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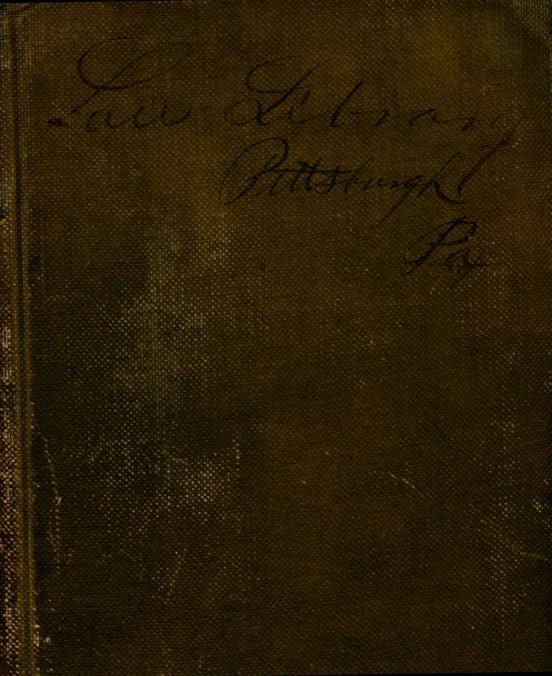
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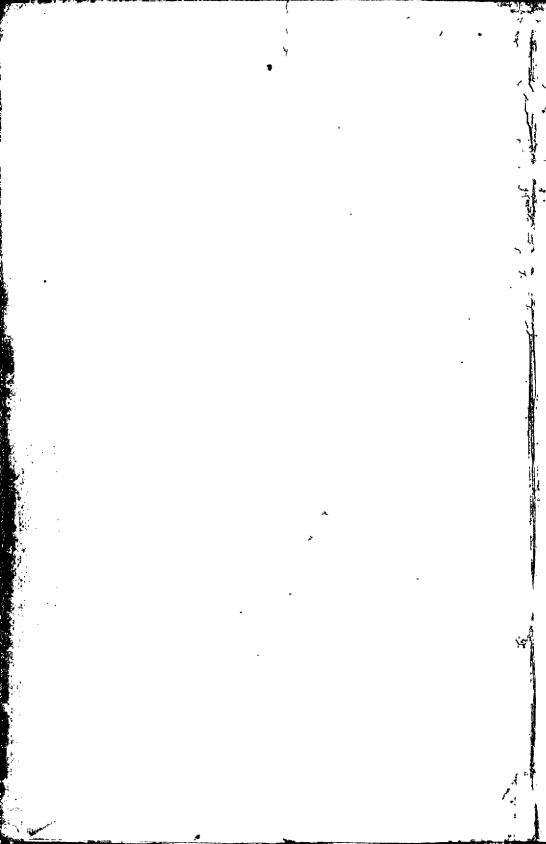
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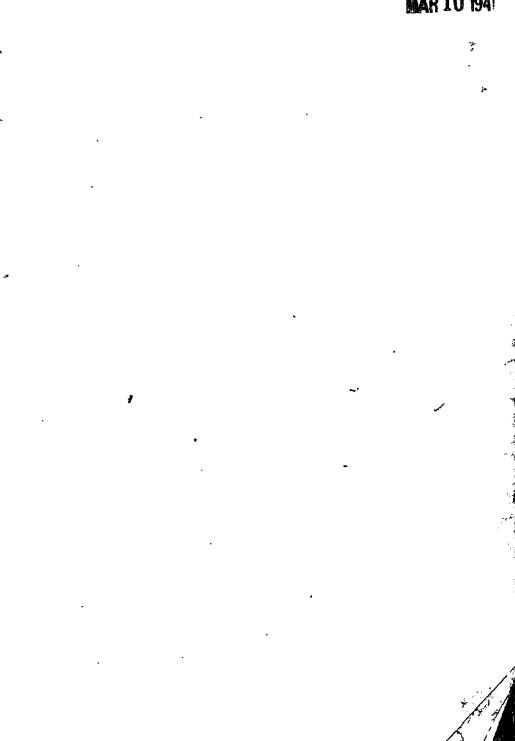
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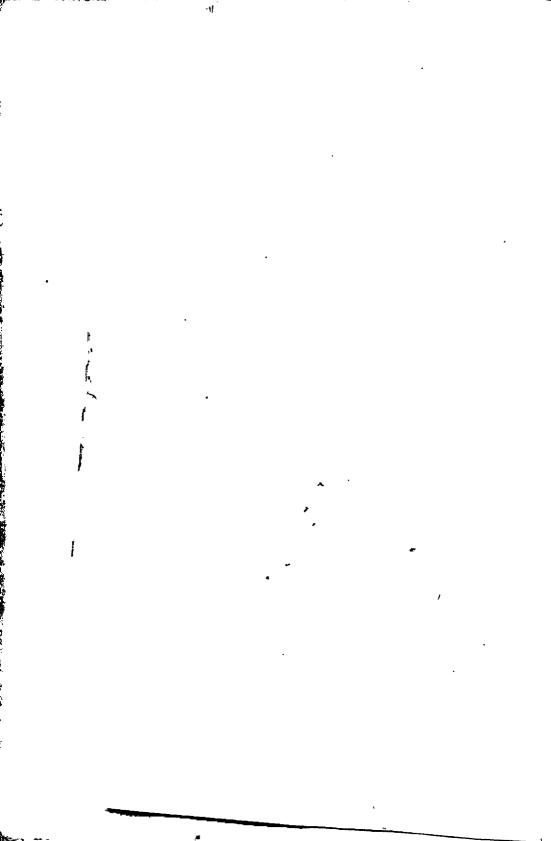
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# MAR 10 1941





# MAR 10 1941

# RULES OF COURT.

# RULES,

# AT LAW AND IN EQUITY,

#### REGULATING THE PRACTICE

OF THE

COURTS OF COMMON PLEAS, THE SEPARATE ORPHANS' COURT, AND THE COURTS OF OYER AND TERM INER AND QUARTER SESSIONS OF THE PEACE OF THE COUNTY OF ALLE-GHENY, COMMONWEALTH OF PENNSYLVANIA;

ALSO, OF THE

SUPREME COURT AND OF THE BOARD OF PARDONS OF SAID COMMONWEALTH-

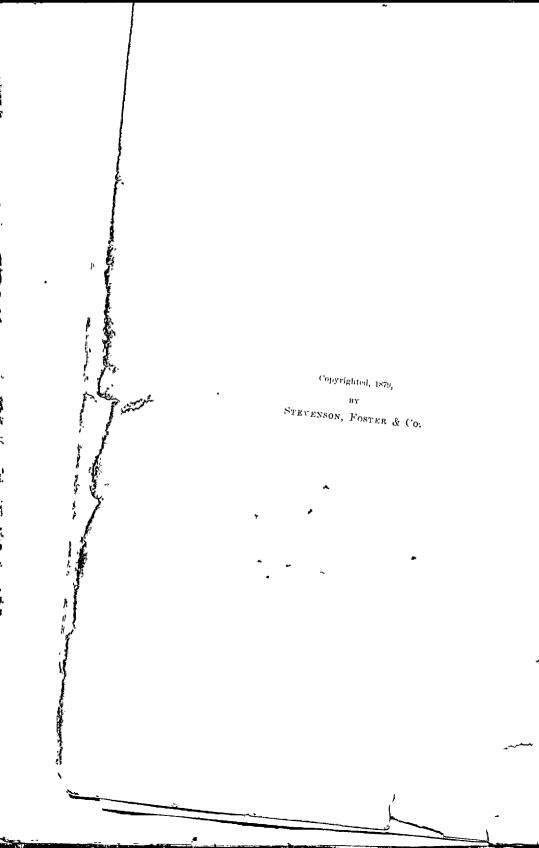
TOGETHER WITH A

DIGEST OF DECISIONS AND ACTS OF ASSEMBLY ON THE SUBJECT OF GENERAL RI LES OF COURT.

Compiled, Indexed and Annotated BY

WIL IAM C. ANDEFSON, Of the Allegheny Cunty Bar.

PITTSBURGH: PRINTED 'BY STEVENSON, FOSTER & CO., 48 FIFTH AVENUE. 1879.



# CONTENTS

J. ACTS OF ASSEMBLY AND DUC	_	ىلىم
I. ACTS OF ASSEMBLY AND DECISIONS ON RULES OF COURT,	GENERAL	
11 COMMON PLEAS,	v-xii	4
Rules of,	FOOT PAGE.	7
Appendix to,	17	4.,
Index to,	<sup>(</sup> 79)	
111. EQUITY PRACTICE IN PENNSYLVANIA, Rules of,	-83,	: * */3
Report on,	129	Ň,
Jndex to,	· · · · · · · · · · · · · · · · · · ·	
IV SEPARATE ORPHANS' COURT,	J. 5. F.	1 in 1 in 1 in 1 in 1 in 1 in 1 in 1 in
Rules of,		·~ 11 ~ ~ ~
, Schedule of Register's Fees, Index to,	- 185, 7202	and and
V. OYER AND TERMINER, QUARTER SESSIONS, EV Rules of,	- 228) I.C.,	がく
Index to,	(237)	AG
VI. SUPREME COURT OF PENNSYLVANIA, Rules of,	258 <sub>)</sub>	ין יו. <i>נו</i>
Index to,	259	- <u>74</u> 17
VII. BOARD OF PARDONS, Rules of,	(285)	
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# NOTE.

In this compilation will be found not only the Acts of Assembly, but also the Decisions of the Courts, down to January 1, 1879, relative to Rules of Court; as well as references to numerous Acts and Leading Cases regulating matters of practice thereunder.

"St\_B-" (Pransylvania State Report,) and "S. C." in capitals and between brackets before the abbreviated title of any unofficial report, designate Decisions of the Supreme Court. All other Decisions are from the lower Courts.

In the preliminary chapter, "General Bules of Court," the name of the county from which any Case was taken to our Supreme Court, is indicated. Throughout the rest of the book, the grade of the Court is likewise given, where not indicated by the Rule under which the Case is placed. W. C. A.

Pittsburgh, Pa., March 15, 1879.

By sub he print " statem relative 2. L requiren stateme

> By si Not

# AMENDMENTS

to the Rules of Court of Common Pleas, No. 1, and Court on Pleas, No. 2, of Allegheny County, for conformity to niformity with the Act of Assembly, approved 23 May, 2. 271 and 272. Adopted January , 1888.

# RULE 8 is amended-

striking out in the eighth and ninth lines the words, "where the unages can be liquidated without the aid of a jury."

substituting "fifteen days" for "ten days," wherever the same the printed rule.

# RULE 9 is amended-

ed rule.

# RULE 91, (new rule.)

he term "declaration" in these rules shall be held to include the ent" provided for in the Act of Assembly approved 25 May, 1887, to forms of actions and pleadings therein.

f the statement provided for in said Act shall also conform to the nents of rules eight and nine, no additional affidavit of claim or at of facts will be required.

# RULE 10. is amended-

ibstituting "fifteen days" for "ten days," in the sixth line.

E.—Rule 91 is not affected by the statute of 1887.

does not extend the time within which the defendant is bound

# RULE 92 is amended-

"ng "fifteen days' notice" for "ten days' notice," in second

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# RULE 96 is amended to read-

Judgments by default shall be entered by the prothonotary on precipe of the party entitled thereto, or his attorney, which precipe shall be filed Provided, That no judgment in default of an affidavit of defense to a statement filed by the plaintiff, shall be entered under this rule, unless such statements hal be verified by affidavit, and shall conform to the rules of Court.

# PLEADINGS.

RULE 117 is amended-

By substituting "fifteen days' notice" for "ten days' notice," in fourth line.

### RULE 119,

2. In actions of Assumpsit and Trespass, the plaintiff may, at any time, before the cause is put on the trial list, and thereafter by leave of Court, rule the defendant to furnish him with a bill of particulars of his defense. And in default thereof, for twenty days after notice, judgment may be cutered against the defendant on proof of notice and default; and on trial the defendant shall be confined to the defense he may have set forth in answer to the rule, unless amendment be allowed by the Court for cause shown.

RULES 122, 123, 124, 125 and 126 are suspended by the statute

# I. (\*

1. A rule of court is an order made by a court of A rule of court record. It is general when the order 'is standing and <sup>is what.</sup> made to regulate the general practice of the court'; and special, when the order is made in some particular case. Bouv. Dic., "Rule"; Election Cases [Phila.], 65 St: R. 20, (65); Dougherty v. Thayer et al. [Elk], 78 Ibid: 172; Deming v. Foster, 42 N. H. 165.

Regularity, justice and despatch are the chief The object of objects of a general rule of court: 'Vanatta v. Ander-court. son [Phila.], 3 Bin. 417; Ankrim v. Sturges [Greete],
 9 St. R. 275. Failing in these, it ceases to accomplish its legitimate purposes. Duncan v. Bell, Johnston & Co. [Blair], 28 Ibid. 516. It is an indispensable aid in the routine business of a court, and to this only does it properly apply. Magill's Appeal [All.], 59 Ibid. 430. It cannot abridge rights secured by positive laws. Dubois v. Turner [Phila.], 4 Y. 361. Imperfections in an act of assembly have been remedied by a rule of court. . Cochran v. Loring, 17 Ohio (Gris.) 409.

**3.** It is not essential that a court in establishing Whether a or changing its practice should do so by the adoption of rule of court one or more written rules of court. Its 'practice may to writing or be established' by a uniform mode of proceeding for a series of years. Duncan v. The United States, 7 Pet. 435, (451). Contra, Owens v. Rainstead, 22 Ill. 161, (173-174); State v. Ensley, 10 Iowa, 149.

4. A rule of court must soperate prospectively. How a rule of Reist's Adm'r v. Heilbrenner [Lan.], 11 S. & R. 131; erate. Dewey v. Humphrey, 5 Pick. 187. At may not disre-

gard a long settled practice though the practice have originated in error. Road from Jonestown [Leb.], 1 P. & W. 243 ; State v. Buchanan, 5 H. & J. (Md.) 331.

5. An act of assembly is a rule of court. Mc-A rule of court is part of the land, Cleary v. Faber et al. [Mer.], 6 St. R. 476. And a rule of court is part of the law of the court and part of the Deming v. Foster, 42 N. H. 165; law of the land. Ogden v. Robertson, 3 Green (N. J.) 124; David v. Ætna Ins. Co., 9 Iowa 45: Walker v. Ducross, 18 La.

Ann. 703.

attorney court in which he practices.

6. An attorney at law who prejudices a cause in rules of the which he has been retained, through his ignorance of a rule of the court in which he practices, is liable in an

action for damages. Dearborn v. Dearborn, 15 Mass. 316; Godefroy v. Dalton, 19 E. C. L. 468; Huntley v. Bulwer, 37 Ibid. 304 : Hunter v. Caldwell, 59 Ibid. 69; Stokes v. Trumper, 2 K. & J. 232; Cox v. Leach, 1 C. B. (N. S.) 617; Frankland v. Cole, 2 Cr. & J. 590.

#### II.

Express constitutional and statutory powers to establish general rules of court vested in the several civil and criminal courts of the commonwealth of Pennsylvania.

Express statutory power, conferred upon the Su-7. Supreme court of Pennsylvania, statu- preme court. express tory power t te

(1.) Act 25 Sept., 1786, § 6: "The justices of the supreme court have full power and authority, and are hereby directed, to make and establish such rules for regulating the practice of said court and expediting the determination of suits, as they in their discretion shall judge necessary." 2 Sm. 392.

Act 8 April, 1826, re-enacting Act. 20 March, (2.)1799, § 13, empowers the Supreme court, for the better conducting the business of the several Circuit courts: (a) to make rules relating to the execution of processes issuing out of said courts, and (b) to declare what rules should be of course and what rules discretionary or grantable on motion only. P. L. 1826-7, Appendix 9. (3.) Act 16 June, 1836, provides: § 3, that the Supreme court for itself and the other civil courts of the commonwealth shall by rule establish new writs and forms of proceedings—Purd. Dig. 1350 pl. 19-22; § 13, that it may by rule alter its practice in equity—Ibid. 598 pl. 47; § 21, that it may establish general rules for regulating its practice and expediting the determination of suits, causes, and proceedings pending before it—Ibid. 1351 pl. 31. See this last section (§ 21) in full, *infra* 8 (1a.)

(4.) The above acts conferred no power which the Supreme court could not have exercised independently of them. See Vanatta v. Anderson, Barry v. Randolph, Dubois v. Turner, and other cases cited under division III page ix.

8. (1.) Express statutory power, conferred upon the District and Common Pleas District courts and the courts of Common Pleas prior statutory power to the adoption of the Constitution of January 1, 1874 : to establish rules prior to January 1, 1874.

### a. COURTS OF COMMON PLEAS.

Act 16 June, 1836, § 21 : " Each of the said courts" (the Supreme, Common Pleas, Orphans', Oyer and Terminer, Quarter Sessions), "shall have full power and authority to establish such rules for regulating the practice thereof respectively, and for expediting the determination of suits, causes, and proceedings therein, as in their discretion they shall judge necessary or proper: Provided, that such rules shall not be inconsistent with the constitution and laws of this commonwealth." Purd. Dig. 233 pl. 136.

This act introduced no new principle. It was merely confirmatory of the law as it stood aa. DISTRICT COURTS.

Act 29 April, 1844, § 3: "The District court of Allegheny county shall have the same powers to make general rules and orders as are given to the District court for the county and eity of Philadelphia by act of the 11th of March, 1836." Purd. Dig. 503 pb.57.

Act 11 March, 1836, § 6: "The said court" (the District court for the county and city of Philadelphia) "sitting in bank, shall have, powerfrom time to time, by general rules and orders, to make such alterations and regulations in respect to the time and manner of pleading and the form and effect of pleadings and the verification and amendment before its passage. Mylin's Estate [Lan.], 7 W. 64. (May, 1838). It is to receive a liberal construction. Election Cases [Phila.], 65 St. R. 20. (Feb., 1870.)

The power to make rules and orders given to the District court of the county and city of Philadelphia by Act 11 March, 1836, § 6, (for which see opposite column) was extended to the Common Pleas-of Franklin, Bedford, Somerset, Fulton, Butler, and Lawrence counties by Act. 20 April, 1846, § 5, P. L. 412;-of Schuylkill county by Act 14 April, 1851, § 14, P. L. 625; - of Berks and Tioga counties by Act 21 April, 1852, § 1, P. L. 386; - of Fayette county by Act 1 May, 1852, § 8, P. L. 507 ;---of Cumberland county by Act 26 Feb., 1872, § 5, P. L. 165; to the Common Pleas No. 1 of Allegheny county by Act 29 April, 1844, § 3, and Art. V, sec. 6 of the Constitution of 1874.

thereof, and to variances occurring between the cause or causes of action alleged and the evidence offered in support thereof, in suits brought in said court, and such rules for carrying the same into effect either by way of staying proceedings in the action, or by payment of costs or otherwise, as shall be conducive to fairness, economy and despatch in the trial of such actions : Provided, that nothing herein contained shall be so construed as in any way to impair or affect the provisions of the 5th section of the act passed March 21st, 1806, entitled 'An Act to regulate Arbitrations and Proceedings in Courts of Justice' (Purd. Dig. 1166)." Purd. Dig. 500 pl. 33.

Common Pleas (2.) Constitutional power, vested in the courts of and Allegheny Common Pleas of the counties of Philadelphia and stitutional powrules. "In the counties of Philadelphia and

"In the counties of Philadelphia and Allegheny all the jurisdiction and powers now vested in the District courts and courts of Common Pleas, subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in four, and in Allegheny in two, distinct and separate courts of equal and co-ordinate jurisdiction.

#### viii

the several courts shall distribute In Philadelphia . . and apportion the business among them in such manner as shall be provided by rules of court." Constitution of January 1, 1874. Art. V, sec. 6.

The foregoing provision invests the new Common Pleas of the counties of Philadelphia and Allegheny with such express statutory power to establish rules of court as the old Common Pleas and the District courts of those counties possessed.

(3.) Express statutory power, conferred upon the Common Pleas, various courts of Common Pleas; subsequently to the tory power to adoption of the Constitution of 1874: since January 1, 1874.

Act 24 May, 1878, § 2: "The said courts shall have full power to make all necessary rules and regulations for the transaction of all business brought before them." P. L. 168.

9. (1.) Express statutory power, conferred upon the Orphans' courts, express various Orphans' courts, prior to the adoption of the statutory power to establish rules prior to January 1, 1874. Constitution of 1874:

Act 16 June, 1836, § 21: see supra 8 (1a.)

(2.) Constitutional power, vested in the various sep-Separate Orphans' courts, power to estab-lish rules under arate Orphans' courts':

"In every county wherein the population shall exceed one the Constitution hundred and fifty thousand, the General Assembly shall, and 1874. in any other county may, establish a separate Orphans' court. which shall exercise all the jurisdiction and powers now vested in or which shall hereafter be conferred upon the Orphans' Constitution of January 1, 1874. Art. V, sec. 22. courts."

Express statutory power, conferred upon the Orphans' (3.) various Orphans' courts, subsequently to the adoption statutory power to establish of the Constitution of 1874: uary 1, 1874.

Act 19 May, 1874, §§ 1, 3, 9: "In every county of this commonwealth there shall be organized and holden, on and after the first Monday of January, 1875, a court of record, the name and style whereof shall be 'The Orphans' Court of (the respective) county.' . . . In the counties of Philadelphia, Allegheny and Luzerne, the Orphans' court shall be a separate court of record. . . . The said courts shall have power to make all rules necessary for the exercise of the power hereby or which may hereafter be conferred." P. L. 206.

rules, since Jan-

Oyer and Terminer, express statutory power of Oyer and Terminer and Quarter Sessions of the Peace. rules. Act 16 June, 1836, § 21 : see supra 8 (1a.)

### III.

Inherent power to establish rules in every rently, as well as by act of assembly, to establish rules court of record, to reculate their practice and for the purpose of area

to regulate their practice and for the purpose of expediting the determination of suits, when such rules are not inconsistent with the Constitution and the laws of the commonwealth. Duncan v. Bell, Johnston & Co. [Blair], 25 St. R. 516; Hickernell v. Carlisle Bank Cum.], 62 Ibid. 146; Russell v. Archer [Ven.], 76 Ibid. 473; Gannon v. Fritz [All.], 79 Ibid. 303; Wilkins v. Anderson [All.], 11 Ibid. 399; Mylin's Estate [Lan.], 7 W. 64; Rundell v. Kesler [Brad.], Id. 237; Snyder v. Bachman [Lan.], 8 S. & R. \*336; Vanatla v. Anderson [Phila.], 3 Bin. 417; Barry v. Randolph [Phila.], Id. 277; Dubois v. Turner [Phila.], 4 Y. 361; Road from Jonestown [Leb.], 1 P. & W. 243; Fullerton v. U. S. Bank, 1 Pet. 604. Without this right. it would be impossible to despatch the public business. Snyder v. Bachman, and Barry v. Randolph, supra. The District courts and the courts of Common Pleas made rules long before any statutory power was expressly given to them. Many regulations of practice which were introduced into England by statute "have been the objects of rules of court in this country. Tilghman, C. J., in Vanatta v. Anderson, supra; Harres v. Commonwealth [Phila.], 35 St. R. 416. To regulate the practice is to prescribe the manner of conducting proceedings, the time for putting in pleadings, etc. is not easy to mark the line where this power ends. Vanatta v. Anderson, supra.

The power to make rules for all cases embraces the power to make a rule in a particular case. *Election Cases* [Phila.], 65 St. R. 20, (35).

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12. In the ordinary case the expediency of a rule of Expediency of court is to be determined by the sound discretion of the court by whose authority it is established. Mylin's Estate [Lan.], 7 W. 64. Only where wrong is manifest will the exercise of that discretion be interfered with. Gannon v. Fritz [All.], 79 St. R. 303. Alleged misapplication of a rule prescribed for the regulation of the court's own discretion is a question not reviewable by the Supreme court. Howser v. Commonwealth [Cam.], 51 Ibid. 332.

13. No discretion in the application of a general Discretion in applying a rule. rule of court to a particular case can be exercised unless that discretion is authorized by the rule itself. Thompson v. Hatch, 3 Pick. 516; Rathbone v. Rathbone, 4 Ibid. 189; Dewey v. Humphrey, 5 Ibid. 187; Ogden v. Röbertson, 3 Green (N. J.) 124; Fogoe v. Gale, 1 Wils. (K. B.) 162; Owens v. Ranstead, 22 Ill. 161, (173); Quynn v. Carroll's Adm'r, 22 Md. 280-(295).

14. May make a rule in a particular case in though Rule in a particular case in the effect is to exempt the case from the operation of the ordinary rules of court. Deming v. Foster, 42 N. H. 165; United States v. Breitling, 20 How. 252.

15. The Supreme court will hold the lower courts Exempting a to their plain, written, express rules of court, and, for puriew of a the sake of certainty and safety, permit no departure therefrom. Alexander v. Alexander [Miff.], 5 St. R. 277. It is not safe to attempt to meet exigencies with equivalents of compliance. M'Clurg v. Willard [Tioga], 5 W. 275; Erwin v. Leibert [Phila.], 5 W. & S. 103; Finlay v. Stewart [Arm.], 56 St. R. 183. Better have no rule at all than to depart from it on slight pretexts or to suit the emergence of a particular case. Rentzheimer v. Bush [Northamp.], 2 Ibid. 88; Walker v. Ducross 18 La. Ann. 703.

Contra. Some discretionary power in the application of a rule must remain in the court which establishes as in case of failure to comply with a rule from acdent, mistake or surprise. Snyder v. Bachman [Lag jxi

11 S. & R. \*336; *Magill's Appeal* [All.], 59 St. R. 430; *Shay* 'v. *Shay* [Phila.], IV Leg. Gaz. 317. It is always in the power of a court to suspend its own rule, or to except a particular case from its operation, whenever the purposes of justice require it. *United States* v. *Breitling*, 20 How. 252. One case where a rule seems to have been wholly dispensed with. *Tilden* v. *Worrell* [Phila.], 30 St. R. 272.

16. Every court is the best judge of its own rules, Construction faced up or and the Supreme court will not reverse for any construction given them that is not palpably erroneous. Coleman v. Naniz [All.], 63 St. R. 178; Wickersham v. Russell [All.], 51 Ibid. 71; Brennan's Estate [Schuyl.], 65 Ibid. 16; Bigoney v. Stewart [Clin.], 68 Ibid. 318; Kountz v. Cilizen's Oil Co. [All.], 72 Ibid. 392; Gannon v. Fritz [All.], 79 Ibid. 303; Frank v. Colhoun [All.], 59 Ibid. 381; In re Whitehall Township I. claim. ], 47 Ibid. 15 Daniel v. Wilver [Daw-ph.], 24 Ibid. Elkinton v. Fennimore [1 mila.], 13 Ibid. 173; Wilkins v. Anderson [All.], 11 Ibid. 399; Ankrim v. Sturges [Greene], 9 Ibid. 275; Umberger v. Zearing [Dauph.], 8 S. & R. \*163; Snyder v. Bachman [Lan.], Id. \*336: This applies to a case that comes within the spirit of a rule. Ellmaker's Ex'r's v. Ins. Co. [Phila.], \* 5 St. R., 183. An alleged mistake in construction must be very obvious to induce the Supreme court to reverse for that reason alone. Dailey v. Green [Union], 15 Ibid. 118, (128). Every rule is of course to be interpreted in the light of its history. Fleming v. Beck [Arm.], 48 Ibid. 309. And if it be clearly void, the Supreme court has no right to consider consequences ; but if it be doubtful, it is the court's duty to do so. Vanatta v. Anderson [Phila.], 3 Bin. 417. A rule must not by a literal construction be extended to a case not within its object. Ferguson v. Kays, 21 N. J. L. (1 Zab.) 431. Nor in any case is a rule to be so rigidly enforced as to work injustice. Sterling v. Ritchey [Dauph.], 17 S. & R. 263. But, instead, it is always to be administered in subordi-

nation to the rights and equities of suitors. *Magill's* Appeal, [All.], 59 St. R. 430; Shay v. Shay [Phila.], IV Leg. Gaź. 317.

17. The court will always remedy its inadvertent Amend violation of its own rule. Crosby v. Massey [Lan.], 1 ments of a of court. P. & W. 229. An amendment to fulfill the requirements of a rule will generally be allowed when offered without unreasonable delay and before much expense and costs have accrued. Magill's Appeal, and Shay v. Shay, supra.

#### IV.

of court altering the general law of evidence. Doe v. stitut Winn, 5 Pet. 233, approved in Odenheimer v. Stokes [Phila.], 5 W. & S. 175. A rule altering the manner of serving a notice made necessary by a statute preparatory to instituting a suit. Byerly v. Vankirk [West.], 5 W. 370; Boas v. Nagle [Dauph.], 3 S. & R. 250. A rule in the nature of an act of limitations. Reist's Adm'r v. Heilbrenner [Lan.], 11 Ibid. 131. A rule adding terms to those already prescribed by statute for exercising the right of arbitration. Hickernell v. Carlisle Bank [Cum.], 62 St. R. 146. A rule regulating the selection of road reviewers in a manner contrary to statutory directions and the practice in the other counties of the commonwealth. Road from Jonestown [Leb.], 1 P. & W. 243. A standing rule on a garnishee to answer where a special rule was held to be contemplated by the act of assembly. Ringwalt v. Brindle [Cum.], 59 St. R. 51: Contra, Dougherty v. Thayer et al. [Elk], 78 Ibid. 172.

19. The Common Pleas of Philadelphia had a set Early s of written rules of court as early as January Term, court. 1788, express statutory authority to establish them having been conferred by Act 25 Sept., 1786. Barry v.

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Randolph [Phila.], 3 Bin. 277. And the first collection of written rules in the District court for the same county and city seems to have been promulgated February 1, to go into effect February 8, 1812. 2 Brown. Appendix 1 to 14.

The first collection in the "fifth circuit" was made in September, 1791, by Judge Alexander Addison. Coulter, J., in *Wilkins* v. *Anderson* [All.], 11 St. R. 399. Westmoreland and Allegheny counties, together with Fayette and Washington in 1791 and for some time thereafter, constituted the "fifth circuit," then comprehending the whole of the western part of the State. Rules were likewise published in this circuit in 1796 and 1811. Agnew, J., in *Fleming* v. *Beck* [Arm.], 48 Ibid. 309.

# RULES

OF THE

# COURTS OF COMMON PLEAS

ALLEGHENY COUNTY.

### JUDGES

OF THE

# COURTS OF COMMON PLEAS

0 F

# ALLEGHENY COUNTY.

COMMON PLEAS No. 1. Hon. Edwin H. Stowe, P. J. Hon. Frederick H. Collier, A. J. Hon. John H. Bailey, A. J.

COMMON PLEA'S No. 2. Hon. Thomas Ewing, P. J. J Hon. John M. Kirkpatrick, A. J. Hon. J. W. F. White, A. J.

# RULES

#### OF THE

# COURTS OF COMMON PLEAS.

### ABATEMENT.

#### RULE 1.

If the plaintiff in any action be dead, and the person For death and to whom the same shall survive shall not be substituted within one year, or if the defendant shall die, and process be not issued within one year thereafter, to make the proper person a party thereto, in case he does not within said time voluntarily become a party to said action, the suit shall abate, and the Court shall, upon affidavit of the death and that said time has elapsed, direct the prothonotary to mark the action abated accordingly:(a)

(a). This rule applied to an action pending would operate retrospectively and as an act of limitations, and be void. *Reist's Adm'r* v. *Heilbrenner* [Lan.], 11 S. & R. 131.

#### RULE 2.

Whenever an order shall be made in any cause staying Abatement for proceedings by the plaintiff therein until the payment contraction of of costs in any previous action, it shall be the duty of action. the prothonotary, at any time after the expiration of one year from the making of such order, at the instance of

(17)

RULES OF THE COURTS OF COMMON PLEAS.

any person interested, to enter judgment of non pros., unless the person liable to pay such costs shall have previously filed written evidence of the fact of payment.

## ACCOUNTS OF ASSIGNEES, &c.

# RULE 3.(a)

Notice of filing, for allowance tion.

Notice of the filing of all accounts of assignees and and confirma- trustees shall be published once a week for three weeks consecutively in the Pittsburgh LEGAL JOURNAL and in one daily newspaper of the county of Allegheny, setting forth that the said accounts will be allowed by the Court, at a certain day to be stated in said notice not less than twenty days from filing of the account, unless cause be shown to the contrary; and upon due proof being Exceptions to confirmation. made of said publication, the account shall be confirmed nisi, on the day named, unless exceptions be filed thereto; but the account shall be open to exceptions for ten days thereafter, when, if no exception be filed, the same shall be confirmed absolutely.

(a) Authorized by Act 14 June, 1886; § 9, Pyrd. Dig. 1417 pl. 10 ; Act 4 May 1864, § 2, Ibid. 93 pl. 18.

### ADMISSIONS FOR THE PURPOSE OF EVIDENCE.

In actions by or against partners, it shall not be me-Farmership. In actions by or against partners, it shan, not when plaintiff, on the trial, to prove the partner-not required to cessary for the plaintiff, on the trial, to prove the partnerprove. ship, but the same shall be taken to be admitted as -

RULE 4.(a)

alleged on the record, unless one or more of the defend-

(18)

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ants shall, by affidavits [affidavit] filed with or before the plea, deny the existence of the partnership(b) as alleged, and state whether there is any partnership in relation to the subject matter of the action, and, if any, who are the parties thereto.

(a) This rule is valid. Odenheimer v. Stokes [C. P. Phila.], 5.W. & S. 175.

(b) An affidavit denying liability, but not the partnership, estops defendant from denying the partnership at trial. *Prescott* v. *Buckwalter* [S. C., Jeff.], 1 W. N. C. 58.

H. and D. were sued as co-partners for work done. Plea—without an affidavit as required: H. is not a partner and did not order the work. *Held*, evidence of no partnership inadmissible. *Muller* v. *Häggarty*, [C. P. 2, Phila.], 2 W. N. C. 427.

#### RULE 5.(a)

In actions founded upon any deed, bond,(b) bill, note(c) Execution of or other instrument of writing, a copy of which shall be writing, when filed with or before the declaration, it shall not be ne-quired to prove. cessary for the plaintiff, on the trial, to prove the execution thereof, but the same shall be taken as admitted, finless the defendant, by affidavit filed with or before his plea, shall deny that the same was executed by him or by his authority.

The same rule, mutatis mutandis, shall apply in cases copy of set-off.", of set-off-the defendant filing the copy of the instrument with or before his plea, and the plaintiff his affidavit of denial within ten days after notice.

(a). To prevent unnecessary expense and useless delays and objections. Does not interfere with the rules of evidence. Simply requires sworn notice of intention to contest proof of execution—failure to do which waives objection. Odenheimef. Y. Stokes. [D. C. Phila.], 5 W. & S. 175; Mills v. U. S. Bank, 11 Wh. 431.

(b) H. sued M. on his insolvent, bond, filing with his precipe a copy. M.'s plea: Non est factum, not sworn to as required by this rule. *Held*, H. could give the bond in evidence without proof of execution. *McGovern* v. *Hoesback* [C. P. Alk.], 53 St. R. 176.

(c) 'O. denied that the note sued on and purporting to have been made by his firm, was made or given by him, and averred that he knew nothing further about it.". Held, sufficient to put H. to proof of execution. Hogg v. Orgill [D: C. All.], 64 St. R. 344.

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### RULES OF THE COURTS. OF COMMON PLEAS.

#### RULE 6.

When cost of In actions where either party may wish to give in eviproving written document, not dence any written documents, not directly put in issue may be put on by the pleadings, he shall be entitled, of course, to a

rule on the opposite party to admit such written documents on the trial of the cause, and if the opposite party or his attorney shall not admit, in writing, the alleged documents within ten days after service of the rule and exhibition of the documents, the Court may order such party to pay the costs of making proof thereof; if it shall appear that he has unreasonably neglected to comply with the rule :

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Admission of such document, how construed.

f Provided, That such admission shall not be construed to extend to the competency or relevancy of such documents to support the issue, but only that they are genuine, or what, on their face, they purport to be.

#### RULE 7.(a)

Books of orig-In actions where the demand may be proved by copy filed is evi-books of original entry, if the plaintiff shall file with or before his declaration, a sworn copy of his account, as taken from his books of original entry, (b) the same shall be admitted as evidence, unless the defendant, by, affidavit, filed with or before his plea, shall state that he had no such dealings with the plaintiff as those

stated in the account filed, (c) or that he verily believes the production of the plaintiff's books of original entry, on the trial, is necessary to a just decision of the causes

Copy of set-off.

The same rule, mutatis mutandis, shall apply in cases of set-off—the defendant filing a sworn copy of 'his account with or before his plea, and the plaintiff his counter affidavit within ten days affier notice.

(a) To allow a sworn copy to be given in evidence whenever books of original entry would be evidence. McCloy v. Maffett's Adm'r [C. P. All.]; 59, St. R. 344.
(b) L, filed "an accurate" transcript from the books of the firm," verified.
B. failed to deny the dealings and to aver the production of the books necesing.

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#### RULES OF THE COURTS OF COMMON PLEAS,

sary. Held, the parties stood related as if L.'s books had been regularly proven by legal evidence. Blackstock v. Leidy [D. C. All.], 19 St. R. 335.

(c) McC. alleged only that the prices charged in M.'s account were too high. Held, M.'s sworn copy might be given in evidence. McCloy v. Maffett's Adm'r, supra. And see Nellis v. Reiter, Rule 8, note 3, paragraph 4.

### RULE 8.(a)

SEC. 1. In all actions on recognizances, judgments, Plaintiff must and other records, mortgages, mechanics' liens, policies fication of items with statement of insurance, book accounts, bills, notes or other instru- of facts. ments of writing for the payment of money, and on all. contracts for the payment of money, whether the same be in-writing or not, and in all actions founded on contract, express or implied (whether in form ex contractu or ex delicto), where the debt or damages tean be, liquir. dated without the aid of a jury, the plaintiff shall file with or before his declaration a specification of the items of his claim, together with a statement of the facts necessary to support it, verified by affidavit, (b) to which defendant shall, within the time hereinafter specified, file an answer verified by affidavit, and such items what items to of the claim and material averments of fact as are, not be taken the addirectly and specifically traversed, and denied by the fondant's denig answer shall be taken as admitted.(c)SEC. '2: If the specification and statement be filed " Specification, with the precipe, they shall be taken as an affidavil of precipe de claim, and defendant shall, without further notice; file his answer thereto within the time required for filingaffidavits of defence, which answer shall be taken as an affidavit of defence. If the specification and statement giled be not filed with the precipe, the plaintiff shall within 15 ten days after filing the same, notify the 'defendant. thereof, and defendant shall within the days thereafter

file an answer thereto.

SEC. 3. This rule shall, apply to a specification and specification. statement of set-off filed by defendant, who shall, within  $e^{tc.}$ ,  $e^{t}$ ,  $e^{tc.}$ ,  $e^{t}$ ,  $e^{tc.}$ ,  $e^{tc.$ 

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#### RULES OF THE COURTS OF COMMON PLEAS.

Judgment.

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thereof, file his reply thereto, verified by affidavit. If the plaintiff fails to comply with any of the requirements of this rule, judgment of non pros. shall be entered against him by the prothonotary; and if the defendant fails to comply with any of the requirements hereof, the plaintiff shall be entitled to judgment against him as for default of a plea and affidavit of defence.

Evidence trial.

SEC. 4.

at the cause as to any facts not substantially alleged or referred to as a ground of action or matter of defence in Supplemental the statements then on file in the cause. Either party affidavit before, and after entry may at any time before the cause is placed on the trial

No evidence will be heard upon the trial of

list, supplement his affidavit, as of course, giving notice thereof in writing to the opposing counsel, within sen days of the filing of such supplemental-affidavit; but after the cause has been placed on the trial-list, such supplemental-affidavit shall be filed only by special allowance of the Court, and upon such terms as to notice, costs and continuance, as may be deemed just and proper under all the circumstances of the case.

(a) To prevent surprise and secure an exact record of what is adjudicated. It is to be rigidly enforced. Finlay v. Stewart [Arm.], 56 St. R. 183. Compare Erwin v. Seibert [C. P. Phila.], 5 W. & S. 105; McCloy v. Maffett's Adm'r [C. P. All.], 59 St. R. 344.

(b) In a claim for necessaries furnished a deserted wife, plaintiff-must state such facts as would bring him within the rule authorizing the necessaries, Hultz v. Gibbs [C. P. All.], 66 St. R. 360.

(c) On taking judgment for a sum admitted, see Rule 11, page 10:

An averment that plaintiff had raised the price of oil to eighteen cents is gallon through a combination to create an artificial scarcity was held not an admission that eighteen cents was the market value. Kountz v. Citizens' Oil Co. [Q. P. All.], 72 St. R. 392.

Plaintiff charged interest. Defendant averied he did not deal with plaintiff, but with one C. whom' he had paid. By agreement all 'transactions between the three parties were "to be considered in the action," and defendant was to file a new affidavit. The new affidavit admitted the "dealings and business 'transactions," but did not deny the charges of interest. Held, defendant might give in evidence an agreement that interest was not to be charged. O'Conner v. Iron Co. [C. P. All.], 56 St. R. 234.

R. filed a sworn copy of his original entries. N. denied indebtedness generally, and in general terms averred that the purchase was under a parol contract for prices less than the prices set out in the copy. R. gave in evidence the

(22)

copy under objection by N. that Rule 7 (being old C. P. Rule 4) disallowed it. Held, that under this section (being old C. P. Rule 5) the only fact in issue was the parol contract. Nellis v. Reiter [S. C., C. P. 1, All.], 2 W. N. C. 203.

Compare Howard v. Allegheny Valley R. R. Co. [C. P. All.], 69 St. R. 489;

Woods v. Watkins [D. C. All.], 40 Ibid. 458. (d) Proof of items of set-off before arbitrators is not a waiver of the notice. Rentzheimer v. Bush [Northamp.], 2 St. R. 88.

Compare Gannon v. Fritz [C. P. 1, All.], 79 St. R. 303; O'Hara v. Baum [C.

P. 1, All.], 82 Ibid. 416.

# AFFIDAVITS OF CLAIM AND DEFENCE.1

#### RULE 9.

In actions on recognizances, judgments and other When plaintiff records, mortgages, mechanics' liens, policies of insur- $\frac{copy}{defendant}$  files ance, book accounts, bills, notes and other instruments defendant files of writing,( $\alpha$ ) and all contracts for the payment of money, fence, etc. whether the same be in writing or hot, and in all other actions founded on contract (whether in form ex contractu or ex delicto),(b) where the debt or damages can be 1liquidated without the aid of a jury, if the plaintiff shall file with(c) his precipe an affidavit stating the amount he believes to be due from the defendant, and a copy(d) of the book entries,(e) instrument of writing, record or claim;(or a statement of the contract, if it be not in writing), together with a statement of the facts necessary to support his claim and shall have filed his declaration, if one be necessary, he shall be entitled to judgment(f) at any time after the return day and the days' service(g) of the writ; unless the defendant, or some one for him, (h) shall have -filed an affidavit of defence, stating therein specifically

and at length, (i) the nature and character of his defence. Provided, that invactions on mortgages, mechanics' When copy not liens, recognizances, or other records(j) of the several, courts of this county, a copy shall not be required if the plaintiff files with his precipe a proper reference to the place of record or entry of such mortgage," mechanics' (23)

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### RULES OF THE COURTS OF COMMON PLEAS.

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Policy of insur-lien, recognizance or other record; and in actions on policies of insurance, a copy shall not be required, if the plaintiff embodies in his affidavit of claim a statement containing the date of the policy, a brief description of the property or interest insured, the peril or perils insured against, and the time and place when and where the loss occurred, and a description of the property injured or destroyed, and the value thereof; and also

Provided, that executors and other persons acting in When executor, dc., not re-quired to file a fiduciary capacity(k) shall not be required to file an affidavit. affidavit of claim or defence, except when the action is founded on some contract or act of such executor or other trustee.

(a) The instrument on its face must be such as to fasten a liability on the defendant before he is to deny its genuineness or to set up matter of defence. Wall v. Dovey [D. C. Phila.], 60 St. R. 212. The judgment by default not being according to the course of the common law is only to be given in the cases authorized by the statute (q. v. Purd. Dig. 495 (3); 1165, III.), Feist v. Prince [Schuyl.], 2 Leg. Chron. 135; Dewart v. Masser [Northum.], 40 St. R. 302; Ringwalt v. Brindle [Cum.], 59 Ibid. 51. See note (e) infra. Contracts. and instruments not within the statute, see Common Pleas Appendix Α.

(b) Compare Woodwell v. Bluff Mining Co. [D. C. All.], 25 St. R. 365; Barr & Son v. Duncan [C. P. 2, All.], 76 Ibid. 395.

(c) This does not mean "attached to." Hossler v. Hartman [York], 82 St. R. 53.

(d) The copy is notice of the subject of the suit and whether the same is within the rule.. If it is not filed, or being filed does not show a contract for the payment of money, judgment cannot be entered by default. Knapp v. Oil Co. [C. P. All.], 53 St. R. 185. Any step necessary to fix liability on a maker, drawer or indorser being] presumed to have been taken need not be avorred. McConeghy v. Kirk [D. C. Phila.], 58 Ibid. 200; Sleeper A. Dougherty, [D. C. Phila.], 3 Wh. 177. See, further, Common Pleas Appendix B.,

The plaintiff in his averments is restricted to a statement of his claim and his title to sue on the instrument. The better practice does not permit him to allege facts dehors in the absence of which recovery would be impossible. Int hoff v. Brown [D. C. Phila.], 39 St. R. 504; Montour Iron Co. v. Coleman [D. C. Phila.], 31 Ibid. 80; Hunter v. Reilly [Berks], 36 Ibid. 509; McConeghy v. Kirk, supra:

(e) Such entries in books of original entry as would be competent to ge to a jury as evidence of plaintiff's claim. Wall v. Dovey [D. C. Phila.], 60 St. R. 212. What are not such entries, see Common Pleas Appendix C.,

(f) This depends upon the cause, not the form, of action: Barr & Son v. Dun-can [C: P.24 All.], 76 St. R. 395. It is interlocutory only where the sum is un-(24)

certain. . Sellers v. Burk [C. P. Phila.], 47 Ibid. 344. It will be opened on prompt'application and the showing of an excusable reason for apparent laches, with oath to a good defence. Gump's Appeal [Bed.], 65 Ibid. 476; Wilson v. Hayes [Lan.], 18 Ibid. 354. See Rule 90, page 39.

(g) Defendant has all of the last day. Duncan v. Bell & Co. [Blair], 28 St. R. 516. In a proper case the time will be extended, or as against the defendant judgment will be indefinitely suspended. Lord v. Ocean Bank [D. C. Phila.], 20 Ibid. 384. The affidavit will both time if filed before the motion for judgment. Gillespie v. Smith [D. C. Phila.], 13 Ibid. 65. After judgment against husband by default a separate rule must be entered against the wife. Eisenbery v. Negus et ux. [C. P. 3, Phila], 2 W N. C. 445.

(h) When some other, see Rule 13, page 12.

(i) It must state whether to the whole or to a part of the claim. Rule 11, page 10. On insufficiency, see Rule 12, page 11.

(j) See Purd. Dig. 496-7, pl. 14-20.

(k) In the ordinary case he was a stranger to the transaction. Should he file an affidavit on information and belief, judgment for insufficiency will not be entered against him. Seymour v. Hubert [C. P. 1, Phila.], 83 St. R. 346.-Widow or heir need not. Stadelman v. Penn. Co. [C. P. 2, Phila.], 6 W. N. C. 134. Nor committee of a lunatic. Alexander v. Ticknor [D. C. Phila.], 1 Phila. 120. Nor an infant. Reed v. Bush [C. P. Phila.], 5 Bin. 455. But a guardian must, on behalf of his ward. Charlton v. Allegheny, City [C. P. All.], 1 Grant, 208. A municipal corporation need not. Act 26 March, 1858, & 8, Purd. Dig. 1165, pl. 9.

The Blair county rule includes a policy of insurance. Lycoming Ins. Co. v. . Dickinson [S. C.], 4 W. N. C. 271. On rule in Clinton county, see Karthaus. v. Coal Co. [S. C.], 1 Ibid, 366. Time, under rules in general and rule in Schuylkill county in particular, see McPhilips v. Ins. Co., 2 Leg. Chron. 268.

10n .the origin (Sept. 11, 1795) and growth of this practice, see Sellers v. Burk [C. P. Phila.], 47 St. R. 344; Clark v. Dotter [D. C. Phila.], 54 Ibid. 215; Detmold v. Coal Co. [U. S. D. C., E. D. Pa.], 3 W. N. C. 567, note. On the various acts of Assembly, see Purd, Dig. 495 pl. 13-20; Ibid. 1165, III, and notes salso Feist v. Prince [Schuyl.], 1 Leg. Chron. 135. The court by rule alon'e could require an affid vit of defence. Hogg v. Charlton [D. C All.], 25 St. R. 200; Harres v. Commonwealth [C. P., Phila.], 35 Ibid. 416.

Such rule, or Act, is constitutional. Hoffman v. Locke [Berks] 19 St. R. 57; Lord v. Ocean Bank [D. C. Phila.], 20 Ibid. 384; Lawrence v. Borm [C. P. ; s. c. 5 W. N. C. 187. It prevents delay of justice 1. Phila.], 86 Ibid. through false defences. Wilson v. Hayes [Lan.], 18 St. R. 354; Bloomer v. Reed [D. C. All.], 22 Ibid. 51. But the practice is in derogation of the right of trial by jury, and every rule and statute on the subject is to receive a strict construct tion. Yales, v. Borough of Meadville [Craw.], 56 Ibid. 21; Wall v. Dovey [D. C. Phila.], 60 Ibid. 212; Boas v. Nagle [Dauph.], 3 S. & R. 250. The procedure, too, being somewhat summary, plaintiff must comply with every requirement. Knapp, v. Oil Co. [C. P. All.], 53 St. R. 185. See further, Rule 12, Note 1, page 11.

(25)

# BULES OF THE COURTS OF COMMON PLEAS.

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appeal justice

# RULE 10.(a)

Affidavit In appeals from justices, the plaintiff shall file with or 'n before his declaration an affidavit setting forth the nature of his claim, a statement of the facts upon which he relies to recover, and the amount he believes to be due from the defendant; and unless the defendant shall within the days after notice thereof file an affidavit setting forth specifically and at length the nature and character of his defence, the plaintiff shall be entitled 'to judgment. If the plaintiff neglects to comply with this rule, judgment(b) of non pros. shall be entered against him by the prothonotary.

