THE

LAW OF PATENTS

AND

PATENT PRACTICE IN THE PATENT OFFICE AND THE FEDERAL COURTS

WITH

RULES AND FORMS

BY

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OF THE

BAR OF THE SUPREME COURT OF THE UNITED STATES.

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IN TWO VOLUMES

VOLUME II

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HOPKINS ON PATENTS

VOL. II.

APPENDIX

PATENT STATUTES---Continued

956742

EXTRACTS FROM THE JUDICIAL CODE.
ACT OF MARCH 3, 1911.

SEC. 1. In each of the districts described in chapter five, there shall be a court called a district court, for which there shall be appointed one judge, to be called a dsitrict judge; except that in the northern district of California, the northern district of Illinois, the district of Maryland, the district of Minnesota, the district of Nebraska, the district of New Jersey, the eastern district of New York, the northern and southern districts of Ohio, the district of Oregon, the eastern and western districts of Pennsylvania, and the western district of Washington, there shall be an additional district judge in each, and in the southern district of New York, three additional district judges: *Provided,* That whenever a vacancy shall occur in the office of the district judge for the district of Maryland, senior in commission, such vacancy shall not be filled, and thereafter there shall be but one district judge in said district: *Provided further,* That there shall be one judge for the eastern and western districts of South Carolina, one judge for the eastern and middle districts of Tennessee, and one judge for the northern and southern districts of Mississippi: *Provided further,* That the district judge for the middle district of Alabama shall continue as heretofore to be a district judge for the northern district thereof. Every district judge shall reside in the district or one of the districts for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor.

See § 551, R. S. U. S., 1 Comp. Stat., p. 446, 4 Fed. Stat. Ann., p. 216.

SEC. 2. Each of the district judges shall receive a salary of six thousand dollars a year, to be paid in monthly installments.

See § 554, R. S. U. S., 1 Comp. Stat., p. 449, 4 Fed. Stat. Ann., p. 217, Pierce, Code § 6985.

SEC 3. A clerk shall be appointed for each district court by the judge thereof, except in cases otherwise provided for by law.

Re-enactment of § 555, R. S. U. S., Pierce Cdoe, § 6986, 1 Comp. Stat., p. 451, 4 Fed. Ann., p. 74. The office of clerk is held at the discretion of the court and mandamus cannot be invoked to restore him to office when removed by an order of court. *Ex parte Hennen*, 13 Peters, 230, 261, 10 L. Ed. 138, 154.

SEC. 4. Except as otherwise specially provided by law, the clerk of the district court for each district may, with the approval of the district judge thereof, appoint such number of deputy clerks as may be deemed necessary by such judge, who may be designated to reside and maintain offices at such places of holding court as the judge may determine. Such deputies may be removed at the pleasure of the clerk appointing them, with the concurrence of the district judge. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and perform the duties of the clerk, in his name, until a clerk is appointed and qualified; and for the default or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk and his estate and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such default or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

See § 558, R. S. U. S., 1 Comp. Stat., p. 452, 4 Fed. Stat. Ann., p. 74, Pierce, Code § 6989.

SEC. 5. The district court for each district may appoint a crier for the court; and the marshal may appoint such number of persons, not exceeding five, as the judge

may determine, to wait upon the grand and other juries, and for other necessary purposes.

See § 715, R. S. U. S., 1 Comp. Stat., p. 579, 4 Fed. Stat. Ann., p. 81.

SEC. 6. The records of a district court shall be kept at the place where the court is held. When it is held at more than one place in any district and the place of keeping the records is not specially provided by law, they shall be kept at either of the places of holding the court which may be designated by the district judge.

Re-enactment of § 562, R. S. U. S., Act Sept. 24, 1789, c. 20, § 3, 1 Stat. at L. 73, 1 Comp. Stat., p. 424, 4 Fed. Stat. Ann., p. 218.

SEC. 7. No action, suit, proceeding, or process in any district court shall abate or be rendered invalid by reason of any act changing the time of holding such court, but the same shall be deemed to be returnable to, pending, and triable in the terms established next after the return day thereof.

Re-enactment of § 573, R. S. U. S., 1 Comp. Stat., p. 475, 4 Fed. Stat. Ann. p. 671. The same provision, as to the circuit courts, repealed by the judicial code, was contained in § 660 R. S. U. S., 1 Comp. Stat. p. 542. See § 297, this Code.

Under § 573, R. S. U. S., a session of the district court in a district where the act of congress provided for a regular term of court, held upon a day other than the one designated in the act, was ruled to be held without authority of law, and its proceedings inoperative and void, as against the forfeiture of a recognizance. McGlashan v. United States, 71 Fed. Rep. 434, 18 C. C. A. 172.

SEC. 8. When the trial or hearing of any cause, civil or criminal, in a district court has been commenced and is in progress before a jury or the court, it shall not be stayed or discontinued by the arrival of the time fixed by law for another session of said court; but the court may proceed therein and bring it to a conclusion in the same manner and with the same effect as if another stated term of the court had not intervened.

See § 746, R. S. U. S., Act March 2, 1855, c. 140 § 1, 10 Stat. at L. 630, 1 Comp. Stat., p. 590, 4 Fed. Stat. Ann. 556.

That the trial "has been commenced and is in progress" at the expiration of the term of court, although but three jurors have been selected, see United States v. Loughery, 13 Blatchf. 267, Fed. Case 15, 631.

SEC. 9. The district courts, as courts of admiralty and as courts of equity, shall be deemed always open for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein. Any district judge may, upon reasonable notice to the parties, make, direct, and award, at chambers or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

Re-enactment of § 574, R. S. U. S., Act August 23, 1842, c. 188, § 5, 5 Stat. at L. 517, 1 Comp. Stat., p. 475, 4 Fed. Stat. Ann. 671.

As to the Circuit Courts, Equity Rule I provided as follows

The Circuit Courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing interlocutory motions, orders, rules, and other proceedings, preparatory to hearing of all cases upon their merits.

With the transfer of the jurisdiction of the Circuit Court to the District Court, the equity rule will doubtless be properly amended.

Under § 602, R. S. U. S., which is repealed by § 297 of this code, it has been held that "the existence of a term (of the district court) does not depend on the fact that any business is transacted thereat, nor does any general order of continuance of itself close the term." Mr. Justice Brewer, in McDowell v. United States, 159 U. S. 596, 600, 40 L. Ed. 271, 273.

Under Equity Rule 1 the practice in the circuit courts has been to treat all questions of confirmation of sale as relating to final process, * * * "and as within the jurisdiction of the chancellor to determine at any time, irrespective of whether a stated term of the circuit court be in session." Pardee, J., in Central Trust Co. v. Sheffield & Birmingham Coal, I. & R. Co., 60 Fed. Rep. 9, 15.

Under § 574, R. S. U. S., it has been held that "the circuit and district court are * * * actually in session * * * when the court is opened by the judge for business, or business is actually transacted in court." Baker, J., in Butler v. United States, 87 Fed. Rep. 655, 659.

SEC. 10. District courts hall hold monthly adjournments of their regular terms, for the trial of criminal causes, when their business requires it to be done, in order to prevent undue expenses and delays in such cases.

Re-enactment of § 578, R. S. U. S., Act August 23, 1842, c. 188, § 3, 5 Stat. at L. 517, 1 Comp. Stat., p. 476, 4 Fed. Stat. Ann., p. 672.

SEC. 11. A special term of any district court may be held at the same place where any regular term is held, or at such other place in the district as the nature of the business may require, and at such time and upon such notice as may be ordered by the district judge. Any business may be transacted at such special term which might be transacted at a regular term.

Re-enactment of § 581, R. S. U. S., 1 Comp. Stat., p. 477, 4 Fed. Stat. Ann., p. 672.

SEC. 12. If the judge of any district court is unable to attend at the commencement of any regular, adjourned, or special term, or any time during such term, the court may be adjourned by the marshal, or clerk, by virtue of a written order directed to him by the judge, to the next regular term, or to any earlier day, as the order may direct.

Re-enactment of § 583, R S. U. S., 1 Comp. Stat., p. 478, 4 Fed. Stat. Ann., p. 673.

The word "term" as used in this section has been thus defined by Judge Carpenter. "In literal meaning, and the easliest use of the word, it signifies a definite period of time, during which the court remains in continuous session. There is, however, nothing here implied which will exclude a session consisting of a single day. The term is that session of the court which begins at a time fixed by or under authority of law, and, having proceeded continuously, ends when the business then un-

der consideration is concluded." Pitnam v. United States, 45 Fed. Rep. 159, 160. Affirmed in United States v. Pitnam, 147 U. S. 669, 37 L. Ed. 324.

SEC. 13. When any district judge is prevented, by any disability, from holding any stated or appointed term of his district court, and that fact is made to appear by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, any such circuit judge or justice may, if in his judgment the public interests so require, designate and appoint the judge of any other district in the same circuit to hold said court, and to discharge all the judicial duties of the judge so disabled. during such disability. Whenever it shall be certified by any such circuit judge or, in his absence, by the circuit justice of the circuit in which the district lies, that for any sufficient reason it is impracticable to designate and appoint a judge of another district within the circuit to perform the duties of such disabled judge, the chief justice may, if in his judgment the public interests so require, designate and appoint the judge of any district in another circuit to hold said court and to discharge all the judicial duties of the judge so disabled, during such disability. Such appointment shall be filed in the clerk's office, and entered on the minutes of the said district court, and a certified copy thereof, under the seal of the court, shall be transmitted by the clerk to the judge so designated and appointed.

See § 591, R. S. U. S., 1 Comp. Stat., p. 480, 4 Fed. Stat. Ann., p. 675.

The failure to file the appointment in the clerk's office does not affect the authority of the appointed judge. National Home for Soldiers v. Butler, 33 Fed. Rep. 374.

It was held that under this section the power of designation to hold court is case of disability did not extend to the case of a vacancy (9 Ops. Atty. Gen. 131) and that opinion was embodied in § 603, R. S. U. S., but where a judge was appointed to hold court in case of disabili-

ty, and, the disabled judge dying after the appointment, continued to hold court, it was held that the appointee was judge *de facto*, if not *de jure*, and his acts as such were held not to be open to collateral attack. Ball v. United States, 140 U. S. 118, 35 L. Ed. 377; Norton v. Shelby County, 118 U. S. 425, 30 L. Ed. 178; Manning v. Weeks, 139 U. S. 504, 35 L. Ed. 624.

SEC. 14. When from the accumulation or urgency of business in any district court, the public interests require the designation and appointment hereinafter provided, and the fact is made to appear, by the certificate of the clerk, under the seal of the court, to any circuit judge of the circuit in which the district lies, or, in the absence of all the circuit judges, to the circuit justice of the circuit in which the district lies, such circuit judge or justice may designate and appoint the judge of any other district in the same circuit to have and exercise within the district first named the same powers that are vested in the judge thereof. Each of the said district judges may, in case of such appointment, hold separately at the same time a district court in such district, and discharge all the judicial duties of the district judge therein.

See § 592, R. S. U. S., 1 Comp. Stat., p. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 15. If all the circuit judges and the circuit justice are absent from the circuit, or are unable to execute the provisions of either of the two preceding sections, or if the district judge so designated is disabled or neglects to hold the court and transact the business for which he is designated, the clerk of the district court shall certify the fact to the Chief Justice of the United States, who may thereupon designate and appoint in the manner aforesaid the judge of any district within such circuit or within any other circuit; and said appointment shall be transmitted to the clerk and be acted upon by him as directed in the preceding section.

See § 593, R. S. U. S., 1 Comp. Stat. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 16. Any such circuit judge, or circuit justice, or the Chief Justice, as the case may be, may, from time to time, if in his judgment the public interests so require, make a new designation and appointment of any other district judge, in the manner, for the duties, and with the powers mentioned in the three preceding sections, and revoke any previous designation and appointment.

See § 594, R. S. U. S., 1 Comp. Stat., p. 481, 4 Fed. Stat. Ann., p. 676.

SEC. 17. It shall be the duty of the senior circuit judge then present in the circuit, whenever in his judgment the public interest so requires, to designate and appoint, in the manner and with the powers provided in section fourteen, the district judge of any judicial district within his circuit to hold a district court in the place or in aid of any other district judge within the same circuit.

See § 596, R. S. U. S., 1 Comp. Stat., p. 482, 4 Stat. Ann. 677.

SEC. 18. Whenever, in the judgment of the senior circuit judge of the circuit in which the district lies, or of the circuit justice assigned to such circuit, or of the Chief Justice, the public interest shall require, the said judge, or associate justice, or Chief Justice, shall designate and appoint any circuit judge of the circuit to hold said district court.

New section.

SEC. 19. It shall be the duty of the district or circuit judge who is designated and appointed under either of the six preceding sections, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district.

See § 595, R. S. U. S., 1 Comp. Stat., p. 482, 4 Fed. Stat. Ann., p. 676.

SEC. 20. Whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel or is a material witness for either party, or is so related to or connected with either party as to render it improper, in his opinion, for him to sit on the trial, it shall be his duty, on application by either party, to cause the fact to be entered on the records of the court; and also an order that an authenticated copy thereof shall be forthwith certified to the senior circuit judge for said circuit then present in the circuit; and thereupon such proceedings shall be had as are provided in section fourteen.

See § 601, R S. U. S., 1 Comp. Stat., p. 484, 4 Fed. Stat. Ann., p. 678. The fact that the judge was plaintiff in a pending suit in a State Court against a defendant corporation, and that one of the parties was his son-in-law did not disqualify him from making administrative orders in the cause; his decision to so act being within his discretion, and not the subject of error. Coltrane v. Templeton, 106 Fed. Rep. 370, 377, 45 C. C. A. 328. If the facts are known to the party rescuing, his objection will be taken as being waived if he fails to make it before issues are joined and the trial commenced. Ibid. The fact that the dirstrict judge is a tax payer of a county does not give him such relation to the county as to disqualify him from sitting in a suit involving the validity of the honds of the county. Wade v. Travis County, 72 Fed. Rep. 985. Disqualification by relationship defined in a State statute renders it improper for a district judge to act, even by consent of the parties. In re Eatonton Elec. Co., 120 Fed. Rep. 1010.

SEC. 21. Whenever a party to any action or proceeding, civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge, shall be designated in the manner prescribed in the section last preceding, or chosen in the manner prescribed in section twenty-three, to hear such matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed not less than ten days before the beginning of the term of the court, or good cause shall be shown for the failure to file it within such time. No party shall be entitled in any case to file more than one such affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith. The same proceedings shall be had when the presiding judge shall file with the clerk of the court a certificate that he deems himself unable for any reason to preside with absolute impartiality in the pending suit or action.

New section.

SEC. 22. When the office of judge of any district court becomes vacant, all process, pleadings, and proceedings pending before such court shall, if necessary, be continued by the clerk thereof until such times as a judge shall be appointed, or designated to hold such court; and the judge so designated, while holding such court, shall possess the powers conferred by, and be subject to the provisions contained in section nineteen.

Similar to § 602, R. S. U. S., 1 Comp. Stat., p. 484; whose operation was automatic, providing that

"§ 602. When the office of judge of any district court is vacant, all process, pleadings, and proceedings pending before such court shall be continued of course until the next stated term after the appointment and qualification of his successor; except when such first-mentioned term is held as provided in the next section." 4 Fed. Stat. Ann., p. 679.

This statute was held to apply to both civil and criminal causes; to be a remedial statute and entitled to liberal construction "The general purpose of § 602 is plain. It is that the administration of justice by a district court shall not, through a vacancy in the office of judge, be defeated or unduly impeded; that causes, civil and criminal, shall, notwithstanding the vacancy, be preserved in their full force and vitality, to be effectively proceeded in where there is a judge authorized to discharge the functions of the court; that all acts and steps, calling for or

serving as the basis of judicial action, which otherwise must or should earlier be done or taken in court in the process of a case, shall or may be done or taken therein after the termination of the vacancy." Bradford, J., in United States v. Murphy, 82 Fed. Rep. 893, 899. "'Process pending before' must be held to include process * * * of which the object has not been fully accomplished,—process which is still *in fieri*,—process, which if continued in force, will result either in securing the appearance of the accused to meet the demands of justice or in fastening upon the recognizors liability for his default. Imprisonment under a commitment by a commissioner to answer a criminal charge clearly is process within the meaning of the section. It is only a means of compelling appearance in court." Ibid.

SEC. 23. In districts having more than one district judge, the judges may agree upon the division of business and assignment of cases for trial in said district; but in case they do not so agree, the senior circuit judge of the circuit in which the district lies, shall make all necessary orders for the division of business and the assignment of cases for trial in said district.

SECTION 24. The district court shall have original jurisdiction as follows: * * *

Seventh. Of all suits at law or in equity arising under the patent * * * laws.

SEC. 116. There shall be nine judicial circuits of the United States, constituted as follows:

First. The first circuit shall include the districts of Rhode Island, Massachusetts, New Hampshire, and Maine.

Second. The second circuit shall include the districts of Vermont, Connecticut, and New York.

Third. The third circuit shall include the districts of of Pennsylvania, New Jersey, and Delaware.

Fourth. The fourth circuit shall include the districts of Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Fifth. The fifth circuit shall include the districts of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

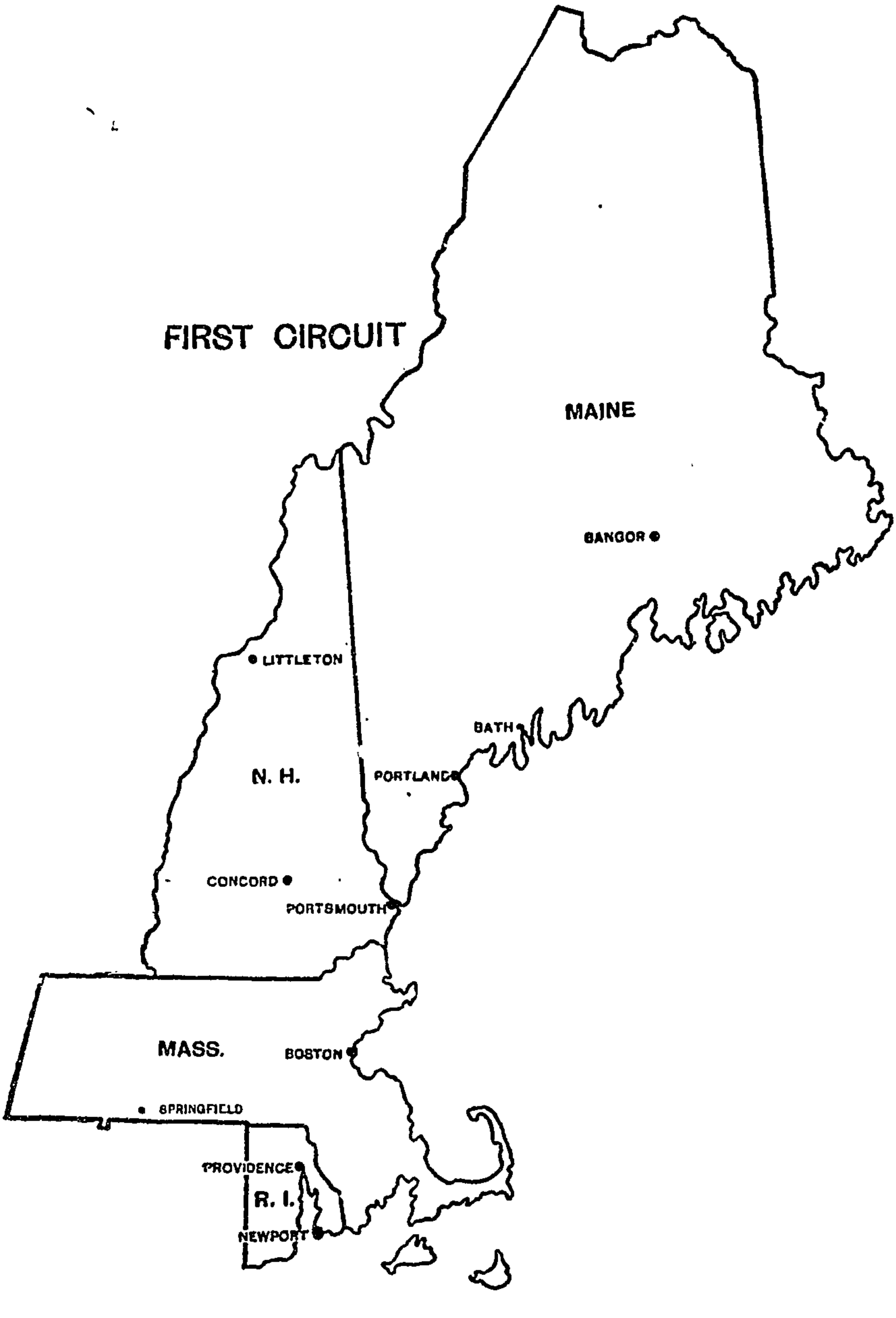
Sixth. The sixth circuit shall include the districts of Ohio, Michigan, Kentucky, and Tennessee.

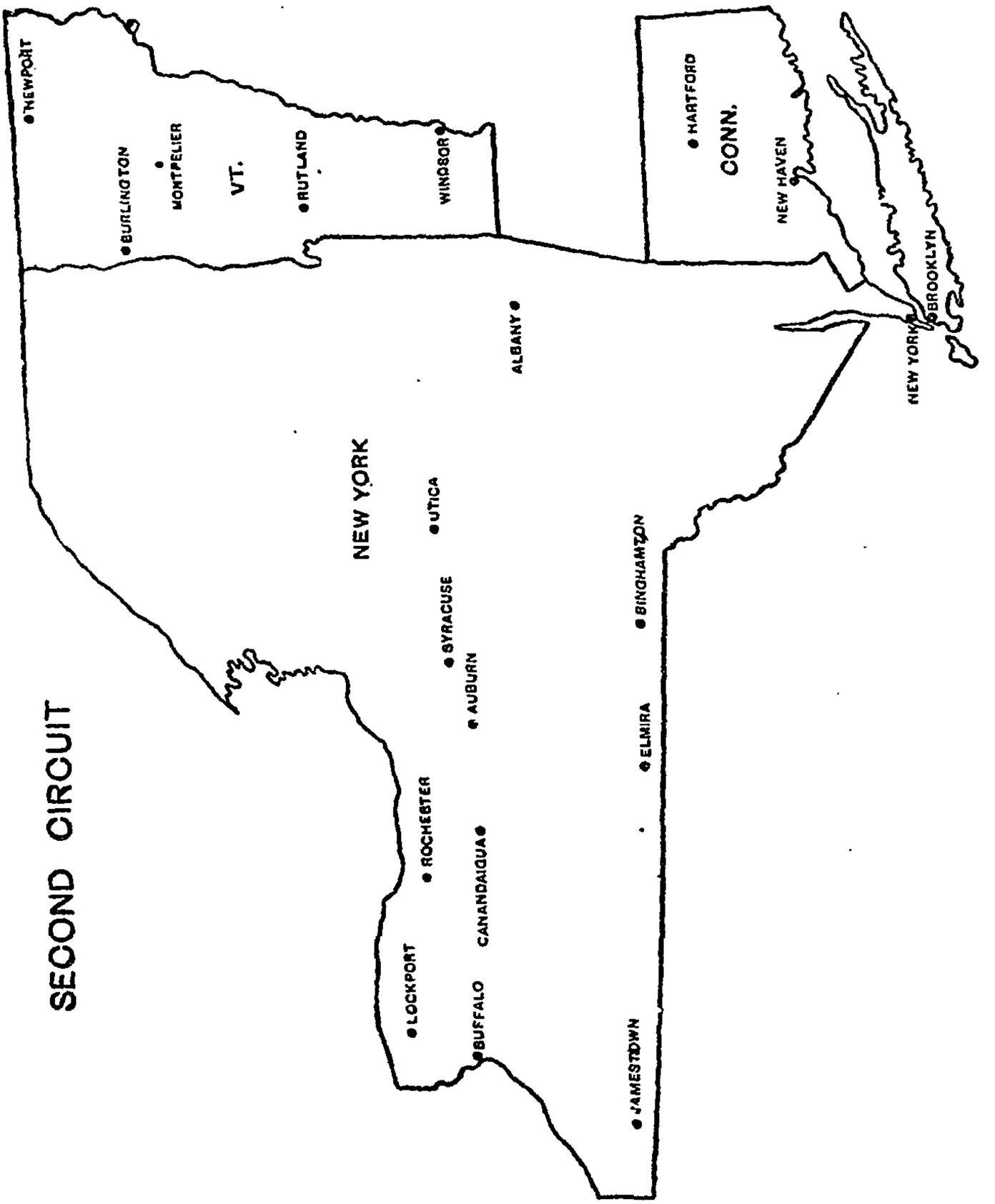
Seventh. The seventh circuit shall include the districts of Indiana, Illinois, and Wisconsin.

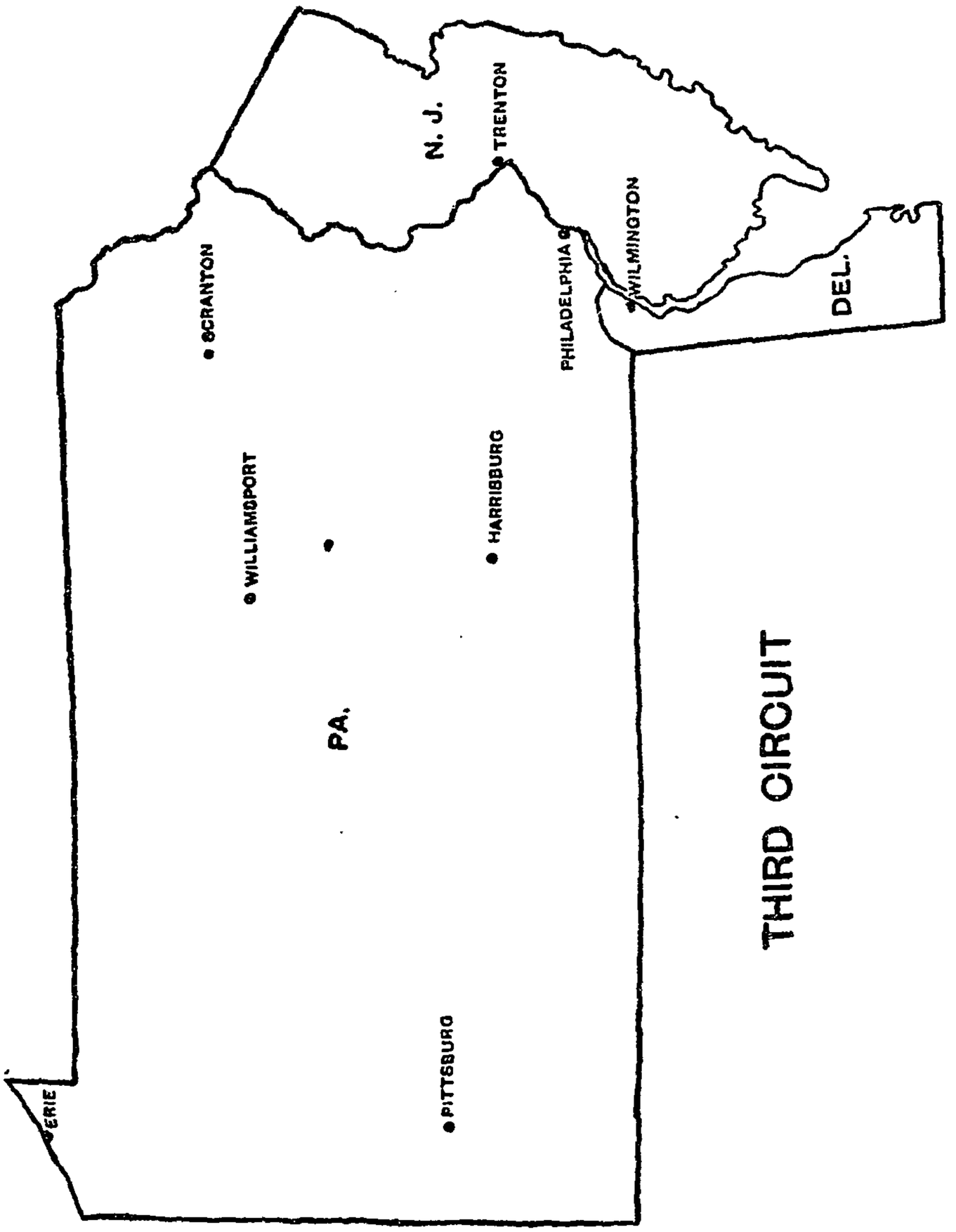
Eighth. The eighth circuit shall include the districts of Nebraska, Minnesota, Iowa, Missouri, Kansas, Arkansas, Colorado, Wyoming, North Dakota, South Dakota, Utah, and Oklahoma.

Ninth. The ninth circuit shall include the districts of California, Oregon, Nevada, Washington, Idaho, Montana, and Hawaii.

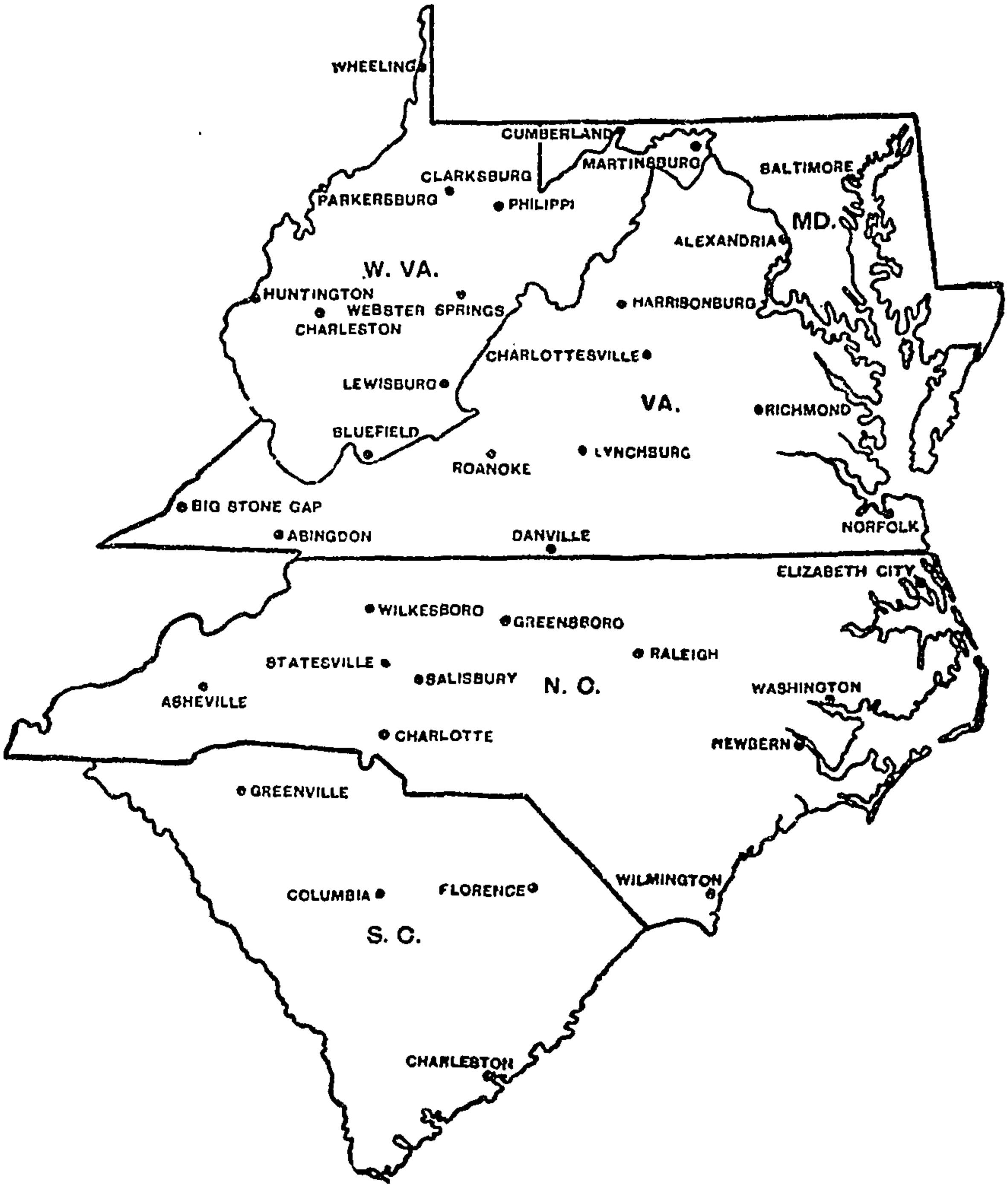
Superseding § 604, R. S. U. S., 1 Comp. Stat., p. 485, 4 Fed. Stat. Ann. 59, Pierce Code, § 7115. For earlier statutes defining the circuits, see Introduction, Title "The Earlier Judiciary Acts," in Hopkin's Judicial Code.

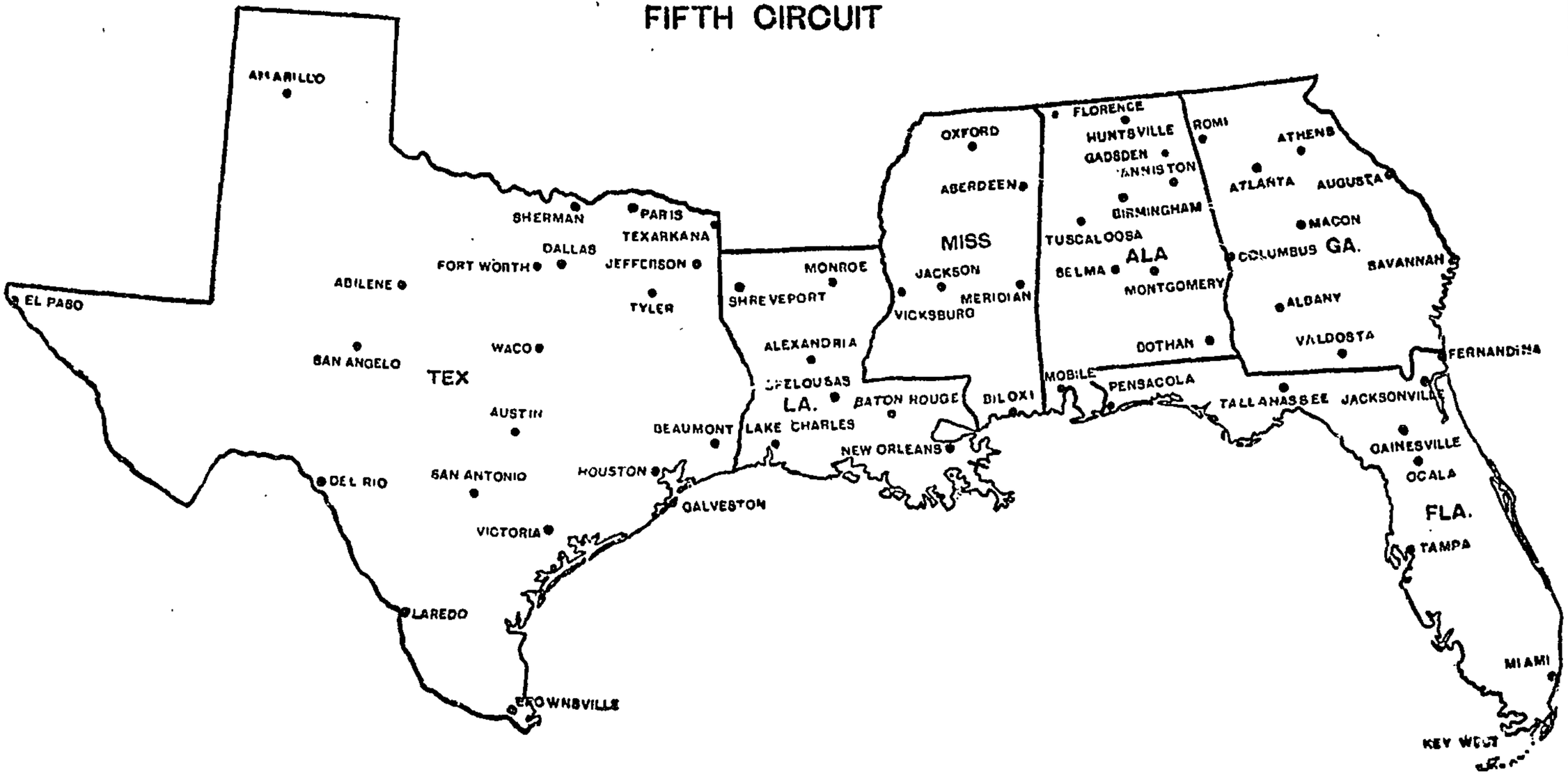

FIRST CIRCUIT
MAINE
BANGOR
LITTLETON
BATH
N. H.
PORTLAND
CONCORD
PORTSMOUTH
MASS.
BOSTON
SPRINGFIELD
PROVIDENCE
R. I.
NEWPORT


SECOND CIRCUIT
NEWPORT
BURLINGTON
MONTPELIER
VT.
RUTLAND
WINDSOR
HARTFORD
CONN.
NEW HAVEN
BROOKLYN
NEW YORK
ALBANY
NEW YORK
UTICA
SYRACUSE
AUBURN
BINGHAMTON
ELMIRA
ROCHESTER
CANANDAIGUA
LOCKPORT
BUFFALO
JAMESTOWN

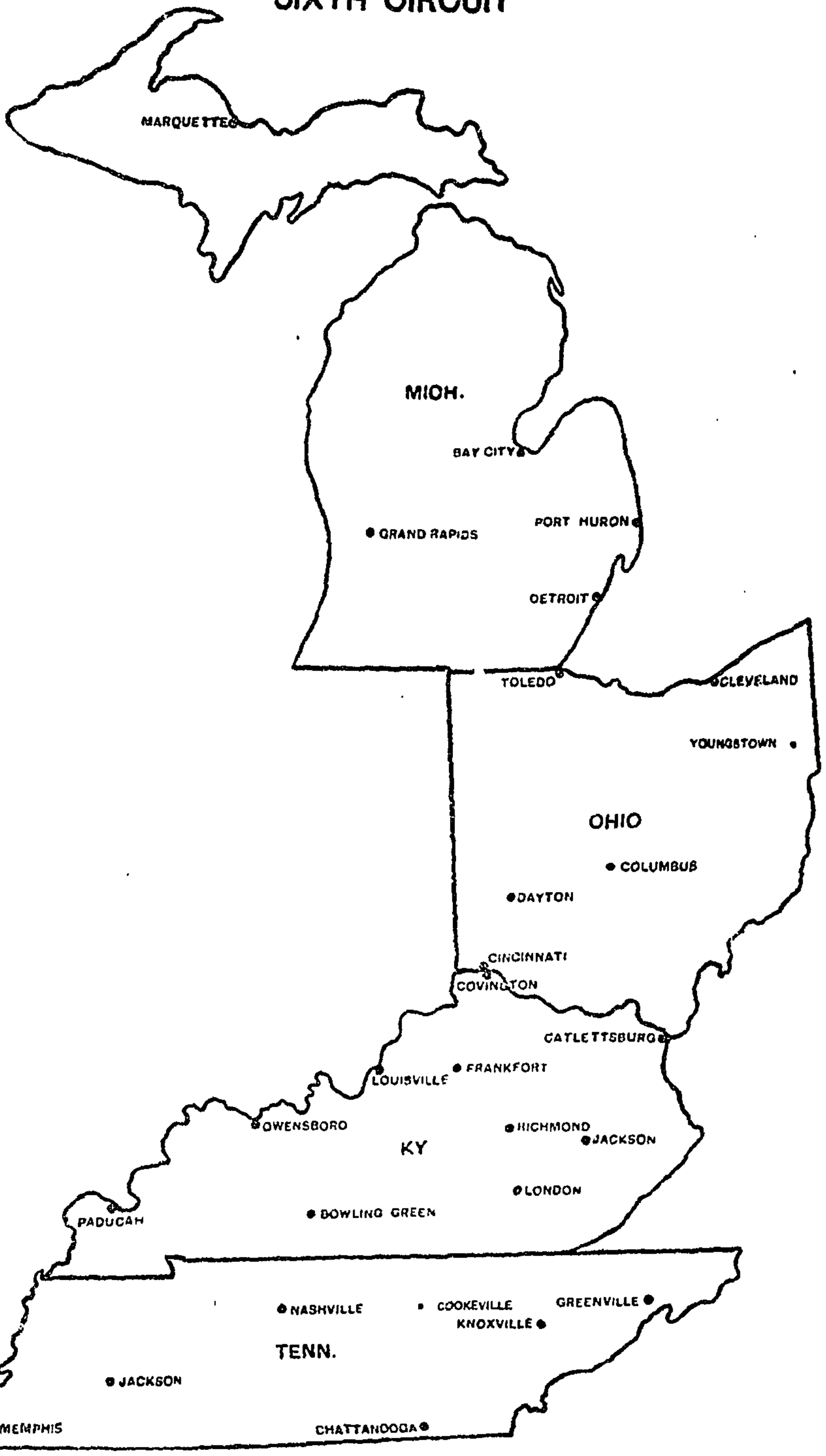

N. J.
TRENTON
SCRANTON
PHILADELPHIA
WILMINGTON
DEL.
WILLIAMSPORT
HARRISBURG
PA.
PITTSBURG
ERIE
THIRD CIRCUIT

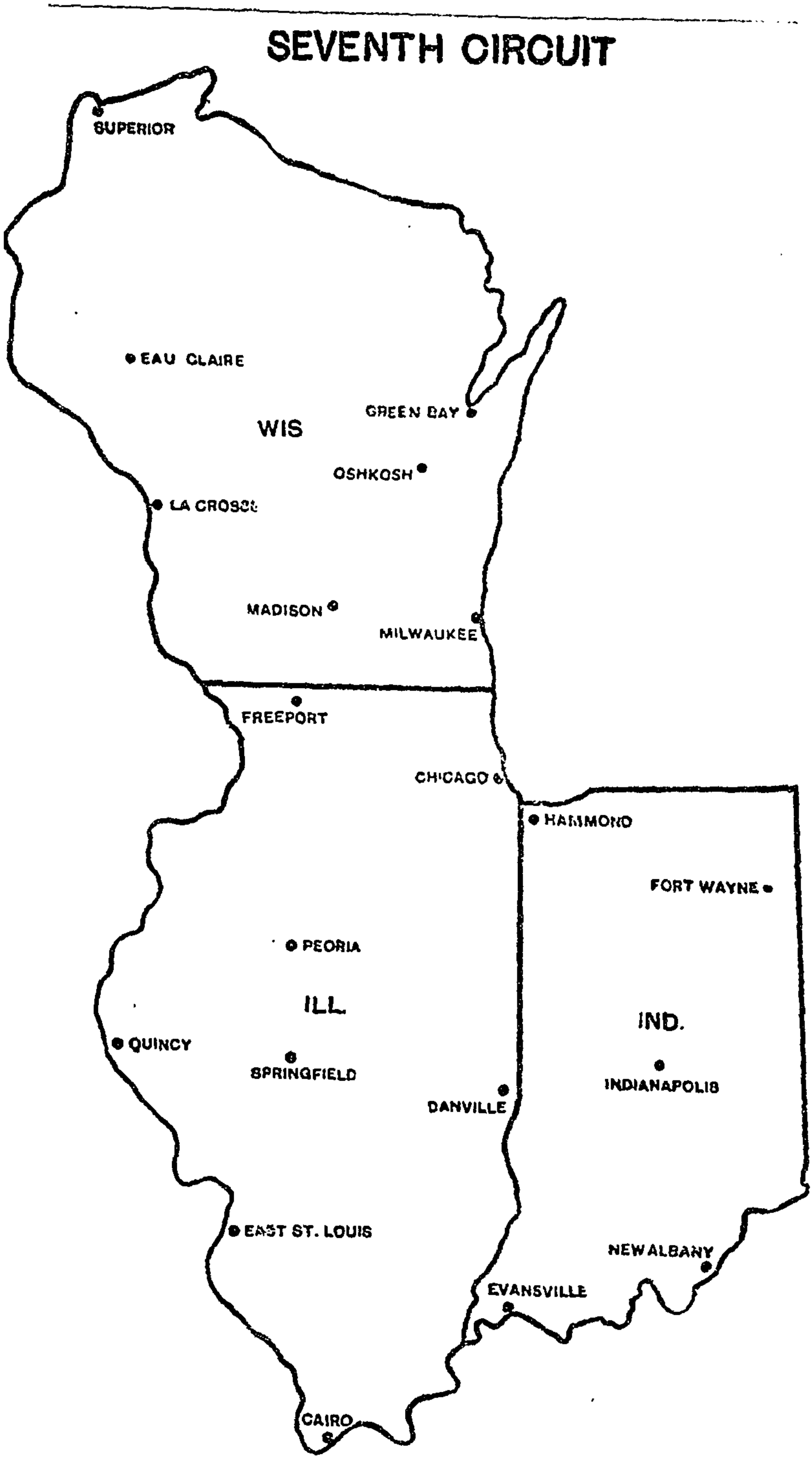
FOURTH CIRCUIT



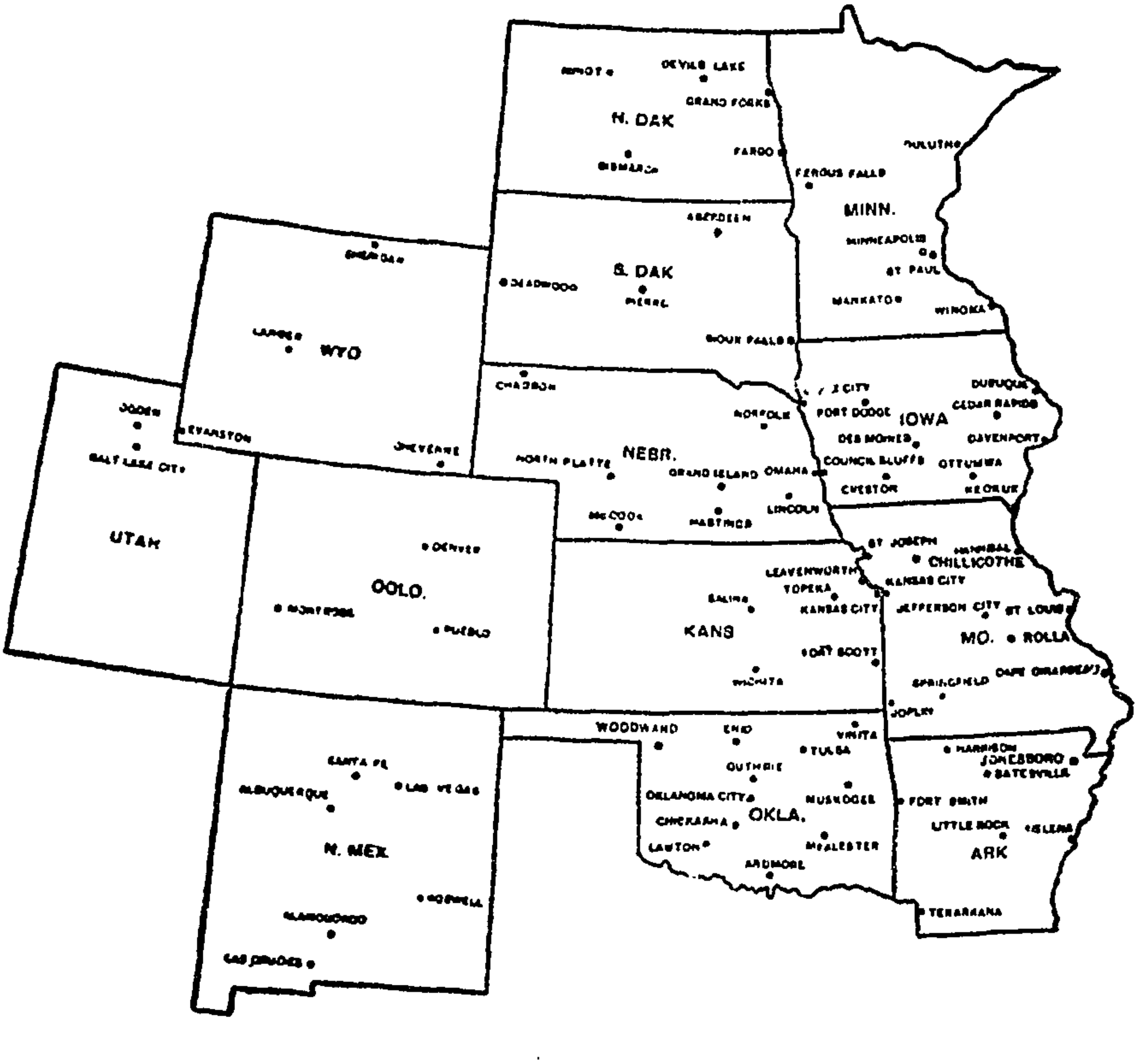

FIFTH CIRCUIT
AMARILLO
EL PASO
ABILENE
SAN ANGELO
SHERMAN
PARIS
TEXARKANA
DALLAS
FORT WORTH
JEFFERSON
TYLER
WACO
TEX
AUSTIN
DEL RIO
SAN ANTONIO
VICTORIA
LAREDO
BROWNSVILLE
HOUSTON
GALVESTON
BEAUMONT
MONROE
SHREVEPORT
ALEXANDRIA
OPELOUSAS
LA.
LAKE CHARLES
BATON ROUGE
NEW ORLEANS
OXFORD
ABERDEEN
MISS
JACKSON
VICKSBURG
MERIDIAN
BILOXI
FLORENCE
HUNTSVILLE
GADSDEN
ANNISTON
BIRMINGHAM
TUSCALOOSA
SELMA
ALA
MONTGOMERY
DOTHAN
MOBILE
PENSACOLA
TALLAHASSEE
ROME
ATHENS
ATLANTA
AUGUSTA
MACON
COLUMBUS
GA.
SAVANNAH
ALBANY
VALDOSTA
FERNANDINA
JACKSONVILLE
GAINESVILLE
OCALA
FLA.
TAMPA
MIAMI
KEY WEST

