

Rules of Practice
of
The Minnesota Supreme Court
and
The District Courts of Minnesota
and
The United States Circuit Court
for the
District of Minnesota

1878

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practice

RULES OF PRACTICE
OF THE
SUPREME AND DISTRICT COURTS
OF THE
STATE OF MINNESOTA. *Supreme*
AND THE
RULES OF PRACTICE
ADOPTED BY THE
UNITED STATES CIRCUIT COURT
OF THE
DISTRICT OF MINNESOTA.

CONTAINING MANY RULES HITHERTO UNPUBLISHED

ST. PAUL:
JOHN B. WEST & CO.
1878.

RULES OF PRACTICE
OF THE
SUPREME COURT
OF MINNESOTA.

RULE I.

1. The clerk shall keep a general docket or register, in which he shall enter the titles of all actions and proceedings, including the names of the parties, and the attorneys or solicitors by whom they prosecute or defend, and he shall enter thereunder, from time to time, of the proper dates, brief notes of all papers filed and all proceedings had therein; the issuing of writs and other process, and the return thereof, the court or officer to whom directed; the return of any court, officer or other person thereto; the filing of any bond or other security, and the issuing of a certificate of *supersedeas*, and of all orders and judgments in any action or proceeding, whether of course or on motion; also, proper references to the number and term of all papers and proceedings.

2. He shall also keep a judgment book, in which he shall enter all judgments, the names of the parties thereto, plaintiff and defendant; the date of the judgment, its number and term, the amount thereof, if the recovery of money or damages is included therein, and the amount of costs, which record shall be properly indexed.

3. He shall keep a court journal, in which he shall enter, from day to day, brief minutes of all proceedings in court.

4. He shall file all papers presented to him; endorse thereon the style of the action, its number and term, the character of the paper, and date of filing; and after filing, no paper shall be taken from the office, unless by order of the court or a judge thereof.

At the commencement of each term he shall furnish the court and bar with separate lists of all causes pending therein which have been noticed for argument, and of which a note of issue has been filed six days before the commencement of

the term. Causes shall be placed upon the list according to the date of the notice of appeal or writ of error.

Adopted July 24, 1867.

RULE II.

Motions, except for orders of course, shall be brought on upon notice, and when not made upon the records or files of the court, shall be accompanied with the papers on which the same are founded.

Adopted July 24, 1867.

RULE III.

Upon an appeal from a judgment or order, the clerk of the district court, in addition to the copies of the notice of appeal and judgment roll or order, shall, upon the request of either party to such appeal, and at the expense of the party applying, certify and transmit to this court, copies of any papers, affidavits or documents on file, in the district court, in the action in which the appeal is taken, which such party may deem necessary to or proper for the elucidation and determination of any question expected or intended to be raised on the hearing of the appeal.

Adopted July 24, 1867.

RULE IV.

The appellant or plaintiff in error shall cause the proper return to be made and filed with the clerk of this court within sixty days after the appeal is perfected or the writ of error served. If he fails to do so the respondent or defendant in error may, by notice in writing, require such return to be filed within twenty days after the service of such notice, and if the return is not filed in pursuance of such notice, the appellant or plaintiff in error shall be deemed to have abandoned the appeal or writ of error, and on an affidavit proving when the appeal was perfected or writ of error served, and the service of such notice, and a certificate of the clerk of this court that no return has been filed, the respondent or defendant in error may enter an order with the clerk dismissing the appeal or writ of error for want of prosecution, with costs, and the court below may thereupon proceed as though there had been no appeal or writ of error.

Adopted July 24, 1867.

RULE V.

If the return made by the clerk of the court below is defective, or full copies of all the orders, papers or records necessary to the understanding or decision of the case in this court are not certified or transmitted, either party may, on an affidavit specifying the defect or omission, apply to one of

the judges of this court for an order that such clerk make a further return and supply the omission or defect without delay.

Adopted July 24, 1867.

RULE VI.

Whenever it is necessary or proper in the opinion of any judge of this court that original papers of any kind should be inspected in this court on appeal, such judge may make such order for the transmission, safe-keeping and return of such original papers as to him may seem proper, and the court may receive and consider such original papers in connection with the transcript of the proceedings.

Adopted July 24, 1867.

RULE VII.

The attorneys and guardians *ad litem* of the respective parties in the court below, shall be deemed the attorneys and guardians of the same parties respectively in this court, until others are retained or appointed, and notice thereof served on the adverse party.

Adopted July 24, 1867.

RULE VIII.

Causes shall be noticed for the first day of the term, and may be noticed for argument by either party. Criminal cases shall have a preference, and may be moved on behalf of the state out of their order on the calendar. Cases shall be noticed for argument at least ten days before the first day of the term, and at least six days before the commencement of the term, the party giving the notice of argument shall furnish the clerk with a note of the issue containing the title of the action specifying which party is appellant and which respondent or plaintiff in error and defendant in error as the case may be; the names of the attorneys of the parties respectively, and the date of the notice of appeal or writ of error.

As amended February 10, 1868.

RULE IX.

The appellant or plaintiff in error shall, at least one day previous to the argument, furnish each member of the court and the reporter with a case or paper book, which shall consist of so much of the return as will clearly and fully present the questions arising on such review, with the reasons of the court below for its decision, if any were filed.

The folios of the case or paper book shall be distinctly numbered in the margin, and the numbering of the copies shall correspond. To the copies of the case furnished as above

required, shall be appended a concise statement of the case so far as necessary to present the questions involved, and a note of the points relied on for a reversal of the order or judgment of the court below, with a list of the authorities to be cited in support of the same.

On the opening of the argument on his part, the other party shall furnish the members of the court and the reporter with copies of his points and authorities.

Adopted July 24, 1867.

RULE X.

Alternate speaking will not be allowed. Counsel for the appellant or plaintiff in error, in bringing on any motion, shall open and be entitled to reply, but no counsel can be permitted to speak on the argument of any case more than an hour, without special leave of the court, granted before the argument begins.

Adopted July 24, 1867.

RULE XI.

At least twenty days before the term of this court at which a cause is noticed for trial by the appellant or plaintiff in error, and in all cases at least twenty days before the first term of this court commencing more than eighty days after the appeal is perfected or writ or error served, the appellant or plaintiff in error shall deliver to the adverse party a copy of the paper book and of his points and authorities, and on or before the first day of the term at which the cause is noticed for trial, the respondent, or defendant in error, shall furnish the adverse party a copy of his points and authorities.

As amended February 10, 1868.

RULE XII.

When the respondent, or defendant in error, notices a cause for trial at a term commencing within the time allowed to the appellant, or plaintiff in error, to serve his points and authorities, the appellant, or plaintiff in error, shall be entitled to a continuance on a suggestion that he cannot conveniently proceed with the trial at such term.

Adopted July 24, 1867.

RULE XIII.