(a) The court may make a rule like this. Lloyd v. Tondy [S. C., C. P. 1, Phila.], 4 W. N. C. 225. On the rule of 1838 in Dauphin county, see Rundell v. Keeler, 7 W. 237.

(b) A default not taken sec. reg. will be set aside. Saylor v. Norris [Schuyl.], 2 Leg. Chron. 231. And see Feist v. Prince [Schuyl.], 1 Ibid. 135.

# RULE II.(a)

Affidavit In all cases where an affidavit of defence is required of defence to whole or part of claim. by these rules, it shall state whether the defence is to the whole or to only a part of the plaintiff's claim, and if only to a part, it shall state to what part, and in such case the plaintiff may proceed to trial for his whole Judgment for claim, or at his option take judgment for the part not recipe to state denied, nor [or] admitted by the defendant, which shall be final for the purposes of lien and execution, but shall not be a bar to the recovery of the residue of his claim; provided he shall state in his precipe for said judgment, that he declines to accept the same in full satisfaction of his claim and elects to proceed for the balance; other, wise he shall be barred from further proceedings, and Costs on fail said judgment shall be taken as final. If the plaintiff ure takes such a judgment, and proceeds for the residue of part denied. his claim and fails to recover, in addition to the amount for which he has taken judgment, he shall pay all (26)

costs(b) accruing in such action subsequent to the taking of said judgment.

(a) This rule is valid. (The first judgment is interlocutory except for purposes of execution. Coleman v. Nantz [B. C. All.], 63 St. R. 178; Russell v. Archer [Ven.], 76 Ibid. 473. See M'Kinney v. Mitchell [Union], 4 W. & S. 25; Brazier v. Banning [D. C. Phila.], 20 St. R. 345.

(b) See Rule 67, page 30.

#### RULE 12.

When the plaintiff(a) considers an affidavit of defence Rule for insufficiency in insufficient, (b) he may enter a rule of course on defendant affidavit of deto show cause why judgment should not be entered for want of a sufficient affidavit of defence, and at the same time he shall specify in writing wherein the affidavit is insufficient; and at any time before the rule is regularly Supplemental cause shown, the defendant may file a supplemental affidavit of which he shall notify the plaintiff's attorney; but no rule shall be called for argument unless the Argument of plaintiff shall have given defendant's attorney five days' tice to be given. notice in writing of the taking of said rule.

(a) Plaintiff must have complied with all the requirements of the affidavit of claim rule, otherwise a judgment given him will be reversed although the defence be insufficient. Gottman v. Shoemaker [Craw.], 86 St. B. 31; s. c., 5 W N. C. 381.

(b) On the question of alleged insufficiency the court draws the conclusion of the law upon the facts set out in the affidavit. Stitt v. Garrett [D. C. Phila.], 3 Wh. 281; Comly v. Bryan [D. C. Phila.], 5 Ibid. 261; Marsh v. Marshall [Erie], 53 St. R. 396.

For the purposes of a hearing the affidavit must be taken as absolutely true and cannot be contradicted even by a record. *Feust* v. *Fell* [C. P. 2, Phila.], 6 W. N. U. 43. A principal test of sufficiency is to consider the affidavit as a plea in substance divested of all formal or technical parts. *Kirkpatrick* v. *Wensel* [Schuyl.], 2 Leg. Chron. 303.

It is sufficient to set forth—1, the necessary elements of a good defence, Selden v. Neemes, [C. P. All.], 43 St. R. 421;—2, specifically and at length such facts as will warrant the logal inference of a full and legal defence, Bryar v. Harrison, [D. C. All.], 37 Ibid. 233;—3, such facts as if proved before a jury would constitute a good prima facie defence, Mellor v. Negley, [D. C. All.], 1 Pitts. 110;—4, facts showing a solid ('talid?) defence which can probably be established, Leibersperger v. Reading Bank, [Berks (and Phila.)], 30 St. K.

(27)

# 12 < RULES OF THE COURTS OF COMMON PLEAS.

,531;--5, a prima facie good and valid defence, Chartiers R. R. Co. v. Hodgens, [Wash.], 77 Ibid. 187;--6, a substantially good defence, Thompson v. Clark, [Erie], 56 Ibid. 83.

The facts are to be averred with reasonable precision. Bronson v. Silverman, [Craw.], 77 St. R. 94. Need not meet every objection which fine critical skill may deduce, Leibersperger v. Reading Bank, supra; nor state the manner nor the evidence by which the facts will be proved. Bronson v. Silverman, supra. While an allegation doubtfully stated or clearly evasive is to be disregarded, defendant is not to be held to a rigor of statement so severe as to catch him in a mere net of form. Lawrance v. Smedler 55 C of a statement so severe as to catch him in a

mere net of form. Lawrance v. Smedley [S. C., C. P. 1, Phila.], 6 W. N. C. 42. A reasonable intendment is to be made in favor of the affidavit. Twitchell v. McMurtrie [D. C. Phila.], 77 St. R. 383. But no essential fact is to be left to inference, Peck v. Jones [C. P. All.], 70 Ibid. 83: because what is not said is taken net to exist. Lord v. Ocean Bank [D. C. Phila.], 20 Ibid. 384. And (when justifiable) inferences and intendments are not to be pressed beyond the ordinary meaning of the terms employed, Marsh v. Marshall [Erie], 53 Ibid. 396: inasmuch as a party swearing in his own cause is presumed to swear as hard as he can with a good conscience. Selden v. Neemes [C. P. All.], 43 Ibid. 421.

On waiver of right to judgment see O'Neal v. Neemes [C. P. All.], 43 Ibid. 421. 395. A married woman need not allege more than coverture and that the credit given was not for necessaries. Imhoff v. Brown [D. C. Phila.], 30 Ibid. 504. A defence on the ground of fraud must show in what facts the alleged fraud consisted. Sterling v. Ins. Co. [D. C. All.], 32 Ibid. 75; Reamer v. Bell [C. P. 2, All.], 79 Ibid. 292.

Error lies for refusal to enter judgment on alleged insufficiency. Act 18 April, 1874, § 1. P. L. 64. This Act is intended to reach only clear cases of error in law. Griffith v. Sitgreaves [S. C., Northamp.], 2 W. N. C. 707.

# RULE 13.

Affidavits, by Aff affidavits required by these rules may be made by made. Facts to the parts or his agent (a) All facts and statements which are within affiant's knowledge shall be sworn or affirmed to be true, and all other facts and statements shall be sworn or affirmed to be true, and all other facts and statements formed and believes, and expects to be able to prove on the trial of the cause (b)

(a) The practice at some courts is to require the defendant himself, to make his affidavit of defence unless cause is shown why he cannot, the sufficiency of which cause is a matter for the judgment of the court. City v. Devine [C. P. 2, - Phila.], 1. W. N. O. 358. Necessary absence, or illness, is sufficient. Clymer v. Filler [C. P. 4, Phila.], Id. 626; Burkhart v. Parker [Bea.], 6 W. & S. 480. To prevent judgment by default a stranger who is interested may make an affidavit of defence. Hunter v. Reilley [Berks], 36 St. R. 509. Affiant's interest as stranger, agent or principal, must appear. Blew v. Schockt[S. C.

88)

### RULES OF THE COURTS OF COMMON PLEAS.

Schuyl. J, 1 W. N. C. 612. An attorney cannot make it on information from his client, Crine v. Wallace [S. C., Schuyl.], Id. 293; but he may, to take out a writ of error to the Supreme court, Act 11 June, 1832, § 3, Purd. Dig. 604, pl. 13; or, to take an appeal to the same court, or a certiorari to the Common Pleas or Quarter Sessions on a justice's record. Act 27 March, 1833, § 2. Purd. Dig. 604, pl. 14.

(b) When defendant avers facts on information and belief he must add that he expects to be able to prove them, or set out specifically the source of his information or the facts themselves upon which his belief, rests. Black v. Halstead [Northamp.], 39 St. R. 64; Thompson v. Clark [Erie], 56 Ibid. 33. This affords a presumption that proof can be made. Clarion Bank v. Gregg [Clar.], 79 Ibid. 384; Renzor v. Supplee [D. C. Phila.], 81 Ibid. 180. Positive averment of truth is enough. Eyre v. Yoke [D. C. Phila.] 67 Ibid. 477; Moeck v. Littell [C. P. 2, All.], 82 Ibid. 354.

### ARBITRATION AND AWARD.

#### RULE 14.

If arbitrators are not chosen at the time specified in \_\_\_\_\_Striking off the rule, the prothonotary shall strike off the rule at the cost of the party taking it out unless the parties otherwise agree.

#### RULE 15.

No exception to an award of arbitrators will be con-Excepting to sidered, unless filed within twenty days after the award is filed and verified by affidavit as to facts not appearing on the record.(a)

<sup>1</sup>Additional terms to those prescribed by statute for exercising the right of arbitration cannot be imposed by rule. Hickernell v. Carlisle Bank [Cum.], 62 St. R. 146. Nor can defendant enter a rule of reference before he has filed his affidavit of defence. Act 14 May, 1874, P. L. 159.

Irregularities in appointing arbitrators, or in their proceedings, when apparent on the record, may be corrected by a writ of error, but those which are made by extrinsic proof can be corrected only by the could below. Wilcox v Payne [S. C., Erie], 19 (N. S.) Pitts. L. J. 67.

Until the arbitrators are appointed it must appear by the record that everything is regular; but after they are appointed, the proceedings are out of court and need not be reduced to writing. Id. (29)

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(a) Every presumption is made in favor of the award unless flagrant error appears in the record. Wilcox v. Payne, supra.

#### RULE 16.

Bail in appeal In appeals from awards, if, within the time allowed from award, exfrom award, extifying and just by the Act, bail is entered which the appellee deems insufficient, he may, within ten days after the fime allowed for appeal, give the appellant or his attorney written notice(a) that he excepts to the bail: whereupon the appellant shall, within ten days after such notice, justify the bail before the prothonotary, giving the appellee or his attorney twenty-four hours' notice; in default whereof, the bail shall be deemed insufficient, and, on motion, the appeal shall be dismissed.

(a) Decisions under old rules, see Barry v. Randolph [C. P. Phila.], 3 Bin. 277; Shelborne v. Eneu [C. P. Phila.], 1 Bro. 137.

# ARGUMENTS.

RULE 17.

Argument-list. All rules to show cause and all other matters involving argument, or requiring special examination by the Court, shall be entered on the argument-list and will not be heard until so entered.(a)

(a) It is not a matter of right with a party that his case be heard by a full bench. One member of a bench may hear and dispose of a rule granted by another member. Commonwealth  $\mathbf{v}$ . McAnany [Q. S. Phila.], 3 Brews. 292.

### RULE 18.

Rules to show All rules to show cause, unless otherwise orderéd, turnable. Writ-shall be returnable on Saturday of 'the succeeding week, when. at 10 o'clock, A. M. If the party to show cause have no attorney of record at least five days' written notice (30)

shall be served upon him, and proof thereof filed before the hearing. If he have an attorney of record (except in rules to show cause why judgment should not be entered for want of a sufficient affidavit of defence), (a) gument-list, noentry on the argument-list for ten days shall be considered notice, unless personal notice to the attorney is specially directed by the Court.

(a) See Rule 12, page 11.

#### RULE 19.

When the time to which any rule is returnable shall Hearing have expired, either party may call the same for argu-tice. ment on Saturday after the ordinary Saturday routine or current business is disposed of; provided the foregoing rules have been complied with, and five days' written notice that the cause will be called for. hearing at said time shall have been given the other party or his attorney, where there is an attorney of record, evidence of which notice shall be filed in the case.

#### RULE 20.

In all cases of the argument of exceptions to the rement, when and ports of auditors or masters, and in all other cases when what. required, the attorneys of the respective parties shall furnish the Court with a brief setting forth the substance of the case, the points in controversy, and the authorities on questions of law, and no case falling within this rule will be determined till the same be done.

# RULE 21.(a)

Arguments of counsel shall not exceed the following Limits of arlimits: In cases on the argument-list, 30 minutes on each side; in the trial of causes before a jury, one hour on each side to the jury; to the Court on the law of the case, 10 minutes on each side; and on questions of

(31)

317

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on no-

evidence during the progress of the trial, 5 minutes on each side; *provided* that the Court, when deemed necessary, may either enlarge or shorten the time.

Who to begin and conclude.

egin On the hearing of rules to show cause of action or to dissolve attachments, the party who is to show cause shall begin and conclude; in all other cases the party who obtains the rule shall begin and conclude.

(a) The establishment and enforcement of rules limiting the arguments of counsel to a certain time are matters resting in the sound discretion of the court, and unless it should appear that injustice has thereby been done, they form no ground of appeal. Lynch v. State, 9 Ind. 541; People v. Chew, 6 Cal. 636.

# ATTACHMENTS.

### RULE 22.

Sale of property on foreign attachment,

No order shall be made for the sale of property seized on foreign attachment unless the plaintiff, or some other person acquainted with the circumstances, shall make affidavit that the debt or demand is just, and unless it be made to appear to the Court that the property attached is of a perishable nature, or that from other causes it should be converted into money; and the Court will make special order for the temporary disposition of the proceeds by investment or otherwise.

# RULE 23.

Bail to dissolve (a) an attachment shall not be entered attachment. Notice. unless twenty-four hours' notice has been given to the attaching creditor or his attorney, specifying the names,

""The said courts" (Common Pleas, Orphans', Quarter Sessions, Oyer and Terminer and General Jail Delivery in the county of Allegheny), "shall have full power and authority to make, establish and enforce such rules and regulations as in their opinion may be necessary to regulate and compel the return of all attachments and other processes issued by said courts. Act 22 March, 1866, 24, P. L. 211. 29

·16

residences and calling of the persons to be offered as bail.

(a) See Act 5 April, 1872, Purd. Dig. 642, pl. 43; 721, pl. 25-28.

#### RULE 24.

At any time after the return of scire facias against. Interrogatories the garnishee, the plaintiff may file interrogatories in the attachment. prothonotary's office, and enter a rule(a) of course for the garnishee to answer(b) on or before a day to be named, not less than ten days from the time of serving notice of the rule and a copy of the interrogatories.

(a) This is a matter of right. The rule is authorized by Act 13 June, 1836,
§ 56, Purd. Dig. 719, pl. 17. Dougherty v. Thayer [Elk], 78 St. R. 172. Contra, Ringwalt v. Brindle [Cum.], 59 Ibid. 51.

(b) The answer is to be construed less strictly than an affidavit of defence. Allegheny Savings Bank v. Meyer [C. P. All.], 59 St. R. 361. The affidavit of defence law does not extend to an attachment in execution. Carter v. Wallace [D. C. Phila.], 9 Phila. 221.

### RULE 25.

If the plaintiff on the trial obtains judgment against Costs in attachment, when the garnishee for a greater sum than the answer to the garnishee to interrogatories admitted to be in his hands, the garnishee shall pay the costs.

#### **RULE 26.**

Attachments in execution may be made returnable at Execution attachment. any return day as writs of summons, and interrogatories Return day. may be filed and served on the garnishee as in foreign ries.

#### RULE 27.

If the plaintiff in an execution attachment does not, Case in attachment dissolved within three calendar-months from the return day of at plaintiff's his writ, rule the garnishee to answer or put the case at

(33)

issue; or, in foreign attachment, within the same time after judgment, does not issue a *scire facias*, or does not, within a like period of time after the return day of the *scire facias*, rule the garnishee to answer or put the case at issue, the Court on motion will, if no sufficient cause be shown to the contrary, order the attachment tobe dissolved at plaintiff's cost.

# ATTACHMENT OF VESSELS.

### **RULE 28.**

Defendant to answer in ten days, or decree. plaintiff's libel within ten days after the return day. If he makes default the Court will proceed *ex parte* and pronounce the proper decree.

# RULE 29.

Answer in attachment of vesselwhen another serve a copy of his libel or claim on the defendant or intervenes. his attorney, and the defendant shall file his answer thereto in ten days thereafter; but the Court may enlarge the time for answering on sufficient cause shown.

# RULE 30.

Affidavits in No claim or answer shall be filed unless it is verified vessel. by the affidavit of the party or his agent.

# RULE, 31.

(34)

served on defendant's counsel, and the exceptions shall be placed immediately on the argument-list.

#### RULE 32.

Any party may propound interrogatories to any other Interrogatories party within twenty days after the answer is filed and perfected; a copy of which interrogatories shall be served on the attorney of the party by whom they are to be If he object to the interrogatories he shall answered. notify the party serving the same, and they shall be submitted to the judge for his allowance. The interrogatories allowed shall be filed with the prothonotary and Notice. notice thereof given; and the party shall file his an- Answers. swers thereto in ten days after such notice,-in default whereof, if libellant, the libel shall be dismissed ; if de-

Objecting to.

19

Allowance of.

#### RULE 33.

fendant, the answer shall be treated as a nullity.

Answers to interrogatories may be excepted to in the Excepting to answers in atsame manner as answers to libels or claims. tachment of ves-

### RULE 34.

At any time before the hearing of the cause the de-Tenderin Court in attachment of fendant may bring into Court such sum or sums of vessel. money as he may admit to be due, together with the costs accrued to that time, which the opposite party may accept or refuse; and if he refuse, he shall pay all fusal. Effect of resubsequent, costs unless he recovers a sum greater than that already tendered.

# ATTORNEYS.1

# RULE 35.

Registration.

It shall be the duty of every attorney of the Court to register with the prothonotary the name, age, and place of residence of every person studying law under his direction, and the term of study shall be computed Preliminary from such registration. But no person shall be regisexamination. tered as a student at law until he shall have undergone an examination by the Board of Examiners on the elements of the Latin language and all the branches of a thorough English education, including algebra, geometry and natural sciences, or fair equivalents therefor; and he shall produce and file with the prothonotary a cer-Certificate. tificate signed by the majority of the Board, that he is sufficiently prepared and qualified to commence the study of the law and that they have received satisfactory evidence of his good moral character. The applicant shall Notice. give at least one week's notice to the secretary of said Board of his desire to be examined preparatory to regis-

# RULE 36. ~

Conditions of No person shall be admitted to practice as an attorney dmission to an of this Court except upon the following conditions: practice as attorney. 1st. He shall be a citizen of the United States, and Citizenship. of full age. Age. Notice. 2d. Every student applying for admission to practite as an attorney in this Court shall first cause inotice to be published in the Pittsburgh LEGAL JOURNAL of his intention to make such application, for one week prior to his examination by the Board of Examiners, which notice shall set forth the name of the applicant, in whose

Act 14 April, 1834, § 68, empowers the Court, to make rules on this subject, and § 69 prescribes the form of the oath to be administered to any person presented for admission to the bar. Purd. Dig. 99, pl. 2, 3.

(36)

office he has studied, and at what time he will apply to be admitted.

3d. He shall have served a regular clerkship in the Clerkship. office and shall have studied under the direction of an attorney or judge of this Court, or some other court of this commonwealth, for three years, for pursued the study of law in some law school of good repute, for, after being of full age, he shall have pursued his studies diligently in the office of some practicing attorney of Allegheny county, or a judge of this Court, for the term of two years. Provided, that a course of study in any law school of good repute shall be deemed equivalent to a like term of study in the office of an attorney or judge.

4th. He shall have undergone an examination by a Final examin-Board of Examiners appointed by the Court, on the principles and practice of law and equity, and shall produce and file with the prothonotary at the time his admission is moved for, a certificate signed by all the certificate. Examiners who were present at his examination, that he is sufficiently qualified for admission to the bar and that they have received satisfactory evidence of his good moral character. And every such examination shall Written queeconsist partly of written questions to be answered in writing by the student, which questions and answers shàll~be reported to the Court.

#### RULE 37.

Except when otherwise specially ordered, no person  $M_{m ember}^{Admission of}$ admitted to practice in other courts of this or other another bar. States, shall be admitted to practice in this Court until he shall have appeared before the Board of Exaffiners and produced a certificate signed by all the Cortificate. Examiners present at his examination, that they have received satisfactory evidence of his moral character and professional qualifications, including at least two years' diligent study or practice of the law, and recommending. (37)

21

Law school.

Notice in wri- his admission to the bar. And written notice of his ting.

intention to apply for such admission shall be given to > the Board at least two weeks prior to such application ; and with said notice the applicant shall also produce and deliver to the Examiners a certificate of the president judge of the court wherein he last practiced of

Certificate.

his good moral character, and of the length of time he Notice in the practiced therein. Pittsburgh  $L_{E}$ -

Provided, however, that notice shall GAL JOURNAL. be given by publication as in the case of students applying for admission; and provided further, that this rule Special admis shall not apply to attorneys of other courts seeking to

be admitted in this Court for special cases.

## RULE 38.

The agreements of the attorneys of this Court touch-Agreements of attorneys. ing the business of this Court shall be in writing; otherwise they will be considered of no validity.

Motion All motions for general admission to the bar shall be general admis- All motions for general admis-sion to the bar. made by members of the Board of Examiners. for

# AUDITORS

# RULE 39.

Appointment of auditor.

In cases where it appears to be necessary, the Court, on application of any party interested, will appoint any auditor; but in cases where exceptions may be filed, no auditor shall be appointed until the time for doing so has elapsed, nor will any agreement of parties for the appointment of an auditor be regarded, unless an affidavit is filed therewith, stating that those who signed the agreement, by themselves or attorneys, représent all the parties interested.

(38)

#### RULE 40.

If no satisfactory cause for the delay is shown, the Vacating ap-Court will vacate the appointment of any auditor whose ditor. report is not filed within sixty days after his appointment, on motion for that purpose being made by any party in interest.

#### RULE 41.

When an auditor is appointed, he shall assign a time Duties of suand place for hearing, and proceed without delay except for sufficient cause; lie shall keep and return regular minutes of his proceedings, showing his different sessions and their extent, and the cause of delay, if any, so that the Court may adjust the amount to be allowed for fees (a) and expenses, and direct how and by whom the same shall be paid.

(a) See Rule 76, page 31.

RULE 42. Ten days' notice of the time and place of hearing Notices of hear shall be given personally to all lien creditors, and others appearing to be interested, or their attorneys, if residing in the county.; all others shall be notified by advertisement published once a week for three consecutive weeks in some newspaper in the city of Pittsburgh, the last of which advertisements shall be published at least ten days before the day of hearing.

### RULE 43.

Where facts are controverted the auditor shall report free of auditor, to contain his finding thereon (a) in concise form, after the manner what of a special verdict, and shall also state concisely the points of law raised before him, with his opinion and reasons therefor; and where an account or schedule of distribution is necessary, it shall not be blended with other parts of the report, but stated separately in a form

(39)

convenient to be recorded. The testimony, documentary or otherwise, shall be returned separately and filed with the report.

(a) See Hindman's Appeal [O. C. Wash.], 85 St. R. 466.

# RULE 44.

Notice of filing report of audit. After the report is made out the auditor shall give the parties ten days' notice (a) of the day designated for filing the same, and in the meantime they shall be al-Exception to lowed access thereto; and no exception to such report shall be received unless filed with the auditor before the day so designated; and if exceptions are so filed, the Re-examina auditor shall re-examine the subject and amend his report, if, in his opinion, the exceptions are in whole or in part well founded.

(a) See Brennan's Estate, [O. C. Schuyl.], 65 St. R. 16.

# RULE 45.

Confirmation The report, on being filed in the office, shall be markof report of auditor. ed confirmed nisi by the prothonotary, which confirmation shall become absolute without further order, if no Objection to. objection thereto is made and noted on the record within ten days; and if objection is so made it shall be treated Exception to. as a renewal of the exceptions filed by the party with the auditor, and the prothonotary shall immediately Hearing on ar- enter the case on the argument-list, and on the hearing gument-list. the party will be confined to these exceptions: reserving Recommitting to the Court, however, the power of recommitting the report should justice require it.

# RULE 46.

Requesting an\* issue before auditor.

It shall be the duty of any person desiring an issue under the acts of Assembly relating to executions, to present his request in writing to the auditor within forty-eight hours after the hearing of the evidence has been concluded; which request shall particularly set forth the specific facts in dispute, on which he founds his claim. (40)

to an issue, verified by affidavit; and it shall be the duty of the auditor forthwith to report the same to the Court.(a)

(a) See Purd. Dig. 656, pl. 108-9.

# RULE 47.

The reports of auditors and masters shall be arranged Recording of so that they may be recorded according to the act of or or master. Assembly.

### BAIL.1

#### RULE 48.

No attorney, sheriff, or sheriff's officer shall be ad-<u>Attorney</u>, mitted as bail in any action depending in Court unless<sup>bail</sup>. by leave of Court for special cause shown.

### RULE 49.(*a*)

No bail shall be required in actions of trespass vi et bail required. - armis, trover and conversion, libel, slander, malicious prosecution, conspiracy or false imprisonment, unless an affidavit stating fully the cause of action be made and filed before the issuing of the writ; and no capias ad callocatur for respondendum requiring bail in more than three hundred dollars shall be issued, in any case, without a special allocatur from the Court or one of the judges.

(a) See Act 13 June, 1836, § 85. Purd. Dig. 56, pl. 9.

#### RULE 50.

The prothonotary; and such of his. deputies as may commissioners from time to time be designated by the Court, shall be

<sup>1</sup>On power to make rules in general on this subject, see Act 13 June, 1836, 2\*15. Purd. Dig. 46, pl. 29.

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commissioners before whom bail may be taken and justified, and they shall each have power to administer the requisite oaths.

### RULE 51.

Suggestion of freehold, when effectual.

Suggestion of freehold for stay of execution shall be effectual for that purpose, only when the same is in writing and has attached thereto a description of the premises, with a reference to the title and the record thereof (if any), under which defendant holds, with an affidavit by him, his agent or attorney, that he is possessed thereof in fee simple; that the same is within the county, worth at least the amount of the judgment or the sum for which the plaintiff may be entitled to have execution thereof, clear of all encumbrances. And upon being filed the same shall be governed by the rules in relation to bail for stay of execution, relative to notice, exceptions, etc., so far as the same may be applicable.

# RULE 52.

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Bail for stay of exècution shall be effectual for that purpose, when the plaintiff or his attorney is present at Exceptions to. the entry thereof and departs without filing exceptions; or, when notice of such entry is given to the plaintiff or his attorney and no exceptions are filed within twentyfour hours thereafter. If exceptions are filed, the defend-Justifying bail ant shall, within ten days thereafter, justify the security before the commissioner of bail, giving the plaintiff or his attorney twenty-four hours' notice thereof.

# RULE 53.

Entries on The presence of the plaintiff or his attorney at the of bail for stay. entry of the bail, or the proof of notice to him that it has been entered, as the case may be, shall be noted on stay. (42)

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has elapsed, or the exceptions, if any, have been disposed of, the prothonotary shall enter an order that the execution be stayed and give a certificate thereof.

### RULE 54.

Bail bonds in cases of attachment of vessels, may be Bail in attachapproved by the commissioner of bail, in the same manner and subject to the same rules as bail for stay of execution.

# RULE 55.

Bonds presented for approval shall have endorsed Affidavit to sufficiency of sethereon or attached thereto, an affidavit or affidavits curity. showing the sufficiency of the bail or security for the amount of the penalty, exclusive of all liabilities and exemptions.

# RULE 56.(a)

Twenty-four hours' notice shall be given to the plain- Notice of addition, etc., to tiff or his attorney of any intended addition, substitu- bail. tion or justification of bail; or when the defendant, having been committed to prison, proposes to enter bail.

(a) See Purd. Dig. 48, pl. 42, 43.

# BILLS OF EXCEPTION.

#### RULE 57.

No bill of exceptions to the admission or rejection of When signed. testimony will be signed, unless the Court has been distinctly called upon to note an exception at the time the decision is made.(a)

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(a) The evidence must be attached to the bill by a pro ut. Edwards v. Iracy [Craw.], 62 St. R. 374, (379). And see Supreme Court Rule XXIV.

On the supervision of the stenographer's notes by the judge who presides at the trial, see second section of note to Supreme Court Rule XXIII.

#### RULE 58.(a)

Stating point for charge by the court. If, on the trial of the cause, the counsel on either side wish the charge of the Court on any point or points of law arising in the case, they shall be distinctly stated in writing and delivered to the Court, and a copy thereof to the opposite counsel.

(a) This rule is valid. Haines v. Stauffer [Lan.], 13 St. R. 541.

# RULE 59.

Framing point Such points shall be written in a plain hand, and so for charge by the court. framed that the answer(a) of the Court will be full, direct and explicit by a simple affirmation or negation.

(a) The answers are to be reduced to writing and to be read to the jury. Act 24, March, 1877, P. L. 38.

### RULE 60.

Excepting to charge of the court must be made immediately after the jury retire; (a) and the party excepting shall, before the rendition of the verdict, state distinctly, in writing, the several matters to which he excepts. No general exception to the whole charge willbe sealed.

(a) Otherwise the exceptions will not be reviewed on error. McAdam's Ex'rs.
v. Stilwell [Montg.], 13 St. R. 90; Holden v. Cole [Brad.], 1 Ibid. 303.
See Supreme Court Rule XXIII.

(44)

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# SHERIFF'S INTERPLEADER RULES, Under Act of May 26, 1897,

# **RULE** 133

Applications under the Sheriff's Interpleader Act must be in writing, verified by affidavit, setting forth facts necessary to give the Court jurisdiction, and containing a schedule or other sufficient description of the goods or chattels taken in execution; whereupon a rule (a) will be granted on the claimant of the goods and chattels and the plaintiff in the execution to show cause why an issue should not be framed to determine the ownership of said goods and chattels; a copy of which rule shall be served by the Sheriff on the parties, or their attorney.

### **RULE 134**.

If the parties, or either of them, fail to appear and answer the rule under oath within five days after the service thereof, the rule shall be discharged; and if the default is made by the plaintiff alone, the officer shall release the property claimed, otherwise he shall proceed with the execution.

If both parties appear and answer as aforesaid, the Court may discharge the rule and direct the officer to release the property; or order him to proceed with the execution; or make the rule absolute and award an issue to determine whether the right of property, in the goods and chattels claimed, is in the claimantor not, or make such other order as the justice of the case may require.

### **RULE 135**

If rule is made absolute and issue awarded, the claimant shall be plaintiff, and all other parties shall be defendants; and the claimant shall give bond to be approved by the Court, in accordance with law.

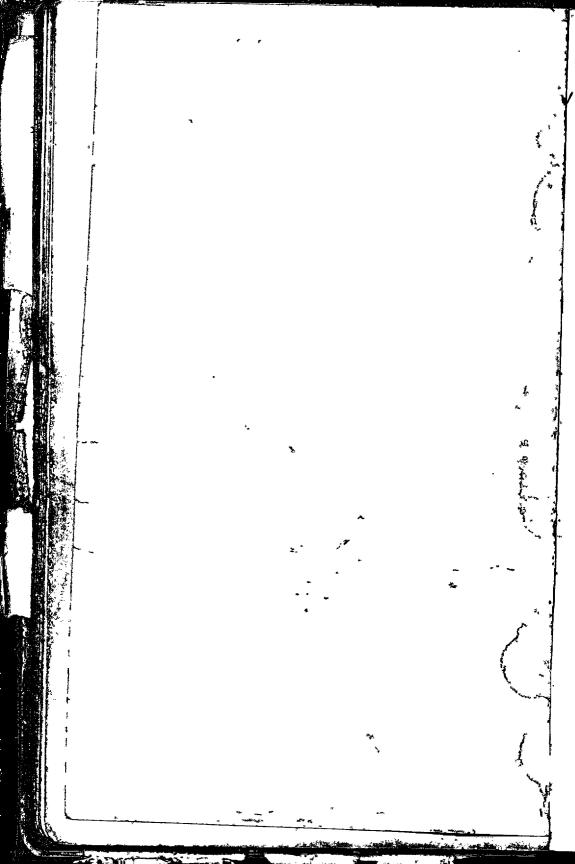
### **RULE 136**.

If the claimant fails to give bond and file statement within two weeks after award of issue, as required by law, the claimant shall be deemed to have abandoned all claim to the goods levied on, and upon production of the Prothonotary's certificate, showing such failure of claimant, the Sheriff shall proceed with the execution.

"If the claimant fails to give bond, but files his statement, as required by law, upon production of the Prothenotary's certificate of such fact, the Sheriff shall proceed with the execution and pay the proceeds of the sale of the claimed goods into Court, to await the determination of the issue:

# RULE 137.

Feigned issues shall be regularly entered on the appearance docket, and as soon as a plea is entered, shall be placed on the issue docket as other causes.



# CERTIORARI.

# RULE 61.

No writ of *certiorari* shall be a supersedeas until the when a superprothonotary has given a certificate that the party suing out the same has entered approved bail for the amount of the demand and costs; and the entry and approval of such bail shall be in the same manner and subject to the same rules as bail for stay of execution.

### RULE 62.

Writs of *certiorari* shall be made returnable in thirty When writ of days from the issuing thereof, and shall be served on turnable. The magistrate by the plaintiff at least twenty days be-vice. fore the return day; and if no return is made on or before the return day, upon proof that the writ has been served, a rule may be entered by the prothonotary on the magistrate, his proper representative or successor, as the case may be, to make return thereof immediately, and if such rule is not complied with an attachment when.

# RULE 63.

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It shall be the duty of the plaintiff in error to cause Return of recthe record to be returned, and if he neglects for ten days after the return day to take the proper steps to compel a return, the certiorari shall be dismissed, of course, by the prothonotary.

# RULE .64.(a)

The plaintiff in error shall, within ten days after the Assigning erreturn day, assign specifically the errors upon which he relies, and in default thereof the judgment below shall be affirmed; of course, by the prothonotary.

(a) Thiś rule is valid. Snyder v. Bachman [Lian.], 8 S. & R. \*336. 7 .(45) 29'

### RULE 65.

Within ten days after the return, either party may Diminution of record in certion art. Rule for suggest a diminution of the record, founded upon affi-

davit specifying the matters omitted or defective, and apply for a rule on the magistrate to make a fuller return.

#### COSTS.

### RULE 66.(a)

Security for In cases where the plaintiff resides out of the State, costs by the defendant, upon filing a sufficient affidavit of defence, resident may have a rule, of course, on him to enter security(b)for costs within thirty days after notice, and in the meantime proceedings shall be stayed : and upon proof of default filed 'the prothonotary shall enter judgment of non-suit.

In all other cases, the defendant, after filing an affidavit of defence to the merits, may, for special reasons assigned and supported by affidavit, obtain a rule onthe plaintiff to show cause why he should not give se-Security, un-curity for costs, and upon the hearing of the rule the Court may make such order as the special circumstances . cial reason.

of the case may seem to require.

(a) May by rule regulate the mode for showing that costs have been paid to the end that they draw interest. Baum v. Reed [Jeff.], 74 St. R. 320.

(b) Under rule, in Dauphin county, see McFarland v. Brown, 11 S. & R. 121.

### RULE 67.

When a bill of costs exceeds twenty dollars, twenty-Notice, when twenty dollars. four hours' notice of the time of taxing the same, shall be given to the opposite party or his attorney.

(46)

#### RULE 68.

If the defendant in his affidavit admit a certain sum Costs, when to be due, and offer to confess judgment for the same, ment refused. which is not accepted by the plaintiff, defendant shall be entitled to recover costs subsequently accruing, unless the plaintiff recovers a greater sum than the amount offered.(a)

(a) See Rule 11, page 10.

#### RULE 69.

All costs and fees shall be taxed in the first instance Taxing costs. by the prothonotary, subject to an appeal to the Court Appeal. at any time before the money is made and paid over: Provided, that the appellant shall file a specification of the items to which he objects and the grounds of his objection; but no such appeal shall stay proceedings Stay. without a special order of Court on sufficient cause shown; and where the money is made or paid pending the appeal; the amount in dispute shall remain in the officer's hands or be paid into Court to abide the event.

#### RULE 70.

The actual expenses of taking depositions, either on Expense of taking depositions rule of Court or commission, shall be taxed and allowed tion. as costs; but the amount shall not exceed twenty dollars. in any case, unless specially allowed by the Court for sufficient cause shown. -

#### RULE 71.

No amount will be fixed for the fees of any auditor, Fixing fee of auditor, master master or other person, whose compensation it shall be ac. the duty of the Court to determine, without the parties in interest or their attorneys shall have filed a statement in writing of the amount they considered proper therefor, or such auditor, (a) master or other person, shall file an

(47)

affidavit stating the amount which he considers a reasonable compensation for his services in the premises.

A reasonable amount for the services of artists ap-Costs for ser-ices of artist. pointed by the Court may be taxed and allowed as costs.

(a) See further, Rule 41, page 23.

# DAMAGES IN CASES WHERE PROPERTY IS TAKEN FOR PUBLIC USE, &c.

# RULE 72.

Issue formed. On appeals from assessments of damages for the takhow.

ing, or for injuries arising out of the taking, of private property for public use by municipal or other corporations, or by individuals, the issue shall be formed as follows:

Plaintiff and The party claiming damages shall be made plaintiff, defendant. and the corporation or individual taking the land, the

statement, etc.

Plaintiff's defendant, and the plaintiff shall file a statement or declaration describing the land or materials and value thereof, and averring his estate therein and his damages, and any other matter specially directed by the Court to

Defendant's be tried. The defendant thereupon 'shall file his plea, Admis-sions in defence. traversing such material allegations in the declaration as

he intends to deny, and such as are not so traversed shall be taken at the trial to be admitted.

82

(48)

#### DEPOSITIONS.

#### RULE 73,

Rules to take the depositions of 'witnesses within the Rule to take State, may be entered of course by the prothonotary, and in State. the depositions may be taken before any person legally whomay take. authorized to administer oaths or affirmations, on ten Notice. days' notice. (a)

(a) A bona fide substantial compliance with the rule as to notice is sufficient. Kellum v. Smith [Bed.], 39 St. R. 241. Notice served on attorney, held good in Snyder v. Wilt [Union], 15 Ibid. 59; Newlin v. Newlin [Del], 8 S. & R. 4];--not good, in Cunningham v. Jordan [Fay.], 1 St., R. 442; Nash v. Gilkerson [Montg.], 5 S. & R. 352; Travis v. Brown [Susq.], 43 St.; R. 1; Fleming v. Beck [Arm.], 48 Ibid. 809; Gracy v. Bailee [Lan.], 16 S. & R. 126. Notice to a party instead of his counsel, as required by rule, must be objected to within reasonable time. Helfrich v. Stem [Lep.], 17 St. R. 143.

On sufficiency of notice, see further, Voris v. Smith [Bed.], 13, S. & R. 624 - 334 Alexander v. Alexander [Miff.], 5 St. R. 277; Ives v. Niles [Tioga], 5 Watts, 823; Thompson v. Milford [But.], 7 Ibid. 442.

On reasonableness of notice of time, see Carpenter v. Groff [Lan.], 5 S. & R. 162; Hamilton v. McGuire [West.], 2 Ibid. 478; McConnell v. McCoy [C. P. All.], 7 Ibid. 228. Notice to take on two consecutive days, held irregular in Carmalt v. Post [Susq.]; 8 W. 406; --on three consecutive days, held good in Phillipi v. Brown [Som.], 2 St. R. 20.

On sufficient designation of place in notice, see Selin v. Snyder [Union], 7 S. & R. 166; Vickroy v. Skelley [Cam.], 14 Ibid. 372'; McCleary v. Sankey [Mer.], 4 W. & S. 113; Sample v. Robb [Miff.], 16 St. R. 305; Gibson v. Gibson [Law.], 20 Ibid. 9.

On waiver of defect in notice, see Selin v. Snyder, Vickroy v. Skelley, and Helfrich v. Stem, supra.; Barnett v. School Directors [Jeff.], 6 W. & S. 46.

On manner of taking depositions, see Crossgrove v. Himmelrich [Union], 5 St. R. 203; Waugh v. Shank [Arm.], 20 Ibid. 130; Wright v. Waters [War.], 82 Ibid. 514; Piper v. White [Cam.], 56 St. R. 90.

### RULE 74.

Rules may be entered of course by the prothonotary Deposition of to take the depositions of ancient, infirm and going wit-infirm and gonesses, within five miles of the court house, on twentyfour hours' notice, and on four days' notice in other parts of Allegheny county; *provided*, the party file an affidavit of the facts necessary to entitle him to such rule.

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### RULE 75.

Commission to Rules for a commission to take testimony out of the take testimony out of the State. State may be entered of course by the prothonotary, and

the commission may be issued, after fifteen days' notice, (a) containing the commissioner's name and a copy of the interrogatories filed.(b)

(a) Fifteen full days. Van Amringe v. Ellmaker [D. C. Phila.], 4 St. R. 281. On waiver of full notice, see American Ins. Co. v. Francia [D. C. Phila.], 9 Ibid. 390.

(b) On the extent of commissioner's powers, see Frank v. Colhoun [C. P. 1, All., 59 St. R. 381.

On designation of place where to be found, see Patterson'v. Greenland [Fay.], 37 Ibid. 510.

On objecting to interrogatories, see Hill v. Canifield [C. P. 1, All.], 63 Ibid. 77. On filing cross-interrogatories, see Case v. Cushman [Susq.], 1 Ibid. 241. On objecting to execution, see Syphers v. Mieghan [Greene], 22 Ibid. 125.

On returning commission, see Clark v. Bonford [Som.], Id. 353.

### **RULE** 76.

No deposition of a witness resident in Pennsylvania, Reading depoin and within the county of Allegheny, can be read in evidence unless the party offering it satisfy the Court that a subpœna, has been taken out and served; or that after taking out a subpœna and reasonable inquiry; the witness could not be found, or that he is, at the time of trial, not within the State (a)

(a) See Act 20 May, 1840, 3.5. Purd. Dig. 1170, pl. 43

#### RULE 77.

Notice of re-The prothonotary shall notify the respective attorneys turn of commission to take tes- of the return of a commission-it and depositions other" sition not taken than those taken on commission shall be filed, (a) and notice thereof given to the opposite party or his attorney. within ten days after they are taken and certified tor they may be retained and a true copy, with the certifi-

cate and exhibits attached thereto, given to the opposite

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party or his attorney within ten days; and all exceptions to depositions, whether taken on commission or otherwise, shall be specified and filed within ten days after the service of such notice or copy, and such exceptions shall be entered immediately on the argument-list by the prothonotary and be disposed of before the trial of the cause; *provided*, in case the deposition is not filed <sup>Not</sup> read at or a copy given to the opposite party or his attorney as herein provided, the deposition shall not be read on the trial except by or with the consent of such opposing party or his counsel. No other objection to any deposition, except as to the competency of witnesses or relevancy of the testimony, will be allowed on the trial.

(a) The court will order the filing. Bennett v. Williams [Susq:], 57 St. R. 404. Effect on admissibility when filed within time and afterwards taken out of office. Ross v. Barker [Bea.], 5 Watts, 391; Ankrim v. Sturges [Greene], 9 St. R. 975; Dailey v. Greene [Union], 15 Ibid. 118.

Notice of filing must be given. *Ewing* v. *Alcorn* [Law.], 40 Ibid. 492. An excuse for want of notice, see *Hagey* v. *Detweiler* [Northamp.], 35 Ibid. 409.

# RULE 78,

The testimony of witnesses to be used on the hearing Testimony for of motions and rules to show cause, shall be taken, on tion, or rule. reasonable notice, before any justice of the peace or other competent authority, and, if deemed necessary, a rule for the purpose may be entered of course by the prothonotary on application of either party, and no witness shall be examined at the bar without special order at bar.

### DISTRIBUTION.

#### RULE 79

It shall be the duty of the officer or party distributing Record receipt or paying out money in any manner connected with pro-out. , to be a receipt for each

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36

#### RULES OF THE COURTS OF COMMON PLEAS.

item paid out entered on the appearance-docket in the prothonotary's office, or on the face of the proper record' of the lien or claim in whatever office it exists.

#### RULE 80.

Distribution under report of decree.

If no appeal be taken within twenty days after final confirmation of a report, or entry of a decree, distributing money, the money shall be paid over according to the report or decree without further order.

### DIVORCE.<sup>1</sup>

#### RULE 81.

Subpœna in divorce. Return.

sheriff.

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general return day of the term; if the first and second Notice by subponas are returned non est inventus, the notice by the sheriff shall be of course and shall, contain the names of the parties, and state whether for a divorce from the bonds of matrimony or for alimony, and shall, call on the respondent to appear and answer on the first day of the next ensuing term, and shall be published in some newspaper of the county for four successive weeks, commencing after the return day of the second subpoena. Ex parts pro- After the return day of such notice and proof of its publication filed, the petitioner, if the respondent does not appear, may proceed ex parte.

All subpœnas in divorce shall be issued thirty days

before the return day and be made returnable on the

<sup>1</sup>To entitle a party to relief who has failed to comply with the rules of this subject, he must show : 1. That the application is made without unreasona. ble delay; 2. That it is based upon surprise, haste, ignorance or mistake; 8. That unless relief be given positive injury and injustice will be done; 4. That no right has accrued to the other side which it would be inequitable or unjust to disturb. Shay v. Shay [C. P. Phila.], 4 Leg. Gaż. 817. 'See Magill's Appeal, under Rule 85, page 37.

In no other class of cases is it so much the duty of the court to see that no injustice be done, Id.

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#### RULE '82.

When the subpœna is returned "served," it shall be Return to service of subpœna accompanied by an affidavit of the officer or person in divorce. serving the same, setting forth particularly how such service was made and the time when the writ was served. And when returned n. e. i., it shall be accompanied by the affidavit of the sheriff or officer in whose hands the writ was placed for service, that he has made diligent inquiry for the respondent and that he or she could not be found within the county.

#### RULE 83.

When the subpœna has been served and the respondtransformation of the subpœna has been served and the respondent does not appear within twenty days after the return vorce. day, the petitioner may proceed ex parte, giving ten days'. notice of the time and place of taking testimony, personally if the respondent can be found, otherwise by three advertisements published in a newspaper of the county.

# , RULE 84.

If respondent appears, he or she shall be ruled to Ruleto answer answer on twenty days' notice to the respondent or coun-ance in divorce. sel, and if after due proof of service no answer be filed at the expiration of said notice, demanding a jury trial, the plaintiff may proceed ex parte.

### RULĖ 85.

When an answer is filed, it shall state whether the reissue in divorce' spondent demands an issue to a jury, and shall specify the facts in the petition which are disputed or avoided, otherwise a jury trial will be taken to be waived. (a) If, 'however, an issue is so demanded, the case shall be placed immediately on the issue-docket by the prothonotary,' and' on the trial, all material averments in the petition not directly traversed or avoided in the answer shall be taken as admitted.

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(a) By reason of supposed need for haste respondent neglected to make the demand, and after part of the testimony had been taken asked the court for leave to amend the answer, which liberty was refused. Held, error. Magill's Appeal [C. P. All.], 59 St. R. 430. See Shay v. Shay, under Rule 81, page 36.

#### **RULE 86.**

When the proceedings are *ex. parte* and the testimony Decree, under ings in divorce. is returned, the attorney for the petitioner shall prepare

the proper decree and submit the same, together with the record and proofs of notice, and testimony filed in ' the case; and if in the opinion of the Court a proper case has been made out, and the proceedings have been conducted according to law and the rules of Court, the decree will be made.

### RULE 87.

Case in divorce . When defence has been made and no issue is awarded, to go on argu-ment-list, when, and the testimony has been closed and returned on both sides, the case shall go on the argument-list, there to be heard and determined. So also at any preceding stage, if exception is taken and filed to the petition or answer or other matter, the same shall immediately goinpon the

EJECTMENT:

Survey by aren In all ejectments wherein, the guestion of boundary

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" our of interfering surveys, may arise, either party may apply to the Court for an order for al survey by an

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RULE 88. . a List yui

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And where such order is made, the artist,(a) at the Artist's duties. time fixed upon (of which notice shall be given to the opposite party), shall survey and ascertain such boundaries and interference and furnish a diagram of both the claims, describing their boundaries, interference, and any other circumstances material to a proper investigation of the subject. Each party shall furnish two copies of such diagram for the use of the Court and jury.

(a) Pay for services, see Rule 70, sec. 2, page 31.

### RULE 89.

Actions of ejectment, where there is an appearance for Ordering cases defendant, may be ordered for trial whether, defendant trial. have entered a plea or not: the plaintiff, or the prothonotary, may enter the plea of "not.guilty" for the defend-\* ant at any time.

# RULE 90.(a) '

' SEC.--1. In all actions of ejectment hereafter plaintiff in brought, it shall be the duty of the plaintiff, either by abstract of title. himself, his agent of attorney, to file in the office of the prothonotary of this Court, on or before the first day of the term to which the writ is returnable, a statement containing a description of the land together with the number of acres and the proportion thereof which he claims, and an abstract of the title on which he relies for his recovery whether the same be in writing or otherwise; and where the same is a matter of record, a reference thereto. And the defendant shall plead "not guilty," Plea. and enter his defence if any he hath, for the whole or any part thereof, before the next term; and at the time Defendant to of entering his plea he shall, by himself, his agent or and abstract. attorney, file a statement containing an abstract of the title or facts on which he relies for his defence, whether the same be 'in writing or otherwise; and where the same is matter of record, a reference thereto, togetherwith a specification of so much of the plaintiff's title as

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he denies, and so much thereof as is not denied shall be Admissions by deemed admitted ; and in answer thereto, it shall be the defendant. duty of the plaintiff, his agent or attorney, within twenty. days after written notice of the filing of such statement Traverse  $^{by}_{Ad}$  by the defendant, to file a specification traversing so plaintiff. mission in tramuch of the defendant's title as he denies, and so much verso. thereof as is not denied shall be deemed admitted : the case may then be ordered on the issue-docket under the Evidence at rule; and at the trial the evidence shall be confined to the facts respectively denied by the parties.

SEC. 2. On failure of the plaintiff to file an abstract Judgment against plaintiff in default of ab- and statement as required by the first section of this rule, stract, etc. judgment of non pros. shall be entered by the prothonotary on precipe of defendant's attorney, or the like judgment may be entered on motion in open Court.

Judgment The failure of the defendant to the the shall be deemed a confession of the truth of the facts set forth by the plaintiff, and that he has no defence thereto. And thereupon, on motion in open Court, the plaintiff shall be entitled to, such judgment as may be warranted by the facts set out in the abstract and statement filed by plaintiff.;

(a) See Purd. Dig. 534, pl. 10.