SIXTH CIRCUIT




SEVENTH CIRCUIT
SUPERIOR
EAU CLAIRE
WIS
GREEN BAY
OSHKOSH
LA CROSSE
MADISON
MILWAUKEE
FREEPORT
CHICAGO
HAMMOND
FORT WAYNE
PEORIA
ILL.
IND.
QUINCY
SPRINGFIELD
DANVILLE
INDIANAPOLIS
EAST ST. LOUIS
NEW ALBANY
EVANSVILLE
CAIRO

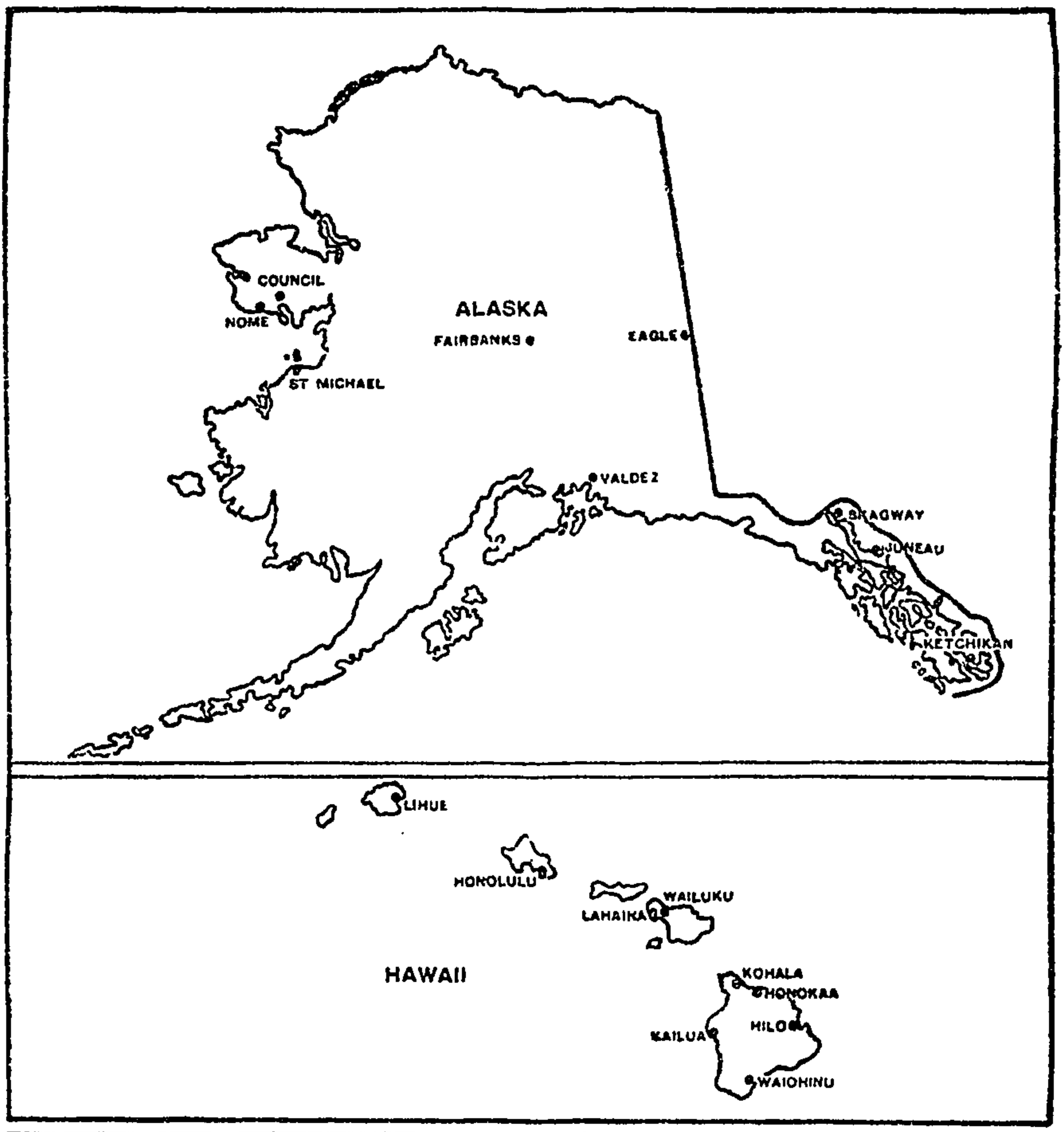
EIGHTH CIRCUIT




NINTH CIRCUIT
(PART OF)
BELLINGHAM
SEATTLE
TACOMA
WASH.
SPOKANE
NORTH YAKIMA
WALLA WALLA
PORTLAND
PENDLETON
OREG.
MEDFORD
EUREKA
SACRAMENTO
SAN FRANCISCO
CAL.
FRESNO
LOS ANGELES
SAN DIEGO
CARSON CITY
NEV.
MOSCOW
IDAHO
BOISE
POCATELLO
GREAT FALLS
HELENA
BUTTE
MONT.
PRESCOTT
ARIZ
PHOENIX
GLOBE
TUCSON
TOMBSTONE

NINTH CIRCUIT

(PART OF)



SECTION 117. There shall be in each circuit a circuit court of appeals, which shall consist of three judges, of whom two shall constitute a quorum, and which shall be a court of record, with appellate jurisdiction, as hereinafter limited and established.

Superseding Act of March 3, 1891, § 2, 26 Stat. at L. 826, 4 Fed. Stat. Ann. 395, 1 Comp. Stat., p. 547, Pierce, Code § 7247.

SECTION 118. There shall be in the second, seventh, and eighth circuits, respectively, four circuit judges, in the fourth circuit, two circuit judges, and in each of the other circuits, three circuit judges, to be appointed by the President, by and with the advice and consent of the Senate. They shall be entitled to receive a salary at the rate of seven thousand dollars a year, each payable monthly. Each circuit judge shall reside within his circuit.

See the various Acts providing for additional judges in the circuits, in addition to the judge for each circuit provided by § 607, R. S. U. S., 1 Comp. Stat. 487.

As; Act of March 3, 1887, c. 347, 24 Stat. at L. 492; Act March 3, 1891, c. 517, § 1, 26 Stat. at L. 826.

SECTION 119. The Chief Justice and associate justices of the Supreme Court shall be allotted among the circuits by an order of the court, and a new allotment shall be made whenever it becomes necessary or convenient by reason of the alteration of any circuit, or of the new appointment of a Chief Justice or associate justice, or otherwise. If a new allotment becomes necessary at any other time than during a term, it shall be made by the Chief Justice, and shall be binding until the next term and until a new allotment by the court. Whenever, by reason of death or resignation, no justice is allotted to a circuit, the Chief Justice may, until a justice is regularly allotted thereto, temporarily assign a justice of another circuit to such circuit.

See § 606, R. S. U. S., 1 Comp. Stat. p. 487, 4 Fed. Stat. Ann., p. 238, Pierce, Code § 7122.

SECTION 120. The Chief Justice and the associate justices of the Supreme Court assigned to each circuit, and the several district judges within each circuit, shall be competent to sit as judges of the circuit court of appeals within their respective circuits. In case the Chief Justice or an associate justice of the Supreme Court shall attend at any session of the circuit court of appeals, he shall preside. In the absence of such Chief Justice, or associate justice, the circuit judges in attendance upon the court shall preside in the order of the seniority of their respective commissions. In case the full court at any time shall not be made up by the attendance of the Chief Justice or the associate justice, and the circuit judges, one or more district judges within the circuit shall sit in the court according to such order or provision among the district judges as either by general or particular assignment shall be designated by the court: *Provided*, That no judge before whom a cause or question may have been tried or heard in a district court, or existing circuit court, shall sit on the trial or hearing of such cause or question in the circuit court of appeals.

Based upon § 3, Act Feb. 19, 1897, 29 Stat. at L 536, 4 Fed. Stat. Ann. 434, 1 Comp. Stat. 547, Pierce, Code § 7248.

SECTION 121. The words "circuit justice" and "justice of a circuit," when used in this title, shall be understood to designate the justice of the Supreme Court who is allotted to any circuit; but the word "judge," when applied generally to any circuit, shall be understood to include such justice.

Re-enacting § 605, R. S. U. S., 1 Comp. Stat. p. 486, 4 Fed. Stat. Ann. p. 59, Pierce, Code § 7121.

SECTION 122. Each of said circuit courts of appeals shall prescribe the form and style of its seal, and the

form of writs and other process and procedure as may be conformable to the exercise of its jurisdiction; and shall have power to establish all rules and regulations for the conduct of the business of the court within its jurisdiction as conferred by law.

See Act of March 3, 1891, c. 517, § 2, 26 Stat. at L. 826.

SECTION 123. The United States marshals in and for the several districts of said courts shall be the marshals of said circuit courts of appeals, and shall exercise the same powers and perform the same duties, under the regulations of the court, as are exercised and performed by the marshal of the Supreme Court of the United States, so far as the same may be applicable.

See Act of July 16, 1892, c. 196, § 1, 27 Stat. at L. p. 222, 1 Comp. Stat. p. 555.

SECTION 124. Each court shall appoint a clerk, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court, so far as the same may be applicable.

See Act of March 3, 1891, c. 517, § 2, 26 Stat. at L. 826, 1 Comp. Stat. p. 547.

SECTION 125. The clerk of the circuit court of appeals for each circuit may, with the approval of the court, appoint such number of deputy clerks as the court may deem necessary. Such deputies may be removed at the pleasure of the clerk appointing them, with the approval of the court. In case of the death of the clerk his deputy or deputies shall, unless removed by the court, continue in office and perform the duties of the clerk in his name until a clerk is appointed and has qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his

death, the clerk and his estate and the sureties on his official bond shall be liable, and his executor or administrator shall have such remedy for such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Re-enacting § 558, R. S. U. S., 1 Comp. Stat. p. 453, 4 Fed. Stat. Ann. p. 74, Pierce, Code § 6989.

SECTION 126. A term shall be held annually by the circuit courts of appeals in the several judicial circuits at the following places, and at such times as may be fixed by said courts, respectively: In the first circuit, in Boston; in the second circuit, in New York; in the third circuit, in Philadelphia; in the fourth circuit, in Richmond; in the fifth circuit, in New Orleans, Atlanta, Fort Worth, and Montgomery; in the sixth circuit in Cincinnati; in the seventh circuit, in Chicago; in the eighth circuit, in Saint Louis, Denver or Cheyenne, and Saint Paul; in the ninth circuit, in San Francisco, and each year in two other places in said circuit to be designated by the judges of said court; and in each of the above circuits, terms may be held at such other times and in such other places as said courts, respectively, may from time to time designate: *Provided*, That terms shall be held in Atlanta on the first Monday in October, in Fort Worth on the first Monday in November, in Montgomery on the third Monday in October, in Denver or in Cheyenne on the first Monday in September, and in St. Paul on the first Monday in May. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the State of Georgia, in the State of Texas, and in the State of Alabama, to the circuit court of appeals for the fifth judicial circuit shall be heard and disposed of respectively, by said court at the terms held in Atlanta, in Fort Worth, and in Montgomery, except that appeals or writs

of error in cases of injunctions and in all other cases which, under the statutes and rules, or in the opinion of the court, are entitled to be brought to a speedy hearing may be heard and disposed of wherever said court may be sitting. All appeals, writs of errors, and other appellate proceedings which may hereafter be taken or prosecuted from the district court of the United States at Beaumont, Texas, to the circuit court of appeals for the fifth circuit, shall be heard and disposed of by the said circuit court of appeals at the terms of court held at New Orleans: *Provided*, That nothing herein shall prevent the court from hearing appeals or writs of error wherever the said courts shall sit, in cases of injunctions and in all other cases which, under the statutes and the rules, or in the opinion of the court, are entitled to be brought to a speedy hearing. All appeals, writs of error, and other appellate proceedings which may be taken or prosecuted from the district courts of the United States in the States of Colorado, Utah, and Wyoming, and the supreme court of the Territory of New Mexico to the circuit court of appeals for the eighth judicial circuit, shall be heard and disposed of by said court at the terms held either in Denver or in Cheyenne, except that any case arising in any of said States or Territory may, by consent of all the parties, be heard and disposed of at a term of said court other than the one held in Denver or Cheyenne.

(From the Register of the Department of Justice.)

TIMES AND PLACES OF HOLDING CIRCUIT COURTS OF APPEALS. First circuit: Annual term, first Tuesday in October; stated sessions, first Tuesday in every month; sessions for hearing cases, first Tuesday in January and October, and second Tuesday in April, at Boston, Mass.

Second circuit: Second Monday in October, at New York City.

Third circuit: First Tuesday in March and first Tuesday in October, at Philadelphia.

Fourth circuit: First Tuesday in February, first Tuesday in May, and first Tuesday in November, at Richmond, Va.

Fifth circuit: First Monday in October, at Atlanta, Ga.; third Monday in October, at Montgomery, Ala.; first Monday in November, at Fort Worth, Tex.; and third Monday in November, at New Orleans, La.

Sixth circuit: Tuesday after the first Monday of October, and adjourned sessions on the Tuesday after first Monday of each month in the year, except August and September, at Cincinnati, Ohio. At the July session no causes will be heard, except upon special order of the court.

Seventh circuit: First Tuesday in October. Term is divided into three sessions, beginning on first Tuesdays in October and January, and second Tuesday in April, at Chicago, Ill.

Eighth circuit: First Monday in May, at St. Paul, Minn.; first Monday in September, at Denver, Colo. (or by the provisions of above § 126, at Cheyenne, Wyo.); first Monday in December, at St. Louis, Mo.

Ninth circuit: At San Francisco, Cal., annual term, commencing first Monday in October; adjourned sessions on first Monday in each month; calendar sessions for hearing of causes at San Francisco, Cal., commence on first Monday in October, February, and May, respectively. At Seattle, Wash., annual term, second Monday in September, for hearing of causes. At Portland, Oreg., annual term, third Monday in September, for hearing of causes.

SECTION 127. The marshals for the several districts in which said circuit courts of appeals may be held shall, under the direction of the Attorney General, and with his approval, provide such rooms in the public buildings of the United States as may be necessary for the business of said courts, and pay all incidental expenses of said court, including criers, bailiffs, and messengers: *Provided*, That in case proper rooms cannot be provided in such buildings, then the marshals, with the approval of the Attorney General, may, from time to time, lease such rooms as may be necessary for such courts.

Superseding Act of March 3, 1891, c. 517, § 9, 26 Stat. at L. 829, 1 Comp. Stat. 829.

SECTION 128. The circuit courts of appeals shall exercise appellate jurisdiction to review by appeal or writ of error final decisions in the district courts, including the United States district court for Hawaii, in all cases other than those in which appeals and writs of error may

be taken direct to the Supreme Court, as provided in section two hundred and thirty-eight, unless otherwise provided by law; and except as provided in sections two hundred and thirty-nine and two hundred and forty, the judgments and decrees of the circuit courts of appeals shall be final in all cases in which the jurisdiction is dependent entirely upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different States; also in all cases arising under the patent laws, under the copyright laws, under the revenue laws, and under the criminal laws, and in admiralty cases.

See Act of March 3, 1891, c. 517, Z 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 549, 4 Fed. Stat. Ann. 434, Pierce, Code § 7251.

SECTION 129. Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve, an injunction, or appointing a receiver to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the Supreme Court: *Provided,* That the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof, during the pendency of such appeal: *Provided, however,* That the court below may, in its discretion, require as a condition of the appeal an additional bond.

See Act of April 14, 1906, § 7, 34 Stat. at L. 116, 1 Comp. Stat. p. 550, Pierce, Code § 7252. The above section of the Judicial Code is a substantial re-enactment of the Act of March 3, 1891, c. 517, § 7, 26 Stat. at L. 828 as amended by the Act of February 18, 1895, c. 96, 28 Stat. at L. 666.

SEC. 132. Any judge of a circuit court of appeals, in respect of cases brought or to be brought before that court, shall have the same powers and duties as to allowance of appeals and writs of error, and the conditions of such allowances, as by law belong to the justices or judges in respect of other courts of the United States, resepctively.

Superseding Act of March 3, 1891, § 12, c. 517, 26 Stat. at L. 829, 1 Comp. Stat., p. 553, Pierce, Code § 7257.

SEC. 133. The circuit court of appeals, in cases in which their judgments and decrees are made final by this title, shall have appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the Supreme courts of Arizona and New Mexico, as by this title they may have to review the judgments, orders, an decrees of the district courts; and for that purpose said Territories shall, by orders of the Supreme Court of the United States, to be made from time to time, be assigned to particular circuits.

See Act of March 3, 1891, c. 517, § 15, 26 Stat. at L. 830, 1 Comp. Stat., p. 554.

SEC. 134. In all cases other than those in which a writ of error or appeal will lie direct to the Supreme Court of the United States as provided in section two hundred and forty-seven, in which the amount involved or the value of the subject-matter in controversy shall exceed five hundred dollars, and in all criminal cases, writs of error and appeals shall lie from the district court for Alaska or from any division thereof, to the circuit court of appeals for the Ninth Circuit, and the judgments, or-

ders, and decrees of said court shall be final in all such cases. But whenever such circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any such case, the court may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the question or proposition certified to it, and its instructions shall be binding upon the circuit court of appeals.

See Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828.

SEC. 135. All appeals, and writs of error, and other cases, coming from the district court for the district of Alaska to the Circuit Court of Appeals for the Ninth Circuit, shall be entered upon the docket and heard at San Francisco, California, or at Portland, Oregon, or at Seattle, Washington, as the trial court before whom the case was tried below shall fix and determine: *Provided*, That at any time before the hearing of any appeal, writ of error, or other case, the parties thereto, through their respective attorneys, may stipulate at which of the above-named places the same shall be heard, in which case shall be remitted to and entered upon the docket at the place so stipulated and shall be heard there.

SEC. 136. The Court of Claims, established by the Act of February twenty-fourth, eighteen hundred and fifty-five, shall be continued. It shall consist of a chief justice an four judges, who shall be appointed by the President, by and with the advice and consent of the Senate, and hold their offices during good behavior. Each of them shall take an oath to support the Constitution of the United States, and to discharge faithfully the duties of his office. The chief justice shall be entitled to receive an annual salary of six thousand five hundred dollars,

and each of the other judges an annual salary of six thousand dollars, payable monthly, from the Treasury.

See § 1049, R. S. U. S., 1 Comp. Stat., p. 729, 2 Fed. Stat. Ann., p. 53, Pierce, Code § 7772.

SEC. 137. The Court of Claims shall have a seal, with such device as it may order.

Re-enacting § 1050, R. S. U. S., 1 Comp. Stat., p. 729, 2 Fed. Stat. Ann. 53, Pierce, Code § 7773.

SEC. 138. The Court of Claims shall hold one annual session at the City of Washington, beginning on the first Monday in December and continuing as long as may be necessary for the prompt disposition of the business of the court. Any three of the judges of said court shall constitute a quorum, and may hold a court for the transaction of business: *Provided*, That the concurrence of three judges shall be necessary to the decision of any case.

See § 1052, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7776. Also Act of June 23, 1874, c. 468, 18 Stat. at L. 252, 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann. 54, Pierce, Code § 7777.

SEC. 139. The said court shall appoint a chief clerk, an assistant clerk, if deemed necessary, a baliff, and a chief messenger. The clerks shall take an oath for the faithful discharge of their duties, and shall be under the direction of the court in the performance thereof; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session. The bailiff shall hold his office for a term of four years, unless sooner removed by the court for cause.

Re-enacting § 1053, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7778.

SEC. 140. The salary of the chief clerk shall be three thousand five hundred dollars a year; of the assistant clerk two thousand five hundred dollars a year; of the bailiff, one thousand five hundred dollars a year, and of the chief messenger one thousand dollars a year, payable monthly from the Treasury.

See § 1054, R. S. U. S., 1 Comp. Stat., p. 730, 2 Fed. Stat. Ann., p. 54, Pierce, Code § 7779.

SEC. 141. The chief clerk shall give bond to the United States in such amount, in such form, and with such security as shall be approved by the Secretary of the Treasury.

Re-enacting § 1055, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann. 54, Pierce, Code § 7780.

SEC. 142. The said clerk shall have authority when he has given bond as provided in the preceding section, to disburse, under the direction of the court, the contingent fund which may from time to time be appropriated for its use; and his accounts shall be settled by the proper accounting officers of the Treasury in the same way as the accounts of other disbursing agents of the Government are settled.

Re-enacting § 1056, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 54, Pierce, Code §7781.

SEC. 143. On the first day of every regular session of Congress, the clerk of the Court of Claims shall transmit to Congress a full and complete statement of all the judgments rendered by the court during the previous year, stating the amounts thereof and the parties in whose favor they were rendered, together with a brief synopsis of the nature of the claims upon which they were rendered. At the end of every term of the court he shall transmit a copy of its decisions to the heads of

departments; to the Solicitor, the Comptroller, and the Auditors of the Treasury; to the Commissioner of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with the adjustment of claims against the United States.

Re-enacting § 1057, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7782. "The decisions of the Court of Claims in general, not appealed from, are guides to the executive officers of the government, and furnish preecedents for the executive departmets in all other like cases." Meigs v. United States, 20 Ct. Cl. 181.

SEC. 144. Whoever, being elected or appointed a Senator, Member of or Delegate to Congress, or a Resident Commissioner, shall, after his election or appointment, and either before or after he has qualified, and during his continuance in office, practice in the Court of Claims, shall be fined not more than ten thousand dollars and imprisoned not more than two years; and shall, moreover, thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States.

See § 1058, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7783.

SEC. 145. The Court of Claims shall have jurisdiction to hear an determine the following matters:

First. All claims (except for pensions) founded upon the Constitution of the United States or any law of Congress, upon any regulation of an Executive Department, upon any contract, express or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to the said court jurisdiction to hear

and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims which, prior to March third, eighteen hundred and eighty-seven, had been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Second. All set-offs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided,* That no suit against the Government of the United States, brought by any officer of the United States to recover fees for services alleged to have been performed for the United States, shall be allowed under this chapter until an account for said fees shall have been rendered and finally acted upon as required by law, unless the proper accounting officer of the Treasury fails to act finally thereon within six months after the account is received in said office.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of loss by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.

Compare § 1059, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code § 7784.

TERRITORIAL JURISDICTION. The pendency of a suit in a court of the United States wherever situated is not a suit in a foreign jurisdiction; the territorial jurisdiction of the Court of Claims is co-extensive with the territory in which the courts of the United States sit. Peterson v. United States, 26 Ct. Cl. 93. "It issues writs to every part of the United States, and is specially authorized to enforce them." United States v. Borcherling, 185 U. S. 223, 46 L. Ed. 884.

RESTRICTING JURISDICTION BY RULE. As in all courts, the jurisdiction conferred by Act of Congress upon the Court of Claims cannot be

restricted by rule, and a rule requiring the claim to go through a governmental department before suit was therefore held void. United States v. Clyde, 13 Wall. 35, 20 L. Ed. 479.

PARTIES. To enable joint claimants to maintain a single suit they must have joint interest. Wilson v. United States, 1 Ct. Cl. 318. Suits by assignees are subject to the conditions of § 3477, R. S. U. S.

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgment of deed, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same." 2 Comp. Stat., p. 2320, 2 Fed. Stat. Ann., p. 7, Pierce, Code § 1661. See Emmons v. United States, 48 Fed. Rep. 43; United States v. Gillis, 95 U. S. 407, 24 L. Ed. 503; Jackson v. United States, 1 Ct. Cl. 260. But the assignor and assignee may maintain an action for the use of the assignee. Tebetts v. United States, 5 Ct. Cl. 607. A suit brought by the holder of the legal title to the use of the beneficial owner is not within the operation of § 3477, R. S. U. S. United States v. American Tobacco Co., 166 U. S. 468, 41 L. Ed. 1081.

THE JURISDICTION SPECIALLY SUBJECT TO CONTROL BY CONGRESS. Possibly the most unique characteristic of the jurisdiction of the Court of Claims resides in the control which Congress exercises at all times to limit or explain its jurisdiction, not only generally, but as to a particular class of cases, or as to a particular case. This rule, with its underlying logic, has been thus expressed by Mr. Justice Miller;

"The Government of the United States cannot be sued for a claim or demand against it without its consent. This rule is carried so far by this court, that it has been held that when the United States is plaintiff in one of the Federal Courts, and the defendant has pleaded a set-off which the Acts of Congress have authorized him to rely on, no judgment can be rendered against the government, although it may be judicially ascertained that on striking a balance of just demands the government is indebted to the defendant in an ascertained amount. And if the United States shall sue an individual in any of her courts, and fail to establish a claim, no judgment can be rendered for the costs expended by the defendant in his defense.

"If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant, and to render judgmest against that defendant, it is only by virtue of Acts of Congress granting such jurisdiction, and it is limited precisely to such cases, both in regard to parties and to the causes of action, as Congress has prescribed.

"It is true that, ordinarily, when we seek for the foundation of this jurisdiction, we look to the general law creating the court, and defining cause of which it may have cognizance. But it is equally true that whenever Congress chooses to withdraw from that jurisdiction any class of cases which had before been committed to its control, as it has done more than once, it has the power to do so, or to prescribe the rule by which such cases may be determined. Its right to do this in regard to any particular case, as well as to a class of cases, must rest on the same foundation; and no reason can be perceived why Congress may not at any time withdraw a particular case from the cognizance of that court, or prescribe in such case the circumstance under which alone the court may render a judgment against the government." DeGroot v. United States, 72 U. S. 419, 18 L. Ed. 700, 703.

CONTRACTS; EXPRESS AND IMPLIED. An appropriation made by Congress for work done may be sufficient to constitute an express contract. Myerle v. United States, 33 Ct. Cl. 1. To constitute an implied contract which will serve as a basis for the recovery of money received by the United States, "There must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake." Knote v. United States, 95 U. S. 149, 24 L. Ed. 442.

JURISDICTION OVER PATENT CASES. See *ante*, §§ 497-500. This code (§ 145) re-enacts the substance of the former statutes, confining the jurisdiction of the Court of Claims to cases arising out of contract, express or implied. Under these statutes the Court of Claims had no jurisdiction of suits against the Government for Patent Infringement. Pitcher v. United States, 1 Ct. Cl. 7. In rare cases a contract to pay for the use of a patented invention was held to be implied (Berdan Fire Arms Mfg. Co. v. United States, 156 U. S. 552, 39 L. Ed. 530), but as a rule, in the absence of an express contract, no recovery could be had (Gill v. United States, 25 Ct. Cl. 415, 160 U. S. 426, 40 L. Ed. 480). But the jurisdiction of the Court of Claims over Patent Cases has been enlarged by the Act of June 25, 1910, 36 Stat. at L., p. 851, providing as follows:

"That whenever an invention described in and covered by a patent of the United States shall hereafter be used by the United States without license of the owner thereof

or lawful right to use the same, such owner may recover reasonable compensation for such use by suit in the Court of Claims: *Provided, however,* That said Court of Claims shall not entertain a suit or award compensation under the provisions of this Act where the claim for compensation is based on the use by the United States of any article heretofore owned, leased, used by, or in the possession of the United States: *Provided further,* That in any such suit the United States may avail itself of any and all defenses, general or special, which might be pleaded by a defendant in an action for infringement, as set forth in Title Sixty of the Revised Statutes, or otherwise: *And provided further,* That the benefits of this Act shall not inure to any patentee, who, when he makes such claim is in the employment or service of the Government of the United States; or the assignee of any such patentee; nor shall this Act apply to any device discovered or invented by such employee during the time of his employment or service."

JURISDICTION OVER TORTS. The general rule excluding torts from the jurisdiction of the Court of Claims is announced in Luddington v. United States, 15 Ct. Cl. 453. The following classes of cases have been held to be outside of the jurisdiction of the Court of Claims as being founded on tort: Suits for damages for personal injuries resulting from the fall of an elevator in a public building, Bigby v. United States, 188 U. S. 400, 47 L. Ed. 519; contracts implied by law from torts, Harley v. United States, 198 U. S. 229, 49 L. Ed. 1029, 39 Ct. Cl. 105; a claim for the taking of land under tidewater for lighthouse purposes, Hill v. United States, 149 U. S. 593, 37 L. Ed. 862; a suit for the diversion of a water course, Mills v. United States, 46 Fed. Rep. 738; a suit for damages for injury to property resulting from defective construction of a dam, Hayward v. United States, 30 Ct. Cl. 219; a suit for infringement of copyright, Lanman v. United States, 27 Ct. Cl. 260; a suit for damages arising from a maritime collision, St. Louis & Miss. Valley Trans. Co. v. United States, 33 Ct. Cl. 251.

CLAIMS FOUNDED UPON A LAW OF CONGRESS. Claims of this character are justiciable under the Court of Claims Act, regardless of whether they are founded on contract or in tort. Christie-Street Com. Co. v. United States, 126 Fed. Rep. 991, 994. The Court of Claims has classified the cases arising under this grant of jurisdiction as follows:

"1. Where Congress creates a class of claims such as the customs cases, the internal revenue cases, the pension cases, and provide a jurisdiction for the ascertainment and allowance of such claims, that jurisdiction is exclusive.

"2. But where the officer clothed with authority to investigate and allow determines the facts of a case and refers it to this court for the determination of a question of law thereby presented, or where the officer, having allowed a claim, transmits it to the accounting officers for payment, and they, or the Secretary of the Treasury, refuses to give effect to the award, an action thereon will lie in this court.

"3. Where Congress creates a class of claims, such as for horses and vessels lost or destroyed in the military service, and refer the claims for investigation and settlement to the accounting officers of the treasury, no jurisdiction to finally determine a legal right is created, and the accounting officers act simply in their usual capacity of auditing officers, and this court has jurisdiction of the claims.

"4. Where Congress creates a class of claims, such as claims for a surplus in the treasury derived from property sold for taxes, or the direct-tax cases, with directions to the Secretary of the Treasury to pay the amount found to be due to the persons entitled thereto, no special jurisdiction is thereby created, and an action will lie in this court.

"5. Where Congress pledge the faith of the United States in consideration of a person doing some act, such as that in the drawback cases, or in sugar-bounty cases, presenting thereby an obligation in the nature of an implied contract, the action of the Secretary of the Treasury, or of the revenue officers, is not conclusive, and an action will lie upon the statutory obligation of the government." Foster v. United States, 32 Ct. Cl. 170.

"ANY REGULATION OF AN EXECUTIVE DEPARTMENT." This expression manifestly refers to Rules and Regulations made by the head of a Governmental Department for the conduct of his department. Harvey v. United States, 3 Ct. Cl. 38.

DEMANDS ON THE PART OF THE UNITED STATES AGAINST A CLAIMANT. That the right of set-off in behalf of the government is founded on § 236, R. S. U. S., and exists independently of the Act of March 3, 1875, and § 1766, R. S. U. S., see Taggart v. United States, 17 Ct. Cl. 322. So the amount of a payment made on a fraudulent voucher may be set up by way of counter claim, Charles v. United States, 19 Ct. Cl. 316. An unliquidated demand may be used as a set-off by the United States. Allen v. United States, 17 Wall. 207, 21 L. Ed. 553. That the right of the government to set off and counter claim is of equal scope with the right given the Crown by the Act of 1860, 23 and 24 Vict., c. 34, see Roman v. United States, 11 Ct. Cl. 761. That the United States may assert a set-off against a judgment, see Bonnafon v. United States, 14 Ct. Cl. 484. That the set-off or counter claim need not be pleaded, see Hart v. United States, 118 U. S. 62, 30 L. Ed. 96; Wisconsin Cent. R. Co. v. United States, 164 U. S. 190, 41 L. Ed. 399.

"THE CLAIM OF ANY PAYMASTER, ETC." This provision extends to the disbursing officer of all the executive departments (Hobbs v. United States, 17 Ct. Cl. 189), and extends to cases where the officer has not given bond. Wood v. United States, 25 Ct. Cl. 98. The claimant's testimony, unsupported, is insufficient under this section. Pattee v. United States, 3 Ct. Cl. 397.

SEC. 146. Upon the trial of any cause in which any set-off, counterclaim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such court are enforced.

Re-enacting § 1061, R. S. U. S., 1 Comp. Stat., p. 737, 2 Fed. Stat. Ann., p. 61, Pierce, Code, § 7790. Where a claim is dismissed for want of jurisdiction, judgment cannot be entered upon a counter claim. Baltimore & Ohio R. Co. v. United States, 34 Ct. Cl. 484. That in suits under the Act of March 3, 1887, c. 359, 24 Stat. at L. 505 (the Tucker Act) the Federal Courts may render a money judgment for the United States on a set-off or counter claim, see United States v. Saunders, 79 Fed. Rep. 407, 24 C. C. A. 649.

SEC. 147. Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed as a credit in the settlement of his accounts.

Re-inacting § 1062, R. S. U. S., 1 Comp. Stat., p. 737, 2 Fed. Stat. Ann., p. 61, Pierce, Code § 779. That the expression "without fault or negligence" is to be taken in its common sense (fault meaning error, and negligence meaning omission) and that the degree of care exacted is that which would be required of his agent by a prudent man in like circumstances, see Malone v. United States, 5 Ct. Cl. 486; Martin v. United States, 37 Ct. Cl. 527. For illustrations of cases where disbursing officers were granted relief from the results of such mishaps as theft, capture by an enemy, or bank failure, see Reynolds v. United States, 15 Ct. Cl. 314; Broadhead v. United States, 19 Ct. Cl. 125; Prime v. United States, 3 Ct. Cl. 209; Hobbs v. United States, 17 Ct. Cl. 189.

SEC. 148. When any claim or matter is pending in any of the executive departments which involves controverted questions of fact or law, the head of such department may transmit the same, with the vouchers, papers, documents and proofs pertaining thereto, to the Court of Claims and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the department by which it was transmitted for its guidance and action: *Provided, however,* That it shall have been transmitted with the consent of the claimant, or if it shall appear to the satisfaction of the court upon the facts established, that under existing laws or the provisions of this chapter it has jurisdiction to render judgment or decree thereon, it shall proceed to do so, in the latter case giving to either party such further opportunity for hearing as in its judgment justice shall require, and shall report its findings therein to the department by which the same was referred to said court. The Secretary of the Treasury may, upon the certificate if any auditor, or of the Comptroller of the Treasury, direct any claim or matter, of which, by reason of the subject-matter or character, the said court might under existing laws, take jurisdition on the voluntary action of the claimant, to be transmitted, with all the vouchers, papers, documents and proofs per-

taining thereto, to the said court for trial and adjudication.

Superseding § 1063, R. S. U. S., 1 Comp. Stat., p. 738, 2 Fed. Stat. Ann., p. 63, Pierce, Code § 7792. "It is only the pendency of a claim or matter in an executive department that gives the head of such department jurisdiction to transmit the same to the court. Armstrong v. United States, 29 Ct. Cl. 148. See also, as to the incidental jurisdiction of the Court of Claims to adjudicate all issues arising in cases transmitted from the departments although involving unliquidated claims which the department could not have settled, see Myerle v. United States, 33 Ct. Cl. 1. That ex parte affidavits transmitted by a department with the claim will not be considered, being incompetent, see Chickasaw Nation v. United States, 19 Ct. Cl. 133.

SEC. 149. All cases transmitted by the head of any department, or upon the certificate of any auditor, or of the Comptroller of the Treasury, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.

Re-enacting § 1064, R. S. U. S., 1 Comp. Stat., p. 738, 2 Fed. Stat. Ann., p. 63, Pierce, Code § 7793. Prior to the Act of 1863, the judgments of the Court of Claims were not conclusive. Nourse v. United States, 2 Ct. Cl. 214. As to their present conclusiveness see Baumer v. United States, 26 Ct. Cl. 82.

SEC. 150. The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Re-enacting § 1065, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann., p. 64, Pierce, Code § 7794.

SEC. 151. Whenever any bill, except for a pension, is pending in either House of Congress providing for the

payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may, for the investigation an determination of facts, refer the same to the Court of Claims, which shall proceed with the same in accordance with such rules as it may adopt and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy, together with such conclusions as shall be sufficient to inform Congress of the nature and character of the demand, either as a claim, legal or equitable, or as a gratuity against the United States, and the amount, if any, legally or equitably due from the United States to the claimant: *Provided, however,* That if it shall appear to the satisfaction of the court upon the facts esablished, that under exising laws or the provisions of this chapter, the subject-matter of the bill is such that it has jurisdicion to render judgment or decree thereon, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and it shall report its proceedings therein to the House of Congress by which the same was referred to said court.

Superseding Act of March 3, 1887, c. 359, § 14, 24 Stat. at L. 507, 1 Comp. Stat., p. 757, 2 Fed. Stat. Ann., p. 87, Pierce, Code, § 7834. That the report of the Court of Claims under this section is not conclusive upon the merits and does not relieve the claimant from the defense of laches, see Balmer v. United States, 26 Ct. Cl. 82. That a case brought before the Court of Claims under this provision is subject to the taking of testimony under § 1063, R. S. U. S., and that ex parte affidavits transmitted by Congress with the claim are not competent, see Smith v. United States, 19 Ct. Cl. 690.

SEC. 152. If the Government of the United States shall put in issue the right of the plaintiff to recover, the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.

Re-enacting Act of March 3, 1887, c. 359, § 151, 24 Stat. at L. 508, 1 Comp. Stat., p. 758, 2 Fed. Stat. Ann., p. 88, Pierce, Code, § 7835. For rulings as to the award of costs under this provision see Hill v. United States, 40 Fed. Rep. 441; Abbott v. United States, 66 Fed. Rep. 447; Abbott v. United States, 72 Fed. Rep. 686, 18 C. C. A. 679; Jacobus v. United States, 87 Fed. Rep. 99; United States v. Harmon, 147 U. S. 268, 37 L. Ed. 164.

SEC. 153. The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December first, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Re-enacting § 1066, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7795.

SEC. 154. No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Re-enacting § 1067, R. S. U. S., 1 Comp. Stat., p. 739, 2 Fed. Stat. Ann. 64, Pierce, Code § 7796.

SEC. 155. Aliens who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such govern-

ment in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.

Re-enacting § 1068, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann., p. 64, Pierce, Code § 7797.

SEC. 156. Every claim against the United States cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate or the Clerk of the House of Representatives, as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women, first accrued during marriage, of persons under the age of twenty-one years, first accrued during minority, and of idiots, lunaticts, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

Re-enacting § 1069, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann., p. 65, Pierce, Code § 7798.

SEC. 157. The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Re-enacting § 1070, R. S. U. S., 1 Comp. Stat., p. 740, 2 Fed. Stat. Ann. 67, Pierce, Code § 7799.

SEC. 158. The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Re-enacting § 1071, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7800.

SEC. 159. The claimant shall in all cases fully set forth in his petition the claim, the action thereon in Congress or by any of the departments, if such has been had, what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim or of any part thereof or interest therein has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets; that the claimant and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. The said petition shall be verified by the affidavit of the claimant, his agent or attorney.

Superseding § 1072, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 67, Pierce, Code § 7801.

SEC. 160. The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Re-enacting § 1073, R. S. U. S., 1 Comp. Stat., p. 741, 2 Fed. Stat. Ann. 68, Pierce, Code §7802.

SEC. 161. Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to forces or government of the late Confederate States during the Civil War, the claimant asserting the loyalty of any such person to the United States during such Civil War shall be required to prove affirmatively that such person did, during said Civil War, consistently adhere to the United States and did give no aid or comfort to persons engaged in said Confederate service in said Civil War.

Superseding § 1074, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7803.

SEC. 162. The Court of Claims shall have jurisdiction to hear and determine the claims of those whose property was taken subsequent to June the first, eighteen hundred and sixty-five, under the provisions of the Act of Congress approved March twelfth, eighteen hundred and sixty-three, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," and Acts amendatory thereof where the property so taken was sold and the net proceeds thereof were placed in the Treasury of the United States; aid the Secretary of the Treasury shall return said net proceeds to the owners thereof, on the judgment of said court, and full jurisdiction is given to said court to adjudge said claims, any statutes of limitations to the contrary notwithstanding.

See Act of March 12, 1863, c. 120, 12 Stat. at L. 820. Also § 1059, R. S. U. S., paragraph 4, 2 Fed. Stat. Ann., p. 60.

SEC. 163. The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it, to prescribe the fees which they shall receive for their services, and

to issue commissioners for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

Re enacting § 1075, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann. 68, Pierce, Code § 7804.

SEC. 164. The said court shall have power to call upon any of the departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

Re-enacting § 1076, R. S. U. S., 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann., p. 69, Pierce, Code § 7805.

SEC. 165. When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not authorize the taking of any testimony therein.

Superseding § 1077, R. S. U. S., (the change being purely verbal), 1 Comp. Stat., p. 742, 2 Fed. Stat. Ann., p. 69, Pierce, Code § 7806.

SEC. 166. The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any commissioner of the court and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the United States appearing in the case, be read and used as evidence on the trial thereof. And if any claim-

ant, after such order is made and due and reasonable notice is given to him, to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue the court may in its discretion order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.

Re-enacting § 1080, R. S. U. S., 1 Comp. Stat., p. 743, 2 Fed. Stat. Ann., p. 70, Pierce, Code § 7808. The application for an order of examination under this section may be made *ex parte*, and need not recite special cause. Truitt v. United States, 30 Ct. Cl. 19. The operation of the section is limited to the claim Act. Macauley v. United States, 11 Ct. Cl. 575.

SEC. 167. The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done.

Re-enacting § 1081, R. S. U. S., 1 Comp. Stat., p. 743, 2 Fed. Stat. Ann., p. 70, Pierce, Code § 7809.

SEC. 168. The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein. Such subpoenas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish.

Re-enacting § 1082, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat Ann., p. 70, Pierce, Code § 7810.

SEC. 169. In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations.

Re-enacting § 1083, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7811.

SEC. 170. The Commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witness brought before him for examination.

Re-enacting § 1084, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code § 7812.

SEC. 171. When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees shall be paid out of the contingent fund provided for the Court of Claims, or other appropriation made by Congress for that purpose.

Re-enacting § 1085, R. S. U. S., 1 Comp. Stat., p. 744, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7813.

SEC. 172. Any person who corruptly practices or attemps to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim or of any part of any claim against the United States shall, ipso facto, forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgment that such claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

Re-enacting § 1086, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7814.