In cases where it may be necessary for the court to go into an extended examination of evidence, each party shall add to the copies of his points furnished the court the leading facts which he deems established, with reference to the portions of the evidence where he deems the proof of such facts may be found. And the court will not hear an extended discussion upon a mere question of fact.

Adopted July 24, 1867.

RULE XIV.

Either party may apply to the court for judgment of affirmance or reversal, or for a dismissal, as the case may be, if the other party shall neglect to appear and argue the cause, or shall neglect to furnish and deliver cases and points as required by these rules.

Adopted July 24, 1867.

RULE XV.

Causes may be submitted on printed briefs or arguments. Either party may submit a cause on his part on a printed brief or argument.

Adopted July 24, 1867.

RULE XVI.

In all cases of the dismissal of any appeal or writ of error in this court, it shall be the duty of the clerk to issue a certified copy of the order or dismissal to the court below, so that further proceedings may be had in such court as if no writ of error or appeal had been brought.

Adopted July 24, 1867.

RULE XVII.

A *remittitur* shall contain a certified copy of the judgment of this court sealed with the seal thereof, and signed by the clerk.

When a decision is filed or an order entered determining the cause, the clerk shall mail notice thereof to the attorneys of the parties, and no judgment shall be entered until the expiration of ten days thereafter.

The clerk shall receive a fee of 25 cents for each notice aforesaid.

The *remittitur* shall be transmitted to the clerk of the court below as soon as may be, after judgment is entered.

As amended by Rule 33, October 31, 1872.

RULE XVIII.

Upon the reversal, affirmance or modification of any order or judgment of the district court by this court, there will be a *remittitur* to the district court unless otherwise ordered.

Adopted July 24, 1867.

RULE XIX.

On reversal of a judgment of the district court, rendered on a judgment removed into it from an inferior court, when there is no *remittitur*, this court will render such judgment as ought to have been given in the court below, including the costs of that court, and also for the costs of this court; and

the plaintiff in error or appellant may have execution thereupon.

Adopted July 24, 1867.

RULE XX.

In all cases where a judgment of the district court, for the recovery of money only, is affirmed, and there is no *remittitur*, judgment may be entered in this court for the amount thereof, with interest and costs, and damages if any are awarded, to be added thereto by the clerk; and the party in whose favor the same was rendered may have execution thereupon from this court.

Adopted July 24, 1867.

RULE XXI.

In case of a reversal of a judgment, order, or decree of a district court, rendered or made in a cause commenced therein, if there is no *remittitur*, the prevailing party shall have judgment in this court for the costs of reversal, and the costs of the court below, and execution therefor.

Adopted July 24, 1867.

RULE XXII.

In all cases in which a *remittitur* is ordered, the party prevailing shall have judgment in this court for his costs, and execution thereon, notwithstanding the *remittitur*.

Adopted July 24, 1867.

RULE XXIII.

Costs in all cases shall be taxed in the first instance by the clerk upon two days notice, and inserted in the judgment subject to the review of the court, and the clerk of the court below may tax the costs of the prevailing party in this, when the same are to be inserted in the judgment.

As amended June 10, 1875.

RULE XXIV.

In all cases, the clerk shall attach together the writ of error, if any, the transcript and papers certified and returned by the clerk of the court below, a copy of the minutes of argument and order for judgment, and annex thereto a copy of the judgment of this court signed by him; and the papers thus annexed shall constitute the judgment roll.

Adopted July 24, 1867.

RULE XXV.

Executions to enforce any judgment of this court may issue to the sheriff of any county in which a transcript of the judgment is filed and docketed; such executions shall be return-

able in sixty days from the receipt thereof by the officer. On the return of an execution satisfied, or acknowledgement of satisfaction, in due form of law, by the party who recovered the same, or his representatives or assigns, the clerk shall make an entry thereof upon the record.

Adopted July 24, 1867.

RULE XXVI.

All other writs and process issuing from or out of the court shall be signed by the clerk, sealed with the seal of the court, tested of the day when the same issued, and made returnable on any day in the next term, or in the same term when issued in term time, and a judge may, by an endorsement thereon, order process to be made returnable on any day in vacation when, in his opinion, the exigency of the case requires it.

Adopted July 24, 1867.

RULE XXVII.

On the issuance from this court of a writ of error, the plaintiff in error in such writ shall give notice in writing to the Attorney General and county attorney of the county in which the action is triable, within ten days after the issuing of such writ, that such writ has been sued out.

Adopted July 24, 1867.

RULE XXVIII.

The case or paper-book, points and authorities, and brief or argument provided for in the rules of this court, shall be printed.

Adopted July 24, 1867.

RULE XXIX.

Unless otherwise ordered, the prevailing party shall recover costs as follows: 1. Upon a judgment in his favor on the merits, twenty-five dollars; 2. Upon dismissal, ten dollars.

Adopted July 24, 1867.

RULE XXX.

In case the prevailing party shall neglect to have judgment entered up within twenty days after notice of the filing of the opinion or order of court, the adverse party may without notice cause the same to be entered by the clerk without inserting therein any allowance for costs or disbursements, except the clerk's fees in this court.

Adopted July 24, 1867.

RULE XXXI

Any of the foregoing rules may be relaxed, modified or suspended by the court in term time, or by a judge thereof in vacation, in particular cases, as justice may require.

Adopted July 24, 1867.

RULE XXXII.

These rules shall take effect at the expiration of thirty days after the publication thereof. All former rules of this court are abrogated except so far as it may be necessary to follow them upon appeals and writs of error which shall be pending when these rules take effect.

Adopted July 24, 1867.

RULE XXXIII.

(See Rule 17.)

RULE XXXIV.

When the clerk shall be directed to enter a cause upon the calendar during term he shall transcribe the same into the copies of the calendar furnished to the judges, for which service he shall be entitled to a fee of one dollar, to be paid by the party upon whose motion such entry is ordered.

Adopted October 31, 1872.

RULE XXXV.

On the first day of the term the calendar will be called for the purpose of entering motions and of ascertaining what cases are for oral argument and of setting down the same.

Motions, and such cases as counsel may desire to argue, may be heard during the first week of the term.

Such cases as upon the call of the calendar are found to be for oral argument, and as shall not be set down for the first week of the term, shall be heard in their order upon the calendar at the rate of two per day, commencing upon the first Monday of the term, unless otherwise directed by the court for special reasons, or unless substitutions shall be made by agreement of counsel and with the consent of court.

Adopted October 31, 1872.

RULE XXXVI.

In case of the failure of the appellant or plaintiff in error to furnish papers as required by Rule 9, the action will be continued by the court upon its own motion unless an affirmance or dismissal is ordered on application of the other party under Rule 14.

Adopted June 10, 1875.

RULE XXXVII.

Upon a hearing on an order to show cause, the moving party shall be entitled to open and close.

Adopted June 10, 1875.

I certify the above to be true copies of the originals remaining of record in my office.

SAM'L. H. NICHOLS,
Clerk of Supreme Court, Minn.

