EQUITY RULES

AND

Rules of the Court of Appeals.

GENERAL RULES

—FOR THE—

REGULATION

—OF THE—

PLEADING AND PRACTICE

—OF THE—

COURTS OF EQUITY IN THIS STATE,

Devised and Promulgated by the Judges of the Court of Appeals, in pursuance of Section 18 of Article 4 of the Constitution of this State.

—ALSO—

RULES OF THE COURT OF APPEALS.

ANNAPOLIS:
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1896.

GENERAL RULES.

Terms of Court.

1.

The Circuit Court for the several counties of this State, and the Circuit Court for the city of Baltimore, as Courts of Equity, shall be deemed and taken to be always open for the transaction of business therein; and the several regular terms of said Courts, for the return of process, and other practical purposes, shall be of two months duration, and shall commence on the first Monday of January, of March, of May, of July, of September, and of November, of each year.

2.

The several clerks of said Courts shall receive and file all papers pertaining to said Courts respectively, and shall keep substantial dockets, and make all proper entries therein, of papers filed, and of the proceedings of the said Courts, as they occur; so that the docket entries shall always show, as near as possible, the real condition and progress of the proceedings.

Proceeding.—How Commenced.

3.

All original proceedings in said Courts shall be commenced by bill, or by special case stated, as hereinafter provided for; the term "bill" to embrace petition or information, where, by statute, or the established practice, petition or information be proper.

4.

No order or process shall be made or issued upon any bill, petition, or other paper, until such bill, petition, or other paper, together with all the exhibits referred to as parts thereof, be actually filed with the clerk of the Court.

Process.—Service and Return thereof.

5.

The process and mode of publication for giving notice to appear, and for procuring the appearance of parties, shall be the same as that now provided by law, except as the same may be changed or modified by the following rules:

6.

All process, other than process to give notice to or to procure the appearance of defendants, shall be made returnable to the first day of the term ensuing the date of such process; and all process that may be issued for the appearance of parties, or to compel appearance, shall be made returnable on the first Monday of the month ensuing the date of its issue; but the plaintiff may, by special direction, require any process to be made returnable at the return day next after the first return day for such process ensuing the issuance of the same.

7.

Whenever a bill or petition is filed, the clerk shall issue the process, or order of publication thereon, for the appearance of the defendants, as of course; and whenever there are more than one defendant, summons may, upon the special direction of the plaintiff, be sued out separately for each defendant, except in case of husband and wife, or a joint summons against all the defendants may be issued.

8.

The service of process to require appearance shall be by reading the summons, or other writ or order, to the party to be

served therewith; or by delivering a copy of the same to such party; and in case the party be an infant or *non compos mentis*, in addition to the service on such party, a copy of the process or order shall be left with the parent or guardian of the infant, if there be one within the jurisdiction of the Court, and with the committee or other person having the care of the person or estate of the party alleged to be *non compos mentis;* and such service shall be specially certified in the return by the officer making the service.

Appointment of Guardian or Next Friend.

9.

Upon return of process as served, or upon proof of due publication of the order of publication as against non-resident defendants, the Court shall, in case of infant or non-sane defendants, on application of the plaintiff, or any other party concerned, by order, either require the legal guardian or committee of the infant or non-sane defendant (if there be such guardian or committee within the jurisdiction of the Court) to appear, answer, and defend for such party, or appoint a guardian *ad litem* to answer and defend the suit for such party. And in appointing guardians *ad litem* no person shall be appointed who may have any interest whatever involved in the suit adverse to that of the person so under disability. The Court or judge thereof may, in any case where it may be deemed necessary, appoint a solicitor to appear and defend for any infant or non-sane defendant.

All commissions for taking answers or to plead shall be and they are hereby abolished.

10.

All infants and other persons under any disability to sue, may sue by their guardian or committee, if any, or by their *prochein ami;* subject, however, to such orders as the Court or judge

thereof may direct for the protection of infants and other persons; but before the name of any person shall be used in any suit to be instituted as next friend of any infant or other party, or as relator in any information, such person shall sign a written authority to the solicitor for that purpose, and such authority shall be filed with the bill or other proceeding.

Time for Appearance and Answer.

11.

Defendants shall have fifteen days from the time of the return of process served within which to enter an appearance, before they shall be treated as in default for non-appearance; and from the time of appearance entered, said defendants shall have twenty days within which to answer. And it shall be the duty of the clerk, in all cases in entering the appearance of defendants, to note in the margin of the docket the time of such appearance entered; and if the appearance be by solicitor, and there be more than one defendant, the clerk shall note for which defendant the appearance is entered, and the Court or judge thereof may, for special reason shown, extend or enlarge the time to answer, according to the nature and circumstances of the case.

Taking the Bill as Confessed.

12.

Upon service of process, or notice given by publication, as the case may be, the adult defendants, not being insane, shall appear and file their answer, plea or demurrer, to the bill or petition, within the time allowed by these rules, or by the terms of the order of publication, or special order for the extension of time; and in default of appearance, or of answer, plea or demurrer, after appearance within the time allowed, the plaintiff may, at his election, obtain an order as of course, that the bill be taken

pro confesso as against such defendants; and thereupon the cause shall be proceeded with *ex parte* as against the defendants so in default; and the matter of the bill or petition may be decreed by the Court or judge thereof at any time after the lapse of thirty days from the date of the order *pro confesso*, if there be no answer, plea or demurrer interposed, and the allegations of the bill or petition present a proper case for relief. But the Court or judge thereof may, in all such cases, if it be deemed proper, order that the allegations of the bill or petition, or any of them be supported by affidavit or desposition to be taken as may be directed.

Frame of Pleadings Generally.

13.

Every bill or petition shall be expressed in terms as brief and concise as it reasonably can be, and shall contain no unnecessary recitals of documents of any kind, *in hæc verba*, nor any impertinent matter, or matter scandalous and not relevant to the suit; and the same rule shall apply to all answers and pleas filed by defendants; and if this rule be violated, the unnecessary or improper matter or averment may be stricken out at the cost of the party introducing the same.

14.

All bills and petitions in the introductory part thereof shall contain the names of all the parties, plaintiffs and defendants, by and against whom the suit is brought. The form shall be substantially as follows:

IN THE CIRCUIT COURT FOR COUNTY.