SEC. 173. No claim shall be allowed by the accounting officers under the provisions of the Act of Congress approved June sixteenth, eighteen hundred and seventy-

four, or by the Court of Claims, or by Congress, to any person where such claimant, or those under whom he claims, shall willfully, knowingly, and with intent to defraud the United States, have claimed more than was justly due in respect of such claim, or presented any false evidence to Congress, or to any department or court, in support thereof.

Superseding Act of April 30, 1878, c. 77, § 2, 20 Stat. at L. 524, 1 Comp. Stat., p. 178.

SEC. 174. When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

Re-enacting § 1087, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 71, Pierce, Code, § 7815.

SEC. 175. The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may on motion, on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.

Re-enacting § 1088, R. S. U. S., 1 Comp. Stat., p. 745, 2 Fed. Stat. Ann., p. 72, Pierce, Code, § 7816. "In order to give full effect to this statute the Court of Claims must have power to grant a new trial at a term subsequent to that at which the judgment was rendered, for it explicitly provides that it may be exercised at any time within two years." United States v. Ayers, 76 U. S. 9 Wall. 608, 19 L. Ed. 625; United States v. Crusell, 79 U. S. 12 Wall. 175, 20 L. Ed. 384; *Ex parte* Russell, 80 U. S. (13 Wall.) 664, 20 L. Ed. 632; *Ex Parte* United States, 83 U. S. (16 Wall.) 699, 21 L. Ed. 507; United States v. Young, 94 U. S.

258, 24 L. Ed. 153; Young v. United States, 95 U. S. 642, 643, 24 L. Ed. 467, 468; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192. A mandate from the Supreme Court does not prevent the operation of this statute or take away the power or interfere with the discretion of the Court of Claims to grant a new trial. *Ex parte* Russell, 80 U. S. (13 Wall) 664, 20 L. Ed. 632; Belknap v. United States, 150 U. S. 588, 591, 37 L. Ed. 1191, 1192.

SEC. 176. There shall be taxed against the losing party in each and every cause pending in the Court of Claims the cost of printing the record in such case, which shall be collected, except when the judgment is against the United States, by the clerk of said court and paid into the Treasury of the United States.

Superseding a provision of the Sundry Civil Appropriation Act of March 3, 1877, ch. 105, 19 Stat. at L. 344, 2 Fed. Stat. Ann., p. 293.

SEC. 177. No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Re-enacting § 1091, R. S. U. S., 1 Comp. Stat., p. 747, 2 Fed. Stat. Ann., p. 73, Pierce, Code, § 7818, enacted as Act of March 3, 1863, ch. 92, 12 Stat. at L. 1206. This section has been uniformly applied to cases arising under the Captured and Abandoned Property Act of March 12, 1863, and special acts. Rice v. United States, 21 Ct. Cl. 413, 122 U. S. 611, 30 L. Ed. 793.

SEC. 178. The payment of the amount due by any judgment of the Court of Claims, and of any interest thereon allowed by law, as provided by law, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Superseding § 1092, R. S. U. S., 1 Comp. Stat., p. 747, 2 Fed. Stat. Ann., p. 74, Pierce, Code, § 7819. That payment is a bar to motions to set aside and vacte judgments of the Court of Claims, see Vaughn v. United States, 34 Ct. Cl. 342.

SEC. 179. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall

forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

Re-enacting of § 1093, R. S. U. S., 1 Comp. Stat. 747, 2 Fed. Stat. Ann., p. 74, Pierce, Code, § 7820. That dismissal for want of jurisdiction is not a bar under this section, see Green v. United States, 18 Ct. Cl. 93; while judgment based on plea of the statute of limitations is. Battelle v. United States, 21 Ct. Cl. 250. "The Judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court, until it is set aside on a motion for a new trial." Mr. Justice Clifford, in United States v. O'Grady's Exrs., 22 Wall. 641, 22 L. Ed. 772.

SEC. 180. Whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer or agent or contractor so indebted, or that he or the person for whom he is such surety, guarantor, or persnoal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States had arisen and exists, and that he or the person he represents has applied to the proper department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application, and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said department and to the Attorney General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney General shall represent the United State at the hearing of said cause. The court may

postpone the same from time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United State against such principal or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court; and unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. The provisions of section one hundred and sixty-six shall apply to cases under this section.

Superseding Act of March 3, 1887, § 3, ch. 359, 24 Stat. at L. 505, 1 Comp. Stat., p. 754, 2 Fed. Stat. Ann., p. 83, Pierce, Code, § 7823. This section is for the benefit of persons indebted to the United States. Gerding v. United States, 26 Ct. Cl. 319.

SEC. 181. The plaintiff or the United States, in any suit brought under the provision of the section last preceding, shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

Superseding the Act of March 3, 1887, § 9, 24 Stat. at L. 507, 1 Comp. Stat., p. 756, 2 Fed. Stat. Ann. 85, Pierce, Code, § 7829.

SEC. 182. In any case brought in the Court of Claims under any Act of Congress by which that court is authorized to render a judgment or decree against the United States, or against any Indian tribe or any Indians, or against any fund held in trust by the United States for any Indian tribe or for any Indians, the claimant, or the United States, or the tribe of Indians, or other party

in interest shall have the same right of appeal as is conferred under sections two hundred and forty-two and two hundred and forty-three; and such right shall be exercised only within the time and in the manner therein prescribed.

See Act of March 3, 1891, ch. 538, § 10, 26 Stat. at L. 854, 2 Fed. Stat. Ann., p. 100, 1 Comp. Stat., p. 763, Pierce, Code, § 7853.

SEC. 183. The Attorney General shall report to Congress at the beginning of each regular session, the suits under section one hundred and eighty, in which a final judgment or decree has been rendered, giving the date of each and a statement of the costs taxed in each case.

See Act of March 3, 1891, ch. 538, § 8, 26 Stat. at L. 853, 1 Comp. Stat., p. 763, 2 Fed. Stat. Ann. 92, Pierce, Code, § 7851.

SEC. 184. In any case of a claim for supplies or stores taken by or furnished to any part of the military or naval forces of the United States for their use during the late Civil War, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the Government of the United States, and that fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed.

Re-enacting the Act of March 3, 1883, § 4, ch. 116, 22 Stat. at L. 485, 1 Comp. Stat., p. 749, 2 Fed. Stat. Ann., p. 79, Pierce, Code, § 7840. On the same day (March 3, 1883) a special relief bill was passed (22 Stat. at L. 804, ch. 111) in considering which the Supreme Court has reviewed the decisions under the prior act relating to the effect of the proclamation of pardon and amnesty of December 25, 1868, 15 Stat. at L. 711.

The above section was considered in connection with the provision of the special (Austin) Act, and the Court said;

"Undoubtedly Congress framed this Act with due regard to the state of decision under the prior Act, and hence, instead of making proof of loyalty an integral part of complainant's case with his ownership of the property and his right to the proceeds, as in the Captured and Abandoned Property Act, it made the establishment of loyalty in fact, as contradistinguished from innocence in law produced by pardon, a prerequisite to jurisdiction. Consent to be sued was given only on this condition." Mr. Chief Justice Fuller, in Austin v. United States, 155 U. S. 417, 432, 39 L. Ed. 206, 212. August 20th, 1866, the date on which the President proclaimed the Rebellion suppressed throughout the whole of the United States (14 Stat. at L. 814) has been recognized as the date closing the Rebellion. Act of March 2, 1867, 14 Stat. at L. 422; United States v. Anderson, 9 Wall. 56, 19 L. Ed. 615; Austin v. United States, 155 U. S. 417, 420, 39 L. Ed. 206, 208.

SEC. 185. The Attorney-General, or his assistants under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under the provisions of this chapter, with the same power to interpose counter claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is required to defend the United States in said court.

Re-enacting Act of March 3, 1883, § 5, ch. 116, 22 Stat. at L. 486, 1 Comp. Stat., p. 749.

SEC. 186. No person shall be excluded as a witness in the Court of Claims on account of color, because he or she is a party to or interested in the cause or proceeding; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Superseding Act of March 3, 1883, § 6, ch. 116, 22 Stat. at L. 486. See § 1078, R. S. U. S., 1 Comp. Stat. 743, 2 Fed. Stat. Ann. 69, Pierce, Code, § 7807.

SEC. 187. Reports of the Court of Claims to Congress, under sections one hundred and forty-eight and one hundred and fifty-one, if not finally acted upon during the

session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

See § 1057, R. S. U. S., 1 Comp. Stat., p. 731, 2 Fed. Stat. Ann., p. 55, Pierce, Code, § 7782.

See also Act of March 3, 1883, § 7, 22 Stat. at L. 485, 1 Comp. Stat. 750, 2 Fed. Stat. Ann. 75, Pierce, Code, §7843.

SEC. 215. The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.

Re-enacting Act of April 10, 1869, § 1, 16 Stat. at L. 44, § 673, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7287.

SEC. 216. The associate justices shall have precedence according to the dates of their commissions, or, when the commissions of two or more of them bear the same date, according to their ages.

Act of September 24, 1789, c. 20, § 1, 1 Stat. at L. 73. Re-enacted § 674, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7288.

SEC. 217. In case of a vacancy in the office of Chief Justice, or of his inability to perform the duties and powers of his office, they shall devolve upon the associate justice who is first in precedence, until such disability is removed, or another Chief Justice is appointed and duly qualified. This provision shall apply to every associate justice who succeeds to the office of Chief Justice.

Act of September 24, 1789, c. 20, § 1, 1 Stat. at L. 73. Act June 25, 1868, c. 81, § 1, 15 Stat. at L. 80. Re-enacted § 675, R. S. U. S., 1, Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7289.

SEC. 218. The Chief Justice of the Supreme Court of the United States shall receive the sum of fifteen thousand dollars a year, and the justices thereof shall receive

the sum of fourteen thousand five hundred dollars a year each, to be paid monthly.

Superseding § 676, R. S. U. S., 1 Comp. Stat., p. 558, 4 Fed. Stat. Ann. 435, Pierce, Code, § 7290.

SEC. 219. The Supreme Court shall have power to appoint a clerk and a marshal for said court, and a reporter of its decisions.

Re-enacting § 677, R. S. U. S., 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7291.

SEC. 220. The clerk of the Supreme Court shall, before he enters upon the execution of his office, give bond, with sufficient sureties, to be approved by the court, to the United States, in the sum of not less than five thousand and not more than twenty thousand dollars, to be determined and regulated by the Attorney General, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court. The Supreme Court may at any time, upon the motion of the Attorney-General, to be made upon thirty days' notice, require a new bond, or a bond for an increased amount within the limits above prescribed; and the failure of the clerk to execute the same shall vacate his office. All bonds given by the clerk shall, after approval, be recorded in his office, and copies thereof from the records, certified by the clerk under seal of the court, shall be competent evidence in any court. The original bonds shall be filed in the Department of Justice.

Superseding Act of February 22, 1875, c. 95, § 3, 18 Stat. at L. 333, 1 Comp. Stat., p. 619.

SEC. 221. One or more deputies of the clerk of the Supreme Court may be appointed by the court on the application of the clerk, and may be removed at the pleasure of the court. In case of the death of the clerk, his deputy or deputies shall, unless removed, continue in office and

perform the duties of the clerk in his name until a clerk is appointed and qualified; and for the defaults or misfeasances in office of any such deputy, whether in the lifetime of the clerk or after his death, the clerk, and his estate, and the sureties on his official bond shall be liable; and his executor or administrator shall have such remedy for any such defaults or misfeasances committed after his death as the clerk would be entitled to if the same had occurred in his lifetime.

Re-enacting § 678, R. S. U. S., Act of June 8, 1872, c. 336, 17 Stat at L. 330, 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 73, Pierce, Code, § 7292.

SEC. 222. The records and proceedings of the courts of appeals, appointed previous to the adoption of the present Constitution, shall be kept in the office of the clerk of the Supreme Court, who shall give copies thereof to any person requiring and paying for them, in the manner provided by law for giving copies of the records and proceedings of the Supreme Court; and such copies shall have like faith and credit with all other proceedings of said court.

Re-enacting § 679, Act of May 7, 1792, c. 36, § 12, 1 Stat. at L. 279, 1 Comp. Stat., p. 559, 4 Fed. Stat. Ann. 425, Pierce, Code, § 7293.

SEC. 223. The Supreme Court is authorized and empowered to prepare the table of fees to be charged by the clerk thereof.

Superseding § 681, R. S. U. S., 1 Comp. Stat., p. 560, 6 Fed. Stat. Ann., p. 767.

SEC. 224. The marshal is entitled to receive a salary at the rate of four thousand five hundred dollars a year. He shall attend the court at its sessions; shall serve and execute all process and orders issuing from it, or made by the Chief Justice or an associate justice in pursuance of law; and shall take charge of all property of the United States used by the court or its members. With the ap-

proval of the Chief Justice he may appoint assistants and messengers to attend the court, with the compensation allowed to officers of the House of Representatives of similar grade.

Superseding § 680, R. S. U. S., 1 Comp. Stat., p. 560, 4 Fed. Stat. Ann. 159, Pierce, Code, § 7294.

SEC. 225. The reporter shall cause the decisions of the Supreme Court to be printed and published within eight months after they are made; and within the same time he shall deliver three hundred copies of the volumes of said reports to the Attorney-General. The reporter shall, in any year when he is so directed by the court, cause to be printed and published a second volume of said decisions, of which he shall deliver a like number of copies in like manner and time.

Superseding § 681, R. S. U. S., 6 Fed. Stat. Ann. 761, 1 Comp. Stat. p. 560, Pierce, Code, § 7295.

SEC. 226. The reporter shall be entitled to receive from the Treasury an annual salary of four thousand five hundred dollars when his report of said decisions constitutes one volume, and an additional sum of one thousand two hundred dollars when, by direction of the court, he causes to be printed and published in any year a second volume; and said reporter shall be annually entitled to clerk hire in the sum of one thousand two hundred dollars, and to office rent, stationery, and contingent expenses in the sum of six hundred dollars: *Provided*, That the volumes of the decisions of the court heretofore published shall be furnished by the reporter to the public at a sum not exceeding two dollars per volume, and those hereafter published at a sum not exceeding one dollar and seventy-five ecnts per volume; and the number of volumes now required to be delivered to the Attorney-General shall be furnished by the reporter without any charge therefor.

Said salary and compensation, respectively, shall be paid only when he causes such decisions to be printed, published, and delivered within the time and in the manner prescribed by law, and upon the condition that the volumes of said reports shall be sold by him to the public for a price not exceeding one dollar and seventy-five cents a volume.

Superseding § 682, R. S. U. S., 1 Comp. Stat., p. 560, 6 Fed. Stat. Ann. 767, Pierce, Code, § 7296. As amended, Act of August 5, 1882, c. 389, § 1, 22 Stat. at L. 254, 1 Comp. Stat., p. 561.

SEC. 227. The Attorney-General shall distribute copies of the Supreme Court reports, as follows: To the President, the justices of the Supreme Court, the judges of the Commerce Court, the judges of the Court of Customs Appeals, the judges of the circuit courts of appeals, the judges of the district courts, the judges of the Court of Claims, the judges of the Court of Appeals and of the Supreme Court of the District of Columbia, the judges of the several Territorial courts, the Secretary of State, the Secretary of the Treasury, the Secretary of War. the Secretary of the Navy, the Secretary of the Interior, the Postmaster General, the Attorney-General, the Secretary of Agriculture, the Secretary of Commerce and Labor, the Solicitor General, the Assistant to the Attorney-General, each Assistant Attorney-General, each United State district attorney, each Assistant Secretary of each Executive Department, the Assistant Postmasters General, the Secretary of the Senate for the use of the Senate, the Clerk of the House of Representatives for the use of the House of Representatives, the Governors of the Territories, the Solicitor for the Department of State, the Treasurer of the United States, the Solicitor of the Treasury, the Register of the Treasury, the Comptroller of the Treasury, the Comptroller of the Currency, the Commissioner of Internal Revenue, the Director of the

Mint, each of the six Auditors in the Treasury Department, the Judge Advocate General, War Department, the Paymaster General, War Department, the Judge Advocate General, Navy Department, the Commissioner of Indian Affairs, the Commissioner of Pensions, the Commissioner of the General Land Office, the Commissioner of Patents, the Commisioner of Education, the Commissioner of Labor, the Commisioner of Navigation, the Commissioner of Corporations, the Commisioner General of Immigration, the Chief of the Bureau of Manufactures, the Director of the Geological Survey, the Director of the Census, the Forester, Department of Agriculture, the Purchasing Agent, Post Office Department, the Interstate Commerce Commission, the Clerk of the Supreme Court of the United States, the Marshal of the Supreme Court of the United States, the Attorney for the District of Columbia, the Naval Academy at Annapolis, the Military Academy at West Point, and the heads of such other executive offices as may be provided by law, of equal grade with any of said offices, each one copy; to the Law Library of the Supreme Court, twenty-five copies; to the Law Library of the Department of the Interior, two copies; to the Law Library of the Department of Justice, two copies; to the Secretary of the Senate for the use of the committees of the Senate, twenty-five copies; to the Clerk of the House of Representatives for the use of the committees of the House, thirty copies; to the Marshal of the Supreme Court of the United States, as custodian of the public property used by the court, for the use of the justices therof in the conference room, robing room, and court room, three copies; to the Secretary of War for the use of the proper courts and officers of the Philippine Islands and for the headquarters of military departments in the United States, twelve copies; and to each of the places where district courts of the United

States are now holden, including Hawaii, and Porto Rico, one copy. He shall also distribute one complete set of said reports, and one set of the digests thereof, to such executive officers as are entitled to receive said reports under this section and have not already received them, to each United States judge and to each United States district attorney who has not received a set, to each of the places where district courts are now held to which said reports have not be distributed, and to each of the places at which a district court may hereafter be held, the edition of said reports and digests to be selected by the judge or officer receiving them. No distribution of reports and digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The clerks of said courts (except the Supreme Court) shall in all cases keep said reports and digest for the use of the courts and of the officers thereof. Such rports and digest shall remain the property of the United States, and shall be preserved by the officers above named and by them turned over to their successors in office.

See former Acts; § 683, R. S. U. S., 1 Comp. Stat., p. 561, 6 Fed. Stat. Ann. 768, Pierce, Code, § 7297; Act of February 12, 1889, c. 135, §§ 1, 2, 25 Stat. at L. 661, 1 Comp. Stat., p. 562, 6 Fed. Stat. Ann., p. 769, Pierce, Code, § 7297.

SEC. 228. The publishers of the decisions of the Supreme Court shall deliver to the Attorney-General, in addition to the three hundred copies delivered by the Reporter, such number of copies of each report heretofore published, as the Attorney-General may require, for which he shall pay not more than two dollars per volume, and such number of copies of each report hereafter published as he may require, for which he shall pay not

more than one dollar and seventy-five cents per volume. The Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the current volumes of such reports, and also for the additional sets of reports and digests required for distribution under the section last preceding.

SEC. 229. The Attorney-General is authorized to procure complete sets of the Federal Reporter or, in his discretion, other publication containing the decisions of the circuit courts of appeals, circuit courts, and district courts, and digests thereof, and also future volumes of the same as issued, and distribute a copy of each such reports and digests to each place where a circuit Court of Appeals, or a district court, is now or may hereafter regularly be held, and to the Supreme Court of the United States, the Court of Claims, the court of Customs Appeals, the Commerce Court, the Court of Appeals and the Supreme Court of the District of Columbia, the Attorney-General, the Solicitor General, the Solicitor of the Treasury, the Assistant Attorney-General for the Department of the Interior, the Commissioner of Patents, and the Interstate Commerce Commission; and to the Seceretary of the Senate, for the use of the Senate, and to the Clerk of the House of Representatives, for the use of the House of Representatives, not more than three sets each. Whenever any such court room, office, or officer shall have a partial or complete set of any such reports, or digests, already purchased or owned by the United States, the Attorney-General shall distribute to such court room, office, or officer, only sufficient volumes to make a complete set thereof. No distribution of reports or digests under this section shall be made to any place where the court is held in a building not owned by the United States, unless there be at such place a United States officer to whose responsible custody they can be committed. The

clerks of the courts (except the Supreme Court) to which the reports and digests are distributed under this section, shall keep such reports and digests for the use of the courts and the officers thereof. All reports and digests distributed under the provisions of this section shall be and remain the property of the United States and, before distribution, shall be plainly marked on their covers with the words "The Property of the United States," and shall be transmitted by the officers receiving them to their successors in office. Not to exeeed two dolars per volume shall be paid for the back and current volumes of the Federal Reporter or other publication purchased under the provisions of this section, and not to exceed five dollars per volume for the digest, the said money to be disbursed under the direction of the Attorney-General; and the Attorney-General shall include in his annual estimates submitted to Congress, an estimate for the back and current volumes of such reports and digests, the distribution of which is provided for in this section.

SEC. 230. The Supreme Court shall hold at the seat of government, one term annually, commencing on the second Monday in October, and such adjourned or special terms as it may find necessary for the dispatch of business.

See former § 684, R. S. U. S., 1 Comp. Stat., p. 563, 4 Fed. Stat. Ann. 992, Pierce, Code, § 7309.

SEC. 231. If, at any session of the Supreme Court, a quorum does not attend on the day appointed for holding it, the justices who do attend may adjourn the court from day to day for twenty days after said appointed time, unless there be sooner a quorum. If a quorum does not attend within said twenty days, the business of the court shall be continued over till the next appointed session;

and if, during a term, after a quorum has assembled, less than that number attend on any day, the justices attending may adjorun the court from day to day until there is a quorum, or may adjourn without day.

Re-enacting § 685, R. S. U. S., 1 Comp. Stat., p. 563, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7310.

SEC. 232. The justices attending at any term, when less than a quorum is present, may, within the twenty days mentioned in the preceding section, make all necessary orders touching any suit, proceeding, or process, depending in or returned to the court, preparatory to the hearing, trial, or decision thereof.

Re-enacting § 686, R. S. U. S., 1 Comp. Stat., p. 564, 4 Fed. Stat. Ann. 693, Pierce, Code, § 7311.

SEC. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it will have original but not exclusive jurisdition. And it shall have exclusively all such jurisdiction of suits or proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations; and original, but not exclusive, jurisdiction, of all suits brought by ambassadors, or other public misisters, or in which a consul or vice consul is a party.

Re-enacting § 687, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 436, Pierce, Code, § 7317.

JURISDICTION FIXED BY THE CONSTITUTION. The original jurisdiction of the Supreme Court can neither be enlarged nor restricted by Congress. Marbury v. Madison, 1 Cranch. 137, 2 L. Ed. 60.

JURISDICTION SPARINGLY EXERCISED. "The jurisdiction is limited and manifestly intended to be sparingly exercised, and should not be ex-

panded by construction." California v. Southern Pac. Co., 157 U. S. 229, 261, 39 L. Ed. 683, 695.

EXCLUSIVE AND NON-EXCLUSIVE JURISDICTION DISTINGUISHED. "By the Constitution and according to the statute this court has exclusive jurisdiction of all controversies of a civil nature where a state is a party, but not of controversies between a state and its own citizens, and original but not exclusive jurisdiction of controversies between a state and citizens of another state or aliens." California v. Southern Pac. Co., 157 U. S. 229, 258, 39 L. Ed. 683, 694.

SEC. 234. The Supreme Court shall have power to issue writs of prohibition to the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a State, or an ambassador, or other public minister, or a consul, or vice consul is a party.

Re-enacting § 688, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 439, Pierce, Code, § 7318.

The issuance of the writ of prohibition is limited to cases in which the district courts are proceeding as courts of admiralty and maritime jurisdiction. Ex parte Graham, 10 Wall. 541, 19 L. Ed. 981; Ex parte Easton, 95 U. S. 68, 24 L. Ed. 373. Mandamus "does not lie to control judicial discretion, except when the discretion has been abused; but it is a remedy when the case is outside the jurisdiction of the court or officer to which or to whom the writ is addressed. One of its peculiar and more common uses is to restrain inferior courts and to keep them within their lawful bounds." Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667.

SEC. 235. The trial of issues of fact in the Supreme Court, in all actions of law against citizens of the United States shall be by jury.

Re-enacting § 689, R. S. U. S., Act of September 24, 1789, c. 20, § 13, 1 Stat. at L. 80, 1 Comp. Stat., p. 565, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7319.

SEC. 236. The Supreme Court shall have appellate jurisdiction in the cases hereinafter specially provided for.

Superseding (with §§ 237, 238, 239), §§ 690, 693, R. S. U. S., See 1 Comp. Stat., p. 556, 4 Fed. Stat. Ann. 443, Pierce, Code, § 7320.

SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may revise, modify, or affirm the judgment or decree of such State court, and may, at their discretion, award execution or remand the same to the court from which it was removed by the writ.

Re-enacting § 709, R. S. U. S., 1 Comp. Stat., p. 575. 4 Fed. Stat. Ann., p. 467, Pierce, Code § 7340. Jurisdiction under this provision must be strictly within the terms of the statute (Capital Nat. Bank v. Cadiz Nat. Bank, 172 U. S. 425, 43 L. Ed. 502), and cannot be conferred by consent of the parties (Mills v. Brown, 16 Peters 525, 10 L. Ed. 1055). The method of review under this provision is by writ of error. Dower v. Richards, 151 U. S. 658, 38 L. Ed. 305.

SECTION 238. Appeals and writs of error may be taken from the district courts, including the United States district court for Hawaii, direct to the Supreme Court in the following cases: In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision; from the final sentences and decrees in prize causes; in any case that involves the construction or application of the Constitution of the United States; in any case in which the contionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question; and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States.

Superseding Act March 3, 1891, c. 517, § 5, 26 Stat. at L. 827, 1 Comp. Stat. p. 549.

SECTION 239. In any case within its appellate jurisdiction, as defined in section one hundred and twenty-eight, the circuit court of appeals at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon the circuit court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

Superseding the first paragraph of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251. See *ante*, § 490.

SECTION 240. In any case, civil or criminal, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by *certiorari* or otherwise, upon the petition of any party thereto, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

Re-enacting a clause of Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. p. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SECTION 241. In any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this Title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs.

Re-enacting the final clause of the Act of March 3, 1891, c. 517, § 6, 26 Stat. at L. 828, 1 Comp. Stat. 550, 4 Fed. Stat. Ann. p. 435, Pierce, Code § 7251.

SECTION 250. Any final judgment or decree of the court of appeals of the District of Columbia may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in the following cases:

First. In cases in which the jurisdiction of the trial court is in issue; but when any such case is not otherwise reviewable in said Supreme Court, then the question of jurisdiction alone shall be certified to said Supreme Court for decision.

Second. In prize cases.

Third. In cases involving the construction or application of the Constitution of the United States, or the constitutionality of any law of the United States, or the va-

lidity or construction of any treaty made under its authority.

Fourth. In cases in which the constitution, or any law of a State, is claimed to be in contravention of the Constitution of the United States.

Fifth. In cases in which the validity of any authority exercised under the United States, or the existence or scope of any power or duty of an officer of the United States is drawn in question.

Sixth. In cases in which the construction of any law of the United States is drawn in question by the defendant.

Except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases arising under the patent laws, the copyright laws, the revenue laws, the criminal laws, and in admiralty cases; and, except as provided in the next succeeding section, the judgments and decrees of said court of appeals shall be final in all cases not reviewable as hereinbefore provided.

Writs of error and appeals shall be taken within the same time, in the same manner, and under the same regulations as writs of error and appeals are taken from the circuit courts of appeals to the Supreme Court of the United States.

See former §§ 705, 706 R. S. U. S. and Act of Feb. 9, 1893, c. 74, § 8, 27 Stat. at L. 436, 1 Comp. Stat. p. 573, 4 Fed. Stat. Ann. 466, Pierce, Code § 7335.

SECTION 251. In any case in which the judgment or decree of said court of appeals is made final by the section last preceding, it shall be competent for the Supreme Court of the United States to require, by *certiorari* or otherwise, any such case to be certified to it for its review and determination, with the same power, and authority in the case as if it had been carried by writ of

error or appeal to said Supreme Court. It shall also be competent for said court of appeals in any case in which its judgment or decree is made final under the section last preceding, at any time to certify to the Supreme Court of the United States any questions or propositions of law concerning which it desires the instruction of that court for their proper decision; and thereupon the Supreme Court may either give its instruction on the questions and propositions certified to it, which shall be binding upon said court of appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there for review by writ of error or appeal.

See Act of March 3, 1897, c. 390, 29 Stat. at L. 692, 1 Comp. Stat. p. 574, Pierce, Code § 7337.

SECTION 254. There shall be taxed against the losing party in each and every cause pending in the Supreme Court the cost of printing the record in such case, except when the judgment is against the United States.

Superseding Act of March 3, 1877, c. 105, § 1, 19 Stat. at L. 344, 2 Fed. Stat. Ann. 293, Pierce, Code § 208.

SECTION 256. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States. * * *

Fifth. Of all cases arising under the patent right * * * laws of the United States.

Superseding § 711, R. S. U. S.

SECTION 267. Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law.

Re-enacting § 723 R. S. U. S., 1 Comp. Stat. p. 583, 4 Fed. Stat. Ann. p. 530, Pierce, Code § 7359. As this section merely embodies an elementary rule of law, it might well have been omitted from the Code.

SECTION 289. The circuit courts of the United States, upon the taking effect of this Act, shall be, and hereby are, abolished; and thereupon, on said date, the clerks of said courts shall deliver to the clerks of the district courts of the United States for their respective districts all the journals, dockets, books, files, records, and and other books and papers of or belonging to or in any manner connected with said circuit courts; and shall also on said date deliver to the clerks of said district courts all moneys, from whatever source received, then remaining in their hands or under their control as clerks of said circuit courts, or received by them by virtue of their said offices. The journals, dockets, books, files, records, and other books and papers of or belonging to or in any several district courts shall be and remain a part of the official records of said district courts, and copies thereof, when certified under the hand and seal of the clerk of the district court, shall be received as evidence equally with the originals thereof; and the clerks of the several district courts shall have the same authority to exercise all the powers and to perform all the duties with respect thereto as the clerks of the several circuit courts had prior to the taking effect of this Act.

SECTION 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this Act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein, the record thereof being entered in the records of the circuit courts so transferred as above provided.

EXTRACTS FROM THE CRIMINAL CODE OF THE UNITED STATES AS AMENDED DURING THE SECOND SESSION OF THE SIXTY-FIRST CONGRESS: BEING THE ACT OF MARCH 4, 1909, *C.* 321, 35 *STAT. AT L.* 1088.

The following extracts are taken from Chapter 6 of the Criminal Code, and relate to "Offenses against Public Justice."

SEC. 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any cause in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

This section is substantially a re-enactment of § 5392, R. S. U. S. . . . As to what constitutes perjury under this section, Judge Toulmin has said: "The oath must be administered in a proceeding that is valid and regular. It must be administered by law. The false testimony must be material, and the oath must be administered by one having legal authority to administer it." United States v. Bedgood, 49 Fed. Rep. 54, 56.

A conviction under this section cannot be sustained on the uncorroborated testimony of a single witness. Boren v. United States, 144 Fed. Rep. 801, 805, 75 C. C. A. 531. As to the requisites of an indictment under this section, see Noah v. United States, 128 Fed. Rep. 270, 62 C. C. A. 618; United States v. Lake, 129 Fed. Rep. 499; United States v. Eddy, 134 Fed. Rep. 114.

SEC. 126. Whoever shall procure another to commit and perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

This section substantially re-enacts § 5393, R. S. U. S. . . . Under this section, Judge Hoffman has defined the requisites of the offense as follows: "To sustain an indictment for procuring a person to commit perjury it is obviously necessary that perjury has in fact been committed. It cannot be committed unless the person taking the oath not only swears to what was false, but does so willfully and knowingly. He who procures another to commit perjury must not only know that the statements to be sworn to are false, but also that the person who is to swear to them knows them to be false; for unless the witness has that knowledge the intent to swear falsely is wanting, and he commits no perjury. It is therefore essential that the indictment should aver, not only that the statements made by the witness were false in fact, and that he knew them to be false, but also that the party procuring him to make those statements knew that they would be intentionally and willfully false on the part of the witness, and thus the crime of perjury would be committed by him." United States v. Evans, 19 Fed. Rep. 912.

Under this section subornation of perjury may be proved by the uncorroborated testimony of the person suborned. United States v. Thompson, 31 Fed. Rep. 331; Boren v. United States, 144 Fed. Rep. 801, 75 C. C. A. 531. As to the requisites of an indictment under this section, see United States v. Howard, 132 Fed. Rep. 325; United States v. Cobban, 134 Fed. Rep. 290.

SEC. 127. Whoever shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceeding, in any Court of the United States, by means whereof any judgment is reversed, made void, or does not take effect; or whoever shall acknowledge, or procure to be acknowledged, in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same, shall be fined not more than five thousand dollars, or imprisoned not more than seven years, or both; but this pro-

vision shall not extend to the acknowledgement of any judgment by an attorney, duly admitted, for any person against whom such judgment is had or given.

This section is a substantial re-enactment of § 5394, R. S. U. S.

SEC. 128. Whoever shall willfully and unlawfully conceal, remove, mutilate, obliterate, or destroy, or attempt to conceal, remove, mutilate, obliterate, or destroy, or, with intent to conceal remove, mutilate, obliterate, destroy, or steal, shall take and carry away any record, proceeding, map, book, paper, document or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined not more than two thousand dollars, or imprisoned not more than three years, or both.

This section substantially re-enacts § 5403, R. S. U. S. As to the object of the section, see United States v. DeGroat, 30 Fed. Rep. 764.

SEC. 129. Whoever, having the custody of any record, proceeding, map, book, document, paper, or other thing specified in the preceding section, shall willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy any such record, proceeding, map, book, document, paper, or thing, shall be fined not more than two thousand dollars or imprisoned not more than three years, or both; and shall moreover forfeit his office and be forever afterward disqualified from holding any office under the Government of the United States.

This section is a substantial re-enactment of § 5408, R. S. U. S.

SEC. 130. Whoever shall forge the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or shall forge or counterfeit the seal of any such court, or shall knowingly concur in using any such forged or counterfeit signature

or seal, for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined not more than five thousand dollars and imprisoned not more than five years.

Based upon § 5419, R. S. U. S.

SEC. 131. Whoever, directly or indirectly, shall give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefor, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision thereon, or because of any such action, vote, opinion, or decision, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

A substantial re-enactment of § 5449, R. S. U. S.

SEC. 132. Whoever, being a judge of the United States, shall in any wise accept or receive any sum of money, or other bribe, present, or reward, or any promise, contract, obligation, gift, or security for the payment of money, or for the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter, or cause depending before him, or because of any such opinion, ruling, decision, judgment, or decree, shall be fined not more than twenty thousand dollars, or imprisoned not more than fifteen years, or both; and shall be forever

disqualified to hold any office of honor, trust, or profit under the United States.

A substantial re-enactment of § 5499.

SEC. 133. Whoever, being a juror, referee, arbitrator, appraiser, assessor, auditor, master, receiver, United States Commissioner, or other person authorized by any law of the United States to hear or determine any question, matter, cause, controversy, or proceeding, shall ask, receive, or agree to receive, any money, property, or value of any kind, or any promise or agreement therefor, upon any agreement or understanding that his vote, opinion, action, judgment, or decision, shall be influenced thereby, or because of any such vote, opinion, action, judgment, or decision, shall be fined not more than two thousand dollors, or imprisoned not more than two years, or both.

SEC. 134. Whoever, being, or about to be, a witness upon a trial, hearing, or other proceeding, before any court or any officer authorized by the laws of the United States to hear evidence or take testimony, shall receive, or agree or offer to receive, a bribe, upon any agreement or understanding that his testimony shall be influenced thereby, or that he will absent himself from the trial, hearing, or other proceeding, or because of such testimony, or such absence, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

SEC. 135. Whoever corruptly, or by threats or force, or by any threatening letter or communication shall endeavor to influence, intimidate, or impede any witness, in any court of the United States or before any United States Commissioner or officer acting as such commissioner, or any grand or petit juror, or officer in or of any

court of the United States, or officer who may be serving at any examination or other proceeding before any United States Commissioner or officer acting as such commissioner, in the discharge of his duty, or who corruptly or by threats or force, or by any threatening letter or threatening communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

See §§ 5399, 5404, R. S. U. S.

SEC. 136. If two or more persons conspire to deter by force, intimidation, or threat, any party or witness in any court of the United States, or in any examination before a United States Commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testfied, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror, each of such persons shall be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

Substantially re-enacting § 5406, R. S. U. S. That the section is restricted to the protection of parties, witnesses, and jurors, see United States v. McLeod, 119 Fed. Rep. 416.

SEC. 137. Whoever shall attempt to influence the action or decision of any grand or petit juror of any court of the United States upon any issue or matter pending before such juror, or before the jury of which he is a member

or pertaining to his duties, by writing or sending to him any letter or any communicatino, in print or writing, in relation to such issue or matter, shall be fined not more than one thousand dollars, or imprisoned not more than six months, or both.

A substantial re-enactment of § 5405, R. S. U. S.

SEC. 140. Whoever shall knowingly and willfully obstruct, resist, or oppose any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any mesne process or warrant, or any rule or order, or any other legal or judicial writ or process of any court of the United States, or United States Commissioner, or shall assault beat, or wound any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process, shall be fined not more than three hundred dollars and imprisoned not more than one year.

A substantial re-enactment of § 5398, R. S. U. S. As to the requisites of an indictment under this section see Blake v. United States, 71 Fed. Rep. 286, 18 C. C. A. 117.

SEC. 145. Whoever shall, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demand or receive any money or other valuable thing, shall be fined not more than two thousand dollars, or imprisoned not more than one year, or both.

This section was formerly, as § 5484, R. S. U. S., limited to internal revenue informers. As now framed it extends to threats of informing against the violation of any law of the United States, and hence to threats in relation to false marking of patented articles.

RULES OF THE SUPREME COURT OF THE UNITED STATES.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to the clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court room, or from the office, without an order from the court, except as provided by Rule 10.

2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the supreme courts of the States to which they respectively belong, and that their private and professional character shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, ———— ————, do solemnly swear [or affirm] that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3.

PRACTICE.

This court considers the former practice of the courts of king's bench and of chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

4.

BILL OF EXCEPTIONS.

The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a State, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such State.

3. Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. There may be united with a motion to dismiss a writ of error or an appeal, a motion to affirm on the ground that, although the record may show that this court has jurisdiction, it is manifest the writ or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

6. The court will not hear arguments on Saturday (unless for special cause it shall order to the contrary), but will devote that day to the other business of the court. The motion day shall be Monday of each week; and motions not required by the rules of the court to be put on the docket shall be entitled to preference immediately after the reading of opinions, if such motions shall be made before the court shall have entered upon the hearing of a case upon the docket.

7.

LAW LIBRARY.

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

2. The clerk shall deposit in the law library, to be there carefully preserved, one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs or arguments filed therein.

3. The marshal shall take charge of the books of the court, together with such of the duplicate law books as Congress may direct to be transferred to the court, and arrange them in the conference room, which he shall have fitted up in a proper manner; and he shall not permit such books to be taken therefrom by any one except the justices of the court.

8.

WRIT OF ERROR, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make return of the same, by transmitting a true copy of the record, and of the assignment of errors, and of all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit court, or district court exercising circuit-court jurisdiction, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transport-

ing, and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and the power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact, and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.

9.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any justice of this court, may enlarge the time, by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been

duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

4. In all cases where the period of thirty days is mentioned in Rule 8, it shall be extended to sixty days in writs of error and appeals from California, Oregon, Nevada, Washington, New Mexico, Utah, Arizona, Montana, Wyoming, North Dakota, South Dakota, Alaska, Idaho, Hawaii and Porto Rico, and to one hundred and twenty days from the Philippine Islands.

10.

PRINTING RECORDS.

1. In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer and supervising the printing, and shall notify to the party docketing the case the amount of the

estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached in the regular call of the docket, after March 1, 1884, the case shall be dismissed.

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

4. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers, sent up under Rule 8, section 4, as are necessary to be printed; and of the whole record in cases of original jurisdiction.

5. The clerk shall supervise the printing, and see that the printed copy is properly indexed. He shall distribute the printed copies to the justices and the reporter, from time to time, as required, and a copy to the counsel for the respective parties.

6. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

7. In case of reversal, affirmance, or dismissal, with costs, the amount of the cost of printing the record and of the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

8. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of the bill of fees due by

them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties, respectively, to compel payment of said fees.

9. The plaintiff in error or appellant may, within ninety days after filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ninety days thereafter, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

The fees of the clerk under Rule 24, section 7, shall be computed, as at present, on the folios in the record as filed, and shall be in full for the performance of his duties in the execution hereof.

11.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceedings in a foreign language, and the record does not also contain a translation

of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it to the inferior court, in order that a translation may be there supplied and inserted in the record.

12.

FURTHER PROOF.

1. In all cases where further proof is ordered by the court, the depositions which may be taken shall be by a commission, to be issued from this court, or from any circuit court of the United States.

2. In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any circuit court of the United States, under the direction of any judge thereof; and no such commission shall issue but upon interrogatories, to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however,* That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where by law it is admissible.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record, as evidence,

unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

14.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of errror or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall

be printed in some newspaper of general circulation within the State, Territory, or District from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in the circuit court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment, or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the

United States, and stating therein the name and character of such representative, and the State or Territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And *provided, also,* That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within time as above required, by the opposite party, the case shall abate: And *provided, also,* That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

16.

NO APPEARANCE OF PLAINTIFF.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the right of the case.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first day of April; but twenty-five copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

21.

BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evi-

dence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

22.

ORAL ARGUMENTS.

1. The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: *Provided, always,* That a fair opening of the case shall be made by the party having the opening and closing arguments.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent. on the amount so received, kept, and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing, and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio; but when the necessary printed copies of the record, as printed for the use of the lower court, shall be furnished, the fee for supervising shall be five cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For a mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every printed copy of any opinion of the court or any justice thereof, certified under seal, two dollars.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter as soon as the same shall be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will

be heard; and if neither party shall be ready to proceed in the argument, the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court.

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also by leave of the court be advanced on motion of the Attorney-General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every case which shall have been called in its order and passed and put at the foot of the docket shall, if not again reached during the term it was called, be continued to the next term of the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the

case shall then be by him reinstated for all ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

29.

SUPERSEDEAS.

Supersedeas bonds in the circuit courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, a majority of the court so determines.

31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

32.

WRITS OF ERROR AND APPEALS UNDER THE ACT OF FEBRUARY 25, 1889, CHAPTER 236, OR UNDER SECTION 5 OF THE ACT OF MARCH 3, 1891, CHAPTER 517.

Cases brought to this court by writ of error or appeal, under the act of February 25, 1889, chapter 236, or under section 5 of the act of March 3, 1891, chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion, and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIALS.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away

by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

34.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

35.

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a district court or a circuit court direct to this court, under section 5 of the act entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States,

and for other purposes," approved March 3, 1891, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and paticularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6, and 9, of Rule 10.

36.

APPEALS AND WRITS OF ERROR.

1. An appeal or a writ of error from a circuit court or a district court direct to this court, in the cases provided for i ections 5 and 6 of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, may be allowed, in term time or in vaca-

tion, by any justice of this court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under said sections 5 and 6, the circuit court or district court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

37.

CASES FROM CIRCUIT COURT OF APPEALS.

1. Where, under section 6 of the said act, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where application is made to this court under section 6 of the said act to require a case to be certified to it for its review and determination, a certified copy of the entire record of the case in the circuit court of appeals shall be furnished to this court by the applicant, as part of the application.

38.

INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 5 and 6 of the said act.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

RULES

OF THE

SUPREME COURT OF THE UNITED STATES

RELATING TO

APPEALS FROM THE COURT OF CLAIMS.

(As adopted by the Supreme Court in 1866 and subsequently added to and amended.)

RULE I.

Record on which appeals are heard in Supreme Court.
9. Wall., 410, and 7 C. Cls. R., 508, and 116 U. S. R., 154, 402.

In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

—transcript of pleadings, etc.
116 U. S., 402; 1 Wall., 102.

1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case. (1)

—finding of fact and conclusions of law.
17 Wall., xvii.
5 Wall., 410, and 7 C. Cls. R., 2.
93 U. S. R., 605, and 12 C. Cls. R., 83.
18 C. Cls. R., 289, 705.
111 U. S. R., 609; 6 Wall., 101, and 7 C. Cls. R., 11; 116 U. S., 154; 20 C. Cls. R., 508, 509; 26 C. Cls. R., 109.

2. A finding by the Court of Claims of the facts in the case, established by the evidence, in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts on which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as part of the record. (2)

RULE II.

Obsolete rule.

[Applied only to decisions rendered before its adoption in 1866, and therefore long since obsolete.]

RULE III.

Allowance of appeals; application stops running of limitation. 17 Wall., 405; 9 C. Cls. R., 22, and 23 C. Cls. R., 1, 41.

In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal. (3)

RULE IV.

Findings of fact and conclusions of law to be filed by court.

In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their findings of fact and their conclusions of law therein, in open court, before or at the time they enter judgment in the case.

RULE V.

Parties before trial to submit request to find facts.

In every such case, each party, at such time before trial, and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven and deems material to the due presentation of the case in the findings of fact. (3)

RULE VI.

Rules to apply to cases under the District claims act.

Ordered, that Rule 1, in reference to appeals from the Court of Claims, be, and the same is hereby, made applicable to appeals in all cases heretofore or hereafter decided

by that court under the jurisdiction conferred by the act of June 16, 1880, c. 243, "to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of claims to hear the same, and for other purposes." (Adopted May 7, 1883.)

(1) Rule 8, section 2, of the Supreme Court requires the clerk to annex to and transmit with the record a copy of the opinion or opinions filed in the case.