PREFACE
TO THE
**RULES OF PRACTICE OF THE
DISTRICT COURTS OF MINNESOTA**

The adoption of the Rules of Practice in civil cases by Minnesota District Judges was authorized by the 17th Legislature. The law provided:

AN ACT REQUIRING DISTRICT JUDGES AND JUDGES OF THE
COURTS OF COMMON PLEAS, TO ADOPT GENERAL RULES OF
PRACTICE IN THE CIVIL ACTIONS FOR THE SEVERAL DISTRICT
COURTS AND COURTS OF COMMON PLEAS.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. The judges of the district courts of the several judicial districts, and of the several courts of common pleas of shall, on the first Wednesday of July next, or on some day prior thereto at their election, meet in general session at the capitol, in the city of Saint Paul, and adopt such general rules of practice in civil actions not inconsistent with the constitution and laws of the state, or of the United States, as will secure a uniformity of practice throughout the state, as may be deemed necessary and just. The said judges shall meet annually thereafter at the same place on the first Wednesday of July, to revise such general rules and make such amendments thereto, and such further rules, not inconsistent with the constitution and laws of the state or of the United States, as may be deemed necessary, and the same shall go into effect from and after their publication. The general rules shall govern all the district courts and courts of common pleas in this State; *Provided*, That in any case in furtherance of justice said rules may be relaxed, or modified, and a party may be relieved against the effect thereof, on such terms as may be just. *Provided, further*, That any six of said judges so convened in general session as hereinbefore provided, shall transact the business and discharge the duties imposed by this act.

SECTION. 2. This act shall take effect and be in force from and after its passage.

Approved March 6, 1875. ¹

¹ 1875 Laws, c. 44, at 77.

RULES OF PRACTICE OF THE DISTRICT COURTS OF MINNESOTA.

Adopted in General Session of the Judges, held at the Capitol, in the City of St. Paul, on the first Wednesday of July, 1875, pursuant to An Act of the Legislature of said State, entitled "An Act requiring District Judges and Judges of the Courts of Common Pleas to adopt General Rules of Practice in Civil Actions for the several District Courts and Courts of Common Pleas," approved March 6th, 1875,

RULE I.

Applicants for admission to practise as attorneys and counsellors of these courts, who are entitled to examination, shall be examined in open court, at such time and in such manner as the court may direct.

RULE II.

To entitle an applicant to examination, he must prove to the court :

1. That he is a citizen of the United States, or has declared his intention to become such; that he is twenty-one years of age, and a resident of the county in which he applies, which proof may be made by his own affidavit of the fact.

2. The evidence of good moral character shall be the certificate of a reputable counsellor of this court, or some other person known to the court; but such certificate shall not be deemed conclusive evidence, and the court must be satisfied on the point after a full examination and inquiry.

3. Such applicant must sustain a satisfactory examination upon the law of real and personal property, contracts, partnerships, negotiable paper, principal and agent, insurance, executors and administrators, personal rights, domestic relations, wills, equity jurisprudence, pleadings, practice, evidence, and criminal law.

RULE III.

The clerk shall administer to each attorney and counselor, on his admission, the following oath :

"You do solemnly swear that you will support the Constitution of the United States, and the Constitution of the State of Minnesota, and that you will conduct yourself, as an attor-

ney and counsellor in the courts of this state, in an upright, courteous and gentlemanly manner, and to the best of your learning and ability, with all good fidelity as well to the court as to the client. That you will use no falsehood or deceit, nor delay any person's cause for lucre or malice: so help you God "

RULE IV.

All bonds shall be duly proved or acknowledged in like manner as deeds of real estate, before the same shall be received or filed.

No practising attorney or counsellor at law shall be received as a surety on any bond or undertaking required in an action, except where such bond or undertaking shall be executed on behalf of a non-resident party.

RULE V.

The qualification of sureties must be as follows: Each must be a resident and freeholder of this state, and worth the amount specified in the bond or undertaking above his debts and liabilities, and exclusive of his property exempt from execution. Whenever a judge or other officer approves the security to be given in any case, or reports upon its sufficiency, he must require the sureties to justify by affidavit.

RULE VI.

On process of papers to be served, the attorney, besides subscribing or endorsing his name, shall add thereto his place of residence; and if he shall neglect to do so, papers may be served on him through the mail by directing them according to the best information that can conveniently be obtained concerning his residence.

This rule shall apply to a party who prosecutes or defends in person, whether he be an attorney or not.

RULE VII

In all cases of more than one distinct cause of action, defence, counterclaim, or reply, the same shall not only be separately stated but plainly numbered—and all pleadings not in conformity with this rule may be stricken out on motion.

RULE VIII.

The attorney or other officer of court who draws any pleading, affidavit, case, bill of exceptions or report, decree or judgment, exceeding two folios in length, shall distinctly number and mark each folio of one hundred words in the margin thereof, or shall number the pages and the lines upon each page, and all copies, either for the parties or court, shall

be numbered and marked, so as to conform to the originals. And if not so marked and numbered, any pleading, bill of exceptions, or case, may be returned by the party on whom the same is served.

RULE IX.

Notices of motion shall be accompanied with copies of the affidavits and other papers on which the motions are made, except papers in the action of which copies shall have been served, and papers on file at the service of the notice which shall be referred to in the notice. When the notice is for irregularity, the notice shall set forth particularly the irregularity complained of; in other cases it shall not be necessary to make a specification of points, but it shall be sufficient if the notice state generally the grounds of the motion.

RULE X.

Whenever notice of a motion shall be given, or an order to show cause served, and no one shall appear to oppose the motion or application, the moving party shall be entitled, on filing proof or admission of service, to the relief or order sought, unless the court shall otherwise direct. If the moving party shall not appear or shall decline to proceed, the opposite party, on filing like proof of service, shall be entitled to an order of dismissal.

RULE XI.

On motion, the moving party, and on order to show cause, the party cited, shall have the opening and closing of the argument. Before the argument shall commence the moving party in the motion or order shall introduce his evidence to support the application; the adverse party shall then introduce his evidence in opposition; and the moving party may then introduce evidence in rebuttal or avoidance of the new matter offered by the adverse party. On the hearing of such motion or order to show cause, no oral testimony shall be received.

RULE XII.

Motions to strike out or correct any pleading under section 90, of chapter 66 of the General Statutes, page 461, must be noticed before demurring or answering the pleading, and within twenty days from the service thereof.

RULE XIII.

The clerk in each county shall keep a special term calendar, on which he shall enter all actions or proceedings noticed for special term according to the date of issue or ser-

vice of notice of motion. Notes of issue of all matters for special term shall be filed with the clerk one day before the term. And no case shall be entered on the calendar unless such note of issue shall have been so filed.

RULE XIV.

All affidavits, notices, and other papers, designed to be used in any cause at special term, shall be filed with the clerk at or before the hearing of the cause, unless otherwise directed by the court.

RULE XV.