A B, *Plaintiff*,
against
C D, *Defendant*,

To the Honorable the Judges of said Court:

Your orator, complaining, says:

1. That, &c., making each paragraph contain a succinct but a complete statement of fact.

15.

All bills and petitions shall be divided into paragraphs, as indicated in the preceding rule, and be consecutively numbered, and shall contain simply a statement of the facts upon which the plaintiff asks relief, and at his option, the facts which are intended to avoid an anticipated defence, and such averments as may be necessary, under the rules of equity pleading, to entitle the plaintiff to relief; and the prayer of relief shall specify particularly the relief desired, and shall also contain the prayer for general relief. And if an injunction, or other writ, or any special order, be required, pending the suit, it shall be specially prayed for; the several subjects of the prayer being formed into distinct paragraphs, and consecutively numbered. The ordinary or formal combination clause, the allegation of the want of remedy at law, and similar formal averments, shall be omitted; nor shall it be necessary to pray that the defendants be required to answer, unless it be desired that they shall answer under oath, or there be special interrogatories appended to the bill to be answered by the defendants or some of them, in which cases there shall be a prayer that the defendant or defendants be required to answer the bill or the special interrogatories appended thereto, under oath.

16.

The prayer for process or for order of publication shall contain the names of all the defendants named in the introductory part of the bill or petition, and the place of their residence, as far as known; and if any of said defendants are known to be infants under age, or under any other disability, such fact shall be stated, so that the Court may take order thereon, as justice may require. And if an injunction, or other writ, or any special

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

17.

The defendant may, at any time before the bill is taken *pro confesso*, or afterwards, (before final decree,) by the special leave of the Court or judge thereof, answer, plead or demur to the bill; and he may plead or demur to the whole bill, or to part thereof, 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, usury or combination, a plea to such part must be accompanied with an answer supporting the plea, and explicitly denying the fraud, usury or combination, and the facts on which the charge is founded.

18.

No plea or demurrer shall be allowed to be filed to any bill or petition, unless it be supported by affidavit that it is not intended for delay; and if a plea, that it is true in point of fact. The form of demurrers shall be substantially as follows: "The defendant demurs to the whole bill," or "to so much of the bill, or discovery, or relief," stating the particular part or parts demurred to, and the special grounds of the demurrer.

19.

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 be available, but no further.

20.

If the plaintiff shall not reply to any plea filed, or shall not set down any plea or demurrer for argument, within ten days

after the same filed, the defendant may set it down for argument on five days' notice.

21.

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

22.

If, upon the hearing, any demurrer or plea is overruled, unless the Court or judge thereof hearing the same be satisfied that it was intended for vexation and delay, the defendant shall be required to answer the bill, or so much thereof as may be covered by the plea or demurrer, at such time as, consistently with justice and the rights of the defendant, the same can be reasonably done; in default whereof, the bill shall be taken, as against him, *pro confesso*, and the matter thereof proceeded in and decreed accordingly; and such decree shall also be made when the Court or judge thereof shall be satisfied that the plea or demurrer was interposed for vexation or delay merely, and is frivolous or unfounded.

23.

The defendant shall make answer to all the material allegations of the bill, except as hereinafter provided; and the answer shall be divided into paragraphs, numbered consecutively, each paragraph containing, as near as may be, a separate and distinct averment. The rule, that if the defendant submits to answer, he shall answer fully to all the matters of the bill, shall not apply in cases where he might, by plea or demurrer, 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 in law or equity, to the merits of the bill, of which he may be entitled to avail himself by a demurrer, or 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 demurrer or 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 the 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 required to make in an answer in support of such plea.

24.

Special interrogatories to the defendant shall not be incorporated in the bill or petition, but shall be appended thereto; and they shall be divided as conveniently as may be, and numbered consecutively. And if there be more than one defendant, and the interrogatories are not intended to be answered by all, it shall be designated which defendant is required to answer the several interrogatories. And in like manner and form, any defendant shall be entitled to file interrogatories to any of the plaintiffs, after he shall have put in his answer to the bill; and such interrogatories, either to plaintiff or defendant, and the answers thereto, shall be deemed part of the pleadings in the cause. Notice by service of copy, or otherwise, shall be given to the party required to answer, who shall answer within thirty days from the time of service, unless the time, for cause shown, be extended by special order; and answers to such interrogatories may be compelled by attachment.

25.

But either plaintiff or defendant shall be at liberty to decline answering any interrogatory, or part of any interrogatory, when he might have protected himself by demurrer from answering

the subject of the interrogatory; and he shall be at liberty so to decline, notwithstanding he shall answer other interrogatories, from which he might have protected himself by demurrer; and upon such declination, the plaintiff or defendant may, on three days' notice, set down the matter for hearing before the Court or judge thereof, as on an exception to the answer for insufficiency. But where the interrogatories are not fully answered, and no reason is assigned for the omission, the particular objection must be pointed out by exception, to be filed and served at least five days before the hearing of such exception. The plaintiff or defendant shall be at liberty, before answers to the interrogatories are filed, or pending exceptions, to file or require a replication, and proceed to take testimony, without waiver of his right to such answers, or of his exceptions to the answers.

26.

Cross-bills for discovery only shall not be allowed, but the defendant shall be at liberty, instead thereof, to file interrogatories to the plaintiff, as in the preceding rule provided. In other cross bills, no other reference shall be made to the matters contained in the original bill than shall be necessary, but the same may be treated as if incorporated therein. The rules regulating the form of bills shall apply to cross-bills. If no new parties are introduced, service of a copy of the cross-bill on the solicitor of the plaintiff or plaintiffs in the original bill shall be sufficient. But where other persons are made parties, the service or notification shall be the same as provided in respect to notice, or service of process upon defendants in original bills, together with the cross-bill.

27.

If the plaintiff in his bill shall not require an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant,

though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but an answer under oath may, nevertheless, be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, to appoint or discharge a receiver, or on any other incidental motion in the cause.

28.

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 within fifteen days thereafter, unless he shall set the cause down for hearing on bill and answer as to said defendant or defendants answering; 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 fifteen days after answer filed, the defendant shall be entitled to a rule further proceedings within ten days after notice of such rule; and upon failure to comply with such rule, the defendant shall be entitled to have the bill dismissed. The form of the general replication shall be as follows:

"The plaintiff joins issue on the matters alleged in the answer of C D, so far as the same may be taken to deny or avoid the allegations of the bill."

29.