(2) The following extract from the opinion of the Supreme Court in the case of Burr v. The Des Moines Railroad and Navigation Co., 1 Wall., p. 102, will explain what is necessary to be set out in the findings:

"The statement of facts on which this court will inquire if there is or is not error in the application of the law to them is a statement of the ultimate facts or propositions which the evidence is intended to establish, and not the evidence on which those ultimate facts are supposed to rest. The statement must be sufficient in itself, without inferences or comparisons, or balancing of testimony, or weighing evidence, to justify the application of the legal principles which must determine the case. It must leave none of the functions of a jury to be discharged by this court, but must have all the sufficiency, fullness, and perspicuity of a special verdict. If it requires of the court to weigh conflicting testimony, or to balance admitted facts, and deduce from these the proposition of fact on which alone a legal conclusion can rest, then it is not such a statement as this court can act upon."

(3) Rule 8, section 5, and Rule 9, section 1, require that the record on appeal in cases from all courts must be filed with the clerk of the Supreme Court and the case docketed within thirty days from the allowance of the appeal.

Rule 20, section 1, permits submission of appeals from the Court of Claims on printed briefs without oral argument, by consent of both parties, within the first ninety days of the term, and thereafter within thirty days after docketing, but not later than April 1. Twenty-five copies of the arguments, signed by attorneys or counsellors of the Supreme Court, must first be filed.

RULES OF PRACTICE FOR THE COURTS OF EQUITY OF THE UNITED STATES.

PRELIMINARY REGULATIONS.

1.

The circuit courts, as courts of equity, shall be deemed always open for the purpose of filing bills, answers, and other pleadings; for issuing and returning mesne and final process and commissions; and for making and directing all interlocutory motions, orders, rules and other proceedings, preparatory to hearing of all causes upon their merits.

2.

The clerk's office shall be open, and the clerk shall be in attendance therein, on the first Monday of every month, for the purpose of receiving, entering, entertaining, and disposing of all motions, rules, orders, and other proceedings, which are grantable of course and applied for or had by the parties or their solicitors, in all causes pending in equity, in pursuance of the rules hereby prescribed.

3.

Any judge of the circuit court, as well in vacation as in term, may, at chambers, or on the rule-days at the clerk's office, make and direct all such interlocutory orders, rules, and other proceedings, preparatory to the hearing of all causes upon their merits in the same manner and with the same effect as the circuit court could

make and direct the same in term, reasonable notice of the application therefor being first given to the adverse party, or his solicitor, to appear and show cause to the contrary, at the next rule-day thereafter, unless some other time is assigned by the judge for the hearing.

4.

All motions, rules, orders and other proceedings, made and directed at chambers, or on rule-days at the clerk's office, whether special or of course, shall be entered by the clerk in an order-book, to be kept at the clerk's office, on the day when they are made and directed; which book shall be open at all office hours to the free inspection of the parties in any suit in equity, and their solicitors. And, except in cases where personal or other notice is specially required or directed, such entry in the order-book shall be deemed sufficient notice to the parties and their solicitors, without further service thereof, of all orders, rules, acts, notices, and other proceedings entered in such order-book touching any and all the matters in the suits to and in which they are parties and solicitors. And notice to the solicitors shall be deemed notice to the parties for whom they appear and whom they represent, in all cases where personal notice on the parties is not otherwise specially required. Where the solicitors for all the parties in a suit reside in or near the same town or city the judges of the circuit court may, by rule, abridge the time for notice of rules, orders, or other proceedings not requiring personal service on the parties, in their discretion.

5.

All motions and applications in the clerk's office for the issuing of mesne process and final process to enforce and execute decrees; for filing bills, answers, pleas, de-

murrers, and other pleadings; for making amendments to bills and answers; for taking bills *pro confesso;* for filing exceptions; and for other proceedings in the clerk's office which do not, by the rules hereinafter prescribed, require any allowance or order of the court or of any judge thereof, shall be deemed motions and applications grantable of course by the clerk of the court. But the same may be suspended, or altered, or rescinded by any judge of the court, upon special cause shown.

6.

All motions for rules or orders and other proceedings, which are not grantable of course or without notice, shall, unless a different time be assigned by a judge of the court, be made on a rule-day, and entered in the order-book, and shall be heard at the rule-day next after that on which the motion is made. And if the adverse party, or his solicitor, shall not then appear, or shall not show good cause against the same, the motion may be heard by any judge of the court *ex parte,* and granted, as if not objected to, or refused, in his discretion.

PROCESS.

7.

The process of subpœna shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be the proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

8.

Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of *assumpsit*. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of the plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. If the delinquent party cannot be found, a writ of sequestration shall issue against his estate upon the return of *non est inventus*, to compel obedience to the decree.

9.

When any decree or order is for the delivery of possession, upon proof made by affidavit of a demand and refusal to obey the decree or order, the party prosecuting the same shall be entitled to a writ of assistance from the clerk of the court.

10.

Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the

cause; and every person, not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

SERVICE OF PROCESS.

11.

No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

12.

Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall contain the Christian names as well as the surnames of the parties, and shall be returnable into the clerk's office the next rule-day, or the next rule-day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken *pro confesso*. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be sued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

13.

The service of all subpoenas shall be by a delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling-house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

14.

Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant, if he shall require it, until due service is made.

15.

The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

16.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

APPEARANCE.

17.

The appearance-day of the defendant shall be the rule-day to which the subpoena is made returnable, provided he has been served with the process twenty days before that day; otherwise his appearance-day shall be the next rule-day succeeding the rule-day when the process is returnable.

The appearance of the defendant, either personally or by his solicitor, shall be entered in the order-book on the day thereof by the clerk.

BILLS TAKEN PRO CONFESSO.

18.

It shall be the duty of the defendant, unless the time shall be otherwise enlarged, for cause shown, by a judge of the court, upon motion for that purpose, to file his

plea, demurrer, or answer to the bill, in the clerk's office, on the rule-day next succeeding that of entering his appearance. In default thereof, the plaintiff may, at his election, enter an order (as of course) in the order-book, that the bill be taken *pro confesso;* and thereupon the cause shall be proceeded in *ex parte,* and the matter of the bill may be decreed by the court at any time after the expiration of thirty days from and after the entry of said order, if the same can be done without an answer, and is proper to be decreed; or the plaintiff, if he requires any discovery or answer to enable him to obtain a proper decree, shall be entitled to process of attachment against the defendant to compel an answer, and the defendant shall not, when arrested upon such process, be discharged therefrom, unless upon filing his answer, or otherwise complying with such order as the court or a judge thereof may direct as to pleading to or fully answering the bill, within a period to be fixed by the court or judge, and undertaking to speed the cause.

19.

When the bill is taken *pro confesso* the court may proceed to a decree at any time after the expiration of thirty days from and after the entry of the order to take the bill *pro confesso,* and such decree rendered shall be deemed absolute, unless the court shall, at the same term, set aside the same, or enlarge the time for filing the answer, upon cause shown upon motion and affidavit of the defendant. And no such motion shall be granted, unless upon the payment of the costs of the plaintiff in the suit up to that time, or such part thereof as the court shall deem reasonable, and unless the defendant shall undertake to file his answer within such time as the court shall direct, and submit to such other terms as the court shall direct, for the purpose of speeding the cause.

FRAME OF BILLS.

20.

Every bill, in the introductory part thereof, shall contain the names, places of abode, and citizenship of all the parties, plaintiffs and defendants, by and against whom the bill is brought. The form, in substance, shall be as follows: "To the judges of the circuit court of the United States for the district of ——: A. B., of ——, and a citizen of the State of ——, brings this his bill against C. D., of ——, and a citizen of the State of ——, and E. F., of ——, and a citizen of the State of ——. And thereupon your orator complains and says that," etc.

21.

The plaintiff, in his bill, shall be at liberty to omit, at his option, the part which is usually called the common confederacy clause of the bill, averring a confederacy between the defendants to injure or defraud the plaintiff; also what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill; also what is commonly called the jurisdiction clause of the bill, that the acts complained of are contrary to equity, and that the defendant is without any remedy at law; and the bill shall not be demurrable therefor. And the plaintiff may, in the narrative or stating part of his bill, state and avoid, by counter averments, at his option, any matter or thing which he supposes will be insisted upon by the defendant by way of defense or excuse to the case made by the plaintiff for relief. The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief; and if an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is required, it shall also be specially asked for.

22.

If any persons, other than those named as defendants in the bill, shall appear to be necessary or proper parties thereto, the bill shall aver the reason why they are not made parties, by showing them to be without the jurisdiction of the court, or that they cannot be joined without ousting the jurisdiction of the court as to the other parties. And as to persons who are without the jurisdiction and may properly be made parties, the bill may pray that process may issue to make them parties to the bill if they should come within the jurisdiction.

23.

The prayer for process of subpœna in the bill shall contain the names of all the defendants named in the introductory part of the bill, and if any of them are known to be infants under age, or otherwise under guardianship, shall state the fact, so that the court may take order thereon, as justice may require. upon the return of the process. If an injunction, or a writ of *ne exeat regno*, or any other special order, pending the suit, is asked for in the prayer for relief, that shall be sufficient, without repeating the same in the prayer for process.

24.

Every bill shall contain the signature of counsel annexed to it, which shall be considered as an affirmation on his part that, upon the instructions given to him, and the case laid before him, there is good ground for the suit, in the manner in which it is framed.

25.

In order to prevent unnecessary costs and expenses, and to promote brevity, succinctness, and directness in the allegations of bills and answers, the regular taxable

costs for every bill and answer shall in no case exceed the sum which is allowed in the State court of chancery in the district, if any there be; but if there be none, then it shall not exceed the sum of three dollars for every bill or answer.

SCANDAL AND IMPERTINENCE IN BILLS.

26.

Every bill shall be expressed in as brief and succinct terms as it réasonably can be, and shall contain no unnecessary recitals of deeds, documents, contracts or other instruments, in *haec verba*, or any other impertinent matter, or any scandalous matter not relevant to the suit. If it does, it may, on exceptions, be referred to a master, by any judge of the court, for impertinence or scandal; and if so found by him, the matter shall be expunged at the expense of the plaintiff, and he shall pay to the defendant all his costs in the suit up to that time, unless the court or a judge thereof shall otherwise order. If the master shall report that the bill is not scandalous or impertinent, the plaintiff shall be entitled to all costs occasioned by the reference.

27.

No order shall be made by any judge for referring any bill, answer, or pleading, or other matter or proceeding, depending before the court, for scandal or impertinence, unless exceptions are taken in writing and signed by counsel, describing the particular passages which are considered to be scandalous or impertinent; nor unless the exceptions shall be filed on or before the next rule-day after the process on the bill shall be returnable, or after the answer or pleading is filed. And such order, when obtained, shall be considered as abandoned, unless the party obtaining the order shall, without any unnec-

essary delay, procure the master to examine and report for the same on or before the next succeeding rule-day, or the master shall certify that further time is necessary for him to complete the examination.

AMENDMENT OF BILLS.

28.

The plaintiff shall be at liberty, as a matter of course, and without payment of costs, to amend his bill, in any matters whatsoever, before any copy has been taken out of the clerk's office, and in any small matters afterwards, such as filing blanks, correcting errors of dates, misnomer of parties, misdescription of premises, clerical errors, and generally in matters of form. But if he amend in a material point (as he may do of course) after a copy has been so taken, before any answer or plea or demurrer to the bill, he shall pay to the defendant the costs occasioned thereby, and shall, without delay, furnish him a fair copy thereof, free of expense, with suitable references to the places where the same are to be inserted. And if the amendments are numerous, he shall furnish, in like manner, to the defendant, a copy of the whole bill as amended; and if there be more than one defendant, a copy shall be furnished to each defendant affected thereby.

29.

After an answer, or plea, or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any judge of the court to amend his bill on or before the next succeeding rule-day, upon payment of costs or without payment of costs, as the court or a judge thereof may in his discretion direct. But after replication filed, the plain-

tiff shall not be permitted to withdraw it and to amend his bill, except upon a special order of a judge of the court, upon motion or petition, after due notice to the other party, and upon proof by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiff's submitting to such other terms as may be imposed by the judge for speeding the cause.

30.

If the plaintiff so obtaining any order to amend his bill after answer, or plea, or demurrer, or after replication, shall not file his amendments or amended bill, as the case may require, in the clerk's office on or before the next succeeding rule-day, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment had been made.

DEMURRERS AND PLEAS.

31.

No demurrer or plea shall be allowed to be filed to any bill, unless upon a certificate of counsel, that in his opinion it is well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay; and, if a plea, that it is true in point of fact.

32.

The defendant may at any time before the bill is taken for confessed, or afterward with the leave of the court, demur or plead to the whole bill, or to part of it, and he may demur to part, plead to part and answer as to the residue; but in every case in which the bill specially

charges fraud or combination, a plea to such part must be accompanied with an answer fortifying the plea and explicitly denying the fraud and combination, and the facts on which the charge is founded.

33.

The plaintiff may set down the demurrer or plea to be argued, or he may take issue on the plea. If, upon an issue, the facts stated in the plea be determined for the defendant, they shall avail him as far as in law and equity they ought to avail him.

34.

If, upon the hearing, any demurrer or plea is overruled, the plaintiff shall be entitled to his costs in the cause up to that period unless the court shall be satisfied that the defendant has good ground, in point of law or fact, to interpose the same, and it was not interposed vexatiously or for delay. And upon the overruling of any plea or demurrer, the defendant shall be assigned to answer the bill, or so much thereof as is covered by the plea or demurrer, the next succeeding rule-day, or at such other period as, consistently with justice and the rights of the defendant, the same can, in the judgment of the court, be reasonably done; in default whereof, the bill shall be taken against him *pro confesso*, and the matter thereof proceeded in and decreed accordingly.

35.

If, upon the hearing, any demurer or plea shall be allowed, the defendant shall be entitled to his costs. But the court may, in its discretion, upon motion of the plaintiff, allow him to amend his bill, upon such terms as it shall deem reasonable.

36.

No demurrer or plea shall be held bad and overruled upon argument, only because such demurrer or plea shall not cover so much of the bill as it might by law have extended to.

37.

No demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant may extend to some part of the same matter as may be covered by such demurrer or plea.

38.

If the plaintiff shall not reply to any plea, or set down any plea or demurrer for argument on the rule-day when the same is filed, or on the next succeeding rule-day, he shall be deemed to admit the truth and sufficiency thereof, and his bill shall be dismissed as of course, unless a judge of the court shall allow him further time for that purpose.

ANSWERS.

39.

The rule that if a defendant submits to answer he shall answer fully to all the matters of the bill, shall no longer apply in cases where he might by plea protect himself from such answer and discovery. And the defendant shall be entitled in all cases by answer to insist upon all matters of defense (not being matters of abatement, or to the character of the parties, or matters of form) in bar of or to the merits of the bill, of which he may be entitled to avail himself by a plea in bar; and in such answer he shall not be compellable to answer any other matters than he would be compellable to answer

and discover upon filing a plea in bar and an answer in support of such plea, touching the matters set forth in the bill to avoid or repel the bar or defense. Thus, for example, a *bona-fide* purchaser, for a valuable consideration, without notice, may set up that defense by way of answer instead of plea, and shall be entitled to the same protection, and shall not be compellable to make any further answer or discovery of his title than he would be in any answer in support of such plea.

40.

A defendant shall not be bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; and a defendant shall not be bound to answer any interrogatory in the bill, except those interrogatories which such defendant is required to answer; and where a defendant shall answer any statement or charge in the bill to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer shall be deemed impertinent.

DECEMBER TERM, 1850.

Ordered, That the fortieth rule, heretofore adopted and promulgated by this court as one of the rules of practice in suits in equity in the circuit courts, be, and the same is hereby, repealed and annulled. And it shall not hereafter be necessary to interrogate a defendant specially and particularly upon any statement in the bill, unless the complainant desires to do so, to obtain a discovery.

41.

The interrogatories contained in the interrogating part of the bill shall be divided as conveniently as may be from each other and numbered consecutively 1, 2, 3, etc.; and the interrogatories which each defendant is

required to answer shall be specified in a note at the foot of the bill, in the form or to the effect following, that is to say: "The defendant (A. B.) is required to answer the interrogatories numbered respectively 1, 2, 3," etc.; and the office copy of the bill taken by each defendant shall not contain any interrogatories except those which such defendant is so required to answer, unless such defendant shall require to be furnished with a copy of the whole bill.

DECEMBER TERM, 1871.

Amendment to Forty-first Equity Rule.

If the complainant, in his bill, shall waive an answer under oath, or shall only require an answer under oath with regard to certain specified interrogatories, the answer of the defendant, though under oath, except such part thereof as shall be directly responsive to such interrogatories, shall not be evidence in his favor, unless the cause be set down for hearing on bill and answer only; but may nevertheless be used as an affidavit, with the same effect as heretofore, on a motion to grant or dissolve an injunction, or on any other incidental motion in the cause; but this shall not prevent a defendant from becoming a witness in his own behalf under section 3 of the act of Congress of July 2, 1864. (See § 858, R. S. U. S.)

42.

The note at the foot of the bill, specifying the interrogatories which each defendant is required to answer, shall be considered and treated as part of the bill, and the addition of any such note to the bill, or any alteration in or addition to such note, after the bill is filed, shall be considered and treated as an amendment of the bill.

43.

Instead of the words of the bill now in use, preceding the interrogating part thereof, and beginning with the words "To the end therefore," there shall hereafter be used words in the form or to the effect following: "To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer; that is to say—

"1. Whether, etc.

"2. Whether, etc."

44.

A defendant shall be at liberty, by answer, to decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself by demurrer; and he shall be at liberty so to decline, notwithstanding he shall answer other parts of the bill from which he might have protected himself by demurrer.

45.

No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without the payment of costs, as the court, or a judge thereof, may in his discretion direct.

46.

In every case where an amendment shall be made after answer filed, the defendant shall put in a new or supplemental answer on or before the next succeeding rule-day after that on which the amendment or amended bill is filed, unless the time is enlarged or otherwise ordered by a judge of the court; and upon his default, the like proceedings may be had as in cases of an omission to put in an answer.

PARTIES TO BILLS.

47.

In all cases where it shall appear to the court that persons, who might otherwise be deemed necessary or proper parties to the suit, can not be made parties by reason of their being out of the jurisdiction of the court, or incapable otherwise of being made parties, or because their joinder would oust the jurisdiction of the court as to the parties before the court, the court may, in their discretion, proceed in the cause without making such persons parties; and in such cases the decree shall be without prejudice to the rights of the absent parties.

48.

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

49.

In all suits concerning real estate which is vested in trustees by devise, and such trustees are competent to sell and give discharges for the proceeds of the sale, and for the rents and profits of the estate, such trustees shall represent the persons beneficially interested in the estate, or the proceeds, or the rents and profits, in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested in such real estates, or rents and profits, parties to the suit; but the court may, upon consideration of the matter on the hearing, if it shall so think fit, order such persons to be made parties.

50.

In suits to execute the trusts of a will, it shall not be necessary to make the heir at law a party; but the plaintiffs shall be at liberty to make the heir at law a party where he desires to have the will established against him.

51.

In all cases in which the plaintiff has a joint and several demand against several persons, either as principals or sureties, it shall not be necessary to bring before the court as parties to a suit concerning such demand all the persons liable thereto; but the plaintiff may proceed against one or more of the persons severally liable.

52.

Where the defendant shall, by his answer, suggest that the bill is defective for want of parties, the plaintiff shall be at liberty, within fourteen days after answer filed, to set down the cause for argument upon that objection

only; and the purpose for which the same is so set down shall be notified by an entry, to be made in the clerk's order-book, in the form or to the effect following (that is to say): "Set down upon the defendant's objection for want of parties." And where the plaintiff shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties taken by the answer, he shall not, at the hearing of the cause, if the defendant's objection shall then be allowed be entitled as of course to an order for liberty to amend his bill by adding parties. But the court, if it thinks fit, shall be at liberty to dismiss the bill.

53.

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

NOMINAL PARTIES TO BILLS.

54.

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

55.

Whenever an injunction is asked for by the bill to stay proceedings at law, if the defendant do not enter his appearance and plead, demur, or answer to the same within the time prescribed therefor by these rules, the plaintiff shall be entitled as of course, upon motion, without notice, to such injunction. But special injunctions shall be grantable only upon due notice to the other party by the court in term or by a judge thereof in vacation, after a hearing, which may be *ex parte*, if the adverse party does not appear at the time and place ordered. In every case where an injunction—either the common injunction or a special injunction—is awarded in vacation, it shall, unless previously dissolved by the judge granting the same, continue until the next term of the court, or until it is dissolved by some other order of the court.

BILLS OF REVIVOR AND SUPPLEMENTAL BILLS.

56.

Whenever a suit in equity shall become abated by the death of either party, or by any other event, the same may be revived by a bill of revivor or a bill in the nature of a bill of revivor, as the circumstances of the case may require, filed by the proper parties entitled to revive the same, which bill may be filed in the clerk's office at any time; and, upon suggestion of the facts, the proper process of subpoena shall, as of course, be issued by the clerk, requiring the proper representatives of the other party to appear and show cause, if any they have, why the cause should not be revived. And if no cause shall be shown at the next rule-day which shall occur after fourteen days from the time of the service of the same process, the suit shall stand revived, as of course.

57.

Whenever any suit in equity shall become defective from any event happening after the filing of the bill (as, for example, by change of interest in the parties), or for any other reason a supplemental bill, or a bill in the nature of a supplemental bill, may be necessary to be filed in the cause, leave to file the same may be granted by any judge of the court on any rule-day upon proper cause shown and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead, or answer thereto on the next succeeding rule-day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by a judge of the court.

58.

It shall not be necessary in any bill of revivor or supplemental bill to set forth any of the statements in the original suit, unless the special circumstances of the case may require it.

ANSWERS.

59.

Every defendant may swear to his answer before any justice or judge of any court of the United States, or before any commissioner appointed by any circuit court to take testimony or depositions, or before any master in chancery appointed by any circuit court, or before any judge of any court of a State or Territory, or before any notary public.

AMENDMENT OF ANSWERS.

60.

After an answer is put in, it may be amended, as of course, in any matter or form, or by filling up a blank, or correcting a date, or reference to a document, or other

small matter, and be resworn, at any time before a replication is put in, or the cause is set down for a hearing upon bill and answer. But after replication, or such setting down for a hearing, it shall not be amended in any material matters, as by adding new facts or defenses, or qualifying or altering the original statements, except by special leave of the court, or of a judge thereof, upon motion and cause shown, after due notice to the adverse party, supported, if required, by affidavit; and in every case where leave is so granted, the court or the judge granting the same may, in his discretion, require that the same be separately engrossed, and added as a distinct amendment to the original answer, so as to be distinguishable therefrom.

EXCEPTIONS TO ANSWERS.

61.

After an answer is filed on any rule-day, the plaintiff shall be allowed until the next succeeding rule-day to file in the clerk's office exceptions thereto for insufficiency, and no longer, unless a longer time shall be allowed for the purpose, upon cause shown to the court, or a judge thereof; and, if no exception shall be filed thereto within that period, the answer shall be deemed and taken to be sufficient.

62.

When the same solicitor is employed for two or more defendants, and separate answers shall be filed, or other proceedings had, by two or more of the defendants separately, costs shall not be allowed for such separate answers, or other proceedings, unless a master, upon reference to him, shall certify that such separate answers and other proceedings were necessary or proper, and ought not to have been joined together.

63.

Where exceptions shall be filed to the answer for insufficiency, within the period prescribed by these rules, if the defendant shall not submit to the same and file an amended answer on the next succeeding rule-day, the plaintiff shall forthwith set them down for a hearing on the next succeeding rule-day thereafter, before a judge of the court, and shall enter, as of course, in the order-book, an order for that purpose; and if he shall not so set down the same for a hearing, the exceptions shall be deemed abandoned, and the answer shall be deemed sufficient; provided, however, that the court, or any judge thereof, may, for good cause shown, enlarge the time for filing exceptions, or for answering the same, in his discretion, upon such terms as he may deem reasonable.

64.

If, at the hearing the exceptions shall be allowed, the defendant shall be bound to put in a full and complete answer thereto on the next succeeding rule-day; otherwise the plaintiff shall, as of course, be entitled to take the bill, so far as the matter of such exceptions is concerned, as confessed, or, at his election, he may have a writ of attachment to compel the defendant to make a better answer to the matter of the exceptions; and the defendant, when he is in custody upon such writ, shall not be discharged therefrom but by an order of the court, or of a judge thereof, upon his putting in such answer, and complying with such other terms as the court or judge may direct.

65.

If, upon argument, the plaintiff's exceptions to the answer shall be overruled, or the answer shall be adjudged insufficient, the prevailing party shall be entitled

to all the costs occasioned thereby, unless otherwise directed by the court, or the judge thereof, at the hearing upon the exceptions.

REPLICATION AND ISSUE.

66.

Whenever the answer of the defendant shall not be excepted to, or shall be adjudged or deemed sufficient, the plaintiff shall file the general replication thereto on or before the next succeeding rule-day thereafter; and in all cases where the general replication is filed, the cause shall be deemed, to all intents and purposes, at issue, without any rejoinder or other pleading on either side. If the plaintiff shall omit or refuse to file such replication within the prescribed period, the defendant shall be entitled to an order, as of course, for a dismissal of the suit; and the suit shall thereupon stand dismissed, unless the court, or a judge thereof, shall, upon motion, for cause shown, allow a replication to be filed *nunc pro tunc*, the plaintiff submitting to speed the cause, and to such other terms as may be directed.

TESTIMONY—HOW TAKEN.

67.

After the cause is at issue, commissions to take testimony may be taken out in vacation as well as in term, jointly by both parties, or severally by either party, upon interrogatories filed by the party taking out the same in the clerk's office, ten days' notice thereof being given to the adverse party to file cross-interrogatories before the issuing of the commission; and if no cross-interrogatories are filed at the expiration of the time the commission may issue *ex parte*. In all cases the commissioner or commissioners may be named by the

court or by a judge thereof; and the presiding judge of the court exercising jurisdiction may, either in term time or in vacation, vest in the clerk of the court general power to name commissioners to take testimony.

Either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court. The examiner, if he so request, shall be furnished with a copy of the pleadings.

Such examination shall take place in the presence of the parties or their agents, by their counsel or solicitors, and the witnesses shall be subject to cross-examination and re-examination, all of which shall be conducted as near as may be in the mode now used in common-law courts.

The depositions taken upon such oral examination shall be reduced to writing by the examiner, in the form of question put and answer given; provided, that, by consent of parties, the examiner may take down the testimony of any witness in the form of narrative.

At the request of either party, with reasonable notice, the deposition of any witness shall, under the direction of the examiner, be taken down either by a skillful stenographer or by a skillful typewriter, as the examiner may elect, and when taken stenographically shall be put into typewriting or other writing; provided, that such stenographer or typewriter has been appointed by the court, or is approved by both parties.

The testimony of each witness, after such reduction to writing, shall be read over to him and signed by him in the presence of the examiner and of such of the parties or counsel as may attend; provided that if the witness shall refuse to sign his deposition so taken, then

the examiner shall sign the same, stating upon the record the reasons, if any, assigned by the witness for such refusal.

The examiner may, upon all examinations, state any special matters to the court as he shall think fit; and any question or questions which may be objected to shall be noted by the examiner upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the questions; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

In case of refusal of witnesses to attend, to be sworn, or to answer any question put by the examiner, or by counsel or solicitor, the same practice shall be adopted as is now practiced with respect to witnesses to be produced on examination before an examiner of said court on written interrogatories.

Notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors, or parties, of the time and place of the examination, for such reasonable time as the examiner may fix by order in each cause.

When the examination of witnesses before the examiner is concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the clerk of the court, to be there filed of record, in the same mode as prescribed in section 865 of the Revised Statutes.

Testimony may be taken on commission in the usual way, by written interrogatories and cross-interrogatories, on motion to the court in term time, or to a judge in vacation, for special reasons, satisfactory to the court or judge.

Where the evidence to be adduced in a cause is to be taken orally, as before provided, the court may, on mo-

tion of either party, assign a time within which the complainant shall take his evidence in support of the bill, and a time thereafter within which the defendant shall take his evidence in defense, and a time thereafter within which the complainant shall take his evidence in reply; and no further evidence shall be taken in the cause, unless by agreement of the parties or by leave of court first obtained, on motion for cause shown.

The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing shall be paid in the first instance by the party calling the witness, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them.

Upon due notice given as prescribed by previous order, the court may, at its discretion, permit the whole, or any specific part, of the evidence to be adduced orally in open court on final hearing.

68.

Testimony may also be taken in the cause, after it is at issue, by deposition, according to the act of Congress. But in such case, if no notice is given to the adverse party of the time and place of taking the deposition, he shall, upon motion and affidavit of the fact, be entitled to a cross-examination of the witness, either under a commission or by a new deposition taken under the acts of Congress, if a court or judge thereof shall, under all the circumstances, deem it reasonable.

69.

Three months, and no more, shall be allowed for the taking of testimony after the cause is at issue, unless the court, or a judge thereof, shall, upon special cause shown by either party, enlarge the time; and no testi-

mony taken after such period shall be allowed to be read in evidence at the hearing. Immediately upon the return of the commissions and depositions containing the testimony into the clerk's office, publication thereof may be ordered in the clerk's office, by any judge of the court, upon due notice to the parties, or it may be enlarged, as he may deem reasonable, under all the circumstances; but, by consent of the parties, publication of the testimony may at any time pass into the clerk's office, such consent being in writing, and a copy thereof entered in the order-books, or indorsed upon the deposition or testimony.

TESTIMONY DE BENE ESSE.

70.

After any bill filed and before the defendant hath answered the same, upon affidavit made that any of the plaintiff's witnesses are aged and infirm, or going out of the country, or that any one of them is a single witness to a material fact, the clerk of the court shall, as of course, upon the application of the plaintiff, issue a commission to such commissioner or commissioners as a judge of the court may direct, to take the examination of such witness or witnesses *de bene esse*, upon giving due notice to the adverse party of the time and place of taking his testimony.

FORM OF THE LAST INTERROGATORY.

71.

The last interrogatory in the written interrogatories to take testimony now commonly in use shall in the future be altered, and stated in substance thus: "Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties

at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer."

CROSS-BILL.

72.

Where a defendant in equity files a cross-bill for discovery only against the plaintiff in the original bill, the defendant to the original bill shall first answer thereto before the original plaintiff shall be compellable to answer the cross-bill. The answer of the original plaintiff to such cross-bill may be read and used by the party filing the cross-bill at the hearing, in the same manner and under the same restrictions as the answer praying relief may now be read and used.

REFERENCE TO AND PROCEEDINGS BEFORE MASTERS.

73.

Every decree for an account of the personal estate of a testator or intestate shall contain a direction to the master to whom it is referred to take the same to inquire and state to the court what parts, if any, of such personal estate are outstanding or undisposed of, unless the court shall otherwise direct.

74.

Whenever any reference of any matter is made to a master to examine and report thereon, the party at whose instance or for whose benefit the reference is made shall cause the same to be presented to the master for a hearing on or before the next rule-day succeeding the time when the reference was made; if he shall omit

to do so, the adverse party shall be at liberty forthwith to cause proceedings to be had before the master, at the costs of the party procuring the reference.

75.

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

76.

In the reports made by the master to the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer brought in or used before them (him) shall be stated or recited. But such state of facts, charge, affidavit, deposition, examination, or answer shall be identified, specified, and referred to, so as to inform the court what state of facts, charge, affidavit, deposition, examination, or answer were so brought in or used.

77.

The master shall regulate all the proceedings in every hearing before him, upon every such reference; and he

shall have full authority to examine the parties in the cause, upon oath, touching all matters contained in the reference; and also to require the production of all books, papers, writings, vouchers, and other documents applicable thereto; and also to examine on oath, *viva voce*, all witnesses produced by the parties before him, and to order the examination of other witnesses to be taken, under a commission to be issued upon his certificate from the clerk's office or by deposition, according to the act of Congress, or otherwise, as hereinafter provided; and also to direct the mode in which the matters requiring evidence shall be proved before him; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before him, which he may deem necessary and proper to the justice and merits thereof and the rights of the parties.

78.

Witnesses who live within the district may, upon due notice to the opposite party, be summoned to appear before the commissioner appointed to take testimony, or before a master or examiner appointed in any cause, by subpoena in the usual form, which may be issued by the clerk in blank, and filled up by the party praying the same, or by the commissioner, master, or examiner, requiring the attendance of the witnesses at the time and place specified, who shall be allowed for attendance the same compensation as for attendance in court; and if any witness shall refuse to appear or give evidence it shall be deemed a contempt of the court, which being certified to the clerk's office by the commissioner, master, or examiner, an attachment may issue thereupon by order of the court or of any judge thereof, in the same manner as if the contempt were for not attending, or for refusing to give testimony in the court. But

nothing herein contained shall prevent the examination of witnesses *viva voce* when produced in open court, if the court shall, in its discretion, deem it advisable.

79.

All parties accounting before a master shall bring in their respective accounts in the form of debtor and creditor; and any of the other parties who shall not be satisfied with the account so brought in shall be at liberty to examine the accounting party *viva voce*, or upon interrogatories, in the master's office, or by deposition, as the master shall direct.

80.

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

81.

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

82.

The circuit courts may appoint standing masters in chancery in their respective districts, (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the

district, concurring in the appointment), and they may also appoint a master *pro hac vice* in any particular case. The compensation to be allowed to every master in chancery for his services in any particular case shall be fixed by the circuit court, in its discretion, having regard to all the circumstances thereof, and the compensation shall be charged upon and borne by such of the parties in the cause as the court shall direct. The master shall not retain his report as security for his compensation; but when the compensation is allowed by the court, he shall be entitled to an attachment for the amount against the party who is ordered to pay the same, if, upon notice thereof, he does not pay it within the time prescribed by the court.

EXCEPTIONS TO REPORT OF MASTER.

83.

The master, as soon as his report is ready, shall return the same into the clerk's office, and the day of the return shall be entered by the clerk in the order book. The parties shall have one month from the time of filing the report to file exceptions thereto; and, if no exceptions are within that period filed by either party, the report shall stand confirmed on the next rule-day after the month is expired. If exceptions are filed, they shall stand for hearing before the court, if the court is then in session; or, if not, then at the next sitting of the court which shall be held thereafter, by adjournment or otherwise.

84.

And in order to prevent exceptions to reports from being filed for frivolous causes, or for mere delay, the party whose exceptions are overruled shall, for every exception overruled, pay costs to the other party, and for

every exception allowed shall be entitled to costs; the costs to be fixed in each case by the court, by a standing rule of the circuit court.

DECREES.

85.

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

86.

In drawing up decrees and orders, neither the bill, nor answer, nor other pleadings, nor any part thereof, nor the report of any master, nor any other prior proceeding, shall be recited or stated in the decree or order; but the decree and order shall begin, in substance, as follows: "This cause came on to be heard (or to be further heard, as the case may be) at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:" [Here insert the decree or order.]

GUARDIANS AND PROCHEIN AMIS.

87.

Guardians *ad litem* to defend a suit may be appointed by the court, or by any judge thereof, for infants or other persons who are under guardianship, or otherwise incapable to sue for themselves. All infants and other persons so incapable may sue by their guardians, if any, or by their *prochein ami;* subject, however, to such orders as the court may direct for the protection of infants and other persons.

88.

Every petition for a rehearing shall contain the special matter or cause on which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No hearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court. But if no appeal lies, the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court.

89.

The circuit courts (a majority of all the judges thereof, including the justice of the Supreme Court, the circuit judges, and the district judge for the district, concurring therein) may make any other and further rules and regulations for the practice, proceedings, and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, in their discretion, and from time to time alter and amend the same.

90.

In all cases where the rules prescribed by this court or by the circuit court do not apply, the practice of the circuit court shall be regulated by the present practice of the high court of chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice.

91.

Whenever, under these rules, an oath is or may be required to be taken, the party may, if conscientiously scrupulous of taking an oath, in lieu thereof make solemn affirmation to the truth of the facts stated by him.

DECEMBER TERM, 1863.

92.

Ordered, That in suits in equity for the foreclosure of mortgages in the circuit courts of the United States, or in any court of the Territories having jurisdiction of the same, a decree may be rendered for any balance that may be found due to the complainant over and above the proceeds of the sale or sales, and execution may issue for the collection of the same, as is provided in the eighth rule of this court regulating the equity practice, where the decree is solely for the payment of money.

OCTOBER TERM, 1878.

INJUNCTIONS.

93.

When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending or modifying the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party.

OCTOBER TERM, 1881.

94.

Every bill brought by one or more stockholders in a corporation against the corporation and other parties, founded on rights which may properly be asserted by

the corporation, must be verified by oath, and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the causes of his failure to obtain such action.

The following provisions relating to equity practice are to be found in the act of 1st *of June*, 1872:

SECTION 7. That whenever notice is given of a motion for an injunction out of a circuit or district court of the United States, the court or judge thereof may, if there appear to be danger of irreparable injury from delay, grant an order restraining the act sought to be enjoined until the decision upon the motion. Such order may be granted with or without security, in the discretion of the court or judge: *Provided*, That no justice of the Supreme Court shall hear or allow any application for an injunction or restraining order except within the circuit to which he is allotted, and in causes pending in the circuit to which he is allotted, or in such causes at such place outside of the circuit as the parties may in writing stipulate, except in causes where such application can not be heard by the circuit judge of the circuit, or the district judge of the district.

SECTION 13. That when in any suit in equity, commenced in any court in the United States, to enforce any legal or equitable lien or claim against real or personal property within the district where such suit is

brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant to appear, plead, answer, or demur to the complainant's bill at a certain day therein to be designated, which order shall be served on such absent defendant, if practicable, wherever found; or where such personal service is not practicable, such order shall be published in such a manner as the court shall direct; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time to be allowed by the court, in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards such absent defendant without appearance, affect his property within such district only.

RULES

OF THE

UNITED STATES CIRCUIT COURTS OF APPEALS.

The following are the rules of the United States Circuit Court of Appeals for the First Circuit; where the particular rule is not the same in all of the circuits, the variations are indicated beneath the rule.

RULE 1.

NAME.

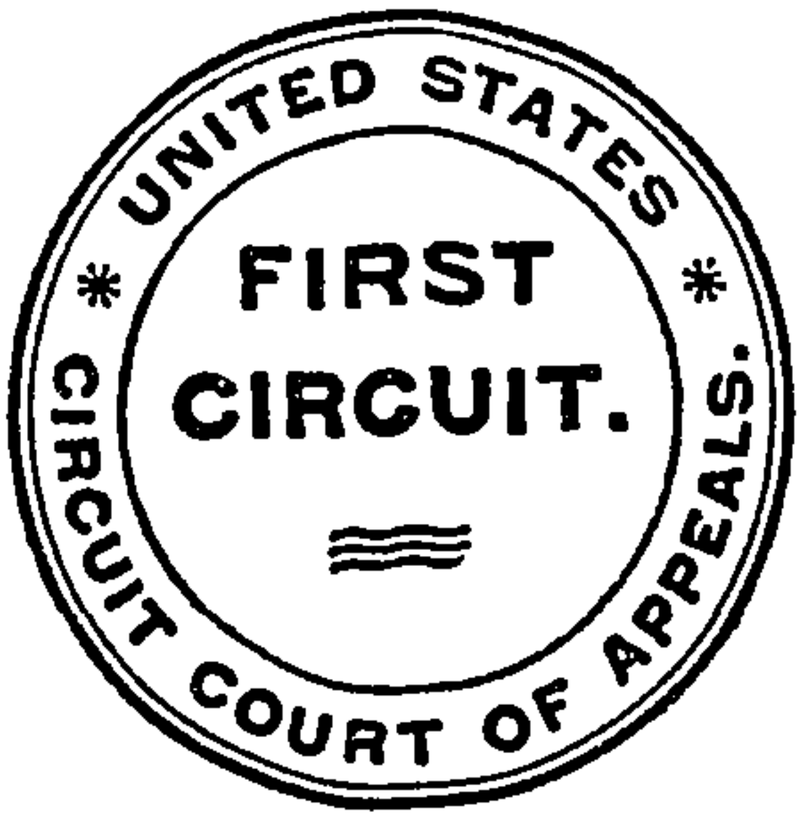
The court adopts "United States Circuit Court of Appeals for the First Circuit" as the title of the court.

This rule is the same in all of the circuits, except as to the number of the circuit.

RULE 2.

SEAL.

The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "First Circuit" in two lines, in the center, with a dash beneath; as follows:



This rule is the same in all of the circuits, except as to the number of the circuit.

RULE 3.

TERMS AND SESSIONS.

One term of this court shall be held annually at the city of Boston at ten o'clock in the forenoon on the first Tuesday of October. Stated sessions thereof shall be there held at the same hour on the first Tuesday of every month, and may be adjourned to such times and places as the court may from time to time designate. But, unless otherwise ordered, any adjournment shall be held to have been made to the first day of the next stated session.

Second Circuit. One term of this court shall be held annually at the city of New York on the second Tuesday of October, and shall be adjourned to such times and places as the court may from time to time designate.

Third Circuit. The terms of this court shall commence and be held on the first Tuesday of March and the first Tuesday of October in each year, at the city of Philadelphia.

Fourth Circuit. There shall be held in the city of Richmond, Virginia, three regular terms of this court; one on the first Tuesday of February, one on the first Tuesday of May, and one on the first Tuesday of November, in each year.

Fifth Circuit. A session of this court shall be held annually at the city of Atlanta, Georgia, on the first Monday in October; at the city of Montgomery, Alabama, on the third Monday in October; at the city of Fort Worth, Texas, on the first Monday in November; at the city of New Orleans, Louisiana, on the third Monday in November, and shall be adjourned to such other time and places as the court may from time to time order and designate.

Sixth Circuit. One term of this court shall be held annually on the Tuesday after the first Monday of Oc-

tober, and adjourned sessions on the Tuesday after the first Monday of each other month in the year except August and September.

All sessions of the court shall be held at Cincinnati unless otherwise specially ordered by the court.

At the October, February and May sessions of the court, hereafter referred to as calendar sessions, there shall be a regular and peremptory call of a calendar containing all the cases upon the docket which under the rules should then be ready for hearing.

At other than calendar sessions, except the June and July sessions, the court will hear any case upon the docket in which the record has been printed and briefs for both parties filed, provided that there has been also filed in the clerk's office on the Monday preceding the first day of such session the written consent of counsel for both parties that such hearing may be had.

At other than calendar sessions the court, on motion, will also hear appeals from interlocutory orders granting or refusing preliminary injunctions, appeals or writs of error in any cause given priority by the statutes of the United States, and appeals from orders in *habeas corpus* proceedings, where the petitioner is in jail, provided that the record has been printed and the brief of the moving party and due notice of the motion have been filed with opposing counsel at least six days before the opening day of the session.

Appeals in *habeas corpus* or criminal cases when the petitioner or appellant is in jail will be heard at any time when the court is in session after the record has been printed and the brief for the petitioner has been filed with opposing counsel six days before the day set for the hearing of the motion.

At other than calendar sessions the court will also hear all motions and miscellaneous business, and will announce opinions. For good cause shown, on motion of

either party, the court may advance any cause upon the docket to be heard at any session, whether calendar or otherwise, even though the time permitted under the rules for the filing of briefs may not have expired at the day set for hearing. Such motions for the advancement of causes will be heard only by the court upon five days' previous notice to opposing counsel.

Seventh Circuit. A term of this court shall be held annually at the city of Chicago on the first Tuesday in October, and continue until the first Tuesday in October of the succeeding year. Every term shall be adjourned to such time and places as the court may from time to time designate. Unless otherwise specially ordered, the court will hold at Chicago three sessions for the hearing of causes during each term, beginning on the first Tuesdays in October and January, respectively, and the second Tuesday in April.

Eighth Circuit. 1. Three terms of this court will be held annually, one at the city of St. Paul on the first Monday of May, one at the city of Denver on the first Monday of September and one at the city of St. Louis on the first Monday of December.

2. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas and Oklahoma in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of April, and cases from Colorado, Utah, Wyoming and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the

printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the May Term in St. Paul are filed on or before the first day of April, and those only, will be heard at the succeeding May Term of the court in St. Paul.

3. Cases from Colorado, Wyoming, Utah and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of July and cases from the remainder of the circuit in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the September term in Denver are filed on or before the first day of July, and those only, will be heard at the succeeding September term in Denver.

4. Cases from Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Kansas, Missouri, Arkansas and Oklahoma in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, are filed on or before the first day of October, and cases from Colorado, Wyoming, Utah and New Mexico in which transcripts to be printed under the supervision of the clerk of this court are filed, or transcripts printed

before certification by the clerk of the lower court and proof by affidavit or admission that three copies of the printed transcripts have been served on the defendants in error or appellees, or their counsel, and stipulations of the parties for their hearing at the December term in St. Louis are filed on or before the first day of October, and these only, will be heard at the succeeding December term in St. Louis.

5. These terms of the court may be adjourned to such times and places as the court may from time to time designate.

Ninth Circuit. One term of this court shall be held annually at the city of San Francisco on the first Monday of October, and shall be adjourned to such times and places as the court may from time to time designate.

RULE 4.

QUORUM.

1. In the absence of a quorum on any day appointed for holding a term, or on any day to which the court is adjourned, any judge who attends shall adjourn the court from day to day; or, if no judge is present, the clerk shall so adjourn; and, in the absence of all the judges and the clerk, the marshal or his deputy shall so adjourn. But the court may, from time to time, as provided in Rule 3, enter orders directing an adjournment, or adjournments, for longer periods than from day to day, or sine die.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding or process, depending in or returned to the court, preparatory to hearing, trial or decision thereof.

Second Circuit. 1. If, at any time, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

Third Circuit. If, at any term, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day, and in the absence of all the judges, the clerk may adjourn the court from day to day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

Rule 4 is same in the Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits as in the Second Circuit.

That under § 3, Act of March 3, 1891, a Circuit Court of Appeals bench may be constituted by three district Judges, see Peters v. Hanger, 136 Fed. Rep. 181, 69 C. C A. 197. See § 120, The Judicial Code.

RULE 5.

CLERK.

1. The clerk's office shall be kept at the place designated in the act creating the court at which a term shall be held annually.

2. The clerk shall not practice, either as attorney or counselor, in this court or in any other court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by Sec. 794, R. S. U. S., and shall give bond in a sum to be fixed, and with sureties to be approved, by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room or from the office, without an order from the court.

