


RULES, ESTABLISHED
FOR REGULATING THE PRACTICE OF THE
SUPREME AND CIRCUIT COURTS
OF
PENNSYLVANIA







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RULES, Established

FOR REGULATING THE PRACTICE OF THE

Supreme and Circuit Courts

OF

PENNSYLVANIA.

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THE following RULES are established and declared by the Justices of the Supreme Court, for regulating the practice of the said Court, and for the better conducting and expediting the business of the several Circuit Courts, in pursuance of two acts of General Assembly passed on the 25th day of September 1786, and on the 20th day of March 1799.

Attorney & Counsellor at Law.

1. It is ordered, that the rules of the Supreme Court made in January Term 1788, respecting the admission of Attornies and

Counsellors and their priviledges remain in full force, and that to entitle any person to practise as an Attorney or Counsellor in the Circuit Courts, a previous admission in the Supreme Court in Bank shall be indispensably necessary.

Bail.

2. Upon the return of a Habeas Corpus in the Circuit Courts, the plaintiff may, in such cases wherein special bail has not been entered in the Court below, and the same is proper and necessary, enter a rule *of course* for a procedendo, unless good bail be put in within six weeks from the first day of the term to which the same is returnable, and after the last day of the said six weeks may take out the procedendo *of course*, in such cases wherein the bail has not been regularly entered.
3. On removal of actions, by Habeas Corpus, from the Courts of Common Pleas into the Circuit Courts, bail shall be taken indefinitely according to the ancient course of the Supreme Court: provided always, that the defendant may make application to have the quantum of bail ascertained, where the parties cannot

otherwise agree; which quantum may be directed by the Circuit Court or by a single Judge out of Court, on reasonable notice given to the adverse party, and special bail shall be taken in the sum thus agreed to or ordered.

4. The plaintiff may except against the bail at any time within the six weeks after the return day of the Habeas Corpus, or within four days afterwards, and the party shall perfect his bail within ten days after such exception taken; the justification of the bail shall be in open Court, or before one of the Judges of the Court.
5. Special bail shall be required in all causes removed by Habeas Corpus out of the Courts of Common Pleas, except the defendant be an executor or administrator, or the action be for words, or small trespasses, or bail has been given in the Court below.
6. When exception is taken to bail, it must be entered with the Clerk of the Circuit Court, and also notice in writing shall be given thereof to the defendant or his attorney.

Certiorari.

7. All writs of Certiorari and Habeas Corpus shall be returned within the first four days of the term, or upon motion a procedendo or attachment may issue; and until they shall be returned, no other rule shall be taken in the cause.
8. When any plaintiff removes his cause into the Circuit Courts from the Common Pleas by Certiorari, notice shall be given to the defendant or his attorney of such writ; and if the defendant will not appear gratis personally or by attorney in Court, within the first four days of the term to which the writ is returnable; then, on affidavit of such notice, a capias may issue against the defendant, returnable on the eighth day afterwards, or on the first day of the next term, at the election of the plaintiff, to compel an appearance and special bail, where by law it may be required.
9. All causes removed into the Circuit Courts by writs of Certiorari, shall be brought up in the condition or situation in which they shall be in the inferior Court

at the time of the delivery of the writs, and the proceedings there begin upon the last rule in the cause in the Court below.

Demurrer.

10. It is ordered that the counsel for the plaintiff and defendant respectively, do furnish a paper book or state of the point in controversy, for the use of the Judges of the Circuit Court, on all law arguments arising on demurrers, reserved points, special verdicts or cases stated for the opinion of the Court; that one of them be delivered to the chief Justice or senior judge by the plaintiff and the other to the puisne judges by the defendant at least two days before the argument, and that the Clerk do charge in the bill of Costs what the Court shall think reasonable for the same: If either party neglect to deliver the same as before directed, such party shall not be heard when the cause comes on to be argued.

Habeas Corpus.

11. No Habeas Corpus shall be brought to remove [a cause into the Circuit Court, after interlocutory judgment in the Court below.
12. The record itself being now removeable by Habeas Corpus cum causa, in all causes removed thereby into the Supreme or Circuit Courts, the proceedings therein shall begin upon the last rule in the Court below; but either party shall be at liberty to alter or amend their pleadings of course on such removal, in the same manner as they would be entitled to do on an application to the Court; provided always, and in order to prevent surprize, when such alterations or amendments change the nature of the demand, or defence, and thereby render other evidence necessary at the trial, the party altering or amending shall give *reasonable notice thereof* to the adverse party previous to the trial; in default whereof, the pleadings shall continue in the same state and condition as when removed by Habeas Corpus, and be tried thereon.