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 obtain leave to amend the same, upon application to the Court or judge thereof, within such time and upon such terms as may be prescribed by order.

30.

If the plaintiff, so obtaining any order to amend his bill after answer, or after plea or demurrer thereto, shall not make the amendment within the time allowed, he shall be considered to have abandoned the leave to amend, and the cause shall proceed as if no application for such leave had been made. But where such amendment is made, and new facts are introduced, and the case is thus varied in any material respect, the defendant shall be at liberty to answer anew, or to plead, or demur to the bill as amended, within such time as the Court or judge thereof may prescribe, after notice of the amendment made; and notice may, in all cases, be given by service of a copy of the bill as amended upon the defendant, or upon his solicitor, if there be one; or it may be by subpœna. The mode of proceeding in default of answer to the matter of the amendment shall be the same as that in default of answer to the original bill; and the proceeding on answer, plea or demurrer, filed to the amended bill, shall be the same as that on answer, plea, or demurrer to an original bill.

Parties.

31.

In all cases where the plaintiff may have a joint and several claim or 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 claim or demand, all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable. But the defendant may at once proceed by petition in the nature of a cross-bill, against such party as is liable jointly with him, and such party shall be permitted to make himself a party to the original cause, and defend the same, and the proceedings in the original cause shall, after the service of such petition, be conclusive as to such other

party, and if he shall appear thereto, the same shall be conducted as if he had been made a party thereto in the first instance.

32.

In all suits concerning real or personal estate, where the entire estate sought to be affected by the decree or order prayed for, is vested in trustees, under any deed, will, or other instrument, with an immediate and unqualified power of sale, coupled with the right to give receipts, such trustees shall represent the persons beneficially interested under the trust, 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 interested under the trust, parties to the suit. But any party interested may, upon his own application, be allowed to come in and be made a party to such proceeding, and the Court or judge thereof may, upon consideration of the matter on the hearing, if it should be deemed proper, order such persons, or any of them, to be made parties.

33.

It shall not be necessary to dismiss the entire bill or petition in any suit, because simply of the misjoinder of parties or the subject-matter of the suit; but the Court may dismiss the bill or petition, as to such of the parties, plaintiff or defendant, as may be improperly joined, and may dismiss the bill or petition, as to such of the subject-matter as may be improperly joined or included therein, so as to relieve the bill or petition of the objection of being multifarious. And the Court may, according to the special circumstances of the case, to meet the requirements of justice, and to prevent a multiplicty of suits, decree as between the plaintiffs, as if they occupied positions of plaintiff and defendant upon the record, and may so decree as between co-defen-

dants to the cause; provided such decrees shall be founded upon the allegations of the pleading between the plaintiffs and defendants, and have immediate connection with the subject-matter of the suit.

Want of Parties.—How Objection Taken.

34.

If a defendant shall, at the hearing of the cause, object that the 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 or judge thereof, if it be deemed proper, shall be at liberty to make a decree, saving the rights of the absent parties, or may require the plaintiff to bring in such absent party, upon such terms as the Court may prescribe as to cost.

35.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty within fifteen days after answer filed, to set down the cause for argument upon that objection only; and the clerk, at the instance of the plaintiff, shall make entry thereof in his docket in the following form: "Set down upon the defendant's objection for want of parties." And if the plaintiff shall not set down the cause, but shall proceed therewith to a hearing, notwithstanding the objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection for want of parties be then allowed, be entitled, as of course, to an order for liberty to amend his bill by adding parties; but the Court or judge thereof may, if it be thought fit, dismiss the bill. If, however, the cause be set down upon the objection taken, and, upon hearing,

the objection be allowed, the plaintiff shall have liberty to amend upon paying the cost of amendment.

Evidence.—How Taken.

36.

Except where testimony is to be taken beyond the limits of the State, or beyond the limits of the county or city for which the Court exercises jurisdiction, no commissions to take testimony shall issue. The Circuit Court for each of the counties, and the Supreme Bench of Baltimore City shall each appoint two or three experienced and competent examiners, who shall, upon qualification, be officers of the Court; and for any special reason a special examiner may be appointed. These examiners shall have authority to issue subpœnas for witnesses, administer oaths, notify parties of the time of their sittings, and to preserve order and decorum during their sessions. Any person refusing to obey subpœnas issued by such examiners, or who shall be guilty of violating the order and proper decorum of the sessions of said examiners while in discharge of their duties, shall be reported by the examiners, together with the facts of the case, to the Court; and, upon hearing, the Court, if satisfied of the facts as reported, and that the party was guilty of the matter charged, shall punish the party so offending.

Such examiners shall be entitled to receive four dollars per day, for each and every day actually employed; to be paid by the party at whose instance the service may have been rendered. And it shall be the duty of such examiners, in making their returns to the Court, in each case, to certify the time that they may have been actually employed, and at whose instance, and the amount taxable to each party for services rendered.

37.

Whenever any cause is at issue, involving matter of fact, or whenever any evidence is required to be taken, to be used in any proceeding in equity, it shall be competent to the party desiring to take evidence, by leave of the Court, or judge thereof, to notify one of the regular examiners, or any special examiner that may be appointed, of such desire, and to furnish him with the titling of the cause and the names of witnesses to be summoned to testify; and the examiners so applied to shall fix some reasonable day or days for the examination of witnesses, and the taking of evidence, of which he shall give due notice to the parties concerned, or those entitled to receive such notice, as if he were proceeding under a commission to take testimony, under former practice. He shall issue subpœnas for witnesses for either party, except where he is required to proceed *ex parte;* and he shall cause to come before him all witnesses subpœnaed, at the time appointed, to be examined; and their attendance and duty to testify may be enforced by attachment, to be issued and returned as provided in section 146 of article 16 of the Code of General Laws.

38.

All examinations of witnesses before the examiners shall be conducted in the presence of the parties, or their solicitors, if they think proper to be present; and the mode of examination shall be either by written interrogatories filed with the examiner, to be by him propounded to the witnesses, and the answers thereto written down by him, as has heretofore been the practice of commissioners in taking testimony; or the witnesses may be examined by the parties, or their solicitors, *viva voce*, and in such case, the answers of the witnesses shall be reduced to writing by the examiner, and the question also, if necessary to the understanding of the answers of the witness, or if it be required by either party. The testimony produced by both parties

shall be taken before the same examiner, unless, for special reasons, it be otherwise directed by the Court or judge thereof; and all *viva voce* examinations shall, as near as may be, be conducted in the manner and order of the examination of witnesses in the trials of fact in the Courts of common law. The defendant shall not be compelled to proceed with the taking of his testimony, until the plaintiff has finished, or declared he has none to take; nor shall the plaintiff be compelled to proceed with the rebutting testimony, until the defendant has completed the testimony on his part. But said questions and answers may be typewritten.

