

NOT CURRENT - 1843

REPORTS

OF

CASES ARGUED AND ADJUDGED

IN

THE SUPREME COURT

OF

THE UNITED STATES.

JANUARY TERM, 1843.

BY BENJAMIN C. HOWARD,

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

VOL. I.

CONTAINING, IN AN APPENDIX, A LIST OF ALL THE CASES DECIDED IN THAT COURT
FROM THE EARLIEST REPORTS TO THE PRESENT TIME.

PHILADELPHIA:

T. & J. W. JOHNSON, LAW BOOKSELLERS.

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THE
RULES AND ORDERS
OF THE
SUPREME COURT
OF THE
UNITED STATES,
FROM THE
YEAR 1790 TO 1843.

RULES AND ORDERS.

I.—FEBRUARY 3, 1790.

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 Counsellor in this Court while he shall continue to be Clerk of the same.

II.—FEBRUARY 5, 1790.

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.—FEBRUARY 5, 1790.

Ordered, That Counsellors shall not practise as Attorneys, nor Attorneys as Counsellors, in this Court. (*See Rule 14.*)

IV.—FEBRUARY 5, 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.” (*See Rule 6.*)

V.—FEBRUARY 5, 1790.

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.—FEBRUARY 7, 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 his 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.—AUGUST 8, 1791.

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.—FEBRUARY 4, 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 a cause. (*See Rule 29.*)

IX.—FEBRUARY 17, 1795.

The Court declared, that all evidence on motion for a discharge upon bail must be by way of *deposition*, and not *viva voce*.

X.—AUGUST 12, 1796.

Ordered, That when process at Common Law, or in Equity, shall issue against a State, the same shall be served on the Go-

vernor, or Chief Executive Magistrate, and Attorney General of such State.

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.—FEBRUARY 13, 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. (*See Rule 31.*)

XII.—AUGUST 7, 1797.

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. (*See Rule 35.*)

XIII.—AUGUST 15, 1800.

IN THE CASE OF COURSE *vs.* 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 two thousand dollars, exclusive of costs; this to be made appear by affidavit, on _____ days' notice to opposite party, or their Counsel in Georgia.

Rule as to affidavits to be mutual.

XIV.—AUGUST 12, 1801.

Ordered, That Cousellers may be admitted as Attorneys in this Court on taking the usual oath. (*See Rule 3.*)

XV.—DECEMBER 9, 1801.

It is ordered, That in every case where the defendant in error

fails to appear, the plaintiff may proceed *ex parte*. (See Rules 19 and 30.)

XVI.—FEBRUARY TERM, 1803.

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. (See Rules 19 and 30.)

XVII.—FEBRUARY TERM, 1803.

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. (See Rule 20.)

XVIII.—FEBRUARY TERM, 1803.

In such cases, where there exists a real controversy, the damages shall only be at the rate of *six per centum per annum*. In both cases the interest is to be computed as part of the damages. (See Rule 20.)

XIX.—FEBRUARY TERM, 1806.

All causes, the records in which shall be delivered to the Clerk on or before the sixth day of a 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 Circuit 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 superseas 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 so to do, and shall also fail to assign them when the cause shall be called for trial, the writ of error may be dismissed at his costs; 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; and that where there is no appearance for the plaintiff in error, the defendant may have the plaintiff called, and dismiss the writ of error; or may open the record, and pray for an affirmance. In such a case *costs go of course*. *Montalet vs. Murray*. (See Rules 30 and 43.)

XX.—FEBRUARY TERM, 1807.

It is ordered, That where damages are given by the rule passed in February term, 1803, the said damages shall be calculated to the day of the affirmance of the judgment in this Court. (See Rules 17 and 18.)

XXI.—FEBRUARY TERM, 1808.

1st. *Ordered*, That all parties of 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.

2d. *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 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 said costs.

XXII.—FEBRUARY TERM, 1810.

Ordered, That upon the reversal of a judgment or decree of the Circuit Court, the party in whose favour the reversal is shall recover his costs in the Circuit Court.

XXIII.—FEBRUARY TERM, 1812.