# JUDGMEN

# RULE gr.(a)

In default of appearance.

In actions personal and real, except ejectment, if the plaintiff has filed a declaration on or before the return.  $day_{a}(b)$  he may have judgment against defendant in default of appearance, at any time after the return day and ten days' service of the writ.(c)

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trial.

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### (a) See Rule 8, sec. 1, page 5.

Where there is no such rule judgment can be had only after the first four days of the term, a declaration having been filed and summons served at least ten days before the return day. Black v. Johns et al. [D. C. Phila.]; 68 St. R. 83.

(b) See Act 13 June, 1836, 22.33, 87, Purd. Dig. 44, 56. See also Foreman v. Schricon [D. C. All.], 8 W. & S. 43; Heister v. Muhlenburg [Berks], 1 Leg. Chron. 61. Where the declaration is for a less sum than the affidavit, see Dennison v. Leech [D. C. All.], 9 St. R. 164.

(c) Judgment for want of an affidavit of defence where there is no appearance is valid. Clark v. Dotter [D. C. Phila], 54 St. R. 215; Act 28 March, 1835, § 2, Purd. Dig. 495, pl. 13.

On judgment on two nikils in Berks and Tioga counties, see Minor v. Graham [Berks], 24 St. R. 491; Taggart v. Fox [Berks], 1 Grant, 190.

#### **RULE** 92.

A defendant having appeared, may rule the plaintiff Judgment in default of plead-15 to declare on ton days' notice, and a plaintiff having ings. declared may rule a defendant, who has appeared, to plead on like notice; and either party may take judgment against the other on proof of default filed.(a)

(a) See Rule 117, page 48.

# RULE 93.(a)

If a declaration is not filed within three months, Judgment.in default of decla-Judgment in. judgment of non pros. shall be entered by the prothono-ration. tary on precipe of the defendant or his attorney. The same rule shall apply to appeals from judgments of justices -- the time being computed from the last day for filing the appeal.

(a) Practice, where long delay to prosecute is not an abandonment, Molone v. Harman, [Lan.], 5 W. N. C. 447.

#### **RULE 94.**(*a*)

In appeals from justices, when the cause is called for Judgment, trial and the appellant does not appear, the Court, on does not appear at trial motion of the opposite party, may enter judgment for the same amount as the judgment of the justice, with interest and costs.

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(a) This rule is valid. Elkinton v. Fennimore [C. P. Phila.], 13 St. R. 173; Kuhn v. Kisterbock [C. P. Phila.], 6 Whar. 166; Frost v. Roatch, [C. P. Phila.], Id. 359.

### RULE 95.

Officers' fees. In cases where suits have been marked discontinued, execution for. or settled, and the officers' fees have not been paid, the prothonotary may, without precipe, enter judgment of non pros. and issue an execution for such fees.

### RULE 96.

Judgments by default shall be entered by the pro-Judgment by default, how en tered. thonotary on precipe of the party or his attorney, setting forth the nature of the default, which precipe shall be filed.

# RULE 97.

In actions commenced by' capias, filing a declaration Judgment not valver of spe-cial bail, when. and taking judgment in default of affidavit, appearance or plea, shall not be construed a waiver of special bail.

### RULE 98.

RULE ob

In judgments by default, where the plaintiff has filed of Amount judgment, liquidâted: ho an affidavit of the amount of his claim, the judgment shall be for that amount. In other cases the prothonotary shall liquidate the amount, where, from the nature, of the action, it may be done without a jury! of inquiry.

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Judgment on verdict

The prothonotary shall enter judgment on a verdict after four days, unless within that time a motion for a Verdict fee. new trial be entered by order of the Court; but no judgment shall be entered without the special order of the Court, until the sum, of four dollars has been paid by the party for whom the verdict shall have been ren-\* dered.

#### RULE 100.

In cases where judgment is confessed(a) by warrant of Judgment by attorney, the warrant and the instrument upon which torney. the judgment is confessed, or true copies thereof, verified by affidavit, shall be filed at the time judgment is entered.

(a) There is no difference in legal effect between a judgment confessed, or for want of appearance or plea, and a judgment on the verdict of a jury. *Hopkins* v. *West* [Wash.], 83 St. R. 109.

No special authority in writing is necessary. Flannigan v. City [D. C. Phila.], 51 Ibid. 491. Appeal lies for refusal to open such judgment. Act 4 April, 1877, P. L. 52.

#### RULE IOI.(a)

If a warrant of attorney to enter judgment be above Procedure ten years old and under twenty, the Court in term time, over ten years or a judge in the vacation, must be moved for leave to old. enter judgment; which motion must be grounded on an affidavit of the due execution of the warrant, that the money is unpaid, and the party living; but if the warrant be above twenty years old, there must be a rule to show cause, and that must be served on the party if he is to be found within the State; and if, upon hearing thereof, the Court shall be satisfied that he cannot be found after reasonable search, judgment shall be 'entered thereon."

(a) The original of this was made soon after 1790. Vanatia v. Anderson [C: P. Phila:]; 3 Bin. 417.

# JURY OF INQUERY AND INQUEST.

#### RULE 102.

A writ of inquiry of damages may, by special order Executed in of the Court for sufficient cause shown, be executed in when. open Court." In such cases ten days' notice shall be given.

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#### **RULE 103.**

Inquest All inquests by the sheriff on writs of fieri facias shall on fieri facias. be marked confirmed, by the prothonotary, unless exceptions be filed within five days after return of the same.

#### MARKING FOR USE.

#### **RULE 104.**

Plaintiff to be In actions for use, the person for whose use they are named on re brought shall be named on the record, otherwise judgcord. ment of non pros. may be entered on motion.

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# MONEY PAID INTO COURT.

#### RULE 105.

A defendant may, upon motion, pay into Court the Paying money into court. amount which he admits to be due together with costs Plaintiff's elec- up to that time. The plaintiff may receive the amount so paid, and either enter a discontinuance or proceed to trial, at his option; but in the latter case he shall pay all costs subsequently accruing, unless he recover judgment for a sum independently of that so admitted to be due and paid into Court. ί,

### RULE 106(a)

Money paid . All money paid into Court to abide the order of the deposited in Court, shall, after deducting the commission allowed the prothonotary thereon, be deposited in such incor-

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tion.

Costs.

porated bank as the Court may designate, and shall be so deposited in the name and to the credit of the Court in the particular case, and shall not be drawn out except Checking out, by a check or checks signed by a judge of the Court and countersigned by the prothonotary, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The prothonotary shall keep a regular book containing a mem-Check-book, orandum and copy of all the checks so drawn, and the dates thereof.

A copy of this rule shall be inserted in the book in Copy of rule which the deposits are entered, attested by the prothonotary and seal of the Court.

(a) Where there is no such rule the prothonotary must exercise toward the money the care of an involuntary depositary. Aurentz v. Porter [Ind.], 56 St. R. 115.

On payment into court in general, see Elliott v. Lycoming Ins. Co. [Blair], 66 Ibid. 22; Berkheimer v. Geise [York], 82 Ibid. 64.

On investment in Federal or other securities on petition, see Act 25 May, 1878, § 1, P. L. 156.

# RULE 107.

The prothonotary shall receive for all sums of money Prothonotary's commission on paid into Court, from the party paying in the same, at money paid into the rate of one-half per cent. for an amount not exceeding one thousand dollars, and one-quarter per cent. on sums exceeding that amount.

# MOTIONS AND RULES.

### RULE 108.

All motions and rules, (a) with the reasons in support To be framed, thereof, shall be reduced to writing, with the names of the parties in interest and their attorneys, if there be an attorney of record; and no motion or rule shall be en-

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tered by the prothonotary until this rule has been com-Placed on ar-plied with. The prothonotary shall without further order place on the argument-list all rules and motions conforming to these requirements,

(a) On a rule to show cause, a rule to take depositions is implied. Coulon v. DeLisle [C. P. Phila.], 1 Bro. 256.

Error does not lie to an order on a motion under which parol evidence is heard, unless the evidence has been placed on record. White v. Leeds [Ind.], 51 St. R. 187.

#### RULE 109.

Saturday shall be the regular day for hearing motions Day for hearing motions, etc. and disposing of rules, etc.

#### RULE 110.

The entry on the argument-list (except in cases other-Entry on ar-, gument-list, no-tice to whom. wise provided in these rules) shall be sufficient notice to all parties for whom appearance has been entered; to all other parties ten days' notice before hearing shall be given.

# NEW TRIAL AND ARREST OF JUDGMENT,

# RULE III.

Motions for new trials shall be made and reasons-filed Time for mofor new within four days after the verdict. The day on which the verdict is given, and Sunday, are to be excluded in calculating the four days.

#### RULE 112.

On motion for a new trial, (a) the Court will determine Hearing of mofoi on the showing of the party by whom it is made whether to grant a rule to show cause or not, without hearing the (62)

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opposite party: if a rule is granted, the cause will be set down for argument; if not, judgment will be entered on the verdict unless a motion in arrest of judgment is pending.

(a) Error does not lie for granting or refusing it. White v. Leeds [Ind.], 51 St. R. 187.

#### RULE 113.

No motion for new trial will be entertained upon the New trial for ground of after-discovered evidence, unless based upon evidence. affidavit containing the names of the witnesses and what they are expected to prove.

# NOTICE.<sup>1</sup>

# RŬLE 114.

All notices shall be in writing, and if a party entitled To be in writto notice has not employed an attorney it shall be suffi-

cient to serve a copy on the party, or his bail to the on whom sheriff, or special bail, if there be any; but if an attorney be employed and marked on the record, all notices, pleadings and papers shall be served on him, except where an act of Assembly or the rules direct otherwise.

On failure to give notice under rule in Dauphin county, see Brincker's Adm'rs v. Dull, 82 Ibid. 828.

<sup>&</sup>lt;sup>1</sup>May not by rule change the service of a notice required by statute. Byerley v. Vankirk [West.], 5 W. 370.

In computing the time within which a thing is to be done after service of a notice, exclude the day on which the service is made and include the day on which the prescribed number of days falls—unless this day is Sunday, in which case the Monday next following is the last day. Cromelian v. Brink [Pike], 29 St. R. 522; Mark's Ex'rs v. Russell [C. P. All.], 40 Ibid. 372.

#### RULE 115.

Notice to widow, heir, devisee. Notice to widows, heirs and devisees residing out of the county of Allegheny, in proceedings under the thirty-fourth section of the Act of 1834,(a) "relating to executors and administrators," shall be given by the sheriff by publication of the writ in any daily newspaper published in the city of Pittsburgh, unless otherwise ordered by the Court.

(a) See Purd. Dig. 426, pl. 102.

#### **RULE 116.**

Notice on application to stay proceedings must be given to the opposite party or his attorney.

## PLEADINGS.

#### **RULE 117.**

Rules to declare, plead, etc.

When the defendant has appeared, rules to declare and plead and for other pleadings may be entered at any time after the return day; and on failure to declare or plead accordingly on ten days' notice of the rule, a non pros., or judgment by default, may be entered on precipe and proof of notice filed (a) The Court, however, may open or set aside such judgment or enlarge the time when deemed necessary.

(a) Two rules are necessary under the rule of court in Union county. 'Green
 v. Hallowell, 9 St. R. 53.

## RULE 118.

Dilatory plea. No dilatory plea shall be received unless supported by affidavit.(a)

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(a) See Lawrence v. Borm [C. P. 1, Phila.], 86 St. R. ; 5 W. N. C. 187. The rule is of long standing. Vanatia v, Anderson [C. P. Phila. (1811)], 3 Bin. 417.

## RULE 119.

The plaintiff may, at any time before the cause is put "Rule to plead on the trial-list, rule the defendant to plead at length, and where defendant has so pleaded he may rule the plaintiff to reply at length. The party neglecting to take such rule shall not be at liberty to object to any. short plea added on the trial, for want of form, or re- Waiver of rule. quire the same to be set forth at length, or be allowed to demur specially to the same.

#### **RULE** 120.

Any time after appearance and before the cause is at Bill of particissue, the defendant may enter a rule on plaintiff to furnish him a bill of particulars, and until it is furnished proceedings shall stay. If the plaintiff neglects to furnish the same within twenty days after service of the rule, a non suit shall be entered by the prothonotary on proof of notice and default.

## **RULE** 121.(*a*)

Where set-off, (b) payment, or payment with leave(c) Copy of matis pleaded, the plaintiff may enter a rule on defendant set off, payment, to furnish him, with a copy of the account, or specification of the claim or matter, to be offered in evidenceunder said pleas; (d) and if the defendant neglects to furnish the same within twenty days after service of the rule, he shall not be permitted to give evidence thereof on the trial.

(*a*). After the copy has been furnished, or notice of the matter given (as the rule may require), any equity which tends to defeat the claim may be given in evidence i the plea then operating as a bill in equity praying for an injunction and admitting of any suggestion which shows, ex equiv et bono, plaintiff

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ought not to recover. Without the copy, or notice, the testimony will be strictly confined to the general issue as at common law. Covely v. Fox [Berks], 11 St. R. 171; Daniel v. Wilver [Dauph.] 24 Ibid. 516; Moyer's Adm'rs v. Fisher [Leb.], Id. 518; Hellings v. Amey [Bucks], 1 Wh. 63. This practice ante-dates 1767, Hawk v. Geddis [Leb.], 16 S. & R. 23,-and is peculiar to Pennsylvania. Robinson v. Eldridge [Susq.], 10 Ibid. 140. Having no distinct court of chancery, we could not get along without it. Light v. Stover's Ex'rs [Leb.], 11 Ibid. 481. By this practice, the court and jury exercise chancery powers. Hawk v. Geddis, supra.

The rule of allegata et probata applies as forcibly as to a formal special pleawhich the copy, or the notice, in substance is. Thomas v. Mann [Bed.], 28 St. R. 520. Particularity in an affidavit of defence may obviate the necessity of furnishing a copy or of giving notice. Lycoming Ins. Co. v. Kakes [S. C., Car.], 12 Leg. Int. 270; Rodgers v. Kichline [Northamp.], 28 St. R. 231. Knowledge is not enough. McClurg v. Willard [Tioga], 5 W. 314; Findlay v. Stewart [Arm.], 56 St. R. 183. Where notice alone is required it must specify Moatz v. Knox [Union], 11 Ibid. 268. Certainty the main points relied on. to a common intent is sufficient. Appleton v. Donaldson [Northum.], 3 Ibid-381; Rodgers v. Old [Montg.], 5 S. & R. 404.

(b) A copy, or notice, of the "set-off," stops the running of the statute of limitations from the day one or the other is given. Gilmore v. Reed [Clar.], 76 St. R. 462; Wisecarver v. Kincaid [Greene], 83 Ibid. 100.

(c) A copy, or notice, must be given whenever it is intended to offer anything but direct "payment." Greenwalt v. Born [Lan.], 3 Y. 6; Hale v. Fenn [Dauph.], 3 W. & S. 361; Erwin v. Leibert [D. C. Phila.], 5 Ibid. 103. Then, payment in goods is admissible. Richabaugh v. Dugan [C. P. Phila.], 7 St. R. 394; Covely v. Fox [Berks], 11 Ibid. 171.

" "Payment with leave " is a special or general defence, as the notice given makes it one or the other. Roop v. Brubacker [Dauph.], 1 Rawle, 304. After the notice the case is substantially at issue. Beale v. Buchanan [D. C. All.], 9 St. R. 123.

(d) When "fraud" is the special matter, see Baring v. Shippen [Bucks], 2 Bin. 154; McDowell v. Meredith [Bucks], 4 Wh. 311; Paul's Ex'rs v. Durborrow [Cum.], 13 S. & R. 393.

When of matter used before arbitrators, see Rodgers v. Kichline [Northamp.], 28 St. R. 236.

#### RULE 122.

Non assumpsit, operation i r general.

on a warranty.

In actions of assumpsit, except on bills of exchange and promissory notes, the plea of non assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law. Ex. gr. In an action on a warranty, the plea will To-an action operate as a denial of the fact of the warranty having

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been given upon the alleged consideration, but not of the breach.

In an action on a policy of insurance, the plea will On a policy of operate as a denial of the fact of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties in the policy.

In actions against carriers and other bailees for not Against a bailee. delivering, or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any express contract to the effect alleged in the declaration, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

In an action of *indebitatus assumpsit* for goods sold To *indebitatus* and delivered, the plea of non assumpsit will operate as a denial of the sale and delivery *in point of fact*; in the like action for money had and received it will operate as a denial both of the receipt of the money, and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

And the same rule shall apply to the plea of "not Not guilty, by guilty" in actions against carriers, where the declaration is [not] in tort.-

### RULE 123.

In actions upon bills of exchange and promissory  $\frac{Non assumpsit}{inadmissible}$ , notes, the plea of non assumpsit shall be inadmissible. when. In such actions, therefore, a plea in denial must traverse some matter of fact : e: g., the drawing, or making, or endorsing, or accepting, or presenting, or notice of dishonor of the bill or note.

In every species of assumpsit, all matters in confession Matters in confession and avoidance, including not only those by way of dis-avoidance to be charge but those which show the transaction to be either ed. void or yoidable in point of law on the ground of fraud or otherwise, shall be specially pleaded: e. g., infancy,

(67)

coverture, release, payment, performance, illegality of consideration either by statute or common law; drawing, endorsing, accepting, etc., bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other. defences.

#### RULE 124.

In actions on policies of insurance the interest of the Insurance policy, plea in avoidance. assured may be avoided thus: "That A. (B. and C.-or some one of them-were or) was interested," etc.; (and it may also be averred) "That the insurance was made for the use and benefit and on the account of the person (or persons) so interested."

#### RULE 125.

In debt on specialty, or covenant, the plea of non est Non est factum. factum(a) shall operate as a denial of the execution of the deed in point of fact only; and all other defences shall be specially pleaded, including matters which make the deed absolutely void as well as those which make it voidable.

(a) An affidavit to such plea must be made if required by rule. McAdam's Ex'rs y. Stilwell [Montg.], 13 St. R. 90.

Where general practice and a rule of court require the plea of non est factum, the plea of nil debet will be declared bad on demurrer. Parkinson v. City of Parker [Arm.], 85 Ibid. 313.

## RULE 126.

In actions of debt on simple contract, other than on Never indebted. bills of exchange and promissory notes, the defendant may plead that "He never was indebted in manner and form as in the declaration alleged ;" and such plea shall have the same operation as the plea of non assumpsit in indebitatus assumpsit; and all matters in confession and avoidance shall be pleaded specially as above directed in actions of assumpsit.

·(68)

etc.

In other actions of debt, including those on bills of Special pleas. exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the deelaration or plead specially in confession and avoidance.

## RULE 127.

All substantial as well as formal defects in pleading Pleading over, shall be deemed cured by pleading over without demurrer, and shall not be taken advantage of by motion in arrest of judgment. But the party may object thereto at the trial,—subject to proper terms as to costs,—by praying the Court to charge the jury that the evidence —proving only the facts averred in the pleading—does not establish a sufficient claim or defence in law.

## **RULE** 128.

On overruling or sustaining a demurrer, the Court Demurrer. will grant leave to amend on such terms as to costs and time of trial as shall seem right, unless it shall appear on the argument of the demurrer that the party has no better cause of action or defence than is set out in the pleading demurred to, in which case judgment shall be entered according as the proceedings require.

#### RULE 129.

After a cause has been set down for trial, no amendafter cause set ment, other than formal joining of issue, shall be allowed for trial, and at (unless otherwise provided by act of Assembly or these "rules) except by consent, or on motion with notice to the opposite party; and in the latter case, on such terms as to the payment of costs, time of trial, or otherwise, as the justice of the case requires. Amendments on the trial shall only be allowed on similar terms.

10

(69)

#### RECORDS.

#### RULE 130.

No record of the Court shall be withdrawn from the Withdrawing record from the prothonotary's office without an order of Court, or a special allowance of a judge, in writing directed to the prothónotary.

#### SHERIFF'S DEEDS.

## RULE\_131.

Sheriff's deeds shall be acknowledged in open Court, Acknowledgment. on Saturday in the forenoon at 10 o'clock in No. 1,'and 10½ o'clock in No. 2, and noted on the minutes by the prothonotary.(a)

(a) See Purd. Dig. 658, pl. 122,

exceptions.

#### RULE 132.

Whenever objection shall be made to the acknowledg-Objection to acknowledg-acknowledg-ment of sheriff's ment of a sheriff's deed, the prothonotary shall note the deed dismissed, same on the minutes, stating by whom and on whose when. behalf such objection is made; and, unless exceptions are filed before the next Saturday, such objections shall be dismissed,

If exceptions are filed, the case shall be immediately Exceptions to. placed on the argument-list. All exceptions founded Affidavit to upon matters not of record shall be verified by affidavit,

otherwise they shall be treated as null.

(70)

office

131 W

## SHERIFF'S-INTERPLEADER RULES, Under Act of May 26, 1897,

Applications under the Sheriff's Interpleader Act must be in writing, verified by affidavit, setting forth facts necessary to give the Court jurisdiction, and containing a schedule or other sufficient description of the goods or chattels taken in execution; whereupon a rule (a) will be granted on the claimant of the goods and chattels and the plaintiff in the execution to show cause why an issue should not be framed to determine the ownership of said goods and chattels; a copy of which rule shall bo served by the Sheriff on the parties, or their attorney.

## **RULE 134**.

If the parties, or either of them, fail to appear and answer the rule under oath within five days after the service thereof, the rule shall be discharged; and if the default is made by the plaintiff alone, the officer shall release the property claimed, otherwise he shall proceed with the execution.

If both parties appear and answer as aforesaid, the Court may discharge the rule and direct the officer to release the property; or order him to proceed with the execution; or make the rule absolute and award an issue to determine whether the right of property, in the goods and chattels claimed, is in the claimant or not, or make such other order as the justice of the case may require.

#### **RULE 135**.

If rule is made absolute and issue awarded, the claimant shall be plaintiff, and all other parties shall be defendants, and the claimant shall give bond to be approved by the Court, in accordance with law.

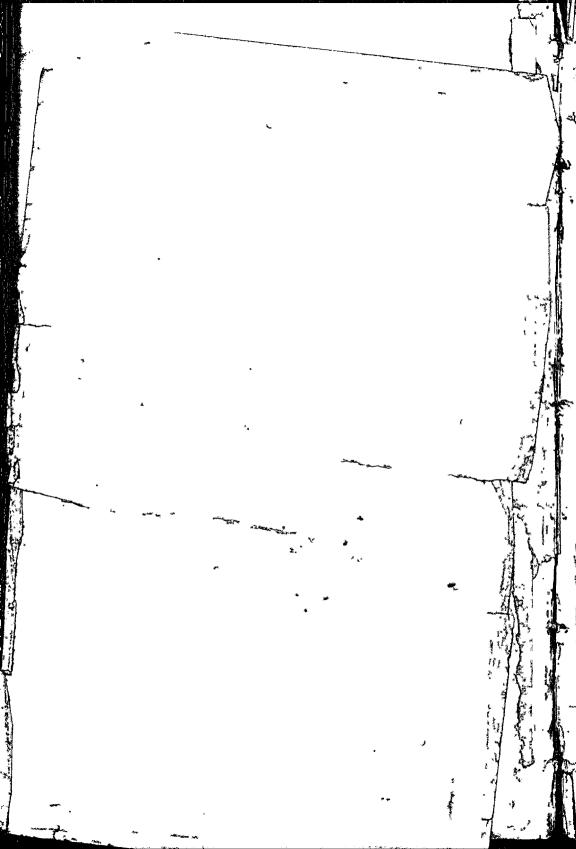
#### **RULE 136**

If the claimant fails to give bond and file statement within two weeks after award of issue, as required by law, the claimant shall be deemed to have abandoned all claim to the goods levied on, and upon production of the Prothonotary's certificate, showing such failure of claimant, the Sheriff shall proceed with the execution.

"If the claimant fails to give bond, but files his statement, as required by law, upon production of the Prothonotary's certificate of such fact, the Sheriff shall proceed with the execution and pay the proceeds of the sale of the claimed goods into Court, to await the determination of the issue.

#### **RULE 137**.

Feigned issues shall be regularly entered on the appearance docket, and as soon as a plea is entered, shall be placed on the issue docket as other causes.



#### SHERIFF'S INTERPLEADER.

#### RULE 133.

Applications under the Sheriff's Interpleader Act Applications nust be in writing, verified by affidavit, setting forth pleader Act. facts necessary to give the Court jurisdiction, and containing a schedule or other sufficient description of the goods or chattels taken in execution; whereupon a rule(a) Rule to mainwill be granted on the claimant of the goods and chat-quish. tels and the plaintiff in the execution, to show cause why they should not maintain or relinquish their respective claims—a copy of which rule shall be served by the sheriff on the parties or their attorneys.

(a) See Russell v. Presbyterian Church [Schuyl.], 65 St! R. 9.

# RULE 134. , 1 , .

If the parties, or either of them, fail to appear and Rule to mainnswer the rule under oath within five days after the quish dischargervice thereof, the rule shall be discharged; and if the in five days. lefault is made by the plaintiff alone, the officer shall elease the property claimed, otherwise he shall proceed

If both parties appear and answer as aforesaid, the Effect when Court may discharge the rule and direct the officer to pear and ansrelease the property; or order him to proceed with the execution; or make the rule absolute and award an issue to determine whether the right of property, in the goods and chattels claimed, is in the claimant or not; or make such other order as the justice of the case may require.

## RULE 135.

If an issue is awarded the claimant shall be plaintiff, Claimant's duand the execution creditor defendant; and, unless other-defendant's wise ordered, the claimant shall within ten days thereafter file a declaration and give bond to the defendant in (71)

the issue in double the value of the property claimed, with security to be approved by the Court or one of the judges, conditioned that upon the determination of the issue such of the goods and chattels claimed as shall be determined not to belong to the claimant, shall be forthcoming to answer the execution of the defendant in the issue; and as soon as the declaration is filed and bond approved the officer shall withdraw from the possession of the property claimed without further order.

#### RULE 136.

Claimant, in interpleader,unable to give the Court may order the officer to proceed with the exebond. cution, and bring into Court the proceeds of the property claimed—there to abide the event of the issue and the further order of the Court.

## RULE 137.

. Declaration in interpleader.

Feigned issues shall be regularly entered on the appearance-docket, and as soon as a plea is entered, shall be placed on the issue-docket as other causes.

(72)

Plea.

Docket tries.

#### RULE 138.

After an issue has been formed and bond approved, <sup>Sale of goods</sup> the claimant in possession of the property may, by petition, with notice to the defendant in the issue, apply to Court for an order to sell the goods and chattels in controversy on the ground that they are perishable; whereupon the Court, if the interest of the parties appears to require it, may order the property to be sold by the sheriff or a commission appointed for the purpose, and the proceeds paid into Court to abide the event of the issue; and when this is done it shall operate as a satisfaction of the bond given by the claimant.

#### RULE 139.

In all cases where the rule to interplead has been dis-Action against charged, and the sheriff has been ordered to withdraw terpleader Act. from the possession of the goods and chattels levied on, or to proceed under his levy, no action shall be brought against the sheriff in respect to such goods and chattels unless otherwise ordered by the Court.

#### SPECIAL RETURNS.

#### RULE 140.

(73)

In all cases where special returns of the sheriff are authorized by law, they shall be read in open Court on Saturday morning at 10 o'clock in No. 1, and  $10\frac{1}{2}$  in No. 2, and the reading thereof shall be noted on the writ, and on the minutes of the prothonotary.

Upon the reading of a special return the same shall Confirmed, be confirmed *nisi*, which confirmation shall become abso-

When read.

Exceptions to. lute unless exceptions be filed within ten days; and if exceptions are filed the case shall be immediately placed on the argument-list. Exceptions not founded on mat-Affidavit to ters of record shall be verified by affidavit, otherwise' they shall be treated as null.(a)

(a) Rule in sheriff's office: "When special returns are required to be made by the sheriff, he must be furnished with the following certificates: 1, prothonotary's; 2, clerk's of the court of Quarter Sessions; 3, clerk's of Orphans' court; 4, clerks' of the United States District and Circuit Courts."

## SUBPIENA DUCES TECUM.

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## RULE' 141.

Issued, when. No subject a duces tecum for public records or papers, shall be issued without the special order of the Court or one of the judges thereof.

(74)

#### TERM AND RETURN DAYS'.(a)

#### RULE 142.

C. P. No. 1. And now, January 4th, 1875, it is ordered (b): — That there shall be four regular terms of this Court held in each year, to be known and designated, respectively, as the March, June, September and December Terms. Said terms shall begin on the first Monday of each of said months, to continue, if necessary, until the commencement of the next succeeding term.

The first day of each term, and the first Monday of each intervening month, shall be return days for all writs issuing out of this Court, except writs of *fieri* facias, venditioni exponas and levari facias, unless otherwise provided by law, or specially directed by the Court. C. P. No. 2.

And now, to wit, January 4th, 1875, it is ordered (b): - 1st. There shall be four regular terms of this Court held in each year, to be designated and known, respectively, as the January, April, July and October Terms. Said terms shall begin as follows, to wit: On the fourth Monday of January, 1875, and thereafter on the first Monday of April, July, October and January, in each year, and to continue, if necessary, until the commencement of the next succeeding term.

2d. The first Mondays of each intervening month, as well as the first day of each term, shall be return days for all writs issuing out of this Court, other than writs of *fieri facias*, venditioni exponas and levari facias, unless otherwise provided by Iaw or specially directed by the Court.

<sup>&</sup>lt;sup>1</sup>The several courts of Common Pleas of the commonwealth may direct, "by rule or standing order, that all writs used for the commencement of actions may, at the election of the party suing out the same, be made returnable on the first day of the next term or on the second, third or fourth Monday of any intermediate month." Act 24 May, 1878, 21. P. L. 168.

(a) The monthly return days in Allegheny county apply to all civil process for the commencement of actions, including a *sci. fa.* on a mortgage which may be returnable to any legal return day whether intermediate or not. *Haupt et al.* v. *Davis*, 79 St. R. 238.

The first writ of sci. fa. on a mortgage having been returned nihil, an alias writ may issue returnable to any different return day of the same term, and on a second return of nihil judgment may be entered by default. Schwartz's Ex'rs v. McClurg, 8 Pitts. L. J. 185.

(b) Under Act 9 April, 1874, §11. P. L. 55. Changes are authorized by Act 18 March, 1875, § 1. P. L. 28.

#### TRIALS.

## RULE 143.

Entering causes in issue docket. An issue-docket shall be kept, in which the prothonotary shall enter causes at issue, when requested in writing by either party or his attorney, in the order of time of making such request, noting the date of such therein.

Cause at issue, If an issue be formed, substantially, by the pleadings, when. If an issue be formed, substantially, by the pleadings, the cause shall be considered at issue without a formal joinder, which may be entered by the prothonotary, or supplied, if desired, at any time.(a)

(a) See Shaw v. Redmond [D. C. Phila.], 11 S. & R. 27; Beale v. Buchanan [D. C. All.], 9 St. R. 123.

## RULE 144.

Trial-list. The trial-list shall consist of causes copied in regular order from the issue-docket.(a)

(a) See Venango County v. Dunbar, 3 Grant, 66.

## RULE 145.

Want of final If a cause is not struck off the list for want of an forcontinuance, issue when the list is first called over, neither party shall when. afterwards object to the want of a formal issue as a

(76)

-61

ground for continuance; but the Court will enter the general issue on the record, and the cause shall proceed to trial on such issue, with leave to add any other plea which justice may require.

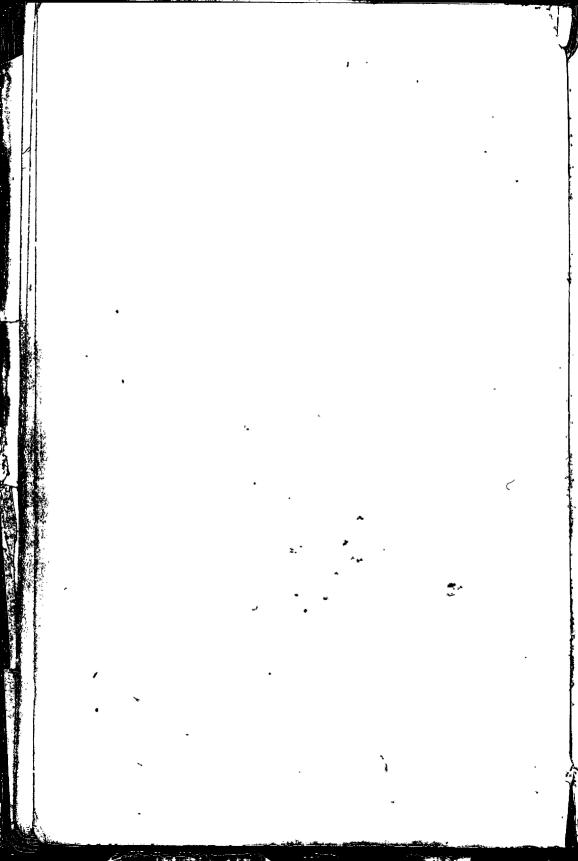
## VIEW.

### RULE 146.

A jury of view, if desired, shall be asked for on the Jury of view, first day of taking up the civil-list at each term; whereupon the jury shall be balloted for, to try the cause, six of whom shall view the premises in presence of an officer , before the trial.

## WARRANTS OF ATTORNEY.

(See Judgment, Rules 100, 101, page 43.)



## APPENDIX

#### TO THE

## RULES OF THE COURTS OF COMMON PLEAS.

## (RULE 9, page 7.)

## APPENDIX Á.

Contracts and instruments of writing within, and not within, the statute (and rules) requiring affidavits of defence :

The record of a judgment obtained in another State, is within the statute, 64 St. R. 239; <u>47</u> Ibid. 467; 25 Ibid. 200; 6 Ibid. 476. Insufficiency in the authentication of such record will not prevent judgment, 65 Ibid. 105. 33 Leg. Int. 264. 1 W. N. C. 130; 2 Ibid. 360.

An absolute guaranty, is, 80 St. R. 333. 1 Clark, 15. 1 Phila. 70. 1 Pitts. L. J. 15; 21 Ibid. 19: s. c., 1 Leg. Chron. 276. 1 W. N. C. 276: s. c., 32 Leg. Int. 282; 1 W. N. C. 146; 2 Ibid. 395; 705: s. c., 33 Leg. Int. 280. Not, a contingent guaranty, 1 W. N. C. 110; 375, 506, 625; 2 Ibid. 291. 'A contract of suretyship, is, 1 Ibid. 311; 2 Ibid. 291, 334, 395, 705.

Not, an executory contract, 1 W. N. C. 29, 267; see 4 Ibid. 90, 380.

A ground-rent deed, is, 2 Wh. 209. 59 St. R. 275. 1 Miles, 340. Not, such deed not signed by assignee, 2 W. N. C. 14. A lease reserving a pecuniary rent, is, 42 St. R. 77. 2 W. & S. 553. So, a contract for security of rent, 1 Leg. Chron. 276. Not, an order to pay rent to a third person, 1 W. N. C. 105.

An insurance premium note, is, 3 Leg. Chron. 165. Not, a copy of a lost note "as near as can be ascertained," 5 W. N. C. 341. A note drawn to order, not endorsed, in hands of payee, is, 4 Ibid. 322. Not, an agreement to accept drafts to be drawn by a third person, 2 Miles, 358. Nor, a duebill for specific articles at a stated price, 1 W. N. C. 267. 33 Leg. Int. 158.

A bank-book in which a balance is struck, is, 2 Miles, 334. Not, an unauthorized overdraft by a depositor, Ibid. 329.

(79)

A coupon detached from a bond, is, 2 W. N. C. 535. So, a replevin bond, 1 Phila. 40—but *quære*: 84 St. R. 15. 3 W. N. C. 531. Not, a bond of indemnity, 1 W. N. C. 110, 506. Nor, an injunction bond, or bond with collateral condition, 1 W. N. C. 111; 4 Ibid. 202.

Not, an agreement to "settle" an unascertained amount of interest due on a mortgage, 2 Miles, 13. Nor, an agreement to pay a debt in commodities, 5 W. N. C. 511. When not, a promise to pay for goods not bought of a third person, 2 W. N. C. 139. When, a conditional promise to pay, 1 Ibid. 267 (2), 625; 4 Ibid. 509. Not, a contract to pay a sum for stock to be delivered, 1 Pitts. 145. 1 Miles, 324; 2 Ibid. 262. Not, a covenant to mine coal and pay by the ton, nothing having been done under the contract, 62 St. R. 495—but see, a like contract for removing fire-brick elay, 59 Ibid. 275.

Not, an acknowledgment of indebtedness signed by an attorney at law for his client, 1 W. N. C. 106. 1 Clark, 209. 1 Pa. L. J. 209. Nor an investment not signed by defendant, 1 W. N. C. 636; 2 Ibid. 334. Nor, a policy of fire insurance, 1 Ibid. 101—except where loss has been adjusted, Id. 84.

Not, a mortgage unaccompanied by an obligation for a sum certain, 5 W. N. C. 566. *Dubitatur*, certificate of no set-off to a mortgage, 1 Ibid. 407.

Subscription for an unpublished book, is, 2 W. N. C. 271, 274. When, certificate of corporation loan, 5 Ibid. 210. *Quære*, subscription to stocks, 53 St. R. 185. Not, a receipt for a city loan, 1 W. N. C. 82. When not, an "advance of money," Id. 156. Not, an attachment-execution, Id. 111. When not, receipt for tide-water money held as security, 40 St. R. 302. Not, wharfage not subject of book-entries within the statutes, 3 W. N. C. 434.

An assignment without express warranty, is, 82 St. R. 53. When not, copy of deed "under and subject" to payment of a mortgage, in action for deficiency after sale under the mortgage, 5 W. N. C. 132. Recognizance of bail in error, is, 3 Ibid. 433; 4 Ibid. 11. So, too, recognizance of bail for release of property in foreign attachment, 4 Ibid. 10. Forfeited recognizance, is, 35 St. R. 416. But not, sheriff's recognizance, 74 Ibid. 105.

(80)\*

## APPENDIX B.

On filing copies of instruments of writing, etc., under the affidavit of claim and defence practice:

It is not necessary to file copy of protest, 1 W. N. C. 105; 2 Ibid. 244. Nor, copy of note on which foreign judgment was founded, 25 St. R. 200. Nor, copy of charter of incorporation, 5 W. N. C. 96; 2 Clark, 498. Nor, copy of recognizance, 3 W. N. C. 433; contra, 2 Ibid. 98. Nor, of assignment of mortgage, on *sci. fac* recital being sufficient, 33 Leg. Int. 426; 2 Clark, 217. Misrecital of instrument in recorder's office prevents judgment, 30 Leg. Int. 84.

The copy must be filed with the precipe before the return of the writ, 1 W. N. C. 27, 464: and disclose a *prima facie* liability on the defendant, Id. 276; Id. 336: s. c., 32 Leg. Int. 282. Need not be filed in *alias* suit, 2 W. N. C. 27, 4; when not where *pluries* served, Id. 111. Need not be signed, 1 Ibid. 27; 2 Ibid. 380; 3 Ibid. 272.

The copy is not amendable after time of filing, 2 Ibid. 470,---when not, after two weeks from return day, 3 Ibid. 155, 329, 475,---a clerical error in the date may be, Id. 133; contra, Id. 329; 1 Ibid. 105, 154.

Defects in copy may be taken advantage of *ore tenus* or in affidavit of defence, 53 St. R. 185. On variance, see 1 W. N. C. 95, 444; 3 Ibid. 155, 272.

## APPENDIX-COMMON PLEAS.

## APPENDIX C.

Not such book-entries as are contemplated by the affidavit of claim and defence law are:

Book-entries of "expenses," 1 W. N. C. 103,—of "cash," Id. 429; but see 2 Ibid. 97,—of physician, 1 Ibid. 9; but see 2 Ibid. 272,—of an attorney, 1 Ibid. 82; 2 Ibid. 535; 3 Ibid. 474,—of conveyancer's charges, 5 W. N. C. 566,—of broker's commission, 1 Ibid. 26; 2 Ibid. 226,—of wages charged by the month, 1 Ibid. 146; but see 4 Ibid. 382, 441;—for boarding and washing, 1 Ibid. 402,—for goods furnished under contract, Id. 110,—for services as secretary and treasurer, 2 Ibid. 536. Entries in a pass-book for dues to a building association, 1 Ibid. 158. Entries in an order book not a book of original entries, 2 Ibid. 228.

Entries not charging defendant by name, 60 St. R. 212. 1 W. N. C. 221, 266, 360, 429; 2 Ibid. 221, 261. Entries omitting defendant's first name, 3 Ibid. 564. Misnomer in entries, 1 Ibid. 82; 5 Ibid. 40. Entries charging vessel without naming owner, 2 Ibid. 446. Entries without dates, 1 Ibid. 469; 5 Ibid. 58.

Items of credit are not properly part of books of original entries, 6 W. N. C. 56. Make defence to part barred by statute of limitations, 18 St. R. 354.

The paper must purport on its face to be a copy of the book-entries, 1 W. N. C. 28.

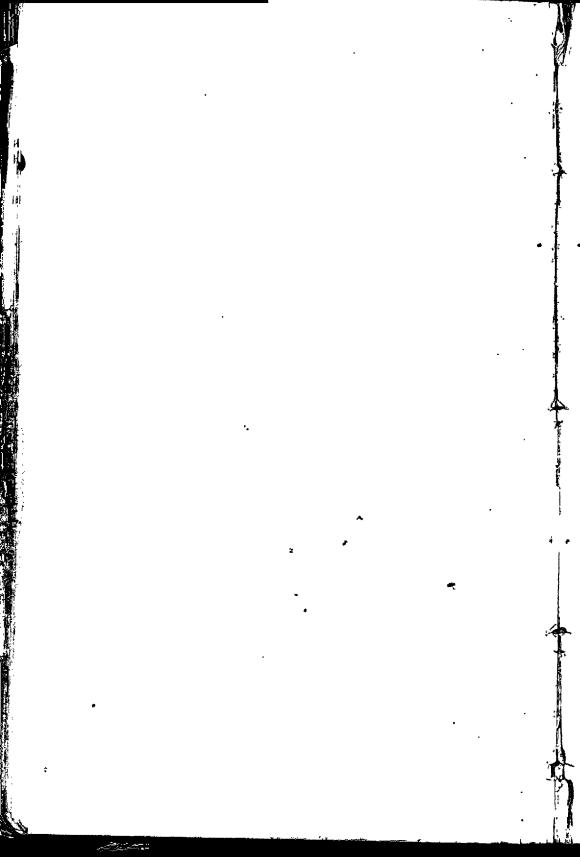
(82)

RULES

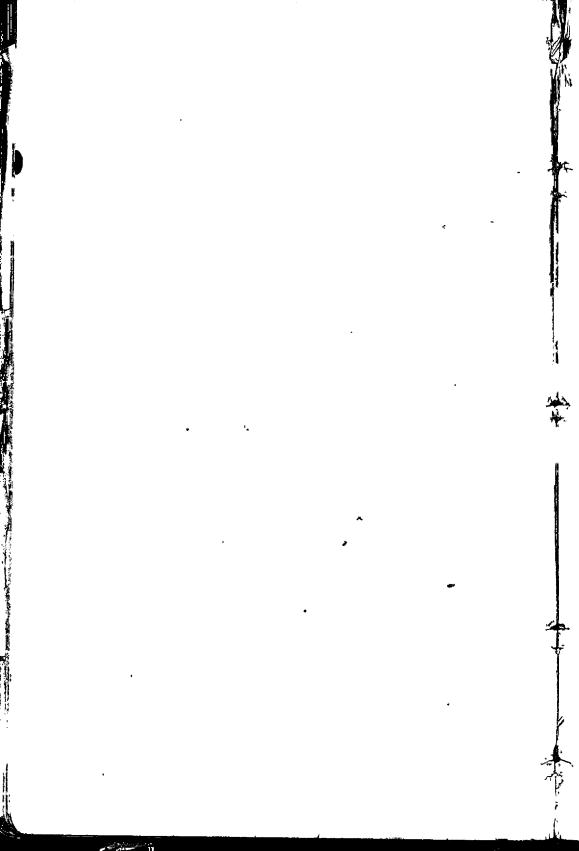
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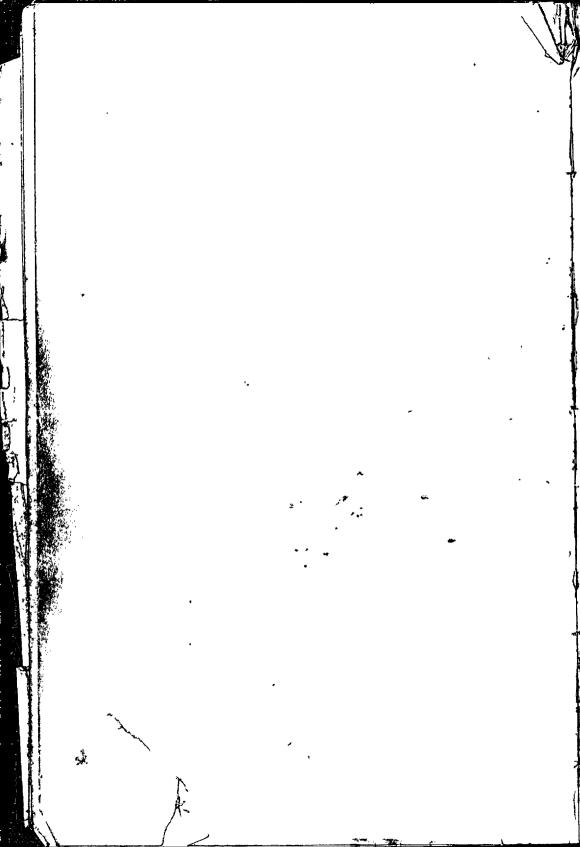
# COURTS OF COMMON PLEAS.