39.

In all examinations, whether conducted by written interrogatories or *viva voce*, at the conclusion of the examination by the parties, the examiner shall put to the witness an interrogatory in the following form: "Do you know, or can you state, any other matter or thing which may be of benefit or advantage to the parties to this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question between the parties? If yea, state the same fully and at large in your answer." And the examiner shall write down the answer to said interrogatory, as part of the deposition of the witness.

40.

In all cases the testimony shall be written down in the language of, and as delivered by, the witness, and when completed shall be read over to the witness, and be signed by him in the presence of the parties or their solicitors, or such of them as may attend; but if the witness, for any cause may not be able to sign the same, or shall for any reason refuse so to do, the examiner shall sign the deposition, stating the reason why the witness has not signed the same; and the examiner may, upon all examinations, state any special matters to the Court that he may deem

proper, to enable the Court the better to understand the evidence. Any question or questions that may be objected to by either of the parties, shall be noted by the examiner upon the deposition; but he shall not have power to decide on the competency, materiality, or relevancy of any question proposed or evidence elicited, nor as to the competency or privilege of any witness offered. All questions of privilege raised, or demurrer interposed, by any witness, to questions propounded, shall be at once reported by the examiner to the Court or judge thereof for decision, and the Court or judge shall hear and determine the same without delay; and in such cases the Court may award cost as justice may appear to require; and in all cases the Court shall have full power to deal with and to direct the payment of the cost of incompetent, immaterial or irrelevant evidence, or any part thereof, as justice may require, apart from the general cost of the case.

41.

So soon as the examination of witnesses before the examiner shall be concluded, the original depositions, with all vouchers, documents, or other papers filed with the examiner as evidence, shall be put together in proper order and form, so as to be convenient for reference and use, and be authenticated by certificate and signature of the examiner, and by him enclosed, with the titling of the cause endorsed thereon, and filed with the clerk of the Court, without delay.

42.

Testimony shall be taken without any unnecessary delay, and it shall be the duty of the examiner to avoid such delay as far as possible. After the lapse of a reasonable time for the taking of testimony, either party may obtain a rule on the adverse party to close the taking of his testimony within such

reasonable time after notice of such rule as may be deemed proper; and any testimony taken after the lapse of that time shall not be read in evidence at the hearing of the cause. But it shall be in the discretion of the Court to enlarge the time, on application of the party against whom such rule may have been obtained, upon sufficient cause shown.

43.

Evidence taken and returned shall be opened by the clerk, and shall remain in Court ten days, subject to exception, before the cause shall be taken up for hearing, unless, by agreement of the parties, such time be waived; but after the expiration of that time the cause shall stand for hearing, unless some sufficient cause be shown to the contrary. This rule not to apply to interlocutory applications.

44.

The examination of witnesses *de bene esse*, or for the perpetuation of their testimony, when by law allowed, may be had before an examiner, in the mode and form as prescribed in rules 39, 40, 41 and 42.

45.

In the Circuit Court for the city of Baltimore, it shall be competent, by the agreement of the parties, with the concurrence of the Court, instead of the mode of taking testimony as provided in the preceding rules, to examine the witnesses, or any of them, orally in Court, in the presence of the judge thereof, as to all or any of the facts desired to be proved; and the evidence so taken shall be written down, as delivered by the witnesses, by such person and in such manner as the judge may direct, and shall be filed in the cause as part of the proceedings thereof, to be used as if taken before an examiner.

46.

Upon any petition, motion, or other interlocutory application, for the hearing and determination of which evidence may be required, the Court or judge thereof may order testimony to be taken before an examiner, or before a justice of the peace, upon such notice, and in such manner as the Court or judge may think proper to direct, to be used at the hearing of such matter.

Special Case Stated.

47.

Any person interested, or claiming to be interested, in any question cognizable by a Court of Equity, as to the construction of any statute, deed, will, or other instrument of writing, or as to any other matter falling within the original jurisdiction of such Court, or made subject to the jurisdiction thereof by statute, may state and raise such question before the Court in the form of a special case stated, instead of formal pleading. Every such special case stated shall be entitled as a cause between some one or more of the parties interested, or claiming to be interested, as plaintiff or plaintiffs, and the others of them as defendants; and such special case shall be regularly docketed as a cause pending in said Court, and shall be in all respects, and for all purposes, treated and regarded as a pending cause, as if regularly instituted by formal pleading.

48.

Such special case shall concisely state such facts and documents as may be necessary to enable the Court to decide the question intended to be raised, and it shall be divided into paragraphs, consecutively numbered; and upon the hearing of such case, the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated and

referred to in such special case, any inference which the Court might have drawn therefrom, if such facts and documents were proved under formal pleading. And upon such special case stated, the Court may decree as upon bill and answer, and such decree shall be enforced as other decrees are; but such decree shall in no case conclude or affect the rights of any other persons than those who are parties to such special case, and those claiming under or through such parties; and the right of appeal shall exist as in cases of decrees upon bill and answer.

49.

Married women may join in any special case stated with their husbands, and infants having guardians, and lunatics having committees, may join in such special case by their guardians or committees, in respect to any interest or right represented by such guardians or committees; and all the parties to such special case shall sign the same in person or by solicitor, and the appearance of the parties shall be entered to said case, as to a cause regularly instituted by formal proceedings; and all the parties to such special case shall be subject to the jurisdiction of the Court in the same manner as if the plaintiff in the special case had filed a bill against the parties named as defendants thereto, and such defendants had appeared to such bill, and by answer admitted the facts thereof.

Rehearing.

50.

All final decrees, and orders in the nature of final decrees, shall be considered as enrolled from and after the expiration of thirty days from the date of the same, the day of the date inclusive.

51.

Clerical mistakes in decrees or decretal orders, or errors arising from any accidental slip or omission, may, at any time before the enrollment of such decrees or orders, be corrected by order of the Court or judge thereof upon petition, without the form or expense of a rehearing.

52.

