

Not Current - 1866

RULES

OF THE

SUPREME COURT OF THE UNITED STATES,

AND

RULES OF PRACTICE

FOR

THE CIRCUIT AND DISTRICT COURTS OF THE
UNITED STATES IN EQUITY AND ADMI-
RALTY CASES.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1866.

I N D E X .

RULES OF SUPREME COURT.

	Page.
No. 1. Clerk	1
2. Attorneys.....	1
3. Practice	2
4. Bill of exceptions.....	3
5. Process.....	3
6. Motions	4
7. Law library.....	4
7. Conference-room	4
8. Return to writ of error	5
9. Docketing cases.....	6
10. Security for costs.....	7
10. Printing records.....	7
10. Attachment for costs.....	8
11. Translations	8
12. Evidence	9
13. Deeds, &c., not objected to, &c., admitted, &c.	9
14. Certiorari.	10
15. Death of a party.	10
16. No appearance of plaintiff	11
17. No appearance of defendant.....	11
18. No appearance of either party.....	12
19. Neither party ready at second term.....	12
20. Printed arguments.....	13
21. Two counsel	14
21. Two hours.....	14
21. Briefs	4
22. Order of argument.....	15
23. Interest, &c	15
24. Costs	16
25. Opinions of the court	17
26. Call of the docket.....	18
27. Motion day	19
28. Adjournment.....	19
29. Dismissing cases in vacation.....	20
ORDER IN RELATION TO APPEALS FROM COURT OF CLAIMS.....	21
EQUITY RULES.....	23
ADMIRALTY RULES	66

RULES
OF THE
SUPREME COURT OF THE UNITED STATES.

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 court-room, or from the office, without an order from the court.

No. 2.

ATTORNEYS.

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 and subscribe the following oath or affirmation.

I, ——— ———, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion.

And I do further 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: So help me God.

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 excepts; and 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 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 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.

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.

CONFERENCE-ROOM.

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.

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 this court, upon appeal or writ of error, 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 connexion 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 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, Utah, and Nevada.

No. 10.

SECURITY 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.

PRINTING RECORDS.

2. In all cases, the clerk shall have fifteen copies of the records printed for the court, and the costs 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.

ATTACHMENT FOR COSTS.

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 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 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.

When there is no appearance for the plaintiff 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.

Where the defendant 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 within the first sixty days of the term; but twenty copies of the arguments, signed by attorneys or counsellors of this court, must be first filed: ten of these copies for the court, two for the reporter, three to be retained by the clerk, and the residue for counsel.

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.

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

TWO HOURS.

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.

BRIEFS.

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. Twenty printed copies of the abstract, points, and authorities required by this rule shall be filed with the clerk by the plaintiff in error or appellant six days, and by the defendant in error or appellee three days, before the case is called for argument.

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-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.

No. 23.

INTEREST.

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

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

*Interest not allowed in admiralty, unless specially directed by the court. (20 How., p. 255.)

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

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 with the clerk of this 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. 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.

ORDER

IN REFERENCE TO

APPEALS FROM THE COURT OF CLAIMS.

REGULATIONS PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES UNDER WHICH APPEALS MAY BE TAKEN FROM THE COURT OF CLAIMS TO SAID SUPREME COURT.

RULE 1.

In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

2. A finding of the facts in the case by said Court of Claims, and the conclusions of law on said facts on which the court founds its judgment or decree.

The finding of the facts and the conclusions of law to be stated separately and certified to this court as part of the record.

The facts so found are to be the ultimate facts or propositions which the evidence shall establish, in the nature of a special verdict, and not the evidence on which those ultimate facts are founded. (See *Burr vs. Des Moines Co.*, 2 Wallace, 102.)

22 APPEALS FROM THE COURT OF CLAIMS.

RULE 2.

In all cases in which judgments or decrees have heretofore been rendered, where either party is by law entitled to an appeal, the party desiring it shall make application to the Court of Claims by petition for the allowance of such appeal. Said petition shall contain a distinct specification of the errors alleged to have been committed by said court in its rulings, judgment, or decree in the case. The court shall, if the specification of alleged error be correctly and accurately stated, certify the same, or may certify such alterations and modifications of the points decided and alleged for error as, in the judgment of said court, shall distinctly, fully, and fairly present the points decided by the court. This, with the transcript mentioned in Rule 1, (except the statement of facts and law therein mentioned,) shall constitute the record on which those cases shall be heard in the Supreme Court.

RULE 3.

