

REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

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

OF THE

UNITED STATES,

FEBRUARY TERM 1816.

BY HENRY WHEATON,

COUNSELLOR AT LAW.

VOL. I.

FOURTH EDITION.

EDITED, WITH NOTES AND REFERENCES TO LATER DECISIONS,

BY

FREDERICK C. BRIGHTLY,

AUTHOR OF THE "FEDERAL DIGEST," ETC.

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RULES AND ORDERS

OF THE

SUPREME COURT OF THE UNITED STATES.

I. February Term 1790. ORDERED, That the clerk of this court do reside and keep his office at the seat of the national government, and that he do not practice, either as an attorney or a counsellor, in this court, while he shall continue to be clerk of the same.

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

III. February Term 1790. ORDERED, That counsellors shall not practice as attorneys, nor attorneys as counsellors, in this court.

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

VI. February Term 1791. ORDERED, That the counsellors and attorneys, admitted to practice 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 this subject, made February term 1790, viz: I, ——, do solemnly swear (or affirm, as the case may be), that I will demean myself as attorney or counsellor of this court, uprightly, and according to law, and that I will support the constitution of the United States.

VII. August Term 1791. The Chief Justice in answer to the motion of the attorney-general, informs him and the bar, that this court consider the practice of the court 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. February Term 1795. THE COURT give 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 the cause.

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

X. August Term 1796. 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*, should not appear at the return-day contained therein, the complainant shall be at liberty to proceed *ex parte*.

XI. February Term 1797. 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. August Term 1797. IT IS ORDERED by the 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. August Term 1800. 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, and —— days' notice to the opposite party, or their counsel, in Georgia. Rule as to affidavits to be mutual.

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

XV. It is ORDERED, That in every cause when the defendant in error fails to appear, the plaintiff may proceed *ex parte*.

XVI. February Term 1803. IT IS ORDERED, That where the writ of error issues within 30 days before the meeting of the court, the defendant is at liberty to enter his appearance, and proceed to trial; otherwise, the cause must be continued.

XVII. 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. 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.

XIX. February Term 1806. All causes, the records of which shall be delivered to the clerk on or before the sixth day of the term, shall be considered as for trial in the course of that term. Where the record shall be delivered after the sixth day of the term, either party will be entitled to a continuance.

In all cases where a writ of error shall be a *supersedeas* to a judgment, rendered in any court of the United States (except that for the district of Columbia), at least thirty days previous to the commencement of any term of this court, it shall be the duty of the plaintiff in error to lodge a copy of the record with the clerk of this court, within the first six days of the term, and if he shall fail so to do, the defendant in error shall be permitted, afterwards, to lodge a copy of the record with the clerk, and the cause shall stand for trial, in like manner as if the record had come up within the first six days; or he may, on producing a certificate from the clerk, stating the cause, and that a writ of error has been sued out, which operates as a *supersedeas* to the judgment, have the said writ of error docketed and dismissed. This rule shall apply to all judgments rendered by the court for the district of Columbia, at any time prior to a session of this court.

In cases not put to issue at the August term, it shall be the duty of the plaintiff in error, if errors shall not have been assigned in the court below, to assign them in this court, at the commencement of the term, or so soon thereafter as the record shall be filed with the clerk, and the cause placed on the docket; and if he shall fail to do so, and shall also fail to assign them, when the cause shall be called for trial, the writ of error may be dismissed, at his cost; and if the defendant shall refuse to plead to issue, and 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.

XX. February Term 1808. ORDERED, That all parties in this court, not being residents of the United States, shall give security for the costs accruing in this court, to be entered on the record.

XXI. ORDERED, That 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 costs, 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 costs.

XXII. February Term 1810. ORDERED, That upon the reversal of a judgment or decree of the circuit court, the party in whose favor the reversal is, shall recover his costs in the circuit court.

XXIII. February Term 1812. ORDERED, That only two counsel be permitted to argue for each party, plaintiff and defendant, in a cause.

XXIV. There having been two associate justices of the court appointed since its last session; It is Ordered that the following allotment be made of the Chief Justice, and of the associate justices of the said Supreme Court among the circuits, agreeably to the act of congress in such case made and provided, and that such allotment be entered or ordered, viz :

For the first circuit, the Honorable Joseph Story : For the second circuit, the Honorable Brockholst Livingston : For the third circuit, the Honorable Bushrod Washington : For the fourth circuit, the Honorable Gabriel Duvall : For the fifth circuit, the Honorable John Marshall, Ch. J. : For the sixth circuit : the Honorable William Johnson : For the seventh circuit, the Honorable Thomas Todd.

XXV. February Term 1816. IT IS ORDERED by the Court, That 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.