Every petition for rehearing shall contain the special matter or cause on which such rehearing is applied for, and shall be signed by solicitor or the petitioner himself, 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 enrollment of the decree or decretal order; and if the decree or order has been executed, parties who have acted on the faith of such decree or order shall not be prejudiced by such decree or order being reversed or varied.

Proceedings before the Auditor.

53.

Whenever a reference of any matter is made to the auditor for examination and report thereof, or for the statement of an account, the party at whose instance the reference is made, shall, within a reasonable time, and without any unnecessary delay, cause the matter of reference to be laid before the auditor for his action; and if such party shall omit to do so, any other party interested in the subject-matter of the reference shall be at liberty to cause the matter to be laid before the auditor, who shall proceed therein without delay.

54.

Upon every such reference it shall be the duty of the auditor, as soon as he reasonably can, after the matter of the reference is

brought before him, if evidence is to be produced, or vouchers filed, to assign a time and place for proceeding in the matter, and to give notice thereof to the parties or their solicitors; and if either party shall fail to attend at the time and place appointed, the auditor shall be at liberty to proceed in the absence of such party, or, in his discretion, to adjourn the examination and proceeding to a future day, giving notice thereof to the parties or their solicitors, but noting all the cost that may attend such adjournment, which shall be subject to the order and direction of the Court. It shall be the duty of the auditor 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 auditor to speed the proceedings before him, and to make his report, and to certify to the Court the reasons for any delay that may have occurred.

55.

The auditor shall regulate all the proceedings in every hearing or examination before him; and in addition to his right and power to examine the parties to the cause, and all witnesses produced by them, or which they may cause to be summoned, on oath or affirmation touching the matters of the reference, he shall also have power and authority to require the production of all books, papers, writings, vouchers and other documents applicable thereto, where, by the principles and practice of Courts of Equity, the production of such writings may be compelled; and if any party so liable to produce such books, papers, writings, vouchers or other documents, shall fail or refuse so to do, when required by the auditor, such party shall, without delay, be reported to the Court by the auditor, with the facts of the case, that the proper proceeding may be taken thereon, by way of attachment or otherwise, as justice and the settled practice may require.

56.

All partices accounting before the auditor shall produce their respective accounts in the form of debtor and creditor, and any of the other parties interested, who shall not be satisfied with the account so produced, shall be at liberty to examine the accounting party, *viva voce*, or upon written interrogatories, before the auditor, who shall write down and report the testimony, if required. And in all cases where the auditor may be required to take testimony to be reported to the Court, he shall observe and pursue the same mode and form of examination, and writing down the testimony, as that prescribed to be observed by examiners.

57.

The foregoing rules shall be in force from and after the first day of September, A. D. 1883, and shall be taken to regulate all cases and procedure to which they are applicable; and all other cases and procedure not therein provided for shall remain to be regulated and governed by the existing statute law of the State, and by the general rules and principles of equity pleading and practice, as heretofore existing, so far as the same may not be changed or modified, by the adoption of the foregoing rules. But nothing in the foregoing rules shall, in any manner, be taken or construed to prevent or restrict the several Circuit Courts, as Courts of Equity, from making and enforcing, from time to time, such general rules and orders as they may deem proper for the good government and regulation of their respective Courts, and the proceedings thereof, and the officers and suitors therein; provided that such rules and orders be not inconsistent with the foregoing rules, or the statutes of this State.

Ordered, This twenty-first day of June, A. D. 1883, by the Judges of the Court of Appeals, that the foregoing rules be and the same are hereby adopted, pursuant to the 18th section of article 4 of the Constitution of this State; and that five hundred

copies of the said rules be printed under the direction and supervision of the clerk of this Court; that of such printed copies of said rules, there shall be distribution as follows: one copy to each of the several judges of this State; one copy to each of the several clerks of the Circuit Courts of this State; one copy to each of the several auditors for the Courts of Equity of this State; one copy to each of the several examiners of the several Circuit Courts of this State; and the remainder to be distributed as may be directed by this Court.

RULES OF THE COURT OF APPEALS.

REVISED AND AMENDED OCTOBER TERM 1896.

The attention of Counsel is expressly directed to the 11th, 12th, 13th, 14th and 15th Rules.

Dockets.

Ten days before the beginning of each term, cases under rule argument will be classified by counties, and placed on the general or special docket for hearing according to the order of the Judicial Circuit from which the appeals are taken; and all cases filed within ten days before the beginning of each term, will be placed on the docket in the order in which they are filed in this Court.

The dockets of each term, will commence respectively with the uncalled cases remaining on the corresponding Docket of the preceding Term At the commencement of each Term, cases on the general docket will be called in their numerical order, beginning with number 1. The Special Docket will be called at such time during the Term as may be designated by the Court.

2. No more than five cases will be called for argument on any one day, nor will any case, on either Docket, be taken up out of its course as ascertained by the preceding Rule in prejudice to the call of any subsequent case, unless entitled to a preference by law; and all cases reached in the regular call of the respective Dockets must be finally disposed of unless continued for cause shown, or by consent of the parties.

3. Cross-Appeals and Writs of Error by both parties, will be called and heard at the same time.

Continuance.

4. No case called at the fourth Term after the transmission of the Record, or at any Term subsequent to the fourth Term, will be continued without the mutual consent of the parties in open Court, or their written order to that effect.

Judgments Nisi.

5. When a case shall be called in its regular order, and the Counsel for the Appellant or Plaintiff in Error shall be absent, the opposing Counsel, if present and ready to be heard, may argue the case orally, or submit it on the Brief then filed, or take an affirmance Nisi of the Judgment. If the Counsel for the Appellee or Defendant in Error be absent, the opposing Counsel if present and ready to be heard, may argue the case orally, or submit it on the Brief then filed, or claim a continuance.

6. Counsel on either side, not otherwise in default, prevented from arguing any case opened or submitted on the other side, when called in regular order, or where on such call the Judgment has been affirmed Nisi, may argue the case on notes to be filed within six days thereafter; and the Counsel for the adverse party may conclude, by replying in the same manner, within the next six days.

7. The argument of cases regularly called will not be postponed on account of the absence of Counsel on either side, unless such absence be occasioned by sickness or other sufficient cause.

8. In all cases where Judgments are affirmed Nisi, in conformity with the preceding rules, the Judgments so affirmed will not be stricken out, except in argued cases, and then only by the final decision of the Court.