In all cases an order of allowance of appeal by the Court of Claims, or the chief justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

STATUTES OF THE UNITED STATES
IN FORCE
FROM THE YEAR 1789 TO 1874
PART II
TITLE 28
CHAPTER 1
SECTION 1
RULES OF PRACTICE
FOR THE
COURTS OF EQUITY OF THE UNITED STATES.

PRELIMINARY REGULATIONS.

1.

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits.

2.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course, and applied for, or had by the parties, or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule days, at

the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits, in the same manner and with the same effect as the circuit court could make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary at the next rule day thereafter, unless some other time is assigned by the judge for the hearing.

4.

All motions, rules, orders, and other proceedings made and directed at chambers, or on rule days, at the clerk's office, whether special or of course, shall be entered by the clerk in an order book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours, to the free inspection of the parties in any suit in equity, and their solicitors. And except in cases where personal or other notice is specially required or directed, such entry in the order book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order book, touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the

same town or city, the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings, not requiring personal service on the parties, in their discretion.

5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees, for filing bills, answers, pleas, demurrers, and other pleadings; for making amendments to bills and answers; for taking bills pro confesso; for filing exceptions, and for other proceedings in the clerk's office, which do not, by the rules hereinafter prescribed, require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications, grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

6.

All motions for rules or orders and other proceedings, which are not grantable of course, or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule day, and entered in the order book, and shall be heard at the rule day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court ex parte, and granted, as if not objected to, or refused, in his discretion.

PROCESS.

7.

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

8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land, or the delivering up of deeds, or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound without further service to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the pay-

ment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of non est inventus, to compel obedience to the decree.

9.

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

10.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the cause.

SERVICE OF PROCESS.

11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the cause.

12.

Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office, on or before the day at which the writ is returnable; otherwise, the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

13.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or, in case of husband and wife, to the husband personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some free white person, who is a member or resident in the family.

14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, toties quoties, against such defendant, if he shall require it, until due service is made.

15.

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

16.

Upon the return of the subpcœna as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

17.

The appearance day of the defendant shall be the rule day to which the subpcœna is made returnable, provided he has been served with the process twenty days before that day; otherwise, his appearance day shall be the next rule day succeeding the rule day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to

file his plea, demurrer, or answer to the bill, in the clerk's office, on the rule day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order book, that the bill be taken pro confesso; and thereupon the cause shall be proceeded in ex parte, and the matter of the bill may be decreed by the court at the next ensuing term thereof accordingly, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant, to compel an answer; and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct, as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

19.

When the bill is taken pro confesso, the court may proceed to a decree at the next ensuing term thereof, and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the

court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship, of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of — : A. B., of —, and a citizen of the State of —, brings this his bill against C. D., of —, and a citizen of the State of —, and E. F., of —, and a citizen of the State of —. And thereupon your orator complains and says, that," &c.

21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defence to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state

and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant, by way of defence or excuse, to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief ; and if an injunction, or a writ of ne exeat regno, or any other special order pending the suit, is required, it shall also be specially asked for.

22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

23.

The prayer for process for subpoena in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon as justice may require, upon the return of the process. If an injunction, or a writ of ne exeat regno, or any other special order pending

the suit, is asked for in the prayer for relief, that shall be sufficient without repeating the same in the prayer for process.

24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part, that upon the instructions given to him and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26.

Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in hæc verba, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may on exceptions be referred to a master by any judge of the court for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plain-

tiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

27.

No order shall be made by any judge for referring any bill, answer or pleading, or other matter, or proceeding depending before the court for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnecessary delay, procure the master to examine and report for the same on or before the next succeeding rule day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

28.

The plaintiff shall be at liberty as a matter of course, and without payment of costs, to amend his bill in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filling blanks, correcting errors of dates, misnomer of parties, misdescription of premises, cleri-

cal errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea, or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court, to amend his bill on or before the next succeeding rule day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

30.

If the plaintiff, so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office, on or before the next succeeding rule day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant, that it is not interposed for delay; and if a plea, that it is true in point of fact.

32.

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

33.

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

34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period, unless the court shall be satisfied that the defendant had good ground in point of law or fact to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him, pro confesso, and the matter thereof proceeded in and decreed accordingly.

35.

If, upon the hearing, any demurrer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter, as may be covered by such demurrer or plea.

38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument, on the rule day when the same is filed, or on the next succeeding rule day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for the purpose.

ANSWERS.

39.