It is ordered, That only two Counsel be permitted to argue for each party, plaintiff and defendant, in a cause.

XXIV.—FEBRUARY TERM, 1812.

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 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 on record, viz.:

For the first circuit—the Hon. JOSEPH STORY.

* For the second circuit—the Hon. BROCKHOLST LIVINGSTON.

For the third circuit—the Hon. BUSHROD WASHINGTON.

For the fourth circuit—the Hon. GABRIEL DUVALL.

For the fifth circuit—the Hon. JOHN MARSHALL, *C. J.*

For the sixth circuit—the Hon. WILLIAM JOHNSON.

For the seventh circuit—the Hon. 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. (*See Rule 27.*)

* The Honourable SMITH THOMPSON having been appointed Associate Justice of the Supreme Court, in the place of the Honourable BROCKHOLST LIVINGSTON, deceased, the President of the United States assigned to him the second circuit, by an instrument dated the _____ day of _____ A. D. one thousand eight hundred and twenty-three.

XXVI.—FEBRUARY TERM, 1817.

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.

XXVII.—FEBRUARY TERM, 1817.

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. (*See Rule 25.*)

XXVIII.—FEBRUARY TERM, 1821.

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.—*March 8, 1821.*

XXIX.—FEBRUARY TERM, 1821.

Ordered, 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.—*March 10, 1821.*
(*See Rule 8.*)

XXX.—FEBRUARY TERM, 1821.

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 has been duly sued out and allowed.—*March 14, 1821.* (*See Rules 19 and 43.*)

XXXI.—MARCH 14, 1823.

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. (*See Rule 11.*)

FEBRUARY TERM, 1824.

There having been one Associate Justice of the Supreme Court appointed since its last session, *It is ordered*, that the following allotment be made by the Chief Justice and 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 on record, viz.:

For the first circuit—the Hon. JOSEPH STORY.

For the second circuit—the Hon. SMITH THOMPSON.

For the third circuit—the Hon. BUSHROD WASHINGTON.

For the fourth circuit—the Hon. GABRIEL DUVALL.

For the fifth circuit—the Hon. JOHN MARSHALL, *C. J.*

For the sixth circuit—the Hon. WILLIAM JOHNSON.

For the seventh circuit—the Hon. THOMAS TODD.

XXXII.—FEBRUARY TERM, 1824.

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.

XXXIII.—FEBRUARY TERM, 1824.

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.

XXXIV.—FEBRUARY TERM, 1824.

On Saturday of each week during the sitting of the Court, motions in cases not required by the rules of the 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.

XXXV.—FEBRUARY TERM, 1825.

Ordered, 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.—*February* 19. (*See Rule* 12.)

JANUARY TERM, 1827.

There having been one Associate Justice of the Supreme Court appointed since its last session, *It is ordered*, that the following allotment be made of the Chief Justice and 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 on record, viz.:

For the first circuit—the Hon. JOSEPH STORY.

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For the third circuit—the Hon. BUSHROD WASHINGTON.

For the fourth circuit—the Hon. GABRIEL DUVALL.

For the fifth circuit—the Hon. JOHN MARSHALL, *C. J.*

For the sixth circuit—the Hon. WILLIAM JOHNSON.

For the seventh circuit—the Hon. ROBERT TRIMBLE.

JANUARY TERM, 1830.

There having been two Associate Justices of the Supreme Court appointed since its last session, *It is ordered*, that the following allotment be made of the Chief Justice and 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 on record, viz.:

For the first circuit—the Hon. JOSEPH STORY.

For the second circuit—the Hon. SMITH THOMPSON.

For the third circuit—the Hon. HENRY BALDWIN.

For the fourth circuit—the Hon. GABRIEL DUVALL.

For the fifth circuit—the Hon. JOHN MARSHALL, *C. J.*

For the sixth circuit—the Hon. WILLIAM JOHNSON.

For the seventh circuit—the Hon. JOHN McLEAN.

XXXVI.—JANUARY TERM, 1830.

The Court, on the second day in each term hereafter, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term, in the same order; and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the cause shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the Court. That ten causes only shall be considered as liable to be called on each day during the term, including the one under argument, if the same shall not be concluded on the preceding day. No cause shall be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the Court. Every cause which shall have been twice 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.