Records.

9. The clerk will have printed, as early as practicable, for the use of the Counsel, Reporter and Court, a sufficient number of the Records and Briefs in all cases for argument, and will, without delay, cause those designed for Counsel to be transmitted to them in the most convenient mode, taking note of the manner and time of transmission.

10. No paper shall be read or referred to as a part of the Record in the argument of any case, without consent of the Counsel and leave of the Court, unless such paper be copied into and made part of the Transcript filed with the Clerk.

Briefs and Argument.

11. In all cases to be argued, the Counsel shall furnish the Clerk with their Briefs in time to have them ready for use when the case is reached in regular order, unless prevented by sickness or other sufficient cause; and if either party shall fail to comply with this rule, the party not in default may have the Judgment affirmed absolutely, or the case continued at his election, the party in default to be charged with the costs of the Term if the case be continued.

12. Briefs, furnished in conformity with the preceding Rule, must contain an abstract of the case and a full and explicit statement of the several points relied on, with the authorities sustaining them, accurately cited, and distributed under their proper heads.

13. Not more than two Counsel will be permitted to argue any case on the same side, nor will they be allowed more than one hour and a-half for any argument or reply, unless, for reasons appearing before beginning the argument, the Court shall grant a longer time.

14. In cases of Cross-Appeals, or Writs of Error by both sides, the Counsel for the Appellant or Plaintiff in Error will open

the appeal first in order on the Docket, and conclude after a like opening by the Counsel for the Appellant or Plaintiff in Error in the second Appeal, after which the Counsel for the Appellant in the second Appeal will conclude.

15. No case will be reargued after the Opinion of the Court has been delivered, unless a reargument shall be requested by some member of the Court who concurred in the Opinion.

16. The Opinions of the Court, filed with the Clerk, will be delivered by him to the Reporter, when required for printing in the State Reports, the same to be returned as speedily as possible to the Clerk for preservation. The Clerk will deliver no other original paper out of his office without leave of the Court.

Diminution.

17. A writ of Diminution will not be granted in any case, after the first Term, without charging the cost then accrued in this Court to the party applying for the writ. In other cases of application for the writ, the question of costs will be in the discretion of the Court.

18. And no case will be postponed or continued on account of any Diminution alleged to exist in the transcript of the Record, unless suggestion thereof be made in writing by one of the parties or his Counsel, under the affidavit of such party or his Counsel, setting forth the particulars in which the Diminution exists, that its correction is necessary to the trial of the merits of the case, that the correction cannot be had except by remanding the Record to the inferior Court, and that the suggestion is not made for the purpose of delaying the argument of the case.

Court of Appeals of Maryland.

ADDITIONAL RULES.

——:o:——

It is ordered this 2d day of November, 1898, by the Court of Appeals of Maryland, that Rule II of said Court be and is hereby amended, to read as follows:

15. No case will be reargued after the opinion of the Court has been delivered unless a reargument shall be requested by some member of the Court who concurred in the opinion, and no motion for a reargument shall be filed after the expiration of thirty days from the day the opinion is filed.

——:o:——

Ordered by the Court of Appeals of Maryland, this 8th day of February, A. D. 1900, that the Clerk of this Court shall hereafter place upon the docket of the January, April or October Term of this Court no case unless the record therein shall have been actually filed in his office before the first day of said terms; and that all records filed on or after the beginning of the first day of each term shall be placed on the docket of the next succeeding term; provided, however, that nothing in this rule contained shall apply to cases or appeals allowed under sections 29 and 42, Art. 5, of the Code, or to any other cases or appeals where by law the appeal may be heard during the same term to which the record shall be transmitted.

Gentlemen of the Bar upon filing their Briefs are requested to send to this office full statements of the cost of printing them, so that the bills of costs may be promptly and accurately made out and furnished counsel on demand.

RULES AND REGULATIONS

RESPECTING APPEALS,

MADE AND PRESCRIBED BY

The Judges of the Court of Appeals,

UNDER AND BY AUTHORITY OF THE

18th Section of the 4th Article of the Constitution.

Appeals from Courts of Law.

1. Formal Writs of Error shall, in all cases, be dispensed with, and the party applying to have the record removed, as upon Writ of Error, in cases where by law Writs of Error are allowable, shall, by brief petition, addressed to the Court in which the case was tried, plainly designate the points or questions of law by the decision of which he feels aggrieved; which application so to remove the record, shall be allowed as of right; and no point or question not thus plainly designated in such application shall be heard or determined by the Court of Appeals.

2. All appeals, or Writs of Error, allowed from any judgment or determination of a Court of Law, to the Court of Appeals of this State, other than from decisions on questions arising under the Insolvent Law, shall be taken within nine months from the date of such judgment or determination, and not afterwards; and the transcript of the record shall be transmitted to the Court of Appeals within six months from the time of the appeal taken, or Writ of Error allowed.

3. All appeals allowed from decisions of questions arising under the Insolvent Law, shall be taken within thirty days from the time of the decision made, and a transcript of the record shall be transmitted to the clerk of the Court of Appeals within sixty days from the date of the decision appealed from.

4. In no case shall the Court of Appeals decide any point or question which does not plainly appear by the record to have been tried and decided by the Court below; and no instruction actually given, shall be deemed to be defective by reason of any assumption therein of any fact by the said Court, or because of a question of law having been thereby submitted to the jury, unless it appear, from the record, that an objection thereto for such defect, was taken at the trial; nor shall any question arise in the Court of Appeals as to the insufficiency of evidence to support any instruction actually granted, unless it appear that such question was distinctly made to and decided by the Court below.

5. Bills of Exception shall be so prepared as only to present to the Court of Appeals the rulings of the Court below upon some matter of law, and shall contain only such statement of facts as may be necessary to explain the bearing of the rulings upon the issues or questions involved; and if the facts are undisputed, they shall be stated as facts, and not the evidence from which they are deduced; and if disputed, it shall be sufficient to state that evidence was adduced tending to prove them, instead of setting out the evidence in detail; but if a defect of proof be the ground of the ruling or exception, then the particulars in which the proof is supposed to be defective shall be briefly stated, and all the evidence offered in anywise connected with such supposed defect, shall be set out in the bill of exception. And it shall be the duty of the Judges in the Courts below to require exceptions to be prepared in accordance with this rule.