The rule, that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defence (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea

in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer and discover upon filing a plea in bar, and an answer in support of such plea, touching the matters set forth in the bill, to avoid or repel the bar or defence. Thus, for example, a bona fide purchaser for a valuable consideration, without notice, may set up that defence by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.*

41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other, and numbered consecutively 1, 2, 3, &c.; and the interrogatories which each defendant is required to answer shall be specified in a note at the foot of the bill, in the form or to the effect follow-

*Vide post, 93d Rule, page 62.

ing; that is to say—"The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3, &c.;" and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note after the bill is filed, shall be considered and treated as an amendment of the bill.

43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end, therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer; that is to say—

"1. Whether, &c.

"2. Whether, &c."

44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill, from which he might have protected himself by demurrer.

45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

46.

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

PARTIES TO BILLS.

47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, cannot be made parties

by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

48.

Where the parties on either side are very numerous, and cannot, without manifest inconvenience and oppressive delays in the suit, be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit having sufficient parties before it to represent all the adverse interests of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

49.

In all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate or the proceeds, or the rents and profits, in the same manner, and to the same extent, as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially in-

interested in such real estate, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50.

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

51.

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

52.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order book, in the form or to the effect following, (that is to say,) "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding

an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

53.

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

NOMINAL PARTIES TO BILLS.

54.

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

55.

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter

his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term, or by a judge thereof in vacation, after a hearing, which may be ex parte, if the adverse party does not appear at the time and place ordered. In every case where an injunction, either the common injunction or a special injunction, is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL
BILLS.

56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor, or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same; which bill may be filed in the clerk's office at any time; and upon suggestion of the facts, the proper process of subpœna shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

57.

Whenever any suit in equity shall become defective, from any event happening after the filing of the bill (as, for example, by change of interest in the parties,) or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead or answer thereto, on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

58.

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

ANSWERS.

59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory.

AMENDMENT OF ANSWERS.

60.

After an answer is put in, it may be amended as of course, in any matter of form, or by filling up a blank, or correcting a date, or reference to a document or other small matter, and be re-sworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for hearing, it shall not be amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or of a judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by affidavit. And in every case where leave is so granted, the court, or the judge granting the same, may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

61.

After an answer is filed on any rule day the plaintiff shall be allowed until the next succeeding rule day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a judge thereof; and if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had by two or more of the defendants separately, costs shall not be allowed for such separate answers or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63.

Where exceptions shall be filed to the answer for insufficiency within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule day thereafter before a judge of the court, and shall enter, as of course, in the order book, an order for that purpose. And if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient: provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

64.

If at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule day; otherwise the plaintiff shall, as of course, be entitled

to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

65.

If, upon argument, the plaintiff's exception to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule day thereafter; and in all cases where the general replication is filed the cause shall be deemed to all intents and purposes at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof,

shall, upon motion for cause shown, allow a replication to be filed nunc pro tunc, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY—HOW TAKEN.

67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time, the commission may issue ex parte. In all cases the commissioner or commissioners shall be named by the court, or by a judge thereof. If the parties shall so agree, the testimony may be taken upon oral interrogatories by the parties or their agents, without filing any written interrogatories.

DECEMBER TERM, 1854.

Ordered, That the sixty-seventh rule governing equity practice be so amended as to allow the presiding judge of any court exercising jurisdiction, either in term time or vacation, to vest in the clerk of said court general power to name commissioners to take testimony in like manner that the court or judge thereof can now do by the said sixty-seventh rule.

DECEMBER TERM, 1861.

Ordered, That the last paragraph in the sixty-seventh rule in equity be repealed, and the rule be amended as follows: Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of the bill, and answer, if any; and such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination, and re-examination, and which shall be conducted as near as may be in the mode now used in common law courts. The depositions taken upon such oral examination shall be taken down in writing by the examiner in the form of narrative, unless he determines the examination shall be by question and answer in special instances; and when completed shall be read over to the witness and signed by him in the presence of the parties or counsel or such of them as may attend, provided, if the witness shall refuse to sign the said deposition, then the examiner shall sign the same; and the examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions, and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

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

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties of the time and place of the examination for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original deposition, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record in the same mode as prescribed in the thirtieth section of act of Congress September 24, 1789.

Testimony may be taken on commission in the usual way by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons satisfactory to the court or judge.

68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the acts of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness either under a commission or by a new deposition taken un-

der the acts of Congress, if a court or a judge thereof shall, under all the circumstances, deem it reasonable.

69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court or a judge thereof shall, upon special cause shown by either party, enlarge the time; and no testimony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions, containing the testimony, into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable under all the circumstances. But by consent of the parties, publication of the testimony may at any time pass in the clerk's office, such consent being in writing, and a copy thereof entered in the order books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

70.

After any bill filed, and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged or infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners, as a judge of the court may direct, to take the examination of such witness or witnesses de bene esse, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

71.