XXXVII.—JANUARY TERM, 1831.

1. In all cases the Clerk shall take of the plaintiff a bond with competent security, to respond to costs, in the penalty of two hundred dollars; or a deposit of that amount to be placed in bank subject to his draft.

2. In all cases the Clerk shall have fifteen copies of the records printed for the Court, provided the Government will admit the item in the expenses of the Court.

3. In all cases the Clerk shall deliver a copy of the printed record to each party. And in cases of dismissal (except for

want of jurisdiction) or affirmance, one copy of the record shall be taxed against the plaintiff, which charge includes the charge for the copy furnished him.

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

XXXVIII.—JANUARY TERM, 1832.

It is ordered by the Court, That hereafter the Judges of the Circuit and District Courts do 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 that the party excepting be required to state distinctly the several matters of law in such charge to which he excepts; and that such matters of law, and those only, be inserted in the bill of exceptions, and allowed by the Court.

XXXIX.—JANUARY TERM, 1833.

1. *It is ordered by the Court,* That during the session of the Court, any gentleman of the bar having a cause on the docket, and wishing to use any book or books in the Law Library, shall be at liberty, upon application to the Clerk of the Court, to receive an order to take the same (not exceeding at any one time three) from the Library, he being thereby responsible for the due return of the same within a reasonable time, or when required by the Clerk. And it shall be the duty of the Clerk to keep, in a book for that purpose, a record of all books so delivered, which are to be charged against the party receiving the same. And in case the same shall not be so returned, the party receiving the same shall be responsible for, and forfeit and pay twice the value thereof; as also one dollar per day for each day's detention beyond the limited time.

2. *It is ordered by the Court,* That during the session of the Court, any Judge thereof may take from the Law Library any book or books he may think proper, he being responsible for the due return thereof.

XL.—JANUARY TERM, 1833.

Whereas, It has been represented to the Court, that it would in many cases accommodate Counsel, and save expense to parties, to submit causes upon printed arguments. It is therefore

Ordered, That in all cases brought here on appeal, writ of error, or otherwise, the Court will receive printed arguments, if the Counsel on either or both sides shall choose so to submit the same.

XLI.—1834.

Ordered, That the original opinions of the Court, delivered to the reporter, be filed in the office of the Clerk of the Court for preservation as soon as the volume of Reports for the term, at which they are delivered, shall be published.

XLII.—1835.

All the opinions delivered by the Court since the commencement of the term shall be forthwith delivered over to the Clerk to be recorded.

And all opinions hereafter delivered by the Court shall immediately, upon the delivery thereof, be in like manner 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.

And all the opinions of the Court, as far as practicable, be recorded during the term, so that the publication of the reports may not be delayed thereby.

XLIII.—1835.

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

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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. If he shall fail so to do, 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, in which case it shall stand for argument at 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.

2. No writ of error or appeal shall be docketed, or the record of the cause filed by the plaintiff in error, or appellant, after the first six days of the term, except upon the terms that the cause shall stand for argument during the term, or be continued at the option of the defendant in error, or appellee. But 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 in the manner provided for in the preceding rule, unless by order of the Court or with the consent of the opposite party.

3. In all cases where the cause shall not be docketed and the record filed with the Clerk by either party until after thirty days from the commencement of the term, the cause shall stand continued until the next term. (*See Rules 19 and 30.*)

XLIV.—1837.

When 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.

XLV.—1838.

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.

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.

In all cases of reversals of any judgment or decree in this Court, except where the reversal shall be for want of jurisdiction, costs shall be allowed in this Court for the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the Court.

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.

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.

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.

XLVI.—1838.

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.

XLVII.—1838.

The Court will, at every future 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.

XLVIII.—1841.

Ordered, That the Clerk 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 man-

ner; and that he do not permit such books to be taken therefrom by any one except the Judges of the court.

XLIX.—1842.

Ordered, That printed arguments will not be received under the fortieth rule of the court, unless filed within forty days from the commencement of the term, except in cases which are reached in the regular call of the docket.