Second Circuit. Same as First Circuit.

Third Circuit. The rule is preceded by,

1. The clerk's office shall be kept in the city of Philadelphia.

Fourth Circuit. The rule is same as in First Circuit.

Fifth Circuit. The rule is preceded by,

1. The clerk's office shall be kept in the city of New Orleans.

Sixth Circuit. The rule is same as in First Circuit.

Seventh Circuit. The rule is preceded by,

1. The clerk's office shall be kept in Chicago.

Eighth Circuit. The rule is same as in First Circuit.

Ninth Circuit. The rule is preceded by,

1. The clerk's office shall be kept at San Francisco.

RULE 6.

MARSHAL AND OTHER OFFICERS.

The marshal shall be in attendance during the sessions of the court, with such number of bailiffs, messengers, and other officers as the court may from time to time order.

Second Circuit. Every marshal and deputy marshal shall before he enters on the duties of his appointment, take an oath in the form prescribed by Sec. 782, R. S. U. S., and the marshal shall, before he enters on the duties of his office, give bond in a sum to be fixed, and with sureties to be approved, by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Third Circuit. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Fourth and Fifth Circuits. Same as Third Circuit.

Sixth Circuit. 1. The crier and bailiffs of the court shall, before they enter on their duties, take an oath in the form prescribed by Sec. 782, R. S. U. S.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may from time to time order.

Seventh Circuit. Same as Sixth Circuit.

Eighth Circuit. 1. The marshal of the district in which a term or session of the court is held and the crier

shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

Ninth Circuit. Same as Third Circuit.

RULE 7.

ATTORNEYS AND COUNSELORS.

All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States and on subscribing the roll; but no fee shall be charged therefor.

Second Circuit. Same as First Circuit.

Third Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States and on subscribing the roll, but no fee shall be charged therefor; and all attorneys and counselors of the Circuit Courts of the United States for the Third Circuit, shall be attorneys and counselors of this court without taking any further oath.

Fourth Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, subscribing the roll, and on payment of a fee of five dollars.

Fifth Circuit. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or any Circuit Court of the United States, upon filing certificate of such admission with the clerk of this court, and upon taking an oath or affirmation in the following form, viz.:

"I, ————————, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court upriglitly and according to law. and that I will support the Constitution of the United States," (a copy of which shall be filed with the clerk), shall become attorneys and counselors of this court; *provided, however*, that any attorney or counselor eligible to admission as an attorney and counselor of this court may be admitted to practice, on motion to open court, upon taking the oath or affirmation as prescribed, and subscribing the roll.

On each admission the clerk will collect ten dollars ($10) to be applied to the purchase of law books for the use of the court and bar.

Sixth Circuit. All attorneys and counselors permitted to practice in the Supreme Court of the United States, or in any circuit court of the United States, shall become attorneys and counselors in this court on taking an oath or affirmation as prescribed by Rule 2 of the Supreme Court of the United States and upon subscribing the roll. The fee for such admission shall be ten dollars.

Every person taking the oath and paying such fee shall be entitled to a certificate of his admission, signed by the clerk.

Seventh Circuit. All attorneys and counselors, admitted to practice in the Supreme Court of the United States or in any Circuit Court of the United States. or in the Supreme Court of a State in this circuit, may become attorneys and counselors in this court on taking

an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, and on subscribing the roll.

Eighth Circuit. 1. All attorneys and counselors admitted to practice in the Supreme Court of the United States, or in any Circuit Court or District Court of the United States, or in the Supreme Court of any State in this circuit, may, upon motion of some member of the bar of this court, be admitted as attorneys and counselors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States, and on subscribing the roll; but no fee shall be charged therefor.

2. And any attorney and counselor admitted to practice in the Supreme Court of the United States or in the Supreme Court of any State or in the District or Circuit Courts of the United States for this circuit, may be admitted by order of this court to practice and may be enrolled as an attorney and counselor of this court, thirty days after he furnishes to the clerk of this court a certificate of a clerk or judge of any one of the courts named that the applicant is an attorney of any one of said courts; and upon subscribing and forwarding to the clerk the following oath: "I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of the Circuit Court of Appeals for the Eighth Circuit, uprightly and according to law; and that I will support the Constitution of the United States. So help me God."

Ninth Circuit. All attorneys admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the Ninth Circuit, shall be deemed attorneys of the Circuit Court of Appeals for the Ninth Circuit; but such attorneys, on or before their first appearance in open court, in said court, shall take an oath or affirmation, in the form prescribed by Rule 2 of the Su-

preme Court of the United States and subscribe the Roll of Attorneys. All other persons who have been admitted to practice in the highest court of any State or Territory, upon presenting satisfactory evidence of good moral character and fair professional standing, may be admitted to practice in said court, upon taking the oath so prescribed, and subscribing the Roll of Attorneys.

RULE 8.

PRACTICE.

The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

Second, Third, Fourth, Fifth and Sixth Circuits, the rule same as in the First Circuit.

Seventh Circuit. The practice, so far as may be, shall be the same as in the Supreme Court of the United States.

Eighth and Ninth Circuits, the rule is the same as in the First Circuit.

RULE 9.

PROCESS.

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

RULE 10.

BILL OF EXCEPTIONS.

The judges of the circuit and district courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of

such charge. But the party excepting shall be required to state directly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

Second Circuit. The rule is the same as in the First Circuit.

Third Circuit. 1. The judges of the circuit and district courts shall not allow any general exception to the whole of the charge to the jury in a civil or a criminal trial at common law, nor shall a series of exceptions be allowed which produces the same result. But the party excepting shall state distinctly and separately the several matters in such charge to which he excepts, and only such matters shall be included in the bill of exceptions and allowed by the court. Exceptions to the charge or to the judge's action upon the requests for instruction shall be taken immediately on the conclusion of the charge before the jury retire, shall be specified in writing or dictated to the stenographer, and shall be specific and not general.

2. Exceptions to the admission or rejection of evidence shall be specific and not general, and the bill of exceptions to such admission or rejection shall contain only so much of the evidence admitted or offered and rejected as is necessary for the presentation and decision of the questions saved for review. Unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all of it shall not be allowed.

Fourth Circuit. The rule is the same as in the First Circuit.

Fifth Circuit, and Sixth Circuit. The rule is the same as in the First Circuit.

Seventh Circuit. 1. The judges of the Circuit and District Courts shall not allow any bill of exceptions

which shall contain the charge of the court at large to the jury in trials at common law, and upon any general exception to the whole of said charge. But the party excepting shall be required to state distinctly the several matters of law in the charge to which he excepts, and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

2. A bill of exceptions shall contain of the evidence only such a statement as is necessary for the presentation and decision of questions saved for review, and unless there be saved a question which requires the consideration of all the evidence, a bill of exceptions containing all the evidence shall not be allowed.

3. No document shall be copied more than once in a bill of exceptions or in a transcript of the record of the case, but instead there shall be inserted a reference to the one copy set out. A motion for a new trial and orders and entries relating thereto shall not be set out in the transcript unless required by written praecipe, of which a copy shall also be set out.

4. The cost of unnecessary matter in the bill of exceptions or transcript or in the printed record shall not be recovered of the appellee or defendant in error, and in its discretion the court will in case of dispute appoint a referee to determine and report what was necessary therein, and will tax the cost of the reference as shall seem just.

Eighth and Ninth Circuits. The rule is the same as in the First Circuit.

RULE 11.

ASSIGNMENT OF ERRORS.

The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall

set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned. See Rule 24, paragraph 4.

Second Circuit. The rule is the same as in the First Circuit.

Third Circuit. The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, his assignment of error, as required by Sec. 997, R. S. U. S., which shall set out separately and particularly each error asserted and intended to be urged. (See Rule 14, sec. 6.) When the error alleged is to the admission or the rejection of evidence, the assignment shall quote the full substance of the evidence admitted or rejected; when the error alleged is to the charge of the court, the assignment shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused; when the error alleged is based on the trial court's refusal to enter a judgment *non obstante veredicto* for the plaintiff in error on the whole record, the assignment shall state the reasons presented to the trial court for the entry of such judgment; when the error alleged is to

a ruling upon the report of a master or referee, the assignment shall state the exception to the report and the action of the court upon it. Such assignments of error shall form part of the transcript of the record and be printed with it. When error is not so assigned, counsel will not be heard, except at the request of the court, and errors not assigned according to this rule will be disregarded. The court, at its option, however, may notice a plain error not assigned.

Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits. The rule is the same as in the First Circuit.

RULE 12.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit or translation, found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

Thus, a petition introduced upon a hearing in a mandamus proceeding without objection as to its competency, cannot be argued to be incompetent upon appeal. Board of Supervisors v. Thompson, 122 Fed. Rep. 860, 59 C. C. A. 70.

RULE 13.

SUPERSEDEAS AND COST BONDS.

1. Supersedeas bonds in the circuit and district courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where

the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but, in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On an appeal from an interlocutory order or decree, the appellant shall, at the time of the allowance thereof, file a bond to the adverse party in such sum as the judge who allowed the appeal shall direct, to answer all costs if he shall fail to sustain his appeal.

Second Circuit. The first clause of this rule is the same as in the First Circuit.

2. On all appeals from any interlocutory order or decree granting or continuing an injunction in a circuit or district court, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such circuit or district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

Third, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits. The rule is the same as it is in the Second Circuit.

Eighth Circuit. 1. Supersedeas bonds in the District Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity,

where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On all appeals from any interlocutory order or decree of a district court, or a judge thereof, granting, continuing, refusing, dissolving or refusing to dissolve an injunction or appointing a receiver, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such district court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal. ("The Judicial Code," Section 128, Act of March 3, 1911, *ante*, p. 993.)

Supersedeas. For the history of supersedeas in equity causes, see Hovey v. McDonald, 109 U. S. 150, 27 L. Ed. 888.

RULE 14.

WRITS OF ERROR, APPEALS, RETURN AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations, must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

The testimony in such a record shall embrace the *viva voce* proof in the district court, if the same or the substance thereof, has been reduced to writing with the approval of its judge. The reasonable cost of so reducing the same to writing may be taxed as a part of the costs of the record, except so far as allowed as costs in the district court.

7. Further proof in instance causes in admiralty shall include only that which could not with diligence have been had at the trial below, or which was there rejected,

or was omitted through misapprehension, provided the evidence be accompanied with a certificate of counsel showing reasonable excuse for the misapprehension. Except by order of the court first obtained, merely cumulative proofs shall not be so taken; but for this purpose the evidence of witnesses who had different duties, interests, or opportunities of observation, will not ordinarily be held cumulative in cases of collision or other maritime tort.

8. Such further proof may be taken after the appeal is allowed, in the manner provided by law for depositions *de bene esse*, or by an examiner appointed by any circuit or district judge, or selected by the parties, or upon interrogatories and commissions as provided in Rule 13 of the circuit courts of this circuit, *mutatis mutandis*. It must be taken and filed forthwith after it is obtainable, but it cannot, except by order of the court, be taken or filed within thirty days before any session at which the cause may be heard, nor thereafterwards until the cause has been postponed to the next term or session.

9. Objections to further proof shall be filed with the magistrate and returned with the evidence. Within seven days after the evidence is taken, the party so objecting may file in print a motion to suppress the same, with a copy of the objections and a brief. The other party may within seven days thereafter file in print a counter-statement and brief. The objections and counter-statement, so far as they contain matters of fact *dehors* the record, shall be verified by affidavit. The court will consider the objections in advance of the trial, or in connection therewith, as it may in each case determine, and without oral argument, and will order suppressed evidence not rightfully taken. The party taking the evidence so suppressed shall pay the cost arising therefrom, including the printing thereof.

10. Nothing herein shall exclude applications for leave to take further proof, or objections thereto, in advance of the taking thereof, or objections touching the formalities of taking it; but the latter must be brought to the attention of the court forthwith after the evidence is filed.

The rule in the Second Circuit comprises the first five of the foregoing paragraphs, and the first clause of the sixth paragraph.

Third Circuit. 1. Any appeal to this court, or writ of error from this court, allowable by law, may be allowed, in term time or vacation, by the circuit justice, or by any of the circuit judges within this circuit, or by any district judge within the district where the case to be reviewed was heard or tried, who may also take the proper security, sign the citation, and, if he deem it proper so to do, grant a supersedeas and stay of execution or of proceedings pending such writ of error or appeal.

2. The clerk of the court to which any writ of error may be directed, or from which any appeal may be taken, upon being paid or tendered his fees therefor, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

3. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

4. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

5. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting, and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

6. All appeals, writs of error, and citations must be made returnable not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day; but the citation must be signed, and the bond for costs must be approved and filed, and the assignments of error submitted and filed, with the petition for the appeal or writ of error, immediately after the appeal or writ of error is allowed; *provided, however,* that every appeal taken from an interlocutory decree, under the seventh section of the act entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, and amendments to said section, shall be made returnable in ten days from the allowance of the appeal and the signing of the citation.

7. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52, of the Supreme Court.

The Rule in the Fourth Circuit comprises the first five paragraphs of the rule of the First Circuit, and the first clause of the sixth paragraph.

The Rule in the Fifth Circuit comprises the first five paragraphs of the rule of the First Circuit, with amendment to fifth paragraph, as follows:

Provided, however, that appeals taken from interlocutory decrees under the seventh section of the act entitled "An act to establish Circuit Courts of Appeals and define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and amendments thereto, shall be made returnable not exceeding ten days from the day of taking the same.

(As amended January 12, 1905.)

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

The Rule in the Sixth Circuit comprises the first five paragraphs of the rule of the First Circuit, and the first clause of the sixth paragraph.

Seventh Circuit. 1. The clerk of the court, to which any writ of error may be directed, shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case necessary to the hearing in this court, under his hand and the seal of the court. The clerk may require of the appellant or plaintiff in error a written praecipe stating in detail what the transcript shall contain, and when a praecipe is filed shall insert a copy thereof in the transcript.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record shall have been filed, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings necessary to the hearing in this court.

4. Whenever it shall be necessary or proper in the opinion of the presiding judge in any Circuit or District

court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper, and this court will receive and consider such original papers in connection with the transcript of the proceeding.

5. All appeals, writs of error and citations must be made returnable not exceeding thirty days from the date on which the appeal is allowed, or the writ of error issued, whether the return fall in vacation or in term time, and be served before the return day. If a party be non-resident the citation and any other writ or notice necessary in the prosecution of the appeal or writ of error may be served upon such party's counsel or attorney of record, who for such purpose may not be discharged unless another resident be designated of record in the case upon whom service may be made.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

Eighth Circuit. 1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court, by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case, and in cases at law a complete copy of the charge of the court to the jury.

3. No case will be heard until twenty-five copies of the printed transcript of the record, containing in themselves, and not by reference, all the papers, exhibits, de-

positions, sketches, drawings, photographs, maps, blue prints and other proceedings, which are necessary to the hearing in this court, printed title pages in the form prescribed in Section five of Rule 26, chronological printed indexes of each and every item of their contents specifying the pages where evidence, testimony and exhibits including those in the body of any pleading, order or bill of exceptions may be found and briefly naming or describing each exhibit in addition to its number together with a statement of the numbers, names and dates of issue of any patents, shall have been filed in this court.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error and citations must be made returnable not exceeding sixty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

Ninth Circuit. 1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, opinion or opinions of the court, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record the original writ of error and citation, or citations issued in the cause, and a certificate under seal stating the cost of the record and by whom paid.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this court shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any circuit or district court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable at San Francisco, California, not exceeding thirty days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.[1]

RULE 15.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony or other proceeding, in a foreign lan-

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1 See, also, Rules 16, 17, 23, 34, 35 and 36 and Rules in Admiralty.

guage, and the record does not also contain a translation of such document, paper, testimony or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

This rule is the same in all of the circuits except the Third Circuit; in which circuit Rule 15 is as follows:

BAIL IN ERROR.

1. Where a writ of error has been allowed in a criminal case, the justice or judge who allowed the writ, or any judge of the court which entered the judgment to be reviewed, shall have power to admit the plaintiff in error to bail for his appearance in such court on the determination of the proceedings on the writ of error to abide by and obey any order that may be made therein. The bond or recognizance for such appearance shall be substantially in the following form:

"United States of America,
.....District of..... } ss.

We (*here insert name of defendant*), residing at ..... and (*here insert the name of surety*), residing at....., in the State of....., acknowledge ourselves to be jointly and severally indebted to the United States of America in the sum of..... dollars, lawful money of the United States of America, to be levied of our goods and chattels, lands and tenements, upon this condition: That if the said....., the defendant, upon whose application a writ of error has been allowed by the United States Circuit Court of Appeals for the Third Circuit and is now pending, shall be and appear at the District Court of the United States for the.....district of.....upon the de-

termination of the proceedings on said writ of error, and the receipt and filing of a mandate or other process or certificate showing the disposition thereof by the said Court of Appeals, or, within five days thereafter, to answer and obey whatever final order or judgment, except as to costs, shall be made in the premises, and not depart said court without leave thereof, then this recognizance to be void; otherwise, to remain in full force and virtue.

..... (L. S.)
..... (L. S.)
..... (L. S.)"

Taken, acknowledged and subscribed, this..... day of.....A. D. 191.., in open court.

.....
Clerk of District Court.

RULE 16.

DOCKETING AND DISMISSING CASES.

1. The plaintiff in error or appellant shall docket the case, and file the record thereof, on or before the return day, whether in vacation or in term time. But, for good cause shown, the justice or judge who signed the citation, or any circuit or district judge, may enlarge the time, the order of enlargement to be filed in this court.

2. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, whether in term time or vacation, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, the return day of the citation, and that the writ of error or appeal was duly sued out or allowed. And the plaintiff in error or appellant shall not be entitled to docket the case, or file

the record, after the same shall have been docketed or dismissed under this rule, unless by the order of the court after notice to the adverse party.

But the defendant in error or appellee may, at his option, docket the case and file the record; and, if the case is docketed and the record filed by the plaintiff in error or appellant within the time prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument.

3. On the filing of the record, the appearance of the counsel for the party docketing the case shall be entered.

In the Second, Fourth, Seventh, and Ninth Circuits the rule is substantially the same as in the First Circuit, except that in the first section its first sentence reads: "It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return-day, whether in vacation or in term time." And in the Ninth Circuit the words "at San Francisco, California" are inserted between the words "clerk of this court," and "by or before."

For the Third Circuit the rule is as follows:

TRANSLATIONS.

1. Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceeding in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

For the Fifth Circuit the rule is the same as in the Second Circuit, except that when amended on June 20, 1895, the words "the justice or judge who signed the citation" in the first clause were omitted and on April 23, 1895, the following clause was added:

4. "In all cases the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction for the payment of his fees, or otherwise satisfy him in that behalf." (Sec. 4, Adopted April 23, 1895.)

For the Sixth Circuit the rule is as given in the Second Circuit, except that by amendment of July 6, 1897, there was inserted at the end of the first sentence of the first section and as a part of it these words: "And at the time of filing the record the plaintiff in error or appellant shall deposit with the clerk the sum of thirty-five dollars as security for costs, except in cases in which the proper showing is made and an order of this court is entered thereon allowing the cause to proceed *in forma pauperis.*"

Eighth Circuit. 1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day, whether in vacation or in term time. But for good cause shown the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled

to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee, may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.[1]

RULE 17.

DOCKET AND CALENDARS.

1. The clerk shall enter and number on the docket all cases consecutively, in their proper chronological order.

2. He shall print at least twenty days before the first Tuesday of October and of January, and the second Tuesday of April, a calendar of all the pending cases, arranged by districts in the following order: Maine, New Hampshire, Rhode Island, Massachusetts.

Second and Fifth Circuits:

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the sec-

[1] A deposit of Thirty-Five dollars to secure Clerk's costs is required before the record in a cause is filed and docketed.

ond term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

Third Circuit:

FILING RECORDS, DOCKETING CASES AND ENTERING APPEARANCES.

1. The plaintiff in error or appellant shall file the record of the case and cause it to be docketed by the clerk of this court on or before the return day of the citation, whether in vacation or in term time; but for good cause shown the justice or judge who signed the citation, or any circuit or district judge, may extend the return day thereof, the order for extension to be filed with the clerk of this court.

2. If the plaintiff in error or appellant shall fail to comply with the first section of this rule the defendant in error or appellee may cause the case to be docketed without the filing of any record and have it dismissed, whether in term time or vacation, upon due proof of notice to the plaintiff in error or appellant of a motion for such dismissal, and upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the case, the return day of the citation, and that the writ of error or appeal was duly sued out or allowed; and in no case shall the plaintiff in error or appellant be entitled to file the record or to have it docketed after the defendant in error or appellee shall have had the case dismissed under this section of this rule, unless upon special order of the court.

3. Instead of having the case docketed for the purpose of having it dismissed under the provisions of the second section of this rule, the defendant in error or appellee, on payment of the usual fees, may file the

record and cause the case to be docketed by the clerk, and if the record be filed and the case docketed, either by the plaintiff in error or appellant, within the time prescribed by the first section of this rule, or by the defendant in error or appellee under the provisions of this section, the case shall stand for argument.

4. On the filing of the record the appearance of the counsel for the party docketing the case shall be entered, and on or before the return day of the citation the counsel for the appellee or defendant in error shall also enter appearance for the appellee or defendant in error.

Fourth Circuit:

1. The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and shall print a docket containing all pending cases at each term of the court, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

2. All cases where the record has been printed and copies thereof furnished to the counsel as provided in Rule 23 shall stand for argument at the term or adjourned term holden next after the docketing of the case.

In the Sixth Circuit the rule is as given for the Second Circuit, except that the words "term or adjourned term" are changed to read "calendar session as provided in Rules 3 and 37." And the word "term" in the following line is changed to "calendar sessions."

In the Seventh Circuit the rule reads as follows:

The clerk shall prepare calendars of causes for the regular terms of this court, to be held on the first Tuesday of October in each year, and for each adjourned session; placing thereon in proper chronological order

only cases in which the record having been printed, briefs upon both sides have been filed seven days before the beginning of the term or session.

Eighth Circuit:

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term, except cases from the districts of Colorado, Utah, Wyoming and New Mexico which cases shall only be called at the September term unless counsel otherwise stipulate as provided in Rule 3; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

For the Ninth Circuit, the rule is as follows:

The clerk shall, upon payment to him by the appellant or plaintiff in error of a deposit of twenty-five dollars in each case, file the record and enter upon a docket all cases brought to and pending in the court in their proper chronological order.

RULE 18.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

For the Second, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

DOCKET AND ARGUMENT LISTS.

1. Upon the filing of the record in any case by the plaintiff in error or appellant and the payment by him of a deposit fee of twenty-five dollars, the clerk shall enter the case, the record of which is so filed, upon the docket of this court; such docket shall have all its cases arranged in their proper chronological order.

2. The clerk shall prepare and cause to be printed, previous to the opening of each term of this court, an Argument List of all cases the records of which shall have been filed with him not less than fifteen days before the opening of the term, which cases shall be put on the Argument List in the chronological order of docketing the same, subject, however, to the following system of grouping: The first group shall be composed of the cases in which all the circuit judges shall be competent to sit; the second, of the cases in which all the circuit judges except the youngest in commission shall be competent to sit; the third, of the cases in which all the circuit judges except the next to the youngest in commission shall be competent to sit, and the fourth, of the cases in which all the circuit judges except the oldest judge in commission shall be competent to sit.

RULE 19.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily

come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and, if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that, unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and, if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit or district court of the United States shall desire to prosecute a writ of error or appeal to this court from any final judgment or decree rendered in the circuit or district court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or

appeal as in other cases. And, within thirty days after the filing of the record in this court, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the State or Territory or District in which such representative resides; and, upon such suggestion, he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days: *Provided, also,* That in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: *And provided, also,* That the said representative may at any time, before or after said suggestion, come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

For the Second, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

ARGUMENTS, CONTINUANCES AND DISMISSALS.

1. The cases in the Argument List shall be called for argument at each term, or adjourned term, and cases shall be argued on call unless the court shall for good cause otherwise order.

2. If the defendant in error or appellee fails to appear when his case is called for argument, the court may proceed to hear the argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

3. For good cause shown the court may order the continuance of any case for the term.

4. When a case is reached in the regular call, and there is no appearance for either party, it may be dismissed at the cost of the plaintiff in error or appellant.

5. Where no counsel appears for the plaintiff in error or appellant, and no brief has been filed for him, the defendant in error or appellee may have the writ of error or appeal dismissed at the cost of the defaulting party.

6. If a case is called for argument at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant unless a sufficient cause is shown for further postponement.

7. Whenever the plaintiff and defendant in a writ of error pending in the court, or the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

8. Cases may also be dismissed in accordance with the second section of Rule 17, the first section of Rule 23 and the fourth section of Rule 24 of this court.

9. Except as in the preceding sections of this rule it is otherwise provided, no motion to dismiss a writ of error or an appeal will be heard unless previous notice of the motion has been given to the plaintiff in error or appellant or his counsel.

RULE 20.

DISMISSING CASES BY AGREEMENT.

Whenever the plaintiff and defendant in a writ of error pending in this court, on the appellant and appellee in an appeal, shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

For the Second, Fourth, Fifth, Sixth, and Ninth Circuits the rule is as above.

In the Third Circuit the rule reads as follows:

CERTIORARI.

1. No *certiorari* for diminution of the record will be awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

In the Seventh Circuit the rule reads as follows:

Whenever the parties to a writ of error or an appeal shall, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, in respect to costs, and shall pay to the clerk any fees that may be due to him, the clerk shall enter the case dismissed, and shall give to either party requesting it a copy of the agreement filed, but no mandate or other process shall issue without an order of the court.

In the Eighth Circuit the rule reads as follows:

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk seasonably to present such agreement to the court for its consideration and determination.

RULE 21.

MOTIONS.

1. The motion day shall be the first Tuesday of every stated session of the court, and any other Tuesday while the court shall remain in session.

2. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

3. All motions to dismiss writs of error or appeals (except motions to docket and dismiss under Rule 16) or to advance cases, or for a writ of *certiorari*, and other special motions, shall be printed, and be accompanied by printed briefs.

4. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party or his counsel.

5. Any motion, of which counsel shall have given notice to the clerk in advance, shall be entered on the clerk's list in the order in which he receives notice thereof, and shall have priority in that order before other motions, unless otherwise specially ordered by the court.

6. Half an hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court granted before the argument begins.

Second Circuit:

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

For the Fourth, Fifth, Sixth and Eighth Circuits the rule is as in the Second Circuit.

For the Seventh and Ninth Circuits, the time limited by clause 2 is one-half hour.

In the Third Circuit the rule reads as follows:

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party,

according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous; *provided, however,* that a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a circuit or district court of the United States shall desire to prosecute a writ of error or appeal to this court, from any final judgment or decree rendered in the circuit or district court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some State or Territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and

shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the filing of the record in this court the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some State or Territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the State or Territory or District in which such representative resides; and upon such suggestion he may, on motion, obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous; *provided, however*, that a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days; *provided, also*, that in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate; *and provided, also*, that the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

RULE 22.

CALL AND ORDER OF THE CALENDAR.

1. On the first Tuesday of October and of January, and on the second Tuesday of April, the court, except as may, from time to time, be otherwise ordered, will commence calling cases for argument in the order in which they stand on the calendar, and proceed from day to day during the session in the same order; but no case from the District of Massachusetts shall be called before the second Tuesday of the session.

2. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called, and the writ of error or appeal dismissed.

3. Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the right of the case.

4. When a case is reached in the regular call of the calendar, and there is no appearance for either party, the case may be dismissed at the cost of the plaintiff.

5. If either of the parties is ready when the case is called, the same may be heard; and, if neither party is ready, the case may be dismissed, or be postponed to the next session, as the court may order.

6. If a case is called for hearing at two stated sessions successively, and, on the call at the second session, neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

7. The court will not hear arguments on Mondays or Saturdays, unless for special cause it shall so order.

8. Five cases are liable to be called on the coming in of the court on each day.

9. Revenue and other cases which concern the United States, and which also involve or affect some matter of general public interest, and criminal cases, and cases once adjudicated by this court on their merits and again brought up by writ of error or appeal, may be advanced by order of the court.

10. Two or more cases involving the same question may, by leave of the court, be heard together, to be argued as one case or more, as the court may order.

11. No agreement of counsel to pass or postpone a case, or to substitute one case for another, shall become effective except on leave.

Second, Fourth and Fifth Circuits:

PARTIES NOT READY.

1. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed.

2. Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

In the Sixth Circuit this rule is the same as given above, except that a new section has been added as follows:

"4. All causes shall stand for hearing when the time allowed for printing the records and the briefs of both parties shall have expired: *Provided, however*, That causes may be heard when the records and briefs therein are printed, though the time allowed for printing records and briefs may not have expired."

In the Seventh Circuit the rule reads as follows:

1. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial the other party may have the writ of error or appeal dismissed.

2. If the appellee or defendant in error fails to appear when the case is called, the court may proceed to hear argument on the part of the plaintiff in error or appellant and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and there is no appearance for either party, and no brief on file for the appellant or plaintiff in error, the case shall be dismissed at the cost of the appellant or plaintiff in error.

In the Eighth and Ninth Circuits this rule is the same as in the Second Circuit, except that the words "in error or appellant" are added at the end of third section.

In the Third Circuit the rule reads as follows:

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

RULE 23.

PRINTING RECORDS.

1. In all cases, the plaintiff in error or appellant, on docketing a case and filing the record, shall enter into an undertaking to the clerk, with surety to his satisfaction, for the payment of his fees, or otherwise satisfy him in that behalf.

2. The clerk shall cause an estimate to be made of the cost of printing the record, and of his fee for preparing it for the printer, and shall notify to the party docketing the case the amount of the estimate. If he shall not pay it within a reasonable time, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed, when the case is reached at the regular call of the docket, the case may be dismissed.

3. Upon payment by either party of the amount estimated by the clerk, twenty-five copies of the record shall be printed under the clerk's supervision, for the use of the court and of counsel.

4. The clerk shall take to the printer the original transcript on file; but shall cause copies to be made for the printer of such original papers sent up under Rule 14, or other original papers, as are necessary to be printed.

5. The clerk shall supervise the printing, and see that the printed copies are properly indexed; and he shall distribute printed copies to the judges and the reporter, from time to time, as required, and three copies to the counsel for each party. An additional number of copies may be printed at the request of either party for his own use and at his own expense, or by order of the court.

6. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record.

7. The clerk may receive from either party, and use as parts of the printed record, so far as the same may be of proper and convenient size and type, any portions which have been printed in any other court, and also printed copies of patents and other exhibits, allowing the party furnishing the same such sum therefor as the

clerk deems reasonable, to be added to and form a part of the cost of printing.

8. If the actual cost of printing the record, together with the fee of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying it. If the actual cost and clerk's fee shall exceed the estimate, the excess shall be paid to the clerk before the delivery of a printed copy to either party or his counsel.

9. In case of reversal, affirmance or dismissal, with costs, the cost of printing the record and the clerk's fee shall be taxed against the party against whom costs are given, and shall be inserted in the body of the mandate or other proper process.

Second Circuit:

On the filing of the transcript in every case, the clerk shall forthwith cause fifteen copies of the same to be printed, and shall furnish three copies thereof to each party, at least thirty days before the argument, and shall file nine copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record. The clerk shall be entitled to demand of the appellant, or plaintiff in error, the cost of printing the record, before ordering the same to be done. If the record shall not have been printed when the case is reached for argument, for failure of a party to advance the costs of printing, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

Third Circuit:

PRINTING AND DISTRIBUTING RECORDS.

1. It shall be the duty of the clerk, immediately after the record of any case shall have been filed with him and docketed and the deposit fee of twenty-five dollars shall have been paid, to notify counsel for all parties that he shall print only the parts of the record mentioned in the second section of this rule, specifying what those parts shall be, and to notify the counsel for plaintiff in error or appellant of his estimate of the cost of printing such parts of the record and of his fee for preparing the parts for the printer, indexing the same and supervising the printing thereof. He shall print no other parts of the record unless, within ten days after such notice, he receives from some one or more of the counsel a written certificate that in his or their judgment other specified parts thereof should be printed in order to enable this court properly to decide the questions raised, in which event the parts so certified as necessary shall also be printed. The court may, in its discretion, direct the printing of other parts of the record, and, in lieu of printing patents or other exhibits, separate printed copies thereof, not less than ten in number, may be filed with the clerk. If other parts of the record than those specified in his notice shall be required to be printed by any of the counsel, or by this court, the clerk shall immediately notify the counsel for the plaintiff in error or appellant of his estimate of the additional cost of preparing, printing and indexing such other parts. The plaintiff in error or appellant shall pay to the clerk, within ten days after notice of any estimate, the amount thereof, in default of which the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

2. Unless additional parts of the record shall be required to be printed under the provisions of the first

section of this rule, the clerk shall print, for the use of the court, only the following parts thereof:

In writs of error—

(*a*) The docket entries.

(*b*) The pleadings upon which the case was tried.

(*c*) The bill of exceptions.

(*d*) The motion and reasons for judgment *non obstante veredicto*, if any.

(*e*) The opinion of the court below, if any.

(*f*) The charge to the jury, if any.

(*g*) The verdict of the jury, if any.

(*h*) The judgment entered.

(*i*) The assignments of error.

In appeals—

(*a*) The docket entries.

(*b*) The pleadings on which the case was heard and determined.

(*c*) The evidence, if any, on which it was heard and determined.

(*d*) The report of the examiner, master, auditor, referee, or other officer who first decided the case, if any.

(*e*) The exceptions to that report, if any.

(*f*) The opinion of the court, if any.

(*g*) The judgment or decree entered.

(*h*) The assignments of error.

In bankruptcy and other cases not being strictly within either of the above classes, the printed record shall conform as nearly as may be practicable to the record in appeals.

3. The clerk shall cause twenty-five copies of the record to be printed, and three copies thereof to be furnished to the counsel of the plaintiff in error or appellant, and also three copies to each of the counsel who shall have entered appearance for any of the other parties, and the remaining copies to be filed in his office, all, if possible, within thirty days after the payment to

him of the amount of his estimate made under the provisions of the first section of this rule.

4. The clerk shall supervise the printing of the record, have it properly indexed and distribute printed copies thereof to the judges of the court from time to time as required.

5. If the actual cost of printing the record and the clerk's fee of twenty-five cents per page for preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying the same, but if they shall exceed the clerk's estimate the amount of such excess shall be paid to the clerk before he shall file the printed copies of the record or deliver any of them to the parties.

6. In case of reversal, affirmance or dismissal, with costs, the actual cost paid for printing the record by the party in whose favor costs are awarded, and the clerk's fee for supervising the printing, etc., where such fee is paid by the party in whose favor costs are awarded, shall be taxed against the party against whom costs are given and shall be inserted in the body of the mandate or other proper process.

7. Each printed record shall show, by a note or memorandum, the time when each pleading or document was filed, and shall contain at the tops of its pages running titles of its contents.

8. In any case where the record, or any part thereof, has been printed in the court below, the same may be embodied in and used as the printed record of this court; *provided*, the manner and style of the printing shall correspond with the requirements of the several sections of this rule for printing done under the supervision of the clerk of this court; but the plaintiff in error or appellant shall pay to the clerk of this court, not only the

deposit fee of twenty-five dollars upon filing the record and having it docketed, but also the fee prescribed by Rule 29 for preparing the record for the printer, indexing the same, supervising the printing and distributing the copies thereof.

9. The clerk shall, on or before the conclusion of each case, collect and file for preservation in this court three copies of the printed record and of each brief, printed motion and argument submitted in such case, and shall, immediately after the mandate in any case shall have been sent down to the lower court, notify the defeated party in this court that unless he removes the remaining copies of the record and briefs within ten days after notice so to do, the same will be destroyed.

Fourth Circuit:

PRINTING RECORDS.

1. Hereafter all records shall be printed under the supervision of the clerk, by such printer and at such rate as the court may designate.

2. Upon the payment of the estimated cost of printing, together with the supervising fees as established by law (which amounts shall be deposited with the clerk within 10 days after notice thereof), the clerk shall cause to be printed thirty copies of the record, twenty copies of which shall be filed for the use of the court, three copies furnished to the adverse party, and the remaining copies delivered to the appellant or plaintiff in error at least ten days before the term or adjourned term.

3. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed, but the court may direct the printing of other parts of the record.

4. If the record shall not have been printed when the case is reached in the regular call of the docket, the case may be dismissed.

5. In case of reversal, affirmance, or dismissal, with costs, the amount paid for the printing of the record and the clerk's fees for supervising the same shall be taxed against the party against whom costs are given.

Fifth Circuit:

1. The clerk shall, upon the docketing of a case, forthwith cause an estimate to be made of the cost of printing the record and of his fee for preparing it for the printer and supervising the printing, and shall notify the party docketing the case of the amount of the estimate. If he shall not pay it within fifteen days in ordinary cases, and within three days in preference cases, after the date of such notice, the clerk shall notify the adverse party, and he may pay it. If neither party shall pay it, and for want of such payment the record shall not have been printed when a case is reached for hearing the case may be dismissed at the discretion of the court.

(As amended January 12th, 1905.)

2. The clerk shall cause the record in all cases to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish to the counsel of each party whose appearance shall have been entered, three copies of the printed record, taking a receipt therefor, and the parties may, by written stipulation filed prior to the printing of the record, agree that only parts of the record shall be printed, and the same may be heard only on the parts so printed, but the court may direct the printing of other parts of the record.

3. The clerk shall take to the printer the original transcript on file, but shall cause copies to be made for the printer of such original papers sent up under Rule 14, or other original papers, as are necessary to be printed.

4. The clerk shall cause at least twenty-five copies of the record to be printed, and may print a larger number on the request of either party on payment of

the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing and see that the printed record is properly indexed. There shall be omitted from the printed transcripts the following:

(1) Commissions to take testimony, and the formal captions to all depositions, and the certificates of commissioners as to the taking of the depositions, except in cases where objections have been made to the depositions on account of defects in caption or certificate.

(2) All process in the nature of subpoenas, citations, summons and subpoenas in chancery, unless from the assignment of errors it appears that some issue is raised which makes it necessary for the court to inspect such writs, and then only such as are involved.

In every transcript wherein any pleading, exhibit or other paper appears at more than one place, such pleading, exhibit or other paper shall be printed at the place it first appears in said transcript, and not thereafter; but the omission shall be indicated by apt notations and references to the pages of the printed record where it appears.

The clerk shall distribute the printed copies to the judges of the court and to the reporter from time to time, as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the clerk's estimate, the amount of such excess shall be paid to the clerk before he shall deliver or file the printed record or any copies thereof.

6. In case of reversal, affirmance or dismissal with costs, the amount of the costs of the printing of the record and of the clerk's fee for supervising the same shall be taxed against the party against whom costs are

given, and shall be inserted in the body of the mandate or other proper process.

7. The clerk shall receive from either party, and use as parts of the printed record so far as the same may be of proper size and type, any portions which may have been printed in any other court, and also printed copies of patents and exhibits, allowing the party furnishing the same such sums therefor as the clerk deems reasonable, to be added to and form a part of the cost of printing.

Sixth Circuit:

PRINTING RECORDS.

1. The clerk shall supervise the printing of all records, and upon the docketing of a case shall forthwith cause an estimate to be made of the cost of printing the record, and his fee for preparing it for the printer and for supervising the printing thereof, and shall at once notify the attorney for the plaintiff in error or appellant of the amount of such estimate, which shall be paid to the clerk within ten days after such notice. If not so paid, the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

2. After the payment to him of such estimate the clerk shall cause at least twenty-five (25) copies of the record to be printed forthwith, shall file the same, and shall furnish to each of the respective parties three (3) copies thereof and take a receipt therefor.

3. Parties may agree by written stipulation, filed with or prior to the filing of the record, that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record. The plaintiff in error or appellant may, within ten days after the case shall be

docketed in this court, file with the clerk a statement of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within fifteen days after service of such statement, may designate in writing, filed with the clerk, additional parts of the record which he thinks material, and if he shall not do so, he shall be held to have consented to the hearing of the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both parties, the clerk shall print those parts only, and the court will consider nothing but those parts of the record. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed, such order as to costs may be made which the court shall think proper. If good cause be shown, the time within which the statement of the parts of the record is to be filed with the clerk by either party, as above limited, may be enlarged by the court in session, or by either circuit judge, if eligible to sit in the cause.

4. If the cost of printing and supervision shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying the same. If the cost is greater than the estimate, the amount of such excess shall be paid to the clerk before he shall file the printed record or deliver any copies thereof.

5. In case of reversal, affirmance or dismissal with costs, the amount paid for printing and supervision shall be taxed against the party against whom the costs are given, and shall be inserted in the mandate or other proper process.

6. In any case where the record shall have been printed in the court below either circuit judge may, on the written application of the plaintiff in error or appellant, order that such printed record be used in this court. In such case the judge shall require, as a condition of making the order, a certificate of the clerk of this court that the record is in accordance with the printing rules and is properly indexed, in which case the supervision fee provided in table of costs, Rule 31, shall be charged and collected by the clerk.

7. The clerk of this court shall receive proposals for printing, which shall be submitted to the senior circuit judge, who may in his discretion award such printing to the lowest and best bidder, and all such printing shall be done by the person to whom the same is so awarded. And when a case shall be heard upon a record printed in the court below the cost for printing shall be taxed on the basis of such bid for printing, except when the parties otherwise agree.

Seventh Circuit:

PRINTING THE RECORD.

1. In all cases the plaintiff in error or appellant on docketing a case and filing the record shall enter into an undertaking to the clerk with surety to be approved by the clerk for the payment of all costs which shall be incurred in the cause, shall deposit with the clerk twenty-five dollars to be applied to the payment of costs and fees, and from time to time when necessary shall, on the demand of the clerk, make further deposits for that use.

2. The clerk, upon the docketing of a case, shall forthwith cause an estimate to be made of the cost of printing the record and of his fees for preparing it for the printer and for supervising the printing thereof, and shall at once notify the attorney for the plaintiff in error, or

appellant, of the amount of such estimate, which shall be paid to the clerk within ten days after such notice. If not so paid, the writ of error or appeal may be dismissed upon the motion of the opposite party, or by the court of its own motion.

3. The clerk shall cause the record in each case to be printed forthwith after the payment of such estimate, and shall immediately thereafter furnish to each of the respective parties at least three copies of the printed record, taking a receipt therefor. The parties may, by written stipulation filed with or prior to the filing of the record, agree that only parts of the record shall be printed, and the case will be heard on the parts so printed only, unless the court shall direct the printing of other parts.

4. The clerk shall cause at least twenty-five copies of the record to be printed and may print a larger number on the request of either party on the payment of the amount necessary for the printing of such extra copies.

5. The clerk shall supervise the printing and see that the printed record is indexed properly, and in a manner to indicate briefly the character of each document and exhibit referred to. He shall distribute the printed copies to the judges of the court from time to time as required. If the cost of printing the record, together with the clerk's fee for supervising the same, shall be less than the amount estimated and paid, the difference shall be refunded by the clerk to the party paying the same. If the actual cost and the clerk's fee shall exceed the estimate, the amount of the excess shall be paid to the clerk before he shall deliver or file the printed record or copies thereof.

6. In case of reversal, affirmance or dismissal with costs, the amount of the cost of the printing of the record and of the clerk's fee for supervising the same, shall be taxed against the party against whom costs

are given, and shall be inserted in the body of the mandate or other proper process.

7. Upon the clerk's producing satisfactory evidence by affidavit, or by the acknowledgment of the parties or their sureties or attorneys, of having served a copy of the bill of fees due from them respectively in this court on such parties, their sureties or attorneys, an attachment shall issue against such parties or their sureties, respectively, to compel the payment of said fees.

8. The clerk shall adopt a uniform size for the printing of all records, shall have them printed in small pica type, on clear white paper, with a margin of not less than an inch and a half, shall show by note or memorandum on the margin the time when each pleading or document was filed, and at the top of the pages shall insert running titles of their contents.

9. The briefs of attorneys shall be printed, and shall conform as nearly as practicable to the size of the printed record.

10. The clerk shall, on or before the conclusion of each case, collect, and file or otherwise preserve together one copy of the printed record and of each brief, printed motion and argument submitted therein.

11. In any case where the record shall have been printed in the court below, in substantial conformity to these rules, the presiding judge may on the application of the plaintiff in error or appellant order that such printed record be used in place of the printing hereinbefore provided for. But the clerk shall prepare and cause to be printed and attached to such record an index, and shall be paid the same fees for the indexing and supervising thereof as if printed under his supervision.

12. The clerk of this court shall obtain sealed proposals for the printing hereinbefore provided for, which proposals shall be submitted to the senior circuit judge of the court, who may award such printing to the lowest

and best bidder, and all such printing shall be done by the person to whom the same is so awarded, except in emergencies when printing may be done by another at the same or less price. And when a case shall be heard upon the record printed below, the costs for printing shall be be taxed on the basis of actual cost not exceeding the rate of the accepted bid.

13. The fees of the clerk of this court, as prescribed by order of the Supreme Court, made February 28, 1898, are as follows:

Docketing a case and filing the record	$5 00
Entering an appearance	25
Transferring a case to the printed calendar	1 00
Entering a continuance	25
Filing a motion, order, or other paper	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree	1 00
Every search of the records of the court and certifying the same	1 00
Affixing a certificate and a seal to any paper	1 00
Receiving, keeping, and paying money, in pursuance of any statute or order of court, one per cent. on the amount so received, kept and paid.	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing)	20
Issuing a writ of error and accompanying papers, or a mandate or other process	5 00
Filing briefs, for each party appearing	5 00

Copying of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy) 1 00
Attorney's docket fee 20 00

Eighth Circuit:

PRINTING RECORDS.