6. In no Bill of Exception shall any patent, deed, will, or other documentary evidence be inserted at length, but shall only be stated briefly, according to its import and effect, unless the nature of the question raised and decided render it necessary that it should be inserted *in extenso;* nor shall any document be more than once inserted at large in any transcript to be sent to the Court of Appeals. And it shall be the duty of the Judges of the Courts below to require exceptions to be prepared in accordance with this rule. Either party, however, shall have the right to have any or all of such documentary proof inserted at length, it being stated in the exception at whose instance the same is so inserted, that costs may be awarded as the matter so incorporated may be deemed proper or not to have been set out in full, by the Appellate Court.

7. In making up the transcript of records to be transmitted to the Court of Appeals, the clerks of the Courts below shall omit from such transcripts the formal heading and commencement of the record, stating only the titling of the cause, and the time of the commencement of the suit or proceedings; they shall also omit all writs, or original process for appearance, where the party has appeared; all entries of continuances and imparlances; all entries of motions and rules to declare or plead; all entries of applications for continuances, for commissions, or for warrants of resurvey, and the affidavits in support thereof, together with the rulings of the Court on such applications; all entries of motions or rules of security for costs, together with the proceedings and rulings thereon; all entries of empannelling, swearing, and names of jurors, and all other merely incidental motions and rules made in the progress of the cause; all pleadings withdrawn, waived or superseded by amendment; all commissions to take testimony and the formal returns thereto, and all warrants of resurvey, the clerk stating the time of issue and return of such warrant; all replevin, *retorno habendo*, and appeal bonds, and affidavits filed

on taking appeals; all formal entries of motions for new trials, and the rulings thereon, together with the affidavits and other evidence used on such motions, the clerk stating in lieu thereof, the fact of such motion being made, and how disposed of by the Court, unless, where any of the foregoing matters or proceedings may be used as evidence in the cause, or where some question may arise in regard thereto, reviewable by the Court of Appeals, then, so much only of any such matter or proceedings as may be used in evidence, or as appertain to the decision or determination desired to be reviewed, shall be incorporated in the transcript, and no more; the intent being to avoid incorporating in the transcript any matter or thing not material to the full and fair presentation of the questions to be reviewed by the Appellate Court.

8. In all cases where judgments shall be reversed or affirmed by the Court of Appeals, and it shall appear to the Court that a new trial ought to be had, such new trial shall be awarded, and a certified copy of the opinion and judgment of the Court of Appeals shall be transmitted forthwith to the Court from which the appeal was taken, to the end that said cause may be again tried as if it never had been tried; and no writ of *procedendo*, with transcript of record, shall be transmitted, as heretofore practised.

Appeals from Courts of Equity.

9. All appeals allowed from decrees or orders of Courts of Equity shall be taken and entered within nine months from the date of the decree or order appealed from, and not afterwards; unless it shall be alleged on oath that such decree or order was obtained by fraud or mistake, in which case the appeal shall be entered within two months from the time of the discovery of the fraud or mistake, and not afterwards.

10. All transcripts of records, on appeals from Courts of Equity shall be made and transmitted to the Court of Appeals within six months from the time of the appeal prayed; but on appeals taken as provided by the 25th section of article 5, of the Code of Public General Laws, as enacted by the Act of the General Assembly of 1868, chapter 102, the transcript of the record shall be made and transmitted to the Court of Appeals forthwith after the appeal prayed.

11. In making up the transcript of the record of Equity Proceedings to be transmitted to the Court of Appeals, it shall be the duty of the clerk of the Court from which the appeal may be taken, to omit therefrom the formal heading and commencement of the record, stating only the titling of the cause and the time of the commencement of the proceeding; he shall also omit all subpœnas and other process for appearance of parties if parties have appeared; all orders and certificates of publication stating in lieu thereof the date of such order, the period of publication required, how published, and the time fixed for appearance of parties thereunder; all commissions to appoint guardians and to take testimony, and the formal returns thereto, stating in lieu thereof the fact and time of issuing such commissions, and the time of their return; all entries of continuances; all injunction bonds, receivers' bonds, trustees' bonds, appeal bonds, and affidavits filed on appeal; all proceedings in the cause subsequent to the decree or order appealed from; and all merely collateral proceedings not in anywise involved in the matter of appeal, and which cannot be material to the hearing and decision of the case by the Court of Appeals; any party to the appeal, however, shall have the right to direct any particular part of the proceedings of the cause, that would otherwise be omitted, to be incorporated in the transcript, the clerk stating at whose instance the same is inserted, that costs may be awarded, as the matter so directed to

be incorporated may be deemed material or not by the Court of Appeals.

12. Whenever deeds, records or other documentary evidence are used in any equity cause, the purport and substance only of such deeds, records or other instruments shall be stated, and they shall not be set out in full in any case, except where some question arises upon the construction or validity thereof, and transcripts of records in equity causes shall be prepared in accordance with this rule. Any party to the appeal, however, shall have the right to direct any or all of such documentary proof to be inserted at length, the clerk stating at whose instance the same is so inserted that costs may be awarded as the matter so incorporated may be deemed proper or not to have been set out in full, by the Appellate Court.

Appeals from the Orphans' Courts.

13. All appeals allowed from orders or decrees of the Orphans' Courts to the Court of Appeals, shall be taken and entered within thirty days after such order or decree appealed from; and the Register of Wills shall make out and transmit to the Court of Appeals, under his hand and the seal of his office, a transcript of the record of proceedings in such case, within thirty days after the appeal prayed; but in such transcript no paper or proceeding, not necessary to the determination of the appeal, shall be incorporated.

Appeals from the Commissioner of the Land Office.

14. All appeals allowed from the judgments or orders of the Commissioner of the Land Office, shall be taken within nine months from the date of the judgment or order appealed from, the party appealing filing at the time of such appeal the ground or reasons therefor; and thereupon it shall be the duty of the said Commissioner to make out, under his hand and the seal of his

office, and transmit to the Court of Appeals, a transcript of the record of proceedings in such case, within sixty days from the time of the appeal taken, but in such transcript no paper or proceeding, not necessary to the determination of the appeal, shall be incorporated.

Relating to Appeals Generally.

15. Upon any appeal being taken in a Court of Law or Equity, or application to take up the record as upon Writ of Error allowed, the clerk of such Court shall make out, and transmit to the Court of Appeals, a transcript of the record of proceedings, under the seal of his office, in accordance with the foregoing rules, and within the time therein prescribed, and upon the receipt of such transcript, the clerk of the Court of Appeals shall enter the case upon his docket as of the term next after the receipt of such transcript.