The last interrogatory in the written interrogatories to take testimony now commonly in use, shall in the future be altered, and stated in substance, thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto, before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill, at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE
MASTERS.

73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master, to whom it is referred to take the same, to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

74.

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance, or for whose benefit, the reference is made, shall cause the same to be presented to the master for a hearing on or before the next rule day succeeding the time when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

75.

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

76.

In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination or answer, brought in or used before them, shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer, were so brought in or used.

77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause upon oath touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *vivâ voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office, or by deposition according to the acts of Congress, or otherwise as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear, or to give evidence, it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But nothing herein contained shall prevent the examination of witnesses *vivâ voce* when produced in open court, if the court shall in its discretion deem it advisable.

79.

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

80.

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

81.

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

82.

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

the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.

83.

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

84.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for every exception allowed shall be entitled to costs—the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

85.

Clerical mistakes in decrees, or decretal orders, or errors arising from any accidental slip or omission,

may, at any time before an actual enrolment thereof, be corrected by order of the court or a judge thereof, upon petition, without the form or expense of a rehearing.

86.

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

GUARDIANS AND PROCHEIN AMIS.

87.

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

88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is ap-

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

89.

The circuit courts (both judges concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

90.

In all cases where the rules prescribed by this court or by the circuit court, do not apply, the practice of the circuit court shall be regulated by the present practice of the High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

91.

Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof, make

solemn affirmation to the truth of the facts stated by him.

92.

These rules shall take effect, and be of force, in all the circuit courts of the United States, from and after the first day of August next; but they may be previously adopted by any circuit court in its discretion; and when and as soon as these rules shall so take effect, and be of force, the rules of practice for the circuit courts in equity suits, promulgated and prescribed by this court in March, 1822, shall henceforth cease, and be of no further force or effect. And the clerk of this court is directed to have these rules printed, and to transmit a printed copy thereof, duly certified, to the clerks of the several courts of the United States, and to each of the judges thereof.

DECEMBER TERM, 1850.

93.

Ordered, That the fortieth rule heretofore adopted and promulgated by this court, as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

DECEMBER TERM, 1863.

No. 94.

Ordered, That in suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the 8th rule of this court regulating the equity practice, where the decree is solely for the payment of money.

RULES OF PRACTICE
FOR
THE COURTS OF THE UNITED STATES

IN
ADMIRALTY AND MARITIME JURISDICTION, ON THE INSTANCE SIDE
OF THE COURT, IN PURSUANCE OF THE ACT OF THE
TWENTY-SECOND OF AUGUST, 1844, CHAP. 188.

DECEMBER TERM, 1844.

1.

No mesne process shall issue from the district courts, in any civil cause of admiralty and maritime jurisdiction, until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or, where he or they are interested by some discreet and disinterested person appointed by the court.

2.

In suits in personam, the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the na-

ture of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

3.

In all suits in personam, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

4.

In all suits in personam, where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to

enforce the final decree so rendered, or upon appeal by the appellate court.

5.

Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail, and depositions in cases pending before the court.

6.

In all suits in personam, where bail is taken, the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion, and due proof thereof.

7.

In suits in personam, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

8.

In all suits in rem, against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances, are in the possession or custody of any

third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal, or other proper officer, if upon the hearing the same is required by law and justice.

9.

In all cases of seizure, and in other suits and proceedings in rem, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

10.

In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the applica-

tion of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

11.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

12.

In all suits by material men for supplies or repairs, or other necessaries, for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight in rem, or against the master or the owner alone in personam. And the like proceeding in rem shall apply to cases of domestic ships, where, by the

local law, a lien is given to material men for supplies, repairs, or other necessaries.*

13.

In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone, in personam.

14.

In all suits for pilotage, the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, in personam.

15.

In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, in personam.

16.

In all suits for an assault or beating on the high seas, or elsewhere, within the admiralty and maritime jurisdiction, the suit shall be in personam only.

17.

In all suits against the ship or freight, founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessaries for the voyage, without any claim of marine interest, the

* Vide post, page 87, Rule 12, substituted for the above.

libellant may proceed either in rem or against the master, or the owner alone in personam.

18.

In all suits on bottomry bonds, properly so called, the suit shall be in rem only against the property hypothecated, or the proceeds of the property, in whose hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be in personam against the wrongdoer.

19.

In all suits for salvage, the suit may be in rem against the property saved, or the proceeds thereof, or in personam against the party at whose request and for whose benefit the salvage service has been performed.

20.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship,

and by a monition to the adverse party or parties to appear and make answer to the suit.