1. In cases brought to this court in which the plaintiff in error or appellant elects to waive the printing of the record under the provisions of the act of Congress, entitled "An Act to diminish the expense of proceedings on appeal and writ of error or of certiorari," approved February 13, 1911, and file a typewritten or manuscript transcript of the record in this court, such plaintiff in error or appellant may within twenty days from and after the date of the filing and docketing of the record in this court, serve on the adverse party a copy of a statement of the parts of the record which he thinks necessary for the consideration of the errors assigned, and file the same, with proof of service thereof, with the clerk of this court; the adverse party, within twenty days thereafter, may designate in writing and file with the clerk additional parts of the record which he thinks material, and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record in determining the questions raised by the errors assigned. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused un-

necessary parts of the record to be printed, such order as to costs may be made as the court shall think proper.

2. On the filing of the transcript in every such case the clerk shall cause thirty copies of the same, or the parts thereof designated under this rule, to be printed, and such additional number of copies as counsel for either of the parties may direct, and shall furnish three copies of the record so printed to each party at least sixty days before the argument.

3. In cases brought to this court in which the record has been printed and used upon the hearing in the court below, and which substantially conform to the printed records in this court, the plaintiff in error or appellant upon application to and by leave of this court, may furnish to the clerk twenty-five copies of such record, used on the hearing in the court below, to be used in the preparation of the printed record in this court; and the clerk's fee for preparing the record for the printer, indexing same, supervising the printing and distributing the copies, shall be computed as if said record so furnished had been printed under his supervision.

4. The clerk shall be entitled to demand of the plaintiff in error or appellant the cost of printing the record before ordering the same to be done.

5. If the record shall not have been printed when the case is reached for argument, for failure of the party to advance the costs of printing, the case may be dismissed.

6. In case of reversal, affirmance or dismissal with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

7. In any cause brought to this court, in which the record has been printed, in which a writ of *certiorari* shall be granted under the provision of Rule 18 of this court the return to such writ of *certiorari* shall be printed in the same manner as the record was.

8. If in any cause in which the record or a portion thereof has been printed it shall be made to appear to this court that the printed transcript does not substantially conform to the requirements of the rules of this court, it may be rejected and stricken from the files and such order relative thereto may be entered as the court shall deem proper.

Ninth Circuit:

1. All records shall be printed under the supervision of the clerk, and upon the docketing of the cause, he shall cause an estimate to be made of the expense of printing the record, and his fee for preparing it for the printer and supervising the printing, and shall notify the party docketing the case of the amount of the estimate. If the amount so estimated is not promptly paid over to the clerk, and for want of such payment the record shall not have been printed when a case is reached for argument, the case shall be dismissed.

2. Upon payment of the amount estimated by the clerk, thirty copies of the record shall be printed, under his supervision, for the use of the court and of counsel.

3. In cases of appellate jurisdiction the original transcript on file shall be taken by the clerk to the printer. But the clerk shall cause copies to be made for the printer of such original papers sent up under Rule 14, section 4, as are necessary to be printed; and the whole of the record in cases of original jurisdiction.

4. The clerk shall supervise the printing and see that the printed copy is properly indexed. He shall distribute the printed copies to the judges and the reporter, and one or more printed copies to the counsel for the respective parties.

5. If the expense of printing and supervision shall be less than the amount estimated and paid, the clerk shall refund the difference to the party paying same. If the expense is greater than the estimate the amount of such

excess shall be paid to the clerk before he shall file the printed record or deliver copies to the parties or their counsel.

6. In case of reversal, affirmance or dismissal, with costs, the amount paid for printing the record and of the clerk's fee shall be taxed against the party against whom costs are given.

7. The plaintiff in error or appellant may, upon filing the record in this court, file with the clerk a statement of the errors on which he intends to rely, and of the parts of the record which he thinks necessary for the consideration thereof, and forthwith serve on the adverse party a copy of such statement. The adverse party, within ten days thereafter, may designate, in writing, filed with the clerk, additional parts of the record which he thinks material; and, if he shall not do so, he shall be held to have consented to a hearing on the parts designated by the plaintiff in error or appellant. If parts of the record shall be so designated by one or both of the parties, or if such parts be distinctly designated by stipulation of counsel for the respective parties, the clerk shall print those parts only; and the court will consider nothing but those parts of the record, and the errors so stated. If at the hearing it shall appear that any material part of the record has not been printed, the writ of error or appeal may be dismissed, or such other order made as the circumstances may appear to the court to require. If the defendant in error or appellee shall have caused unnecessary parts of the record to be printed such order as to costs may be made as the court shall think proper.

All statements and stipulations filed hereunder shall distinctly and accurately refer to the pages of the original certified record as well as the documents to be printed or omitted.

8. At the time of filing the record and docketing the cause counsel for the plaintiff in error or appellant in patent cases may furnish the clerk with copies of patent office drawings and specifications to be used as inserts, and the same, if in proper form and of convenient size, shall be used in printing the record.

9. The fee of the clerk for preparing the record for the printer, indexing the same, supervising the printing, and distributing the copies, for each printed page of the record and index, twenty-five cents.

RULE 24.

BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least six days before the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated,—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and, in cases brought up by appeal, the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether be in instructions given or in instructions refused. When

the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief at least three days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified. See Rule 11.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but, if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

In the Second Circuit this rule is the same, except section 1 thereof reads as follows:

"1. The counsel for the plaintiff in error, or appellant, shall file with the clerk of this court, at least twenty days before the case is called for argument, ten copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side."

And section 3 reads as follows:

3. The counsel for a defendant in error, or an appellee, shall file with the clerk, at least ten days before the case is called for hearing, ten copies of his printed brief, one of which shall, on application, be furnished to each of the counsel on the opposite side. His brief shall be of a like character with that required of the plaintiff in error, or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error, or appellant, is controverted.

Third Circuit:

BRIEFS.

1. In each case in which the printed record has been delivered by the clerk to the counsel for the plaintiff in error or appellant sixty or more days before the first day of the term, such counsel shall file twenty copies of his brief with the clerk not less than thirty days before the first day of such term; in each case in which the printed record has been delivered by the clerk to such counsel between thirty days and sixty days before the first day of such term, twenty copies of such brief shall be filed with the clerk not less than twenty days before the first day of such term; and in all other cases twenty copies of such brief shall be filed with the clerk not less than fifteen days after the receipt of such printed record. Within the same time such counsel shall give to counsel for the defendant in error or appellee not less than five copies of such brief.

2. This brief shall contain, in the order here stated—

(*a*) The names of the parties and the nature of the proceedings.

(*b*) A short abstract of the bill or declaration or petition, and of the plea or answer.

(*c*) A statement of the question or questions involved, which shall be in the briefest and most general terms, without names, dates, amounts or particulars of any kind whatever.

(*d*) A concise abstract or statement of the case.

(*e*) The assignments of error relied on, and, where any assignment of error is based on any bill of exceptions or any part of a bill of exceptions, a reference to the particular page of the record where the exception may be found.

(*f*) Argument on the part of the plaintiff in error or appellant, which shall exhibit a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. At least five days before the case is called for argument, the counsel for the defendant in error or appellee shall file with the clerk twenty printed copies of his brief, and give not less than five copies thereof to the counsel for the plaintiff in error or appellee. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case unless that presented by the plaintiff in error or appellant is controverted.

4. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is

in default he will not be heard, except on consent of his adversary, and by special leave of the court.

5. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

In the Fourth Circuit the rule is the same as in the First as above given, except that the copies of plaintiff's brief must be filed at least ten days before any term or terms, and defendant's brief must be filed at least three days before the term or adjourned term.

In the Fifth Circuit the rule is as in the First, except as to the first and third sections, which are as follows:

1. The counsel for the plaintiff in error, appellant or petitioner shall file with the clerk of this court, at least fifteen days in ordinary cases, and five days in preference cases, before the case is called for argument, twenty copies of a printed brief, one to be signed in handwriting by an attorney of this court, who has entered an appearance in the case; one copy of the brief shall, on application, be furnished to each of the counsel engaged upon the opposite side.

3. The counsel for defendant in error, appellee or respondent shall file with the clerk of this court, at least five days before the case is called for argument in ordinary cases and before the case is called for argument in preference cases, twenty copies of a printed brief. His brief shall be of a like character with that required of the plaintiff in error, appellant or petitioner, except that no specification of errors shall be required and no statement of the case, unless that presented by the plaintiff in error, appellant or petitioner is controverted.

In the Sixth Circuit, the rule is as follows:

1. The counsel for the plaintiff in error shall file with the clerk of this court, within twenty-five days after

the filing of the printed copies of the record, as required in Rule 23 as amended, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated.

(1) A concise abstract or statement of the case, presenting succinctly the questions involved in the manner in which they are raised;

(2) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record, and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief within forty days after the filing of the printed record, as required by Rule 23. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no statement of the case shall be required, unless that presented by the plaintiff in error or appellant is controverted.

4. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary and by request of the court.

5. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

In the Seventh Circuit, the rule is as follows:

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, within twenty days

after the date of the delivery by the clerk of the printed record, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated, and under the respective titles, "Statement of Case," "Errors Relied Upon," and "Brief of Argument:"

(1.) A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2.) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged, and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specifications shall set out the part referred to *totidem verbis*, whether it be in an instruction given or in one refused. When the error alleged is to a ruling upon the report of a master the specifications shall state the exception to the report and the action of the court upon it. Following each specification there shall be a reference by page to the portion of the printed record on which the question arises.

(3.) A brief of the argument exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for the defendant in error or the appellee shall file with the clerk twenty printed copies of his brief within twenty days after the filing of the brief of the plaintiff in error or appellant. His brief shall conform to the requirements of this rule except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted. Either party, at or before the argument of the cause, may file a supplemental brief strictly confined to matter in reply to the brief of the opposite party.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court, and errors not specified according to this rule, and Rule 11, ante, will be disregarded; but the court at its option may notice a plain error involving the merits of the case, though not assigned or specified, and though the question be not saved according to the strict rules of practice, if it be apparent of record that the point was contested and not waived in the court below.

5. When, according to this rule, a plaintiff in error or appellant is in default, the case may be dismissed on motion, and when a defendant in error or appellee is in default, he will not be heard except on consent of his adversary, or by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument has been filed, only one counsel will be heard for the adverse party, but if a printed brief or argument has been filed, the adverse party will be entitled to be heard by two counsel.

Eighth Circuit:

BRIEFS.

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court, at least forty days

before the case is called for argument, twenty copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall be printed on unglazed paper, and it and all quotations contained therein shall be in substantial conformity with the size and type prescribed by Rule 26 for the printing of records and shall contain, in order here stated—

First. A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

Second. A specification of the errors relied upon, which in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be in instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

Third. A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a State is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty copies of his brief

printed on unglazed paper and in substantial conformity with the size and type prescribed by Rule 26 for the printing of records, at least ten days before the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by Section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

In the Ninth Circuit the rule is the same as that in the First, except that the first section reads as follows:

1. The counsel for the plaintiff in error or appellant shall file with the clerk of this court twenty copies of a printed brief, and serve upon counsel for the defendant in error or the appellee one copy thereof, at least ten days before the case is called for argument.

And the third section reads as follows:

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty printed copies of his brief and serve upon counsel for plaintiff in error or appellant one copy thereof at least three days before

the case is called for hearing. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of error shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

RULE 25.

In the First, Third, Fourth, Sixth and Eighth Circuits the rule is as follows:

ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion: *Provided, always,* That a fair opening of the case shall be made by the party having the opening and closing arguments.

In the Second Circuit the third section has been amended to read as follows:

3. Upon writs of error, appeals in admiralty, appeals from orders granting a preliminary injunction and in appeals in customs cases, one hour on each side, and in other cases one hour and a half will be allowed. But in all cases where there are no difficult questions of law and the amount involved does not exceed $500, and in

appeals and petitions for review in bankruptcy, only one-half hour on each side will be allowed. No more time than above specified will be allowed without special leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided always, that a fair opening of the case shall be made by the party having the opening and closing arguments.

In the Fifth Circuit the third section is as follows:

3. One hour will be allowed for the plaintiff in error or appellant to open and present his case, and one hour will be allowed to the defendant in error or appellee to answer; thirty minutes will then be allowed to the plaintiff in error or appellant to reply. No more time will be allowed for argument without special leave of the court.

In the Seventh Circuit the rule is as in the First Circuit and a fourth section is added as follows:

4. Reading at length from briefs or reported cases shall not be indulged.

In the Ninth Circuit the rule is as in the First Circuit; except that the third section commences with the words "one hour" instead of "two hours."

RULE 26.

FORM OF PRINTED RECORDS, ARGUMENTS AND BRIEFS.

All records, arguments and briefs, printed for the use of the court, must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume.

Second Circuit:

All arguments and briefs printed for the use of the court must be printed upon a page eleven inches long by seven inches wide and must have a margin of at least two inches in width.

Third Circuit:

1. All written opinions delivered by the court shall be filed by the clerk.

Fourth Circuit:

All records, arguments and briefs printed for the use of this court shall be in small pica type, 24 pica "ems" to a line, with an index and a suitable cover containing the title of the court and the cause, the court from which the case is brought into this court, and the number of the case. Size of pages to be 9¼ x 6¼ inches, except that in patent cases the size of the pages shall be 10¾ x 7⅝ inches; that is to say, large enough to bind in copies of Patent Office drawings and specifications without folding. So much of the record as was printed in the court below may be used in this court if it conform to this rule.

Fifth Circuit:

All records, arguments and briefs printed for the use of the court must be in such form and size that they can be conveniently bound together so as to make an ordinary octavo volume; and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (never smaller than small pica) and on unglazed paper.

Promulgated March 21, 1911.

Sixth Circuit:

1. All records shall be of a uniform size, printed in small pica type, 24 pica ems to a line, 48 lines to a page, solid, with an index and a suitable cover, containing the title of the court and cause, the court from which the cause is brought to this court and the number of the case; size of pages to be 9¼ x 6¼ inches, except that in patent cases the size of the pages shall be 10¾ x 7⅝ inches; that is to say, large enough to bind in copies of Patent Office drawings and specifications without folding.

2. All arguments and briefs of attorneys shall be printed and conform as near as practicable to the size of the printed record.

Seventh Circuit:

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records, but at the end of each term, the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

Eighth Circuit:

1. All transcripts of record, arguments and briefs for the use of this court, except in patent causes as hereinafter provided, shall be printed on unglazed paper not less than 6¼ inches in width by 9½ inches in length, including a sufficient margin so that they can be conveniently trimmed and bound in volumes. The paper should equal a weight of 80 pounds per ream on basis of size of sheet 25 by 38 inches.

2. All records and briefs in patent causes may be printed on unglazed paper, of the weight as provided in section one of this rule, of such size that copies of letters patent may be inserted therein without folding, but the size of such records and briefs in patent causes shall not be less than 7½ inches wide and 9½ inches long so that the records and briefs can be conveniently trimmed and bound in volumes.

3. All records, briefs, supplemental transcripts and returns to writs of *certiorari* shall be printed in clear eleven point or small pica type (never smaller than ten point), of 26 pica or 28 small pica ems to a line and 52 lines, including running head solid, per printed page, containing substantially 1400 small pica ems. Where testimony or depositions by question and answer are printed the answer shall follow on same line as the question whenever the same can be done.

4. All indexes to records and tabular exhibits, which from their nature require smaller type, may be printed in eight point or brevier type.

5. All covers for records shall be printed in a neat and workmanlike manner on substantial paper equal to a weight of 96 pounds per ream on the basis of a sheet 25 by 40 inches, and shall contain in conspicuous type the following matter, viz.:

First. TRANSCRIPT OF RECORD.

Second.

UNITED STATES CIRCUIT COURT OF APPEALS,

EIGHTH CIRCUIT.

Third. The abbreviation for number "No." followed by a blank line ¾ of an inch in length.

Fourth. The title of the cause as it will be docketed in this court, viz.:

....., Appellant (or Plaintiff in Error) as the case may be, vs. ....., Appellee (or Defendant in Error).

Fifth. The words "In Error to" (or "Appeal from") as the nature of the case may require, followed by the correct title of the trial court.

6. Unless otherwise expressly directed by counsel, the full titles of the court and cause once correctly shown

in the printed transcript shall not be repeated when unchanged. There shall be placed at the head of each subsequent pleading, etc., a brief designation of its character.

Unless otherwise expressly directed by counsel, the indorsements on pleadings, etc., shall not be printed in full; it shall be sufficient to print: "Filed in the..... Court on ....," giving the correct date and name of the court.

The date of all orders and decrees and the name of the judge or judges making them shall always appear.

In printed transcripts the pleadings, orders, testimony of witnesses, etc., shall be separated by a face rule three inches long. The clerk shall indicate to the printer the appropriate places therefor.

When inserts are folded several times to conform to the size of the printed record, stubs should be inserted at the binding side of the record to equalize the space occupied by the folds. Unmounted photographs should be used when copies of such are required in printed records.

As this rule is intended primarily for the guidance of the printer his attention should be directed thereto before the record or brief is printed.

A sample copy of a printed record will be furnished by the clerk of this court on application therefor.

Records and briefs not printed in substantial conformity with the provisions of this Rule will not be accepted or filed.

Ninth Circuit:

1. All records printed for the use of the court must be printed on unruled white writing paper, nine and one-quarter inches long and six and one-quarter inches wide. The printed page, exclusive of any marginal note, reference or running head, must be seven inches long and four inches wide, excepting in patent cases where

counsel furnish to the clerk at the time of docketing the cause Patent Office drawings and specifications for insertion. In such cases the margin of the record may be sufficiently enlarged to accommodate such drawings and specifications. The record must be properly indexed. Pica double-leaded is the only mode of composition allowed.

2. All arguments, briefs, and petitions for rehearing, printed for the use of the court, must be printed on unruled white writing paper, nine and one-quarter inches long and six and one-quarter inches wide. The printed page, exclusive of any marginal note, reference or running head, must be seven inches long and four inches wide. Pica double-leaded is the only mode of composition allowed.

RULE 27.

COPIES OF RECORDS AND BRIEFS.

The clerk shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs and arguments, filed therein.

The Rule in the Second, Fifth, Sixth, and Ninth Circuits is the same as above.

Third Circuit:

REHEARING.

1. A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be granted, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

Fourth Circuit:

COPIES OF RECORDS AND BRIEFS.

The clerk shall cause to be bound two copies of the printed record in every case, and of all printed motions, briefs and arguments filed therein; one copy to be carefully preserved in his office, and one copy for the use of the court library.

Seventh Circuit:

REHEARING.

A petition for rehearing must be filed within thirty days after entry of judgment or decree, or after filing of the opinion, shall be in print, and be served forthwith by copy upon the opposing party, who, within twenty days from such service, may file a printed answer, and the petition shall be determined without oral arguments, unless otherwise ordered. If a petition be not filed within the time allowed, and upon the overruling of a petition, the clerk shall, without special order, issue the mandate of the court to the court below. Twenty copies of such petition or answer shall be filed with the clerk of this court.

Eighth Circuit:

COPIES OF RECORDS AND BRIEFS.

The clerk shall cause to be bound in volumes in a substantial manner and shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs, and arguments filed therein

RULE 28.

First, Second, Fifth, and Eighth Circuits:

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but, at the end of each term, the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

Third Circuit:

INTEREST.

1. In cases where a writ of error is prosecuted in this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

Fourth Circuit:

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall be printed under the supervision of the judge delivering the same, or of one of the Circuit Judges, the cost of such print-

ing to be paid by the clerk out of the revenues of his office and charged to the litigants in the respective cases, to be taxed and allowed as other costs.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. The clerk of this court shall from time to time cause two sets of the printed opinions of this court to be bound in a substantial manner into volumes, one set to be kept in the clerk's office and one set to be kept in the court library.

Sixth Circuit:

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The opinions of the court shall be printed under the supervision of the clerk by the printer to whom the court printing has been awarded, in accordance with paragraph 7, Rule 23.

3. Opinions printed under the supervision of the clerk need not be copied into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

4. The cost of printing the opinions shall be defrayed out of the amount received for the same, and any deficit shall be paid out of such fees collected by the clerk as are not properly taxable as costs in any case pending in the court.

Seventh Circuit:

INTEREST.

1. When a judgment for the payment of money is affirmed by this court, the interest thereon shall be calculated and levied from the date of the judgment

below until the same is paid, and at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded on the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

5. In cases where money is paid into court, any party interested may move for an order that the clerk deposit the same under the direction of the court. On deposits so made, the clerk shall account for such interest as he may have collected on the

Ninth Circuit:

OPINIONS OF THE COURT.

The original opinions of the court shall be filed with the clerk of this court for preservation, and when so filed the same shall be deemed to have been recorded within the meaning of this rule.

RULE 29.

REHEARING.

A petition for a rehearing after judgment may be filed at the term at which the judgment is entered, and within one calendar month after such entry, and not later unless by leave grantedd during the term. It must be in print, in the form and style required by Rule 26, and it must briefly and distinctly state its grounds, and

be supported by a certificate of counsel. It will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it and a majority of the court so determines. *Provided*, Whenever a judgment is entered within less than a month before the term adjourns, the petition may be filed within a month after the entry of judgment, and with the same effect after the term as though filed before the adjournment.

Second Circuit:

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

Third Circuit:

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such

cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

7. In pursuance of the Act of Congress of February 19, 1897 (29 Stat. 536, c. 263), and of the order of the Supreme Court of January 10, 1898, as amended February 28, 1898 (90 Fed. Rep. CLXXI), the following table of fees and costs is established for this court:

Docketing a case and filing the record.	$5 00
Entering an appearance.	25
Transferring a case to the printed calendar.	1 00
Entering a continuance.	25
Filing a motion, order, or other paper.	25
Entering any rule, or making or copying any record or other paper, for each one hundred words.	20
Entering a judgment or decree.	1 00
Every search of the records of the court and certifying the same.	1 00
Affixing a certificate and a seal to any paper.	1 00
Receiving, keeping and paying money, in pursuance of any statute or order of court, one per cent. on the amount so received, kept and paid.	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index.	$0 25
Making a manuscript copy of the record, when required by the rules, for each one hundred words	

(but nothing in addition for supervising the printing). 20
Issuing a writ of error and accompanying papers, or a mandate or other process. 5 00
Filing briefs, for each party appearing. 5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy). 1 00
Attorney's docket fee. 20 00

In the Fourth Circuit the following sentence is added to the rule of the Second Circuit: "But such petition shall not operate to stay the mandate or other process provided for in Rule 32, except by special order of the court.

Fifth Circuit:

A petition for a rehearing after judgment can be presented only during the term at which judgment is entered, and within twenty days after such entry, unless by special leave granted by the court, or one of the judges, and must be printed and briefly and distinctly state its grounds without argument, and be supported by certificate of counsel; and will not be granted or permitted to be argued unless a judge who concurred in the judgment desires it and a majority of the Court so determines.

(As amended January 12th, 1905.)

Sixth Circuit:

A petition for rehearing after judgment can be presented only within thirty days after the day when the printed opinion of the court is returned by the printer to the clerk, and can be obtained by counsel for the parties (which date the clerk shall note upon the appearance docket), unless by special leave granted during such thirty days, and must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel, and will not be granted, or permitted to be

argued, unless a judge who concurred in the judgment desires it and a majority of the court so determines.

Seventh Circuit:

COSTS.

1. When any suit shall be dismissed in this court, except for want of jurisdiction, costs shall be allowed to the defendant in error of appellee, unless otherwise agreed by the parties.

2. In every case of a judgment or decree affirmed in this court costs shall be allowed to the defendant in error or appellee unless otherwise ordered by the court.

3. In every case of reversal of a judgment or decree in this court costs shall be allowed to the plaintiff in error or appellant unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be taxable in that court as costs in the case.

4. No costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, directing to award execution thereupon and to annex to the same the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

Eighth Circuit:

1. A petition for rehearing may be presented and filed within sixty days after the date of the judgment or decree, and jurisdiction to hear and decide the questions presented thereby is reserved, notwithstanding the lapse of the term within the sixty days.

2. Such petition for rehearing must be printed and twenty copies thereof filed with the clerk and must briefly and distinctly state its grounds, and be supported by a certificate of counsel, and will not be granted or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

Ninth Circuit:

A petition for rehearing may be presented within thirty days after judgment. It must be printed, and briefly and distinctly state its grounds, and be supported by certificate of counsel that in his judgment it is well founded, and that it is not interposed for delay. Twenty printed copies must be filed with the clerk of this court.[1]

RULE 30.

First, Sixth and Eighth Circuits:

INTEREST.

1. In cases where a writ of error is prosecuted in this court and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the State where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent., in addition to interest, shall be awarded upon the amount of the judgment.

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[1]See, also, sub. 2 of Rule 26 and Rule 32.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

In Second, Fourth, Fifth, and Ninth Circuits the words "or territory" follows the word "state" in the last line of clause 1. Otherwise the rule is as in the First Circuit.

Third Circuit:

MANDATE.

1. In each case finally determined in this court, a mandate or other proper process in the nature of a *procedendo* shall be issued to the court below, for the purpose of informing such court of the proceedings in this court so that further proceedings may be had in such court as to law and justice may appertain. Such mandate or other process may issue at any time on the order of the court, and, when not otherwise ordered, it shall issue as of course at the expiration of thirty days from the date of filing the opinion or decision therein.

Seventh Circuit:

MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo* shall be issued, on the order or by the rule of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

RULE 31.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant

in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court.

4. The cost of the transcript of the record from the court below shall be taxable in that court as costs in the case.

5. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In all cases certified to the Supreme Court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

In the Second Circuit the rule is the same, except that Clause 3 reads as follows, and Clauses 5, 6 and 7 become Clauses 4, 5 and 6.

3. In cases of reversal of any judgment or decree in this court costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in this court as part of such costs, and the clerk of the court below shall send to the clerk of this court with the transcript of record a certificate of the cost of such transcript.

Third Circuit:

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas corpus*, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from a final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

In the Fourth Circuit the rule is the same as in the First Circuit, except that Clauses 3 and 4 are numbered Clause 3, and Clauses 5, 6 and 7 become Clauses 4, 5, and 6; the table of costs is printed as Clause 7.

In the Sixth Circuit the rule is the same as in the First Circuit, except that Clauses 3 and 4 are numbered Clause 3, and Clauses 5, 6 and 7 become Clauses 4, 5 and 6; the same table of costs as promulgated by the Supreme Court, February 28, 1898, is printed at length after Rule 31.

TABLE OF COSTS.

Order Promulgated by the Supreme Court of the United States February 28, 1898.

Ordered, In pursuance of the Act of Congress of February 19, 1897 (29 Stat. 536, c. 263), that the following table of fees and costs in the Circuit Courts of Appeals be, and the same is hereby, established, to take effect

on the first day of March, A. D. 1898, and no other fees and costs than those therein named shall thereafter be charged:

Docketing a case and filing the record.	$5 00
Entering an appearance.	25
Transferring a case to the printed calendar.	1 00
Entering a continuance.	25
Filing a motion, order or other paper.	25
Entering any rule, or making or copying any record or other paper, for each one hundred words	20
Entering a judgment or decree.	1 00
Every search of the records of the court and certifying the same.	1 00
Affixing a certificate and a seal to any paper.	1 00
Receiving, keeping and paying money in pursuance of any statute or order of court, one per cent on the amount so received, kept and paid,	
Preparing the record for the printer, indexing the same, supervising the printing and distributing the copies, for each printed page of the record and index.	25
Making a manuscript copy of the record, when required by the rules, for each one hundred words (but nothing in addition for supervising the printing).	20
Issuing a writ of error and accompanying papers, or a mandate or other process.	5 00
Filing briefs, for each party appearing.	5 00
Copy of an opinion of the court, certified under seal, for each printed page (but not to exceed five dollars in the whole for any copy)	1 00
Attorney's docket fee.	20 00

In the Seventh Circuit the rule reads as follows:

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas*

corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in the custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety for appearance to answer the judgment of the Appellate Court except where, for special reasons, sureties ought not to be required.

Eighth Circuit:

1. In all cases where any suit shall be dismissed in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. Where the record has been printed in this court under the provisions of sections one and two of Rule 23, the cost of printing thirty copies of the transcript of record from the court below shall be taxed as costs in the case, unless otherwise ordered by this court, but no allowance shall be made for the amount paid to the clerk of the court below for the written or typewritten transcript of the record. Where the record has been printed in the court below and a copy of such printed record certified to this court the cost of printing twenty-five copies

of such record or portion thereof shall be taxable as costs in the case in the court below, unless otherwise ordered by this court.

4. Neither the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court, except that no fee shall be charged or collected for any printed record or portion thereof, required by law to be used by the clerk in the preparation of such transcript of the record.

In the Ninth Circuit, Clause 3 is as in the First Circuit with the following, "including cost of the transcript from the court below, unless otherwise ordered by the court." Clauses 5, 6 and 7, are numbered 4, 5 and 6 in the Ninth. Clause 7, in the Ninth Circuit, is as follows:

7. Upon the clerk's producing satisfactory evidence, by affidavit or the acknowledgment of the parties or their sureties, of having served a copy of any bill of fees due by them, respectively, in this court, on such parties or their sureties, an attachment shall issue against such parties or sureties respectively to compel payment of said fees.

RULE 32.

MANDATE.

In every case finally determined, a mandate, or other proper process in the nature of a *procedendo,* shall be issued to the court below, for the purpose of informing that court of the proceedings in this court, so that further proceedings may be had in the court below as to law and justice may appertain. Such mandate, or other process, may issue at any time on the order of the court; but, unless otherwise ordered, it shall issue as of course after two calendar months from the entry of judgment, unless a petition for a rehearing has been filed and remains undisposed of.

Second Circuit:

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo,* shall be issued, on the order of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Third Circuit:

MODELS, DIAGRAMS AND EXHIBITS OF MATERIAL.

1. Models, diagrams and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the clerk of this court at lease ten days before the case is heard or submitted.

2. All models, diagrams and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided.

When this is not done, it shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

Fourth Circuit:

In all cases finally determined in this court, a mandate or other proper process, in the nature of a *procedendo*, shall be issued to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, or other process, may issue at any time on the order of the court; but, unless otherwise ordered, it shall issue as of course after the expiration of twenty days from the date of the judgment or decree.

Fifth Circuit:

Mandates shall issue at any time after twenty-one days from the date of the decision, unless an application for a rehearing has been granted or is pending. A copy of the opinion of this court shall accompany the mandate when a new trial or further proceedings are to be had in the lower court, and the charge for such copy shall be taxed in the costs of the case.

Provided that in all cases entitled to precedence in this court under Section 7 of the Act approved March 3, 1891, and amendments thereto, the mandate or other proper process shall issue after the expiration of seven days from the date of the decision, unless otherwise ordered by the court or one of the judges.

(As amended January 12th, 1905.)

Sixth Circuit:

In all cases finally determined in this court a mandate or other proper process in the nature of a *procedendo*

shall be issued, on the order of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Such mandate shall not issue until time has elapsed for filing a petition to rehear, as defined by Rule 29; and no mandate or other process of *procedendo* shall issue when a petition to rehear is pending, unless specially ordered.

Every mandate shall be accompanied by a copy of the opinion filed in the cause in which it is issued, and the charge for the same shall be taxed in the costs of the case.

Seventh Circuit:

MODELS, DIAGRAMS AND EXHIBITS.

Models, diagrams and exhibits of material forming part of the evidence taken in the court below, and in any case pending in this court on writ of error or appeal, shall be placed in the custody of the marshal for the use of this court at least ten days before the case is heard or submitted; and shall be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule, and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy or make such other disposition of them as to him may seem best.

Eighth Circuit:

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo* below, for the purpose of informing such court of the proceedings in this court, so that further proceedings,

may be had in such court as to law and justice may appertain.

Note.—By an order entered March 30, 1911, the Clerk is directed to issue a mandate or other proper process to the court below, in all cases, sixty days after the final disposition thereof, except where it shall be otherwise expressly ordered.

Ninth Circuit:

RULE 32.*

MANDATE.

In all cases finally determined in this court a mandate or other proper process in the nature of a *procedendo* shall, upon the payment of any costs due in the case, be issued, as of course from this court to the court below, for the purpose of informing such court of the proceedings in this court so that further proceedings may be had in such court as to law and justice may appertain. Such mandate, if not stayed by the order of the court, shall be issued on the expiration of thirty days from the date of such final determination, unless within said time a petition for rehearing be filed, in which case the mandate shall be stayed until five days after the determination of such petition.

RULE 33.

First, Second, Fourth, Fifth, Sixth, Eighth and Ninth Circuits:

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas corpus*, the custody of the prisoner shall not be disturbed.

*See, also, Rule 29.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

In the Third Circuit there is no rule after Rule 32.

In the Seventh Circuit, Rule 33 reads as follows:

LAW LIBRARY.

1. The library of the court shall be under the general supervision and custody of the clerk of the court.

2. No book shall be removed from the library except upon a written order of a judge of this court, except that during the sessions of the court any lawyer who has a case upon the docket, upon written application to the clerk and upon the clerk's written order, may take from the library not exceeding three volumes at a time, being responsible for the return thereof within twenty-four hours, and in default of return shall pay to the clerk for the library fund twice the value thereof, but if returned in good condition one dollar for each day's detention beyond the limited time.

RULE 34.

First, Fourth, Fifth, Sixth, Eighth and Ninth Circuits:

MODELS, DIAGRAMS AND EXHIBITS OF MATERIAL.

1. Models, diagrams and exhibits of material, forming part of the evidence taken in the court below, in any

case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least ten days before the case is heard or submitted.

2. All models, diagrams and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

Second Circuit:

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, except customs cases, shall be placed in the custody of the clerk of this court at least ten days before the case is heard or submitted.

2. Three copies must be furnished for the use of the court of any maps, charts, plans, diagrams, or other papers or documents which it is intended to refer to on the argument, and which are not contained in the transcript of record as certified from the court below.

3. All exhibits of material in customs cases must be filed with the clerk at the time of filing the transcript of record, and such exhibits will be returned to the clerk of the circuit court at the expiration of 60 days from the decision of the case by this court. All other models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case must be taken away by the parties within one month after the case is decided. It shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the

articles are not removed within the time above specified, he shall destroy them, or make such other disposition of them as to him may seem best.

In the Third Circuit, there is no Rule 34.

In the Seventh Circuit, Rule 34 is as follows:

WRITS OF ERROR IN CRIMINAL CASES.

1. Writs of error from this court to review criminal cases tried in any district or circuit court of the United States within this circuit, may be allowed in term time or in vacation by the circuit justice assigned to this circuit, or by any of the circuit judges within the circuit, or by any district judge within his district, and the proper security be taken, and the citation signed by him, he may also grant a supersedeas and stay of execution or proceedings, pending the determination of such writ of error.

2. Where such writ of error is allowed in the criminal cases aforesaid, the circuit court or the district court before which the accused was tried, or the district judge of the district wherein he was tried, within his district, or the circuit justice assigned to this circuit, or any of the circuit judges within the circuit, shall have the power, after the citation has been duly served, to admit the accused to bail and to fix the amount of such bail.

RULE 35.

ERROR IN CRIMINAL CASES.

On or after the allowance of a writ of error in a criminal case cognizable by this court, the justice or judge who allowed the writ, or the court which entered the judgment, or any judge thereof, shall have power to admit to bail the plaintiff in error, according to the rules of law applicable to his case.

Second Circuit:

1. An appeal or writ of error from a Circuit Court or a District Court of this Court in the cases provided for in Sections 6 and 7 of the Act entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3, 1891, and Acts to amend said Act approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice or by any circuit judge within the circuit or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error to this Court is allowed in the case of a conviction of an infamous crime or in any other criminal case in which it will lie, the Circuit Court or District Court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

In the Third Circuit, there is no Rule 35.

Fourth Circuit:

SATURDAYS CONFERENCE DAY.

The clerk in making his docket shall not set down for argument any cause for any Saturday of the term for which such docket is intended, and this court will meet on said days for consultation only.

Fifth Circuit:

XXXV—ORDER IN RELATION TO ASSIGNMENT OF CASES FOR HEARING.

Unless otherwise ordered by the Senior Circuit Judge, thirty days prior to the opening of a regular session of this court, the clerk is directed to assign cases for hearing as follows:

At Atlanta, Georgia, four cases per day for the first three days of each week;

At Montgomery, Alabama, four cases per day for the first three days of each week;

At Forth Worth, Texas, four cases per day for the first three days of each week;

At New Orleans, Louisiana, two cases per day for the first three days of each week.

The above assignments shall be made in accordance with existing law regulating the return of appeals, writs of error and other appellate proceedings in the Fifth Judicial Circuit provided, that cases entitled by law to preference in hearing and bankruptcy cases shall be first assigned, and cases, whether preference or not, may, upon stipulation of the parties filed with the clerk and approved by the court, be assigned for hearing at any other place or session of this court designated in such stipulation.

Except as hereinabove provided, the assignment of cases at New Orleans, Louisiana, shall be grouped by states, so as to permit the hearing of cases from one state before the cases from the next state in order shall be called. (As amended October 15, 1906.)

The above assignments shall be made in accordance with existing law regulating the return of appeals, writs of error and other appellate proceedings in the Fifth Judicial Circuit, provided that cases entitled by law to preference in hearing and bankruptcy cases shall be first assigned, and cases whether preference or not may, upon stipulation of the parties filed with the clerk, be assigned for hearing at any other place or session of this court designated in such stipulation.

Except as hereinabove provided, the assignment of cases at New Orleans, Louisiana, shall be grouped by states, so as to permit the hearing of cases from one

state before the cases from the next state in order shall be called. (As amended January 12, 1905.)

Sixth Circuit:

TESTIMONY IN ADMIRALTY CASES AFTER APPEAL.

In admiralty appeals no testimony shall be taken except under a commission issued from this court to a clerk of a United States court or a United States commissioner by direction of the court, the circuit justice, or either circuit judge qualified to sit on appeal in said case, after cause shown to such court, justice or judge that such evidence is material and necessary and could not by due diligence have been produced at the original hearing. Such testimony shall be taken only upon interrogatories settled by such court, justice or judge, upon at least ten days' previous notice to the opposing party or his attorney (accompanied with a copy of the proposed interrogatories) and upon cross interrogatories to be settled at the same time after five days' previous notice of the same, with copy thereof to be served upon counsel offering testimony.

In the Seventh Circuit there is no rule after Rule 34.

Eighth Circuit:

1. Writs of error to review criminal cases tried in any District Court of the United States within this circuit, which may be reviewed under the provisions of "The Judicial Code," approved March 3, 1911, may be allowed in term time or in vacation by the Circuit Justice assigned to this circuit, or by either of the Circuit Judges within the circuit, or by any District Judge within his district, and the proper security be taken, and the citation signed by him, and he may also grant a supersedeas and stay of execution or proceedings, pending the determination of such writ of error.

2. Where such writ of error is allowed in the criminal cases aforesaid, the District Court before which the ac-

cused was tried, or the District Judge of the district wherein he was tried, within the district, or the Circuit Justice assigned to the circuit, or either of the Circuit Judges within the circuit, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be, as near as may be, in the form prescribed in the appendix to these rules.

Ninth Circuit:

ASSIGNMENT OF CAUSES FOR HEARING.

1. Thirty days prior to the opening of any calendar session of the court the clerk is directed to assign causes for hearing at the rate of one case for the first day of each term or session, and two cases per day for each of the ensuing court days of such term or session. Causes shall be grouped by States, and assignments made so as to permit the hearing of causes from one State before the causes from the next State in order shall be called; causes from the Northern District of California shall be assigned for hearing last. Any causes entitled by law to preference in hearing shall be first assigned and take precedence over other causes from the same State.

2. A stipulation to continue a case to the foot of the calendar, or in any way change the day assigned for hearing, will not be recognized as binding upon the court, and no such change will be made except by order of the court for reason shown.

3. Ten days before each calendar session of the court the clerk shall prepare and cause to be printed a calendar of the causes assigned for the approaching session.

RULE 36.

PETITIONS IN BANKRUPTCY CASES.

1. On the filing of a petition for the exercise of the power of superintendence and revision vested in this court by the act to establish a uniform system of bank-

ruptcy throughout the United States, approved July 1, 1898, or any acts in addition thereto or amendatory thereof, the clerk shall issue, as of course, an order to show cause, returnable two weeks from the date thereof, which shall be served by copy on each of the adverse parties named in the petition as a person against whom relief is desired, or his solicitor in the proceeding in the district court, at least one week before the return day of the order, which service shall be made by the marshal or his deputy in the district where the party or solicitor served resides.

2. Within one calendar month after the return day of the order to show cause, either party may demur, plead or answer; but the determination of any demurrer, plea or answer shall be final, and no order to plead over will be allowed; and any party may secure in his answer all the advantages of a demurrer or plea, or both, by inserting therein the proper allegations therefor. No demurrer shall be general, and no cause of demurrer shall be allowed unless specifically set forth therein.

3. There shall be no pleadings in reply by the petitioner; but any new matter properly in reply shall be available without the same being pleaded in the petition, or otherwise.

4. A motion to dismiss may be filed within the time allowed for a demurrer, plea or answer; or the subject-matter thereof, if it relates to the substance of the proceeding or to the jurisdiction of the court, may be availed of on demurrer, plea or answer, by proper allegation; and whenever a motion to dismiss is seasonably filed, the time for filing demurrer, plea or answer, will run from the day on which an order may be entered overruling the motion. Every motion to dismiss shall be filed in print, accompanied with a printed brief; and each of the opposing parties shall forthwith be served by the clerk, through the mail or otherwise, with a copy of the mo-

tion and of the brief, and he may file, in print, a brief in reply within two weeks. At the expiration of the time allowed for filing the brief in reply the motion and briefs will be distributed by the clerk to the circuit judges, and to the district judge, senior in commission, who is not disqualified. Thereupon, the motion will be disposed of by the court on the briefs, unless, at its own suggestion, or for good cause shown, the court shall order oral arguments.

5. So much of Rule 14 as relates to *viva voce* proofs in the district courts, or to further proof in instance causes in admiralty, shall apply to appeals and petitions authorized by the act aforesaid, or by acts additional thereto or amendatory thereof: *Provided,* That any record on any such appeal or petition may be supplemented by any matter agreed to in writing by the parties and filed with the clerk.

6. The Rules with reference to records, printing and briefs, and all other Rules, except as herein modified, shall apply to the proceedings to which this order relates.

7. Nothing herein shall prevent the court, from time to time, from making, for special cause, others diminishing or enlarging the times named herein, or any other orders suitable to expedite the proceeding or to prevent injustice.

Second Circuit:

1. In all cases the plaintiff in error or appellant on docketing a case and filing a record, shall enter into an undertaking with the clerk for the payment of his fees or otherwise satisfy him in that behalf.

2. At the expiration of ten days after a case has been decided, the order or decree thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said ten days the parties may file with the clerk their pro-

posed orders or decrees and bills of costs with proof of service of the same upon the opposing attorneys.

In the Third Circuit, there is no Rule 36.

Fourth Circuit:

BANKRUPTCY.

Upon the filing of the petition for review as provided for in section 24 (b) of the act to establish a uniform system of bankruptcy throughout the United States, approved July 1, recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the clerk of this court at least ten days before the case is heard or submitted.

2. All models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this not done, it shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and, if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

SATURDAYS CONFERENCE DAY.

The clerk in making his docket shall not set down for argument any cause for any Saturday of the term for which such docket is intended, and this court will meet on said days for consultation only.

BANKRUPTCY.

Upon the filing of the petition for review as provided for in section 24 (b) of the act to establish a uniform system of bankruptcy throughout the United States, approved July 1,

Fifth Circuit:

XXXVI.—ASSIGNMENT OF JUDGES.

It is ordered that whenever a full bench of three judges shall not be made up by the attendance of the associate justice of the Supreme Court assigned to the circuit, and of the circuit judges, so many of the district judges, in the order of the seniority of their respective commissions and qualified to sit, as may be necessary to make up a full court of three judges, are hereby designated and assigned to sit in this court; *provided, however,* that the court may at any time, by particular assignment, designate any district judge to sit as aforesaid.

(Adopted June 23, 1892.)

Sixth Circuit:

DISPOSITION OF FEES NOT COSTS IN CASES.

All fees collected by the clerk which are not properly taxable as costs in any case pending in the court, and which are not by law required to be deposited by him in the treasury of the United States, after the payment of any deficit arising from the printing of opinions, shall constitute a fund to be expended in the purchase of law books for the library of the court by the clerk, under the direction of the court. And it shall be the duty of the clerk to render to the court, for its examination and approval, a quarterly account of such fees received and disbursed by him.

The Seventh Circuit has no Rule 36.

Eighth Circuit:

PETITIONS TO REVISE.

A petition to revise, under the provisions of section 24b, of the Bankruptcy Law, approved July 1, 1898, shall be filed and docketed as an original action in this court, and be entitled "....., Petitioner, v. ....., Respondent," and shall specifically designate the respondent or respondents upon whom the petitioner desires notice to be served, and a sufficient number of copies of such petition shall be furnished the clerk at the time of filing so that a copy may be served upon each of the respondents.

Ninth Circuit:

TERMS AND SESSIONS OF THE COURT.

1. One term of this court shall be held annually on the first Monday of October and adjourned sessions on the first Monday of each month in the year. All sessions shall be held at San Francisco, unless otherwise especially ordered by the court.

2. The October, February and May sessions shall be known as calendar sessions, and shall be sessions for the trial of all causes that shall have been placed upon the calendar in pursuance of Rule 35.

3. A term of this court shall be held annually in the city of Seattle, in the State of Washington, and in the city of Portland, in the State of Oregon. The Seattle term shall be held beginning upon the second Monday in September, and the term at Portland shall be held beginning upon the third Monday in September. All appeals and writs of error from the circuit and district courts for the District of Washington, the transcripts of which shall be filed in this court between the first day of April and the first day of August of each year, shall be heard at said annual term in the city of Seattle, unless it be stipulated by the parties thereto that they be heard

at San Francisco. All other appeals and writs of error from said circuit and district courts for that district shall be heard at San Francisco, unless it be stipulated by the parties thereto that they be heard at said annual term in the city of Seattle. All appeals and writs of error from the circuit and district courts for the District of Oregon, the transcripts of which shall be filed in this court between the first day of April and the first day of August of each year, shall be heard at said annual term in the city of Portland, unless it be stipulated by the parties thereto that they be heard at San Francisco. All other appeals and writs of error from said circuit and district courts for that district shall be heard at San Francisco, unless it be stipulated by the parties thereto that they be heard at said annual term in the city of Portland. Appeals and writs of error from the circuit and district courts for the Districts of Idaho and Montana, and from the district courts of Alaska may, upon the stipulation of the parties thereto, be heard at the annual term to be held either at Seattle or Portland.