Any party applying to any judge or court commissioner for any order to be granted without notice, except an order to show cause, shall state in his affidavit whether he has made any previous application for such order, and if such previous application has been made upon the same state of facts, every subsequent application shall be refused.

RULE XVI.

No order extending the time to answer a complaint shall be granted, unless the party applying for such order shall present to the judge to whom the application shall be made, an affidavit of merits, or an affidavit of the attorney or counsel retained to defend the action, that from the statement of the case in the action made to him by the defendant, he verily believes that the defendant has a good and substantial defence, upon the merits, to the cause of action set fourth in the complaint, or to some part thereof.

RULE XVII.

In an affidavit of merits, the affiant shall state that he has fully and fairly stated the case and the facts in the case to his counsel, and that the defendant has a good and substantial defence to the action on the merits, as he is advised by his counsel after such statement, and verily believes true, and shall also give the name and place of residence of such counsel.

RULE XVIII.

In cases where a sale of real estate upon execution or foreclosure by advertisement is sought to be enjoined, the application for an injunction shall be heard and determined upon notice to the adverse party either by motion or order to show cause.

The application shall be made immediately on receiving notice of the publication of the notice of sale. And no in-

junction in such case shall be allowed *ex parte*, unless the rights of the applicant would otherwise be prejudiced, nor unless a satisfactory excuse is furnished showing why the application was not made in time to allow the same to be heard and determined upon notice before the day of sale.

And in all other cases, if the court or judge deem it proper that the defendant or any of several defendants shall be heard before granting the injunction, an order may be made requiring cause to be shown at a specified time and place why the injunction should not be granted.

RULE XIX.

In every case where no special provision is made by law as to security, the court or officer allowing a writ of injunction or *ne exeat*, shall require an undertaking or bond on behalf of the party applying for such writ, in not less than two hundred and fifty dollars, executed by him or some person on his behalf, as principal, together with one or more sufficient sureties, to be approved by the court or officer allowing the writ, and to the effect that the party applying for the writ will pay the party enjoined or detained such damages as he may sustain by reason of the writ, if the court shall eventually decide that the party was not entitled to the same.

RULE XX.

When a demurrer is overruled with leave to answer or reply, the party demurring shall have twenty days after notice of the order, if no time is specified therein, to file and serve an answer or reply, as the case may be.

RULE XXI.

A change of venue or place of trial will not be granted unless the party applying therefor uses due diligence to procure the same within a reasonable time after issue joined in the action and the ground for the change shall have come to the knowledge of the applicant. Nor will a change be granted where the other party will lose the benefit of a term, unless the party asking for such change shall move therefor at the earliest reasonable opportunity after issue joined, and he shall have information of the ground of such change. In addition to what has usually been stated in affidavits concerning venue, either party may state the nature of the controversy, and show how his witnesses are material; and may also show where the cause of action or defence or both of them arose; and these facts will be taken into consideration by the court in fixing the place of trial.

RULE XXII.

In cases where the trial of issues of facts is not provided for by section 198, of chapter 66, of General Statutes of Minnesota, if either party shall desire a trial by jury, such party shall, within ten days after issue joined, give notice of a motion to be made upon the pleadings, that the whole issue or any specific question of fact involved therein, be tried by a jury. With the notice of motion shall be served a distinct and brief statement of the questions of fact proposed to be submitted to the jury for trial, in proper form, to be incorporated in the order, and the court or judge may settle the issues, or may refer it to a referee to settle the same. The court or judge may, in his discretion, thereupon make an order for a trial by jury, setting forth the questions of facts as settled, and such questions only shall be tried by the jury, subject however to the right of the court to allow an amendment of such issues upon the trial in like manner as pleadings may be amended upon trial.

RULE XXIII.

Commissions to take testimony without this state may be issued on notice, and application to the court, or judge thereof, either in term time or in vacation. Within five days after the entry of the order for a commission, the party applying therefor shall serve a copy of the interrogatories proposed by him, on the opposite party. Within five days thereafter the opposite party may serve cross interrogatories. After the expiration of the time for serving cross interrogatories, either party may within five days give five days' notice of settlement of the interrogatories before the court, or judge thereof. If no such notice be given within five days, the interrogatories and cross interrogatories, if any served, shall be considered adopted. Whenever a commission is applied for, and the other party wishes to join therein, interrogatories and cross interrogatories to be administered to his witnesses may be served and settled or adopted within the same times and in the same manner as those to the witnesses of the party applying. After the interrogatories are settled, they must be engrossed by the party proposing the interrogatories in chief, and the engrossed copy or copies be signed by the officer settling the same, and must be annexed to the commission and forwarded to the commissioners. If the interrogatories and cross interrogatories are adopted without settlement, engrossed copies need not be made, but the originals or copies served may be annexed and forwarded with the commission.

RULE XXIV.

Should any or either of the commissioners fail to attend at the time and place for taking testimony, after being notified thereof, any one or more of the commissioners named in the commission may proceed to execute the same.

RULE XXV.

The witnesses shall severally subscribe their depositions, and the commissioner or commissioners shall annex to the commission a certificate, showing the time or times and place of executing it, which certificate may be substantially in the following form:

I, _____ commissioner named in the within and above written commission, do certify that the said commission was executed, and the testimony of _____ was taken before me at _____ in _____ on the _____ day of _____ 18 _____ at _____ o'clock in the _____ noon and _____ was reduced to writing by myself, (or by deponent, or by _____, a disinterested person in my presence and under my direction.)

That the said testimony was taken by, and pursuant to the authority and requirements of the said commission, upon the interrogatories _____ annexed and herewith returned. The said witness, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth, relative to the cause specified in said commission, and that the testimony of said witness was carefully read to (or by) said witness (by me,) and then by him subscribed in my presence.

A. B., Commissioner.

And shall also state whether any commissioner not attending was notified of the time and place of the taking of the deposition. The commission or commissioners shall annex the deposition, with such certificate, to the commission, seal them up in an envelope, and direct to the clerk of the court of the county in which the action is pending. They may be transmitted by mail or private conveyance. The clerk, on receipt of the same, shall open the envelope, and file it with the commission and deposition, marking thereon the time. They cannot be taken from his custody except upon the order of the court, or of a referee appointed to take proofs or try any issues in the cause. The clerk shall produce them in court to be used upon the trial of the cause, upon the request of either party.

RULE XXVI.

All objections to the manner of taking or certifying or returning depositions, shall be deemed waived unless made before the commencement of the trial of the cause in which such deposition was taken.

RULE XXVII.

No papers on file in a cause shall be taken from the custody of the clerk, except by the judge for his own use, or a referee appointed to try the action. Before a referee shall take any files in said action, the clerk shall require a receipt therefor, signed by the referee, specifying each paper so taken.

RULE XXVIII.

On a hearing before referees, the plaintiff may dismiss his action, or his action may be dismissed, in like manner as upon a trial, at any time before the cause has been finally submitted to the referees for their decision, in which case the referees shall report according to the fact, and judgment may thereupon be perfected by the defendant.