## ADDENDA.









## INDEX

## TO THE

# RULES OF THE COURTS OF COMMON PLEAS.

1

[The first numeral designates the Rule; the small númeral, the section of paragraph of the Rule.]	
ABATEMENT	
For death, 1, - non-payment of costs in previous action, 2, -	1 1 8
ACCOUNT-See Book-Account.	
	9
ACCOUNT OF ASSIGNEE, &c.	
Notice of filing; exception to; confirmation of, 3, -	2
ACKNOWLEDGMENT	
Of Bildfill S deed, when, row,	5, <b>4</b> 54
ACTION	
Abated for death, 1,	1
non-payment of costs in previous action, 2,	1
rerson for whose use, on record, roly	44
Against sheriff in interpleader case, 139,	57
ADMINISTRATOR .	
Affidavit of claim or defence by, 9-3,	7
ADMISSION—See ATTORNEY.	
In appeal from damages assessed, 72,	32
answer in divorce, 85,	37
statement and abstract in ejectment, 90, -	40
Of sum due plaintiff, 105,	44
testimony, sealing bill for, 57,	27

(83)

## ADMISSION FOR THE PURPOSE OF EVIDENCE

										1	PAGE.
	Of partnership, 4,		-		-		•		-		2
	execution of writing, 5,	-		-		-		-		-	3
	In affidavit of defence, 8-1, -		-		-	•	-		-		5
	specification of set-off, 8-3,	-		-		-		-			5
ADVE	RTISEMENT										
	Of filing trustee's account, 3,		-		-		- '		-		2
	hearing by auditor, 42,	-		-		-		-		-	23
	To respondent in divorce, 81, 83,		-		-		-		-	3	6, 37
	Of notice to widow, heir, devisee	, 11	5,			-		-		-	48
	In Pittsburgh LEGAL JOURNAL :										
	Notice of filing account, 3,		-		-		-		-		<b>2</b>
	by proposed student, 3	6		-		-		-		-	20
	candidate for bar,		-		-		-		-		21
	4										
AFFI	DAŢIT										
·	Who and how to make, 13,	-		-		-		-		-	12
AFFII	DAVIT OF CLAIM										
	In attachment of vessel, 30, -		-		-		-		•		18
	By executor or other trustee, 9-3	,		-		-		-		-	7
	Judgment on, no appearance, 91,		-		-		-		-		40
	In appeal from a justice, 10, -	-		-		-		-		~•	10
	Action ex delicto, 8-1, 9-1,		-		-		-		-		5, 7
	Plaintiff's specification and state	men	t, a	s.,8-,	1, 5	-		-		-	-5
	filed with precipe, deft's duty;						8-2	,	-		5
	<b>A</b>					-					
∆ TE FT Ì	DAVIT OF DEFENCE				·.*.	,	ι.		м		
Q.E.F.L.					4	ĸ			.1		31
*	Admitting a sum due, 68, *	î.		÷		**		-	X	-	18
	In attachment of 'vestel', 30, '		- 1	* 1 12	-		-	, ،	- 	•	. 4
	That books of original entry neo	essa	iry,	<i>r</i> ,		-		- 1		э,	
	In action er delicto, 8, 9-1,		-	. "	٠,	4.	~ ·		-		5,7
42	To whole or part of claim, 11,	-		1	*	·-	•,	-		-	10
Υ.	"Judgment in default of, when, 9	-1,;	20	د. <sub>م</sub>	ن. تيريد آنام	•			-		-
•	By executor or other trustce; 9-s	2	~ 2	14	ş, j	•	ž	-		•,	7 1 1 E
1	Rule for insufliciency in, 12, 18,*		~ *	-	- 1		P	~	¥-	4	1, 15
	In appeal from a justice, 10,	-		-		- 'rs	Υ.	-		<u>،</u>	10
•	Filed, rule for costs, 66, -	3	-				÷		•		30
1	To specification of set-off, 8-s,	- 1		2	**	-	ĸ	-		-	5
	Supplemental-before, after argu	mer	it oj	í in	suffi	çien	icy,	12,			11
	entry	y on	tri	al-li	\$t, `t	3- <b>f</b> ,			-		5
						-	Y				
AGRE	EMENT		<b>*</b>	<i>.</i>		J.		6 M			
	To choose arbitrators, 14,		•			តី <b>ខ</b>	- '	-3			13
	Between attorneys, 38, -	5.4	•	1 - 1 - 1	- 9,	·2 - C		÷*	الياء	-	22
*	For appointment of auditor, 89,		-*	ч£,	- 1	181	- [*		-		<b>22</b>
	(84)										
	( ),										

	INDEX-COMMO	N PLEAS.			, (	69-
		,		۰ ۲	PAG	IE.
AMENDMENT	100	_	-	<b>_</b>		53
. Alter den	nurrer, 128, se set for trial, at trial, 1	 29 -			-	53
cau	se set for trial, at trial, 1	20, -				
APPEAL						14
From aw	ard of arbitrators, 16,		-	-		14
co	sts as taxed, 69,		-	-	-	31
∽ da	mages assessed on-proper	ty taken, 72:	, -	-		32
' di	stribution under decree of	Freport, 89;		-		36
ju	dgment of a justice, 10,		- •	-		10
+	non	pros., when	ı, 10, 93,		- 10	·
-	judi	gment affirm	ed, when,	, 94,		41
APPEARANCE	3			( 		
	argument-list notice, afte	er, 110,	- **	1	-	46
A nswer	in attachment of vessel,	after, 28, -	-	1 2		18
Bill of r	particulars, after, 120,			•	-	4
Bulato d	leclare or to plead, after,	92, 107, -	'	~	41	1,4
Indefeu	lt of, in divorce, proceedi	ing ex parte,	83, ,	-	-	3
In derau	taking judgment, at	fter service,	etc., §1,	-		4
	non suit in appeal t	from a justic	e, 94,	•	-	4
	effect of judgment	for in capia	s, 97, -	-		4
Pula for	r answer in divorce, after	84.	-	-	-	3
Orderin	g ejectment case for trial	,, after. 89.	-	-	•	3
	-				•	
APPEARANC.	E-DOCKET-See Dock	ET.	) <sup>1</sup>		4.	•
	NAND AWARD		*			
ARBITRATIO	appeal from award, 16,	*	. · · ·			J
Ban in	appear from award, 10,		-	-	-	2
Except	ing to award, 15, -	4 _				
Strikin	g off rule for reference, 1	ч, -		,		
ARGUMENT		·		•		
Counse	l to furnish brief of, 20,	:	-	-	1 -	
Ôf ruie	e on insufficient defence,	12, -	-		-	
	of, 21,		~		-	
	e for new trial, 112, -	<del>،</del> -	$\pi = e^{-\pi}$		*	
A'RGUMÈNT-	TTOM		₹.			
ARGUMENT-	on, all matters for argum	ent. 17	-	-	-	
To go	what motions and ru	les 108		•	-	
	rule to show cause, 1	7 -	- ^		-	
	exception, in attachn	', nent of vess	al. 31		-	
	exception, in attach	's report, 45,	<u> </u>	-	_	
		tion, 77,	· · ·		-	
		's deed, 132-	-2	-	-	
			~, ~ _ ·	-		
Limit	s to arguments on, 21, on, notice to whom, 110	-	_	-	-	-
10	on notice to whom, 110	,	-			
_ Entry	attorney, 1	0			-	

**N** 

70	INDEX-COMMON PLEAS.		
	A D TIDGMENI	P/	AGE.
ARKEST	C OF JUDGMENT	-	46
-	Motion fòr, stays judgment on verdict, 112, effect on defects pleaded over, 127,		53
ARTIST	-See Ejectment.		
ASSIGN	ТЕ Е		_
	Filing account; exception to; confirmation of, 3, -	-	2
ASSUM	PSIT		
	Non assumptit denies what, 122, -		50
	inadmissible to bill or note, 123-1, 122,	5	1, 50
	Special pleas in, 123-2,	•	51
ATTAC	HMENT		
	Bail to dissolve, 23,		16
-	For no return in certiorari, 62,	-	29
	On rule to dissolve, who to begin, 21-2,		16
<b>ል</b> ጥጥ A C	HMENT-EXECUTION		
111110	Returnshle how 26.	-	17
	Garnishee-rule on, for answer or issue, 27, -		17
	interrogatories on, serving, 26,	-	17
	answering, 24,		17
	to pay costs, when, 25,	-	17
ΑΤΤΑ	CHMENT, FOREIGN	ł	
	Rule for answer or issue, 27, -		17
•	Property sold, when, 22,		16
ATTA	CHMENT OF VESSEL	•	- >
	Appearance and answer, 28;		18 -
	Claim and answer, to be verified, 30,	-	18
24.2	Excepting to answer, 31,	\	18
1	Interrogatories, 32,	, - ,	19
	Intervening, 29,	í.	18
ኔ ጥጥ በ	RNEY-See WARRANT OF ATTORNEY.	)	
AIIO.	Admission to practice, 36, 38-2,	-	20, 22
	Agreement on business of court, 38,	- '	22
	Argument-to furnish brief of, 20;	ہ بھ	15
	$\rightarrow$ limits to, 21, $\frac{i}{2}$ the $\beta$	-	15
5	As bail, 48,	-	25
	Name, on motions and rules, 108, <sup>111</sup> <sup>121</sup>	-	45
	Notice to party not having, 18, -	-	14
κ.	having, 18, 110,	-	14, 46
-	when special, 18,	-	. 14
	· return day gone by, 49,	L	15
5	by pleadings served, 114;	-	- 47
1	To register student, 36, (86)	-	20

Ł

ڊ ر

ł

ł

											,
AUDIT	OR				•	. <i>P</i>		1.17	PA SL	GE.,	
	Appointment, 39,		-		7 Ö		-	1-1	1	<b>22</b>	
	vacated, 40, -	-		-		2		'-•• A		<b>23</b>	
	Fee and expenses adjusted, 41, -		-'		-		-	-	-	23	
	affidavit to reasonableness of, 71	,		-		•				. 31	
	Hearings, minutes, etc., 41, -		-		-,	3	•		-	<b>23</b>	
	Requesting issue before, 46, -	-	,	-		-	-	<b>7</b> -4		-24	
	Notice to creditor, 42,		-				-		-	23	
	Report-to contain what, 43,	-		-		٠		- '	ı	- 23	
	notice of filing, 44, -	-	-		La j	L, L	-	<u></u>	-	24-	
	excepting to, 20, -	-		-		•				×15	
	confirmation of, 45, -		-		ŗ_		-	<b>.</b>	~	24	
	distributing money under,					المعر يناه	*	•		36 07	
	arrangement for recording	, 47,	- 、		-		-		-	<b>25</b>	
			4	** 4				ì			
AWAR	D-See Arbitration and Award	•					7				
	ĩ										
BAIL										0.7	
	Notice of addition, etc., 56		-		-		•		-	27	
	Allocatur for, 49, -	-	۰,	- •		*		-		,25	•
	To dissolve attachment, 23,		7		-		÷		-	16	
	In attachment of vessel, 54, -	-		-	ı	1-		-		27	
	Attorney as, 48,		-		•-	•	-		-	,25	
	In appeal from award, 16,	~	,	÷		-		•		14 27	
	Affidavit to bail-bond, 55,		-		-	. e	-		-	27 25	
	Commissioners of, 50,	-		-		5		۲,		20 27	
	Imprisoned debtor proposing, 56,		-		•		÷		×=	26	
	For stay of execution, 52, - record-entri	-		*ب نوب	6.00	-	2			20	
		es a	nu e	er 61.	nca	, .	ω,	5	Ē	29	
	in certiorari, 61, - Sheriff, sheriff's officer as, 48, -	•		-		-	4			25	
a naw	Special—serving notice on, 114,		•	_	-	_	-			47	
	not waived on capias, 97,	-	_	-		-	-	מ	-	42	
	None in certain torts when 49,		-	-				-		25	
	Suggesting freehold, 51,	τ	-						٦	26	
	buggesting nethold, er,								ŗ		
BAIL	म म									*	3
101111.00	"'Not guilty,'" by carrier, 122-6, -		_		-		-		_	50	
	Non assumpsit by, 122-4, -	-		-				~		50	1
	110 <i>n</i> assumption by, 122 4,					r.	*				
BANK	-See Money.			1				ŧ			
DARE									7		
BAR-	-See BOARD OF EXAMINERS.							• •	-		
Dir								3	1.0	ЧÇ	
BILL	OF EXCEPTIONS-See CHARGE.				•	(m		23			
•	Not sealed to whole charge, 58,	-				-				28	
	On testimony, 57, -		~		-		~			27	
	(87)							τ		5 <b>4</b> 2012	à:
				•						1	5
										1 2 3	, °

$\mathtt{BILL}$	OF EXCHANGE	PAGE.
	Plaintiff's specification, etc. ; defendant's denial, 8-1,	5
	Judgment, no defence, 9-1,	- 7
	Not to prove execution, when, 5,	3
	Non assumptst inadmissible to, 123-1, 122,	- 51, 50
	Plea in denial to traverse what, 123, -	51
	Special pleas, 123, 126, -	-51, 52
BILL	OF PARTICULARS	
	Furnished, when, 120,	· 49
BOAR	D OF EXAMINERS	
	Examination by, for study, 35, -	- 20
	the bar, 86,	- 20 20
	of member of another bar, 37,	- 21
	Certificate by, 37,	· 21
	Member, to move general admission, 38-2, -	- 22
DOMP		-
BOND		
	Plaintiff's specification, etc.; defendant's denial, 8-1,	5
	Judgment, no defence, 9-1,	- 7
	Not to prove oxecution, when, 5,	3
	Interpleader, nature of claimant's, 135, -	- 55
	claimant unable to give, 136,	56
		- 27
BOOK-	-ACCOUNT	
	Plaintiff's specification, etc.; defendant's denial, 8-1,	5
	Judgment, no defence, 9-1,	- 7
		•
BOOKS	5 OF ORIGINAL ENTRY	
	Copy-evidence, when, 7,	'` <b>`</b> 4
CAPIA	.9	
QALIB	Allocatur for bail on, 49,	0.5
	Judgment not waiver of special bail, when, 97,	- 25
	*	42
CARRI	ER É	
	"Not guilty " by, 122-6,	- 50
d'a man		
UAUSE	OF ACTION	
	Party to show, to begin, 21-2, Bail in tort, after affidavit to, 49,	16
	No better, on demurrer, 128, -	- 25
		53
CERTI	FICATE	
	FICATE Of bail for stay, 53,	₩ 26
		⊷ 26 29
	"Of bail for stay, 53,"	

 $\mathbf{72}$ 

.

CERTIÓRARI PAGE.	
Suggesting diminution, 65, 30	)
Dismissed for default, 63, 29	)
Assigning error, 64, 29	)
Return—rule for, or attachment, 61, 29	)
of record, 63, 29	
rule for fuller, 65, 30	
Supersedeas, when; 61, 29	1
OHARGE	
Exception to, 60, 28	3
whole, not sealed, 60, 28	į.
Přeparing point for, '58, 59, 28	;
That with defect cured, no case, 127, 58	;
CIVIL-LIST .	
Asking jury of view under, 146, 61	Ļ
COMMISSION-See DEPOSITION; PROTHONOTARY.	
COMMISSIONER-See DEPOSITION; DIVORCE.	
COMMITTÉE OF LUNATIC	
Affidavit of claim or defence by, 9-3, 7	,
CONFESSION AND AVOIDANCE	
Matter in assympsit, 123-2, 51	
covenant, 125,	2
debt, 126,	1
CONFIRMATION-See Account; AUDITOR; SHERIFF.	
CONSIDERATION	
. Illegal, as special plea, 123, 51	
CONSPIRACY	
Affidavit of claim or defence in $8-1$ , $9-1$ , 5, 7	/
Bail in, 49, 25	i
CONTINUANCE ·	
For no formal joinder of issue, 145, 60	)
Supplemental affidavit, case on_trial-list, 8-4, E	i
CONTRACT	
Plaintiff's specifications, etc.; defendant's denial, 8-1, - 5	5
Judgment, no defence, 9-1,	1
(89)	

COSTS		PAGE.
•	Appeal from, as taxed, 69,	- 31
	Non-payment of, in previous action, 2.	1
	When arbitrators not chosen, 14,	- 13
ſ	Pay for artist's services, taxed as, 71-2,	31
	Attachment, dissolved at plaintiff's, 27, -	- 17
	of vessel, tender refused, 34, -	19
	Expense of taking deposition, taxed as, 70,	- 31
	Garnishee to pay, 25, -	17
	Rule on plaintiff to secure, 66,	- 30
_	Over twenty dollars, 67,	31
	On supplemental affidavit, case on trial-list, 8-4,	- 5
r	Pleading-after defect pleaded over, 127,	53
	of amendment, after demurrer, 128, -	- 53
	cause set for trial, 129, -	53
	Of proving document not directly in issue, 6, -	- 4
I	Taxed by prothonotary, appeal from, 69,	31
•	as stay, 70, 4 - J. By plaintiff, tender refused, 68,	- 31
	Dy prantom, tender retused, 08,	31
	•	
· COVEN	NANT	
	Non rest factum denies what, 125, -	- 52
	ing	- 02
COVER	יייייייייייייייייייייייייייייייייייייי	~
00111		
,	As special plea in assumpsit, 123-27	4 <b>~</b> 51
<i>24</i> b	covenant, 125,	- 52
	debt on simple contract. 126,	52
DAMA	ANG . I THE STOR	
DUWĂ	× ×	
	Admission in action for, 8-1,	- <u>\</u> 5
-7 ¥	Appeal from assessment, 72,	82
	Judgment in action for, no defence, 9, -	- vr.
	For property taken, issue formed, how, 72,	32
	Executing in open court, writ of inquiry for, 102,	43
	• • •	3
DEATI		
	Abatementsfor, 1,	1
		-
DEBĘ.	• •	
	Rlaintiff's specification, etc.; defendant's denial, 84,	_
· .	Judgment, no defence, 9, 51 51 51 4t - 14	- 5
,	Oh bill or note, defendant's traverse, 126,	7
"	Never indebted," etc., to simple contract, 126,	- 52
	Special pleas in, 126,	- 52 - 52
	On speciality not est factum what 195	- 52 52
5		نې ن
	(90)	
	,	

**74**.

١

3

AS. 5 50 - 41 41
50 41
- 41
aut nulo 98 41
10ut rule, 93, — - 41 t 9 7
.t., <b>9</b> , 7 41
41
55
56
36
; <u>u</u> 38
3
54
, 182, 54
- 58
•
e
ha
49
58
,
2
4
34
84
., 31
35
33
- 34
r <sup>0</sup> *
•
·*
۱۹
1 1 1 1 1 1
1 73 3

থ হা

à.

4.1

ş

	INDEX-COMMON PLEAS.		
DIST	<b>TRIBUTION</b>		
	Docket-receipt, 79,		PAGE.
	Made, when, 80,	-	35
		-	36
DIVO	ORCE		
	Subpæna: issue; return; sheriff's notice, 81,		0.0
	affidavit to return of, 82, -	-	36
	Proceeding ex parte, no appearance, 83,	-	37
	Answer—rule for, 84,	-	37
	none, after notice, proceeding ex parte, 84,	•	37
	to demand issue, 85,	-	37
	Case on argument-list, 87	-	37
	Examiner or commissioner, 83, 86,	-	38
	Decree on ex parte proceedings, 86,	•	37, 38
	, 1 procouningo, 00, 1	-	38
DOCH	KET		
	-		
	Receipt on appearance, 79,	-	85
	Issue-securing entry in, 148,		60
	divorce case on, 85,	-	37
	traverse in ejectment on, 90-1,		93
	feigned issue on, 137-2,	-	56
Ň	trial-list made up from, 144, -		60
DOOD		~	
DOOD	JMENT "		
	Not directly in issue, cost of proving, 6,	-	4
FTFO			
TEO TE (-	TMENT t'		
	Survey by artist, 88, -		38
	artist's pay, 71-2,	-	31
	Statements and abstracts, 90,		39
	Ordering for trial without plea, 89,	-	39
	"Not guilty" with defence, when, 90-1, )* "	ł	39
	Evidence at trial, 90-1,	-	39
		12	
EVID:	ENCE	-	
	Admitting partnership as alleged, 4,	#	
	execution of writing, Ø	-	3
	document not directly in issue, 6, 1		3
	abeument not directly in issue, 6,	-	4
	averment in specification, etc., 8-1, After-discovered, 113,		5
	Limite to openen and a set	-	47
	Limits to arguments on question of, 21,		15
: هيئ	Taken before auditor, 43,	-	23
	time for issue, after, 46,		24.
	Bill, for admitting or rejecting, 57, Books of original entry, 7,	-	27
	DUCKS OF Original Antry 7		
	Of the state of th		4
	Of costs paid in previous action, 2,	-	4 1

					PAQE.
Deposition, securing reading in, 76,	-		-	-	34
for hearing on motion or rule, 78	3,	-	-		1 <b>3</b> 5
Testimony in divorce, 83, 86, -	-		-	-	37, 38
What heard at trial, 8-4, -		-	-		- 5
in ejectment, 90-1, -	-		-	-	39
Matter of set-off, as, 121,		-	-		- 49

## EXAMINER-See DIVORCE.

1

Į,

## EXAMINATION-See BOARD OF EXAMINERS.

EXCEPTION	3								
To account of	trustee, 3,	-	-	- *		-		-	<b>2</b>
answer in a	ttachment of ve	essel, 31,	83, -	-	-		-	18	, 19
Auditor-appoi	nted after time	for, elap	sed, a	39, -		-		-	22
befor	e report filed, 44	ł, -		-	-		2		24
after	report filed, 45,	-	-	-		ъ		-	24
	of, to report, 20			-	-		-,		15
	bitrators, 15,		-	-		é.		-	13
bail—waive	r of; justifying	, 52, -		-	-		-		26
Bill of, on testi		-	-	-		-		-	<b>27</b>
To charge of c	ourt, 69, ·	- س		-	-		-		31
deposition, 7	77, -	-	-	+		-		-	<b>34</b>
August and a second	answer in divor			-	-		-		38
	quest on <i>fi. fa.</i> ,	103,	-	-		-		-	44
sheriff's dee		- **		-	-		-		`54
	rn, 140-2,	-	-	•		-		-	57
fact not of T	ccord-See RE	CORD.							
EXECUTION									
Stay of-bail f	or, 52, -	-	-	-		-		-	26
certifi	cate of, 53,			-	-		-		26
	sting freehold f	or, 51,	-	-		-		-	$26^{\circ}$
For officer's fe	es, 95, -			-	-		-		42
Of what writin	ngs, proof of, n	ot requir	ed, 5,	-		-		-	3
EXECUTION-ATTA	OHMENT					<b>*</b> '			
Returnable, ho	w. 26;	-	-	-		-		-	17
	le on, for answe	r or issue	e, 27,	-	-		-		17.
	terrogatories on			-		×		-	17
	-	answeri	ng,2	4, .	_مريد_		ς-		17
	pay costs, when	, 25,	-	-	-	-		•	17
EXECUTOR	,						مبر	<u>،</u> `	*
Affidavit of cl	aim or defence	by, 9-8,	-	-	•	-		-	7
FALSE IMPRISONM	IENT								
Affidavit of cl	aim or defence	in, 8-1,	9-1,	-	-		- 2		5, 7
Bail in, 49,	•	~	-		-	-		-	25
13	· (č	93) ·							

FEES										PA	ЭE,
	Auditor to file affidavit to, 71,		-		-		-		-		81
	Fixed by court on data, 41, 71,	-		-		~		-		- 23,	31 42
	Issuing, for officer's, 95, Taxed by prothonotary, 69,		-	_	-	_	-	_	-		42 31
	raked by promonotary, 09,	-		-		-		-			
FEIGŃ	ED ISSUE										
	To go on issue-docket, when, 13'	7-2,		-		-		-		-	56
FIERI	FACIAS										
•	Return day for writ of, 142-2,		•		-		-		-		59
	Sheriff's inquest on, 103,	-		-	•	-		-		-	44
FOR U	SE-See MARKING FOR USE.										
FOREI	GN`ATTACHMENT										
	Garnishee, answer or issue by, 2	27,		-		-		-		-	17
	When property may be sold, 22	,	-		-		-		-		16
FREER	IOI D					٦					
1, 1917131	Suggesting, for stay, 51, -										<b>2</b> 6
	Suggesting, for stay, on -	-		-		-		-		-	29
GÀRN	ISHEË.						1	~			
	Rule on, for answer or issue, 27,	•	-		-	r	x-				17
	Serving interrogatories on, 26,. Answering interrogatories, 24,		_	-		-		+ <b>-</b>		-	17 17
	To pay costs, when, 25,	-	7	-	•	***		_	-	-	17
~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~	· · · · · · · · · · · · · · · · · · ·					ŕ	`s^	1	L.		
GENE.	RAL JSSUE							.7	-4	٠ <u>،</u>	<b>`</b>
-	Entered by court, 144, -	-	-	ť	 - A	)	·-		-		°60,
HEIR		•,	•		11	d.					
	Sheriff's notice to, 115, -	±. T	~,	- ?	,		٠,	-	+	-	48
ÍMPRI	SONMENT '			,	. K	3 <b>•</b>		ñ.,	'()	ŧ.	
Thi C Th	Bail by debtor in, 56,		+			۱. ۲.	٦		`` *3		27
	in false, 49,	•_	ີະ	÷.			÷	_	-		25
		4		•				11			
<b>ĮNDE</b> ]	BITATUS ASSUMPSĮT	3	16			ĩ					
	Non assumpsit denies what, 122	-1, î	,		-	*	-		-		50
INFAI	NÔY .	2 7	t							: <b>-</b>	
۰.	As special plea in assumpsit, 12	3.	~	21	\$	2		-		-	51
inter a	debt on specia		125	, .	-		-		-		52
<b>1</b> .44	simpl	le co	ntre	ict,	126	,		-~		-	52
INQU.	EST-See JURY OF INQUEST.	-									
	(94	1)									

7,8

۴.

INDEX-COMMON PLEAS.			79	١
INSTRUMENT OF WRITING			PAGE.	
Not to prove execution, when, 5,				< compared by the second se
Plaintiffa magification at a defendent la i lo	-		- 3	
Plaintiff's specification, etc. <sup>4</sup> ; defendant's denial, 8-1, Judgment, no defence, 9-1,		-	5	
	-		- 7	
INSUFFICIENCY				
In affidavit of defence, 12,	-		- 11	
notice of rule, for, 12, 18,		-	11, 14	
Of bail in appeal from award, 16,	-		- 14	
INSURANCE POLICY			•	
Plaintiff's specification, etc.; dofendant's denial, 8-1,				
Copy not required, when, $9-2$ ,		-	5	
Judgement me defense 0			- 7	
Avoiding assured's interest, 124,		-	7	
	-		- 52	
Non assumpsit denies what, 122-3,		-	50	
INTERPLEADER-See-SHERIFF'S INPERPLEADER.				
INTERROGATORIES -				
In attachment of vessel, 32,		J	10	, <sup>,</sup>
excepting to, 83,	-		- 19	
attachment-executionfiling, serving, 24, 26,		~	19	
answering, 24, -	-			
Copy, commission out of State, 75,	-	•	- 17 - 34	14
~			01	
ISSUE				
On evidence before auditor, 46, -	•		- 24	·
Continuance, for want of, 145,		ق	60	
Answer in divorce to demand, 85,	-		-, 37	
Cost of proving document not directly in, 6,		· <b>··</b> ·	4	
	2		- 53	1
General, entered by court, 144, 143		. <del>-</del>	-67	
ISSUE DOOFFT See Door-				
ISSUE-DOCKET-See DOCKET.		*		يېږي تې. د
JUDGMENT				
Plaintiff's specification, etc.; defendant's dehial, 8-1,	- *-		- 5	
- Reference to, sufficient when, 9-2,		-	7	
Arrest of, effect of motion on verdict, 112,	-		- 46	
availing of defect, by motion, 127,		-	53	
On capias, effect on bail, 97,	-	14	- 42	
For part of claim, 11,		-	· 10	
all of claim, 98, =- =-	-		- 42	
Costs-after offer to confess, 68, 105,		<b>-</b>	31, 44	
for non-payment of, in previous action, 2,	-			
when a party fails to secure, 66,	-	<u></u> ,	- 1 24	
(95)		- ,	englø	
(30)				Ύ <sup>ι</sup>

- M-14-14

							਼ "	AGE.,
	By default-precipe for, 96,				-		-	42
	of appellant's appearance at tri	al,	94,	-		-		41
	declaration, 92, 93, 117,	•	_		-		4	1, 48
	bill of particulars, 120,	-		-		-		49
	affidavit of defence, 9-1, 10,				-		-	7, 10
	statement in ejectment, 90-2		1.	-		_		40
	plea, 117,	,, ,	÷,				_	48
	For insufficient defence, 18,		-	_	-	_		14
	• •	-		-		•	•	42
	officer's fees, 95,		-		-		-	
	When person for use not marked, 104,	-		-		-		44
	On verdict, 99, 112,		-		-		- 4	2,46
	warrant of attorney, 100, 101, -	-		-		-		43
JURY								
	Limits of arguments to, 21,		•		-		-	15
	After retirement of, except to charge, 60,	-		<del>.</del> .		-		28
	Trial by, in divorce, 85,				-		-	37
	Of inquiry-liquidating, Without, 98,	-		-		-		<b>42</b>
	executing in open court, 102,		-				-	43
	confirmation of return, 103,	-		-		-		44
	view, asking for; 146,							61
JUSTI			-				-	01
	•							10
	Appeal from judgment of, 10,	-		-		•		10
	judgment on, no declaration, 93,		-		-		-	41
	affirmed, 94, -	<u>}-</u>		-		-		41
LEVA.	RI FACIAS							
	Return day for writ of, 142-2,	2		-		-		59
LIBEL							-	
	Affidavit of claim or defence in, '8-1; 9-1,		-		-		-	5,7
	Bail in, 49,	-		-		-		25
	2000 00, -0,	2						
LIEN	-See MECHANICS' LIEN.	A.						
	•							10
	Of judgment for part of claim, 11,		-		-		-	10
TTOP	-See Argument-List; Civil-List; Trial	f.	<b>6m</b>					
1101-	-See Argument-List; Civil-List; IRIAL	-11	ът.					
T IT NT A	TTO Set Concernment of Transform						*	
LUNA	TIC-See COMMITTEE OF LUNATIC.							
	TATE PROPERTIEN							
MADI	CIOUS PROSECUTION							-
	Affidavit of claim or defence in, 8-1, 9-1,				-		2	5, 7
	Bail-in, 49,	-		3		-		<b>25</b>
	1							•
MARK	ING FOR USE							
	Person for whose use to appear, 104,		i_		-		-	44
	II S							
MAST	ER							
	Brief of exceptions to report, 20, -						_	15
			-				-	31
	Fee, $i_{1_{1}}$	÷						91
	. (96)							

INDEX—COMMON PLEAS	
MECHANICS' LIEN PAGE.	
Plaintiff's specification, etc.; defendant's denial, 8-1, - 5	
Reference to, sufficient, when, $9-2$ , 7	
Judgment, no defence, 9–1, – – – – 7	
MINUTES	
Auditor's, 41, 23	
Noted on, exceptions to sheriff's deed, $131-1$ , 54	
1 ,	
MONEY	
Brought into court, in attachment of vessel, 34, - 19	
Converting attached property into, 22, 16	
Paid out on decree or report, 80,	
docket-receipt for, 79, - 35	
Deposited in bank, 106,	
Instrument for payment of plff's specification, etc., 8-1, - 5	
defendant's denial, 8-1, - 5	
judgment, no defence, 9-1, - 7	
proving execution of, 5, 3	
Paying into court sum admitted, 105, 44	
Prothonotary's commission, 107, 45	
Verdict fee, 99, 42	
MORTGAGE	
Plaintiff's specification, etc.; defendant's denial, 8-1, 5	
Reférence to, sufficient, when, 9-2, 7	
Judgment, no defence, 9-1, 7	
Not to prove execution, when, 5, 3	
MOTION	
How framed ; on argument-list, 108, 45	
Day for hearing, 109, 46	
For judgment in ejectment, 90, 39	
Notice of, to party, 110, 46	
To enter warrant of attorney, 101, 43	
'	
NARR-See DECLARATION.	
NEVER INDEBTED, ETC.	
Denies what, 126, 52	
NEWSPAPER-See Advertisement.	
NEW TRIAL	
For after-discovered evidence, 113, 47	
Motion for—filed, when, 111, 46	
opposite party not heard, 112, - 46	
stays judgment on verdict, 99, 42	
Refused, judgment on verdict, 112, 46	
(97)	

NON ASSUMPSIT	PAGE.
- Denies what, 122,	50
Inadmissible on bill or note, 123,	51
	_
NON EST FACTUM	
Denies what, 125,	52
NON RESIDENT	
To secure cosis, 66,	30
· , ·	
NOT GUILTY	
By carrier, 122-6,	- 50
In ejectment, 89,	39
NOTE-See PROMISSORY NOTE.	
Plaintiff's specification, etc.; defendant's denial, 8-1,	5
Judgment, no defence, 9-1,	- 7
Not to prove execution, when, 5,	3
NOTICE	
To be in writing; service of, 114,	47
Of account filed by trustee, 3,	2
supplemental affidavit of defence, 8-4,	- 5
argument on insufficient defence, 12,	11
Entry on argument-list, what, 18, 110, -	14, 45
Attachment—to dissolve, 23,	16
- garnishee to answer, 24,	. 17
By auditor-of hearing, 42, -	23
report filed, 44,	- 24
Of bail—for stay, 52,	. 26
of addition, etc., to, 56,	- 27
Of costs over twenty dollars, 67,	30
to be secured, 66, - 2.	- 30
Of deposition—taken in State, 73, - ****-	33
out of State, 75,	-, 34
of witness, ancient, etc., +74, 두	* 33
return of commission, 77, t -	- 34
not taken on commission, 77,	<b>34</b>
for use on motion or rule, 78,	85
Divorce-by sheriff, 81,	36
of rule for answer, 84,	- 37
proceedings ex parte, 83, 86,	,37, 38
Ejectment—of artist's survey, 88,	; 38
defendant's statement, etc., 90-1,	39
	11, 14
In interpleader-to maintain or relinquish, 183, -	55
of petition to sell goods, 138,	- 57

(98)

82

83,

				PAC	IE.
	In appeal from a justice, 10,	-		.1	10
	Pleading-to declare or to plead, 91, 117,		-	- 40.	48
	of bill of particulars, 120, -	_	-		49
	When return day expired, 19,		-	-	15
	Of set-off, 8-3,	-		-	5
	Special, 18, 110,	-	-	14,	46
	Of specification, etc., filed after precipe, 8-2,	-	`	-	5
	To stay proceedings, 116,		-	-	48
	By proposed student, 35,	-			20
	candidate for bar, 36-2,		··	1	20
	To widow, heir, devisee, 115,	-			48
	Of execution of writ of damages, 102, -		-	-	43
NUNQI	UAM INDEBITATUS—See Never Indebted			ı	
PARTI	CULARS-See BILL OF PARTICULARS.		*34		
PARTN	<b>VÉRSHIP</b>		ì		
	· •		*		
	When not to prove, 4,	-		•	2
РАУМІ	ENT		*		
	As special plea in assumpsit, 123, - '-		_	_	57 51
	Copy of matter, under plea of, 121,	-			49
PERFO	DRMANCE				
	As special plea in assumpsit, 123, -		-	-	51
-PITTSI	BURGH LEGAL JOURNAL-Sec Advertisen	IENT.			
PLEA,	PLEADING		•		
	In abatement, to be verified, 118,	-		-	48
	Amendment-after demurrer, 128,		-	-	53
	cause set for trial, or at trial,	129,		-	53
	Assumpsit—non assumpsit denies what, 122,		-	-	51
6	to what inadmissible,	123,		-	51
	At length, 119,		-	-	49
	Bill, note-non assumpsit inadmissible to, 123, 12	22,		- 51,	,50
	denial to traverse what, 123, 126, -		-*	- 51,	52
	special pleas, 123, 126, -	- '		- 51,	52
•	Bill of particulars, 120,		<i>_</i> -	-	49
	Matter in confession, etc., in assumpsit, 123-2,	-			51
	covenant, 126,		*-	-	52
	debt on simple cont	ract,	126,		-52
	Covenant, non est factum what, 125, -		- '		52
	Debt on bill or note, 126,	-		-	52
	specialty, 125,		-	-	52
	Rule to declare or to plead, 117,	-		-	48
	Defects, 127,	-	-	-	53

(99)

							PAGE.
	Demurrer-in default of short plea, 119,	-		<b>.</b> .	-	•	49
	amendment, after judgment on,	128	,		-	-	53
	Dilatory, 118,	-	•	-		-	48
Charles and the second	Indebitatus assumpsit, non assumpsit what,	122.			-	-	50
	Issue—joinder of, 143,	. ´		-			60
	continuance, no joinder, 144,		-		_	-	60
	general, entered by court, 144,	-		-		-	60
	Non assumpsit—See Assumpsit, above.						
					_	-	52
	est factum, denies what, 125,		-		-		51
	Not guilty," by carrier, 122-6,	-		-		-	39
	in ejectment, 89,		-		-	-	51
	Payment-as special plea in assumpsit, 123,			-		-	49
	copy of matter of, on rule, 121,		-		-	-	49
	Promissory note-See Bill, above.						0 40
	Set-off-filing copy of, 5, 121, -	-		-		-	3,49
	notice of, 5, 8-3, -		-		-	-	8,5
	as special plea, 123-2, -	-		-		-	51
	Special plea, matter in assumpsit, 123-2,		-		-	-	51
	covenant, 125,	-		-		-	52
	debt on simple contr	ract,	120	i,	-	-	52
POLIC	Y OF INSURANCE						
	Plaintiff's specification, etc.; defendant's de	enial	. 8-	1.	-	-	5
	Copy not required, when, 9-2,	_ `	<i>,</i> -	_		-	7
	Avoiding assured's interest, 124, -				-	-	52
	Judgment, no defence, 9-1,	_		_		_	7
	Non assumpsit denies what, 122-8,	-	-	•	£		. 51
	Non assumpsit denies what, 122-s,		-		-	~	an rain in a
DDEAT	ידס						
PRECI			•				
	Specification—filed with, filed after, 8-2,		-		-	-	. 5
	Issuing for costs, without, 95, -	ř		2		-	42
	For judgment by default, 96, 🛫 -	· . ·	-		-	-	42
	for part of claim, 11,	- 29	L	-		-	10
	no declaration, 93, 🛛 - *		-		-	-	41
	' in ejectment, 90-2, -	- *		-		-	39
	بنوب <sup>س</sup> بر ۲		ж	<u> </u>			
PROMI	SSORY NOTE *		•		С — А		
	Non assumpsit inadmissible, 123, 122,	-		-	~	-	51, 50
	Denial to traverse what, 123, 126,		-		- ;		51, 52
	Special pleas, 123, 126,	-			. *	-	51, 52
	Not to prove execution, when, 5,		- '		-		3
	, , , , , , , , , , , , , , , , ,						
PROTE	IONOTARY						
	To mark action abated for death, 1,				_		- 1
		0094	ູ້		-	- '	1
	non-payment of	COSI	رك رد	•		-	. 13
	Arbitration-to strike off rule, 14,	<u> </u>	-	10	-	•	
	receive bail in appeal from	ย พย	ιrα,	10,		•	14
	(100)						

•

									۱ı	GE.
Auditör'	's report—to m	nark confir	med, 4	4,	-		~		-	<b>24</b>
	•	nter excep				۰.		-		<b>24</b>
Commis	sioner of bail,	-	-	- '	-		-		-	25
	ri-to give cer		bail in	ı, 61,		÷		-	4	<b>29</b>
		urn of reco			-		-		~	<b>2</b> 9
		writ, 63,	· -		-	-		-		<b>29</b>
		udgment, 6	34,	-	-		-		-	<b>29</b>
To tax c	osts and fees,		· -		-	-		٤		31
	on-to enter ru		tness in	1 State	ə. 73.		-		-	33
Dopositi	•••••••••	····, ···		ut of		75.		-		34
				ncien					-	33
•	eive no	tice of ret						-		34
		xceptions t		-	-		, 		-	34
To enter	r issue in divo		-1,		-	~		-		37
	ent—to enter p		-	-	-		-		-	39
13/004110		os., no stat	ement.	etc.	90-2.	_		-		39
Toining	issue, 143,			-			-		-	60
	nt—to enter, f	or default	in set-r	off etc	2. 8-a			-		5
0 uugme		or, directed			, -	,	-		-	42
	liquidati			')	-	-		-		42
	on-verdic		_	_	_		<u>:</u>		-	42
		<i>os.,</i> no déc	- laratio	n 93.		_		-		41
	01 1000 pr	for fee		ш, <i>о</i> оу	_				-	42
			eal fro	maž		10				10
	ndn anit	no bill of				1.	, _		-	49
	non-surt,	not securi						_		30
∽ mTravania	- motions and					-	_		-	45
, To ente	r motions and rule for testi			- 78	-	_		_		85
Oular t	o withdraw re	and direa	tod to	120	_	_	_		-	54
Order 6	er winnung wird		land 1	21	•	_		-		54
To note	sheriff's deed		ections,		- ntions	- +0	122	_1	-	54
					puons	, w,	104	-1,	-	57
	exceptions to	special re	turn, 1	40,	-	-		-		01
		·								
PUBLICATIO	N-See ADVE	RTISEMENT	r.							
		~								
RECOGNIZAN	-			_		_				_
	ff's specificatio			t's de	nial,	8-1,	-		-	5
Reférer	nce to, sufficier	nt when, 9-	-2, • -			-		-		7
Judgm	ent, no defenc	e, 9-1,	-	-	-		-		-	7
•				43						
RECORD		~								
	ff's specificatio			enial,	8-1,		Ŧ		-	53
Referen	nce to, sufficien	nt when, 9-	-2, -		-	-		-		7
	ent on, no defe		-	-	-		-		-	7
In bail			-		-	-		-v		26
	of, in certiora	ıri, 63,	٤.	-	-		-		-	29
	t on, 79,		F		7	-		-		35
14	-	(10	1)							
		•								

	To dimense of								r.	AGE.
	In divorce, 86,		-		-		-		- *′	38
	Marking for whose use, 104,	-		-		- ,		-		44
	Withdrawing, from office, 130, -		-		-		-		-	54
	Facts not of, to be verified in :									•-
	exceptions to	arhi	itrot	orst		b.e.	15			10
	Cacephons to						19,		-	13
				dee				-		54
	•	spec	cial :	retui	m, 1	140,	-		-	57
REPOI	RT									
	Brief of another on to a continue to	00								
	Brief of argument on exception to	20,	-		-		-		-	15
	To contain rulings, 43,	-		-		-		-		<b>23</b>
	exhibit minutes, 41, -		-		-		-		-	23
	Testimbhy with, 43,			-		-		_		23
	Notice of filing, 44,		-		_					24
	Confirmed, or recommitted, 45,						-		-	
	Wohow noid out un'den 00"	-		-		-		-		24
	Money paid out under, 80,		-				-		-	36
	Recording, 47,	-		-		-		-		<b>25</b>
	-									
RETUI	RN DAT									
	General, 142-2,		-		-		-		-	59
	In divorce, 81,	-		-		-		-		36
	To matter on argument-list, 19; -		-		-		_			15
	Judgment-no appearance, after,	11							-	
	'Saturday as, 109;	, i i i i i i i i i i i i i i i i i i i		-		-		-		40
	Cabarday as, 103;		-				-		÷	46
RETU	RN; SPECIAL-Sce, Special Reti	JRN.								
RETU	N; SPECIAL-Sco, SPECIAL RETU	JRN.								
	RN; SPECIAL-Sco, Special Retu	JRN.								
RETUI RULĘ	-	JRN.								
	- Framed, how, 108; - 4-	JRN.	دلو		-			>	_	45
	-	JRN.	دارد	<b>.</b>	Ŧ	۰ <u>-</u>		>	-	45 46
	Framed, how, 108; Day for hearing under, 109,	JRN.		-	Ŧ	<b>'</b> _		> -	-	46
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110,	-	۶ م	-	7	۰ <u>-</u>		> -	-	46 46
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110,	- 78.	~ ~	-	7	<b>'-</b>		> - -	-	46 46 35
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition, for use under To admit document not directly in	, 78, 'issue	÷- •	-		۰ <u>-</u>	41	> - -	- -	46 46
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrations, 14;	- 78.	÷- ► e,_6,	-		۰ <u>-</u>	1	> - -	- -	46 46 35
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition, for use under To admit document not directly in	, 78, 'issue	;- ▲ e,_6,	-		۰ <u>-</u>	1 ti	> - -	- - 	46 46 35 4 15
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrations, 14;	, 78, 'issue	;- ► e,_6,	-		<u>.</u>	-	う	- - 	46 46 35 4 15 29
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66,	, 78, iesuo	;- <b>^</b> e,_6,	-		۲ <u>ـ</u>	-	) - · · · · · · · · · · · · · · · · · ·	-	46 46 35 4 15 29 30
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of wilness in State,	, 78, issue	۲ -			· <u>·</u>		) - · · ·	-	46 46 35 4 15 29 30 83
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, out of S	, 78, issue 73, tate,:	, - 75;			·-	-			46 46 35 4 15 29 30 83 84
	Framed, how, 108; Day for hearing under, 109, Notice of entry of, 110, deposition, for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, out of S ancient;	, 78, issue 73, tate,:	, - 75;		t i i t t	<u>،</u>			-	46 46 35 4 15 29 30 83
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, sut of S ancient; answer in divorce, 84,	, 78, issue 73, tate,:	, - 75;			·	5 - 5			46 46 35 4 15 29 30 83 84
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12,	, 78, issue 73, tate,:	, - 75;		· · · · ·	<u>.</u>				46 46 35 4 15 29 30 83 84 33 '37
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12,	, 78, issue 73, tate,:	, - 75;			<u>ر</u>	- r, -			46 46 35 4 15 29 30 83 83 84 33 '37 11
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition, for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, out of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 130,	73, tate, etc.,	75; 74,	-			- L			46 46 35 4 15 29 30 83 34 33 '37 11 55
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66, deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 130, discharged, w	73, 173, tate, etc.,	75; 75; 74,	-	с	<u>.</u>				46 46 35 4 15 29 30 83 84 33 34 33 37 11 55 55
	Framed, how, 108; Day for hearing under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 130, discharged, w Pleading—to declare or to plead, 92	73, 173, tate, etc.,	75; 75; 74,	-	с	·				46 35 4 15 29 30 88 34 33 '37 11 55 55 , 48
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 132, discharged, w Pleading—to declare or to plead, 92 plead at length, 419	, 78, issue 73, tate, etc., hen, 2, 117	75; 75; 74,	-	с	·			-  - - - 41	46 46 35 4 15 29 30 83 84 33 34 33 37 11 55 55
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, sutf of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 132, discharged, w Pleading—to declare or to plead, 92 plead at length, 419 for bill of particulars;	78, 78, 73, tate, etc., 2, 117	75; 74, 134	-	с	· · · ·			-  - - 41	46 35 4 15 29 30 88 34 33 '37 11 55 55 , 48
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, sutf of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 132, discharged, w Pleading—to declare or to plead, 92 plead at length, 419 for bill of particulars;	78, 78, 73, tate, etc., 2, 117	75; 74, 134	-	с				- - - - 41	$\begin{array}{c} 46\\ 46\\ 35\\ 4\\ 15\\ 29\\ 30\\ 38\\ 34\\ 33\\ 37\\ 11\\ 55\\ 55\\ 48\\ 49\\ 49\\ 49\\ \end{array}$
	Framed, how, 108; Day for hearing; under, 109, Notice of entify of, 110, deposition; for use under To admit document not directly in choose arbitrators, 14; For return in certiorari, 62, costs, 66 deposition of witness in State, sut of S ancient; answer in divorce, 84, insufficient defence, 12, In interpleader case, 132, discharged, w Pleading—to declare or to plead, 92 plead at length, 419	78, 78, 73, tate, etc., 2, 117	75; 74, 134	-	с		· · · · · · · · · · · · · · · · · · ·		- - - - 41	$\begin{array}{c} 46\\ 46\\ 35\\ 4\\ 15\\ 29\\ 30\\ 38\\ 34\\ 33\\ 37\\ 11\\ 55\\ 55\\ 48\\ 49\\ \end{array}$

INDEX-COMMON PLEAS.	87
. P	ĄGE.
To show cause—on argument-list, 17,	14
returnable, when, 18,	14
fixing new return day for, 19;	15
at hearing of, who to begin, $21-2$ , -	15
for new trial, 112,	46
on warrant of attorney, 101,	<b>4</b> 3
SATURDAY	
As return day, 109,	46
Matters on argument-list, heard on, 19,	15
Sheriff's deed, acknowledged on, 131,	54
to except to, before next, 182,	54
Rule to show cause, returnable on, 17,	14
• *	
SET-OFF	
Copy of, filing, 5-2,	సే
furnishing to plaintiff, 121,	49
Notice of filing, 5-2, 8-3,	3, 5
Denying execution, 5-2,	3
As special plea, 123,	52
SHERIFF	
As bail, 48, -,	25
Acknowledgment of deed, 131,	54
objecting, excepting to, 132-1,	54
Publication of notice in divorce, 81,	3Ğ
Inquest on fieri facias, 103,	44
Notice-to widow, heir, devisee, 115,	48
SHERJFF'S INTERPLEADER	
Applications under, 133,	55
Plaintiff unable to give bond, 136,	56
,	5C
Form of declaration, of plea, 137–1, Plaintiff's duties, on issue awarded, 135,	55
Rule to maintain or relinquish, 133,	55
discharged, when, 134-1,	55
when both parties appear, $134-2$ ,	55
Order for sale of goods, 138,	57
Action against sheriff, 139,	75
SLANDER	
Affidavit of claim or defence in, 8-1, 9-1,	5, 7
Bail in, 49,	25
SPECIAL MATTER	
Not directly in issue, cost of proving, 6,	4
(103)-	

	L PLEA			PA	GE.
	Matter as, in assumpsit, 123-2,		-		51
	covenant, 125,	-		-	52
	debt on simple contract, 126, -		-		52
SPECIA	AL RETURN				
	Reading of; confirmation; excepting to, 140, -	-		•	57
SPECIA	TLA Î				
-	Non est factum denies what, 12	-		-	52
STAY					
	Costs-for non payment of, 2,	-		-	1
	on appeal from, as taxed, 69,		-		31
	Of proceedings, notice of, 116,	-		-	48
	execution, bail for, 52,		-		26
-	certificate of, 53,	-		-	26
	suggesting freehold for, 51,	-	-		26
STUDE	NT-See Attorney; Board of Examiners.				
SUBPO	<b>ENA</b>				
	Before read deposition, 76,	-		-	34
	Issue and return in divorce, 81,	~	-`		36
	affidavit to, 82, -	-		-	37
1.1.	For public record, 141,	•	- ,		58
XIII-4	aluder, warring a for -				A
SUPER	SEDEAS				
	Certiorari, when, 61;	-	•	-	29
SURVI	Y-See Ejectment.	,	t	in.	
	י יי יי כרא	**			
TĘNDI	Of sum admitted, 105,	_			44
	In attachment of vessel, 34,		_	-	19
	In attachment of vessel, at,	T	د آ		10
<b>WERMS</b>					
	OF COURT		1.4		
2 <b>1</b> 3 ( ( ( ) )	S OF COURT Begin, on what days, 142,	4 -	1	-	59
	Begin, on what days, 142,	4 - N	T.#	-	59
TESTI:	Begin, on what days, $142$ , .	* . ``		-	
	Begin, on what days, 142, • · · · · · · · · · · · · · · · · · ·	4 _ ~ -		-	59 23
	Begin, on what days, 142, •	* _ ~ -	-	-	
	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken ex parte, 83,	* _ ~ -	-	-	23 27 37
	Begin, on what days, 142, •	۲ بر ۱۹۰۳ - ۱۹۰۰ -	-	-	
TESTI	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken <i>ex parte</i> , 83, to be submitted, '86,	* _ ~ -	-	-	23 27 37
	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken <i>ex parte</i> , 83, to be submitted, '86,	×		-	23 27 37 38
TESTI TORT	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken ex parte, 83, to be submitted, 36, Affidavit of claim or defence in, 81, 9-1,	× • •		-	23 27 37
TESTI TORT	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken <i>ex parte</i> , 83, to be submitted, 86, Affidavit of claim or defence in, S <sup>2</sup> <sub>1</sub> , 9–1, Bail in, 49,	* - - - -		-	23 27 37 38
TESTI TORT	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken ex parte, 83, to be submitted, 36, Affidavit of claim or defence in, 81, 9-1,	* _ · · · · · · · · · · · · · · · · · ·			23 27 37 38
TESTI TORT	Begin, on what days, 142, MON Y Return of, by auditor, 43, Bill of exceptions on, 57, In divorce—taken <i>ex parte</i> , 83, to be submitted, 86, Affidavit of claim or defence in, S <sup>2</sup> <sub>1</sub> , 9–1, Bail in, 49,	×		-	23 27 37 38

89 INDEX-COMMON PLEAS. PACE. TRESPASS 5, 7 Affidavit of claim or defence in, 8-1, 9-1, 25Bail in, 49, \_ \_ . TRIAL Admitting at-partnership as alleged, 4, 2 3 execution of writing, 5, 4 document not directly in issue, 6, 15 Limits of argument at, 21, -.53 Objecting at, on defects pleaded over, 127, -34 Reading deposition at, 76, - -34 objections to, 77, 37 In divorce, 84, 85, -39 Ordering ejectment case for, '89, 5 Evidence at, 8-4, Stating law-point at, 58, 59, -28 49Objecting to short plea at, 119, -TRIAL-LIST 60 1 To consist of what, 143, -60 Joining issue in cause on, 144, -Rule to plead at length, after cause on, 119, 49 TRIAL, NEW-See NEW TRIAL. . 5 m TROVER AND CONVERSION Affidavit of claim or defence in, 8-1, 9-1, 5.7 25Bail in, 49, - -TRUSTEE Notice of filing account, 3, - -2 Affidavit of claim a defence by, 9-3, USE-See MARKING FOR USE. VENDITIONI EXPONAS 59Return day for writ of, 142-2, VERDICT 28 Excepting to charge, before, 58, -42 Judgment on, 99, - -45 Moving for new trial, after, 110, 42 Fee, 99, -VIEW, JURY OF 48 Asked for, when, 115, (105)

ŗ

90

WARRANT OF ATTORNEY	PAGE.
Filing original, or copy, 100,	- 43
under motion, or rule, 101,	- <del>1</del> 3 43
WARRANTY	
Non assumpsit denies what, 122,	50
WIDOW	
Sheriff's notice to, 115,	- 48
WITNESS	
Deposition of-in State, 73,	- 33
out of State, 75,	- 33
ancient, infirm, etc., 74, -	- 33
who may take, 73,	- 33
as evidence, 76,	- 34
for use under motion, etc., 78,	35
Examined at bar, 78,	- 35
Name, to after-discovered evidence, 113, -	48
WRITING	
Admitting execution of, 5,	- 3
document not directly in issue, 6-1,	- 3
instrument of, for payment of money, 8-1, -	- 5
judgment on, 9-1, -	- 0
To be in, attorneys' agreements, 38,	-, 22
points for charge, 58,	28
exceptions to charge, 60,	- 28
questions by Board, 37,	21
all notices, 114,	- 47
order to withdraw record, 130, 🔹	<b>'54</b>
request for case on issue-flocket, 142, -	- 59
application for interpleader, 133,	55
suggestion of freehold, 51,	- 26
	40. s
۱	***
•	

(106)

## PENNSYLVANIA PRACTICE.

#### RULE I.

#### MISCELLANEOUS RULES.

§ 1. The equity side of the supreme court, [district Courts of courts] and courts of common pleas, shall be deemed open for proceed ings of always open for the purpose of filing bills, answers and course. other pleadings, for issuing and returning mesne and final process and commissions, and for making and directing all interlocutory motions, orders, rules and other proceedings preparatory to the hearing of causes upon their merits.(a)

(a) Under Article V, Sections 6-and 21, of the new Constitution, the Nisi Prius and District Courts were abolished. And see Act 14 May, 1874. P. L. 139.