Fury

13. No trial shall be put off on account of a view not being had by six of the first twelve of the jury, as they stand in the panel, provided any six of them have viewed, and some of them do appear to try the cause and that such of them who have viewed and do appear, shall be first sworn or affirmed on the trial; and that the form of the venire facias be altered accordingly.
14. On all venires for summoning juries, issued out of the Circuit Courts, the sheriff to whom the same shall be directed, shall cause each juror to be served with personal notice to attend. Such service shall be at least ten days before the day of appearance specified in such writs; and it shall be particularly mentioned in the notice that the juror is summoned to serve on the general jury, or a special jury (naming the plaintiff and defendant in the latter case.)—
15. The Sheriff shall cause the officer who shall have served the process, to attend the Court on the day whereon the venire is

returnable, in order that the proof thereof may be had whenever it shall be deemed requisite.

16. The person who shall summon any jury upon any process out of the Circuit Court shall make a minute or memorandum, on the panel, of the day of the month and year of summoning each juror and shall subscribe the same, in order that due proof may be had thereof agreeably to the preceding rules.
17. It is ordered, that no special jury shall be directed on the application of any defendant, unless an affidavit of defence be filed in the office of the Clerk of the Circuit Court, agreeably to the terms of the act of Assembly passed 27th March 1789 in or before the first term in which the issue shall be joined in the Circuit Court, or in six weeks after the first day of the term of removal in case issue shall be joined below; nor unless there shall be subjoined to such affidavit a certificate from Counsel to the following effect; "I do certify that I verily believe the application for a special jury is not made for the purpose of delay, but for the better investigation of

the merits of the cause." But the counsel of both parties may mutually agree to a trial by a special jury.

Judgment.

18. It is ordered that no motion shall be made for a new trial after a motion in arrest of judgment.
19. All motions for new trials, and reasons in arrest of judgment in causes tried in the Circuit Courts shall be made and offered within four days after the verdict ; unless in causes tried within the four last days of the court, in which cases, unless made before the court ends they shall not afterwards be received.
20. In all actions of debt and contract removed into the Circuit Courts to September and December, the plaintiff shall be at liberty to direct judgment *of course* to be entered at the third term of the Supreme Court, unless the defendant or some person for him or her shall make affidavit, and previously file the same in the Clerk's Office, that to the best of his or her know-

ledge and belief there is a just defence in whole or in part in the same cause : and if the defence is to part only, then judgment to be entered for so much as shall be acknowledged to be due to the plaintiff, if he or his attorney will accept the same in full satisfaction of his demand. The judgment so entered as of March Term in the Supreme Court, to be with a stay of execution for sixty days, and those of September term in the Supreme Court, for thirty days. But, in such actions removed to the term of March in the Supreme Court, in default of such affidavits, judgment of course to be entered as of September term following, with a stay of execution for sixty days, the said cesset to be computed from the first day of the respective terms in the Supreme Court.

21. On a report of Referrees returnable into the Clerk's Office, or to the next term, judgment shall not be entered thereon until thirty days after the return thereof ; nor shall it be then entered unless by order of the Court. If either party shall file his exceptions thereto on oath or affirmation during the said thirty days, to

which shall be subjoined to a written statement of his Counsel, subscribed with his name, certifying his belief that the same are sufficient in law to obtain a decision in favour of his client, and not made for the purpose of delay.

Judges Order.

22. Any judge of the Court in vacation may, under special circumstances, by his order enlarge the time for putting in, adding to, perfecting or justifying Bail, or for filing the declaration, plea, replication, rejoinder or other pleadings in the Cause. He may also hear objections against any rule, which has been taken or offered to be taken, and make his order thereon.
23. On a judgment, entered in the Clerk's Office, application may be made to any judge of the Court in the vacation on affidavit of a just and legal defence, and a certificate of Counsel subjoined thereto; that, in his belief, the grounds of defence are sufficient to obtain a decision in favour of his client; and are not made for the

purpose of delay, to suspend the proceedings on reasonable terms until the next Circuit Court. But, where the circumstances of the Case will not admit of that delay, application may be made to the *Supreme Court in Bank*, on giving reasonable notice thereof.

24. No judge shall make an order, unless previous notice of the intended application has been given to the adverse party for six days, when the party so notified resides within thirty miles from such judge's abode and one day additional for every thirty miles greater distance.
25. The validity of a judge's order may in all cases be impeached by an application to the next supreme or Circuit Court: otherwise it shall stand in full force.

Plea and Pleading.

26. No dilatory plea shall be received, unless the party offering such plea does by affidavit prove the truth thereof, or shew some probable matter to the Court to induce them to believe that the fact of such dilatory plea is true.

27. It having been the common practice, to plead the general issue, with leave to give the special matter in evidence at the trial of the Cause ; in order for the future, that neither party may be taken by surprise, and, that a fair opportunity may be afforded, to encounter the evidence intended to be offered under such rules, the party who proposes to take the benefit of it shall, at least ten days before the trial, give notice in writing to the other, what are the special facts or matters on which he will rely, and which he intends to urge in support of his action, or by way of defence: otherwise he shall give no other evidence than what is by law strictly admissible on a general issue plea, or what has been received on such plea, by solemn and settled adjudications in this court.