The First Circuit has no rule after Rule 36.

RULE 37.

Second Circuit:

In the preparation of briefs any citations made from "Federal Cases" must be accompanied by the citation of the original report of the case, and where a citation is made from the American Bankruptcy Reports, the citation in the Federal Reporter or United States Supreme Court Reports must also be given. If the case is not reported elsewhere than in Federal Cases or American Bankruptcy Reports the fact must be so stated.

In the Third and Fourth Circuits there is no rule 37.

Fifth Circuit:

XXXVII.—WRITS OF ERROR IN CRIMINAL CASES.

1. Writs of error to review criminal cases tried in any district or Circuit Court of the United States within this circuit, which may be reviewed under the provisions of the Act of March 3, 1891, creating this court, and the Act of Congress amendatory thereof, approved January 20, 1897—may be allowed in term time or in vacation by the circuit justice assigned to this circuit by either of the circuit judges, or by any district judge who presided on the trial, and the proper security be taken, and the citation be signed by him, and he may also grant a supersedeas and stay of execution or proceedings pending the determination of such writ of error.

2. Where such writ of error is allowed in any criminal case as aforesaid, the circuit court or district court, before which the accused was tried, or the trial judge, or the circuit justice assigned to the circuit, or either of the circuit judges, shall have the power, after the citation has been duly served, to admit the accused to bail in such amount as may be fixed, such bail bond to be, as near as may be, in the form prescribed in the appendix to these rules.

(Adopted June 11, 1897.)

APPENDIX TO RULE 37 (of Fifth Circuit).

(Form of Appearance Bond on Writ of Error in Criminal Cases.)

Know all men by these presents:

That we,....., as principal, and....., as sureties, are held and firmly bound unto the United States of America in the full and just sum of..... dollars, to be paid to the said United States of America,

to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this..... day of ....., in the year of our Lord one thousand eight hundred and ninety-.....

Whereas, lately at the..... term, A. D. 189...., of the..... court of the United States for the..... district of....., in a suit pending in said court, between the United States of America, plaintiff, and....., defendant, a judgment and sentence was rendered against the said....., and the said.....has obtained a writ of error from the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Fifth Circuit, at the city of New Orleans, Louisiana, thirty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said.....shall appear in the United States Circuit Court of Appeals for the Fifth Circuit, on the first day of the next term thereof, to be held at the City of....., on the first Monday in....., A. D. 189 ...., and from day to day thereafter during said term and from term to term, and from time to time, until finally discharged therefrom, and shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Fifth Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said court may direct, if the judgment and sentence of the said.....court against him shall be affirmed by the said United States Circuit Court

of Appeals for the Fifth Circuit then the above obligation to be void, else to remain in full force, virtue and effect.

.....[Seal]
.....[Seal]
.....[Seal]

Approved:

.....

Judge of the.....

Sixth Circuit:

CALL AND ORDER OF THE DOCKET.

1. The court, on the first day of each calendar session, will begin calling the cases for argument in the order in which they stand on the docket, and proceed from day to day during the session in the same way. If the parties, or either of them, shall be ready when the case is called, the same will be heard, and if neither party shall be ready to proceed with the argument, the case will be continued to the next calendar session.

2. Each day's calendar shall consist of the six cases next in order after the case last submitted on the previous day, but the calendar will not include any case continued or passed by the court or stipulation of counsel before the adjournment of court on the previous day. The calendar for each day shall be exhibited in the clerk's office at the adjournment of court on the previous day. Counsel choosing to rely on the judgment of the clerk as to the probable time of the hearing of any case, otherwise than as shown in the day's calendar above provided for, must do so at their own risk.

3. Two or more cases involving the same question may by leave of the court be heard together, but they must be argued as one case.

In the Seventh Circuit there is no Rule 37.

Eighth Circuit:

ORDER OF COURT.

1. Before the filing of a petition to revise, the same shall be presented to the court, or one of the circuit judges, for leave to file same and for an order fixing the return day to the notice required by law.

2. When such petition is accompanied by a written consent that the petition to revise may be filed and a waiver by the respondent or respondents, or their counsel, of such notice, no notice will be issued. In such cases the case will be docketed by the clerk.

PHOTOGRAPH OF CHINESE TO BE ATTACHED TO BAIL BOND.

Whenever, in cases of deportation of Chinese, the defendant be admitted to bail pending appeal, before the bond be approved and the party released from custody a photograph of the defendant shall be attached to said bond.

The Ninth Circuit has no Rule 37.

RULE 38.

Second Circuit:

Petitions to review orders in bankruptcy filed under the provisions of Section 24 B of the Bankruptcy Act, must be filed and served within ten days after the entry of the order sought to be reviewed, and a transcript of the record of the proceedings in the Bankruptcy Court of the matter to be reviewed must be filed and the cause docketed within thirty days thereafter, but the judge of the Bankruptcy Court may for good cause shown enlarge the time for filing the petition or record, the order of enlargement to be made and filed with the clerk of this court before the expiration of the times hereby limited for filing the petition and record respectively.

The Third and Fourth Circuits have no Rule 38.

The Fifth Circuit has no rule after Rule 37.

Sixth Circuit:

APPEAL OR WRIT OF ERROR MAY BE ALLOWED.

1. An appeal or writ of error from a circuit court or a district court to this court in the cases provided for in Sections 6 and 7 of the act entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States and for other purposes," approved March 3, 1891, and acts to amend said act, approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice, or by either circuit judge within the circuit, or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error to this court is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie, the circuit court or district court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

The Seventh Circuit has no Rule 38.

Eighth Circuit:

NOTICE.

The notice to be given, as provided by law, shall be issued by the clerk of this court, under the seal thereof, and shall be addressed to the respondent or respondents and be served by the marshal, unless an acknowledgment or acceptance of service thereof is made by the respondent or respondents, or their counsel.

Ninth Circuit: No Rule 38.

RULE 39.

Eighth Circuit:

RESPONSE.

The response to the petition, when the respondent elects to make a written response, shall be filed within thirty days after the service of the notice or the filing of a waiver thereof.

RULE 40.

Eighth Circuit:

PRINTING OF RECORD.

1. The clerk shall cause the petition and exhibits thereto, if any, and the order, notice and response, if any, to be printed as soon as convenient after the response is filed or the time for filing such response has expired and shall distribute the printed copies of same to counsel for the respective parties, as soon as the same are printed.

RULE 41.

Eighth Circuit:

BRIEFS AND ARGUMENTS.

Twenty copies of the brief and argument in behalf of petitioner shall be printed and filed twenty days before the day set for the hearing and twenty copies of the brief and argument for the respondent or respondents shall be printed and filed eight days before the day of hearing.

RULE 42.

Eighth Circuit:

HEARING.

1. Petitions to revise filed in vacation, shall be assigned by the clerk for hearing in their regular order at

the next session or term of the court in the same manner as appeals and writs of error in other cases.

2. Petitions to revise filed during a session of the court, when a sufficient showing of urgency is presented, may be set for hearing at that term and upon such terms and conditions as the court may direct.

3. Petitions to revise assigned by the clerk in their regular order as provided in section one of this rule, when such assignment is for a day near the close of the session, may be advanced by order of the court and set for an earlier day, upon good cause shown therefor by either of the parties.

RULE 43.

Eighth Circuit:

COSTS.

1. The costs and fees now provided by law in cases upon appeal or writ of error, shall, so far as the same are applicable, be taxed on petitions to revise.

2. Upon the determination of a petition to revise such order as to costs will be made as the court may deem necessary.

RULE 44.

Eighth Circuit:

PROCEDENDO.

1. In all cases on a petition to revise wherein the action or decree of the district court, complained of, is disapproved by this court, the clerk shall, at the expiration of thirty days from and after the date of entering the decree in this court, issue process in the nature of a procedendo to the said district court for the purpose of informing such court of the proceedings in this court,

so that further proceedings may be had in such district court in conformity with the decree of this court.

2. In all cases on petition to revise, wherein the action or decree of the district court, complained of, is approved and confirmed, or said petition dismissed, by this court, the clerk shall, at the expiration of thirty days, certify a copy of such decree to the district court.

RULE 45.

Eighth Circuit:

APPEALS AND WRITS OF ERROR IN BANKRUPTCY CASES.

1. The appeals and writs of error provided for by section twenty-five of the Bankruptcy Law, approved July 1, 1898, shall be governed by the same rules and regulations as to costs and procedure as are provided by this court for appeals and writs of error in other cases.

REVISED RULES

FOR THE

GOVERNMENT AND PRACTICE

OF THE

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA,

PRESCRIBED

Under Act of Congress Approved Feb. 9, 1893.

AND

Act of Congress Approved July 30, 1894.

No. I.

TERMS OF COURT.

1. There shall be three terms a year, the same to commence on the first Monday of October, the first Monday after the first day of January, and the first Monday of April in each year, and all process of said court shall be returnable on the first day of the term succeeding the date of the issue of such process, unless otherwise provided hereafter or specially ordered by the court.

2. All cases appealed to this court shall be entered on the docket in the order of time in which the transcripts or records shall be received and shall be considered for trial during the term. But no case shall be called for hearing, save by consent of the parties, until after the expiration of at least twenty days from the date of receipt of the transcript or record.

No. II.

CLERK OF THE COURT—HIS DUTIES.

1. The clerk of this court shall reside in the District of Columbia, and shall attend in person the daily sessions of the court and not depart therefrom without permission of the court, except in cases of sickness or other causes of actual disability to attend. He shall keep his office open from 9 o'clock a. m. until 4 o'clock p. m., and said clerk shall not practice either as an attorney or counselor in this or any other court during the time that he remains clerk of this court.

2. Said clerk, upon appointment, shall give bond, with surety or sureties to be approved, in the penalty of five thousand dollars, to be renewed at the end of each successive period of four years thereafter, to be approved by the court, with condition well and faithfully to perform all the duties of his office that are now or that may be hereafter prescribed; and he shall also take an oath well and faithfully to perform the duties of his office.

3. It shall be the duty of said clerk to receive all records, transcripts, and papers proper to be filed in his office, and to place the same on the files thereof, and to safely keep the same, and also to keep accurate minutes of the proceedings of the court.

He shall furnish certified copies thereof whenever required, upon payment therefor, according to the schedule of fees that may be prescribed by this court. He shall keep a true and faithful record of the proceedings of the court under the inspection and control of the court, and he shall have power to authenticate the same, according to law. He shall not permit any original record or paper to be taken from the files of his office without an order of court, or according to the rules thereof.

He shall procure for his office a seal of court, the engraved device of which shall be the ordinary figure of

Justice, with the balance scales in the center, surrounded with the words "Court of Appeals, District of Columbia, Seal, 1893." He shall be the keeper of said seal, and shall apply or impress the same upon all process issued from this Court; and in the authentication of all records of the proceedings of the court, and of the transcripts thereof, and the certificates proper to be issued by him, the said seal shall be applied by said clerk as *the means* of proper authentication.

5. He shall also procure and keep in his office a Test Book, in which shall be written or printed the form of the oath required to be taken by the Justices of this court, as prescribed by section 712 and section 1757 of the Revised Statutes of the United States to be taken and subscribed by them; also the form of the oath required to be taken by the officers of the court, to be subscribed by them, and also the form of the oath required to be taken and subscribed by the attorneys who may be admitted to practice in this court.

6. Said clerk shall also, out of the fund designated by the act of Congress for necessary expenditures in conducting his office, provide and supply the necessary stationery and writing material for his office and the Justices of the said court, and also the necessary record books and dockets for the use of said office and the court.

7. It shall be the duty of the clerk to prepare and keep regular dockets or calendars of all cases brought into this court on appeal. He shall keep three dockets, to be known as the General Docket, the Special Docket, and the Patent Appeal Docket, respectively.

On the General Docket shall be placed all appeals from final judgments or decrees of the court below, except as hereafter mentioned.

On the Special Docket shall be placed all appeals or writs of error in criminal cases, in matters of *habeas*

corpus, in cases of mandamus, in cases of Orphan's Court business, in cases of *certiorari*, and all appeals from interlocutory orders or judgments provided for in the *proviso* to section 7 of the act of Congress, approved February 9, 1893, entitled "An act to establish a Court of Appeals for the District of Columbia, and for other purposes."

On the Patent Appeal Docket shall be placed all appeals from the Commissioner of Patents.

The cases on these dockets will be called for argument in the order fixed by rule of court.

No. III.

PROCESS OF THE COURT.

All process of this court shall be in the name of the President of the United States, and all writs and other processes issuing from this court shall be under the seal thereof, and bear test of the Chief Justice of said court, and be signed by the clerk.

No. IV.

CRIER AND MESSENGER OF COURT.

1. The crier of the court shall take an oath to perform the duties of his office; and he shall perform the ordinary duties of crier of said court, and act as bailiff thereof, and it shall be his special duty to preserve order in court.

2. The messenger of this court shall take an oath well and faithfully to perform the duties of his office, according to the direction of the court and of the Justices thereof specially given.

No. V.

WHAT TO CONSTITUTE THE RECORD OR TRANSCRIPT ON APPEAL, AND HOW TO BE MADE UP.

1. In making up the transcript or record on appeal by the clerk of the court below, it shall be the duty of said clerk to omit from such transcript or record, to be transmitted to this court, parts of the proceedings as follows:

a. The formal heading and commencement of the record, stating only the titling of the cause, with the names of all the parties in full, and the time of the commencement of the suit or proceeding.

b. He shall also omit all writs or original process for appearance, where the party or parties have appeared, and there is no question as to the regularity of such writs or process; also all orders of publication for appearance, and the certificate of publication, unless there be a question as to their validity or regularity; the clerk stating the date of such order and the time of publication.

c. There shall be omitted all applications for and entries of continuances; all entries of motions and rules to plead; all applications for commissions and the affidavits in support thereof; all applications for rule security for costs, and rulings thereon; all mere preparatory rules and orders, where no question is raised thereon; all commissions for the taking of testimony, or the assignment of guardians, unless material to some question raised on the appeal; all pleadings that have been waived or withdrawn; all entries of the calling, empanelling, swearing, and names of jurors, the clerk simply stating the fact of the trial by jury, the nature of the verdict, and the amount thereof; and all other mere formal proceedings not material to any question involved in the appeal.

d. He shall also omit from such transcript all motions for new trials, the reasons assigned therefor, and the depositions and affidavits in support thereof, the clerk merely stating how such motion was disposed of, and all mere collateral proceedings not in any way involved in or necessary to the consideration of the question presented on the appeal.

e. There shall be omitted all replevin bonds, *retorno habendo* bonds, appeal bonds, injunction bonds, and trustees' and receivers' bonds, and all affidavits filed in relation thereto, unless some question be raised thereon to be determined on appeal.

f. No deed, will or other document once inserted in the transcript shall be again inserted, but a reference only to such first insertion shall be made; and all proceedings in the cause in the court below had subsequent to the judgment, decree, or order appealed from, and in no manner involved in or material to the question presented by the appeal, shall likewise be omitted from said transcript. But in all cases where a written opinion of the court below with respect to the judgment, decree or order appealed from shall be filed, such opinion shall be incorporated in such transcript. Any party, however, to the appeal shall have the right to direct any particular part of the proceedings of the cause, that would otherwise be omitted, to be incorporated in the transcript, the clerk stating at whose instance the same is inserted, that costs may be awarded, according as the matter so directed to be incorporated may be deemed material or not by the court; the intent and purpose of this rule being to avoid the making of unnecessary costs, by omitting from the transcript any and all matter that may not be material or necessary to a full and fair presentation of the questions involved in the appeal; and all transcripts made up in accordance with this rule shall be deemed and taken as legal and sufficient records on appeal. And

upon failure to comply with this rule, the appellant will be denied all costs unnecessarily made.

g. Further, as far as possible to reduce the cost of appeals, if the appellant shall be of opinion that other parts of the record than those hereinbefore specified are necessary for the determination of the questions to be presented on the appeal, he may, by notice or order in writing to the clerk of the Supreme Court of the District of Columbia, whereof a copy shall be served on the appellee or his counsel, and whereof a copy shall also be included in the transcript of record to be transmitted to this court, designate the parts of the record which he desires to be included in the transcript as sufficient for the determination of said questions, and the said clerk shall thereupon transcribe and certify as the record in the cause, necessary for the hearing of the appeal, the parts so designated; unless the appellee or his counsel, within five days after the service of such notice upon him, or such further time as the Supreme Court of the District of Columbia may by special order allow or as may be agreed upon in writing between the parties or their counsel, shall designate, by a similar notice or order in writing to be filed with said clerk, and whereof a copy is to be transcribed in transcript of record, other parts of the record and proceedings in the cause which he deems necessary or material for the appeal; whereupon the said clerk shall include such other parts also in the transcript of record, and certify all the parts so designated by both parties as the record in the cause, the question of unnecessary costs caused by either party being reserved for the determination of this court.

2. It shall be competent to the parties to an appeal, by their respective attorneys, to stipulate as to what parts of the original proceedings shall constitute the transcript on appeal, provided such stipulation be in writing and filed with the clerk below in time to enable

that officer to make up the transcript and transmit the same to the clerk of this court, within the time allowed by the rules of this court for bringing in and having docketed such transcript.

3. In no case will this court decide any point or question that was not fairly presented for decision by the court below; nor shall any question arise in this court as to the insufficiency of evidence to support any instruction actually given, unless it appear that such question of the insufficiency of evidence was distinctly made to and decided by the court below.

4. Bills of exception shall be so prepared as only to present to the appellate court the ruling or rulings of the court below upon some matter of law, and shall contain only such statement of facts as may be necessary to explain the bearing of the rulings upon the issues or questions involved; and if the facts are undisputed, they shall be stated as facts, and not the evidence from which the facts are or may be deduced; and if disputed, it shall be sufficient to state that evidence was adduced tending to prove them, instead of setting out the evidence in detail; but if a defect of proof be the ground of the ruling or exception, then the particulars in which the proof is supposed to be defective shall be briefly stated, and the substance of all the evidence offered in anywise connected with the having relation to the proposition or propositions in respect to which the proof is supposed to be defective shall be set out in the bill of exception in a narrative form, as far as practicable; and where the exception is taken to the charge of the court, the exception shall specify particularly the matter or proposition of law to which the exception is intended to apply. All the exceptions taken during a trial shall be included in a single bill of exceptions, if that be practicable.

5. In no bill of exception shall any patent, deed, will, or other documentary evidence be inserted at length, but

shall only be stated briefly, according to its legal import and effect, unless the nature of the question raised and decided renders it necessary that it should be inserted *in extenso;* nor shall any document be more than once inserted at large in any bill of exception or transcript for the Court of Appeals. Either party, however, shall have the right, at his own expense, to have any and all such documentary proof inserted at length, it being stated in the exception at whose instance the same is so inserted that costs may be awarded as the matter so incorporated may be deemed proper or not by this court.

(6) Whenever in condemnation proceedings in the Supreme Court of the District of Columbia, or before any Justice thereof, two or more parcels of land owned by different persons are condemned and more than one of such owners take an appeal to this court from the final judgment in the case, and a bill of exceptions is necessary to present the questions involved or any of them to this court, the Court or Justice entering such final judgment may allow and sign a single bill of exceptions for two or more parties appealing to this court, but in such case if the bill of exceptions shall contain any exception in which all the parties to the same do not join, it shall be stated in the bill of exceptions which of the the parties have taken such exceptions.

7. Whenever it shall be shown to be necessary for the correct understanding of any cause, or question therein, that the original papers in the case, or any of them, remaining in the court below shall be produced for inspection or examination by this court, an order will be made for the production of such original paper or papers and the safe keeping and return thereof to the files of the court below after the same shall have been inspected or examined.

But before such original paper or papers shall be taken from the files in the court below, a proper ground

shall be shown therefor by petition, supported by the affidavit of the party or his agent desiring the production of such original paper or papers to be inspected.

No. VI.

PRINTED RECORDS AND DISTRIBUTION THEREOF.

1. No case shall be heard on appeal until a record or transcript, containing in itself, without reference *aliunde*, all the papers, exhibits, depositions, and other proceedings *necessary* to the fair hearing and determination by this court of the questions involved in said appeal, shall be duly filed with the clerk of this court; and in all cases to be heard by this court the appellant shall cause to be printed such parts of the record, or papers constituting the same, including an abstract of the pleadings, *as may be material to the full presentation of the points or questions for review;* and of such printed parts of the record twenty-five copies shall be filed with the clerk, for the use of the court and counsel before the time at which the case is assigned for argument, and the costs of such printing, shall be taxed as costs in the case against the losing party, or as may be specially directed by the court, in its judgment.

2. It shall be the duty of the clerk to retain in his office, as part of the proceedings of the cause, at least two copies of such printed parts of the record, and to distribute copies to the court and to the counsel appearing of record to argue the case.

3. The printing of the record or transcript, or the essential parts thereof, as required by the preceding section of this rule, shall be under the supervision of the clerk of this court, and he shall properly index the matter contained in such printed copy, and shall distribute the copies as directed by the rule of this court.

And it shall be the duty of the clerk, at the end of the April term of the court, of the cases decided during the year, to have bound up in volumes of convenient form and size, one copy of such printed record in each case, together with the briefs of counsel, to be preserved in his office, properly labeled, etc.

4. The clerk, in executing the duties required of him by the preceding section of this rule, may allow to be used by the printer the original transcript on file in his office, he being responsible for the preservation and safe return thereof; but of all original papers filed in his office, and required to be printed as preparatory to the hearing of the case, he shall cause copies to be made for the printer.

5. In order to avoid the printing of unnecessary matter in preparing the case for argument, the appellant may, within six days after filing the record or transcript in this court, file with the clerk of this court a brief statement of the supposed errors for which he prosecutes the appeal, and of the parts of the record which he thinks necessary for the consideration of the questions involved, and forthwith serve such statement on the adverse party or his attorney; and the adverse party, within six days after such notice served, may designate in writing, filed with the clerk, additional parts of the record which he thinks material; and if he shall fail to do so, he shall be held to have consented to a hearing on the parts of the record designated by the appellant; and if parts of the record or transcript shall be so designated by one or both of the parties, the clerk shall have printed those parts only, and the court will consider those parts of the record only and the errors assigned thereon. But if at the hearing it shall appear that any material part of the record has not been designated and printed, the appeal may be dismissed, or such other order passed in the premises as the circumstances may require. If,

however, either the appellant or appellee shall have caused parts of the record to be printed *plainly unnecessary* to the full and fair hearing of the case, the court will deal with the same in respect to cost as it may deem proper and just. But nothing in this section of the rule shall be taken to operate a right of continuance or postponement of the case, or delay in hearing the argument in the regular call of the docket.

No. VII.

ATTORNEYS—THEIR ADMISSION AND OATH.

All persons desiring to be admitted to the bar of this court must, upon motion made in open court, be shown either to have been admitted to practice law in the Supreme Court of the United States, the Supreme Court of the District of Columbia, or in the highest court of some State or Territory of the United States, and that they are members of the bar of some one of such courts, of good repute and standing, and upon taking and subscribing the oath herein prescribed. The oath to be taken and subscribed by all attorneys of this court shall be as follows:

"I, ..., do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court uprightly and according to law, and that I will support the Constitution of the United States, so help me God."

No. VIII.

ARGUMENT OF CAUSES AND THE PREPARATION THEREFOR.

1. Not more than two counsel shall be heard for each party, appellant and appellee, in the argument of the cause, except by special leave of the court, upon sufficient reason shown.

2. Only two hours on each side shall be allowed in the argument, unless by special leave the time is extended by the court before the argument is commenced; but such time may be apportioned between counsel on the same side, at their discretion. In all cases, however, a full and fair opening must be made.

In view of the large number of cases on the calendar awaiting hearing, and in consideration of the time which must necessarily be consumed if the full four hours are taken in the argument as allowed by section 2 of Rule VIII, it is by the court this day ordered that said section 2 of Rule VIII be, and the same is hereby, amended, so as to read that only one hour on each side shall be allowed in the argument, unless by special leave the time is extended by the court before the argument is commenced; but counsel, in order to avail themselves of the opportunity to apply for additional time, must make request therefor to the court, accompanied by a copy of their printed brief, at least five days before the case is liable to be called for argument. The time may be apportioned between counsel on the same side, at their discretion. In all cases, however, a full and fair opening must be made.

3. The counsel for the appellant shall file with the clerk of the court, at least five days before the case is liable to be called for argument, under the rules of this court, fifteen copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged on the opposite side. Such brief shall contain, *in the order here stated*:

(1.) A concise statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2.) The assignment of errors relied upon by the appellant, to be separately and specifically stated; and if the supposed error is assigned to the ruling upon the

report of an auditor or master, the specification shall state the exception to the report and the action of the court thereon.

(3.) A clear statement of the points of law or fact to be discussed, with reference to the pages of the record, and the authorities relied on in support of each point.

(4.) Whenever a decision of this court, that has been published in the official reports of the court, shall be cited in a brief, the reference shall include the volume and page of the report wherein the same has been published.

4. For the appellee there shall be filed with the clerk fifteen copies of the brief for argument for his side of the case at least one day before the case is liable to be called for argument. Such brief shall be of a like character to that required of the appellant, except that no assignment of errors is required and no statement of the case, unless that presented by the appellant be controverted or denied to be sufficiently full and complete to present the questions for review.

5. Without such brief and assignment of errors by the appellant, counsel will not be heard for the appellant, except at the request of the court; and errors not assigned, according to the rule of the court, will be disregarded though the court, at its option, may notice and pass upon a plain error not assigned.

6. When, according to the provisions of this rule, the appellant is in default, the case may be dismissed on motion; and when the appellee is in default, he will not be heard, except by consent of the adverse party, and upon the court.

7. If no counsel appears for one of the parties, either appellant or appellee, and no printed brief or argument is filed, according to rule, and the preceding clause of this rule is not enforced with regard to the default of

the appellant, only one counsel will be heard for the adverse party for whom a brief has been filed; but if a printed brief or argument has been filed, the adverse party will be entitled to be heard by two counsel.

8. The appellant in this court shall be entitled to open and conclude the case; but where there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument in this court.

9. Where there is no appearance for the appellant when the case is called for argument, the appellee may have the appellant called and the appeal dismissed, or may open the record and pray for an affirmance.

10. Where the appellee fails to appear when the case shall be called for argument, the court may proceed to hear an argument on the part of the appellant, and give judgment according to the right of the cause as presented on the record; and when a case is reached in the regular call of the docket or calendar, and no appearance is entered for either party, the case shall be dismissed, at the cost of the appellant.

11. When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to proceed with the argument, the appeal shall be dismissed at the cost of the appellant, unless sufficient cause be shown for further postponement.

No. IX.

THE MAKING OF NEW PARTIES UPON DEATH OF ORIGINAL PARTY.

1. Whenever, pending an appeal, dating from the time of the appeal taken in the court below, either party shall die, the proper representatives, in the personalty or realty of the deceased party, according to the nature of

the case, may voluntarily come in and be admitted parties to the suit at once, or at the next succeeding term after death, and thereupon the cause shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion in writing, obtain an order that unless such representatives shall become parties within sixty days thereafter, the party moving for such order, if appellee, shall be entitled to have the appeal dismissed; and if the party so moving shall be appellant, he shall be entitled to open the record, and, on hearing, have the judgment, decree, or order appealed from reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be printed and published in some newspaper, of general circulation, published in the District of Columbia for two successive week, at least thirty days before the expiration of such period of sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear before the second day of the second ensuing term succeeding the suggestion, and no measures are taken by the opposite party within that time to compel an appearance, the appeal shall abate, provided there are parties in being capable of being made parties to the appeal.

No. X.

TIME AND MANNER OF ALLOWING APPEALS TO THIS COURT.

1. No order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, shall be reviewed by the Court of Appeals, unless the appeal shall be taken within twenty days after the order, judgment, or decree complained of shall have been made or pronounced.

2. No such appeal, except in cases where the United States or the District of Columbia is appellant, shall operate as a stay of execution or supersedeas unless within such term of twenty days the appellant shall file in the clerk's office of the Supreme Court of the District of Columbia a bond, with surety or sureties, to be approved by one of the justices of said court, conditioned for the successful prosecution of such appeal.

3. In all causes appealed to this court, except as hereafter provided in paragraph 4 of this rule, the appellant shall give bond, to be approved and filed as aforesaid, sufficient to cover the costs of the case, or he may deposit in said clerk's office, with the approval of one of the justices of said Supreme Court, a sum of money reasonably sufficient to cover such costs.

4. No bond for costs shall be required on an appeal from an interlocutory order or decree of the Supreme Court of the District of Columbia that has been allowed on petition made to this court; but to obtain a supersedeas or stay of proceedings in such cases the appellant shall file in the Supreme Court of the District of Columbia, if required so to do by the said court, within ten days from the allowance of such appeal, a bond as in other cases of stay or supersedeas; and in case of default his appeal will on motion be dismissed.

5. The penalty of the respective bonds required by the preceding sections to be such as the Supreme Court of the District of Columbia, or one of the Justices thereof, shall prescribe; and if neither the bond required by the preceding second section for stay or supersedeas, nor the bond or deposit of money for security of costs required by the preceding third section, be given or made within the twenty days aforesaid, the appeal, if the transcript of the record has not been transmitted to this court, may be dismissed by the court below, or one of the justices thereof, upon application by the appellee; or, if the

transcript has been filed in this court, said appeal will be dismissed here, upon motion of the appellee, provided the motion for dismissal in this court be made within the first twenty days next after the receipt of the transcript in this court.

6. The notice of said appeal to the appellee shall be by citation, issued out of the clerk's office of the Supreme Court of the District of Columbia within five days after the time of appeal entered, to be served by the Marshal of the District, and returned to said court within twenty days next succeeding the date of the issue of said citation.

(7) When two or more parties shall have the right to appeal to this court from any final judgment, decree or order of the Supreme Court of the District of Columbia, or of any Justice thereof, it shall no longer be necessary where all the parties aggrieved do not appeal for those who do appeal to proceed by summons and severance, or otherwise, to obtain the right to prosecute their appeal alone, unless action by this court in the case is required before the expiration of the twenty days allowed by rule of this court for the taking of an appeal.

No. XI.

BAIL IN CRIMINAL CASES PENDING APPEAL.

Whenever an appeal is duly taken and entered to this court in any criminal case, or in any case where the appellant is held in custody, where an appeal is authorized by law, and said appeal is in all respects duly perfected, the justice of the Supreme Court of the District of Columbia before whom the trial was had, or any other justice of the said Supreme Court, either in term time or during vacation, may, at any time during the pendency of the appeal allow and take bail of the appellant, if the offense of which he is convicted be such that bail is al-

lowable by law after conviction and judgment, in such sum, and with such surety or sureties, as shall be prescribed and approved by said justice; and if the transcript of the record of such appeal case has been duly filed in this court, after such appeal has been entered and perfected as aforesaid, this court, or any justice thereof, may allow and take such bail. And if such transcript is not brought into this court and duly filed within the time prescribed by the rules of this court, the attorney for the Government may have the case docketed and dismissed, as provided by Rule XV of this court. And where bail is taken of the appellant, as herein provided, the bail bond or recognizance shall be conditioned, that in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, the appellant shall forthwith surrender himself to the custody of the marshal of this District to be dealt with and proceeded against according to law; and if the bail bond or recognizance be taken in this court, or by one of the justices thereof, a copy of such bond or recognizance shall be sent to the court below with the mandate of this court.

No. XII.

DISMISSAL OF APPEALS.

The appellant shall, at any time before argument, have the right to dismiss his appeal, upon payment of the costs of appeal, including the taxable cost incurred by the appellee; and the parties, by agreement in writing, may at any time have the cases entered agreed or satisfied; but in all such cases the agreement shall be filed in the cause.

No. XIII.

THE CALLING OF THE CASES FOR ARGUMENT.

On the first day of each term the court will receive motions and cause all proper entries to be made on the dockets of the court; and will then proceed to call cases for argument, commencing with the cases on the Special Docket, and continue with those cases to the end of that docket, when the cases on the General Docket will be called in regular order. On the first Tuesday of each month thereafter of the term, during the period of the sessions of the court, the cases on the Special Docket will be first in order, and will be proceeded with to the end of said docket, except as this rule may be qualified by and subject to the rule in respect to the time for calling the cases for argument on the Docket of Patent Appeals. All cases will be called for argument or submission in the order in which they stand on the respective dockets, and so continue from day to day, except Saturdays; but not more than ten cases shall be liable to be called for argument in any one day, including the case under argument and not concluded on the preceding day. No cause shall be taken up out of its order, or be set down for hearing on any particular day, except under special and peculiar circumstances, to be shown to the court.

No. XIV.

DIMINUTION OF RECORD.

After the lapse of thirty days from the date of the filing of any appeal in this court, the argument of the case will not be delayed or postponed because of any alleged diminution of the record or transcript, except upon payment of the costs then accrued in this court by the party alleging the diminution and asking the postponement,

in order to supply the defect or omission in the transcript; and in all such cases the suggestion of diminution shall be made in writing, setting forth the particulars in which the diminution exists, and be supported by the oath of the party or his attorney that the omitted matter is material and necessary to the fair trial of the case on its merits, and that the suggestion is not made for delay.

No. XV.

DOCKETING OF CASES.

1. When an appeal is entered in the court below, it shall be the duty of the appellant, within forty days from the time of the appeal entered and perfected in said court (unless such time for special and sufficient cause be extended by the court below, or a judge thereof, such time to be definite and fixed), to produce and file with the clerk of this court a transcript of the record of such cause; and if he shall fail to file the transcript within the time limited therefor, the appellee shall be allowed to file a copy or transcript of the record with the clerk of this court, and the cause shall stand for trial in the like manner as if the transcript had been filed by the appellant in due time; or, the appellee may, after the time limited for filing the transcript in this court by the appellant has expired, and upon his or her default in respect thereto, upon producing a certificate showing the entry of appeal and the date thereof, have said appeal docketed and dismissed; and in no case shall the appellant be entitled to docket the case and file the record after said appeal shall have been docketed and dismissed under this rule, unless by special order of the court, upon satisfactory reason shown.

2. In all cases of appeal from an interlocutory order or decree of the Supreme Court of the District of Co-

lumbia, the transcript of the record shall be filed in this court within twenty days from the entry of the order of the allowance of such appeal, unless such time, for special and sufficient cause, shall be extended for a definite and fixed period by order of a justice of the Supreme Court of the District of Columbia.

No. XVI.

MOTIONS TO DISMISS.—HOW HEARD AND DISPOSED OF.

1. No motion to dismiss an appeal shall be heard, except upon suggestion of the court, unless previous notice thereof has been given to the adverse party, or his attorney of record, at least two days before the case is liable to be called for argument; and all such motions shall be made in writing, stating briefly the grounds thereof; this rule not to apply to motions to docket and dismiss under preceding rule.

2. In order to prevent the abuse of the right of appeal, and to avoid vexatious delays, there may be united with a motion to dismiss the appeal a motion to affirm on the ground that, although the record may show that this court has jurisdiction of the case, it is manifest that the appeal was taken for delay *only*, or that the question on which the jurisdiction and right of review depends is *so manifestly frivolous* as not to require further argument; and in all cases of such motions there shall be filed a brief statement of the points or questions decided by the court below, and the ground upon which the motion is made.

3. In all cases of the dismissal of any appeal in this court it shall be the duty of the clerk of this court to issue a certificate to the court below, informing that court of the proceedings of this court in respect to such appeal, so that further proceedings may be had in such lower court as law and justice may require.

No. XVII.

FEES TO BE COLLECTED AND ACCOUNTED FOR BY THE CLERK OF THIS COURT UNDER SAID ACTS OF CONGRESS.

The clerk shall demand and receive of the party or parties at whose instance or request the service is performed, or who by law may be bound to pay, fees of his office, according to the following schedule:

For receiving, indorsing, and placing on file the transcript of the record, in each case, and docketing the same	$1 00
For entering appearance to case	0 20
For every continuance entered	20
For filing any motion, order, or other paper	20
For entering any rule, or for making or copying any record or other paper, per folio of each one hundred words, and *pro rata*	10
For entering every judgment, decree, or order	50
For every certificate under seal	50
For receiving, keeping, and paying money in pursuance of any statute or order of the court, two per cent. on the amount so received, kept, and paid over.	
For certificate of admission to the bar, under the seal of the court	5 00
For preparing the record or transcript for the printer, or such parts thereof as may be required under the rule of the court, indexing the same, supervising the printing thereof, and distribution of copies under rule, to be paid by the appellant, for each printed page of the record	10
For the issuing of a mandate or other process of the court, under the seal thereof	1 00
For every copy of any opinion of the court or any justice thereof, certified under the seal of the court, fifteen cents per one hundred words, the	

whole not to exceed, at that rate, five dollars for any one copy.

For making a transcript of the record for use in the Supreme Court of the United States, when a printed copy of the record on which the case was tried in this court is used, 5 cents for each printed page, and 10 cents per folio for all additional matter.

For filing and distributing briefs of counsel to justices of the court, for each party appearing to the case $0 50

No. XVIII.

HOW COSTS SHALL BE AWARDED.

1. In all cases where appeals shall be dismissed by this court, except where dismissal shall be for want of jurisdiction, costs shall be allowed to the appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment, decree, or order appealed from, costs shall be allowed to the appellee, unless otherwise ordered and directed by the court.

3. In cases of reversal of any judgment, order, or decree by this court, costs shall be allowed to the appellant, unless otherwise ordered by this court; and the cost of the transcript of the record from the court below shall be a part of such costs and be taxable in that court as costs in the case.

4. Neither of the foregoing sections, however, shall so apply to cases where the United States are a party as to require the award of costs against the United States, as in this court no costs shall be allowed for or against the United States.

5. In all cases where costs are allowed in this court it shall be the duty of the clerk to insert the amount

thereof in the body of the mandate or other proper process sent to the court below, and annex thereto a bill of the costs taxed in full.

No. XIX.

PRINTING OF RECORDS.

1. In all cases the appellant, upon filing the transcript and having the case docketed, and paying therefor, according to the table of fees prescribed by this court, shall enter into a satisfactory undertaking, or give good security to the satisfaction of the clerk, for the payment of all subsequent fees for which he or she may be liable.

2. The clerk shall, immediately upon filing the transcript or record, cause an estimate to be made of the cost of copying said record, or the parts thereof necessary to be printed under the rule of this court, and his fee for preparing it for the printer and supervising the printing, and shall notify the party so docketing the case of the amount of the estimate; and if he shall not pay the amount so ascertained within a reasonable time, the clerk shall notify the adverse party and he may pay it; and if neither party shall pay the amount, and for want of such payment the record shall not have been printed when the case is reached in the regular call of the docket—in such case, at any time after the lapse of thirty days from the time of filing the record or transcript and docketing the case (unless for good cause the court shall extend the said time), such appeal shall be dismissed. If the actual cost of copying the record, together with the fees of the clerk, shall be less than the amount estimated and paid, the amount of the difference shall be refunded by the clerk to the party paying the same.

If the actual cost and clerk's fees shall exceed the estimate, the amount of the excess shall be paid to the clerk before the case shall be taken up for argument, or the distribution of the printed record made to either party or his attorney, and in default of such payment the appeal of the appellant may be dismissed.

3. In all cases, upon the clerk's producing satisfactory evidence by affidavit, or the acknowledgment of the party or parties, of his having made demand and served a copy of the bill of fees upon the party or parties by whom such fees are due, and the failure to pay within ten days thereafter, an attachment shall issue against such party or parties to compel the payment of the fees due.

No. XX.

CONTINUANCES AND TRANSFER OF CASES.

At the end of each term of this court, all cases on the regular term dockets and all motions not argued, submitted, dismissed, or otherwise disposed of, shall be continued to the next succeeding term of this court.

XXI.

APPEALS FROM THE COMMISSIONER OF PATENTS.

1. All certified copies of papers and evidence on appeal from the decision of the Commissioner of Patents, authorized by section 9 of the Act of Congress approved February 9, 1893, shall be received by the clerk of this court, and the cases, by titling and number as they appear on the record in the Patent Office, shall be placed on a separate docket from the docket of the cases brought into this court by appeal from the Supreme Court of the District of Columbia, to be designated as the "Patent Appeal Docket;" and upon filing such copies, the

party appellant shall deposit with the clerk, or secure to be paid as demanded, an amount of money sufficient to cover all legal costs and expenses of said appeal; and upon failure to do so his appeal shall be dismissed. The clerk shall, under this titling of the case on the docket, make brief entries of all papers filed and of all proceedings had in the case.

2. The appellant, upon complying with the preceding section of this rule, shall file in the case a petition, addressed to the court, in which he shall briefly set forth and show that he has complied with the requirements of sections 4912 and 4913 of the Revised Statutes of the United States, to entitle him to an appeal, and praying that his appeal may be heard upon and for the reasons assigned therefor to the Commissioner; and said appeal shall be taken within forty days from the date of the ruling or order appealed from, and not afterwards.

If the petition for an appeal and the certified copies of papers and evidence on appeal mentioned in this and the preceding section of this rule shall not be filed and the case duly docketed in this court within forty days (exclusive of Sundays and legal holidays) from the day upon which notice of appeal is given to the Commissioner of Patents, the Commissioner, upon such facts being brought to his attention by motion of the appellee, duly served upon the appellant or his attorney, may take such further proceedings in the case as may be necessary to dispose of the same, as though no notice of appeal had ever been given.

3. The clerk shall provide a minute book of his office, in which he shall record every order, rule, judgment, or decree of the court in each case, in the order of time in which said proceedings shall occur; and of this book the index shall be so kept as to show the name of the party applying for the patent, the invention by subject-matter or name, and, in cases of interference, the name

of the party with whose pending application or unexpired patent the subsequent application is supposed to interfere.

4. The cases on this docket shall be called for argument on the second Monday of January, March, May, and November in each year, and the cases shall be called in regular order as they may stand on the docket. A copy of these rules shall be furnished to the Commissioner of Patents; and it shall be the duty of the clerk of this court to give special notice to the said Commissioner at least fifteen days immediately preceding the times thus respectively fixed for the hearing of said cases; the said notice to name the place of the sitting of the court, the titling of the cases on the docket of this court, the respective numbers thereof, and the number of each case as it appears of record in the Patent Office; and thereupon the Commissioner shall give notice to the parties interested or concerned by notice addressed to them severally by mail.

5. The clerk shall furnish to any applicant a copy of any paper in any of said appeals on payment of the legal fees therefor.

6. The appeals from the Commissioner of Patents shall be subject to all the rules of this court provided for other cases therein, except where such rules, from the nature of the case, or by reason of special provisions inconsistent therewith, are not applicable.

7. Models, diagrams and exhibits of material forming part of the evidence taken in the court below or in the Patent Office, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the clerk of this court at least three days before the case is heard or submitted.

8. All models, diagrams and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of the case, must be taken away

by the parties within twenty days after the case is decided. When this is not done, it shall be the duty of the clerk to notify the counsel in the case, and the Commissioner of Patents, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within ten days after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

No. XXII.

OPINIONS OF LOWER COURT AND COMMISSIONER OF PATENTS TO BE MADE PART OF RECORD.

Wherever the judgment, decree or order appealed from is based upon or has reference to a written opinion filed in the case by the court below, such opinion shall constitute a part of the transcript to be sent to this court; and such opinion, and also the written reasons or grounds assigned by the Commissioner of Patents in appeals from the Patent Office, shall be printed as part of the record to be printed under Rule 6.

No. XXIII.

REHEARING.

All motions for reargument, or for modifications of judgments or decrees, shall be made in writing and filed with the clerk of the court within fifteen days from the time of the opinion or judgment delivered; and it shall be the duty of the clerk of this court to deliver a copy of such motion to each member of the court without delay, and during such period of fifteen days no mandate shall issue unless upon special order of the court for cause shown.

No. XXIV.

REPORTER.

1. The reporter of the decisions of this court shall have access to and the right to copy all the opinions of this court; and the clerk shall furnish such reporter a copy of the printed record, and briefs of counsel filed, in each case decided by the court.

2. It shall be the duty of the reporter to publish a volume of the reports of cases adjudged by this court, within three months from the time when the number of cases that have been decided shall be sufficient to make a volume containing not less than six hundred pages, exclusive of the title page, tables of cases and statutes and index. And unless otherwise directed by the court, he shall report all cases decided, and shall exercise his discretion in respect of the inclusion in the reports of abstracts of the briefs and arguments of counsel.

No. XXV.

WRITS OF ERROR TO POLICE COURT, AND THE JUVENILE COURT.

1. Wherever the pronoun, *he, him or his* occurs in the following rules, the same shall be taken to apply to and include all genders, whether masculine, feminine or neuter, and whether singular or plural, as the case may require.

2. To entitle a party to apply for writ of error he shall cause note of his intention to be made at the time of the ruling by the court; and he shall within three days thereafter present to the court a bill of exception properly prepared to present the ruling excepted to, and which bill of exception, if properly prepared, or after correction by the judge, shall be signed by the judge within two days from the date of the judgment or sentence imposed, and he shall file the same in the cause, immediately after signing the same.

3. All writs of error shall be applied for within ten days, Sundays and legal holidays excluded, from the day upon which the judgment or sentence of the Police Court, or Juvenile Court, shall have been entered or imposed, and not afterwards.

4. That the application for writ of error shall be by petition addressed to one of the Justices of this court, wherein shall be stated concisely, but clearly and distinctly, the nature of the proceeding in said court, the trial and judgment therein, and the particular ruling or instruction *upon matter of law,* to which exception has been taken; and which application for the writ shall be signed by the attorney of the applicant, if he have one, or if not, by the party himself; and such petition shall be verified by an affidavit appended, of the party or his attorney, wherein shall be distinctly stated that the exception has been taken *bona fide,* and that the writ of error is not sought for any purpose of delay.

And to said petition shall be appended a copy of the bill of exception taken and signed by the judge.