 $\S$  2. The prothonotary's office shall be open, and the Prothonotary, at prothonotary shall be in attendance therein daily, during office. office hours, for the purpose of receiving, entering, entertaining and disposing of all motions, rules, orders and other proceedings which are grantable of course, and

<sup>1</sup>By Art. V., Sec. 3, of the new Constitution, the original jurisdiction of the Supreme Court in equity is limited "to cases of injunction where a corporation is a party defendant.

The Court will not assume jurisdiction under this clause unless sufficient reason is shown why the cause could not be heard in the proper county court: which reason must be verified by affidavit and presented with the bill, otherwise the bill will not be entertained. Buck Mountain Coal Co. v. Lehigh Coal and Navigation Co. [Luz.], 2 W. N. C. 241; s. c., 8 Leg. Gaz. 15.

The equity rules adopted in 1855 by the Supreme Court govern in the several counties of the State. Durborrow's Appeal [S. C., Hunt.], 6 W. N. C. 209.

The several courts of Common Pleas have express power under Act 4 May, 1864, (Purd: Dig. 601, pl. 70) to establish for their respective courts a tariff of fees and costs in equity cases. Id. (129)

applied for or had by the parties or their solicitors, in all cases pending in equity, in pursuance of the rules hereby prescribed.

Eastern district, duties of \$ 3.(a) In all cases in equity instituted in the supreme nist prime judge court when sitting in the eastern district, the nisi prime toward case in judge, unless otherwise ordered by the court on cause

shown, shall take cognizance, and shall hear and decide the same, and make all necessary decrees as fully as the supreme court in banc might or could do, subject to revision according to the ninth section of the act of 26th *Nui prins open*, July, 1842. The *nisi prins* shall be open for equity when. cases on all juridical days.

(a) See § 1, note (a).

Certifying § 4. When any case in equity, within the meaning of der Act 8 April, the first section of the act of 8th April, 1852, (a) comes 1852.

into the supreme court in banc for revision, it shall be certified from district to district until determined, as required by the act aforesaid. All such cases, instituted in other districts than the eastern district, shall be disposed of by the supreme court in banc, without a preliminary reference to the judge at *nisi prius*, and shall be certified for that purpose from district to district, as the said act requires.

(a) Purd. Dig. 592, pl. 8.

## RULE 2.

## PROCESS AND APPEARANCE,

When suit in § 5. No suit shall be deemed pending until the bill " equity deemed be actually filed in the prothonotary's office. Every bill Bill-printing of, etc. shall be printed, except in the cases specially provided

for in these rules; and the prothonotary shall endorse thereon the time of filing the same.

Service of copy of bill,

§ 6. Unless otherwise provided by law, the defendant or defendants shall be required in the first instance to appear and answer the exigency of the bill, by the service of each defendant therein named of a printed copy (130)

thereof, on which shall be endorsed a notice in the fol- Notice to be endorsed lowing form : "To the within-named defendant: (here copy. the name of the defendant upon whom service is to be 'made must be inserted.) You are hereby notified and required, within fourteen days after service hereof on you, exclusive of the day of such service, to cause an appearance to be entered for you in the supreme court of Pennsylvania, in and for the eastern district, (or as the case may be,) to the within bill of complaint of the within-named (here insert the name of complainant,) and to observe what the said court shall direct. Witness my hand at (here insert the place where the court is held, the date of notice, and name and place of business of plaintiff's solicitor.)"

"Note.—If you fail to comply with the above directions by not entering an appearance in the prothonotary's office, within fourteen days, you will be liable to have the bill taken pro confesso and a decree made against you in your absence."

§ 7. Guardians ad litem to defend a suit may be apguardian ad pointed by the court, or by any judge thereof, on petition, pointed. for infants or other persons, who are under guardianship, or otherwise incapable to sue for themselves; all infants suing by guarand other persons so incapable may sue by their guardian ad litem or dians, if any, or by their prochein ami, subject, however, to such orders as the court may direct, as to security or otherwise, for the protection of such infants and other persons.

§ 8. Service upon a defendant shall be by giving him Service of proa printed copy of the bill, with a notice endorsed thereon ant. in the form prescribed in these rules, or by leaving such copy and notice at his dwelling house, with an adult member of his family or the family in which he resides. The court, or a law judge thereof, may direct how service Service, in shall be made in special cases.

(131)

-5

Service on husband and wife. Service of a copy of the bill and notice to appear shall service on each of them. Service on non-resident defendants shall be made in the mode prescribed by the acts of assembly relating thereto.(a)

(a) Purd. Dig. 598, pl. 47, et seq.

<sup>a</sup> <sup>Service on</sup> § 10. Service of the bill and notice to appear, on a corporation, shall be effected in the mode prescribed by

law for the service of a writ of summons upon such cor- $\frac{\text{Service on the poration.}(a)}{\text{Commonwealth.}}$  Where the commonwealth is a necessary

party, service shall be made in the manner prescribed by the act of 6th April, 1844.(b)

(a)Purd. Dig. 286, pl. 23, et seq.; Act 23 March, 1877, P. L. 32. (b)Purd. Dig. 598, pl. 49.

Service on § 11. Whenever the court shall make an order under  $\frac{1}{1}$  for a service upon a non-resident defendant; without the com-

monwealth, such service shall be by delivery to him of a copy of the bill, such as is provided for in these rules, together with a copy of the order authorizing such service; and in. such case the form of subpœna shall be similar, in substance, to the notice to appear prescribed by these rules, but so varied as to require the defendant to cause an appearance to be entered for him, on or before the time fixed in such special order.

(a)Purd. Dig. 598, pl. 51.

Service by \$12. Whenever the court shall direct service by pubder Act 6 April, lication, under the provisions of the act of 6th April, 1859,(a) a copy of such order, together with a statement of the substance and object of the bill, petition or other pro-

ceeding, shall be published in such one or more newspapers, and at such times as the court shall by special order direct, having regard to the probable residence of the defendant, and affidavit filed stating all the knowledge or information of the complainant or deponent in reference to such defendant's place of residence.

(a) Purd. Dig. 599, pl. 52.

§ 13. Upon filing the bill, the prothonotary shall Suit to be enenter the suit upon his docket as pending in the court, when. and shall state the time of entry; and upon the filing of an affidavit of the due service of notice to appear upon the defendant or defendants, shall enter the same upon the docket. The appearance of the defendant, either Appearance of personally or by solicitor, shall be by a paper filed and by paper filed, etc. endorsed by the prothonotary, with the time of filing the same, and shall be noted on the margin of the equity docket. If the defendant shall not cause an appearance to be entered for him within the time limited for that purpose, the plaintiff may, at his election, enter an order as of course in the cause, that the bill be taken pro confesso, or proceed by attachment as is hereafter provided by Section 29.

## RULE 3.

## PLEADINGS GENERALLY.

§.14. All bills, interrogatories, demurrers, pleas, an-Pleadings be printed. swers to bills and to interrogatories, and amendments of pleadings, where such amendments exceed one hundred consecutive words, shall be printed on white sized paper of a convenient size. Amendments shall be printed on one side only of the paper. Each party appearing by Copies or pleadings. separate counsel shall be entitled to ten copies of all such pleadings. The amount paid for printing shall be al- Costs of print-ing pleadings. The amount paid for printing shall be al- Costs of print-ing pleadings. This rule shall not apply Rule not ap-plied, when. where counsel shall certify that his client, by reason of poverty, is unable to pay for the same. In which case. instead of ten printed copies, each party shall be entitled to one fairly written copy of all pleadings, interrogatories, etc., and in such case any other party may print such papers, and be allowed for the expense at the termination of the cause, or when the court shall see fit to order the payment by the other party. The prothono- In what case tary shall not permitany such unprinted pleadings to be pleadings filed, saving with such a certificate, and saving also bills junction.

(133)

for injunction where counsel shall certify that there has not been time to print the same. And such injunction bills shall be withdrawn and deemed finally dismissed as of course, unless within twenty days after filing the same printed copies are filed and served.

## RULE 4.

#### STRUCTURE OF BILL.

Structure and" contents of bill.

ter.

ence.

§ 15. Every bill shall be expressed in as brief and succinct terms as it reasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts, or other instruments, in hæc verba, or any other impertinent Reference to matter, or scandalous matter not relevant to the suit. If master for imor it do, it may, on exceptions, be referred to a master by scandalous matany judge of the court for impertinence or scandal, and if so found by him the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a law judge thereof shall otherwise order. If Costs of refer- the master shall report that the bill is not scandalous or impertinent, the defendant [plaintiff] shall be entitled to all costs occasioned by the reference, or the court or any law judge thereof may decide thereon without a reference unless the case shall require it.

Form of bill.

§ 16. Every bill, in the introductory part thereof, shall contain the names of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form in substance shall be as follows : In the (style of court). Sitting in equity. Between (A. B.) plaintiff, and (C. D.) defendant. To the honorable the Judges of the said Court: Your orator complains and says, etc.

Bill to be divided into paraof facts, etc.

§ 17. The bill shall be divided into paragraphs congraphs, to con-secutively numbered, and shall contain a succinct 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 (134)

necessary under the rules of equity pleading to entitle the plaintiff to relief, and the prayer for relief and for special orders, writs or process, which shall also be so divided and numbered. The combination clause, the Formal averments to be interrogatories, and the allegation of want of remedy at omitted in bill. law and similar formal averments, shall be omitted.

## RULE 5.

#### PARTIES.

§ 18. Where no account, payment, conveyance, or, In what cases other direct relief is sought against a party to a suit not appear and being an infant, the party upon service of the notice specially requirupon him need not appear and answer the bill unless the plaintiff especially requires him so to do, by the prayer of his bill; but he may appear and answer at his option; and if he does not appear and answer, he shall. be bound by all the proceedings in the cause. If the plaintiff shall require him to appear and answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

§ 19. Where infants or persons not sui juris are parnot sui juris fact. Where person not sui juris fact ties, the fact shall be specially stated in the bill, so that to be stated in the court before or after the service of process may take order thereon as justice may require.

§ 20. Where persons without the jurisdiction are where person proper or necessary parties, this fact shall be stated in diction, fact be the bill, and they may be brought in by service when they come within the jurisdiction of the court, or under a special order as provided by the acts of assembly.(a)

(a) Purd. Dig. 598, pl. 51..

§ 21. In all cases where it shall appear to the court Proceedings that persons, who might otherwise be deemed necessary dice to the or proper parties to the suit, cannot be made parties by persons not reason of their being out of the jurisdiction of the court, incapable otherwise of being made parties, or because

(185)

their joinder would oust the jurisdiction of the court, the court may, in their discretion proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

Proceeding § 22. Where the parties on either side are very nuwithout parties where parties merous, and cannot without manifest inconvenience and numerous. oppressive delays in the suit be all brought before it, the court in its discretion may dispense with making all of them parties, and may proceed in the suit, having sufficient parties before it to represent all the adverse interest of the plaintiffs and the defendants in the suit properly before it. But in such cases the decree shall be without prejudice to the rights and claims of all the absent parties.

Trustee of realty to represent thereof.

§ 23. In all suits concerning real estate, which is beneficiaries vested in trustees, and such trustees are competent to self and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the éstate or the proceeds, or the rents and profits, 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 in such real estate or rents and profits parties to the suit, but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

Making heirat-law a party.

§ 24. In suits to execute the trusts of a will, it shall not be necessary to make the heir-at-law a party; but the plaintiff shall be at liberty to make the heirs-at-law a party, where he desires to have the will established against them.

Parties, where § 25. In all cases where the plaintiff has a joint and ointly and sev- several demand against several persons, either as princierally liable. (136)

pals or sureties, it shall not be necessary to bring before the court, as parties to a suit concerning such 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 a bill in the nature of a cross-bill against such party as is liable hot made a cojointly 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 cross-bill, be conclusive as to such other party, and if he shall appear thereto, be conducted as if he had been made a party thereto in the first instance.

§ 26. If a defendant shall, at the hearing of a case, Decree saving where object that a suit is defective for want of parties, not want of parties alleged. having by plea or answer taken the objection and therein specified by name or description the parties to whom the objection applies, the court, if it shall think fit, shall be at liberty to make a decree saving the rights of the absent parties.

§ 27. Where the defendant shall by his answer sug- Setting down gest that the bill is defective for want of parties, the leged want of parties the leged want of parties the leged want of plaintiff shall be at liberty, within fourteen days after answer filed, to set down the "cause for argument upon that objection only; and the purpose for which the same is so set down shall be notified by an entry to be made in the equity-docket in the form or to the effect following, that is to say: "Set down upon the defendant's objection for want of parties." And where the plaintiff Effect of proshall not set down his cause, but shall proceed therewith ing without set to a hearing, notwithstanding an objection for want of argument al-leged want of parties taken by the answer, he shall not at the hearing parties. of the cause, if the defendant's objection shall then be allowed, be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it think fit, shall be at liberty to dismiss the bill. ٠.

(137)

Cross-bill

11 ·

Discontinu-

§ 28. The parties to a suit may at any time before ance by agree-ment and pay-decree, by agreement in writing, without special motion, consent that the bill be dismissed with or without costs, as may be stipulated; and upon payment of the costs due to the officers of the court, such agreement shall be \* entered upon the docket, and the suit shall be thereupon fully ended and discontinued.

## RULE 6.

## PLEAS, DEMURRERS, AND DECREES PRO CONFESSO.

Rule for plea, demurrer, or answer.

§ 29. The plaintiff shall be entitled immediately after the defendant's appearance is entered, to a rule on defendant to be entered of course in the prothonotary's office, to file his plea, demurrer, or answer to the bill within thirty days after service of notice of such rule; in default of compliance therewith the plaintiff may at his election enter an order as of course in the cause, that

the bill be taken pro confesso. And in such case, and Proceedings also where the bill is taken pro confesso for want of an cree pro confesso for want of ap-appearance, the cause shall be proceeded in ex parte, and pearance, plea, the case may be put upon the next equity argument-list, swer. and the matter of the bill may be decreed by the court when there reached in its order, if the same can be done without an answer, upon the allegations in the bill, which without further proof shall be taken as admitted ; Attachment to or the plaintiff, if he requires any discovery or answer compel an anto enable him to obtain a proper decree, shall be entiswer. tled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer or otherwise complying with such order as the court or a law judge thereof may direct as to pleading to or fully answering the bill within a period to be fixed by the court or judge, and undertaking to speed the cause; or it shall be in the Process of con-tempt to compel option of the plaintiff, when such rule to plead, answer

a plea, demurrer or demur shall have been served as aforesaid and not

(138)

complied with, or on default of appearance by the defendant within the time limited therefor, instead of taking the bill *pro confesso*, to have process of contempt to compel an answer.

§ 30. When the bill is taken pro confesso, and the Decree on court shall have proceeded to a decree as aforesaid, such bill taken pro decree so rendered shall be deemed absolute, unless the lute, when; set aside on motion, court or a law judge thereof shall, within fourteen days when after the service of notice of such decree on the defendant, set aside the same and give the defendant time for filing an answer upon cause shown. And no such motion shall be granted, unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct for the purpose of speeding the cause.

§ 31. The defendant may, at any time before the bill Defendant may is taken for confessed, or afterwards with the leave of etc., to the whole the court, demur or plead to the whole bill or to part of bill. it, 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 or combination, a plea to such part of fraud or combination must must be accompanied with an answer fortifying the plea, be accompanied with answer exand explicitly denying the fraud and combination and the <sup>plicit in denial</sup>.

§ 32. No demurrer or plea shall be allowed to be Demurrer or filed to any bill, unless supported by affidavit that it is supported by afnot interposed for delay; and if a plea, that it is true in point of fact. Demurrers shall be substantially in the form following: "The defendant demurs to the whole Form of dbbill," or "to so much of the bill, or discovery or relief," stating the particulars and assigning the reasons or grounds in detail.

§ 33. The plaintiff may set down the demurrer or Plaintiff may plea to be argued, or he may take issue on the plea. If have argument upon an issue, the facts stated in the plea be determined sue on plea.

(139)

for the defendant, they shall avail him as far as in law and equity they ought to avail him.

§ 34. If the plaintiff shall not reply to any plea, or Defendant may set plea or demurrer for ar set down any plea or demurrer for argument within ten gument, when. days after service of the same, the defendant may set it down for argument on five days notice.

Demurrer or § 35. No demurrer of pice server held bad, when overruled upon argument only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to, or because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

Amending bill

§ 36. If, upon the hearing, any demurrer or plea shall after demurrer 3 50. If, upon one may, in its discretion, upon motion of the plaintiff, allow him to amend his bill upon such terms as it shall deem reasonable.

§ 37. If, upon the hearing, any demurrer or plea is Assigning defendant to an-swer after de-overruled, utiless the court shall be satisfied that it was murrer or plea to bill overruled, intended for vexation and delay, the defendant shall be

assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, at such period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof the bill shall be taken against him pro confesso, and the matter thereof proceeded in

Decree pro con- and decreed accordingly; and such decree shall also be fesso on plea or demurrer deem-made when the court deems the plea or demurrer to vexatious, frivolous, etc. have been for vexation and delay, and to have been frivolous or unfounded.

## RULE 7.

#### ANSWERS AND CROSS-BILLS.

Structure and form of answer.

§ 38. The defendant shall make answer to all the make terial allegations of the bill. The answer of a defendant must be in the first person, and divided into paragraphs

(140)

numbered consecutively, each paragraph containing as nearly as may be a separate and distinct allegation. The Defendant rule that if the defendant submits to answer, he shall all matters of answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea or demurrer protect himself from such answer and discovery. And the what matters defendant shall be entitled in all cases, by answer, to insist fendant may in upon all matters of defence in law, (not being matters swer; what matof abatement, or to the character of the parties, or of lable to answer. matters of form), 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 in any answer in support of such plea.

§ 39. Specific interrogatories to defendants shall not Interrogatobe included in the bill, but may be filed separately. In separately. like manner any defendant shall be entitled to file interrogatories to any of the plaintiffs after he shall have put in his own answer to the bill. In either case they may be filed at any time before the taking of testimony Time for filing. is begun, and shall be deemed with the answers part of the pleadings. By special order on notice they may be filed after testimony has been taken, and answers required at such time as the court or a law judge may They shall be divided as conveniently as may To be divided and numbered. order. Where there is more than one debě, and numbered. fendant or plaintiff, the particular interrogatories which each is required to answer shall be specified by a note at the foot of the paper. A copy shall be served on each Copies to be

party required to answer them, or his counsel, and an order of course, to answer within ten days after such <sup>Copies of an-</sup>service, and on neglect to answer any interrogatory and <sup>rogatories.</sup> serve a copy of such answer within that time, the plain-<sup>Attachment to</sup> tiff or defendant, as the case may be, shall be entitled to move for an attachment to compel an answer.

Party at liberty to decline to § 40. A plaintiff or defendant shall be at liberty to deanswer inter-cline answering any interrogatory, or part of an interrogrogatory, when.

atory, when he might have protected himself by demurrer from answering the subject matter of the interrogatory; and he shall be at liberty to so decline, notwithstanding he shall answer other interrogatories from which he

Argument of might have protected himself by demurrer, and the forinsufficiency. plaintiff or defendant may, on forty-eight hours' notice,

set down the matter for a hearing before any law judge of the court, as on an exception to the answer for in-Excepting for sufficiency. But where the interrogatories are not fully omission to an answered, and no reason is assigned for the omission, swer fully.

the particular objection must be pointed out by excep-

tion to be filed and served at least ten days before the Filing replica- hearing of such exception. The plaintiff or defendant terrogatories shall be at liberty, before answers to the interrogatories ceptions deter- are filed, or pending exceptions, to file or require a repli-

cation, and proceed to take testimony without waiver of his right to such answers, or of his exceptions to the answers.

Cross-bill for § 41. Cross-bills for discovery only shall not be aldiscovery only, only, instead be at liberty instead terrogatories, in thereof, to file interrogatories to the plaintiff as above other cross-provided. In other cross-bills no further reference shall

be made to the matters contained in the original bill than shall be necessary, but the same may be treated as Form of cross- if incorporated therein. The rules regulating the form bills. Service of copy of bills shall apply to cross-bills. If .no new parties of cross-bill. are introduced, service of a copy of the cross-bill on the Service of copy counsel of the plaintiff in the original bill shall be of original bill sufficient. Where other persons are made parties the

(142)

service shall be in the manner provided in original bills, a copy of such original bill being served together with the cross-bill, and such new parties shall be entitled to have copies of the answer to the original bill as required for the plaintiff.

§ 42. Answers and affidavits may be sworn to before Answers and affidavits, sworn any person authorized to administer oaths under the laws to before whom. or usages of this commonwealth, or of any other state, territory, or country, where the oath is taken.

## RULE 8.

## EXCEPTIONS TO ANSWERS.

§ 43. After answers are filed to interrogatories, the Time for filing plaintiff shall be allowed twenty days from the service answersto interrogatories. of a copy of such answers on the plaintiff's counsel, to file in the prothonotary's office exceptions thereto, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court or a law judge thereof: and if no exceptions shall be filed thereto.within that period, the answer shall be deemed and taken to be sufficient.

§ 44. Where an exception shall be filed to the an- Exception to swer to any interrogatory for insufficiency, within the rogatory for in-period prescribed by these rules, if the defendant shall dered for a hear-ing, when. not submit to the same, and file an amended answer within ten days from service of a copy of such exception on the defendant's counsel, the plaintiff shall forth-. with order the prothonotary to set the matter down for a hearing on the next day thereafter appointed for such causes, before a law judge of the court, and shall give notice of such order to the opposite party or his solici-And if he shall not so set the same down for a tor. Exception hearing, the exception shall be deemed abandoned, and deemed doned, when, the answer shall be deemed sufficient: Provided, however, that the court or any law judge thereof may, for

Time enlarged, good cause shown, enlarge the time for filing an excepwhen. tion or for filing an amended answer in their or his dis-

cretion, upon such terms as they or he may deem rea-Exceptions to sonable. Exceptions shall be printed, and the expense be printed. Ex-pense of print- of printing such as are sustained shall be allowed as costs, to be immediately recovered.

§ 45. If, at the hearing, any exception shall be al-After an exception has been allowed, a full lowed, the defendant shall be bound to put in a full and interrogatory complete answer to the particular interrogatory, within must be put in, if plaintiff re- ten days, unless the time be enlarged by order of the court, otherwise the plaintiff shall as of course be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he Attachment. may have a writ of attachment to compel the defendant

to make a better answer to the matter of the exception : and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court or of a law judge thereof, upon his putting in such answer and complying with such other terms as the court or judge may direct.

§ 46. No order shall be made by any judge for refer-Alleged scan-dalous or impertinent matter or ring 'any' bill, answer, or pleading, or other matter, or proceeding, referred under ex- proceeding depending before the court for scandal or imception and orpertinence, unless exceptions are taken in writing, and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; such excep nor unless the exceptions shall be filed within ten days tions must filed, when. after service of the same upon the party excepting or

thereon may b had, when.

der.

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hearing hearing by either party on forty-eight hours' notice, or such other notice as the court may direct to the opposite party.,

(144)

his counsel, and such exceptions may be set down for

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#### RULE 9.

#### REPLICATIONS.

§ 47. Whenever the answer of the defendant shall After general replication filed, not be excepted to, or shall be adjudged or deemed cause at issue. sufficient, the plaintiff shall file the general replication thereto within ten days thereafter, unless he-shall set the cause down on bill and answer; 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 plain-Rule to such replication. tiff shall omit or refuse to file such replication within Effect of failthe prescribed period, the defendant shall be entitled to with rule. to comply a rule upon him to reply within ten days after notice of such rule; on failure to file such replication with notice to the defendant's counsel, the plaintiff shall be deemed to have abandoned his right to traverse the matters alleged in the answer. The replication shall be in 'Form of replisubstance thus : "The plaintiff joins issue on the mat-". ters alleged in the answer."

§ 48. No special replication to any answer shall be Special replication not allow. filed. But if any matter alleged in the answer shall ed, but amendment of bill inmake it necessary for the plaintiff to amend his bill, he stead. may have leave to amend the same upon motion to the court, or a law judge thereof in vacation.

#### RULE 10.

#### AMENDMENTS, SUPPLEMENTAL BILLS, &c.

<sup>1</sup>§ 49. The plaintiff shall be at liberty, as a matter of <sup>When, before</sup> course, to amend his bill in any matters whatsoever, be-<sup>filed, plaintiff as of course may fore answer, plea, or demurrer to the bill, but he shall, <sup>amend bill</sup>. <sup>1</sup>Duties as to without delay, give the defendant notice of such amend-<sup>notice</sup>. ment, and all rules taken by the plaintiff in the case shall be suspended until such notice is given.</sup>

(145)

§ 50. After an answer, or plea, or demurrer is put in, When, before replication filed and without no and before replication, the plaintiff may, upon motion may amend bill. or petition, without notice, obtain an order from any

law judge of the court to amend his bill within twenty When amend days thereafter. But after the replication [is] filed, the after replica-tion filed. plaintiff shall not be permitted to withdraw it and to amend his bill, except upon an order of a law judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff submitting to such other terms as may be imposed by the judge for speeding the cause.

§ 51. If the plaintiff, so obtaining any order to amend when plaintiff § 51. If the plaintiff, so obtaining any order to amend abandoned right his bill after answer, or plea, or demurrer, or after rep-to amend bill under order, af-lication, shall not file his amendments or amended bill, ter answer, etc., as the case may require, in the prothonotary's office, and serve a copy on the counsel of all other parties to the cause, who appear by counsel within the time appointed for making such amendments, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

Defendant's

§ 52. In every case where, after answer filed, an amendor plead to ment of the bill is made in such particulars as to vary the case or the grounds of relief, the defendants shall be at liberty to demur or plead to the amended bill or to the amendments, as if no answers had been filed, and the answer to the original bill shall not, unless the defendant fails to put in another answer when required, be used except as an admission of the facts therein stated, subject to explanation by the answer subse-Answer to quently filed. Answers to amendments may be required when and what at such times as the court or a law judge upon notice shall direct, and shall be in other respects subject to the rules regulating answers to the original bill.

filed.

§ 53. After an answer is put in, it may be amended Amendments as of course, in any matter of form, or by filling up a course, before re-plication put in, blank, or correcting a date, or reference to a document, or cause set for a hearing upon or other small matter, and be re-sworn, at any time be- bill and answer. fore replication is put in, or the cause is set down for a hearing upon bill and answer. But after replica-Like amend-tion or such setting down for a hearing, it shall not be after replication, effective down for a hearing it shall not be after replication, amended in any material matters, as by adding new facts or defences, or qualifying or altering the original statements, except by special leave of the court or a law judge thereof, upon motion and cause shown after due notice to the adverse party, supported, if required, by And in every case where leave is so granted, affidavit. the court or the judge granting the same may, in his discretion, require that the same be separately engrossed and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

§ 54. Whenever the circumstances are such as to Amendment to original bill, in-require a bill of revivor, supplemental bill, or bill in stead of bill of revivor or sup-the nature of either or both, or where additional or difo join new parferent parties are required to be joined, the same shall ties, etc. be made by way of amendment or addition to the original bill, and copies of such amendments or additions being served on the parties to the original bill, or their counsel on the record, shall entitle the plaintiff to proceed as on an original bill, after service. Where a new party is joined, a copy of the original bill and the amendment shall be served as is provided for in the case of original bills. But, where the personal repre-Procedure sentative of a deceased party is properly required to be representative joined, it may be done by stating on the record the fact of the death, and the grant of letters to such representative, and by service of notice of such statement on such representative; and the cause, without more delay, shall proceed as if such representative had been originally a party, allowing him ten days to appear.

(147)

## RULE II.

## EVIDENCE.

§ 55. An order to take the testimony of ancient, infirm,

Order to take

tant place.

sion issued.

testimony de bene esse before and going witnesses de bene esse before any alderman or justice of the peace of the respective county, or other person therein, authorized by law to take depositions in other cases, may be entered by either party in the prothonotary's office of course, at any time after the service of process stipulating a reasonable notice to the adverse Order for com- party : so of an order for a commission to any place mission to diswithin the State of Pennsylvania, more than forty miles distant from the county seat of the respective county, or How commis- to any other State or territory, or to foreign parts. But in Interrogatories case of a commission, the interrogatories must be filed in the prothonotary's office at the time, and written notice commissioners, of this last order and of the names of the commissioners must be served on the adverse party at least fifteen days before the commission issues, in order that he may file crossinterrogatories or nominate commissioners on his part, Depositions ta if he shall deem it eligible: Provided, that depositions is a lowed taken before magistrates in the method prescribed by to be read on the to be read on the his rule, shall only be allowed to be read in evidence on the hearing of the cause, in case the same facts shall appear before the examiner appointed to take testimony in the cause after it is at issuer and be certified by him to excuse the production of such witnesses before him as are necessary for the introduction of depositions taken de bene esse on trials by jury in the same courts, or if taken by the commissioner before the cause is at issue. under this rule, it shall appear by affidavit at the hearing that the witnesses so examined were aged, infirm or going out of the country, or that any of them was a single witness to a material fact.

Return of commission to take depositions.

§ 56. Upon the return of the commission executed, the same may, at the application of either party, be opened by any one of the judges of the court, in term time or (148)

vacation, or by the prothonotary; and the prothonotary Notice by proshall give notice to the parties of the return of any commission, and, of the filing of depositions taken before any alderman, justice of the peace, or examiner, and the par- Exceptions to form or manner ties shall, within ten days after service of such notice of execution, etc. upon them respectively, enter exceptions in writing, if they have any, to the form of the interrogatories or the manner of the execution of the commission and the taking of the depositions, or be forever precluded from the benefit of such exceptions, which exceptions when so taken may be put down for hearing by either party giving forty-eight hours' notice to his adversary thereof, or such other notice as the court may direct.

§ 57. The last of the interrogatories to take testimony Form of last shall be stated in substance thus: "Do you know, or can take testimony. you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

§ 58.(a) On all interlocutory applications, as for an in- witnesses projunction or the appointment of a receiver, either party ination in open shall be at liberty to produce his witnesses for examination in open court at the hearing of the application, as to all such matters as could be proved by their affidavits. subject to cross examination as in other cases, or, upon reasonable notice, to require the other party to produce his witnesses for examination in open court, unless sufficient cause be shown to the contrary.

(a) This rule was suspended until further orders by the Supreme Court, 29th June, 1866, reserving to the judge the right to enforce the same at his discretion.

§ 59. The method of taking testimony, except in Method of tak-ing testimony cases provided for in the foregoing rules, shall be as in other cases. follows: After the cause is at issue, the court shall ap-Appointment and duties of expoint an examiner at the request of either party who aminer.

(149)

court, when.

Supbœnas.

How examinducted.

may first make application, which examiner shall cause such witnesses as either party may name to him to come before him on a reasonable day or days, to be appointed by him, of which he shall give notice to the parties; for the enforcing the attendance of which witnesses, either party may have subpœna or subpœnas, returnable before such examiner, to be enforced by the usual process of contempt. The examination shall be conducted ation to be con- by the counsel of the parties viva voce, and the answers of the witnesses shall be reduced to writing by the examiner, and the questions [question] also, if necessary to the understanding of the answer or if it be required by either party. The testimony of both parties shall be taken before the same examiner, and 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 Appointment with the rebutting testimony until the defendant has of additional ex- completed the testimony on his part; but the court may, upon the special application of either party, upon cause shown, appoint an additional examiner before whom the party making such application may proceed to take his testimony, notwithstanding the pendency of the proceeding of his adversary before the examiner first named.

Affirmation allowed.

§ 60. Whenever under these rules an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn Affidavits and affirmation to the truth of the facts stated by him: All Annuavits and annuavits and depositions shall be taken and expressed be in first per affidavits and depositions shall be taken and expressed son, divided, in the first person of the deponent, and shall be divided into paragraphs, and each paragraph, as nearly as may

be, confined to a distinct portion of the subject.

§ 61. Either party may enter a rule as of course on Rule to close the taking testimony. his adversary to close the taking of his testimony within thirty days after notice of such rule; any testimony taken after thirty days' notice of such rule shall not be (150)

read in evidence at the hearing of the cause. But it shall be in the discretion of the court to enlarge the time on the application of the party against whom such order may have been obtained, upon sufficient cause being shown; and no such rule shall be entered against a party while, by the provisions of the 59th section, such party is not bound to begin until his adversary has closed.

# **RULE 12.**

### MASTERS.

§ 62. The courts may appoint standing masters in Appointment chancery in their respective jurisdictions, and they may also appoint a master pro hac vice in any particular case. The compensation to be allowed to every master in chan-His compensacery for his services in any particular cause, shall be fixed by the court in its discretion, having regard to all the circumstances thereof; and the compensation shall be charged upon and borne by such of the parties in the cause, as the court shall direct. The master shall not Not to retain port as securretain his report as security for his compensation; but ity when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

§ 63. Whenever any reference of any matter is made Mode of securing a hearing to a master to examine and report thereon, the party at before master. whose instance or for whose benefit the reference is made, shall cause the same to be presented to the master for a hearing within ten days after the day when the reference was made; if he shall omit to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

§ 64. Upon every such reference it shall be the duty  $_{\rm ter.}^{\rm Duties of mas-}$  of the master, as soon as he reasonably can after the

(151)

same is brought before him, to assign a time and place for proceedings in the same, and to give due notice thereof to each of the parties or their solicitors; and if either party shall fail to appear at the time and place appointed, the master shall be at liberty to proceed ex parte, or in his discretion to adjourn the examination and proceedings to a future day, giving notice to the absent party or his solicitor of such adjournment; and it shall be the duty of the master to proceed with all reasonable diligence in every such reference, and with Order on mas ter to speed pro- the least practicable delay; and either party shall be at liberty to apply to the court or a law judge thereof, for an order to the master to speed the proceedings, and to make his report, and to certify to the court or judge the reasons for any delay.

§ 65. The master shall regulate all the proceedings in General powconferred every hearing before him, upon every such reference; and he shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; where, by the principles of courts of chancery, the production of them may be compelled, and also to examine on oath viva voce all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken under a commission to be issued upon his certificate by the prothonotary; and also to-direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts and direct all other inquiries and proceedings in the matters before him which he may deem necessary and proper to the justice and merits thereof, and the rights of the parties.

Accounting before master.

§ 66. All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor, and any of the other parties who shall not be satisfied with the account so brought in, shall be

(152)

ers upon master.

at liberty to examine the accounting party viva vocé, or upon interrogatories before the master, or by deposition, as the master shall direct.

§ 67. The master shall be at liberty to examine any Power in mascreditor or other person coming in to claim before him, claimant. either upon written interrogatories or viva voce, or in both modes, as the nature of the case may appear to him to require. The evidence upon such examination shall be taken down by the master, or by some other person by his order and in his presence, if either party requires it, in order that the same may be used by the court if necessary.

§ 68. All affidavits, depositions, and documents which what writings have been previously made, read, or used in the court foro master. may be used be upon any proceeding in any cause or matter, may be used before the master.

§ 69. No exception will be received to the report of Exceptions to report of master. any master, unless the party excepting has filed the same with the master, by whom the report has been made, whose duty it shall be, on such exception being filed, to re-examine the subject and amend his report, if in his opinion such exceptions are in whole or in part well founded. And in order to give all parties in interest an Report to be opportunity of entering such exception, no master shall filed, when. file his report until ten days after he has notified to the parties his intention so to do, on a day designated, and giving them an opportunity of having access to such report. On the hearing of the question of confirming or Hearing of setting aside the master's report the party excepting port. thereto shall be confined to the exception made by him before the master according to the previous requisition of this rule; reserving to the court, however, the power Power in court of committing the report again, should justice require to recommit. it. On the return of the master's final report, or at such Hearing on time as may be established by the rules of the particular final report. court, either party may set down the cause for hearing on the next equity argument-list, provided that at least

exceptions to re-

18

(153)

Confirmation four days shall intervene ; but if no exceptions be filed of report where exceptions as thus provided, the report shall be confirmed at the filed. expiration of twenty days succeeding the day on which

it shall have been filed.

# RULE 13.

# INTERLOCUTORY ORDERS, GENERALLY,

§ 70. Any judge of the supreme court, [or district Power i n judge at chambers to direct in-courts], or any law judge of the courts of common pleas, terlocutory proas well in vacation as in term, may at chambers make ceedings.

and direct all such interlocutory orders, rules and other proceedings preparatory to the hearing of causes upon · their merits, in the same manner and with the same effect as the court could make and direct the same in term, reasonable notice of the same being first given to the adverse party or his solicitor, to appear and show cause to the contrary, at such time thereafter as shall be assigned by the judge for the hearing thereof.

What entries. equity-docket to contain.

§ 71. All motions, rules, orders, and other proceedings made and directed at chambers or at the prothonotary's office, whether special or of course, shall be entered by the prothonotary in his equity-docket on the day on Notice given which they are made and directed, and notice thereof notice to party, given to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases in which personal notice on the parties is not otherwise specially required: The equity-docket shall be kept by the prothonotary at his office, and shall be open at all office hours to the free inspection of the par-Notice to be ties in any suit in equity, and their solicitors. All notices shall be in writing.

in writing.

when.

§ 72. All motions and applications in the prothono-What motions and applications grantable of tary's office for the issuing of mesne and final process, (except process of sequestration and of attachment to enforce and execute decrees); for filing bills, answers, pleas, demurrers, and other pleadings; for making (154)

amendments to bills and answers; for taking bills pro confesso; for filing exceptions, and for other proceedings which do not by the rules hereafter prescribed require any allowance or order of the court, or of any judge thereof, shall be deemed motions and applications grantable of course by the prothonotary of the court; but the same may be suspended, altered or rescinded by any law judge of the court upon cause shown.

§ 73. All motions for rules or orders, and other pro- What proceedings which are not grantable of course, or without granted in denotice, shall be made on application to the court or a shown contralaw judge at chambers, and entered in the equity-docket, and shall be heard at such time thereafter as shall be assigned therefor by the court or judge at the time of making the application; and if the adverse party or his solicitor, after notice thereof, shall not then appear, or shall not show good cause against the same, the motion may be heard by any law judge of the court, *ex parte*, and granted as if not objected to, or refused, in his discretion.

§ 74. No order allowing further time shall be made Order for furwithout written notice of the application for such order be made, when to the counsel on record of the opposite party ; and any order which does not recite such notice, or that the counsel attended at the hearing, may be disregarded.

§ 75. Cautionary orders in injunction bills shall not No injunction be made, nor shall any injunction be allowed except se-security be curity be given according to law. But whenever an Injunction injunction shall be granted without previous notice to notice, to be the opposite party, it shall be taken to be dissolved if the motion be not argued within five days after such notice given, unless otherwise specially ordered by the court or a law judge thereof.

§ 76. In the city of Philadelphia all rules, or orders Rule or order to plead or to close testimony, which, according to the Philadelphia, time prescribed in the foregoing rules, would otherwise

(155)

expire on any day of the months of July and August, shall be deemed and taken to expire on the same day of the month of September following.

Costs on interlocutory proceedings.

§ 77. If, on any interlocutory proceeding, a party shall be ordered to pay the costs thereof, such costs shall be taxed by the prothonotary, and payment thereof may be enforced by attachment and sequestration, or the party to whom the said costs are directed to be paid may, at his option, have a common law writ of execution for the recovery thereof; and the party against whom such order is made shall not be allowed to take any further step in the cause until payment of such costs.

# RULE 14.

# DECREES AND FINAL PROCESS.

§ 78. In drawing up decrees and orders, neither the What not to be incorporated orders.

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in decrees and bill nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceedings, shall be recited or stated in the decree or order; Decrees and but the decree and orders shall begin in substance as folorders to begin, lows: "This cause came on to be heard (or, to be further heard, as the case may be) at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz. :" (Here insert the decree or order.)

Proceed ings on entry of decree.

§ 79. The decree shall be drawn by the solicitor of the party in whose favor it is, who shall, unless otherwise herein provided, serve a copy thereof on the solicitor of the adverse party, with notice of the time, which shall not be less than three days thereafter, when the same will be submitted to the court; but the court may direct the decree to be entered forthwith, without further notice, upon the same being pronounced, should they think the justice of the case requires it, or when the solicitor of the opposite party is present and does not object

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Exceptions to the form thereof. If the opposite party, where notice (156)

is required to be given to him, shall not deem such draft. of decree in conformity with the intentions of the court, he may file exceptions thereto before the day of hearing designated in such notice, which shall be submitted with the draft of the decree on the day so appointed, and thereupon, the court approving of the draft, or correcting the same in conformity with such exceptions, or otherwise, the prothonotary shall enter it in his equity-docket, and from thenceforth it shall become the act and decree of the court.

§ 80. If the decree or order be merely for the pay- Decree or order to be enterment of money, the party in whose favor it is made ed in judgment-index, shall be entitled to have a minute thereof (without wait- when. ing for the draft of a more formal decree) entered in the equity-docket and placed in the usual form of entering judgments in the judgment-index of the common law side of the court.

§ 81. Unless otherwise provided by law or by these Processes to compelling ordered by the court, a writ of attach-dience to order ment, and if the defendant cannot be found, or it may be otherwise thought proper by the court, a writ of sequestration or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court ; but the same shall not be issued unless upon motion and allowance by the court or a law judge thereof.

§ 82. When any decree or order is for the delivery of Writ of assistpossession, upon proof made by affidavit of a demand delivery of posand refusal to obey the decree or order, the party prosecuting the same shall be at liberty to apply forthwith to the court or to a law judge, for an order for a writ of assistance, upon the allowance of which the prothonotary shall immediately issue the same.

§ 83. Final process to execute any decree may, if the  $_{ecute}^{Process to ex-ecute}$  decree be solely for the payment of money, be by a writ  $_{haw}^{be}$  form, when. (157)

of execution in the form used in the same court in suits Limit of time at common law in actions of debt or assumpsit. If the in decree, when decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or delivering up of deeds or other documents, the decree shall prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the Writ of attachment, when. plaintiff filed in the prothonotary's office that the same has not been complied with, the court, if sitting, or any law judge during vacation, may direct the issuing of a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged unless upon a full compliance with the decree and the payment of costs, or upon a special order of the court or of a law judge thereof, upon motion and affidavit, Writ of se-enlarging the time for the performance thereof. If the questration, delinquent party cannot be found, a writ of sequestraŵhen. tion may, upon motion, be ordered by the court or a law judge thereof, to be issued against his estate upon the return of non est inventus, to compel obedience to the decree.

§ 84. Every person not being a party in any cause, In whose favor, and against who has obtained an order, or in whose favor an order will be enforced.

shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause ; and every person not being a party to the cause against whom obedience to an order of the court may be enforced, shall be liable to the same process for enforcing obedience to such order as if he were a party in the causé.

Mistakes and errors corrected

§ 85. Clerical mistakes in decrees or decretal orders, upon petition. or errors arising from any accidental slip or omission, may be corrected by order of the court or a law judge thereof, upon petition, without the form or expense of a rehearing.

(158)

## RULE 15.

## REHEARING.

§ 86. Every petition for a rehearing shall contain Petition for rehearing, to exthe special matter or cause on which such rehearing is hibit, what. applied for, shall be signed by counsel, 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. A rehearing may be granted at any time within Rehearing the discretion of the court; but where the decree has Refrect. When been executed, parties who have acted on the faith of such decree shall not be prejudiced by such decree being reversed or varied.

## RULE 16.

# GENERAL PROVISIONS.

§ 87. The courts may make any other and further Power in the courts to make rules and regulations for the practice, proceedings, and other rules and process, mesne, and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.(a)

(a) See Act 16 June, 1886, § 18. Purd. Dig. 598; pl. 47. Also supra, "Gen- eral Rules of Court," page vii, (3).

§ 88. In all cases when these rules or those prescribed Chancery practice of England by the other courts do not apply, the practice of the to furnish analogies, when. courts shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

§ 89. These rules shall take effect from and after the Rules to take first day of July, 1865. It shall be the duty of the prothonotary of the supreme court for the eastern district forthwith to send a certified copy thereof to the proof these rules. thonotaries of the middle, northern, and western districts, and to the prothonotary of each district court and court of common pleas throughout the State.

(159)



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# REPORT OF THE COMMISSIONERS

# APPOINTED TO REVISE AND AMEND, THE

# RULES OF EQUITY PRACTICE

# IN PENNSYLVANIA,

### MAY 27, 1865.

# To the Honorable the Judges of the Supreme Court of Pennsylvania:

The undersigned, a Committee appointed by this Honorable Court on the 9th day of March, 1864, to revise and amend the rules of practice in equity cases, and to report to this Court,

### RESPECTFULLY REPORT-

That in pursuance of the duties of their appointment they have prepared a body of equity rules, of which they submit herewith a copy.

In doing so the Committee beg to point out briefly the more important changes which they have thought it expedient to make in the existing practice. They would observe at the same time, that, except where such changes have been introduced, they have considered it better to adhere to the language and general scheme of the existing rules.

1. Formal rule days are abolished. Process may issue and rules be taken at any time. On the other hand a sufficient period for appearance to process, or for compliance with the usual rules, is expressly limited in each case. By this means a neeáless waste of time is obviated.

2. The bill and other pleadings are required to be printed except in two cases: first, poverty, certified by counsel; secondly, bills for injunction, where, however, a printed copy must be substituted in a few days. The cost of printing is made part of the costs of the cause.

3. Subpœnas to appear are abolished. Instead thereof a copy of the bill is to be served on the defendant, with a notice endorsed thereon to appear in fourteen days, and that if he does not the bill will be taken *pro confesso*, and a decree made against him in his absence.

19

(161)

4. Provision is made in case the defendant fails to appear, for a decree pro confesso against him, or for an attachment to compel an answer, which seems to have been overlooked in the present rules.

5. The bill is required to be in as brief and succinct form as it reasonably can be, and to be divided into paragraphs, consecutively numbered, omitting the interrogatories and all mere formal parts. The prayer for relief and for special orders, writs or process, is to be also divided and numbered.

6. Interrogatories to defendant are to be filed separately. So the defendant instead of resorting to a cross-bill may file interrogatories to the plaintiff; and

7. Consequently cross-bills for discovery only are abolished. Those for relief are made substantially part of the original proceedings.

8. Supplemental bills, bills of revivor and the like, are dispensed with; and their place is to be supplied by amendments and orders in the original cause.

9. On interlocutory applications, such as for an injunction or receiver, it is provided that either party may take, or require his adversary to take testimony *viva voce* in the presence of the Court, subject to cross-examination, as in ordinary cases. This will generally dispense with the use of affidavits, which are demoralizing and unreliable, and at the same time enable the parties to compel the attendance of witnesses by subpœna, which cannot now be done.

10. Instead of a period of three months in which to close testimony, which, in a vast majority of cases, is quite unnecessary, a thirty days rule is allowed, subject to enlargement on cause shown.

11. Orders for allowing further time are hereafter only to be granted on notice to the other party.

12. Cautionary orders on injunction bills are abolished. At the same time, that which was their only excuse, the rule that injunctions shall only be granted on notice, is done away with. Cases of emergency sometimes occur where there is no time to give formal notice, to prevent irreparable injury, or where the notice would defeat its own purpose. On the other hand, the security which the law requires before the grant of an injunction and the unwillingness of judges to act without notice to the other party except in extreme cases, afford together a sufficient protection to defendants. To this is added a provision that an injunction without notice is made operative only for five days, unless the motion is argued within that time.

13. In the city of Philadelphia, rules and orders to plead or close testimony, which would otherwise expire in the months of July and August, are postponed until September. A vacation, which elsewhere may be only a habit, is here a necessity.