21.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a fieri facias, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

22.

All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return day of the process why the forfeiture should not be decreed.

23.

All libels in instance causes, civil or maritime, shall state the nature of the cause, as, for example, that it

is a cause civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be in rem, that the property is within the district; and if in personam, the names and occupations, and places of residence, of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights in rem, or in personam, (as the case may require,) and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

24.

In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form, may be made at any time, on motion, to the court as of course. And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

25.

In all cases of libels in personam, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

26.

In suits in rem, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant, by whom or on whose behalf the claim is made, is the true and bona fide owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or upon an appeal by the appellate court.

27.

In all libels in causes of civil and maritime jurisdiction, whether in rem or in personam, the answer of the defendant to the allegations in the libel shall be on

oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.*

28.

The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same; and may further order the defendant to pay such costs as the court shall adjudge reasonable.

29.

If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken pro confesso against him, and the court shall proceed to hear the cause ex parte, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

*Vide post, 49th Rule, page 83.

30.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken pro confesso against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

31.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offence.

32.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant, touching any matters charged in the libel, or touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the 31st rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the

premises by attachment, or take the subject-matter of the interrogatory pro confesso in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

33.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath, or solemn affirmation, at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

34.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction in rem for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had, and decree rendered by the court therein, as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses, and damages, as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

35.

Stipulations in admiralty and maritime suits may be taken in open court, or by the proper judge at chambers, or, under his order, by any commissioner of the court who is a standing commissioner of the court, and is now by law authorized to take affidavits of bail, and also depositions in civil causes pending in the courts of the United States.

36.

Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

37.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories, touching the same, as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process in personam against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

38.

In cases of mariners' wages, or bottomry, or salvage, or other proceedings in rem, where freight, or

other proceeds of property, are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

39.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy, and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40.

The court may, in its discretion, upon the motion of the defendant, and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

41.

All sales of property, under any decree in admiralty, shall be made by the marshal, or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

42.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by a check or checks, signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn, and the date thereof.

43.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene pro interesse suo, for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

45.

All appeals from the district to the circuit court must be made while the court is sitting, or within such other period as shall be designated by the district court by its general rules, or by an order specially made in the particular suit.

46.

In all cases not provided for by the foregoing rules, the district and circuit courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

47.

These rules shall be in force in all the circuit and district courts of the United States from and after the first day of September next.

It is ordered by the court, that the foregoing rules

be, and they are, adopted and promulgated as rules for the regulation and government of the practice of the circuit courts and district courts of the United States in suits in admiralty on the instance side of the courts; and that the reporter of the court do cause the same to be published in the next volume of his reports, and that he do cause such additional copies thereof to be published as he may deem expedient, for the due information of the bar and bench in the respective districts and circuits.

1845, MARCH 5.

DECEMBER TERM, 1850.

Ordered, That the following supplemental rules be added to the rules heretofore adopted by this court for regulating proceedings in admiralty:

48.

In all suits in personam, where a simple warrant of arrest issues, and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State, where an arrest is made upon similar or analogous process issuing from the State courts.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

49.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the district court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

It is further ordered, that these rules be published in the next volume of the Reports of the Decisions of this court, and that the clerk cause them to be forthwith printed and transmitted to the several district courts.

1851, JANUARY 9.

DECEMBER TERM, 1851.

50.

Ordered, That further proof taken in a circuit court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a circuit court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate

before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles travel: *Provided*, That the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

51.

Ordered, That when oral evidence shall be taken down by the clerk of the district court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the circuit court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

DECEMBER TERM, 1851.

It is ordered by the court, that the clerk have the Admiralty Rules printed for the use of the court.

DECEMBER TERM, 1854.

Ordered, That the following supplemental rules be added to the rules heretofore adopted by this court for regulating proceedings in admiralty:

52.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant,

and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the district court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

53.

The clerks of the district courts shall make up the records to be transmitted to the circuit courts on appeals, so that the same shall contain the following:

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same,

and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the district court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the district court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where, and the date when, the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The clerk of the district court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the district court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

DECEMBER TERM, 1858.

No. 12.

Ordered, That the twelfth rule of practice prescribed by this court at December term, 1844, in causes of admiralty and maritime jurisdiction, be and the same is hereby repealed, and the following rule of practice is substituted in its place:

“In all suits by material men for supplies or repairs, or other necessaries for a foreign ship, or for a ship in a foreign port, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*. And the like proceeding *in personam* but not *in rem* shall apply to cases of domestic ships for supplies, repairs, or other necessaries.”

This order to take effect and be in force from and after the first day of May, 1859.