RULE XXIX.

Upon a trial of issues by a referee, such referee shall file his report in the clerk's office, upon his fees being paid or tendered by either party.

RULE XXX.

At general terms there shall be two calls of the calendar. The first shall be preliminary, the second shall be peremptory. All preliminary motions, except motions for continuance, shall be made on the first call. The cases shall be finally disposed of in their order upon the calendar on the second call. Substitution of cases may be made on the second call by consent of all the attorneys in the cases transposed.

RULE XXXI.

All motions for continuance shall be made on the first day of the term, unless the cause for such continuance shall have arisen or come to the knowledge of the party subsequent to that day. And in all affidavits for continuance on account of the absence of a material witness, the deponent shall set forth particularly what he expects and believes the witness would testify to were he present and orally examined in court.

No counter affidavits shall be received on motions for continuance.

RULE XXXII.

On the trial of actions before the court, but one counsel on each side shall examine or cross-examine a witness, and one counsel only on each side shall sum up the case to the jury, unless the judge who holds the court shall otherwise order. Upon interlocutory questions, the party moving the court or

objecting to testimony shall be heard first, the respondent may then reply, by one counsel, and the mover rejoin, confining his remarks to the points first stated, and a pertinent answer to the respondent's argument. Discussion on the question shall then be closed, unless the court request further argument.

At the hearing of causes before the court, no more than one counsel shall be heard on each side, unless by permission of the court. No counsel shall be permitted to speak on the argument of any case more than an hour, without special leave of the court granted before the argument begins.

RULE XXXIII.

The points on which a party desires the jury to be instructed, must be furnished in writing to the court before he commences his argument to the jury, or the same may be disregarded. All exceptions to the charge and to refusals to charge shall be taken before the jury retire.

RULE XXXIV.

It shall not be necessary to call either party, or that either party be present or represented, when the jury return to the bar to deliver their verdict.

RULE XXXV.

Costs and charges to be inserted in a judgment shall be taxed in the first instance by the clerk upon two days' notice. And an appeal therefrom may be taken to the court within thirty days after such taxation by the clerk, but not afterwards. When such appeal is taken, either party may bring the same on for determination before the court on notice, or by an order to show cause. On such appeal the court will only review the items objected to, and upon the grounds specified before the clerk.

RULE XXXVI.

Judgments, and copies to annex to the judgment roll, shall in all cases be signed by the clerk, and no other signature thereto shall be required.

RULE XXXVII

Where a party is entitled to have judgment entered in his favor by the clerk, upon the verdict of a jury, report of referees, or decision or finding of the court, and neglects to enter the same for the space of ten days after the rendition of the verdict, or notice of the filing of the report, decision or finding, (or in case the same has been stayed, for the space

of ten days after the expiration of such stay,) the opposite party may cause the same to be entered by the clerk upon five days' notice to the adverse party of the application therefor.

RULE XXXVIII.

In case of trials by the court or by referees, the time for serving a case or bills of exceptions shall be computed from the date of service of notice of filing the report, decision or finding. The party procuring a case or bill of exceptions, shall cause the same to be filed within ten days after the case shall be settled, or the same or the amendments thereto shall have been adopted, otherwise it shall be deemed abandoned.

RULE XXXIX.

Transcripts of the stenographic reporter's minutes shall be made in the exact words and in the form of the original minutes. The case or bill of exceptions prepared therefrom may be in narrative form. The party procuring the transcript shall, at or before the time of serving the proposed case or bill of exceptions, file the same with the clerk for the use of parties and the court.

RULE XL.

If during the progress of the term a juror does not appear and answer when called by the court, the clerk shall make an entry of the default of such juror, and deduct from his time of service the day upon which such default shall have occurred, unless the court for good cause shall excuse such absence.

RULE XLI.

In cases where no provision is made by statute or by these rules, the proceeding shall be according to the customary practice, as it has heretofore existed in the several District and Common Pleas Courts of this State.

PREFACE
TO
RULES OF PRACTICE
OF THE
UNITED STATES CIRCUIT COURT
OF THE
DISTRICT OF MINNESOTA

The Rules of Practice for Federal Courts in Minnesota were adopted at various times in 1871, 1874, 1876 and 1877. They were published in 1878 as part of a pamphlet containing the Rules of Practice of the Minnesota Supreme Court and Minnesota District Courts.

Rule 8 incorporates the state law on peremptory challenges to jurors in criminal cases. The state law provides:

An Act to amend sections thirteen (13) and fourteen (14), of 1868. chapter one hundred and sixteen (116), of the General Statutes, relating to challenging jurors.

SECTION 1. That section thirteen (13), of chapter one hundred and sixteen (116), of the general statutes, be amended so as to read as follows:

Sec. 13. A peremptory challenge can be taken either by the State or by the defendant, and may be oral. It is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

SECTION 2. That section fourteen (14) of said act be also amended so as to read as follows:

Sec. 14. If the offense charged is punishable with death, or with imprisonment in the state prison for life, the state is entitled to seven (7) peremptory challenges, and the defendant to twenty (20) peremptory challenges. On a trial for any other offense the state is entitled to two (2) peremptory challenges and the defendant to five (5) peremptory challenges.

SECTION 3. This act shall take effect and be in force from and after its passage.

Approved March 5, 1868.²

² 1868 Laws, c. 86, at 126.

RULES OF PRACTICE
OF THE
CIRCUIT COURT
OF THE
UNITED STATES,
FOR THE
DISTRICT OF MINNESOTA.

RULE I.

Juries shall be chosen as follows :

The clerk shall select seventy-five names, and the marshal an equal number ; the names of the persons so selected, being one hundred and fifty in number, shall be placed by the clerk upon ballots, and placed in a box, to be prepared for that purpose. These being thoroughly intermixed, the clerk shall draw therefrom, in the presence of the marshal, who shall keep the count, twenty-three in number to constitute the grand jury of the term.

In the same manner the clerk shall draw from the box thirty-six in number, who shall constitute the petit jury for the term.

Venires for grand and petit juries shall ordinarily be issued by the clerk at least twenty days before the approaching term. But the said rule shall not apply to juries drawn in term ; but in such case, the juries shall be obtained either from drawing from a box, in the manner provided aforesaid, or by directing the marshal to summon the requisite number of qualified persons from the body of the district, to serve as jurors.

In selecting the names of jurors, the clerk or marshal shall not, in the aggregate, select more than sixteen names of persons from any one city or town in the district.

Adopted June 23, 1871.

RULE II.

Gentlemen admitted to practice in this court shall pay the clerk thereof the sum of \$3, which shall entitle them to receive from said clerk a certificate of such admission to practice.

Adopted June 23, 1871.

RULE III.

In pursuance of the 67th rule in equity, general powers are hereby vested in the clerk of this court, to name commissioners in all causes to take testimony in suits in the manner that the court, or a judge thereof, now can do by same 67th rule of the "Rules of Practice for the Courts of Equity of the United States."