These are the principal alterations which the Committee have made. The object as will be seen has been in the main to shorten and simplify equity proceedings; to make them less expensive, and at the same time to adapt them to the course of practice and usages which prevail in this State in common law cases. Most of these changes are not untried. They have for a number of years been adopted and in use in England and elsewhere. Other alterations have been made in the existing rules, either to correct their phraseology or to adapt them

(162)

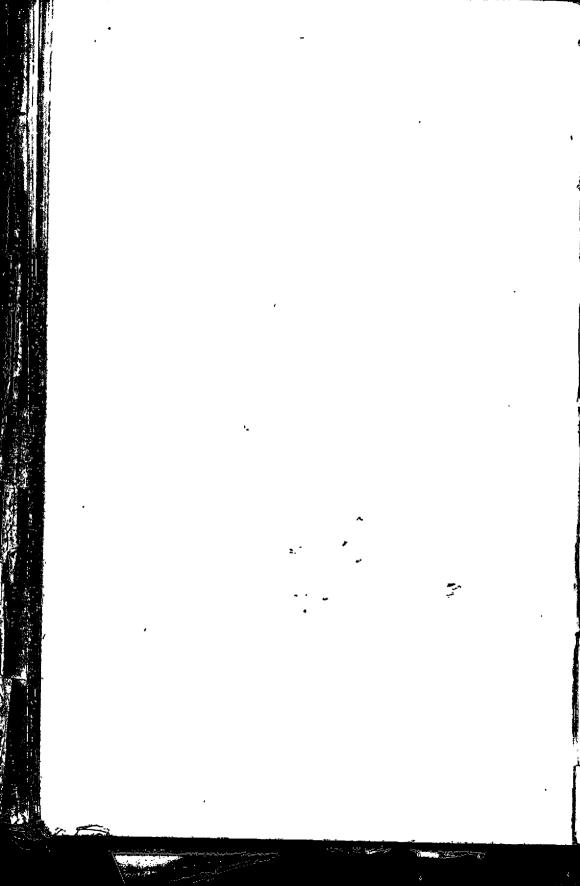
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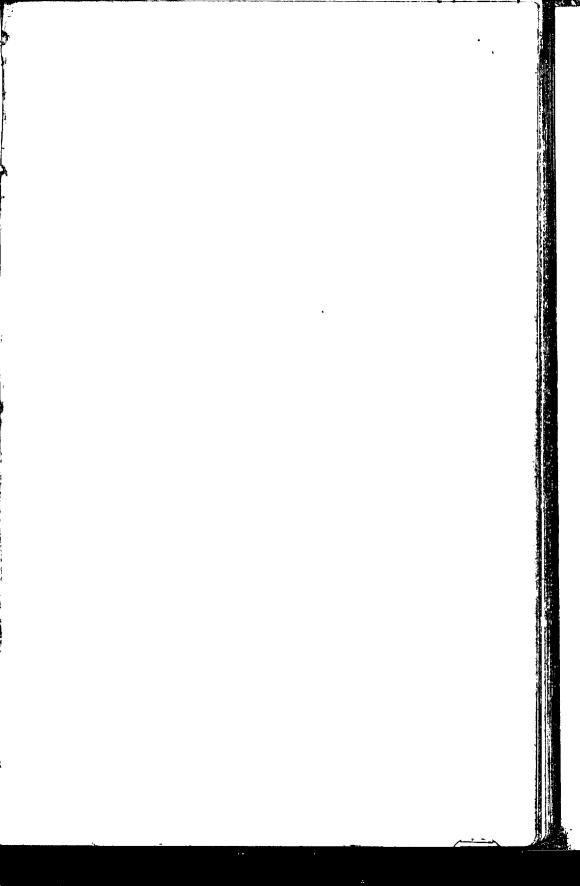
to recent Acts of Assembly. Besides this the whole body of rules has been rearranged, so as to give them a more logical order of succession than they now possess.

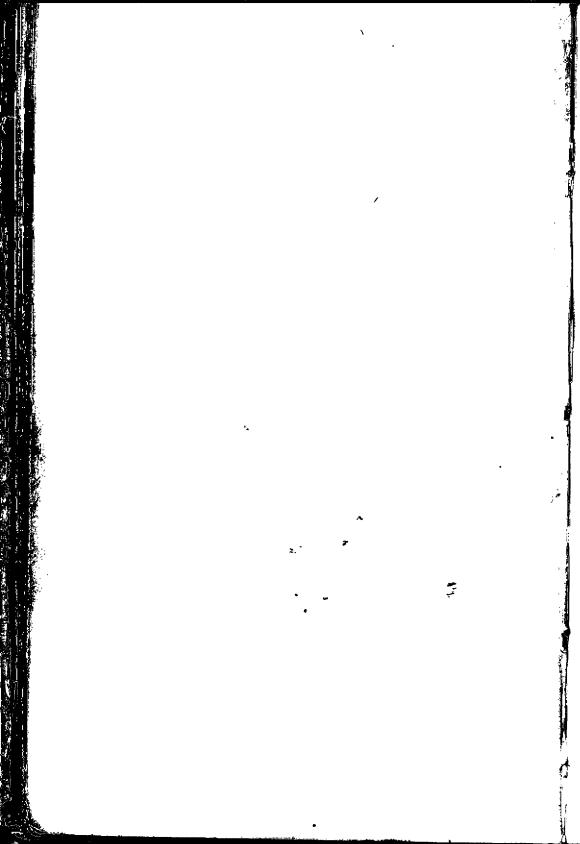
The subject of costs has only been incidentally touched, as it did not appear to be within the province of the Committee. They would, however, respectfully recommend it to the Court as one needing revision.

All of which is respectfully submitted.

GEO. SHARSWOOD, OSWALD THOMPSON, ST. GEO. T. CAMPBELL, GEO. W. BIDDLE, R. C. McMURTRIE, FRED. C. BRIGHTLY, HENRY WHARTON, Committee.







# INDEX

# то тне

# RULES OF EQUITY PRACTICE

#### IN

# PENNSYLVANIA.

ACCOU	NT						PA	GE.
	Accounting before master, 22 66, 67,	-	-		-		- 26,	27
ADMIN	IISTRATOR							
	Made a party, § 54,	-	-		-		-	21
AFFID	AVIT							
	Divided into paragraphs, § 60, -	-	-		-		-	24
	Before whom made, § 42,		-	-		-		17
	In evidence before master, § 68, -	-	-		-		<u>-</u> :	<b>27</b>
	For process to non-resident, § 12, -		-	-		-		6
	To service of process, § 13, -	-	-		-		-	7
	. plea or demurrer, § 32,		-			-		13
AMENI	DMENT							
	To be printed, with copies, etc., § 14,	-	-		-		-	7
	When demurrer or plea allowed, § 36,		_	-		-		14
	Of bill-before answer, demurrer, etc.,	88	49, 50.		-		- 19	. 20
	after answer, § 48,		-	~		-		, 19
	replication, § 50, -	-	-		-		-	50
	Demurrer or plea to, § 52,		-	-				20
	Effect of, to original bill, § 52, -	-	-		-		-	20
	Answer to, § 52,		-	-		-		20
	To answer to, § 53,	-	-				-	21
	Supplementary matters by, § 54, -		-	-		-		21
•	Of decree or order, § 85, 🝾	-	¥		-		-	82
	(175)							

(175)

# INDEX-EQUITY PRACTICE.

ANSWER	
To be printed, with copies, etc., § 14,	PAGE.
Before whom sworn to, § 42,	- 7
Plea-fortified by, when, § 31,	17
Exception to, 2 40	- 13
To interrogatory, § 43.	16
Effect of, to amended bill, 3 52	17
To amendment, $352$ -	- 20
Amendment to, § 53,	20
APPEAL	- 21
To be certified, when, § 4,	4
APPEARANCE	
Mode of entering; default of, § 13,	. 7
ARGUMENT	
Of objection of want of parties, § 27,	11
plea or demurrer, 22 33-37,	13, 14
summered of answer to interrogatory 240	16
exception to answer, $2244$ , 46,	17
commission, etc., § 56,	22
ASSISTANCE	
Writ of, allowed when, 22 81, 82,	81
ATTACHMENT	
To compel answer, 22 29, 39, 45,	15, 18 31
BILL-See PLEADINGS.	
To be printed, 22 5, 14,	
Structure and form; § 15,	4, 7
of interlocutory next 2 tot	8
10 be divided, numbered, etc., 3 17	8
Copy, served on defendant. 2 6.	**************************************
Time of filing to be endorsed, 25	- 4 4
Reference for impertinence, etc., 2 15	* 8
Cross—filed, when, § 25,	10
for discovery only, § 41,	16
service and procedure under, § 41,	16
Supplemental-matter of, introduced how, § 54,	21
BILL OF DISCOVERY-See DISCOVERY.	
BILL OF REVIVOR.	
Amendment, in lieu of, § 54,	01
(1.76)	21

INDEX-EQUITY PRACTICE.	51
COMMISSION .	PAGE.
To take testimony, § 55,	22
- return of ; exception to, etc., § 56,	- 22
COMMONWEALTH	
Process served on, § 10,	- 6
CORPORATION	
Process served on, § 10,	- 6
COSTS	
Expense of printing, as, § 14, Of reference for impertinence, etc., § 15, bill dismissed on agreement, § 28,	. 7
Of reference for impertinence, etc., § 15,	- 8
bill dismissed on agreement, § 28,	12
When nominal party required to appear, etc., § 18, - On interlocutory proceedings, § 77,	- , 9 - 30
COURTS OF EQUITY	
Always open, § 1,	- 1
Power to make rules, 287,	. 33
CROSS-BILL	
Filed, when, 2 25,	16
Filed, when, § 25,	- 16
Service and procedure under, § 41,	. 10
DECREE	
Form of, § 78,	- 30
	12, 13, 14
Entered in judgment-index, § 80,	- 81
Procedure on entry of; excepting to, § 79,	- 30
Amendment of, § 85,	- 32 - 11
In favor of one not a party, § 84,	- 32
For whom enforced, $\gtrless$ 84,	32
DEMURRER	
	10
Form of, § 32,	13 - 13, 14
Not held bad, § 35,	- 10, 14
Allowance and disallowance, 22 35–37,	- 14
DEPOSITION	
Of witness ancient, infirm, etc., § 55,	- 22
To be divided, etc., § 60,	- 24
Notice of filing ; exception to ; hearing, § 56,	- 22
As evidence before master, § 68,	- 27
(177)	

DISCOVERY PAGE. Cross-bill for, § 41, 16 Interrogating plaintiff, 22 39, 41, - 15, 16 DISMISSAL Of suit, on agreement, § 28, -12 DOCKET Kept by prothonotary, §§ 13, 71, 7 Appearance on, § 13, -7 Motions and orders on, § 71, 28 EVIDENCE Testimony, commission to take, 22 55-57, 59, 60, 22, 23, 24 rule to close, § 61, - -24 What, before master, § 68, 27 Witness examined in open court, § 58, -23EXAMINER Appointment ; duties, § 59, 23 Closing testimony before, 22 61, 69, - 24, 27 EXCEPTIONS To be printed, § 44, - '-17 form of; hearing on, § 45, 18 Time for filing, 22 44, 46, -17, 18 Answer to, or attachment, § 45, -17 Argument of, 32 44-46, -17, 18 To answer to interrogatory, \$\$ 40, 43, - 16, 17 execution of commission, § 56, - $\mathbf{22}$ master's report, § 69, -.27 draft of decree, § 79, 30 EXECUTION Attachment, 22 81, 83, Sequestration, § 81, -81 Writ of assistance, § 82, -31 Common law writ issued, § 83, 31 EXECUTOR Made a party, § 54, 21 FORMA PAUPERIS Printed pleadings dispensed with, § 14, 7 FRAUD Plea denying, to be supported, § 31, 13 (178)

INDEX-EQUITY PRACTICE.

52

e

INDEX—EQUITY PRACTICE. 53						
GUARDIAN AD LITEM						
Appointed, § 7, 5						
HEIR-AT-LAW						
As party to suit, § 24, 10						
HUSBAND AND WIFE						
Service of process on, § 9, 6						
IMPERTINENCE						
Exception and reference for, 22 15, 46, 8, 18						
INFANT ,						
To sue by whom, § 7, 5 Fact of infancy to be stated, § 19, 9						
INJUNCTION						
Bill for, allowed, § 14, 7						
Witness examined, when, § 58,						
Security for ; notice of, § 75, 29						
Security for ; notice of, $275$ , 29 Ex parte, dissolved when, $275$ , 29						
INTERLOCUTORY APPLICATION						
Witness examined, when, § 58,						
Granted at chambers, § 70, 28						
Entered on docket, § 71, 28						
Motion of course—entry; suspension, etc., § 72, - 28						
not of course, § 73, 74, 29						
Costs in, § 77,						
INTERROGATORIES						
To be printed, with copies, § 14, 7 divided, numbered, etc., § 89, 15 Form of last § 57						
divided, numbered, etc., § 39, 15						
Service of copy; rule for answer, § 39, 15						
Not inserted in bill, 22 17, 39,						
part of pleadings, § 39, 15						
to answers to, 22:43-46 17, 18 May decline to answer, what, 2:40, 16						
Argument on alleged insufficiency, 22 40, 44, 16, 17 For commission to examine witnesses, 2 55, 22						
JOINT AND SEVERAL ACTION						
Joining several parties, § 25, 10						
20 (17.9)						
~						

ي تعر لا

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8 9

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9 6 7

8

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# INDEX-EQUITY PRACTICE.

Appointment; duties; compensation, § 62, -       25         Further duties; § 64, -       25         Hearings before, § 63, -       26         rower conferred upon, § 65, -       27         Evidence before, § 63, -       27         Accounting before, § 66, -       28         To report impertinence, etc., § 15, -       8         Filing report; exceptions to; hearing on, § 69, -       27         ON-RESIDENT       Serving process on, § 11, 12, -       6         Non-residence to be stated, § 20, -       9         NOTICE       All notices to be in writing, § 71, -       28         Entered on docket, § 71, -       28         Motion for; hearing on, § 78, -       29         For further time, on notice, § 74, -       29         Gautionary, § 75, -       29         For further time, on notice, § 74, -       29         Cautionary, § 75, -       9         Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Oniting progre, § 21, -       9         Representing numerous class, § 22, -       10         Trustee as, § 23, -       10         Alleged want of—hearing on, § 27, -       11	MAST	ER							PAGE.
Further duties, § 64,		Appointment; duties; compensation. 3 62.	-		_		-		
Fower conferred upon, § 65,		Further duties, § 64.		_		_		-	
Power conferred upon, § 65,		Hearings before, 2 63.	-		-				
to examine parties, § 67,		Power conferred upon 2 65.		_		_		-	
Evidence before, § 68,			26	.7				-	
Accounting before, § 66,				···,	-		-		
To report impertinence, etc., § 15,				-		-		-	
Filing report ; exceptions to ; hearing on, § 69,		To report impertipence ato 215	-		-		-		
ON-RESIDENT       6         Serving process on, §§ 11, 12,		Filing report : exceptions to : hearing on 3	60	-		-		-	
Serving process on, 22 11, 12,		ring report, exceptions to, nearing on, q	09,		-		-		21
Non-residence to be stated, § 20,	ON-F	ESIDENT							
Non-residence to be stated, § 20,		Serving process on 32 11, 12		_		_		_	6
NOTICE       All notices to be in writing, § 71,       28         ORDER       Interlocutory, § 70,       28         Entered on docket, § 71,       28         Motions and rules of court, § 72,       28         Motion for ; hearing on, § 73,       29         For further time, on notice, § 74,       29         Cautionary, § 75,       29         For and against whom, § 84,       29         PARTY       Nominal—to appear, when, § 18,       9         Infant or other, not sui juris, § 19,       9         Omitting proper, § 21,       9         Peresenting numerous class, § 22,       9         Omitting proper, § 21,       9         Representing numerous class, § 22,       10         Trustee as, § 28,       10         Joint and several, § 25,       10         Alleged want of — hearing on, § 27,       11         decree on, § 26;       11         PLEADINGS       11         Printing; copiés, etc., § 14,       7         Affidavit to, § 32,       13         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       18         not bad, when, § 36,       14         disallowed, § 37,       14   <		Non-residence to be stated, 2 20	_	-	_	-		-	
All notices to be in writing, § 71,       28         ORDER       Interlocutory, § 70,       28         Entered on docket, § 71,       28         Motions and rules of court, § 72,       28         Motion for; hearing on, § 73,       29         For further time, on notice, § 74,       29         Cautionary, § 75,       29         For and against whom, § 84,       29         For and against whom, § 84,       29         PARTY       Nominal—to appear, when, § 18,       29         PARTY       Non-resident as, § 20,       9         Omitting proper, § 21,       9         Representing numerous class, § 22,       9         Or trustee as, § 23,       10         Heir-at-law as, § 24,       10         Joint and several, § 25,       10         Alleged want of—hearing on, § 27,       11         decree on, § 26,       11         PLEADINGS       13         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       13         not bad, when, § 36,       14         ammended, § 36,       14         ammended, § 36,       14		= = =	-		-		-		
ORDER       Interlocutory, § 70,	NOTIC	E							
ORDER       Interlocutory, § 70,		All notices to be in writing 2 71.		-				-	28
Interlocutory, § 70,       28         Entered on docket, § 71,       28         Motions and rules of court, § 72,       28         Motion for; hearing on, § 73,       29         For further time, on notice, § 74,       29         Cautionary, § 75,       29         For and against whom, § 84,       32         To expire in Philadelphia, when § 76,       29         PARTY       Nominal—to appear, when, § 18,       9         Infant or other, not sui juris, § 19,       9         Non-resident as, § 20,       9         Omitting proper, § 21,       9         Representing numerous class, § 22,       10         Trustee as, § 28,       10         Joint and several, § 25,       10         Alleged want of—hearing on, § 27,       11         decree on, § 26;       11         PLEADINGS       13         Printing; copiés, etc., § 14,       7         Affidavit to, § 32,       18         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       18         not bad, when, § 35,       14         amended, § 36,       14         disallowed, § 37,       14		······································				-		-	20
Entered on docket, § 71, 28 Motions and rules of court, § 72, 28 Motion for; hearing on, § 73, 29 For further time, on notice, § 74, 29 Cautionary, § 75, 29 For and against whom, § 84, 29 For and against whom, § 84, 29 PARTY Nominal—to appear, when, § 18, 9 Infant or other, not sui juris, § 19, 9 Non-resident as, § 20, 9 Omitting proper, § 21, 9 Representing numerous class, § 22, 10 Trustee as, § 23, 10 Heir-at-law as, § 24, 10 Joint and several, § 25, 10 Alleged want of—hearing on, § 27, 11 decree on, § 26, 11 PLEADINGS Printing; copiés, etc., § 14, 7 Affidavit to, § 32, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14	ORDER								
Entered on docket, § 71, 28 Motions and rules of court, § 72, 28 Motion for; hearing on, § 73, 29 For further time, on notice, § 74, 29 Cautionary, § 75, 29 For and against whom, § 84, 29 For and against whom, § 84, 29 PARTY Nominal—to appear, when, § 18, 9 Infant or other, not sui juris, § 19, 9 Non-resident as, § 20, 9 Omitting proper, § 21, 9 Representing numerous class, § 22, 10 Trustee as, § 23, 10 Heir-at-law as, § 24, 10 Joint and several, § 25, 10 Alleged want of—hearing on, § 27, 11 decree on, § 26, 11 PLEADINGS Printing; copiés, etc., § 14, 7 Affidavit to, § 32, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14		Interlocutory, 3 70		-		-		-	28
Motions and rules of court,					_				
For further time, on notice, § 74,       29         Cautionary, § 75,       29         For and against whom, § 84,       32         To expire in Philadelphia, when § 76,       29         PARTY       Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       -         Joint and several, § 25, -       10         Joint and several, § 25, -       10         Alleged want of—hearing on, § 27, -       -         PLEADINGS       11         PLEADINGS       13         Printing ; copiés, etc., § 14, -       -         Affidavit to, § 32, -       -         Joining, § 31, -       -         Inot bad, when, § 36, -       -         Joining, § 31, -       -         Inot bad, when, § 36, -       -         Inot bad, when, § 37, -       -         Inot bad, when, § 37, -       -		Motions and rules of court. 3 72		·		-		-	
For further time, on notice, § 74,       29         Cautionary, § 75,       29         For and against whom, § 84,       32         To expire in Philadelphia, when § 76,       29         PARTY       Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       -         Joint and several, § 25, -       10         Joint and several, § 25, -       10         Alleged want of—hearing on, § 27, -       -         PLEADINGS       11         PLEADINGS       13         Printing ; copiés, etc., § 14, -       -         Affidavit to, § 32, -       -         Joining, § 31, -       -         Inot bad, when, § 36, -       -         Joining, § 31, -       -         Inot bad, when, § 36, -       -         Inot bad, when, § 37, -       -         Inot bad, when, § 37, -       -		Motion for : hearing on 2 73.					_	-	
Cautionary, $\frac{2}{6}$ 75, 29 For and against whom, $\frac{2}{6}$ 84, 32 To expire in Philadelphia, when $\frac{2}{6}$ 76, 29 PARTY Nominal—to appear, when, $\frac{2}{6}$ 18, - 9 Infant or other, not sui juris, $\frac{2}{6}$ 19, 9 Non-resident as, $\frac{2}{20}$ , 9 Omitting proper, $\frac{2}{21}$ , 9 Representing numerous class, $\frac{2}{22}$ , 7 Trustee as, $\frac{2}{23}$ , 7 Heir-at-law as, $\frac{2}{24}$ , 7 Alleged want of—hearing on, $\frac{2}{27}$ , 7 Metric 4, $\frac{2}{25}$ , 10 PLEADINGS Printing ; copiés, etc., $\frac{2}{24}$ , 7 Affidavit to, $\frac{2}{32}$ , 13 Plea, demurrer, or answer—rule for, $\frac{2}{29}$ , 12 joining, $\frac{2}{31}$ , 13 not bad, when, $\frac{2}{35}$ , 14 amended, $\frac{2}{36}$ , 14 disallowed, $\frac{2}{37}$ , 14		For further time, on notice, 2 74		_	-	_	-	_	
For and against whom, § 84,       32         To expire in Philadelphia, when § 76,       29         PARTY       Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       -         Joint and several, § 25, -       10         Joint and several, § 25, -       10         Alleged want of—hearing on, § 27, -       -         PLEADINGS       -         Printing; copiés, etc., § 14, -       -         Affidavit to, § 32, -       -         Joining, § 31, -       -         Inot bad, when, § 35, -       -         Inot bad, when, § 36, -       -         Inot bad, when, § 36, -       -         Inot bad, when, § 36, -       -         Inot bad, when, § 37, -       -         Inot bad, § 37, -       -         Inot bad, § 37, -       -		Cautionary 8 75		-		-		-	
To expire in Philadelphia, when § 76,       29         PARTY       Nominal—to appear, when § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       -         Joint and several, § 25, -       -         Alleged want of—hearing on, § 27, -       -         PLEADINGS       -         Printing ; copiés, etc., § 14, -       -         Affidavit to, § 32, -       -         Joining, § 31, -       -         13       not bad, when, § 36, -         14       amended, § 36, -         14       vexatious, § 37, -		For and against whom 2 84	•		-		-		
PARTY       Nominal—to appear, when, $\S$ 18, -       9         Infant or other, not sui juris, $\S$ 19, -       9         Non-resident as, $\S$ 20, -       9         Omitting proper, $\S$ 21, -       9         Representing numerous class, $\S$ 22, -       -         Trustee as, $\S$ 28, -       -         Heir-at-law as, $\S$ 24, -       10         Joint and several, $\S$ 25, -       10         Alleged want of—hearing on, $\S$ 27, -       -         PLEADINGS       11         PLEADINGS       13         Printing ; copiés, etc., $\S$ 14, -       -         In the adjustre, or answer—rule for, $\S$ 29, -       12         joining, $\S$ 31, -       13         not bad, when, $\S$ 35, -       14         amended, $\S$ 36, -       14         disallowed, $\S$ 37, -       14		To avaira in Philadalphia when 2.76		-		-		•	
Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       10         Heir-at-law as, § 24, -       10         Joint and several, § 25, -       10         Alleged want of—hearing on, § 27, -       11         decree on, § 26; -       11         PLEADINGS       11         PLEADINGS       12         joining; copiés, etc., § 14, -       7         Affidavit to, § 32, -       18         Plea, demurrer, or answer—rule for, § 29, -       12         joining, § 31, -       18         not bad, when, § 35, -       14         amended, § 36, -       14         disallowed, § 37, -       14		20 capito in 1 inadelpina, when , g 10,	-		-				29
Nominal—to appear, when, § 18, -       9         Infant or other, not sui juris, § 19, -       9         Non-resident as, § 20, -       9         Omitting proper, § 21, -       9         Representing numerous class, § 22, -       -         Trustee as, § 28, -       10         Heir-at-law as, § 24, -       10         Joint and several, § 25, -       10         Alleged want of—hearing on, § 27, -       11         decree on, § 26; -       11         PLEADINGS       11         PLEADINGS       12         joining; copiés, etc., § 14, -       7         Affidavit to, § 32, -       18         Plea, demurrer, or answer—rule for, § 29, -       12         joining, § 31, -       18         not bad, when, § 35, -       14         amended, § 36, -       14         disallowed, § 37, -       14	PARTY	•							
Infant or other, not sui juris, § 19,	•					_		-	q
Non-resident as, § 20,       9         Omitting proper, § 21,       9         Representing numerous class, § 22,       10         Trustee as, § 28,       10         Joint and several, § 25,       10         Alleged want of—hearing on, § 27,       11         decree on, § 26;       11         PLEADINGS       11         PLEADINGS       11         PLEADINGS       11         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       13         not bad, when, § 35,       14         amended, § 36,       14         disallowed, § 37,       14			.*		_				
Omitting proper, § 21,       9         Representing numerous class, § 22,       10         Trustee as, § 28,       10         Heir-at-law as, § 24,       10         Joint and several, § 25,       10         Alleged want of—hearing on, § 27,       11         decree on, § 26;       11         PLEADINGS       11         PLEADINGS       11         PLEADINGS       11         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       18         not bad, when, § 35,       14         amended, § 36,       14         disallowed, § 37,       14			-	-				_	
Representing numerous class, § 22,       10         Trustee as, § 23,       10         Heir-at-law as, § 24,       10         Joint and several, § 25,       10         Alleged want of—hearing on, § 27,       41         decree on, § 26;       11         PLEADINGS       11         PLEADINGS       11         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       13         not bad, when, § 35,       14         amended, § 36,       14         disallowed, § 37,       14			_	~	_			-	
Trustee as, § 23,       10         Heir-at-law as, § 24,       10         Joint and several, § 25,       10         Alleged want of — hearing on, § 27,       11         decree on, § 26;       11         PLEADINGS       11         PLEADINGS       11         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       13         not bad, when, § 36,       14         disallowed, § 37,       14		Representing numerous class & 22		_	-		~		
Heir-at-law as, § 24,       10         Joint and several, § 25,       10         Alleged want of — hearing on, § 27,       -         decree on, § 26;       -         PLEADINGS         Printing; copiés, etc., § 14,       -         Affidavit to, § 32,       -         Joining, § 31,       -         Affidavit to, § 32,       -         Joining, § 31,       -         Affidavit to, § 32,       -         Joining, § 31,       -         Image: A comparison of the second s		Trustee as. 2 23.				-		-	
Joint and several, § 25,		Heir-at-law as 8 24	¥.	*	-		-		
Alleged want of — hearing on, § 27,				•		-	•	-	
decree on, § 26;		Alleged want of hearing on 8 27	- ×		-		•		<u> </u>
PLEADINGS Printing; copiés, etc., § 14, 7 Affidavit to, § 32, 18 Plea, demurrer, or answerrule for, § 29, 12 joining, § 31, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14 vexatious, § 37, 14		decree on 3 26.				-		-	
Printing ; copiés, etc., § 14,       7         Affidavit to, § 32,       13         Plea, demurrer, or answer—rule for, § 29,       12         joining, § 31,       13         not bad, when, § 35,       14         amended, § 36,       14         disallowed, § 37,       14         vexatious, § 37,       14			-		-		-		11
Affidavit to, § 32, 13 Plea, demurrer, or answer—rule for, § 29, 12 joining, § 31, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14 vexatious, § 37, 14	PLEAD	INGS							
Affidavit to, § 32, 13 Plea, demurrer, or answer—rule for, § 29, 12 joining, § 31, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14 vexatious, § 37, 14		Printing; copiés, etc., § 14, -		-		-		-	7
Plea, demurrer, or answer—rule for, § 29,			-		-		-		
joining, § 31, 13 not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14 vexatious, § 37, 14		Plea, demurrer, or answer-rule for. 3 29						-	
not bad, when, § 35, 14 amended, § 36, 14 disallowed, § 37, 14 vexatious, § 37, 14		ioining. 3 31.	-		-		-		
amended, § 36, - 14 disallowed, § 37, 14 vexatious, § 37, 14		not bad, when 3 35.				-		-	
disallowed, § 37, 14 vexatious, § 37, 14				•	-	_		-	
vexatious, § 37, 14		disallowed 8 37				_	-		
				-	_	-	_	-	
		(180)							11

Constant and

INDEX-EQUITY PRACTICE.	55
Filing replication, § 40,	PAGE. 16 20
PRACTICE English-rules applied, § 88,	- 83
PRINCIPAL AND SURETY	
Joinder of, § 25,	- 10
PRINTING Of pleadings, 22 14, 44,	- 7, 17
PROCESS	
Form of original, 26,	- <b>4</b> 5,6 - 6 6
non-resident, 22 11, 12,	- 6
PRO CONFESSO	
Decree—in default of appearance, § 13, procedure on, § 29, absolute, when, § 30,	7 - 12 13
PROCHEIN AMI	
Who may sue by, § 7,	- 5
PROTHONOTARY	
Attendance, § 2,	- 7 33
PUBLICATION .	
Of subpœna to non-resident, § 12,	- 6
RECEIVER Procedure on motion for, § 58,	- 23
REHEARING Application for, § 86,	33
RELIEF Form of prayer for, § 17,	- 9
REPLICATION Before answers filed to interrogatories, § 40, General—filed, when, etc., § 47, Special—not allowed, § 48,	16 - 19 19 \
(181)	

£.,

A CARLE AND A COLORADO

•

INDEX-EQUITY PRACTICE.

SCAN	DAL								
	Exception and reference for, § 15,	-		-		-		-	PAGE. 8
SEQU	ESTRATION								
	Issued on decree, 22 81, 83,		-		-		-		81
SERVI	CE								
~	Of process on defendant, 22 8-12, husband and wife, 2 9,	-	-	-		-	_	-	5, 6 6
	corporation; commonwes	alth	, į 1	0,		-			6
	non-resident, 22 11, 12, Proof of, to be entered, 2 13,	-	-	_	-	_	-		6 7
SUBPO	· •					ŕ		-	1
	To non-resident, form of, § 11, -	-		-		-		-	6
SUIT									
	Deemed pending, when, $å 5, \cdot$ -	-		-		-		-	4
SUPPI	EMENTAL BILL								
	Matter of-how introduced, § 54,	-		-		-		-	21
SUPRE	ME COURT								
	Original cognizance of case, when, § 4,		-		-		-		4
TRUST	'EE								
	To represent party, when, § 23, -	-		-		-		-	10
VACA	FION								
	In Philadelphia, § 76,	•	-	~	-		-		29
WILL			*						
	Making heir-at-law a party under, 724,	-	•	-				-	10
WITNI	ISS		4 ¥						
	Deposition of, § 55,	*	-		-		-		122
	At interlocutory application, § 58,	-		-		-		-	23
	Before master, § 59, '-		-		-		-		23
	May affirm, § 60,	-		-		-		•	24

# RULES

OF THE

# SEPARATE ORPHANS' COURT

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ALLEGHENY COUNTY.

JUDGE

OF THE

# SEPARATE ORPHANS' COURT

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ALLEGHENY COUNTY,

Hon. William G. Hawkins, Jr.

# RIULES

## OF THE

# SEPARATE ORPHANS' COURT

# ALLEGHENY COUNTY.'

# RULE 1.

# APPEALS.

§ 1. In all cases where any party interested is desir-Appeal from ous of taking an appeal from a judicial act or decision of the register. of the register, the appellant or appellants shall present a petition to this Court setting forth the facts and circumstances upon which he, she or they rely; whereupon, if such facts and circumstances appear to be *prima facie* sufficient, a citation will be granted on all parties interested to show cause why such appeal should not be allowed, and the judicial act or decision complained of should not be set aside.(a) Notice of such citation shall Notice to regbe given to the register, who shall, on or before the return day thereof, file the record in the case in the clerk's office.

(a) See Act 15 March, 1832, § 31, Purd. Dig. 1255, pl. 19; Quinn's Appeal, McArthur's Estate [All.], 26 Pitts. L. J. 57.

<sup>1</sup> The Separate Orphans' Court is a new court, erected under the Constitution of 1874, Art. V, sec. 22, and Act 19 May, 1874. French v. Commonwealth [Luz.], 78 St. R. 339.

In the absence of reference to special power, any particular rule herein is established under the general powers conferred upon this Court to regulate its own practice, as see hereinbefore, "General Rules of Court," section nine, page ix. See also, note to Common Pleas Rule No. 22, page 16.

On the application of equity rules and principles by this Court, see *Ake's Appeal* [Blair], 74 St. R. 116. On the approval of the stenographer's notes by the Court, see note to Supreme Court Rule No. XXIII. On assigning error to this Court, see note to Supreme Court Rule No. XXII.

(185)

## RULE 2.

# APPRAISEMENTS.

To be accom-§ 2. All appraisements made under the provisions of panied by petithe fifth section of the Act of April 14, 1851, and its several supplements,(a) and presented to this Court for approval, shall be accompanied by a petition setting forth the facts and circumstances out of which the claim Approval of arises ; whereupon, a prima facie case appearing to have appraisement. been made out, such appraisement shall be approved nisi and filed-which approval, subject to the notice hereinafter provided, shall become absolute in one month, unless exceptions be filed thereto in the mean-Notice of filing an appraisement shall be pub-Publication of time. appraisement. lished once a week for two consecutive weeks in the Pittsburgh LEGAL JOURNAL, whereof the last publication shall be at least ten days before final confirma-Certificate of tion of such appraisement. A certificate of such nopublication oi tice, verified by affidavit, shall be filed with the clerk notice. of this Court and a minute thereof be made by him of record in the case.

(a) See Purd. Dig. 416, pl. 60.

RULE 3.

Practitioners § 3. All attorneys in active practice and good standbefore the Separ. Orphans' ing in the Orphans' Court of this county under its old court. organization, shall be considered as admitted to practice in the Separate Orphans' Court.

Student to be § 4. It shall be the duty of every attorney of the Court to registered. Between the the clerk the name, age, and place of residence of every person studying law under his direction, and the term of study shall be computed from such regisexamination. But no person shall be registered as a student at law, until he shall have undergone an examination by the Board of Examiners on the elements of the Latin language

<sup>1</sup> See Purd. Dig. 99-100, pl. 1 et seq.

(186)

and all the branches of a thorough English education, including algebra, geometry, and natural sciences, or fair equivalents therefor; and he shall produce and file with Certificate. the clerk a certificate signed by the majority of the Board, that he is sufficiently prepared and qualified to commence the study of the law, and that they have received satisfactory evidence of his good moral character. The applicant shall give at least one week's notice Notice. to the secretary of said Board of his desire to be examined preparatory to registration.

§ 5. No person shall be admitted to practice as an Conditions of to attorney of this Court except upon the following condi-practice. tions:

(1.) He shall be a citizen of the United States, and Citizenship; of full age.

(2.) Every student applying for admission to practice Notice in the JOURas an attorney in this Court shall first cause notice to be NAL. published in the Pittsburgh LEGAL JOURNAL, of his intention to make such application, for one week prior to his examination by the Board of Examiners, which notice shall set forth the name of the applicant, in whose office he has studied, and at what time he will apply to be admitted.

(3.) He shall have served a regular clerkship in the Clerkship. office, and shall have studied under the direction of an attorney or judge of this Court, or some other court of this commonwealth for three years, or pursued the study of law in some law school of good repute, or, after Law school being of full age, he shall have pursued his studies diligently in the office of some practicing attorney of Allegheny county, or a judge of any court of this county, for the term of two years. Provided, that a course of study in any law school of good repute shall be deemed equivalent to a like term of study in the office of an attorney or judge.

(4.) He shall have undergone an examination by a Final examin-Board of Examiners appointed by the Court, on the principles and practice of law and equity, and shall produce

(187)

21

Certificate.

and file with the clerk at the time his admission is moved for, a certificate signed by all the Examiners who were present at his examination, that he is sufficiently qualified for admision to the bar, and that they have received written ques satisfactory evidence of his good moral character. And every such examination shall consist partly of written questions, to be answered in writing by the student, which questions and answers shall be reported to the Court.

§ 6. Except when otherwise specially ordered, no per-

son admitted to practice in other courts of this or other

States, shall be admitted to practice in this Court until he shall have appeared before the Board of Examiners and produced a certificate signed by all the Examiners

present at his examination, that they have received satisfactory evidence of his moral character and professional qualifications, including at least two years' diligent study

Admission of member from another bar.

Cértificate.

or practice of the law, and recommending his admission ting.

Certificate.

LEGAL NAL.

sion.

Notice in wri- to the bar. And written notice of his intention to apply for such admission shall be given to the Board at least two weeks prior to such application; and with said notice the applicant shall also produce and deliver to the Examiners a certificate of the president judge of the court wherein he last practiced of his good moral character, and of the length of time he practiced therein. Notice in the Provided, however, that notice shall be given by publication as in the case of students applying for admission; and provided further, that this rule shall not apply to Special admis- attorneys of other courts seeking to be admitted in-this Court for special cases.

§ 7. All motions for general admission to the bar shall Motion for sion. be made by members of the Board of Examiners.

Roll of membership.

§ 8. The clerk shall keep a book in which shall be entered the names of all attorneys now in active practice, and hereafter to be admitted to practice, in this Court in the order in which they have been, or may be, admitted: (188)

6

tions.

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§ 9. Every attorney when employed by any party intorney employterested shall have his name marked of record in the ed to appear of proceeding with reference to which he was employed. And so long as the name of any attorney remains on the record during his continuance in practice, he shall on such attorbe considered as the attorney of the party for whom he is marked, and liable to be served with such notices as may properly be served on him as attorney in such proceeding. And the name of such attorney shall not be stricken from the record in such proceeding unless upon the record the name of court.

§ 10. The agreements of attorneys of the Court touch-Agreements of ing the business of the Court shall be in writing; otherwise they will be considered of no validity.

# RULE 4.

### AUDITORS.1

§ 11. Where it appears by writing filed, duly signed Reference to auditor agreed desirous of having an account referred to an auditor named therein, such reference will be made accordingly.

e.

§ 12. In all other cases where it appears necessary, the Appointment Court, on application of any party interested, will ap-<sup>Court.</sup> point an auditor.

§ 13. If no satisfactory cause for the delay is shown, Vacating appointment. The Court will vacate the appointment of any auditor auditor. whose report is not filed within sixty.days after his appointment, on motion for that purpose being made by any party in interest.

§ 14. When an auditor is appointed, he shall assign a Duties of autime and place for hearing and proceed without delay, except for sufficient cause; he shall keep and return regular minutes of his proceedings, showing his differ-

<sup>1</sup>See Purd. Dig. 113; Constitution of 1874, Art. V, sec. 22; also Act 19 May, 1874, P. L. 206.

(189)

ent sessions and their extent, and the cause of delay, if any, so that the Court may adjust the amount to be penses of anditor. When the same shall be paid.

Notices of hearing by auditor. § 15. Ten days' notice of the time and place of hearing shall be given personally to all lien creditors and others appearing to be interested, or their attorneys, if residing in the county : all others shall be notified by advertisement published once a week for three consecutive weeks in some newspaper of the city of Pittsburgh, the last of which advertisements shall be published at least ten days before the day of hearing.

Report of §16. Where facts are controverted, the auditor shall report his finding thereon in concise form, (a) after the manner of a special verdict, and shall also state concisely the points of law raised before him, with his opinion and reasons therefor; and where an account or schedule of distribution is necessary, it shall not be blended with other parts of the report but stated separately in a form convenient to be recorded. The testimony, documentary or otherwise, shall be returned separately and filed with the report.

(a) See Hindman's Appeal [Wash.], 85 St. R. 466.

Excepting to report of auditor. give the parties ten days' notice of the day designated for filing the same, and in the meantime they shall be allowed access thereto; and no.exception to such report shall be received unless filed with the auditor before the day so designated; and if exceptions are so filed, the Re-examina-auditor shall re-examine the subject and amend his retion by auditor.

port, if, in his opinion, the exceptions are, in whole or in part, well founded.(a)

(a) See Mylin's Estate [Lan.], 7 W. 64; Brennan's Estate [Schuyk], 65 St. R. 16

Confirmation of report of auditor. § 18. The report, on being filed in the office, shall be marked confirmed *nisi*, by the clerk, which confirmation shall become absolute without further order, if no objection thereto is made and noted on the record within (190)

ten days; and if objection is so made, it shall be treated as a renewal of the exceptions filed by the party with the auditor, and the clerk shall immediately enter the case on the argument-list, and, on the hearing, the party will be confined to these exceptions, reserving to the Court, however, the power of recommitting the report Recommitting should justice require it.

§ 19. It shall be the duty of any person desiring an Requesting an issue, under the acts of Assembly relating to executions, ditor. to present his request in writing to the auditor within forty-eight hours after the hearing of the evidence has been concluded; which request shall particularly set forth the specific facts in dispute, on which he founds his claim to an issue, verified by affidavit; and it shall be the duty of the auditor forthwith to report the same to the Court.(a)

(a) See Purd. Dig. 656, pl. 108, 109.

§ 20. The reports of auditors shall be arranged so Recording report of auditor. that they may be recorded according to the act of As-sembly.(a)

(a) See Purd. Dig. 1250, pl. 10, 11.

# RULE 5.

### CONFIRMATION OF ACCOUNTS, REPORTS; ETC.

§ 21. Accounts, allowed by the register, shall be presented on the first day of each term, and confirmed *nisi*, terms allowed by regisif they appear on examination to be correct and the register has given the required notice; which confirmation shall become absolute, without further order, unless exceptions are filed within ten days.(a)

(a) See Act 15 March, 1832, Purd. Dig. 1253, pl. 5; Ibid. 444, pl. 189, et seq.

§ 22. Trust accounts, reports of sale, and inquests of Confirmation partition, if appearing to be correct, shall, on presenta- reports of sale, inquests of partion to the Court at the return day thereof, be confirmed tition, nisi and filed, which confirmation shall become absolute unless' exceptions are filed within ten days; provided

(191)

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<sup>Special notice,</sup> that, when deemed necessary, the Court may direct special notice to be given.

<sup>Filing exceptions ingeneral.</sup> § 23. Exceptions may be filed, by leave of Court, to any adjudication of audit within twenty days after such adjudication shall have been entered.

Exceptions to set forth what,

§ 24. All exceptions shall set forth the grounds on which objections are founded; otherwise they will be dismissed, or the exceptant will be required to pay the costs of any adjournment resulting therefrom, as the Court may deem just.

Bonds, requisite to approval § 25. All bonds required in any proceeding shall be of. signed, in addition to the principal, by at least two Sureties, num-sureties who shall justify in open Court or before the ber of. judge in chambers.(a)

(a) See Act 29 March, 1832, Purd. Dig. 428, pl. 113; Act 24 Feb., 1834, Ibid. 425, pl. 101; Act 18 April, 1853, Ibid. 1248, pl. 3, 4, 6; Act 3, April, 1857, Ibid. 430, pl. 119; Act 28 April, 1868, Ibid. 443, pl. 184; Hood on Executors, page 521.

Justifying re cognizance on § 26. Twenty-four hours' written notice of justificaappeal. tion of recognizance on appeal shall be given to parties interested.(a)

(a) See Act 16 June, 1836, Purd. Dig. 1104, pl. 11; Act 19 May, 1874, P. L. 206.

# RULE 6.

COURT AUDITS.

§ 27. A list of accounts to be audited by the Court List taken up, when. will be taken up on the third Mondays of March, June, September, and December, respectively; notice thereof having previously been given, and, so far as practicable,. ten accounts audited consecutively, each day (Saturdays: and Sundays excépted), until the whole list shall have List to include, been disposed of. Such list shall be prepared by the what. clerk and embrace all accounts: (1) included in the last register's list showing balances for distribution; (2) to which exceptions have been filed, and (3) such other accounts as may be specially ordered down for audit.(a)See Act 29 March, 1832, Purd. Dig. 445, pl. 194, 195; Act 19 May, 1874, P. L. 206.

(192)-

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§ 28: Accountants, creditors and other persons interaudits. Who to attend ested, will be expected to attend at the time fixed for audit and furnish such information and produce such evidence as may be necessary to make a proper disposition of exceptions and of funds for distribution. In cases where the proceeds of sales of real estate are to be for use at audits. distributed, accountants will be required to furnish lists of liens, properly certified, the cost whereof will be paid out of the fund for distribution. (a)

(a) See Act 29 March, 1832, Purd. Dig. 445, pl. 198; Ibid. 1109, pl. 48; Hammett's Appeal [Phila.], 83 St. R. 392.. On requiring vouchers from accountants, see Romig's Appeal [Lan.], 84 Ibid. 235.

# RULE 7.

### DISCHARGE OF TRUSTEES.

§ 29. Executors, administrators, guardians, or other Discharge of trustees; shall not be discharged on their own application. tion unless ten days' personal notice be given to the parties interested, if such notice be reasonably practicable; and if not, notice shall be given by publication for three weeks in at least one newspaper of the county.(a)

'(a) See Purd. Dig. 452, pl. 232, et seq.

§.30. Before a guardian shall be entitled to a final Discharge of discharge during the minority of his ward:

(1.). He must have rendered to the Court an account Account. of the management of his trust.(a)

(2.) Personal notice of the filing of such account must Notice of filhave been given to the minors interested, if over the age of fourteen years, or, if under that age, to the next of, kin of full age.(b)

(3.) Some stillable person must have been appointed  $\frac{Guardian}{ulem}$  by the Court to appear and act for such wards in respect to the settlement of said account.(a)

(193)

Confirmation (4.)Such account must have been examined with speof account. cial reference to such discharge and been confirmed by the Court.(a)

(5.) The balance found to be in the hands of the Balance, paid over. guardian must have been handed over to a subsequent guardian.(a)

(a) Purd. Dig. 413, pl. 44.

(b) Ibid. 1105, pl. 17.

See also, In re application of D. Wenke [All.], 23 Pitts. L. J. 49.

#### RULE 8

#### DISTRIBUTION.1

Docket-receipt for money paid § 31. It shall be the duty of the officer, or party distributing or paying out money in any manner connected with proceedings in Court, in all cases to have a receipt for each item paid out, entered on the appearancedocket in the clerk's office, or on the face of the proper record of the lien or claim in whatever office it exists.

Money paid § 32. If no appeal be taken within twenty days after out on report or final confirmation of a report, or entry of a decree, disdecree, when. tributing money, the money shall be paid over according to the report or decree, without further order.

## RULE 9.

#### EVIDENCE.1

§ 33. Rules to take the depositions of witnesses with-Deposition of witness within State. in the State may be entered of course by the clerk, and the depositions may be taken before any person legally authorized to administer oaths or affirmation's, on ten days' notice.

§ 34. Rules may be entered of course by the clerk to Deposition of witness ancient, infirm or going. take the depositions of ancient, infirm or going witnesses,

(194)

out

<sup>\*</sup> See Act 19 May, 1874. P. L. 206.

13

within five miles of the court house, on twenty-four hours' notice; and on four days' notice, in other parts of Allegheny county : provided the party file an affidavit of the facts necessary to entitle him to such-rule.

§ 35. Rules for a commission to take testimony out Commission to take testimony out take testimony of the State may be entered of course by the clerk, and out of State. the commission may be issued, after fifteen days' notice, containing the commissioner's name and a copy of the interrogatories filed.

§ 36. The testimony of witnesses to be used on the Testimony for hearing of motions and rules to show cause shall be tion or rule. taken, on reasonable notice, before any justice of the peace or other competent authority, and, if deemed necessary, a rule for the purpose may be entered of course by the clerk on application of either party; and no witness shall be examined at the bar without special order of the Court.

§ 37. All applications for issues shall state specifically Application for the material facts in dispute, and set forth the nature and what. character thereof.(a)

(a) See Act 15 March, 1832, § 41, Purd. Dig. 1256, pl. 22; Act 29 March, 1832, 2 55, Ibid. 1108, pl. 45; Act 16 June, 1836, 2 87, Ibid. 656, pl. 108; Act 20 April, 1846, § 2, Id. pl. 109.

#### RULE 10.

#### MONEY PAID INTO COURT.1

§ 38. On the payment of money into Court to abide To be deposited in bank. the order of the Court, the same shall be deposited in such incorporated<sup>\*</sup> bank as the Court may designate, to the credit of the Court in the particular cause, and shall Checked out, how. be drawn out only upon an order of the Court, attested by the clerk. A copy of this section shall be inserted Bank-book. in the bank-book in which the deposits are entered.

§ 39. The Iron City National Bank is designated as Depository. depository.

<sup>1</sup> See Act 19 May, 1874. P. L. 206. See Schedule of Fees of Clerk, Rule 18, page 18.  $\mathbf{22}$ (195)

14. RULES OF THE SEPARATE ORPHANS' COURT.

Clerk's comsy paid into Court the clerk shall be and into entitled to receive from the party paying the same, at the rate of one per centum on any sum not exceeding five hundred dollars, and one-half of one per centum on sums exceeding that amount.(a)

(a) See Act 18 March, 1875, § 1. P. L. 29.

#### RULE 11.

#### MOTIONS, RULES, ARGUMENTS, ETC.

Regular days § 41. Wednesday and Saturday shall be the regular rules, etc. days for hearing motions and disposing of rules and other business.

Motions and rules on arguinent shall be ment list. § 42. Motions and rules requiring argument shall be immediately placed on the argument-list by the clerk called up spe- without further order, and may be called up for argunent on five days' notice.

Briefs of argus 43. In cases set down for argument, the attorneys of the respective parties shall each deliver to the Court a statement in writing, setting forth the points in controversy and a reference to such principles and authorities as may be deemed pertinent.

#### RULE 12.

### PETITIONS, CITATIONS, PLEADINGS, ETC.

Application to § 44. All applications shall be by petition, verified be by petition, by affidavit, setting forth the facts necessary to give the Court jurisdiction, the specific cause of complaint, and the relief prayed for.

Petition for appointment of for \$ 45. Petitions for the appointment of guardians shall guardian to set set forth the name, age, and place of residence of the minor, and the amount of personal property and income of every kind that may come into the hands of the guardián; and the appointment shall not be recorded or certificate issued, until the bond is approved and filed. (196) § 46. If executors, administrators, guardians, or <u>Citation to file</u> other trustees do not file their respective accounts within the time required by law, a citation may be issued of course by the clerk, on application of any person interested, setting forth the necessary facts verified by affidavit.

§ 47. The mode of proceeding in controverted matters Pleadings in shall be by petition, answer, replication, etc., verified by matters. affidavit.(a)

(a) See Steffy's Appeal [Lan.], 76 St. R. 94.

§ 48. Notices of the granting of citations and rules to : Notice of the granting of citations and rules to : Notice of the granting of citations of citations and rules to show cause show cause show cause it in or rule to before the return day thereof; if no answer be filed, and the petitioner appear entitled thereto, a decree pro con-. Decree pro ton-fesso will be made on motion. If an answer and repli-fesso. Cation, or a demurrer, be filed, the cause shall be put down for hearing. Except where otherwise specially Facts in petition not denied by the answer shall be taken as admitted.

(a) See Act 29 March, 1832, § 57, Purd. Dig. 1106, pl. 27.