16. No appeal shall be dismissed because the transcript shall not have been transmitted within the time prescribed, if it shall appear to the Court of Appeals that such delay was occasioned by the neglect, omission or inability of the clerk; but such neglect, omission or inability shall not be presumed, but must be shewn by the Appellant.

17. In all cases of cross-appeals, or of more than one appeal being entered in the same case from any judgment, decree or order, there shall be but one transcript of the record transmitted to the Court of Appeals, and that shall be used upon the hearing of all such appeals. In cases arising under this rule, the Appellate Court shall have power to award costs, including the cost of transmitting the record, to either of the parties in its discretion, or the costs may be apportioned as the said Court may deem just.

18. Whenever a case has before been in the Court of Appeals, there shall be copied into the transcript, upon any subsequent

appeal, only the proceedings occurring in the Court below subsequent to the former appeal.

19. In all cases where a writ of diminution shall be issued, the clerk in the inferior Court, to which the writ may be sent, shall, in his return thereto, transmit to the Court of Appeals only so much of the proceedings remaining of Record in the inferior Court as may be necessary to correct the alleged errors or defect in the transcript first sent to the Court of Appeals.

20. The preceding Rules shall not be taken or construed to repeal any existing provisions of law, except where they may be plainly in conflict therewith.

21. The preceding Rules shall take effect and be in force from and after the first day of January, A. D. 1870; but in their application to cases previously decided by the several Courts from which Appeals or Writs of Error are allowed, nothing in said rules shall be construed to extend the right of appeal, as now regulated by law, to a period greater than at present allowed, and in no such case shall the right of appeal exist for a period greater than that fixed by the preceding Rules, from the time of their taking effect.

Rules for the regulation of Appeals, prescribed in pursuance of section 183 of the General Incorporation Act of 1868, chapter 471, forming Article 26 in the Code of Public General Laws of this State, adopted this 26th day of May, 1876:

22. The appeal allowed by the said section 183 of said Incorporation Act, shall be taken within thirty days from the date of the judgment or determination of the Court appealed from; and the transcript of the record shall be transmitted to this Court within thirty days from the day of the appeal entered.

23. The appellant or appellants, if the defendant or defendants in the cause, upon praying such appeal, in order to stay the execution or enforcement of the judgment appealed from, shall

tender and file in the cause an appeal bond, in such form and with such sureties, as may be approved by the Court, the penalty in such bond not to exceed, in any case, the sum of ten thousand dollars.

In order to avoid all unnecessary cost and expense in the prosecution of appeals, the judges of the Court of Appeals, in pursuance of the authority conferred by section 18 of article 4 of the Constitution, deem it advisable and proper to make reduction in the fees and expenses, in the following particulars, by rule, in addition to the rules heretofore adopted for the regulation of appeals:

24. All appeals shall be brought into the Court of Appeals by transcript of the records of the Court below, as contemplated by the Constitution, and shall be made up as directed by the general rules heretofore adopted; and the appellant, in all civil cases, shall pay, or secure to be paid, to the clerk of the Court of Appeals, the cost of printing the necessary number of copies of said transcript, as required by the rules of Court, at the rate of seven cents for every hundred words, and so *pro rata* for each copy, instead of ten cents per hundred words for each copy, as now provided by law. But before the clerk shall be required to have any transcript in any civil case printed, the appellant or appellants shall, upon being furnished with the amount of the cost at the rate aforesaid, pay or secure to be paid to the clerk, the amount of such cost, so that the clerk shall not be required to pay out money for printing and incur the risk of loss, in not being able to collect the cost from the parties from whom it may be due, after the work is done. And if there be cross-appeals, or more than one appeal, embraced in one transcript, the cost shall be duly apportioned; and no appeal shall be considered as ready for hearing until this rule shall be complied with by the appellant or appellants. But nothing herein contained shall be taken to prevent the appellee from having the appeal dismissed, or the judgment, order or decree affirmed, under rule of Court,

for failure on the part of the appellant to have the appeal ready for argument.

25. All briefs in civil causes preparatory to the argument of such causes, as required by the rule of Court, shall be filed with the clerk in manuscript; and the clerk shall furnish the requisite number of printed copies thereof, at the rate of cost provided in the preceding rule; and the amount of such cost shall be paid, or secured to be paid, by the party required to furnish such briefs, at the time of delivery thereof, to the clerk, and before argument; and any party failing to comply with this rule shall be considered in default under the rules of Court, for not furnishing briefs as thereby required.

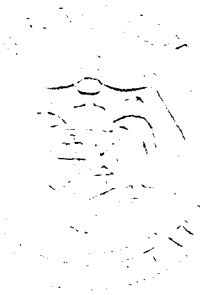
26. Either party may file written or printed arguments in any cause pending in the Court of Appeals, but the cost of such arguments shall not be taxed as part of the cost of the cause. A sufficient number of printed copies of the argument shall be furnished for the Court, the counsel concerned, the reporter and the clerk. If the party filing the argument think proper, he may have the printing done on the best terms he can make; provided it be in good, clear, readable type; but if the clerk of the Court of Appeals be required to have the argument printed, he shall be entitled to charge therefor at the rate prescribed in the preceding rules, and be entitled to receive the amount of the cost upon his being ready to deliver the printed copies of the argument to the Court. But in no case shall a brief or argument be received, either through the clerk or otherwise, after the cause has been argued or submitted, unless it be upon special leave granted in open Court, after notice to opposing counsel.

27. Rules 2, 9 and 10, respecting appeals, heretofore passed, shall be and they are hereby modified, so that hereafter the appeals and writs of error therein contemplated shall be taken within two months from the date of the judgment or determina-

tion, order or decree, appealed from, instead of nine months as now provided; and the transcript of the record shall be transmitted to the Court of Appeals within three months from the time of the appeal taken or writ of error allowed.

28. The aforegoing rule, however, shall not apply to criminal cases; but in all such cases the appeal or writ of error, allowed by law, shall be taken without delay, and the transcript of the record shall, forthwith, or as soon as the same can be made out, be transmitted to the Court of Appeals.

The foregoing additional or supplemental rules shall take effect and go into full operation from and after the first day of September, A. D., 1883.



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