Adopted June 23, 1871.

RULE IV.

In all civil cases, counsel shall be allowed one hour on each side to address the jury, and without special cause being assigned therefor, no further or longer time shall be allowed for said purpose on either side.

Adopted June 23, 1871.

RULE V.

In all cases in which costs remain due to the clerk or marshal, or both, in which no executions have been issued, the clerk or marshal, or either of them be, and they are, hereby authorized and empowered to issue execution in such cases for such costs, and the costs of such proceeding. And that, upon the return of such executions not satisfied, judgment may be entered against the plaintiffs and their securities on the cost bond for the unsatisfied costs, and when in such case, or cases, executions have been or may be issued, and returned unsatisfied, the clerk or marshal, or either of them, shall be authorized to issue further execution for such costs. And when judgment has been, or may be, rendered against the plaintiffs for the costs, and such costs remain unpaid, execution therefor may be issued by the clerk or marshal, or either of them, as herein contemplated.

And it is further ordered, that when the marshal, or any other officer of this court has, or may have in his possession, any writ or other process, or other paper or papers upon or in relation to which he has made a service, or done any service to a party in any suit or proceeding, such officer shall be authorized to retain the possession of such paper or papers until the fees thereon are paid.

Adopted June 23, 1871.

RULE VI.

In actions at law, the practice and pleadings, as they existed under and were prescribed by the general statutes of the state of Minnesota which took effect and went into operation on and after the 31st day of July 1866, in and for the district courts of said state, be and the same are hereby adopted in this court, except so far as the same may be contrary to the constitution

and laws of the United States, and except also that all original and final process shall be issued by the clerk of this court, under the seal thereof and be executed by the marshal as heretofore, and except further that the time within which a party shall be required to answer, demurr, or reply, shall be twenty instead of thirty days.

As amended October 16, 1871.

RULE VII.

Whenever a pleading is founded upon an instrument in writing, a copy of said instrument shall be annexed to said pleading, and be considered as a part thereof, unless a sufficient reason is stated for the failure so to do by affidavit filed with the pleading.

Adopted June 23, 1871.

RULE VIII.

Chapter LXXXVI of the acts of the legislature of the state of Minnesota, approved March 5, 1868, relating to the peremptory challenge of jurors in criminal cases, is adopted as a rule of practice in criminal cases in the circuit and district courts of the United States for the District of Minnesota.

Adopted June 23, 1871.

RULE IX.

In all cases of the redemption of real property from sale upon execution or decree of this court, the money paid for such redemption may be paid to the person holding the right acquired under the sale, or at the option of the person redeeming, it may be paid into this court and the clerk of this court shall in such case make, acknowledge and deliver to the person redeeming, a certificate under his hand and the seal of this court, in the same form substantially, and with the like effect as the certificate authorized by the laws of this state in case of a redemption from the sheriff or clerk of the district court in case of redemption under the state laws; and for receiving into court, and paying over the money paid on such redemption, and executing the certificate, the clerk shall be entitled to receive from the party redeeming; the sum of five dollars, and when the redemption money exceeds the sum of two thousand dollars, the sum of ten dollars in addition to the expense of acknowledging the certificate; and the sum so paid the clerk by the party redeeming shall become part of his lien upon the property redeemed.

Adopted June 23, 1871.

RULE X.

Matters of abatement on account of the character of the parties shall be alleged by plea in abatement before answer to the merits, and shall be first determined when such order,

in respect of the prosecution or defence of the case, shall be made by the court, as in each case shall seem just.

Adopted June 23, 1871.

RULE XI.

Prerogative writs shall be sued out and prosecuted, not according to state statutory provisions, but according to the course of the common law, as modified by modern usage and practice

Adopted June 23, 1871.

RULE XII.

Continuances on the ground of the absence of witnesses shall be applied for on the first day of the term, unless the occasion therefor shall afterwards arise or come to the knowledge of the applicant, when they shall be at once asked of the court. The motion shall be supported by an affidavit of the party or his attorney, giving the name and residence of the witness whose testimony is required, and the reason for not procuring the same, with a brief statement of facts which it is expected he will testify to. It shall also contain an affidavit of merits, and of the *bona fide* intentions of the party. If the adverse party shall deem the affidavit insufficient, he shall state and file his objections in writing, when, without hearing counsel, the court will determine the application. The following rules of the United States circuit court for the Southern District of New York, are hereby adopted:

Rules 41 to 48, inclusive.

" 72 to 75, "

" 80 to 90, "

" 116 to 135, "

Adopted June 23, 1871

(See rule 26.)

RULE XIII.

Causes removed into this court from the courts of the state shall stand for trial at the first term, when the issue has been joined, and sufficient opportunity for preparation for trial has been had before the application for removal. Other cases shall stand for trial at the term succeeding that at which the transcript is filed, but demurrers and dilatory pleas shall be filed and determined at the first term.

Adopted June 23, 1871.

RULE XIV.

When, in a cause removed from a state court, the matter of complaint and of defence is purely legal, no repleader will be necessary in this court.

Adopted June 23, 1871.

RULE XV.

When in such case the matter of complaint or defence is purely equitable, the party pleading such matter may, if he choose, file a new bill, in the usual form of bills in equity, and he shall be required by rule entered in the cause so to do, if he has not alleged the same, by his petition in form substantially good as a bill in equity.

Adopted June 23, 1871.

RULE XVI.

When in such case the matter of complaint or defence is both legal and equitable in its character, a rule to replead, according to the course of this court, shall be entered in the cause.

Adopted June 23, 1871.

RULE XVII.

When the party applying in the State court for the removal of a cause into this court shall, within the time limited by statute, fail to file his transcript, or a complete and perfect transcript, the adverse party may present the transcript or the parts of the record omitted in the transcript as filed, and move the court to file the same; and unless some good and sufficient cause is shown against the same, an order will be made for the filing thereof, when the cause shall stand and be proceeded in all its aspects as if the same had been duly filed by the proper party, on the first day of the term.

Adopted June 23, 1871.

RULE XVIII.

Ordered, that hereafter pursuant to an act entitled "An act relating to moneys paid into the courts of the United States" approved March 24, 1871. All moneys in the registry of the circuit court of the United States for the district of Minnesota, or in the hands or under the control of any officer of said court, shall forthwith be deposited in "The Second National Bank of the city of St. Paul," being a designated depository of the United States, in the name and to the credit of such court, unless the same shall be delivered upon security according to agreement of parties under the direction of this court; and all such moneys which shall hereafter be paid into the registry of such court, or received by the officers thereof, shall be forthwith deposited in like manner, in said bank.

Adopted July 1, 1871.

RULE XIX.

The pleadings, affidavit, bonds, and other written proceedings in an action shall be filed or entered in court, or with the

clerk thereof, unless the court expressly provide for a different disposition thereof. Until a pleading is thus filed it shall not be regarded, and whenever an answer in any action at law shall not be thus filed within the time required to answer, judgment may be entered. Copies of pleadings need not be served on the adverse party.