#### RULE 13.

#### REAL ESTATE.

•§ 49. All proceedings for the sale, or partition, of real Sale or partition of reality, tion of reality, how initiated.

(a) See Horam's Estate [Jeff.], 59 St. R. 152; Simmond's Estate [All.], 19 Ibid. 439; Wall's Appeal [All.], 31 Ibid. 62.

§ 50. Petitions for the sale, or mortgaging, of real estate Petition for sale or mortgaging, of real estate Petition for for payment of the debts of a decedent shall be accom- ing of realty, accompanied by a description of all the real estate, a certified what. copy of the inventory of personal property filed in the register's office, and a list of the debts, of such decedent,

(197)

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and a certificate from the county commissioners of the last official valuation of the real estate proposed to be sold.

Inquisitions § 51. Inquisitions and orders for the sale of real sale of real sale of real tyre- estate shall be returnable on regular return days next suc-

ceeding the expiration of twenty-one days from the exit Confirmation of such orders or inquisitions; and thereupon such return, if deemed sufficient, shall be confirmed nisi, and this confirmation become absolute ten days thereafter,

unless exceptions be filed thereto in the meantime.(a)

(a) See Act 29 March, 1824, Purd. Dig. 1115, pl. 15; Act 29 March, 1832, Ibid. 480, pl. 121; Act 11 April, 1835, Ibid. 1115, pl. 14; Act 17 April, 1856, Ibid. 1113, pl. 71.

Bond of trustee to be approved and filed before certificate of an order of sale shall be issued fore certificate by the clerk until the bond of the administrator, execuissued. tor, guardian, or other trustee, as the case may be, shall have been approved by the Court and filed.

Return of sale § 53. All returns of sale shall be accompanied by a v to be accompanied by what. copy of the handbills posted, by affidavit of publication, and by certificate of the clerk that bond has been approved and filed.

" RULE 14.

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#### RECORDS:

Withdrawing § 54 record from office. the cle

<sup>ng</sup> § 54. No record of the Court shall be withdrawn from the clerk's office without an order of Court, or a special allowance of the judge, in writing, directed to the clerk.

Entries in rec ognizancedocket. S 55. A recognizance-docket shall be kept, in which shall be entered a memorandum of every recognizance, setting forth the names of the recognizors in alphabetic order, the number and term of the case, and the date and amount of the recognizance; and when any procgeding is had on a recognizance, the same-shall be noted on the record thereof in said docket.

(198)

16

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#### **RULE 15.**

#### SECURITY.1

§ 56. No attorney, sheriff or other county, city, or Attorney or State officer, shall be admitted as security in any proceeding unless by leave of Court for special cause shown.

§ 57. Bonds presented for approval shall have endor-Affidavit to sufficiency of second thereto, an affidavit or affidavits curity. showing the sufficiency of the security for the amount of the penalty, exclusive of all liabilities and exemptions.

#### RULE '16.

#### SPECIAL RETURNS.

§ 58. In all cases where special returns are authorized special returns, by law, they shall be read in open Court, on Saturday morning at ten o'clock, and the reading thereof shall be noted on the writ and on the minutes by the clerk.(a)

(a) See Act 20 April, 1846, Purd. Dig. 655, pl. 104, et seq.

§ 59. Upon the reading of special returns, the same  $\frac{\text{Special returns}}{\text{confirmed } nisi}$ , which confirmation shall become when. absolute if no exceptions are filed within ten days; and if exceptions are filed, the case shall be immediately  $\frac{\text{Exceptions to.}}{\text{Exceptions to.}}$ 

#### RULE 17.

#### TERM AND RETURN DAYS.

§ 60. Term days in the Separate Orphans' Court shall Term days. be the first Mondays of March, June, September, and December.

§ 61. Court will be held on the first Mondays of Sessions of March, June, September, December, and on Wednesday. and Saturday of every week, and at such other times as may be necessary or proper.

<sup>1</sup> See Act 18 June, 1886, Purd. Dig. 56, pl. 9. (199)

Regular return § 62. The regular return day, when not otherwise day. provided by law or by order of Court, shall be the first Saturday of every month.

Continuance § 63. If the Court is not in session on the return day of proceedings. of any rule or other process that requires a hearing in Court, the proceedings shall be continued of course until the next session of Court.

#### RULE 18.

### SCHEDULE<sup>1</sup> OF FEES OF CLERK.

Cost to be paid.

<sup>1.</sup> § 64. No petition will be filed of record, nor citation, rule or certificate, be issued, by the clerk, except where otherwise specially ordered for cause shown, until the costs thereon shall have been paid; and such payment shall not prejudice the question of the liability for costs as between the parties to the record, as thereafter determined by the Court.

Inquest, one description,			Dolls.	Cts.
Each additional description,	⊾	-	5	00
Widow, claim for \$300,		-		50
Petition and citation to file account, and return thereto.	-	-	1	00
Rule for attachment, and attachment, each, -		•	2	00
Appearance-bond on attachment, -	-	-	1	00
Commitment,		-	1	00
Order of sale and bond, one description,	-	•	1	00
Each additional description,		-	3	00
Return of sale and confirmation,	-	-		-60
Confirmation of account,		-	2	<b>00</b>
Advertising audit-list, not exceeding,		-	1	<b>25</b>
Attendance at hearing of andia		-	3'	00
Attendance at hearing of audit, preparing schedules, etc., of cap or brief paper,	first	page		
Each additional page,		-	4	00
Filing and entering polition 1 1	-	-	2	00
Filing and entering petition and bond for guardian, if minor,	only	y one		
	-	-	2	00
Each additional name,		-		<b>`</b> 50
Certificate of appointment,	-	-	ʻ` 1	00

<sup>1</sup>Authorized by Act 18 March, 1875. P. L. 29.

(200)

Doll	s. Cts.
Filing guardian's inventory,	50
guardian's statement,	50
auditor's report and confirmation,	1 00
Recording petition, auditor's report, examiner's report, etc., per page	
of cap or brief paper,	50
Appeal to supreme court, certificate of record and bond,	5 00
Certified copy of petition, decree, order of sale, account, report of	
auditor or examiner, exemplification of record, etc., per page	
of cap or brief paper,	50
	2 50
Filing petition and bond for trustee, injunction and to mortgage,	1 00
Refunding bond,	50
Certificate,	
Acknowledgment of deed,	75
Affidavit,	<b>25</b>
Subpœna,	25
Entering receipt.	50
Fieri facias,	1 00
Venditioni exponas,	1 00
For receiving and disbursing money paid into court, one per centum	
for first five hundred dollars, and one-half of one per centum	
per dollar above that sum.	•

## SCHEDULE<sup>1</sup>

#### 0 F

## FEES OF REGISTER OF WILLS.

For probate of will,	Dolls,	Cts.
letters testamentary,	- 1	00
recording will non none of his a	1	00
recording will, per page of brief or cap paper, - affidavit of death.	-	50
conv of will		50
copy of will, per page of brief or cap paper,	-	50
filing inventory,		50
bond of administrator,	1	50
letters of administration,	-	00
use of commonwealth on each letters testamentary and letters	-	00
		50
filing, examining, passing and recording account of executor, ad-		90
ministrator, guarulan, or other trustee not orgooding to	•	
pages of brief of cap paper, each		
each additional page,	3	75
filing renunciation,		50
sales-list,		50
petition and citation,		50
entering caveat,	1	00
issuing commission to take testimony of witness,	1	00
precept for issue,	2	00
subpona,	1	00
entering or continue of the second		<b>25</b>
entering exceptions to administrator's bond and hearing the		
оаше, <u> </u>	2	-00
certificate and seal,		50
copy of will, account, bond, inventory, etc., per page of brief		00
		50
commission on tax on writs, for every dollar,		
commission on collateral inheritance tax, for every dollar, -		03
ior or or or y donar, -		05

<sup>1</sup>Authorized by Act 24 March, 1877. P. L. 37.

(202)

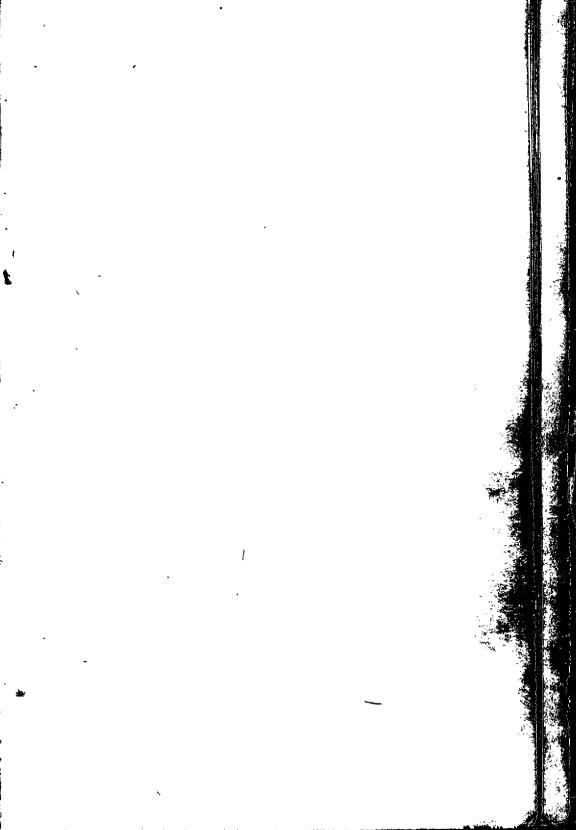
### RULES

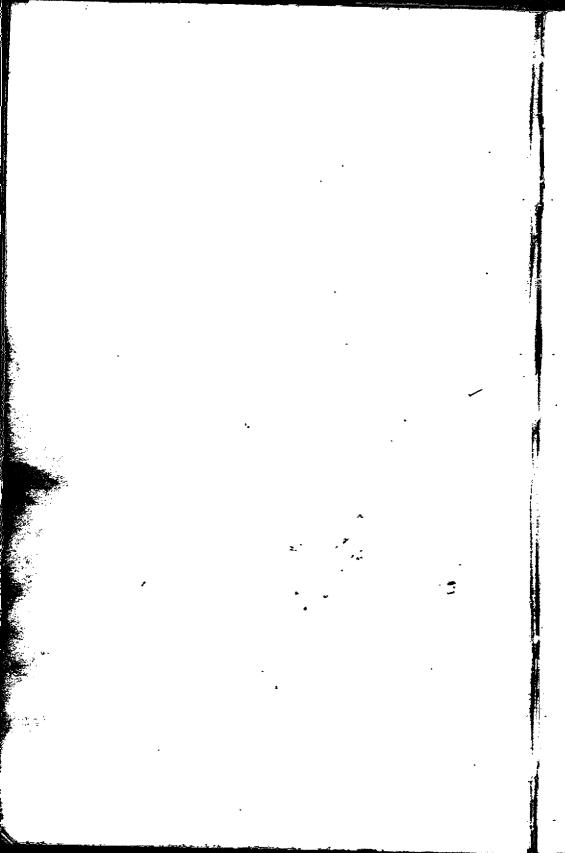
OF THE

SEPARATE ORPHANS' COURT.

ADDENDA.

And now to with July 19, 1879, the following is adopted as a rule of this court.





## INDEX

#### TO THE

## RULES OF THE SEPARATE ORPHANS' COURT

F

## ALLEGHENY COUNTY.

ACCOUNT	•						PA	GE.	
Referred to auditor, 22 11, 12	, -	-	-		-		-	7	÷. م
to be sta	ted, how, a	16,				-		8	
Audited by Court, 22 27, 28,	-	-	-				- 10	, '11 ·	
Of guardian-filed, before dis	scharge, 🖉	30, -		-		F		11	
citation to file,		-	-		۶.,		-	15	, et
Confirmation of, in general, &	§ 21–24,			<u>^</u>		-	9	, 10	
j.									
ADMINISTRATOR									
Bond by, before sell realty, §	52,	-	-		-		-	16	
Cited to file account, § 46,		-		-		-		15	
Requisite to discharge of, § 29	Э, -	-	-		•		-	11	
									1 M
ADMISSION									
In answer, of allegations in p	petition, §	48,	-		-		-	15	E in
	•	Ý							1. I.S.
ADVERTISEMENT									
Notice-of appraisement filed	1, 2 2.	-	-		-		-	4	
hearing by-audito		-		-				.8	
trustee's proposed		, ð <sup>-</sup> 29,	۰.		-		-	11	
Of sale of realty, § 53,		-		-		-		16.	
In Pittsburgh LEGAL JOURN	AL:							•	
Notice of appraisement fil		-		-		2		4	
by candidate for be	ar, 27 5, 6,	-	-		-		-	5, 6:	
	223,)								

AFFI	DAVIT								1	PAGE.
	To certificate in appraisement, §	2.		_			•		,	4 AGE.
	Auditor-for reference to, § 11,	-,			-			-	-	7
	issue before, § 19,	-		-			-		-	9
	To rule for deposition, § 34, -	-			-		-	-		12
	petition, 22 44, 46,	-	-	-	-		-		1	4, 15
	pleadings, § 47, publication of sale, § 53,	-			-			•		15
	sufficiency of bond, § 57, -	•	-	•	-		-			16
	sumerency of bond, § 57, -	-	•		-	-		~		17
AGREI	EMENT									
	Of attorneys, § 10,		-		_		_			7
ì	To refer account to auditor, § 11,	-			•			-	-	7
AMEN	DMENT									
	Of report of auditor, § 17, -	-		-		-		-		8
	\$	•								-
ANSW	ER									
	To petition, 22 47, 48,	8 48	-	-	-		-		-	$15 \\ 15$
		0 -	,							10
APPEA	L ·	•	-							
	From act or decision of register, ?	1.	-		-		-		_	3
	confirmation of decree or re	, port	. ?	82,		-	-	-	~	12
	Justifying recognizance in,-2 26,		-	•	-		-		-	10
APPEA	RANCE-DOCKET-See Docket.	•				~				
					, <b>7</b>					
APPOIÌ	NTMENT .	ž,			<i>,</i>	, Î				
	Of auditor-by agreement, § 11, -				• •					_
	the Court, § 12,	-2		_	-		•		-	æ.,
	.vacated, § 13.			£.	-	-	_	-	_	5 5
	Of guardian, § 45,	-	-	-		-	• -	-	-	15
	ad litem, § 30-(3), -		-		-		-			12
APPRA	ISEMENT									
	Under Act 14 April, 1851, etc., § 2,	-		-		-		-		4
ARGUM	- ENT									
1	Brief of, to contain what, §43, -									• •
-	(224)		-		-		-		-	14

INDEX-ORPHANS' COURT.	43
ARGUMENT-LIST	PAGE.
Exceptions to auditor's report, on, § 18,	- 8
special return, on, § 59,	- 17
Motions and rules placed on, § 42,	- 14
ATTORNEY	
Admission to bar, 22 5, 6, '	- 5,6
Member of Separate Orphans' Court, § 3, -	- 4
	- 6
To be enrolled, § 8, Employed—to appear of record, § 9,	- 7
serving notice on, 22 9, 15,	- 7,8
stricken off, § 9, Agreement on business of Court, § 10, Brief of argument by, § 43,	- 7
Agreement on business of Court, § 10,	- 7
Brief of argument by, § 43,	- 14
As security, § 56,	- 17
AUDIT-See Court Audit.	
AUDITOR	
Appointment—by agreement, § 11,	- 7
the Court, § 12,	- 7
vacated, § 13,	- 7
Duties, in general, § 14,	- 7
Fees-and-expenses. 8 14.	- 7
Securing an issue before, § 19,	- 9
Notice of hearing by, § 15,	- 8
Report—to contain what, § 16,	- 8
ب notice of filing, § 17,	- 8
excepting to; amendment of, § 17, -	- 8
confirmed or recommitted, § 18,	- 8
recording, § 19,	- 9
BAIL-See Bond; SECURITY.	
BOARD OF EXAMINERS	
Examination of candidate for study, § 4,	- 4
- practice, § 5, -	- 5
from another bar, § 6,	- 6
Certificate given by, § 4-(4),	- 6 - 6
BOND-See Security.	•
Requisite to approval of, § 25,	· - 10
Of guardian, before certificate given, § 45	- 14
an and and a	P .

By trustee to sell or mortgage realty,								PA	GE.
Certificate of, approved, etc., § 53,	52	,	•		-			-	16
Affidavit to sufficience of 2 55,		-				٠.	-		16
Affidavit to sufficiency of, § 57,	-		-		-			-	17
CERTIFICATE									
Of notice of appraisement filed, § 2, By Board of E-ami	-		-		-		-	•	4
By Board of Examiners, $\overset{\circ}{\xi} 4-(4)$ ,		-							4
Of liens for use at distribution, § 28,	-		-		-		-		12
appointment of guardian, § 45, -				-		-			14
valuation of realty, § 50, -	-		-		-		-		15
order to sell realty, -2 52,		•		•		-			16
bond approved and filed, § 58,	-		-		-		•		16
CITATION									
Costs of, to be paid, when, § 64,		-		-		-			18
In appeal from register, § 1, To file account, § 46,	-				•		-		3
Granted potice to be at a 10		• -		~		-			15
Granted, notice to be given, § 48,	-		-		-		:	•	15
CLERK									
Schedule of costs, § 64, .									
To note certificate in appraisement, § 2,		-		-		-			18
receive attorney's certificate, 88'4, 5,			-		-		-		4
keep roll of members, 8,8,		-		-		-		-5,	, 6
prepare audit-list, § 27,	-		-		-		-		6
confirm report of auditor, § 18,		-		-		Ę			10
enter rule for deposition, 32 33-36,	-		-		-		-		8
file petition, when, § 64,		~ /	•	-		-	]	12, :	
issue citation, etc., when, $\gtrsim 64$ ,	-		•-		-		-		18
attest order on depositary, § 38,	1	<b>-</b>		•		-			18
Commission or money påid in, § 40, -	-	**			-		-		13
To place motions and rules on argument.	- 	- 2	40	-		-			4
issue citation for account, § 46,	-115	·, .8	42,		-			[مرجع	
certificate of order for sale, 2 52,		-		-		-			5
put down cause for hearing, § 48,			-		-		•		.6
deliver record on order, § 54, -		•		-		-			5
note special return read, § 58, -	-		-		-		-		6
exceptions to, § 59		-	_	-		-		1	77
- , , , , , , , , , , , , , , , , , , ,							-	1	•
CONFIRMATION									
Of accounts, in general, 22 21-24,							war ,	<b>.</b> -	•
account of guardian, $\frac{2}{30}$ 30-(4),	-		-		-		- {	9, 10	
appraisement, § 2,		-		-		-		1:	
· (226)			-		-		-	4	4
~ (440)									

**·**45

									P	AGE.
	report of auditor, § 18, –	-		-		-		-		8
	• return to sale, § 51,		-		-		-		-	<b>1</b> 6
	special return, § 59, -	-		-		-		-		17
]	Money paid, after, § 32, -		-		-		-		-	12
CONTIN	UANCE									
(	Of proceedings, of course, § 63, -		-		-		-		-	18
COSTS										
1	Paid, before file petition, issue cita	tion,	etc.,	80	34,	-		z		18
(	On adjournment of exceptions, § 24	ŀ,	-		-		-		-	10
(	Of lists of liens to accountant, § 28,	-		-		-		-		12
COURT	AUDIT -									
I	List taken up, § 27,		-				-		-	10
	to include what, § 27, -	Ŧ		-		-		-		10
Т	Who to attend, § 28,	*	•		-		-		-	11
E	Evidence to be furnished at, § 28,	-		-		-		-		11
I	lists of liens for use at, § 28,				-		_		_	11
E	Excepting to adjudication of, § 23,	-		-		-		-		10
DECREE	1							Ň		
М	Ioney paid out under, § 32, -		_				_	·	_	12
	Pro confesso, on motion, 2 48, -	-		-		-		-		15
										-•
DEMURI	RER									
Т	o answer, replication, etc., § 48,		-		-		-		-	15
										10
DEPOSIT	TION									
	of witness ancient, infirm or going,	2 34			_				_ \	12
	within the State, 2 33,	-	,	_		_			•	12
۲	outside the State, § 35,		_			-		-		13
- F	or use on motion or rule, § 36,	-	-	-		-	-	-	-	_10 13
	/ 0 - /									
DISCHAI	RGE									
	f trustee, on application, § 29,	_		-		_				11
	guardian, during minority, 2 30,		_	-	_	-	_	-	-	ii
	- ,									••
DISTRIB	UTION									
	chedule of, with report of auditor,	2 10								0
יט ית	vidence on, at Court audit, § 28,	% то	,	-		-		-		8
я. Я	eceipt to be entered, § 31, -		-		-		-		-	11
	nder report or decree, § 32, -	-		-		-		-		12
U			-		-		-		-	12
	(227)									

10	INDEX-ORPHANS' COURT.	
DOC	CKET	
	Receipt to be entered on, § 31, Entries in Recognizance, § 55,	PAGE. 12
		- 16
EVII	DENCE	
	What, at Court audit, § 28, -	11
	Taken by auditor, 22 16, 19,	- 8,9
	Application for an issue, § 37,	13
	Allegations not denied, admitted, § 48,	- 15
EXA	MINERS-See Board of Examiners.	
EXCH	EPTION	
	To approval of appraisement, § 2,	
	report of auditor, § 18,	. 8
	confirmation of account, 22 21-24,	9, 10
	return of inquisition, etc., § 51, -	16
	special return, 3 59.	17
	Evidence on, at Court audit, § 28, To adjudication of audit, § 23,	11
	To adjudication of audit, § 28,	10
EXEC	CUTOR	
·	Bond by, before sell realty, § 52,	Ì6
	Cited to file account, § 46,	15
	Requisite to discharge of, § 29,	11 '
FEES	3	•
	Of auditor-adjusted, etc., § 14;	7
	* <b>*</b> *	
GUAR	RDIAN	
	Appointment, petition for, § 45,	14
	ad litem, § 30-(3),	11
	Bond by, before sell realty, § 52,	16
	Cited to file account, § 46, Requisite to discharge of, §§ 29, 80, •	15
	requisite to discharge of, 22 29, 30, •	11
HAND	D-BILL	
	Copy of, with return of sale, § 53,	16
	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	10
INQUI	-	
	Of partition, confirmed, § 22,	9
	excepting to, § 22, 23, -	9, 10
	For sale of realty, return of, § 51,	16
	(228)	

INDEX-ORPHANS' COURT.	47
ISSUE <sup>1</sup>	
	PAGE.
Application for, 2 37,	13
Formed by pleadings, 22 47, 48,	9 15
2 of mod by preadings, gg 17, 40,	15
LIENS	
List of, for use at distribution, § 28,	
with petition to sell or mortgage, § 50,	11
Receipt, on record of, § 31,	15 12
1,	14
LEGAL JOURNAL-See Advertisement.	
MINOR "	
Next of kin acting for, § 30-(2,)	11
Petition for guardian for, 2 45,	11
Notice to, before guardian discharged, & 30-(2),	11
MINUTE	
Of certificate in appraisement, § 2,	4
proceedings by auditor, § 14,	4 7
special return read, § 58,	17
MONDAY	•
As term day, 2 60,	17
Court held on, § 61, -	17
MONEY	
Paid in, deposited in bank, 22 38, 39,	13
checked out, how, § 38,	13
clerk's commission on, 22 40, 64, 1	
MORTGAGE	
To pay debts of decedent, § 50,	15
MOTION	۶.
Regular day for, § 41, -	
Testimony for use under, § 36,	14
Placed on argument-list, § 42,	13 14
	11
NEXT OF KIN	
Notice to, by guardian, § 30-(2),	11
. (229)	
•	

చ

ł,

NOTICE	~ ~
To register, in appeal, § 1,	
Of appraisement filed, § 2,	1
By auditor—of hearing, § 15,	4
filing report 2 17	8
Special-of account filed, § 22,	8
Of accounts audited by Court, § 27,	9
justifying recognizance on appeal, § 26, -	10
granting citation 2 49	10
Deposition of taking in State 2 ap	$15 \\ 12$
ant of State 2 ar	12
witness angiont star 2.04	12
for use under motion, 2 36	12
By trustee applying for discharge, 38 29, 30-(2)	11
10 Call un casa specially 2 49	14
	11
ORDER .	
To sell realty, return of, § 51,	16
withdraw record, § 54,	16
Ň	
PARTITION	
Initiated by citation, § 49,	-
Inquest of, confirmed, 22,	5
excepting to 22 99 94	9 0
• • • • • • • • • • • • • • • • • • •	v
PETITION	
Alexandre and a second s	
Applications to be by, 244,1	4
Allegations in-not denied, admitted, § 48, In appeal from register, § 1,	5
appraisement; 22,	3
controverted matter, § 47, 2:	4
For appointment of guardian; § 45,	5
citation or rule 3/49	
	5
لمس م	
PLEADINGS •	-74
In controveried matters, 22 47, 48,	
18	i
1	
PUBLICATION-See Advertisement.	
j <b>v</b>	
REAL ESTATE	
Sale of petition for, § 49, 15	
$1$ bond of trustee for, $\frac{3}{2}$ 52, 16	
(230)	

48

	certificate to trustee, § 53, -		•							PAGE. 16
	return of order, etc., for, § 51,			-		-		-		16
	accompanied by what, § 53, -		•		-		-		-	16
	confirmation of, § 51, -			-		-		•		16
	evidence at distribution, § 28,		-		-		•	٠	-	10
				-		-		-		11
RECOG	NIZANCE			•						
	Justifying, in appeal, § 26, -				_		-		-	10
	Docket, entries in, § 55, - · -		·	-		-		-		16
RECOR	תי									
HEOOT	Noted on-certificate in appraisement,	•	ຄ							
		8	z,		-		-		-	4
	name of student, § 4, -			-		-		-		4
	attorney, § 9,		-		-		-		-	7
	Of auditor's report, §-20,			-		•		-		: 9
	Receipts entered on, § 31,		-		-		-		-	12
	Recognizance-docket, entries in, § 55,			-		-		-		16
حمد	Withdrawn from office, § 54, -		-		-		-		-	16
	Öf petition, when, § 64,			-		•		-		18
REGIS'	TER							_		
	Appeal from act or decision of, § 1,				-				_	3
	Accounts allowed by, presented, § 21,			-	•	-		-		9
REPLI	CATION									
	_									
	To answer, 22 47, 48,		-		-	•	-		-	15
REPOR	ст									
	Auditor's-to contain what, § 16,		-		-				-	8
	notice of filing, § 17, -			-		-		-		8
	excepting to; amendment	of	. 8	17,	-		_		-	8
	confirmed or recommitted,	ş	18,	,		-		-		8
	recording, § 19, -	Ŭ	_ 6		-		-		-	- 9
	Of sale confirmed; § 22,			-		-		-		J ∳
	excepting to, § 22-	24	,		-		-		-	9, 10
	Money paid out under, § 32,			-		-		-		12
RETUF	N, RETURN DAY		_	_						
	Of account, report, inquest, § 22,									~
	In inquisition or sale of realty, 22 51,	52	-		-		-		-	9 1e
	Special, read, § 58, -		-	-		-	-	-		16 17
	Regular return, day for, § 62, -		-	_	-	_	-		-	17
	24 (231)			-		-		-		10
	(201)									

2

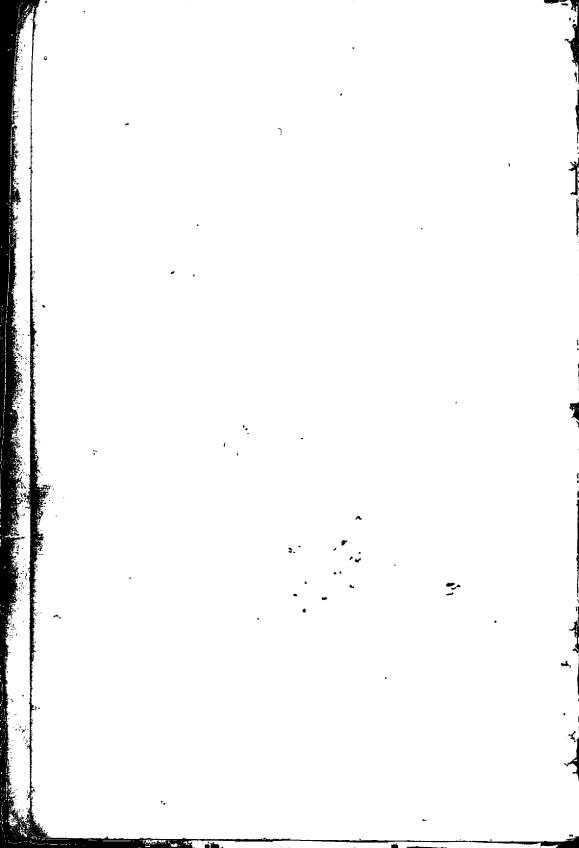
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RULE									Р	AGE.	
	Issued, when, § 64,		-		-	-		-		18	•
	Issued, when, § 64, For deposition, § 33-35, -	-		-		-	-		-	<b>12</b>	
	Day for hearing, § 41, -		-		•	-		-		14	and a second s
	On argument-list, § 42, -	-		-		-	-		-	14	
	Called up specially, § 42, -		-		-	-		-		14	
	To show cause, notice of, § 48,	-		-		-	-		-	15	
•	Proceedings under, continued, §	63,	-		-			-		18	
SALE											
	Dement of confirmed 200									0	
	Report of, confirmed, § 22,	-		-		-	-		-	9	
	Of realty-petition for, 22 49, 50	,	-		-	-		-		15	
	certificate of order, §	52,	-		-	•	•	-		16	
	return of órder, § 51,						- -		-	16 16	
	sale, accom	pani	ea c	у ч	nat	, ę ə	б,	-		16 16	
	confirmed, wh	en,	ရ စာ	,		-	-	•	-	16 12	
	proceeds of, distribut	ea,	28,		-	-		-		12	
<b>ŠATU</b> I	RDAY										
	Regular day for what, 2 41,	_		_		-			-	14	
	Special return, read on, § 58, -				_		-	_		17	
	Court held on, § 62, -	_		_		-	_		-	18	
	Excepted, in Court audit, § 27,		-		-		-	-		11	
	; ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~										
	-				-						
SCHEI	DULE										
	Of clerk's costs, § 64, · -		-		-		-	-		18	
SECUI	RITY										
	Attorney or officer as, § 56, 🖉	-		-		-		-	-	17	
	Affidavit to sufficiency of, § 57,		-		-		-	-		· 17	
2		5. <b>6</b> 4									
							_				
SHÈR	IFF	-					-				
	As security; 7 56,	-		-		-		-	-	17	
	•••••										
SPECI	AL RETURN										
	Read, when, § 58,	-		-		-		-	-	17	
	Confirmed, when, § 59, 📜 -		-		-		-		-	17	
0.000											
SURE											
	Number of, § 25,	-		-		-		-	-	10	
	Signing bond and justifying, &		-		-		-		-	10	
	(232	2)									

50

۰,

INDEX-ORPHANS' COURT	•			51			
TERM DAYS				PAGE.			
What Mondays are, § 60,	-	-	-	17			
TESTIMONY-See Deposition.							
Taken by auditor, § 16, For use on motion or rule, § 36,	-	-	-	8 13			
TRUST							
Account, confirmed, § 22, excepting to, §§ 22, 24,	-	-	- 9,	9 10			
TRUSTEE							
Bond in sale of realty, § 52, Cited to file account, § 46, Requisite to discharge of, §§ 29, 30, -	-	- -		16 15 11 .			
WEDNESDAY							
Regular day for what, § 41, Court held on, § 61,	- ,	-	-	<b>14</b> 17			
WITNESS-See Deposition.							
WRITING							
Petition—in appeal from register, § 1, - appraisement, § 2,		-	-	3 4			
Agreement-of attorneys, § 10, -	-	-	-	7			
for reference to auditor, § 11, - Brief of argument, § 43, -	_	-		7 14			
Request for issue, before auditor, § 19,		-	-	9			
Notice of justifying recognizance 2 26,	-	-	-	10 16			
Order to withdraw record, 2 54, 🔿 -	•	-	-	10			



## RULES

#### OF THE

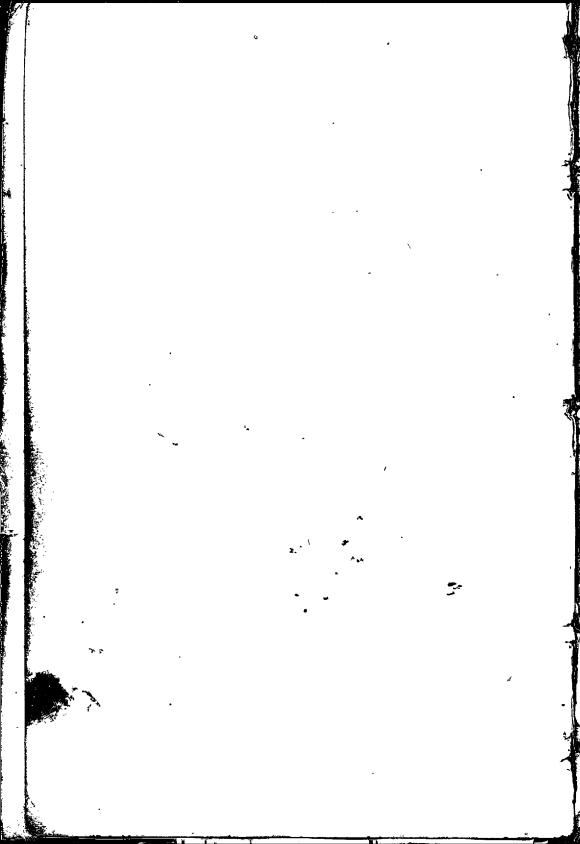
## COURTS OF OYER AND TERMINER

#### AND

## QUARTER SESSIONS OF THE PEACE

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### ALLEGHENY COUNTY.



## RULES

#### OF THE

# COURTS OF OYER AND TERMINER, QUARTER SESSIONS, ETC.

## BILLS OF EXCEPTION.

### RULE I.

In cases of murder and voluntary manslaughter, no In murder and manslaughter. bill of exceptions to the admission or rejection of testimony will be signed, unless the Court has been distinctly manslaughter. called upon to note an exception at the time the decision

### RULE 2.

If, on the trial of the cause, the counsel on either side Poin wish the charge of the Court on any point or points of Court. Points. law arising in the case, they shall be distinctly stated in writing and delivered to the Court, and a copy thereof, to the opposite counsel, before either party commences his argument to the jury.

### RULE 3.

Such points shall be written in a plain hand, and so Framing points framed that the answer of the Court will be full, direct Court. and explicit by a simple affirmation or negation.

(237)

#### RULES OF THE COURTS OF OYER AND TERMINER, ETC. 4

#### RULE 4.

Excepting to charge of Court.

Exceptions to the charge of the Court must be made immediately after the jury retire; and the party excepting shall, before the rendition of the verdict, state distinctly, in writing, the several matters to which he excepts. No general exception to the whole charge will be sealed.

#### COSTS.

#### RULE 5.

Bill of costsmade out, how.

Bills of costs shall be made out with such particularity and detail as will enable the clerk to judge of their correctness, and the necessity for the attendance of the witnesses, giving, the dates, number of days in actual attendance, mileage, etc.

#### RULE 6.

All costs and fees shall be taxed, in the first instance, by the clerk, subject to an appeal to the Court at any time Costs and fees to be taxed by clerk. before the money is made and paid over: Provided, that the appellant shall file a specification of the items to which he objects and the grounds of his objection; but no such appeal shall stay proceedings without a special order of Court on sufficient cause shown; and where the money is made or paid pending the appeal, the amount in dispute shall remain in the officer's hands or be paid into Court to abide the event.

Appeal. Stay.

(238)

#### RULES OF THE COURTS OF OYER AND TERMINER, ETC.

#### HABEAS CORPUS AND BAIL.

#### RULE 7.

Reasonable notice of applications for the discharge of Notice of proposed discharge on bail or otherwise, and of the time and place on bail. of hearing on writs of *habeas corpus* for such purpose, shall be given to the district attorney and the committing magistrate or prosecutor.

#### RULE 8.

No attorney, sheriff or sheriff's officer shall be ad-<sup>who not admitted as bail or security, unless by leave of Court for special cause shown.</sup>

### RECOGNIZANCES AND RETURNS.

#### RULE 9.

An information-docket shall be kept by the clerk in  $\frac{\text{Information}}{\text{docket to ex}}$ which he shall regularly enter recognizances and in-hibit what. formations returned by magistrates,—giving the name of the defendant, the offence with which he is charged, the name of the prosecutor, the magistrate before whom the information was made, and the date of the return.(a)

(a) On the special statutory power in the Quarter Sessions of Philadelphia to make a rule allowing judgment in a suit on a recognizance in default of an affidavit of defence, see *Harres* v. *Commonwealth*, 35 St. R. 416.

#### RULE 10.

The clerk shall endorse, on each recognizance and in-Recognizance or information, formation, the date of the return and entry; and; when what to be enhe delivers the same to the district attorney, he shall make a note thereof on the information-docket.

25

(239)

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## RULES OF THE COURTS OF OVER AND TERMINER, ETC.

#### RULE II.

Recognizance or information. When a recognizance or information is not returned proceedings within the time required by law, the Court, on applicaturned. tion of any person interested will and will and will and will

tion of any person interested, will order the magistrate to make a return forthwith, and, if necessary, enforce the same by attachment.(a)

## ROADS AND BRIDGES.<sup>1</sup>

#### RULE 12.

Petition for Every petition for road or bridge viewers shall, before certified. presentation to the Court, be certified by counsel to be regular and conformable to law.

## RULE 13.

Order for view or review returnable, when. Every order issued for view or review shall be made Report presentred, when. Thereon shall be returned and presented to the Court within the first week of the term to which it is returnable, and, until so presented; it; Shall not be filed.

<sup>1</sup> Decisions an rules of court regulating new applications where a former application had failed, *Towamencia Road* [Montg.], 10 St. R. 195; Franconia Road [Montg.], 78 Ibid. 316.

Decision on a rule that petition for a view or review would not be received at an adjourned session of court, *Road in Little Brîtain* [Lan.], 27 Ibíd. 69. Irregular practice, under rule of court, in 'selecting reviewers, *Road from* Jonestown [Leb.], 1 P. & W. '243.

#### RULES OF THE COURTS OF OYER AND TERMINER, ETC.

#### · RULE 14.

In all cases where damages are assessed, the viewers Damages assess ed, who to pay. shall report whether in their opinion they ought to be paid by the petitioners or by the county; and if by the county, notice thereof shall be given to the county commissioners before the report is presented to the Court for approval, and proof of such notice presented and filed with the report.

#### RULE 15.

Every petition for the review, or vacation, or change Reference original case. Reference to of a road, and the docket-entry thereof, shall contain a reference to the number and term of the original case, if any record thereof exists.

#### **RULE** 16.

After the first week of the next ensuing term after the Confirmation report is presented and approved, the clerk shall, of Excepting to. course, mark it confirmed, and enter the proceedings of record, if no exception or review is pending.

#### TIPSTAFF.

#### **RULE 17.**

No tipstaff shall be permitted to charge or receive, for Tipstaff, compensation of. the performance of his duties, any fee or compensation other than the salary fixed by the Court as the compensation of such officers.

The costs on attachments and other process served by Costs on prosuch officers, by direction of the Court, shall be paid into the county treasury. Each officer shall keep an account, and, at the end of each term, make out a detailed state-swear to statement, verified by affidavit, of his necessary expenses ses. incurred in the performance of his duties, which shall be paid in addition to his salary aforesaid.

Tipstaff

(241)

#### RULES OF THE COURTS OF OYER AND TERMINER, ETC.

#### TRIAL, ARGUMENTS, ETC.

#### **RULE 18.**

It shall be discretionary with the judge presiding at Noting testi-mony at trial. the trial whether time shall be allowed for noting the testimony of the witnesses.

#### RULE 19.

The entire examination of each witness shall be con-Examination witnesses at ducted by one only of the counsel of each party; and the re-examination by the party calling him shall be confined to the matter of the cross-examination.

#### RULE 20.

Motions for new trials shall be made and reasons filed Motion for new trial. within four days after the verdict. The day on which the verdict is given, and Sunday, are to be excluded in calculating the four days (a)

(a) Granting or refusing a new trial is purely a matter of discretion with the Court. Howser v. Commonwealth [Cam.], 51 St. R. 332.

#### RULE 21.

Arguments. limits to.

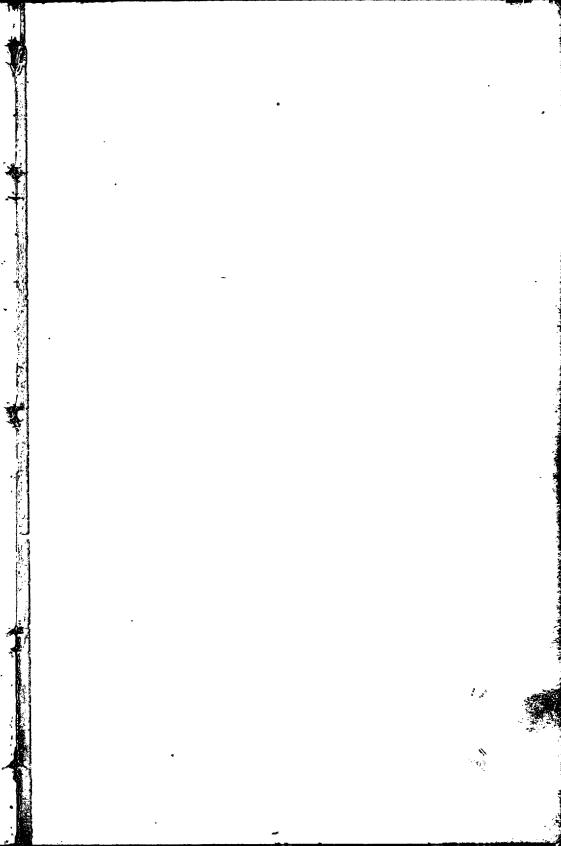
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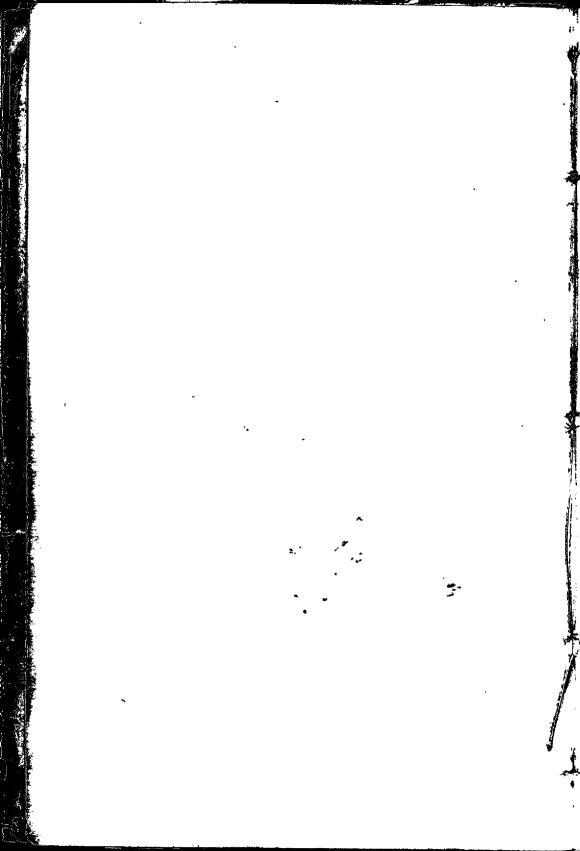
Arguments of counsel shall not exceed the following limits, viz: to the jury, thirty minutes on each side; to the Court, on the law of the case, ten minutes on each side and on questions of evidence during the progress of the trial, five minutes on each side: Provided, that in homicide and other important cases the Court may enlarge the time.

#### **RULE 22.**

All agreements of attorneys, touching the business of Agreements of the Court, shall be in writing, otherwise they will be considered of no validity.

(242)









### INDEX TO THE RULES

#### OF THE

## COURTS OF OYER AND TERMINER, QUARTER SESSIONS, Etc.

AGREEMENT-See ATTORNEY.

ATTACHMENT		**			PAGE.		
Costs of, to go into county treasury, 17, -	-	-	-		-	7	
For no return to recognizance or information,	,11,	-		-		6.	
ATTORNEY						· · ·	
Agreement, to be in writing, 22, -	-		-		-	8	
Argument—length of, 21,		-		-		8	
points for charge, before, 2,			_		-	3	
As bail, 8, $-$		-				5	
To certify to petition for road, etc., 12, -	-		-		-	6	
BAIL	•						
Who may not become, without leave, 8,	-		-		-	5	
Notice for discharge on, 7,		-		•		5	
BILL OF EXCEPTIONS							
In murder and manslaughter, 1,	-		-		-	3	
'To charge, 4,		-		-		4	
						1. A. A.	
BRIDGE-See ROADS AND BRIDGES.						Ξ <sup>1</sup> ε,	
(253)						•	
*				•			
<i>,</i> ·							

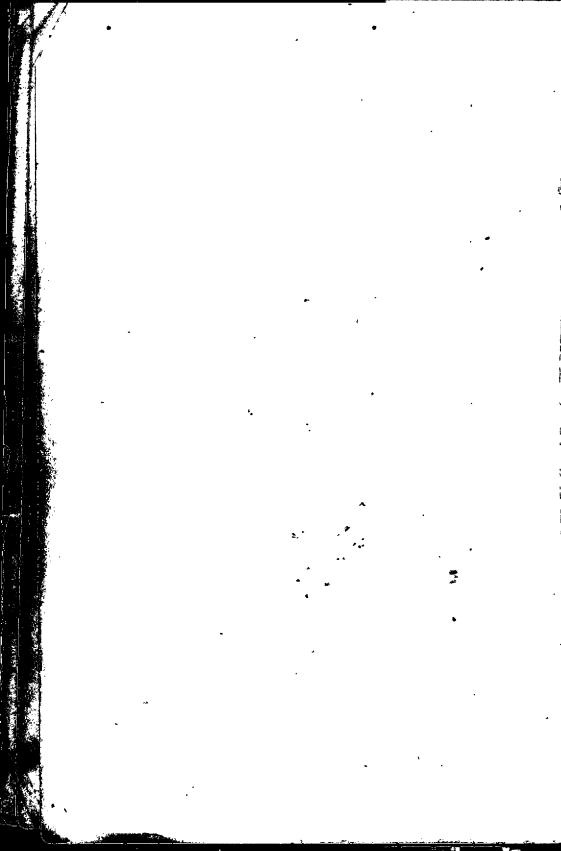
20	INDEX-OYER AND TERMINER,	ETC.		
CHAI	RGE			PÅGE.
	Points for-in writing with copy, 2, framed, how, 3, -	-	-	- 3
	Bill of exceptions to, 4, -	-	-	- 4
CLER	ĸ			
	To tax costs and fees, 5,	•	• .	- 4 5
	• endorse informations, etc., 10, - • approve and confirm reports, 16, -	•		- 5 7
ĊOMN	AISSIONERS, COUNTY			
	Notice to, of damages assessed, 14,	-	-	- 7
COSTS	3			
	Of attachments, etc., 17,	-	-	- 7
	Bills of, 5,	-	Ľ	- 4
	PTIONS-See Bill of Exceptions.			
	Taxed by clerk, 6,	-		- 4
HABE	AS CORPUS			
	Hearing on writ of, 7,	- 0	-	<b>•</b> 5
HOMI	CIDE	•		
	Limits to arguments in, 21, Bill of exceptions in, 1,		-	8
INFOR	RMATION-DOCKET-See CLERK.			
MANS	LAUGHTER-See Homicide.		,	
MURD	ER-See Homicide.			
NEW	TRIAL.—See TRIAL.			
	(254).			

ý.

r:

### INDEX-OYER AND TERMINER, ETC.

NOTIC	E									PA	GE.
	Of discharge on bail, 7, -	-		-		-		-		-	5
	hearing on habeas corpus, 7,		-		-		-		2		5
	Of damages in road view, 14,	-		-		-		-		-	7
RECOG	NIZANCES AND RETURNS										
	Endorsements on, by clerk, 10,	_		-		-		-		-	5
	Procedure, when not returned, 1	1	-		-		-		-	K	6
	Entry of, on information-docket,			-		-		-			5
		, - ,									-
ROADS	AND BRIDGES										
	Certificate to petition, 12,			-		-		-		-	6
	Report-returned, 13, -		-		-		-		-		6
	excepting to, 16, -	-		-		-				-	7
	confirmed, 16, -		-		-		-		-		7
	Who to pay damages, 14,	-		-		-		-		-	7
	Reference to original case, 15, -		-		-		-		-		7
SHERI	FF, SHERIFF'S OFFICER										
	As bail, 8,										5
•	As ball, 0,		-		-		-		-	•	U
TIPSTA	AFF ,										
	Fees and compensation, 17,	-		-		-		-		-	7
	Account of expenses, etc., 17,		-		-		-		•		7
TRIAL							>				
1101210	Agreements concerning, 22,										8
	Arguments at, 21,	-	·	-	_	-		-	_	-	8
	Moving for new, 20, -	_	-	-	-	_		-	2	_	8
	Noting testimony at, 18, -	-	-	-	-	-	-	-	_	-	8
	Examination of witness at 10						-				0



# RULES

OF THE

# SUPREME COURT

OF THE

COMMONWEALTH OF PENNSYLVANIA.

### JUDGES

### OF THE

# SUPREMÉ COURT

### of

### PENNSYLVANIA.

HON. GEORGE SHARSWOOD, Chief Justice.

"	ULYSSES MERCUR,	Justice.
"	ISAAC G. GORDON,	"
"	WARREN J. WOODWARD,	"
"	Edward M. Paxson,	"
"	JOHN TRUNKEY,	"
"	JAMES P. STERRETT,	"

Prothonotaries.

Eastern District, BENJAMIN E. FLETCHER, Philadelphia. Middle " ROBERT SNODGRASS, Harrisburg. Northern " J. A. J. CUMMINGS, Montandon. Western " J. B. SWEITZER, Pittsburgh.

State Reporter.

### TIME AND PLACE OF HOLDING COURT.

$\mathbf{At}$	PHILADELPHIA,	commencing	first Monday of	January.
"	HARRISBURG,	"	"	May.
"	SUNBURY,	"	66	September.
"	PITTSBURGH,	"	66	October.