28. When there have been mutual dealings between a plaintiff and defendant, and the defendant intends on the general issue to default his account against the plaintiff's demand or any part of it, he shall give notice thereof in writing, at least ten days before the trial, and at the same time furnish him with a copy of the account which he intends to give in evidence, and rely on ; and

if the plaintiff's action is not founded on a specialty or writing, he in like manner shall be obliged on the defendant's request, at the same time, or on a reasonable notice, to give him a copy of his account and demand ; so that there shall be an exchange of copies at the same time—otherwise the defendant shall not be compelled to a trial by the plaintiff, or *vice versa*.

29. Whereas it has been adjudged in the Supreme Court, after solemn argument, that on a plea of payment to a bond or specialty, the defendant may on the trial in avoidance of the deed, give in evidence that it was given without any, or a good consideration, or obtained by fraud, or by a suggestion of a falsehood, or suppression of the truth ; for the future, it is ruled, that in all such cases the defendant shall give the plaintiff at least thirty days notice in writing before the trial of the matter intended to be objected in avoidance of the same, or else he shall be precluded therefrom.

30. To settle in future all disputes respecting the bringing of money into Court, in causes depending in the Circuit Courts, the same practice shall prevail in all such cases as the

statute of the fourth and fifth of Anne Chap. 16 prescribes, according to the usage, practice, and construction under it, in the Court of King's bench at Westminster, at the time of the late revolution.

31. The Clerk shall receive for all sums of money paid into Court, from the party paying in the same, at the rate of one per Cent for all sums not exceeding one hundred pounds, and at the rate of ten shillings in the hundred pounds for all monies exceeding that sum.
32. Where a declaration has not been filed in the Court below, the Clerk of the Circuit Court of the proper County shall enter a rule *of course* to declare in thirty days : and if a declaration shall not be filed within that period, (to be computed from the first day of the term in the Supreme Court) he shall enter a second rule to declare or non pros. *of course*, by the first day of the ensuing term in the Supreme Court ; and in failure thereof a non pros. shall be entered on the first day of such succeeding term : But where the parties cannot otherwise agree, such non pros. may be taken off by order of a

judge in vacation, on reasonable grounds and giving notice as is herein before directed by the 24th rule.

33. After a declaration has been filed, the clerk shall enter *of course* a rule to plead in thirty days; and if no plea shall be then filed, he shall enter a second rule to plead in thirty days or judgment or in failure thereof he shall enter judgment; the defendant shall not however by a delay in pleading, prevent the plaintiff from a speedy trial, in the ordinary course of practice, nor shall the plaintiff compel the defendant to a trial; unless the declaration has been filed in the Prothonotary's Office at least thirty days before the time of holding the Circuit Court.

34. Upon a plea or pleas being entered, the clerk shall, *of course*, put the cause to issue and enter the proper replications, and other pleadings for that purpose; but, the act of the Clerk, herein shall not prejudice either of the parties. Each party shall have it in his power, to enter other pleadings, or demur, as they may deem most eligible; provided they give reasonable notice thereof to the adverse party, to prevent surprise and secure a fair trial. The tim

of filing the declaration, pleas, replications and all other pleadings and papers shall be distinctly marked in the Clerk's docquet.

35. In all actions of debt or contract where the defendant shall not make affidavit of a just defence, he shall have it in his power to prevent the expence of summoning a jury and other incidental costs, by confessing a judgment, with stay of execution, in the manner herein before directed by the 21st rule.

In order to prevent surprise, and that the attornies on each side may be informed of the different rules taken in each cause, the Circuit Court docquet shall be called over in the Clerk's Office of every County, on the tuesday of each Court of Common Pleas of the proper County, at or immediately following the several terms of the Supreme Court.

Sheriff.

36. If any sheriff, under-sheriff, deputy or bailiff, shall wilfully delay the execution of any process, or shall take or require any undue fees for the same, or shall give notice

to the defendant thereby to frustrate the execution, of any writ or process; or, having levied money in execution shall detain the same in his hands after the return of the writ; the officer so offending shall be liable to an attachment, information, commitment or fine, as the case may require.

37. Every sheriff, under-sheriff, deputy or bailiff, shall upon reasonable notice given to him deliver a true copy of the inventory of any goods, chattels, or effects taken by him upon a *fi-fa*, *elegit*, or attachment, to the person requiring the same, he paying for such copy not exceeding one cent for every twelve words.

Trial.

