

REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

S U P R E M E C O U R T

OF THE

UNITED STATES,

IN AUGUST AND DECEMBER TERMS 1801,

AND

FEBRUARY TERM 1803.

BY WILLIAM CRANCH,

ASSISTANT JUDGE OF THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA.

Potius ignoratio juris litigiosa est, quam scientia.

CIC. DE LEGIBUS, DIAL. 1.

VOL. I.

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EDITED, WITH NOTES AND REFERENCES TO LATER DECISIONS,

BY

FREDERICK C. BRIGHTLY,

AUTHOR OF THE "FEDERAL DIGEST," ETC.

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1902

RULES AND ORDERS

OF THE

SUPREME COURT OF THE UNITED STATES.

I. 1790, February 3. Ordered, That John Tucker, Esq., of Boston, be the clerk of this court. That he reside and keep his office at the seat of the national government, and that he do not practise, either as an attorney or a counsellor in this court, while he shall continue to be clerk of the same.

II. 1790, February 5. Ordered, That (until further orders) it shall be requisite to the admission of attorneys or counsellors to practise in this court, that they shall have been such for three years past in the supreme courts of the state to which they respectively belong, and that their private and professional character shall appear to be fair.

III. 1790, February 5. Ordered, That counsellors shall not practise as attorneys, nor attorneys as counsellors, in this court.

IV. 1790, February 5. Ordered, That they shall respectively take the following oath, viz.: "I, ————, do solemnly swear, that I will demean myself (as an attorney or counsellor of the court) uprightly, and according to law, and that I will support the Constitution of the United States."

V. 1790, February 5. Ordered, That (unless and until it shall otherwise be provided by law) all process of this court shall be in the name of the President of the United States.

VI. 1791, February 7. Ordered, That the counsellors and attorneys, admitted to practise in this court, shall take either an oath, or, in proper cases, an affirmation, of the tenor prescribed by the rule of this court on that subject, made February term, 1790, viz.: "I, ————, do solemnly swear (or affirm, as the case may be) that I will demean myself, as an attorney, or counsellor of this court, uprightly, and according to law, and that I will support the Constitution of the United States."

VII. 1791, August 8. The chief justice, in answer to the motion of the attorney-general, made yesterday, informs him and the bar, that 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 that they will, from time to time, make such alterations therein as circumstances may render necessary.

VIII. 1795, February 4. The court gave notice to the gentlemen of the bar, that hereafter they will expect to be furnished with a statement of the material points of the case from the counsel on each side of a cause.

IX. 1795, February 17. The court declared that all evidence on motions for a discharge upon bail must be by way of deposition, and not *vivá voce*.

X. 1796, August 12. Ordered, That 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 further, that 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*.

XI. 1797, February 13. It is ordered by the court, that 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.

XII. 1797, August 7. It is ordered by the court, that no record of the court be suffered by the clerk to be taken out of his office, but by the consent of the court; otherwise, to be responsible for it.

XIII. 1800, August 15. In the case of *Course v. Stead's Executors*. Ordered, That the plaintiff in error be at liberty to show to the satisfaction of this court, that the matter in dispute exceeds the sum or value of \$2000, exclusive of costs; this to be made appear by affidavit, on — days' notice to the opposite party, or their counsel, in Georgia. Rule as to affidavits to be mutual.

XIV. 1801, August 12. Ordered, That counsellors may be admitted as attorneys in this court, on taking the usual oath.

XV. 1801, December 9. It is ordered, That in every cause where the defendant in error fails to appear, the plaintiff may proceed *ex parte*.

XVI. 1803, February Term. It is ordered, That where the writ of error issues within thirty days before the meeting of the court, the defendant in error is at liberty to enter his appearance, and proceed to trial: otherwise, the cause must be continued.

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

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