### RULES

#### OF THE

## SUPREME COURT

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### PENNSYLVANIA.<sup>1</sup>

### ARGUMENTS.

### RULE 1.

The court will call the cases for argument in the order In what order in which they stand on the printed argument-list. If argument, neither party be present or ready to proceed with the Non-prossed; argument, the case shall be non-prossed, unless reason to the contrary be shown to the satisfaction of the court.

### RULE 2.

All cases brought or to be brought up for review shall Argument-list be placed upon the argument-list next succeeding their entry, and in the order in which they stand upon the docket, unless advanced by the special order of the court.

### RULE 3.

No cause shall be continued when reached without Continuance. permission of the court.

(259)

<sup>&</sup>lt;sup>1</sup>With the continually increasing business of the court, and the voluminous paper books which have to be carefully read, to facilitate the labors of the court, it becomes more and more important that these rules bé attended to by the members of the bar, and strictly enforced by the court. *Penn. R. R. Co. v. Sly* [War.], 65 St. R. 205; *Burkholder v. Stahl* [Som.], 58 Ibid. 371, (379).

### BAIL IN ERROR.

### RULE 4.

Recognizance of bail in error.

Recognizances of bail in error shall be plainly drawn and engrossed on parchment or paper, in the following form, or as near as may be: "---- county, to wit: You severally acknowledge to owe (the plaintiff in the action) the sum of (double the sum recovered), upon the condition that (A. B.) prosecute his writ of error with effect; and if judgment be affirmed, or the writ of error be discontinued or non-prossed, to pay the debt, damages or costs (as the case may be) adjudged accruing upon such judgment, and all other damages and costs that may be awarded on such writ of error."

### RULE 5.

The defendant in error or appellee may, within twenty Manner of excepting to and justifying old ald days after notice of the taking of bail in error, except ail, or putting in new. to the sufficiency thereof, when the plaintiff in error or the appellant must either put in new bail, or the old bail must justify within ten days after exception taken; in default whereof the writ of error shall not be a supersedeas of the execution. New bail may be put in, or the old justified, within the ten days, before the prothonotary of this court in the proper district, or before the prothonotary of the court of common pleas of the county to which the writ of error shall have been issued, or from which the appeal shall have come; and, in the latter case, the new recognizance, or the affidavit of justification, shall be returned to the prothonotary of this court within the ten days allowed, not counting the day Notice to be when the exception to bail was taken. Of the time and place of giving new bail or justifying the old, at least three days' written notice shall be given to the opposite Commissioners, party or his attorney of record. For the purpose of this rule, the prothonotaries of the several courts of common pleas are appointed commissioners of bail.(a).

(260)

given.

of bail.

(a) Though the recognizance be defective the cause is well removed, but it is not a supersedeas. Magill v. Kauffman [Miff.], 4 S. & R. 317. A corporation may have a writ of error without bail, but it is not a supersedeas. Savings' Institution v. Smith [Phila.], 7 St. R. 291.

The prothonotary may correct a recognizance defectively taken below by receiving a new recognizance in the form prescribed by the act of Assembly. Hosie v. Gray [Schuyl.], 73 Ibid. 502.

(Compare Tilden v. Worrell [Phila.], 30 Ibid. 272.)

### ATTORNEYS.

### RULE 6.

No person shall be admitted to practice as an attorney Admission of person who has in this court, unless he hath served a regular clerkship, studied and practiced within within the State, to some practicing attorney or gentle- the State. man of the law, of known abilities, for the term of four years, and afterwards shall have practiced as an attorney in one of the county courts of common pleas, [or district courts], for the term of one year, or served such clerkship three years and practiced two years: Provided always, That in the case of a person applying to be admitted who shall appear to have studied the law with assiduity, under the direction of some practicing attorney or gentleman of the law of this State, for the term of two years after his arrival at the age of twenty-one years, and afterwards practiced in some of the county courts of common pleas for the term of two years, he may be ádmitted.

### RULE 7.

No person shall be admitted to practice as attorney in Admission of this court upon the ground that he has been admitted the bar of another State. to practice in the courts of some other State, unless he be a citizen of the United States, and also, unless it be shown that the attorneys of this court are entitled, by the practice of the court where the applicant has been admitted, to admission under the like circumstances.

(261)

### RULE 8.

All agreements and notices of attorneys touching the Agreements and notices of business of the court shall be in writing, otherwise they will be considered of no validity.

### RULE 9.

Who may not become bail ex-cept by leave.

No attorney of this or any other court, sheriff's officer, bailiff or other person concerned in the execution of process, shall become bail on appeal or in error, except by special leave of the court previously obtained.

### CRIMINAL CASES.<sup>1</sup>

### RULE 10.

Allocatur for certiorari.

In all the criminal cases brought up from the lower courts' by certiorari, wherein a special allocatur has not been had, the prothonotary is instructed by this court to enter "Writ quashed," and the records shall be returned to the courts whence they came.

### RULE II.

Certiorari, defendant out on bail.

No such writ of certiorari shall issue at the instance of a defendant who is at the time out on bail, until he enters into a recognizance in the nature of special bail, to the satisfaction of the court or judge taking the same: conditioned for his appearance before the supreme court in banc, from time to time, as the court may order, until the final determination of the cause, and that he will not depart without the leave of the said court.

<sup>1</sup>On the return and hearing of writs of error in capital cases, see Rules 41-44, pages 16-17.

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### ERRORS AND APPEALS.

### RULE 12.

In all cases brought into this court by writ of error, <sup>Filing specifithe counsel for the plaintiff in error shall, on or before the third day of the term to which the writ is returnable, specify in writing the particular errors which he assigns, and file the same in the prothonotary's office : and on failure so to do the court may non pros. the writ.</sup>

### RULE 13.

In all cases of writs of error when the record is not  $\underset{n \text{ on-prossed}}{\text{writ of error}}$  returned on the return day, it shall be the duty of the when. prothonotary to enter a non pros., which shall not be taken off except by special order of the court.

### RULE 14.

The prothonotary shall endorse on each writ of error Bule to appear, or certiorari to remove proceedings, a rule to appear and dorsed on writ plead at the return day of the writ; and on default of Proceeding ex appearance when the cause is called for argument, and on proof of ten days' service on the defendant in error, or his counsel below, the court will proceed ex parte. And it is further ordered that the court proceed in like Appeal. manner on proof of the like service of notice in appeal cases.

### **RULE 15.**

In all appeal cases, where the appellants neglect to Bringing up bring up the record at the next term of this court after peal. the appeal shall have been taken, any of the other parties interested may bring it up and have the case presented and determined ex parte, or the appeal dismissed at the costs of the appellant.

(263)

### RULE 16.

In all cases where, in pursuance of the judgment of . Procedendo awarded, opin-ion to be sent this court, a cause goes back to the court below for fur-

ther proceedings, it shall be the duty of the prothonotary to certify and send back with the order, decree or judgment, a copy of the opinion of the court which shall have been filed; and the fees paid him therefor shall stand as part of the costs in the cause.

### PAPER BOOKS.<sup>1</sup>

### RULE 17.

Paper book of In a case where the writ of error is or a jung-plaintiff in error shall to contain, what a verdict, the paper book of the plaintiff in error shall In a case where the writ of error is to a judgment on contain the following matters, in the following order: 1. The names of all the parties as they stood on the record of the court below at the time of the trial, and the form of the action; 2. An abstract of the proceedings, showing the issue, and how it was made; 3. The verdict of the jury, and the judgment thereon; 4. A history of the case; 5. The points, if any, which were submitted in writing to the court below; 6. The charge of the court; 7. The specifications of error; 8=A brief of the argument for the plaintiff in error; 9. An appendix, containing the evidence, and, if necessary, the pleading in full.

### **RULE 18.**

Paper book on case stated.

Where the judgment below is on a case stated in the nature of a special verdict, the facts as agreed on by the parties, the opinion of the court, and the argument of counsel, will be sufficient.

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(264)

### RULE 19.

In appeals, the arrangement of the appellant's paper Paper book in book shall be as follows-1. The names of the parties and what. and the nature of the proceedings; 2. A short abstract of the bill or petition and answer; 3. A history of the case; 4. The report of the auditor, or master, if there was one; 5. The exceptions taken to the report in the court below; 6. The opinion of the court on the exceptions, and the decree made; 7. Assignment of error; 8. Argument on part of appellant; 9. Appendix, containing such documentary or other evidence as may be necessary.

### RULE 20.

In a certiorari to the court of quarter sessions or over Paper book in and terminer, the paper book shall contain-1. An ab-tain, what, stract list or brief of all the petitions, motions, orders, reports, exceptions, etc., which may be necessary to give the court here a full view of the record at once; and this in the precise order of their respective dates, and with the date of each prefixed; 2. The exceptions which were overruled or sustained by the final order or judgment of the court; 3. The opinion of the court, if it was filed in writing; 4. Assignments of error; 5. The argument; 6. Appendix, containing the record in full.

### RULE 21.

The history of the case must contain a closely con- History of densed statement of all the facts of which a knowledge may be necessary, in order to determine the points in controversy here; and the want of such a statement **,** • cannot be supplied by reference to another part of the paper book.

27

(265)

### RULE 22.

Regular and Each error relied on must be specified particularly, irregular specifreations of er- and by itself. If any specification embrace more thanror. one point, or refer to more than one bill of exceptions, or raise more than one distinct question, it shall be considered a waiver of all the errors so alleged.(a)

(a) See RULE 33, page 14.

The proceedings in a court of error assimilate themselves to proceedings in a court of original jurisdiction. The writ of error in a general way recites the cause of complaint, and it is left to the assignment of error to specify it as a declaration specifies the cause of action. The plea *in nullo est erratum* raises the issue. Like a declaration, therefore, an assignment of error must be complete in itself: that is, self-sustaining. Whatever is part of it must be parcel of it. Burkholder v. Stahl [Som.], 58 St. R. 371, (376-7).

Good faith to the court should ever prevent any assignment of error which is not conscientiously believed to be error. *Id.* 

The burden is upon the plaintiff in error to make out his assignment affirmatively, and he must furnish in the record and on his paper book all that is necessary for that purpose. *Aiken* v. *Stewart* [Arm.], 63 St. R. 30.

The court will sustain a demurrer to an assignment which does not comply with the rules. *Neiss* v. *Foster* [Carb.], 64 St. R. 495. It may take notice of an error not assigned. *Bean's Road* [Leh.], 35 Ibid. 280.

Numerous assignments criticised, Dime Savings' Institution v. Allentown Bank [Leh.], 65 St. R. 116, (123;) Kemmerer v. Tool [Leh.], 81 Ibid. 467. On defective or irregular assignments, see O'Donnell v. Allegheny Valley Railroad [Arm.], 50 Ibid. 490, (493); Schwenk v. Montgomery County, 26 Ibid. 281; Bull's Appeal [Ches.], 24 Ibid. 286; Daniel v. Daniel [Leh.], 23 Ibid. 198.

Exceptions must follow the rules of the court below. Conrow v. Schloss [D. C. Phila.], 55 St. R. 28, (43). The identical matter of exception must appear in the assignment itself. It is not sufficient that it appears in the bill of exceptions. There it is historical—in the assignment of error it is a material part of the pleadings in this court. Spith v. Tome [Brad.], 68 Ibid. 158:

On assigning error to the Orphans' Court, see Twitchell's Appeal [Phila.], 4 W. N. C. 68; Solt's Appeal [Phila.], Id. 298.

### RULE 23.

Assigning or , When the error assigned is to the charge of the court, court. or to answer to points, the part of the charge or the points and answers referred to must be quoted *totidem* 

*verbis* in the specification.(a)

(266)

(a) See Arthurs v. Smathers [Jeff.], 38 St. R. 40; Hutchinson v. Campbell [Fay.], 25 Ibid. 273; Clark v. Smith [War.], Id. 137; Criswell v. Altemus [Ind.], 20 Ibid. 124.

The stenographic notes that are to, be "the best authority in any matter of dispute" (Act 15 May, 1874, P. L. 182), are the notes made up under the eye and direction and with the approval of the court. Taylor v. Preston [But.], 79 Ibid. 436, (442).

When plaintiff in error alleges that there was no evidence to support the charge he must furnish the whole evidence as given below, *Davenport* v. Wright [Erie], 51 Ibid. 292. In other cases he must furnish as much of the evidence as is necessary to make his exceptions intelligible. Sorg v. German Congregation [D. C. All.], 63 Fbid. 156. See further under RULE 24.

### RULE 24.

When the error assigned is to the admission or rejection of evidence, the specification must quote the full or rejection of substance of the bill of exceptions, or copy the bill in immediate connection with the specification.(a) When the error is as to the admission or rejection of a writing, a full copy of the writing must be printed in the paper book. Any assignment of error not according to this and the last rule will be held the same as none.(b)

(a) See Schwenk v. Montgomery County [Montg.], 26 St. R. 281; Rice v. Bank [Greene], 22 Ibid. 118.

(b) See Sorg v. German Congregation [D. C. All.], 63 St. R. 156; Thompson v. Clark [Greene], 1 Grant, 396; Sigmaster's Appeal [C. P. 1, Phila.], 6 W. N. C. 14.

When the error alleged is to the answer to a point or a refusal to charge, as requested, the point in writing must be copied in the specification and the answer or refusal as given. *Penna. R. R. 'Co. v. Sly* [War.], '65 St. R. 205; *Burkholder v. Stahl* [Som.], 58 Ibid. 371, (376, 378).

Points are generally isolated and often abstract propositions, framed not so much upon the real aspects of the evidence as they are to express the extremes of the case, and to lead to the expression of opinions upon the theoretical rather than the practical questions of the cause. The answers to them do not therefore exhibit the true views of the judge upon the case before him as is done in a single and harmonious charge. Wherefore, injustice may be done, both to the judge below and to the interests of justice, by sending up only so much of the charge as is contained in the answer to a single point. *Roberts* v. *Roberts* [C. P. Phila.], 54 St. R. 265, (269).

(267)

### RULE 25.

The brief of the argument must contain a clear state-Brief of argument. ment of the points on which the party relies, with such reasons and arguments as he may see proper to add, together with all the authorities which he thinks pertinent.

### RULE 26.

When an authority is cited, the principle intended to Citing authorities. be proved by it must be stated. A naked reference to the book will not be sufficient.(a)

(a) No rule is of more importance than this. Compliance with it enables the judges at once to see what bearing the principle is to have on the . case, or whether or not it supports the position contended for, and, if so, whether it will affect the general result of the case. Burkholder v. Stahl [Som.], 58 St. R. 371, (379).

### RULE 27.

The paper book of the defendant in error or appellee Paper book of defendant in error to contain, may, if he chooses, contain no more than his argument, to which rules twenty-five and twenty-six will be held to apply. But he may make it to embrace a counterstatement, giving such version of the facts as he asserts to be the true one.

### RULE 28

How copies of In cases originating in the county of I many provide the server all the plaintiff in error or appellant shall serve a copy of his attorney, at paper book on the opposite party, or his attorney, at least ten days before the first day of the term to which the writ of error or appeal is entered, and when the cause is called shall furnish one copy to each of the judges, and file four with the prothonotary-two for the reporter, one for the Law Association of Philadelphia, and one to be filed in his office. The defendant in error shall serve a copy of his paper book on the opposite party, or his attorney, at least five days before the argu-

(268)

ment, furnish a copy to each judge, and file four with the prothonotary for the same purposes as the paper books of the plaintiff in error or appellant.

### RULE 29.

In all cases except those originating in the county of How copies of Philadelphia, the plaintiff in error or appellant shall ed outside of Philadelphia serve a copy of his paper book on the opposite party, or county. his attorney, at least twelve days before the day appointed for hearing the cases from the county where the cause was tried; and the defendant in error or appellee shall serve a copy of his paper book on the opposite party, or his attorney, at least five days before the time appointed for hearing as aforesaid. But if the writ of error or appeal shall have been taken thirty days or more before the day assigned for the hearing as aforesaid, the paper book of the plaintiff in error or appellant shall be served at least twenty days, and that of the opposite party at least five days, before the days assigned for the hearing. of the said causes. When the cause is called, each party shall furnish a copy of his paper book to each judge, and file four copies with the prothonotary, one of which is to remain with the records, and two to be delivered to the reporter, and one for the Law Association of Philadelphia.

### RULE 30.

When the plaintiff in error or appellant is in default Consequence of non-observaccording to these rules, he may be non-suited on mo- ance of rules. tion; and when the defendant in error or appellee is in default, he will not be heard by the court except on the request of his adversary, and not then if his negligence has been gross.

13

(269)

### RULE 31.

Defective pa-When paper books are furnished which differ in any material respect from those here prescribed, the parties furnishing them shall be considered in the same default as if none had been furnished, and, on a proper occasion, the court will, of its own motion, non-suit or silence the defaulting party, or suppress the paper book.(a)

(a) See references under RULES 22-26, pages 10-12.

### RULE 32.

Paper book to Paper books shall be furnished in the shape and size form. of a common octavo pamphlet, on ordinarý printing paper.

### RULE 33.

In case stated, general assign and facts agreed in the nature of a special verdict. In such cases it is enough to say that the judgment is erroneous, without more. But the rule has no other exception.

> ROAD CÁSES. RÚLE 34.

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In what cases, the court will reverse.

On the return of any certiorari for the removal of any order, judgment, or proceedings in relation to a public or private road, this court will not suffer the merits of the case to be entered into, nor reverse the order of the sessions, unless for some irregularity apparent on the record, or that the court below have exceeded their jurisdiction, or have erred in their judgment in point of law.

(270)

### SHORT CAUSES.

### RULE 35.

The prothonotary of each district shall keep a separate List. It for short causes.

### **RULE** 36.

To this list all causes shall be transferred in which Short cause to the attorney of either party shall certify that it is a short cause.

### RULE 37.

The causes on this list shall have precedence over all Precedence others on the Wednesday of every week in which the causes same causes might be heard, if they had remained on the general list and had been reached in their order.

### RULE 38.

Where a cause has been certified to be a short cause Certifying short cause back by the attorney of one party, and the attorney of the to regular list. other party will certify that it is not so and that injustice may be done to his client by placing it on the list of short causes, it shall be put back again on the regular list.

### RULE 39.

On the hearing of short causes the speeches of counsel shall be limited to fifteen minutes on each side.

### RULE 40.

The hearing of short causes shall not be the exclusive Hearing obusiness of Wednesdays. When they are disposed of, the general list shall be called as on other days; but the short list shall be finished before any other business. It Copy of short list to be put shall be the duty of the prothonotary to put up in some up. conspicuous part of the court room a copy of the short

(271)

list, and this shall be notice of the transfer of the vi

cause which are on it. No party shall be permitted to certin, Short not to go back to regular list, any cause back to the regular list after three days from when. the time it has been placed on the short list.

### RETURN AND HEARING OF WRITS OF ERROR IN CAPITAL CASES.

### RULE 41.

### Return day in capital case.

The first Monday of each month shall be a special return day in each district, for all writs of error and certiorari in cases of conviction and sentence of alth for murder in the first degree.

Hearing capital case.

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The fifth Monday after the issuing of the writ shall in be assigned for the argument thereof (a): Provided the court shall be in session in any district. If then in session in a district other than that in which the writ issued, the prothonotary issuing such writ shall certify the record to the district in which the court shall be sitting. If the court shall not be in session at that time, the case shall be certified to the district in which the next term shall be held.

(a) Under the Act of 15 February, 1870, (Purd. Dig. 610, pl. 38) allowing writs of error as of right in all cases of murder, the court at the hearing will not review the facts on the question of guilt or innocence, but only determine whether the ingredients of murder in the first degree exist. Grant v. Commonwealth [Ches.], 71 St. R. 495; Staup v. Commonwealth [Fay.], 74 Ibid. 458. Errors alleged in the charge or in rulings on evidence can be taken up only by Grant v. Commonwealth, supra. bill of exceptions as in civil cases.

### RULE 42.

Capital cases shall be placed at the head of the list Capital case on list for. argu-ment. for argument.

(272)

### AMENDMENTS TO THE EQUITY RULES.

And now, January 15th, A. D. 1894, it is ordered that the Equity Rul formulated and adopted May 27, 1865, under the authority of the Act of June 1 1836, to regulate the practice in the several Courts of Common Pleas in the Commonwealth in proceedings in Equity, be amended in the manner here

Now set forth; and that such rules, or parts thereof, heretofore in force

hay be inconsistent with these amendments, be rescinded hereby, from an it the date on which these amendments take effect.

The Prothonotary of the Supreme Court for the Eastern District is directed to give notice of these amendments by publishing them in the Legal Intelligence and in the Weekly Notes of Cases.

The Prothonotary for the Western District is directed to give notice by the publication of the same in the Pittsburgh Legal Journal.

The State Reporter is also directed to insert them, together with this orde in the first volume of the State Reports prepared after this date. Filed Jan. 15, 1894.

PER CURIAM,

#### Pleadings.

All defences, in equity cases, shall be made by answer or by demurrer. A issues of fact must be made by answer.

#### Evidence.

The office of "Examiner to take testimony," is hereby discontinued, except in proceedings conducted under the directions of a statute by which duties are imposed upon an Examiner, as in bills to perpetuate testimony, and similal cases. All testimony in cases in equity shall be taken in the same manner as in now practiced in courts of law; upon rule, commission, letters rogatory, or it open court. Rules may be entered for the purpose of taking testimony on the equity side of the several Courts of Common Pleas, in the same manner and with the same effect, as upon the common law side of the same courts.

#### Hearing.

The hearing of cases in equity shall be conducted before the Judge sitting a Chancellor, or before a referee, and the office of Master in Chancery is hereby discontinued, except in proceedings where decrees or interlocutory orders are to be executed, or their execution supervised by an officer of the court; as in partition the sale of real estate, the execution of deeds, and the like. When a case in equity is at issue upon demurrer it shall be placed on the argument list then next to be heard. When it is at issue upon answer it shall be placed on the equity trial list. Cases upon the trial list shall be heard in court in the same manner that actions at law wherein trial by jury has been waived are now heard by courts of law. The evidence shall be given or read in open court, and exceptions to the same manner, and with the same effect, as is now practiced in the trial of actions at law. The Judge shall sit continuously during the trial of causes in equity in the same manner as during the trial of actions at law.

#### Findings.

The counsel for the respective parties may present to the Judge, sitting as Chancellor, requests for findings both of fact and law. After hearing the evidence, and the suggestions or argument of counsel, the Judge may adopt or affirm these requests, or any of them, he may qualify or deny them, or he may state his findings of fact or of law in his own language. The requests so presented, with the answers thereto, and the findings of the Judge, both of law and fact, shall be filed by the Prothonotary, and become thereby part of the record of the court in the said case.

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#### Referees.

When a case in equity is at issue upon answer it may be taken from the list by the parties, and its trial referred to a person agreed upon by them, who shall be called 'a "referee." He shall proceed at once upon his appointment to fix a day for trial, which shall not be more than three months after his said appointment; at which time, unless the cause be continued, he shall proceed to hear the parties, and sit from day to day, continuously for that purpose. He shall hear the testimony, seal bills of exceptions to the admission and rejection of evidence. make findings of fact and of law, act upon the points or requests that may be presented by counsel, and prepare the form for a final decree. When his findings and decrees are ready, he shall give notice to counsel for the respective parties, of a time and place, when and where the same may be examined by them. If no exceptions be filed within ten days after the day fixed for such examination, the referee shall deliver to the Prothonotary his findings, the requests of counsel, and the form of decree prepared, who shall fle the same, and thereupon the court shall enter the decree prepared by the referee. If exceptions be filed the referee shall hear them within ten days thereafter; and within ten days after such hearing, decide upon the same and file said exceptions, his action thereon, together with his original findings, the requests of counsel, and the form of a decree with the Prothonotary of the court. At any time within ten days after this is done exceptions may be taken to the action of the referce and filed with the Prothonotary. The case shall thereupon be placed upon the equity argument list next to be heard in said court, and the exceptions heard by the court or Judge acting as Chancellor in the case, and disposed of; whereupon the proper decree shall be made and entered, subject to the right of appeal to the Supreme Court, as provided by law.

### Accounts.

In cases involving complicated accounts, or questions requiring the aid of experts, if the parties do not refer, the court may call in the aid of an accountant or other expert. as an assessor. The charges to be allowed for such services shall not exceed the rate *per dicm* commonly paid by business men for similar services, and shall be taxed as costs in the case, or paid as the court may direct.

#### Trial.

A trial in equity shall be conducted, as near as may be, as a trial at law is now conducted. When entered upon it shall not be interrupted or postponed, except for cause shown to, and approved by, the court or referee; and the costs of all such postponements shall be paid by the party at whose instance the same may be ordered, and shall not abide the result, or be taxed in the general bill of the successful party. Continuances for cause may be made where the list is called, with or without terms, as is now practiced in the courts of common law.

### Trial by Jury.

After a case in equity is at issue upon questions of fact, either party may move a rule upon the other party to show cause, on five days' notice. why the issues of fact, or some of them, shall not be tried before a jury. If, on the return of the rule, such trial be awarded, the court shall frame the issues in the form of separate questions. The verdict rendered shall not be general, but shall consist of an answer to each question so submitted. These answers, made to inform the conscience of the Chancellor, shall not be binding upon him in any case.

#### Trial and Argument Lists.

The preparation of trial and argument lists shall be regulated by an order of the several courts, so as to make the practice in regard thereto conform as  $\checkmark$  nearly as may be practicable to the practice in the said courts in actions at law.

### Injunction Cases.

Preliminary injunctions may be granted, in accordance with the present practice, on bill and injunction affidavits; but upon the hearing, at the end of four days, or such other time as may be fixed, the evidence must be taken subject to cross-examination, and *ex parte* affidavits will not be received. Witnesses may be examined orally before the Judge, or testimony may be taken on short rule, or, when necessary, testimony may be taken before any person authorized to administer an oath, on notice to the other side to appear and cross-examine. In cases when testimony is taken on notice alone, the certificate of counsel that he had not sufficient time to enter and serve a rule, shall - stand in lieu of such formal entry and service.

#### Fees.

The fees of referees shall be adjusted upon a statement of the number of days actually occupied with the trial and the preparation of the findings and decree. Parts of days on which the parties met and adjourned shall not be included. For days actually spent in the trial and disposition of the case a per diem shall be allowed, "fixed by the Court in which the cause is pending, upon consideration of the character of the labor actually performed, but in no case to exceed twenty dollars per day. The referee shall state separately the number of days occupied in the trial, and those occupied in preparing the findings and decree." For parts of days on which meetings and adjournments have taken place the referee shall be allowed five dollars each. to be paid by the party at whose instance the adjournment may be made, and not otherwise.

### Appeals.

Whenever an appeal shall be taken from an order or decree in equity the appellant shall file in the court below, with his notice of appeal, a brief statement of the errors he alleges to have been made by the order or decree appealed from or the findings on which it rests. No other errors shall be assigned in the Supreme Court unless leave be granted on motion, and notice to the other party. If the reasons for the appeal do not affect the whole decree, and its enforcement, as to so much as is not complained of, is not inconsistent with the relief asked on appeal, leave will be granted to proceed as to that part of the decree, notwithstanding the appeal.

### Stenographers.

The evidence on the trial of cases in equity may be taken by stenographi in the same manner and under the same rules as to noting exceptions and filit the notes of the trial as are in force on the law side of the several courts.

### Appearance and Answers.

Unless otherwise provided by law, the defendant or defendants shall be required, in the first instance, to appear and answer the exigency of the bill, by the service upon each defendant therein named of a printed copy the which shall be endorsed a notice in the following form :

You are hereby notified and required to cause an appearance to be entiyou in the within named Court and file your answer to the within bill complaint within fifteen days after the service hereof on you, and to observe what the said Court shall direct. You are also notified that if you fail to enter your appearance and file your answer within fifteen days, you will be liable to have the bill taken pro confesso, and a decree made against you in your absence.

Solicitor for Plaintiff.

In cases in which the defendant cannot prepare his answer within fifteen days, the Court may, on motion with notice, extend the time for answer, not exceeding

It is further ordered that these amendments shall take effect on the first. Monday of March next, and be applicable to all cases in Equity put at issue either on answer or demurrer on or after that day.

E-STERN DISTRICT OF PENNSYLVANIA, SS. :

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I, CHARLES S. GREENE, Prothonotary of the Supreme Court of Pennsylvania, in and for the Eastern District, do hereby certify that the within and foregoing is a full, true and correct copy of Equity Rules as amended, as appears from the original on file in my office. In testimony whereof, witness my hand and official seal this 24th day of  $\sim$ 

CHARLES S. GREENE,

Prothonotary.

### **RULE 43**.

The plaintiff in error shall serve his paper book on Serving paper proper district attorney ten days before the day as- case. I for the hearing, and the defendant in error shall

three days before the hearing.

### RULE 44.

Every præcipe for a writ of error or certiorari in a Precipe in capital case shall be accompanied by a certificate under be accompanied seal of the court below, of the date of the sentence. And if it shall appear from said certificate that more than twenty days have elapsed since said sentence, the prothonotary shall not issue said writ unless the same be specially allowed by this court or one of the justices thereof.(a)

(a) See Act 24 March, 1877. P. L. 40.

### HOUR-LIST.

### RULE 45.

For each week during the sitting of the court the pro-Hour-list, made thonotary shall make a list to be called the hour-list. The attorney of either party may order a case on said list, at any time after writ issued or appeal taken prior to Tuesday noon of the week in which the case is assigned for argument. No case thus ordered thereon shall Ordering case on hour-list. The cases on said list shall be heard in the order they were set down, and shall have precedence over all other cases except those on the short-list, and, in the argument thereof, counsel shall be heard for one-half hour only on each side.

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### RULE 46.

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Cases on hour-list remaining over unuspoor of the hour-over. terms, and set down for argument on the hourbe placed at the head of that list in the order numbers and terms.

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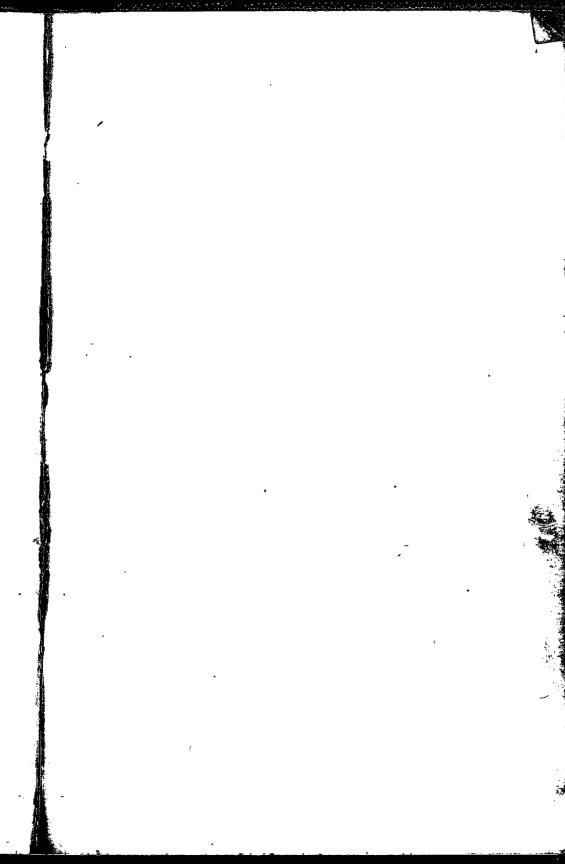
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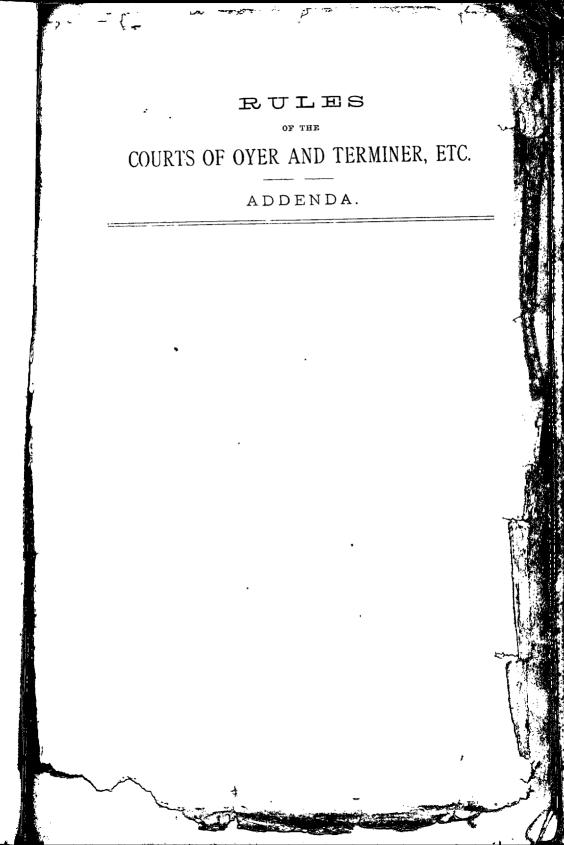
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### INDEX

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4

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# RULES OF THE SUPREME COURT.

### 0 F

## PENNSYLVANIA.

AGREEMENTS											_
Between counsel, 8,	-	-		•		-		-			раде. - 6
ALLOCATUR											
In criminal case, 10, 44,	-		-		-		-		-		6, 17
APPEAL											
Rule to appear and plead	14.	_									
Record brought up, 15,	,,	-		-		-		-		-	7
Copy of opinion on proce	dendo	o, 16,	-	-	-	-	-	-	-	-	7 8
ARGUMENT-See PAPER Book	•										
ARGUMENT-LIST											
How made up, 2,	-	-		-		-		-		-	3
called, 1,	-		-		-		-		-		3
Continuance of case on, a	s,	-		-		-		-		-	3
Capital case at head of, 4	2, -		-		-		-		-		16
ASSIGNMENT OF ERRORS											
Must be specific, 22,		_		_							
When to be filed, 2,	-		-	-		-		-		-	10
In error, 22, 25, -				_	-		-		-		3
On appeal, 19,	-		-			-		-		-	10, 12
certiorari in criminal o	case, 2	20.							-		9
	(28)					-		-		-	10

### INDEX-SUPREME COURT.

ATT	ORNEY	~-
	Admission ofrequisite to, 6,	u)
	from another State, 7,	
	Agreements of, 8,	
	As bail, 9,	
AUT	HORITIES	
	How to be cited, 26,	1
BAIL		
	Form of recognizance of, 4,	
	Notice of; excepting to; justifying, etc., 5	4
	Attorney as, 9,	6
	On certiorari in criminal case, 11,	ŧ
	*	
CERT	IORARI 💎 -	
	Issued in criminal case, 10,	6
	By defendant out on bail, 11,	0 6
	Rule to appear to be endorsed, 14,	7
	Copy of opinion on procedendo, 16,	8
	In road case, 34, - In capital case—certificate with præcipe, 44,	4
	return of whit of Al	.7 .6
CONT	INUANCE	
00111	Permission required ?	
	- · · · ·	3
00.037		
COPY		
	Of notice of time and place, in bail, 5,	4
	paper book, served when, 28, 29,	8
COUN	FER-STATEMENT	
	In defendant's paper book, 27, 12	2
CRIMI	NAL CASE	
	Certiorari in-specially allowed, 10,	•
	not issued before bail entered. 11	
	Murder-certificate with præcipe in, 44, 17	
	return and hearing in, 41, 16	;
	(286)	

INDEX-SUPREME COURT.	31
ERROR	PAGE.
Certificate with præcipe in capital case, 44,	PAGE. 17 7
Writ non prossed, record not returned, 13,	7 7
EX PARTE HEARING	
	_
On default of appearance, 14,	7 7
HOMICIDE-See CRIMINAL CASE.	
HOUR-LIST	
Ordering case on, 45,	17
Hearings under, 45, -	17
Cases at the head of, 46, -	18
LIST—See Argument-List; Hour-List.	
MURDER-See CRIMINAL CASE.	
NON PROS.	
Neither party ready for argument, 1, -	3
	<u>, 4</u>
For non-assignment of error, 12,	7
failure to return record, 13,	7
want of paper book, 30, defect in paper book, 31,	18
	14
NON SUIT	
For defect in paper book, 31, default under Rules, 30,	14 13
NOTICE	
To be in writing, 8,	6
Of time and place, in bail, 5,	4 4
rule to appear and plead, 14, -	7
transfer to short list, 40,	15
OPINION	
Copy of, on procedendo, 16,	8
(287)	0

### INDEX-SUPREME COURT.

PAPER BOOK	P	AP	ER	BOOK	
------------	---	----	----	------	--

Contents, in error, 17, 18,									PAGE.
or appeal 10	-		-		-		-		8
on appeal, 19,	-	-		~		-	-		9
certiorari, 20, To contain history	-		-		-		-	-	9
To contain history of case, 2 Each opport to be	1,	-		-		-	-		9
fact error to be specified. 29	2 _		-		-		-	-	10
Assigning error to charge, 2	з,	-		-		-	-		10
evidence :	admitt	ed,	etc.,	24,		-		-	11
Differ of argument in, 25.	-	-		-		-	-		12
Citing authorities in, 26,	÷		-		-	-		-	12
Of defendant in error, 27,	-	-		-	-		_		12
How served in Philadelphia,	28,		-		-	_	-		
other counties	. 29.	-		-		-		-	12
murder, 43	_		_	_	•		-		13
Consequence of default under	Rules	: 30	)	-	•	-		-	17
defects in, 31		,	''	-	-		-		13
To be in octavo form, 32,	, -		-	_	-	-		-	14
In case stated, 33,		-		-	-		-		14
	-		-		-	-		-	14
RECORD									
Non pros., not returned, 13,	-		-		-	-		-	7
Who may bring up, 15,		-		-	-		-		7
									•
ROAD CASE									
For what will reverse, 34,									
	-		-	•	-	-		-	14
RULE									
To appear and to plead, 14,	~		•	-		-		-	7
	~								•
SHORT CAUSES									
Separate list of, 35;									
To be certified by attorney, 36	- i -		-		-		-		15
have precedence, on Wedne	, 	· - ·	-	-		-		-	15
Certified to regular_list, 38, 42,	esaay,	37,	-		*		-		15
Head to regular list, 38, 42,	-			-		-		- 1	5, 17
Limits to speecher : when	not, 4(	),	-		-		-		15
Limits to speeches in, 39,	-	-		-		-			15
Notice of list to be given, 40,	-		-		-		-		15
					1				
SUPERSEDEAS									
Writ of error as, 5,									
	-	-		-		-	-	•	4
WRIT OF ERROR-See ERROR.									
LE OF HIMOR-Dee ERROR.									
WDINING									
WRITING									
Agreements and notices to be in	n. 8								
(28)		-		-		-			6
(40)	0)								

 $\mathbf{32}$ 

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# RULES

OF THE

# BOARD OF PARDONS

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COMMONWEALTH OF PENNSYLVANIA.

MEMBERS

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# BOARD OF PARDONS.

CHARLES W. STONE, Lieutenant Governor. M. S. QUAY, Secretary of the Commonwealth. HENRY W. PALMER, Attorney General. AARON K. DUNKEL, Secretary of Internal Affairs.

- C. N. FARR, JR., Recorder.

### RULES

#### OF THE

## BOARD OF PARDONS.

### ADOPTED APRIL 4, 1879.1

### RULE 1.

The Board will meet to consider applications in open Application considered, session on the third Tuesday of each month.

### RULE 2.

The Board must be furnished with proof that notice <u>proof of notice of application</u> for pardon has been published once a week tion. for two consecutive weeks, in a newspaper printed in the county or city in which conviction was had, said proof to be made by the affidavit of the publisher of the newspaper that the publication has been made as required by this rule.

<sup>1</sup>. The Governor "shall have power to remit fines and forfeitures, to grant reprieves, commutation of sentence and pardons, except in cases of impeachment; but no PARDON shall be granted, nor SENTENCE COMMUTED, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session; and such recommendation, with the reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth." Constitution. Art. IV, sec. 9.

On delivery of a pardon, see Commonwealth v Halloway [Phila.], 44 St. R. 210. On the effect of a pardon on sentence, see Cope v. Commonwealth [Northamp.], 28 Ibid. 297; Commonwealth v. Ahl [York], 43 Ibid. 53; Commonwealth v. Hitchman [West.], 46 Ibid. 357; Schuylkill County v. Reifsneyder, 46 Ibid. 446.

Effect of pardon where these rules (alleged) not complied with as to notice/ of meeting. Kester v. Commonwealth [Col.], 85 St. R. 139, (141, 154.)

### RULES OF THE BOARD OF PARDONS.

### RULE 3.

Proof of notice of application served.

Notice of the application must be given to the judge who tried the case, and to the district attorney or attorney who prosecuted, stating when the application will be made, and the grounds or reasons upon which the application is based, and no other grounds than those contained in such notice, will be entertained by the Board, and proof must be made that such notice was served by giving a copy to said judge, district attorney, or attorney who prosecuted.

### RULE 4.

Notices of applications for pardon of persons convicted Notices in Philadelphia and Pittsburgh, in the cities of Philadelphia and Pittsburgh, in the cities of Philadelphia and Pittsburgh. given to the mayors and chiefs of police of said cities respectively, and proof of the service of such notice filed in each case.

### RULE 5.

Every application for pardon must be accompanied Papers with application. with the following papers, written in a clear and distinct hand :

Copy of record.

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(1.) A certified copy of the whole record, including docket entrics, minutes of the court, copy of indictment, pleas and all other papers on file relating to the case. (2.) A brief statement of the grounds upon which the Statement of

of trial, letters, application is based, and a schedule of papers, and the facts to sustain the grounds in the form of a history of the case, will be required in every application; the notes of evidence taken on the trial; letters from responsible persons in the community where the crime was committed.

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### RULE 6.

All applications and correspondence must be address- To whom application to be ed to or filed with the Recorder of the Board, at Har-inade, and when. risburg, so that the same may be prepared for presentation to the Board at its next session; and no application will be heard or considered unless the same, and papers upon which based, have been filed at least TEN days before said session, and in no instance will this rule be relaxed.

### RULE 7.

No application that has been refused by the Board Rehearings. will be reheard or reconsidered, unless substantial grounds for reopening the case are formally presented to and approved by the Board, and when submitted again, the publication and notices required by rules second, third and fourth must be made anew, and proof thereof, together with the additional reasons, filed with the original papers, according to the provisions of rule sixth.

#### RULE 8.

All facts relied upon to sustain any allegation as a Depositions. ground for pardon, must be proved by depositions, taken within the jurisdiction of the court in which the conviction took place, before some person authorized to administer oaths, upon notice to the district attorney, and to the attorney who assisted in the prosecution of the case, if any, and no fact will be considered by the Board What facts not considered. unless so proved, except such as appear in the record and notes of evidence taken on the trial, the statement of the judge before whom the case was tried, or the officers or persons connected with the prison in which the applicant shall be imprisoned.

#### RULES OF THE BOARD OF PARDONS.

#### RULE 9.

Applications for mis-trial or improper conviction.

ations In applications for pardons based upon the grounds rial or of a mis-trial, or improper conviction, the allegations shall be sustained by such reasons and evidence as would have been a good ground for a new trial, and which upon a second trial should have produced an acquittal, and where the court has overruled the same reasons for a new trial on a motion based thereon, they will not be reconsidered, except on the recommendation of the judge before whom the case was tried.

### RULE 10.

Consideration All applications properly on file will be considered by

Limits to dive no party will be allowed to occupy more than fifteen minutes in the oral presentation of any application, unless by special permission of the Board.

#### RULE 11.

What application not considered. No application will be considered if presented to any ered.

### RULES

OF THE

# BOARD OF PARDONS.

ADOPTED AUGUST 5, 1876.

### RULE 1.

The first Tuesday of each month is appointed as the Full hearing, day whereon the Board shall convene to give a full hearing in open session to all applications for pardon.

### RULE 2.

The Board must be furnished with proof that notice Notice of apof application for pardon has been published once a week for two consecutive jeeks, in a newspaper printed in the county or city in which conviction was had, said proof to be made by the affidavit of the publisher of the newspaper that the publication had been made as required by this rule.

<sup>1</sup> The power of the Governor to grant commutations of sentences and pardons can only be exercised "upon recommendation in writing by the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session."-Constitution, Art. IV, Sec. 9.

On delivery of a pardon, see Commonwealth v. Halloway [Phila.], 44 St. R. 210. On the effect of a pardon on sentence, see Cope v. Commonwealth [Northamp.], 28 Ibid. 297; Commonwealth v. Ahl [York], 43 Ibid. 53; Commonwealth v. Hitchman [West.], 46 Ibid. 357; Schuylkill County v. Reifsneyder, 46 Ibid, 446.

Effect of pardon where these rules (alleged) not complied with as to notice of meeting. Kester v. Commonwealth [Col.], 85 St. R. 139, (141, 154.)  $(291)^{\circ}$ 

### RULE 3.

Proof of notice of application served.

Notice of the application must be given to the judge who tried the case, and to the district attorney or attorney who prosecuted, stating when the application will be made and the grounds or reasons upon which the application is based, and no other grounds than those contained in such notice will be entertained by the Board, and proof must be made that such notice was served by giving a copy to said judge, district attorney, or attorney who prosecuted.

### RULE 4.

Papers with Every application for pardon must be accompanied with the following papers, written in a clear and distinct hand :

Copy of cord.

re- (1.) A certified copy of the whole record, including docket-entries, minutes of the court, copy of indictment,

pleas, and all other papers on file relating to the case. Statement of (2.) A brief statement of the grounds upon which the of trial, letters, application is based, and a schedule of papers, and the etc. facts to sustain the grounds in the form of a history of

the case, will be required in every application; the notes taken on the trial; letters from responsible persons in the community where the crime was committed.

### RULE 5.

What applications, not considered if presented to any sidered individual member of the Board.

### RULE 6.

Applications to be made, when.

All applications and correspondence must be addressed to or filed with the Recorder of the Board, at Harrisburg, so that the same may be prepared for presentation to the Board at its next session; and no application will be heard or considered unless the same and papers upon which based, have been filed at least TEN days before said session, AND IN NO INSTANCE WILL THIS RULE BE RELAXED.

(292)

### RULES OF THE BOARD OF PARDONS.

### RULE 7.

No application that has once been rejected will again Rejected plications. be placed upon the record, or heard by the Board, without the consent of the Board first obtained therefor, and when submitted the second time, additional reasons, petitions and proof of notices to judge, district attorney and the public must be furnished anew.

### RULE 8.

All facts relied upon to sustain any allegation as a Depositions. ground for pardon, must be proved by depositions taken within the jurisdiction of the court in which the conviction took place, before some person authorized to administer oaths, upon notice to the district attorney, and to the attorney who assisted in the prosecution of the case, if any, and no fact will be considered by the Board What -unless so proved, except such as appear in the record and notes of evidence taken on the trial, the statement of the judge before whom the case was tried, or the officers or persons connected with the prison in which the applicant shall be imprisoned.

### RULE 9.

In applications for pardons based upon the grounds Application for mistrial, etc. of a mis-trial, or improper conviction, the allegations shall be sustained by such reasons and evidence as would have been a good ground for a new trial, and which upon a second trial should have produced an acquittal, and where the court has overruled the same reasons for a new trial on a motion based thereon, they will not be reconsidered, except on the recommendation of the judge before whom the case was tried.

### RULE 10.

No party will be permitted to occupy more than fif- Limits of disteen minutes in the oral discussion of any application, cussion. unless by the special request of the Board.

(293)

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### RULES

OF THE

## BOARD OF PARDONS.

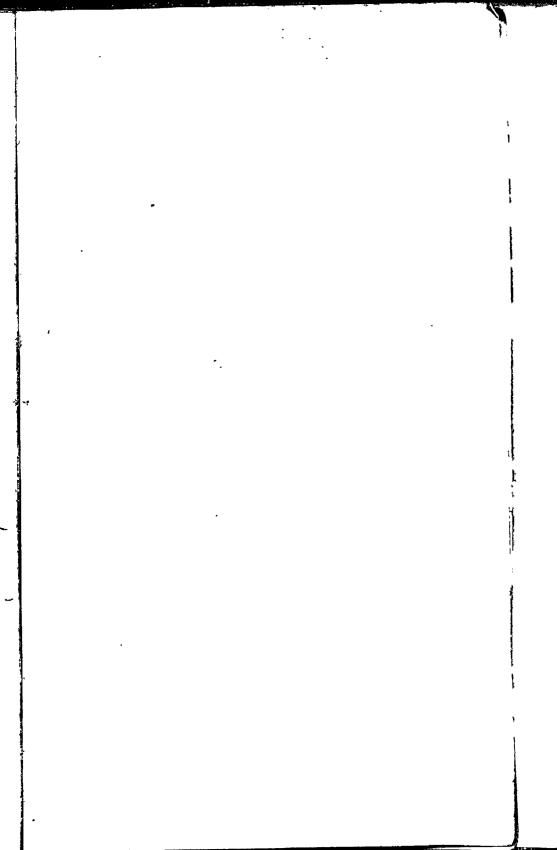
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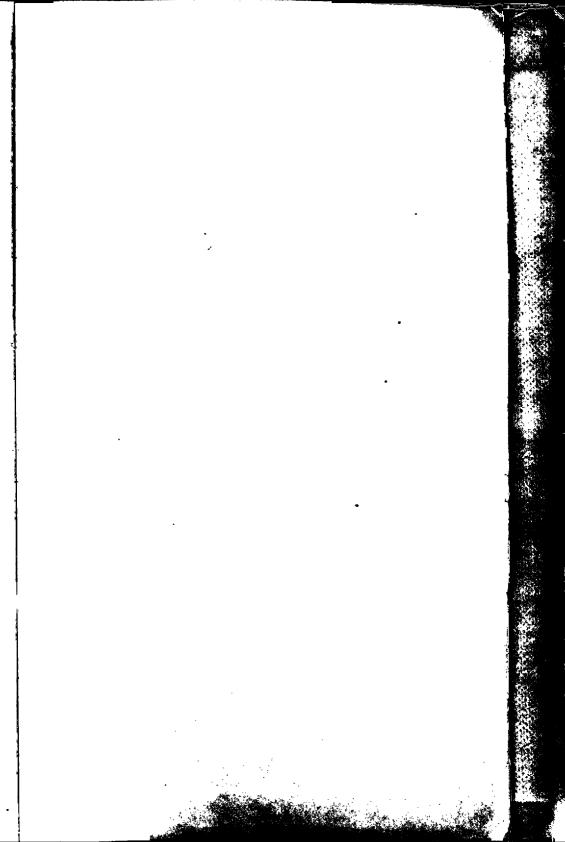
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