

REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

SUPREME COURT

OF THE

UNITED STATES,

JANUARY TERM 1828.

BY RICHARD PETERS, JUNIOR,

COUNSELLOR AT LAW, AND REPORTER OF THE SUPREME COURT OF THE UNITED STATES.

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EDITED, WITH NOTES AND REFERENCES TO LATER DECISIONS,

BY

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RULES AND ORDERS

OF THE

SUPREME COURT OF THE UNITED STATES.

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

II. That (until further order) it 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 court of the state to which they respectively belong; and that their private and professional characters shall appear to be fair.

III. That counsellors shall not practice as attorneys, nor attorneys as counsellors, in this court.

IV. 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. 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. 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 this subject, made at the February term 1790, viz: I, —— do solemnly swear (or affirm, as the case might 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. 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. 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. The court declared, that all evidence on motions for a discharge upon bail, must be by way of deposition, and not *vivá voce*.

X. 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. 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. 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. 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 to appear by affidavit, and ——— days' notice to the opposite party, or their counsel, in Georgia. Rule as to affidavits to be mutual.

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

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

XVI. That where the writ of error issues within thirty 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 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. § 1. 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.

§ 2. 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 to do so, 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.

§ 3. 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 to trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the rights of the cause.

XX. 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. That upon the clerk of this court producing satisfactory evidence, by affidavits, 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. 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. That only two counsel be permitted to argue for each party, plaintiff and defendant, in a cause.

XXIV. 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.

XXV. Whenever it shall be necessary or proper in the opinion of the presiding judge in any circuit court, or district court exercising circuit court jurisdiction, that original papers of any kind should be inspected in the supreme court, upon appeal, such presiding judge may make such rule or order for the safe-keeping, transporting and return of such original papers, as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

XXVI. 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 commissions 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.

XXVII. After the present term, no cause standing for argument will be heard by the court, until the parties shall have furnished the court with a printed brief or abstract of the cause, containing the substance of all the material pleadings, facts and documents, on which the parties rely, and the points of law and fact, intended to be presented at the argument.

XXVIII. 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, three successive weeks, at least sixty days before the beginning of the term of the supreme court, then next ensuing.

XXIX. 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 term to which such writ of error or appeal shall be returnable, 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; on failure to do which, the defendant in error or appellee, as the case may be, may docket the cause, and file a copy of the record with the clerk, and thereupon, the cause shall stand for trial, in like manner as if the record had been duly filed within the first six days of the term; or, at his option, he may have the cause 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 had been duly sued out and allowed.

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

XXXI. 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.

XXXII. 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.

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

XXXIV. That after the present term, no original record shall be taken from the supreme court-room, or from the office of the clerk of this court.