Adopted Dec. 21, 1874.

RULE XX.

At least eight days before any term of court, a party desiring a cause to be placed on the calendar for trial or argument shall furnish the clerk with a note of issue, containing the title of the action, the names of the attorneys, the nature of the issue, and the time when the last pleading was served or filed; and thereupon the clerk shall place the same on the calendar; and no cause shall go on the calendar unless such note of issue is furnished as aforesaid, except in cases removed from the United States district court for this district, or from the state courts, which shall be placed on the calendar as heretofore. A cause once placed on the calendar shall remain until the issues then joined are determined.

Adopted Dec. 21, 1874.

RULE XXI.

All original and final process in an action when issued, shall be delivered by the clerk directly to the marshal for service.

Adopted Dec. 21, 1874.

RULE XXII.

In all chancery suits in this court, a notice of trial served upon the solicitors of the parties shall take the place of, and have the same effect as, a subpoena to have judgment duly served, and such notice shall be substantially the same as required in actions at law.

Adopted Dec. 21, 1874.

RULE XXIII.

Hereafter no commissioner of the circuit court of the United States for the district of Minnesota shall issue any warrant or process upon any information made or filed by private persons, or officers not belonging to the internal revenue service, for violation of the internal revenue laws without first laying such information before W. W. Billson, Esq., the, United States district attorney, or his successor in office, and getting the consent of said United States attorney, in writing. Any violation of this rule by any such commissioner, will be regarded as a cause for his removal, and no fees will be allowed to such commissioner, where this rule is not complied with.

Adopted June 19, 1876.

RULE XXIV.

Notices of sales made by masters in chancery of this court pursuant to any order or decree thereof, required to be published by said order or decree, shall contain in the body of the notice, a description of the property to be sold, the time and place of such sale, and that the sale is made pursuant to order or decree of the United States circuit court for the district of Minnesota; and all masters are inhibited from making any such sale, unless notice thereof conforming to this rule shall have first been published for the whole time required by the decree or order of sale.

Adopted Feb. 16, 1877.

RULE XXV.

All attorneys or solicitors who practice in this court and reside outside the district shall appoint an agent, who shall be an attorney of this court and reside within the district, and all papers which can properly be served on such attorneys and solicitors may be served on such agent, and such service shall have the same force and effect as if personally made upon the attorneys or solicitors themselves.

Adopted July 10, 1877.

RULE XXVI.

(RULE 41.)—Commissions to take testimony may be taken out by either party after suit brought.

RULE XXVII.

(RULE 42.)—Four days notice shall be given in writing, to the opposite party or his attorney, of the intention to sue out a commission, together with the names of the commissioner or commissioners, witness or witnesses, when known, and residence and occupation of commissioners and witnesses, when known, and of the facts expected to be proved.

RULE XXVIII.

(RULE 43.)—At the expiration of the four days, a rule may be entered of course, in the common rule ordering such commission, unless proceedings are previously stayed by a judge, or unless the attorney of the opposite party file a written consent to admit on the trial, that the witness named will swear to the facts stated.

RULE XXIX.

(RULE 44.)—All commissions must be issued under the seal of the court and signed by the clerk, with the name of the attorney moving it subscribed thereto. They may be directed

to one commissioner or three; but no costs shall be taxed for the services of more than one commissioner, unless both parties unite in requiring a greater number.

RULE XXX.

(RULE 45.)—After a commission is actually issued and in a train for execution, proceedings may be stayed in the cause by a judge, on proper cause shown, a reasonable time for the execution and return thereof.

RULE XXXI.

(RULE 46.)—A commission may be moved for before the court, or a judge out of court, (under special circumstances to be allowed by the court or judge,) and the proceedings in such case are to be conformable to the rules of this court and the district court applicable thereto.

RULE XXXII.

(RULE 47.)—A commission may be executed by a majority of the commissioners named therein, if more than one, and shall be accompanied by written or printed instructions directing the manner of its execution and return.

RULE XXXIII.

(RULE 48.)—The interrogatories for the direct and cross-examination shall be annexed to the commission, and in case the parties disagree respecting them, be presented to a judge for his allowance at one time; a copy of the direct interrogatories with a notice of the time of presenting the same for allowance shall be served eight days before such time, and copies of cross interrogatories four days after such service.

RULE XXXIV.

(RULE 72.)—In cases of division of opinion between the judges on points of law, the court, at the instance of either party, will forthwith note such points in writing.

RULE XXXV.

(RULE 73.)—Either party may, within four days thereafter, serve on the other a statement, or certificate in writing, of such points, and also of facts in the case upon which the points arose, and if no amendments are proposed thereto within two days, such statement shall be filed, and shall be engrossed by the clerk, and be certified to the supreme court, under the seal of this court.

RULE XXXVI

(RULE 74.)—In case of disagreement between the parties, the statement or certificate shall be submitted to the court, and be settled by the judges, as in the matter of a case, or bill of exceptions.

RULE XXXVII.

(RULE 75.)—The like practice shall be pursued in certifying a division of opinion in proceedings on indictments.

RULE XXXVIII.

(RULE 80.)—On suing out a writ of error to the district court, and before the clerk seals the same, the plaintiff in error, (other than the United States) shall file security, with two or more sureties, to be approved by one of the judges of the court, (in the sum of five hundred dollars, when the writ of error does not operate as a supersedeas,) conditioned to prosecute his writ of error to effect, and answer all damages and costs awarded against him.

RULE XXXIX.

(RULE 81.)—The clerk shall forthwith make return to a writ of error, by transmitting a certified copy of the record and all proceedings in the cause, (including the bill of exceptions when one has been signed by the judge and filed by the party,) under the seal of the court.

RULE XL.

(RULE 82.)—The plaintiff in error shall assign errors within two days of the term, in which the writ is returned, first following the return thereof, and the defendant shall join issue within two days after the assignment, unless, in either case, the court by special order shall enlarge the time.

RULE XLI.

(RULE 83.)—No further order on the defendant in error to appear and join in error need be given, than the citation required by statute, provided that the same is served twenty days previous to the return of the writ of error.

RULE XLII.

(RULE 84.)—If the plaintiff in error fails to appear and file his assignment of errors within two days after the return of the writ of error, the defendant may have a rule of course for judgment of *non pros*. But if there are not two days remaining in term after the return of the writ of error, the plaintiff will be entitled to the two first days of the succeeding term.

RULE XLIII.

(RULE 85.)—The plaintiff in error may, by affidavit, show and prove the value of the matter in dispute, in order to sustain the *jurisdictio* of the court, and a suggestion shall thereupon be entered on the record.

RULE XLIV.

(RULE 86.)—No *certiorari* for diminution shall issue, without the affidavit of the party, showing reasonable cause for alleging diminution, and in what such diminution consists; nor shall it be allowed after issue in error joined, without special order.