38. When a cause has been at issue in the Circuit Court for the space of one year, without ordering the same for trial, three months notice of trial shall be given.
39. All causes shall be tried in the order in which they stand on the issue docket, saving the preference due to the Common-

wealth. But where the Commonwealth is not interested in the event, such cause shall not be entitled to priority, tho' the state be named as a party.

40. Notice of trial shall be given in writing to the defendant, or to his attorney, or left at their houses, or usual places of abode, at least fourteen days before the day of such intended trial, if the defendant resides out of the County, or above forty miles from the place where such trial is expected; and at least ten days, if he resides within the County, or within forty miles of such place of trial in the Circuit Courts: and in case the defendant or his attorney is unknown, or cannot be found, then such notice shall be served upon the defendant's bail, if known, or to be found; and if not, then it shall be stuck up in the Prothonotary's Office of the proper County, fourteen days at the least before such intended trial, and there remain open to public inspection for that space of time. The expences attending such notices shall be allowed to the attorney in the taxing of the bill of costs.

41. If the defendant has obtained a rule for a special jury, and has not used due dili-

gence to obtain the same to be struck and summoned, the plaintiff shall not be prevented from trying the cause by a common Jury. A general venire facias shall serve for all the causes intended to be tried by the Common traverse jury; but, in case of special juries, a particular venire facias shall issue in each suit.

42. In all causes tried at Bar, as well as at nisi prius and in the Circuit Courts, not more than two counsel on each side shall be permitted to sum up the evidence to the jury.

Views.

43. Rules for views in the Circuit Courts shall not be considered *of course*, but where views may be proper and necessary to ascertain *Boundary*, and the same shall be so certified, under the hand of the counsel applying for the same, and filed in the office of the Clerk of the Circuit Court, such rule may be entered: and where Rules for views have been obtained in the Courts of Common Pleas, in causes hereafter removed into

the Circuit Courts, the same shall only be made use of on the certificate of counsel being filed in the manner herein before directed ; And in all cases of views the party who shall enter the rule therefor shall bear and pay the expences thereof, and shall not have any allowance for them upon taxation, unless the Court on trial shall certify that such rule was proper and necessary, in the same manner as is directed by law with respect to the striking of Juries.

Witnesses.

44. A rule to take the depositions of ancient, infirm and going witnesses to be read in evidence on the usual terms upon trial, is *of course*, and may be entered by either party in the Clerk's office, stipulating a reasonable notice to the adversary, so of a rule for a commission to any of the United States, or to foreign parts ; but, the interrogatories must be filed in the Clerk's office at the time and written notice of this last rule, and of the names of the Commissioners, must be served on the adverse party at least fifteen days before the Com-

mission issues, in order that he may file cross interrogatories or nominate Commissioners on his own part, if he shall deem it eligible.

45. Notwithstanding a rule of the Court hath been obtained for taking the depositions of witnesses, and that they shall be read in evidence at the trial of the cause, in case of the death, absence out of the state, or other legal inability of such witnesses to attend: yet, it is required, that the party offering such a deposition in evidence shall satisfy the Circuit Court that the witness, if resident within this state, and within forty miles of the place of trial, was duly subpoenaed, or could not be found after reasonable pains taken for that purpose; otherwise the same may not be admitted.

46. Where a commission or commissions shall be taken out for the examination of witnesses residing out of the jurisdiction of this Court, the expences of executing such Commission shall be allowed in the bill of costs; provided, it shall appear to the Court that the persons examined were

material witnesses : but, no greater sum than five pounds will be allowed in any case for the execution of any one commission.

Writ of Inquiry.

- 47 Writs of Inquiry shall issue *of course* in such cases where by law, or the usual practice, damages are to be liquidated. They may be executed at the Bar of the Circuit court on motion, and cause shewn, and judgments thereupon be rendered during the same Court : But, if executed in the vacation, no judgment shall be entered thereon until the next Circuit Court to be held for the same County—in case the defendant shall file his objections thereto on oath or affirmation in the Clerk's office, during the Supreme Court term following, the execution of the Writ of Inquiry, to which shall be subjoined a written statement of his counsel, subscribed with his name, certifying his belief that the same are sufficient in law to obtain a decision in favour of his Client, and are not made for the purpose of de-

lay ; in failure whereof, judgment shall be entered *of course* on the last day of the said following term in the Supreme Court.


EDWARD SHIPPEN.

I. YEATES. (J. Yeates)

THOMAS SMITH.

H. H. BRACKENRIDGE.

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Over Hugh Henry
Brackenridge Esq
Dear Sir
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Editor U S Magazine
Intro of President
Master of Academy
Maryland
The Treasurer of the
Esq.

San Association is Mr. John
W Wallan whose office is at the
South East corner of 6th & Walnut
St & his dwelling n. 284. Spruce St.

I am very respectfully
and truly yry

P M Fall.

Jan^y 14th


Edward S Bard Esquire.

Peter M. Call

14th Jan'y

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