inserted in the bill of exceptions, and allowed by the court.

No. 5.

PROCESS.

All process of this court shall be in the name of the President of the United States.

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.

Process of subpoena, 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 subpoena, shall not appear at the return day contained therein, the complainant shall be at liberty to proceed *ex parte*.

No. 6.

MOTIONS.

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

No. 7.

LAW LIBRARY—CONFERENCE ROOM.

1. During the session of the court, any gentleman of the bar having a cause 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. And 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; as also one dollar per day for each day's detention beyond the limited time.

2. The clerk 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 judges of the court.

No. 8.

RETURN TO WRIT OF ERROR, ETC.

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

2. No cause will hereafter be heard until a complete record, containing in itself, without references *aliunde*, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court, shall be filed.

3. 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 the Supreme Court, upon 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.

No. 9.

DOCKETING CASES.

1. In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered

thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant, as the case may be, to docket the cause, and file the record thereof with the clerk of this court within the first six days of the term; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the cause, and file the record thereof with the clerk of this court within the first thirty days of the term; and if the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the cause, and certifying that such writ of error or appeal has been duly sued out and allowed.

And in no case shall the plaintiff in error or appellant be entitled to docket the cause and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

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

3. In all cases where the period of thirty days is mentioned in this rule, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Washington, New Mexico, and Utah.

No. 10.

SECURITY FOR COSTS—PRINTING RECORDS—ATTACHMENT FOR COSTS.

1. In all cases, the clerk shall take of the party a bond, with competent surety, to secure his fees, 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

records printed for the court; and the cost of printing shall be charged to the Government, in the expenses of the court.

3. The clerk shall furnish copies for the printer, shall supervise the printing, and shall take care of and distribute the printed copies to the judges, the reporter, and the parties, from time to time, as required.

4. In each case, the clerk shall charge the parties the legal fees for but the one manuscript copy in that case.

5. In all cases, the clerk shall deliver a copy of the printed record to each party. And in cases of dismissal, reversal, or affirmance with costs, the fees for the said manuscript copy of the record shall be taxed against the party against whom costs are given, and which charge includes the charge for the copy furnished him.

6. In cases of dismissal for want of jurisdiction, each party shall be charged with one-half the legal fees for a copy.

7. Upon the clerk of this court 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 attachment shall issue against such parties or sureties respectively, to compel payment of the said fees.

No. 11.

TRANSLATIONS.

Whenever any record, transmitted to this court upon a writ of error or appeal, shall contain any document, paper, testimony, or other proceeding, in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, 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.

No. 12.

EVIDENCE.

1. In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission

to be issued from this court, or from any Circuit Court of the United States.

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.

No. 13.

DEEDS, ETC., NOT OBJECTED TO, ETC., ADMITTED, ETC.

In all cases of equity and 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.

No. 14.

CERTIORARI.

No *certiorari* for diminution of the record shall be hereafter awarded in any cause, 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* shall be made at the first term of the entry of the cause; otherwise, the same shall not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

No. 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 person

alty 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 cause 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 same reversed, if it be erroneous; *Provided, however*, that a copy of every such order shall be printed in some newspaper at the seat of Government, in which the laws of the United States shall be printed by authority, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

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.

No. 16.

NO APPEARANCE OF PLAINTIFF IN ERROR.

Where there is no appearance for the plaintiff in error when the case is called for trial, the defendant may have the plaintiff called, and dismiss the writ of error, or may open the record, and pray for an affirmance.

No. 17.

NO APPEARANCE OF DEFENDANT IN ERROR.

Where the defendant in error fails to appear when the cause shall be 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 cause.

No. 18.

NO APPEARANCE OF EITHER PARTY.

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

No. 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 costs of the plaintiff, unless sufficient cause is shown for further postponement.

No. 20.

PRINTED ARGUMENTS.

1. In all cases brought here on appeal, writ of error, 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 so to submit the same. But the arguments must be filed within the first ten days of the term, and signed by attorneys or counsellors of this court.

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.

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 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.

No. 21.

TWO COUNSEL—TWO HOURS—BRIEFS.

1. Only two counsel shall be permitted to argue for each party, plaintiff and defendant, in a cause.

2. No counsel will be permitted to speak in the argument of any case more than two hours, without the special leave of the court, granted before the argument begins.

3. Counsel will not be heard, unless a printed brief or 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 be referred to in the argument.

4. The same shall be signed by an attorney or counsellor of this court.

5. 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.

6. Fifteen printed copies of the abstract, points, and authorities, required by this rule, shall be filed with the clerk three days before the case is called for argument; nine of these copies for the court, one for the reporter, one to be retained by the clerk, and the residue for counsel.

7. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party. But if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

No. 22.

ORDER OF ARGUMENT.

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

No. 23.

INTEREST, ETC.

1. 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.

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

3. 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; and the said damages shall be calculated from the date of the judgment in the court below until the money is paid.

No. 24.

COSTS.

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 for the defendant in error, or appellee, as the case may be, unless otherwise agreed by the parties.

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, as the case may be, unless otherwise ordered by the court.

3. In all cases of reversals of any judgment or decree in this court, costs shall be allowed in this court for the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court.

4. Neither of the foregoing rules 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.

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 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.

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.

No. 25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall immediately, upon the delivery thereof, be delivered over 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 the originals, with a transcript of the judgment or decree of the court thereon, to the reporter, as soon as the same shall be recorded.

2. 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.

3. The original opinions of the court, delivered to the reporter, shall be filed in the office of the clerk of the court, for preservation, as soon as the volume of reports for the term, at which they are delivered, shall be published.

No. 26.

CALL OF THE DOCKET.

The court, on the second day in each term, will commence 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; 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 cause shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court. That ten causes only shall be considered as liable to be called on each day during the term, including the one under argument, if the same shall not be concluded on the preceding day. No cause shall 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 cause 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.

No. 27.

MOTION DAY.

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; and on Friday in each week, during the sitting of the court, motions in cases not required by the rules of the court to be put on the docket shall be entitled to preference, if such motions shall be made before the court shall have entered on the hearing of a cause upon the docket.

No. 28.

ADJOURNMENT.

The court will, at every session, 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.

No. 29.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in any appeal, shall at any time hereafter, in vacation and out of term time, by their respective attorneys, who are entered as such on the record, sign and file with the clerk an agreement in writing, directing the case to be dismissed, and specifying the terms upon which it is to be dismissed as to costs, and also paying 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 which may request it a copy of the agreement filed; but no mandate or other process is to issue without an order by the court.