RULE XLV.

(RULE 87.)—In every cause in which the defendant in error fails to appear, the plaintiff in error may proceed *ex parte*.

RULE XLVI.

(RULE 88.)—When a bond with sureties is approved by the judge and filed, the clerk may seal a writ of error, without mandate or allowance by the judge.

RULE XLVII.

(RULE 89.)—A judge's order, staying proceedings, accompanied with service of notice of motion, and copies of proofs to be used thereon, shall stand in force until revoked or modified by one of the judges, or until the order of the court thereon. But if the party obtaining such order shall not proceed thereon at the next term, the opposite party may enter an order of course, vacating such stay of proceedings, and for his costs in consequence thereof.

RULE XLVIII.

(RULE 90.)—No agreement, or consent, between the parties or their attorneys, in respect to the proceedings in court, shall be binding, unless reduced to writing, and signed by the party against whom it shall be alleged or suggested.

RULE XLIX.

(RULE 116.)—An appeal can be taken from no other than final decrees.

RULE L.

(RULE 117.)—A decree shall be deemed final when in a state for execution without further action of the court below.

RULE LI.

(RULE 118.)—Every appeal, to the circuit court, in a cause of admiralty and maritime jurisdiction, shall be in writing, signed by the party, or his proctor, and delivered to the

clerk of the district court, from the decree of which the appeal shall be made: and it shall be returned to the court, with the necessary documents and proceedings, within twenty days, and by the first day of the term next after the delivery thereof to the clerk, unless a longer time is allowed by the judge.

RULE LII.

(RULE 119.)—The appeal shall briefly state the prayers, or allegations, of the parties to the suit in the district court, in the proceedings in that court, and the decree, with the time of rendering the same. It shall also state whether it is intended, on the appeal, to make new allegations, to pray different relief, or to seek a new decision on the facts, and the appellants shall be concluded in this behalf, by the appeal filed.

RULE LIII.

(RULE 120.)—A copy of the appeal shall, at the same time, be served on the proctor of the appellees, in the court below; and an affidavit, of the due service of such copy, shall be filed with the appeal, and no process, or order, shall be necessary to bring the appellees into this court.

RULE LIV.

(RULE 121.)—If in the appeal, it shall not be intended to make new allegations, to pray different relief, nor to seek a new decision of the facts, then the pleadings, evidence, and decree, in the district court, with the stipulations in the cause, and the clerk's account of the funds in court in the cause, if any, shall be certified to this court with the appeal. But in all cases the statement of facts agreed between the parties, or settled by the judge of the district court, and on file according to the practice of that court, may be certified in the place of the evidence at large.

RULE LV.

(RULE 122.)—If it shall be intended to seek only a new decision of the facts, then the pleadings of the parties, with the stipulations in the cause, and the clerk's account of the funds in court, if any, and the exhibits and depositions in the cause, shall be certified to this court with the appeal; but the proofs need not be certified unless specially required by the appellant or ordered by this court.

RULE LVI.

(RULE 123.)—If it shall be intended to make new allegations, or to seek new relief, then the return to the petition of appeal shall only contain copies of the process issued upon the libel,

and of the return thereof, the account of the clerk of the funds in court in the cause, the depositions and exhibits, and the stipulations in the cause.

RULE LVII.

(RULE 124.)—The appellant shall cause the notice of appeal, and an affidavit of the service of a copy thereof, with the documents required to be returned with the appeal, to be filed in this court within four days after the return is completed by the clerk, otherwise the appeal shall not be received, and shall be deemed deserted; and a certificate in this behalf shall be made to the court from which the appeal is made, which may proceed to execution of its decree.

RULE LVIII.

(RULE 125.)—This court shall be deemed possessed of the cause, from the time of filing the appeal, with the documents required to be returned therewith in this court.

RULE LIX.

(RULE 126.)—If the appellee does not enter his appearance within the two first days in term, succeeding the filing the appeal, and proceedings, and affidavit of service of notice thereof on him, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

RULE LX.

(RULE 127.)—No answer, or issue, need be given to the appeal. Each party may notice the cause for hearing, for the term to which the appeal is made (if made in term time,) or if made in vacation, for the term next succeeding.

RULE LXI.

(RULE 128.)—A writ of *inhibition* will be awarded, at the instance of the appellant, when circumstances require, to stay proceedings in the court below; notice of such application having been previously given.

RULE LXII.

(RULE 129.)—A *mandamus* may in like manner be obtained to compel a return of the appeal when unreasonably delayed by the clerk, or court below.

RULE LXIII.

(RULE 130.)—If the appellee should have any cause to show why new allegations, or proofs, should not be offered, or new relief prayed, on the appeal, he shall give four days notice

thereof, and serve a copy of the affidavit containing the cause intended to be shown; and such cause shall be shown within the two first days of the term; otherwise the appeal shall be allowed according to its terms.

RULE LXIV.

(RULE 131.)—If new allegations are to be made, or different relief prayed, in this court, then the libellant in the District Court shall exhibit, in this court, a libel, on oath within ten days, to which the adverse party shall, in twenty days, answer on oath, subject in each case to the extension of those periods, by order of either of the judges of this court; and on a default in this behalf, the court will, on motion, without notice, make such order for finally disposing of the cause, on the default of the party, as the nature of the case may require.

RULE LXV.

(RULE 132.)—After the libel and answer, whether newly filed in this court, or certified from the district court, shall be filed in this court, the cause shall be proceeded in to a hearing as in other cases. But where interrogatories have been answered in the district court, or written testimony taken, the same may be used in this court.

RULE LXVI.

(RULE 133.)—The appellee may move this court to have the decree, made in the district court, carried into effect, subject to the judgment of this court, or of the supreme court on appeal, upon giving his own stipulation to abide and perform the decree of such courts: and this court will make such order, unless the appellant shall give security by the stipulation of himself, and competent sureties, for payment of all damages, and costs, on the appeal in this court, and in the supreme court, in such sums as this court shall direct.

RULE LXVII.

(RULE 134.)—In cases where an appeal shall lie from the decree of this court, the final decree shall not be executed until ten days shall have elapsed from the pronouncing, or filing, of the decision of the court.

RULE LXVIII.

(RULE 135.)—When appeal shall be made from the decree of this court, the appellant shall, within four days from the pronouncing, or filing of such decision, unless further time is allowed by the judge, make, and serve on the adverse party, a

statement of the testimony on the trial, excepting such evidence as was in writing, which shall be properly referred to therein. The party on whom the same shall be served shall, in four days after such service, propose amendments thereto, or the statement shall be deemed acquiesced in, and the statement and amendments, unless acquiesced in, shall be submitted by the appellant, to the judge in four days afterwards, for settlement; and the same, when settled, shall be engrossed by the clerk, and with the written evidence, shall be deemed the proofs on which the decree is made, and shall operate as a stay of further proceedings in this court.