5. The writ of error, when allowed, shall be issued by the clerk of this court, and shall be directed to the Judge of the Police Court, or of the Juvenile Court, who shall have tried the case and made the rulings excepted to. Upon receipt of the writ of error by the clerk of that court, he shall at once and without delay issue notice to the defendant in error or his counsel, notifying him of the allowance of the writ of error, and that he is required to appear in this court, to defend and maintain the rights of the defendant in error, at such times as by the rules of this court may be required.

6. The clerk of the Police Court, or of the Juvenile Court, upon the receipt of the writ of error, shall, with the approval and direction of that court, endorsed thereon, without delay and within a time not to exceed ten days, Sundays and holidays excluded, make up and trans-

mit to this court a transcript of the record of the proceedings therein, certified under the seal of said court; and which transcript of record, if not filed in this court within fifteen days from the date of the allowance of the writ of error, the writ of error shall be dismissed.

7. The clerk of this court upon the receipt of the transcript from the Police Court, or Juvenile Court, shall docket the case, in regular order of reception, upon the Special Docket or calendar of this court, and such case shall stand for hearing in the regular call of that Special Calendar.

8. Upon the decision and filing of opinion in the cases brought into this court on writ of error from the Police Court, or the Juvenile Court, the mandate of this court shall at once issue without delay, and upon filing such mandate the cause shall stand for such further proceedings in that court as may be directed, or as may be proper under the circumstances of the case, according to law, or as directed by the statute.

9. The general rules of this court, regulating the practice thereof, and the requirements as to the preparation of cases for argument, shall all apply to cases brought into this court by writs of error from the Police Court, and the Juvenile Court; except in special cases and for special reasons, the court will expedite the hearing of such cases.

No. XXVI.

REGULATING APPEALS FROM BOARD OF MEDICAL SUPERVISORS.

1. The record on appeal to this court under said act shall consist of the transcript of the proceedings had by and before the board of medical supervisors, and the orders passed thereon by said board, together with a complete transcript of the evidence taken and used on

the hearing of the matter before said board of medical supervisors; and the said transcript shall be filed with the clerk of this court within twenty days from the date of the order or decision appealed from, and shall be printed as other transcripts of records on appeal are printed.

2. Upon receipt of said transcript by the clerk of this court, said clerk shall ascertain the cost and serve notice and demand therefor upon the appellant as in other cases, and when the costs are paid or secured to be paid the clerk shall docket the appeal, entitled the appellant against the board of medical supervisors as appellees.

3. The appellant within ten days after filing the transcript on appeal in this court shall by brief petition addressed to the court, stating the nature of the case and the grievance complained of, assign the causes of appeal and the supposed errors of the board of medical supervisors in their determination, and a copy of said petition and assignment of error shall be served on the president of the board of medical supervisors or the secretary of said board at least ten days before the case may be called in this court for argument; and upon failure to comply with this rule the appellees may have the appeal dismissed upon motion.

4. The rules of this court in respect to briefs of counsel, so far as they may apply, shall be observed on appeals under said act of Congress, of June 3, 1896.

5. Upon the decision of this court on appeal taken as provided, the decision shall be entered and a copy of the opinion and judgment of this court shall be certified to the board of medical supervisors as the final determination of the matter involved in said appeal.

No. XXVII.

SUNDAYS AND LEGAL HOLIDAYS.

That wherever days are mentioned in the foregoing rules as limitations of time, they shall be construed to exclude Sundays and legal holidays, but to include Saturday half holidays.

No. XXVIII.

The foregoing rules shall be of force and effect in the Court of Appeals of the District of Columbia from and after the time of their adoption, as heretofore directed, and be binding upon all those subject to the jurisdiction of said court until altered or rescinded; but no right or duty created or imposed by pre-existing rules shall in any manner be impaired or discharged.

It is further ordered that these rules shall be printed and a copy thereof shall be furnished to each of the justices of the Supreme Court of the District of Columbia, and to the clerk of that court, and also to the Commissioner of Patents.

Per Curiam:

Test: HENRY W. HODGES,

Clerk Court of Appeals of the District of Columbia.

RULES

OF

THE COURT OF CLAIMS OF THE UNITED STATES.

CLERK'S OFFICE.

Clerk's office, hours of.

1. The clerk's office will be open every day, except Sundays, Saturdays, and holidays, from 9½ a. m. to 4 p. m. On Saturdays the office will be closed at 3 p. m. and during the Christmas holidays at 1 p. m.

Attendance of clerks.

2. When the court is in session, both the chief clerk and the assistant clerk will be at the office during office hours. In vacation they may arrange their hours to suit each other and the public business.

Duties of chief clerk.

3. The chief clerk will have charge of the journal of the court, of the law docket and the calendar, and of the printing; and he will also prepare the reports to Congress.

Duties of assistant clerk.

4. The assistant clerk will attend to office business, and will have charge of the general docket, the notice book, and the giving of notices under these rules.

Clerk, provision for absence.

5. In the absence of the chief or the assistant clerk, his duties will be performed by the other.

ATTORNEYS AND COUNSEL.

Suits, by whom commenced. Power of attorney.

6. Suits may be commenced by the claimant in person, or through his attorney in fact, or an attorney of this court. If the

claimant is represented by an attorney in fact, the power must filed with the clerk, and its execution must be proved or acknowledged before an officer authorized to take acknowledgments of deeds.

Appearance, When may be entered.

7. In Congressional and Departmental cases attorneys may enter an appearance prior to the filing of a petition, by filing a power of attorney from the claimant, or legal representatives, or heirs of the deceased claimant.

Admission of attorneys to the bar of this court, in open court.
18 C. Cls. R., 25.

8. Any person of good moral character, who has been admitted to practice in the Supreme Court of the United States, or in the highest court of the District of Columbia, or in the highest court of any State or Territory, may be admitted, on motion in open court, to practice as an attorney and counselor of this court.

—at chambers.

He may also be admitted by an order at chambers, on its being shown by affidavit or otherwise that he is qualified as above provided.

Att'y of record, one only allowed. Changes permitted.
7C. Cls. R., 499.
9C. Cls. R., 346.
11C. Cls., 725.

9. There shall be but one attorney of record for the claimant in any case at any one time. A firm of attorneys will be regarded as the attorney of record.

Changes to be made on conditions perscribed by the court.

10. A claimant may change his attorney on such conditions as the court may prescribe. The moving party must produce the consent of the attorney of record or his duly authorized representative or must certify or show by affidavit that the attorney of record has been notified of the filing of the motion. If no objection to the substitution be filed by the attorney of record

within ten days thereafter, the motion will be allowed.

If the attorney of record resides at a distance, the court will not act on the motion until a reasonable time has elapsed for his objection to be filed.

Motion must be accompanied by power of attorney or certificate.

The motion when submitted must be accompanied either by a power of attorney from the claimant containing a power of substitution or by the certificate of the attorney of record that the substitution is made with the knowledge and assent of the claimant.

—to sign pleadings, etc.

11. Petitions, pleadings, and motions on the part of the claimant must be signed by the attorney of record; pleadings and motions on the part of the United States, by the proper assistant attorney-general.

Indians may defend by attorney.

12. Should any Indian or Indians interested desire to appear in any action under act of March 3, 1891, chapter 538 (1 Supp. R. S., 2d ed., 913), and defend by an attorney employed by them, application therefor shall be made to the court, showing such interest, the name of the Indian or Indians interested, of the attorney employed, and the approval of the Commissioner of Indian Affairs in that behalf, whereupon the court will make an order allowing such appearance and defense by the attorney employed.

Counsel.

13. Counsel other than the attorney of record may be heard on either side at the trial or at any stage of the proceedings, but shall not be entitled to file pleadings, give notices, or make motions.

Post-office address of claimant or attorney to be registered.

14. Attorneys of record, or the claimant if he appear in person, on appearing in a suit, will register with the clerk of the court a post-office address, to which all notices required by these rules or ordered by the court may be sent.

Statement of attorneys for allowance of fees.

15. Attorneys for claimants in Indian depredation cases desiring the court to make an allowance of attorney's fees for prosecuting the claim shall, on or before the submission of the cause, file a sworn statement of their employment, giving the date thereof, showing the services performed, and, if any, what unusual services have been rendered or expenses incurred by them.

THE PETITION.

Filing of petition and copies.

16. Suits shall be commenced by petition, verified in the manner provided by law, and filed in the office of the clerk, with one extra copy in print or typewriting. The clerk will note thereon the day of filing, and will cause a copy to be forwarded to the Attorney-General. Within twenty days thereafter the claimant shall have printed twenty-five copies of such petition, retaining ten copies for the trial record and filing the remaining copies in the clerk's office, unless the court, on motion, for good and sufficient cause, waives the printing of the petition.

Five of said copies shall be for the Attorney-General.

Contents of petition.
23 C. Cls., 361.

The petition must comply with Revised Statutes, section 1072, respecting what action has been had thereon before Congress

or any of the Departments, the ownership of the claim, and what transfer, or assignments, if any, have been made, and must also set forth:

(1) The title of the action, with the full Christian and surnames of all the claimants.

(2) A plain, concisé statement of the facts, giving venue and date, free from argumentative, irrelevant, and impertinent matter.

(3) In every case transmitted by the head of a Department, by Congress, or a committee thereof, a copy of the order of transmission shall be set out or annexed, as provided by paragraph 5, Rule 27.

(4) The claimant must state distinctly the amount for which he demands judgment, or the relief for which he prays.

Acts and regulations to be specified.

17. If the claim be founded upon an act of Congress, or upon a regulation of an Executive Department, the act and the section thereof upon which the claimant relies must be specified, and the particular regulation of the Department must be stated in terms.

Contracts, how stated.

18. If the claim be founded upon an express contract with the United States, the substance of such contract must be set forth in the petition and, if it be in writing, the original or a copy must be annexed thereto. If it be founded upon an implied contract, the facts upon which the claimant relies to prove a contract must be specified. If it consists of several matters or items, each must be separately stated.

Statutes of limitation.

When petition may be dismissed on bar of six years. 14 C. Cls. R., 122, 374.

19. If it appear on the face of the petition that the claim first accrued more than six years before the petition was filed, the claimant must aver therein the existence and period of duration of some disability, recognized by law, which prevented his filing his petition within that time, in default whereof it will be considered that no such disability existed, and the petition may be dismissed on motion.

In cases under sec. 14, act Mar. 3, 1887, what claimant must aver in avoidance of statute of limitation.

20. In cases under section 14 of the act of March 3, 1887, chapter 359 (1 Supp. R. S., 2d ed., 559), if any statute of limitation has applied to the claim, the claimant shall set out in his petition any facts bearing upon the question whether the bar of such statute should be removed, or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy.

When petition may be dismissed on bar of three years.

21. If the claimant, in avoidance of the bar of limitation, aver in his petition the existence and duration of any such disability, and it thereby appears that after the disability ended more than three years had elapsed before the petition was filed, the petition may be dismissed on motion.

If petition does not show when claim accrued it must be made certain.

22. If upon the face of the petition it does not appear when the claim first accrued, the court may require the claimant to make the petition definite and certain in that regard, and in default thereof may dismiss the suit.

Averments as to time claim accrued put in issue by general traverse.

23. Averments in regard to the time when a claim first accrued, or in regard to

an alleged disability of the claimant, will be held to be put in issue by the defendants' general traverse.

Verification of petition.

Power of attorney to be annexed to petition.

24. If the petition be verified by any one other than the claimant, a power of attorney authorizing him to prosecute the suit or make the verification must be annexed to the petition and filed therewith.

On dismissal of petition judgment to be entered when.

In all cases where a petition is dismissed, and the court has jurisdiction so to do, a formal judgment shall be entered against the claimant in favor of the United States.

Petition in Indian Depredation cases.

Contents of petition, 23 C. Cls., 361.

25. The petition must set forth:

(1) The title of the action, with the full Christian and surnames of all the claimants, and the name of the band, tribe, or nation of defendant Indians.

(2) The residence and citizenship of each of the claimants and the damages sought to be recovered.

(3) A plain, concise statement setting forth the facts and circumstances upon which such claims are based, giving place and date, the persons, classes of persons, tribe or tribes or band of Indians by whom the alleged illegal acts were committed, the property lost or destroyed, and the value thereof, and any other facts connected with the transaction and material to the proper adjudication of the case, free from argumentative and impertinent matter.

Preferred claims.

(4) Whether the claim has been examined, approved, and allowed by the Secretary of the Interior, or under his direction; and, if so, for what amount, the date thereof, and refer briefly to the official letter, report, or document showing such action, and state whether claimant elects to reopen the case and try the same before the court or desires judgment for the amount so allowed.

Petition in French Spoliation cases.

Parties having a common interest.

26. Parties having a common interest, growing out of the seizure of the same vessel or its cargo, may unite in one petition for the recovery of their respective claims, which may be heard together.

Petition by agent, etc.

Where insurance was made in his own name by one for himself and others, or as agent for others, or by a keeper of an insurance office, in either case, or in case of an agent for underwriters, in respect of a policy or a loss thereunder from spoliation, his administrator, appointed in the jurisdiction of his last domicile, may file one petition on each policy for all the underwriters thereon, and the personal representatives of the underwriters may come in and be heard thereon in respect of their respective interests.

When one of several underwriters may file petition for all on same policy.

To avoid multiplicity of petitions in behalf of separate underwriters upon a single policy, the personal representative of any one may file a petition for his decedent setting up the interest of all underwriters upon the same policy, and thereafter.

When and how the others may become parties.

On or before January 20, 1887, the representatives of any or all the other underwriters on the policy may by motion be permitted to become parties to that petition, and they will be heard as to their respective interests after filing letters of administration.

How insurers may prosecute their claims when set out in petition of owners of vessel or cargo.

When the petition of the owners of a vessel or its cargo sets out an insurance thereon, the insurers may, under the same restrictions and in the same manner, on motion, prosecute their respective interests in the same case.

How firms and joint owners may come in.

Where claimants are firms or joint owners, the petition of the personal representative of the last survivor may be made in behalf of all, and the personal representatives of the others may come in and be heard in respect to their interests.

Petitions in cases under the Bowman and Tucker acts.

What petition must embrace.

27. In cases for stores and supplies the petition shall embrace the following:

(1) An allegation as to loyalty of the party from whom the stores or supplies were taken or person furnishing same.

(2) If the suit is by legal representative it must be alleged when and by what authority such party was appointed such representative. And it must be alleged that the claimant brings into court his warrant of authority.

(3) It must be alleged whether the claim was before the Commissioners of Claims, Quartermaster-General, or Commissary-

General of Subsistence, and with what result, together with a brief statement of the ground given for the decision.

(4) It must show the items of account before said commission or officers, and which of said items are now presented to this court.

Copy of bill to be annexed to petition.

(5) It must be stated which House of Congress or committee referred the case, with the date thereof, and if by bill a copy thereof shall be annexed to the petition.

It must be stated, where it is known to the claimant, what officers, regiments, brigades, or commands took or were furnished with stores or supplies or occupied the real estate in suit, or it will be ground for continuance.

Copies must be furnished.

Where printed copies of the petition have not been filed pursuant to Rule 16, the attorney for the claimant will file in the clerk's office, for transmission to the Attorney-General, two typewritten copies of the petition, and an entry to that effect will be made on the docket.

Evidence of the use or destruction of buildings must be specific.

(6) In Congressional cases for the use or destruction of buildings of whatever character, the evidence, in addition to that required respecting the loyalty of the claimant, must show as specifically as may be when and how long such buildings were occupied or when destroyed, and by whose authority, the purpose of such use or destruction, when such buildings were constructed, the dimensions thereof, of what material constructed, the cost of such buildings and their furnishings, together with the condi-

tion and value of such buildings when used or destroyed, or both. In short, all the elements essential to enable the court to judicially determine what amount, if any, should be allowed for the rent or destruction of such buildings, or both.

Petitions in Departmental and Congressional cases.

Persons interested may appear as parties by filing petitions.

28. After the filing of a case transmitted to the court by the head of an Executive Department or by Congress, or either House, or by a committee thereof, any person directly interested in the case may appear as a party therein by filing his petition, under oath, in accordance with Rules 16 and 17.

Persons indirectly interested may appear and be heard.

29. Any person claiming to be indirectly interested in any question involved in such case may appear and be heard on the one side or the other, head of an Executive Department the court will proceed to try the case upon the statement made by the head of such department.

(Rule 30 does not appear in the Rules as furnished by the Clerk.)

Amendment to petition.

Imperfect petition, when may be filed.
27 C. Cls., 352.

31. When the claimant can not state his case with the requisite particularity without an examination of papers in one of the

Executive Departments, and has been unable to obtain a sufficient examination of such papers on application, he may file a petition stating his claim as far as is in his power, and specifying as definitely as he can the papers he requires. The court will then, upon motion, call upon the proper department for such information or papers as may be deemed necessary, and when the same are furnished the petition may be amended and take the place of the original petition.

Amending petition.
New parties.

32. A claimant desiring to amend his petition or to introduce new parties may do so at any time before final submission, without special leave, by filing an amended petition embodying the amendments desired. The right to make such amendments or to introduce new parties is subject to the objection of the defendants either before or at the trial.

Bill of particulars may be required.

33. The court or the chief justice or a judge in vacation may, on motion, require a claimant to make his petition more specific, or to make and file a duly verified bill of particulars within a time fixed, and in case of failure so to do the petition may be dismissed.

EXECUTORS, ADMINISTRATORS, WIDOWS, AND NEXT OF KIN.

Appointment of executor, etc.

34. If the claimant be an executor, administrator, guardian, or other representative appointed by a judicial tribunal, a duly authenticated copy of the record of the appointment must be filed with the petition.

Death of claimant.

35. If the claimant die pending the suit, his death may be suggested on the record, and his proper representative, on filing a duly authenticated copy of the record of his appointment as executor or administrator, may be admitted to prosecute the suit without special leave, but subject to the objection of the defendants either before or at the trial.

Widows and next of kin.

36. Where a suit is prosecuted in the name of the widow of the deceased claimant, it must be shown by evidence that the present claimant is the widow of the deceased; and where it is prosecuted in the name of the heirs or next of kin of the deceased it must be shown that they are his only heirs or next of kin.

PLEADINGS.

When pleas must be filed.

37. Demurrers and pleas must be filed within sixty days after the filing of the petition, unless the court extend the time.

Proceedings when demurrer is sustained.

38. If a demurrer be sustained, the claimant may, once of right, amend his petition, within such time as the court may direct; but if he decline to amend, judgment will be rendered dismissing the petition.

When demurrer is overruled.

39. If a demurrer be overruled the defendants may of right plead to the petition within such time as the court may direct; but if they decline so to do, the claimant may proceed with the case, but shall not have judgment for his claim or for any part thereof, unless he shall establish the same by proof satisfactory to the court.

Replication of set-off, etc.

40. Within three months after the filing of the set-off or counter-claim by the defendants, the claimant must answer the same by replication under oath, unless the court extend the time for twenty days.

Plea of fraud.

41. When the Attorney-General pleads, under section 1086 of the Revised Statutes, that the claimant has practiced or attempted to practice fraud, he shall set forth the facts with sufficient particularity to enable the claimant to answer the same in detail, and the claimant shall, within three months after the filing of said plea, reply to the same with like particularity, under oath, unless the court extends the time for ten days.

On failure of Government plead. general traverse entered by clerk.

42. Unless the Attorney-General shall, within sixty days after the service of the petition upon him, appear and defend by filing a demurrer plea or answer, and by filing a notice of any counter-claim, set-off, claim of damages, demand, or defense in the premises, a general traverse of the petition shall be considered as entered on the part of the defendants, and the case shall be proceeded with the same as though an answer of general traverse had been filed.

MOTIONS.

Motions to be first heard at chambers.

43. Motions will be heard in the first instance before the chief justice or a judge at chambers. They must be in writing and come to him through the clerk's office. Those which are *ex parte* will be acted upon; those which are not *ex parte* will be

sent to the law calendar for argument unless accompanied by the consent of the opposite party.

Disposition of motion may be requested.

44. In cases where the action of the court is necessary, or where the above procedure will not be properly applicable, the moving party may call the attention of the court to the fact and request such disposition of the motion as may be deemed suitable or necessary.

Motion to amend petition.—to substitute administrator.
—to consolidate cases.

45. A motion to amend a petition under Rule 32 will be regarded as *ex parte* and entered as allowed by the clerk, and the suggestion of the death of the claimant and the motion to substitute his executor or administrator, under Rule 35, will also be regarded as *ex parte* and entered as allowed by the clerk. A motion to consolidate cases involving substantially the same issues will will also be regarded as *ex parte*. But these orders will be subject to the objections of the defendants, either at or before the trial.

Any brief filed in connection with a motion must be printed or typewritten.

WITNESSES.

When evidence may be taken.

46. When a petition is filed and the proper Department, in response to calls therefor, has without unnecessary delay reported or had refused so to do, and issue of fact has been joined, either party may proceed to take testimony; but if issue is pending on demurrer such issue must be disposed of before testimony is taken.

Testimony to be in depositions.

Officers who may take depositions.

47. Unless the court order a witness to testify orally on the trial the evidence of witnesses must be by deposition, taken either before a commissioner of the court, or a judge of a court of the United States, or a judge of a court of record in a State or Territory of the United States, or a United States commissioner, or a notary public.

When a deposition is taken before a notary public it must be taken in the form and manner prescribed for commissioners of this court and for the same compensation and subject to Rules 52 and 65.

When depositions may be taken before a judge of this court.

48. When a witness can be conveniently examined before a judge of this court, either party, at any time prior to the examination, may move for an order directing that his deposition be so taken.

Witness, etc., may be examined in court.

The court may order a witness or a claimant to be produced before the court or one of the judges thereof for examination.

Proceedings against witness in contempt.

49. If a witness, having been duly summoned and his fees tendered him, shall fail or refuse to appear and testify before any officer authorized to take his testimony, a rule upon him will be issued by the court, on motion, to show cause why a fine should not be imposed upon him, and if he fail to show sufficient cause he shall be fined not exceeding one hundred dollars.

Fees of witnesses.

50. The fees of witnesses shall be such as are now or may hereafter be prescribed by Congress and shall be paid by the party at whose instance the witnesses appear.

DEPOSITIONS.

Depositions on written interrogatories.

Depositions on written interrogatories.

51. Depositions obtained in foreign countries must be taken on written interrogatories sent out under a special commission issued by the clerk.

Depositions may be taken in like manner within the United States, by consent of parties, or when authorized by the court, or by the chief justice or a judge in vacation.

The written interrogatories must be filed in the clerk's office and notice thereof given to the adverse party.

Adverse party may file objections to interrogatories.

Within fifteen days after such notice the adverse party may file objections to any of the interrogatories, specifically stating the grounds of objection, and may either file cross-interrogatories or a notice that he will cross-examine the witnesses orally, which notice shall be attached to the special commission.

If he file cross-interrogatories, the other party may, within fifteen days thereafter, file objections thereto, specifically stating the grounds of objection.

No objections to an interrogatory or a cross-interrogatory will be considered at the trial unless taken before the commission issues.

Parties not to be present at taking.

52. When a deposition is taken upon written interrogatories and written cross-interrogatories, neither the Attorney-General, nor the claimant, his agent or attorney, nor any other person, shall be present at the examination of the witness; which

fact shall be certified by the officer taking the depositions, who shall, in such cases, propound the interrogatories and cross-interrogatories to the witness in their order, and reduce his answers to writing in the witness' own words.

Depositions on oral examination.

Notice for taking depositions on oral examination.

53. The party proposing to take depositions on oral examination shall cause fifteen days' notice to be given thereof to the other party or his attorney. The notice must be in writing and state the names of the witnesses to be examined, the day of the month, the hour, and the place of taking the deposition, and, if practicable, the name of the officer before whom such depositions are to be taken.

When may not be taken.

But no deposition, except by consent of parties or the order of court, shall be taken during a day when the attorney of record for the claimant or the attorney of the Department of Justice charged with preparation of the case or cases in which the deposition is to be used is so engaged in the trial of cases in court that he can not attend. It shall be the duty of the attorney receiving a notice to take depositions, in case he can not attend for the reason stated herein, to notify the attorney on the opposite side that he will be unable to attend at the time and place stated in the notice.

When witness lives more than 500 miles from Washington.

54. When the claimant proposes to take a deposition and the witness resides more than 500 miles from Washington, or when

the defendants propose to take the deposition and the witness resides more than 500 miles from the claimant or his attorney, one day's further notice shall be given for every additional hundred miles.

Notice when deposition is to be taken in the District of Columbia.

55. If a deposition is to be taken on behalf of the claimant in the District of Columbia three days' notice shall be sufficient and if it be taken on behalf of the defendants a like notice shall be sufficient when the claimant's attorney resides or has an office within the District. But if there be no reason for taking the deposition on such short notice the court or a judge thereof will enlarge the time.

Depositions under § 1080, R. S.

56. When the court has made an order under Revised Statutes, section 1080, for the taking of the testimony of the claimant, and he has been notified of the time and place, no further testimony on his part shall be taken until he has been examined unless the court or the chief justice or a judge on motion otherwise orders.

Questions and answers to be recorded.

57. When a deposition is taken by oral examination, each question propounded to the witness must be recorded, and his answers must be taken down in his own words.

Objections to questions.

58. No general objections to any question shall be noticed by the officer; but where an objection is made on specifically stated grounds, the officer shall record the same.

When witnesses not named in the notice may be examined.

59. When depositions are taken on notice, as provided in Rule 53, if both parties are present or represented at the time and place specified in the notice, either party may, after the examination of the witnesses pro-

duced under the notice, be entitled to produce and examine other witnesses; but in such case one day's notice must be given to the adverse party, or his attorney, there present.

Depositions in fee cases.

Witnesses must confine themselves to statement of facts.

60. In depositions hereafter taken in fee cases the witnesses are required to confine themselves to the statement of facts connected with the claim, as witnesses in other cases, and depositions taken in violation of this order will not be considered or may on motion be suppressed by the court. The findings must state the exact nature of the service, stating separately as to each kind of service. It must distinctly appear where more than one service of a different class is contained in the same finding as to how much is claimed for each service.

General provisions as to depositions.

Other witnesses to be excluded.

61. At the request of either party a person whom either expects or intends to call as a witness in the same case, or in any kindred case, shall be excluded from the room where the testimony of a witness is being taken. If such a person remain in the room, or within hearing of the examination, after such request has been made, he shall not thereafter be admitted to testify in the case, or any kindred case, except by the consent of the party who requested his exclusion.

Of the oath. General interrogatories.

62. Witnesses must be sworn or affirmed before any questions are put to them, to tell

the truth, the whole truth, and nothing but the truth, relative to the cause in which they are to testify; and each witness shall then state his name, age, occupation, and place of residence; whether he has any, and, if any, what, interest, direct or indirect, in the claim which is the subject of inquiry; and whether, and in what degree, he is related to the claimant.

At the conclusion of the deposition the witness shall state whether he knows of any other matter relative to the claim in question; and if he does, he shall state it.

Depositions.

The testimony of the witness when completed shall be read over to him and be signed by him in the presence of the officer.

—what officer's return must show.

In his return the officer must show that the witness was properly sworn or affirmed, and that the answers were taken down in his presence and read over to and signed by the witness.

Sheets of depositions, how put together.

63. The officer must so connect the sheets of the deposition that they can not be tampered with, and must return them sealed together. He must sign, and make the witness sign, each sheet; and he must spare no pains to return to the court the exact evidence he has taken.

Exhibits to be marked.

64. All exhibits must be carefully marked so as to be capable of immediate indentification, and, when practicable, must be attached to the deposition under seal.

Caption of depositions.

65. The officer must state in the caption of the deposition the cause in which it was taken, the place and date of taking, the name of the witness, the party by whom

called, and the names of the parties and counsel present. And in the body of the deposition must also be shown by whom the witness was examined and cross-examined.

Before whom depositions not to be taken; what to certify.

In no case shall a deposition be taken before a commissioner of the court or other officer (authorized to take depositions) who has any office connection or business employment with the parties to the suit or their attorneys, except by consent of parties and when no other officer is accessible, (Order of Court, May 2, 1910), and in his certificate to such depositions such officer shall so certify.

Failure to so certify shall be deemed sufficient ground to suppress such deposition.

Return of.

66. The officer must inclose the depositions and exhibits in a packet, under his seal, and direct the same to the clerk of the Court of Claims at Washington, D. C., and deposit the package in the postoffice, or in an express office, or he may transmit the same by messenger, whose name shall be by him indorsed on the packet. Depositions reaching the clerk's office in any other way may, on motion, be stricken from the files.

When will not be considered.

—officer's fees to be paid before opening.

67. If the officer's fees be not paid at the time of taking the deposition, he should indorse on the outside of the packet the name and number of the case and for which party the testimony was taken, also the gross amount of his fees and disbursements, and inclose inside a detailed statement thereof.

The packet when so indorsed must not be opened until the party for whom the deposi-

tions were taken deposits with the clerk the amount indorsed thereon unless such deposit be waived in writing by the officer. The clerk will then open the packet and tax the officer's charges at the rates hereinafter provided, and will immediately transmit to him the amount taxed, returning the overplus, if any, to the party. *Provided*, That depositions taken for the Government may be opened and used by the parties in the preparation of a case without the Department of Justice furnishing a certificate that the fees of a commissioner or other officer have been paid; but such depositions can not be read in evidence until such certificate has been furnished.

When depositions may be opened without payment of fees.

Transmission of fees.

The money will be transmitted by draft or registered letter, and the clerk will retain his vouchers therefor.

Fees of commissioners and stenographers.

68. The fees shall be 15 cents a folio of 100 words for taking and returning the depositions. But when a deposition is taken in shorthand by the commissioner he shall receive, in addition to the above fee, 5 cents a folio for writing out the notes and preparing the deposition for the witness to sign.

When the deposition is typewritten, the commissioner shall receive 5 cents, in addition to the prescribed fee of 15 cents, a folio.

But if the commissioner is not a stenographer either party may produce a stenographer to take down and write out the testimony of the witness for the use of the commissioner, in which case the commissioner shall receive only 10 cents a folio. The tes-

timony so taken down by the stenographer must, nevertheless, be given in the presence of the commissioner, who will be held responsible for the accuracy of the deposition subscribed by the witness.

If the stenographer's fees be not paid at the time of taking the deposition, he may transmit a statement to the clerk, and the deposition will then be held by the clerk, subject to the provisions of Rule 67.

When but one deposition is taken on one notice, the commissioner shall receive not less than $3.

—excessive charges.

69. Any commissioner charging in excess of the prescribed fees, except under a previous written agreement with the parties, will be deemed guilty of improper and illegal conduct, and his commission will be revoked.

—objections to notice, form, etc., when to be made.

70. Objections to the notice or the form and manner of taking or returning the testimony must be made in writing and filed within one month after notice of the filing of the deposition, or they will be considered as waived.

EVIDENCE.

Evidence from the Executive Departments.

Attorney-General may give in evidence certified papers.

71. The Attorney-General may offer in evidence properly certified information and papers from any Executive Department without calling for the same under the provisions of section 1076 of the Revised Statutes.

Call on Departments.

A call for such information and papers will be made on claimant's motion on the approval of the Chief Justice or any judge in chambers. Such calls must show that the evidence called for is relevant, material, and competent.

When call will not be issued.

A call will not be issued for evidence which presumptively is in the possession of the claimant, such as copies of letters sent by the defendants' officers to the claimant, contracts in duplicate, one of which is retained by the claimant, or any documentary evidence which the claimant can himself produce.

Notice of answer.

On the receipt of an answer to the call the clerk will notify the claimant's attorney and the Attorney-General.

Objections to papers, etc., when to be made.

72. All information and papers furnished by an Executive Department in response to a call, or through the Attorney-General, are subject to objection by either party according to the rules of evidence at common law; but neither party will be required to produce the originals of such papers, or to prove their execution, unless the party objecting to such papers files in the clerk's office a written denial of their genuineness.

When regarded as offered in evidence by claimant.

Such information and papers in reply to a claimant's call, not objected to by him before trial, will be regarded as evidence offered by claimant.

Official papers filed in one cause, when may be used in another.

73. Any information or papers certified from any Executive Department, and filed in any cause, may be used and applied in any other pending cause to which the same may be applicable or pertinent, notice thereof being filed.

Comparison of handwritings.

Comparison of handwriting proof of signature.

74. Where the defendants intend to prove the signature of a paper by comparison of handwriting notice must be given in due time, either by describing in the brief the paper to be proved or by filing a special notice to that effect. The claimant may then request that the papers be brought into court *before the trial* and comparison of handwriting be made. This will be done at the opening of court on any day when the court is sitting.

Production of original papers by the claimant.

Order for production of papers by claimant.

75. The court may, at the instance of the Attorney-General, order any claimant, his agent, or attorney to produce in court, or before any officer authorized to take depositions, any letters, papers, deeds, documents, or other writings in his possession or subject to his control, in any way relating to the claim sued upon; and any claimant, his agent, or attorney, who, after due notice, refuses to produce such letters, papers, deeds, documents, or other writings, when in his power to do so, shall be subject to attachment for contempt; or the court may direct the petition to be dismissed.

Depositions from Claims Commission.

Certain depositions before Commissioners of Claims may be used.

76. If a claim which was at any time before the Commissioners of Claims, appointed under the act of March 3, 1871, be transmitted to this court by either House

of Congress, or by any committee thereof, under said act, and with such claim there be transmitted depositions, which were duly taken in conformity with the rules of said Commission, such depositions may be used by either party as evidence subject to such objections to their competency or relevancy as might be made if the deponents were examined in open court or their depositions were regularly taken under the rules of this court.

Papers before Claims Commission, how obtained.

77. If it be made to appear that, besides the depositions so transmitted, there are among the papers of said Commission other like depositions relating to the claimant's loyalty, or to the merits of his claim, the Chief Justice or any judge of the court may authorize such depositions, or duly certified copies thereof, to be obtained and filed in the clerk's office, to be used as evidence in the same manner and on the same terms as if they had been transmitted with the claim.

PRINTING.

Depositions, how to be printed and when.

78. The testimony will not be printed except by order of the court on written motion therefor.

In printing the testimony the notices and the officers' captions and certificates will be omitted; but to each deposition there must be prefixed a title in the following form:

Deposition of —— ——, *for claimant* [or defendants, as the case may be], *taken at* —— —, *on the* —— *day of* —, 19—; *claimant's counsel,* —— ——; *defendant's counsel,* —— ——.

Matter not to be printed.

79. Before printing a return made to a call, the chief clerk will withhold from the copy for the Public Printer—

First. All papers of which copies have been previously printed in the record of the case, and for this purpose he will compare the two copies, and if variations are found he will take the directions of the Chief Justice or any judge in chambers before sending the return to the printer.

Second. All certificates of authenticity and certificates of acknowledgment.

Third. All papers which both parties agree to omit.

Fourth. All papers which a judge at chambers orders to be omitted.

Papers, etc., returned from Departments on call when not to be printed.

80. If the claimant objects to printing information or papers so returned, and the Attorney-General request to have the same printed, the clerk will note a memorandum of such request in the copy for the printer, with his initials attached, and when such information or papers are printed, the same will be regarded as evidence offered on the part of the defense.

Type and size of page.

81. The printed papers required by these rules must be in long primer type on *unglazed* paper and in royal octavo pages, with the style and number of the case prefixed, and the paging in large distinct type in the upper corner of the page.

Paging to be continuous through whole record.

The printed paging of evidence, either for the claimant or the defendant, shall be a continuation of the record and continuous throughout the whole record and shall be properly indexed.

The attorneys for the claimant and for the defendants will see that the paging of their Request for Findings and Briefs follow the paging of that part of the record already printed when the brief is prepared.

Deposition of claimant not to be printed until Attorney-General files declaration of his intention to use it.

82. The deposition of a claimant, taken under section 1080 of the Revised Statutes, shall not be printed unless the Attorney-General shall first have filed in the case a written declaration of his intention to read the same in evidence on the trial, and the filing of such declaration shall be considered as the exercise of the discretion vested in that officer by said section, and shall entitle the claimant to read the examination as evidence at the trial if the Attorney-General declines to do so, unless for good cause shown the court shall otherwise order.

—thereafter claimant may read it in evidence.

Printing by claimant in Indian depredation cases.

83. In Indian depredation cases, if the claimant's papers be printed, whether briefs or evidence or both, the corresponding papers of the defendants must be; and if the printing of the claimant's papers be paid for by the attorney of record, the cost thereof will be considered in the allowance of attorney's fees.

Reimbursement for printing.

84. In cases where attorneys are entitled to reimbursement for printing they will produce and file ordinary vouchers showing payment or will certify that they have had printed and filed a designated number of pages of printing for which they have paid a designated amount.

Abstract of evidence to be printed.

85. In Indian depredation cases where the claim, as shown by the request for findings, is in excess of the sum of $2,000, the

abstract of evidence and brief of counsel on both sides shall be printed and arranged in the above order at the time the case is submitted for consideration.

FINDINGS OF FACT AND BRIEF.

86. The claimant shall have printed twenty-five copies of his brief, fifteen of which he shall file in the clerk's office and ten of which he shall retain for making up the trial record.

The brief must set forth the points of law on which he relies, with reference to authorities.

He shall also have printed twenty-five copies of the requests for facts required by Rule V of the "Regulations prescribed by the Supreme Court regulating appeals from the Court of Claims," fifteen of which he shall file in the clerk's office and ten of which he shall retain for making up the trial record.

All printed briefs and requests for facts must be in the form and manner prescribed by Rule 81.

Five typewritten copies of the brief and requests for facts in lieu of printed copies may be filed by leave of court.

Form of requests for findings.

87. Such request must be in the following terms: "*The claimant, considering the facts hereinafter set forth to be proven, and deeming them material to the due presentation of this case in the findings of fact, requests the court to find the same as follows:*"

Following this request must be a statement, in the form of distinct numbered propositions, of the facts which the party desires to have found; and each proposition must be so prepared, with respect to its length, subject, and phraseology, that the court may conveniently pass upon it; and they must be so arranged as to present a concise statement, in orderly and logical sequence, of the whole case, as the party desires it to appear in the findings of fact.

Request for findings, references to evidence.

Subjoined to each proposition must be references to the pages of the record or to the unprinted evidence relied on in its support; but no evidence must be set out. Documents which may enter into the findings of fact need not be presented in the statement, but may be referred to therein by the pages of the record.

Brief and request of defendants.

88. The defendants, within thirty days after the filing of the claimant's brief and request for findings of fact, shall file their printed brief and request for findings of fact, and should indicate the requests on the claimant's part to which no objection is made.

Defendants to furnish claimant with ten copies of brief for trial record.

The defendants shall furnish the claimant with ten copies of such printed brief and request for findings of fact, to be used in making up the trial record, and shall file fifteen copies in the clerk's office.

If the claimant, by leave of court, has filed five typewritten copies of his brief and requests, as provided for in Rule 86, the defendants may also file typewritten copies.

Reply brief—when required.

If the defendants' brief contains statements of fact which the claimant controverts, he must file a reply brief; otherwise it will be assumed that he concedes the facts stated.

Defendants to point out objections to claimant's requests.

Where claimant's requested findings are not agreed to, the defendants will point out specifically their objections to each finding, and suggest any changes therein they may desire. After this is done, defendants may request such additional findings as they deem material. Such request must be in form and substance like that required of the claimant by the next preceding rule.

Briefs of both parties to contain references to evidence.

89. The attorney of each party shall append to his brief a table of depositions, letters, documents, or other papers which he may offer in evidence on the trial, with references to the pages of the record, and if they be not of the paged record, then to the places where they may be found.

The abstract of testimony submitted with any case, if not printed, shall be typewritten, with marginal notes of the substance or items of the paragraphs either written, printed, or typewritten.

MANUSCRIPT BRIEFS.

Size and quality of paper.

90. Briefs for claimants or defendants, when not printed, must be in typewriting, upon pure white bond paper, 8 inches in width and 10½ inches in length, weighing not less than 3 and not more than 4 pounds to the ream of 500 sheets.

The typewriter ribbon must be black and the carbon blue.

When a brief and abstract of evidence will together exceed 50 pages, the abstract must be made a separate document.

The brief proper, i. e., the statement, argument, authorities, etc., must be distinct from the abstract of evidence. The abstract must follow the brief proper, or be a separate document.

Marginal references required.

The abstract of evidence may be continuous, but if continuous, there must be marginal references, such as "*cattle*," "*horses*," etc.

Where the filing of additional and supplemental briefs is necessitated, attorneys are requested to file a revised brief, so that there shall not be more than two briefs filed for either claimant or defendants.

The original brief in black must be fastened at the side and indorsed for filing. It will be filed with the papers in the case and will not be taken from the files unless by order of the court. The copies must be fastened at the side and *must not be folded.*

Before trial, record to be made up in book form for court.

Before any case is called for trial, the claimant, if the record be not printed as required by Rule 97, shall have five complete and legible copies of the pleadings, evidence, or abstract of evidence (as the Rules require), requests for findings of fact and briefs, fastened together in consecutive order in book or pamphlet form for the use of the court on the trial.

No case will be considered ready for trial until this rule has been complied with.

THE CALENDAR.

91. When the claimant has closed his evidence he shall enter the case in the Notice Book kept by the clerk.

When the defendants have closed their evidence they shall enter the fact in the Notice Book, and as soon thereafter as the claimant shall file the requests for facts and brief, as required by Rule 86, and note the same upon the Notice Book, the case shall be placed upon the Trial Calendar.

The taking of testimony by either party shall be deemed closed upon the filing of a brief; and thereafter no witness shall be re-examined or other testimony taken by such party without leave of court on motion showing reasons therefor.

The calendar will be made up at the beginning of every term and cases will be placed thereon in the order in which they are ready. At the end of each month cases which have subsequently become entitled to be placed upon the Calendar will be placed at the foot.

When claimant may move to place case on Calendar.

Defendants are expected to prepare their defense and to file briefs, so far as practicable, in the order of the entry of cases in the Notice Book. Should defendants unreasonably delay the preparation of the defense, claimants may move that the case be placed upon the Calendar.

Demurrers and pleas to be disposed of before taking testimony.

92. Demurrers, pleas in bar and to the jurisdiction of the court, will be placed upon the Law Calendar by the clerk immediately upon being filed, and will be heard and dis-

posed of before the taking of testimony on the merits.

NEGLECTED CASES.

Cases may be put on after two years by Attorney-General.

93. If the claimant neglect, for two years after filing his petition, to close his proof and give notice to the Attorney-General, as required by Rule 91, the defendants may place the case on the Trial Calendar; and after thirty days' notice to the attorney of record, or if there be no attorney of record, then to the claimant at his last known place of residence, they may move to dismiss such case for nonprosecution. This rule shall also apply to cross actions by the defendants against claimant.

All demurrers, pleas, and motions that have been on the Law Calendar for two years may, on motion of either party, be submitted.

ADVANCEMENT OF CASES.

Cases may be advanced when early decision is important to Government.

94. Whenever, in any case which the claimant has not put on the Calendar, it shall be shown to the court on motion that an early decision thereof is important to the interests of the Government, the case may, in the discretion of the court, be placed on the Calendar by the defendants.

REMANDED CASES.

Motion to remand, what to contain.

95. When a party desires a case to be remanded to the general docket for further proceedings he shall make a motion therefor, stating the facts expected to be proved,

with the grounds of such expectation and the reasons why such action was not taken before the case was closed.

TRIALS AND OTHER PROCEEDINGS.

Assignment of case for trial.

96. Ten or more cases on the Calendar will be called, assigned, and posted in the clerk's office each day for trial on the following day, and if not then argued or submitted by the parties, or by either in the absence of the other, will be disposed of as the court may order.

When case will be sent to foot of Calendar—when it may be passed.

When a case on the Calendar is called for trial, and the claimant is not ready to proceed, it will be placed at the foot of the Calendar; if the defendants are not ready, the case may be passed.

When a case has been so "passed" the clerk will place it on any subsequent day Calendar at the request of both parties, without application to the court.

Record to be made up in book form.

97. No case in which a printed record is required will be heard unless the claimant makes up in book form and has ready at the time of trial a complete record of the case, consisting of the printed pleadings, evidence, and requests for facts and briefs, paged consecutively. All citations from, or references to, such pleadings, evidence, and briefs must be by the consecutive paging of such book.

Claimant to furnish court with copies of record; also one copy to defendants and one copy to bailiff.

At the time of trial of the case the claimant shall furnish a copy of such printed record to each member of the court, and shall furnish one copy for the defendants and deliver one copy to the bailiff for binding.

Oral arguments —procedure.

98. In oral arguments, as preliminary, the counsel for claimant will make a brief but substantial statement of the cause of action alleged in the petition, in which statement he will also embrace the material facts which, in his opinion, are established by the evidence. After the statement of claimant's counsel, and before he proceeds with his argument, the counsel for the defendants will, in like manner, make a statement of the defense; after which the counsel may proceed to argue the case in detail.

—to be limited to one-half hour a side in Congressional cases.

Arguments in Congressional cases will be limited to one-half hour on a side; in all other classes of cases to one hour.

Additional time may be granted.

Where additional time is deemed necessary by counsel on either side application therefor must be made before the trial begins.

If cases specially set will require more than the prescribed time, it must be so stated when the application to set down is made. When it is not so stated the court will understand that the arguments can be concluded within the prescribed time.

When calling up cases in court, counsel will refer to them by their Calendar numbers and not by their docket numbers.

Submission on written stipulation.

99. Parties may also submit, on written stipulation, on the blank forms printed therefor by the clerk, any case in any jurisdiction on any docket, whether on any Calendar or not, when briefs have been filed on both sides and the rules of the court have otherwise been complied with.

Submission of cases without argument.

100. Where cases are submitted without argument upon stipulation, the parties will note at the foot of the submission paper (by the date of filing) the briefs and stipulations, if any, upon which the case is intended to be submitted. Where this is not done the case will not be regarded as having been submitted.

Requirements before submission of cases.

101. No submission of a case on loyalty or merits will be permitted until the following requirements are complied with by claimant's attorney under the supervision of the bailiff:

—on loyalty.

When a submission is on loyalty, the petition, all reports previously made by any officers on the subject, abstract of evidence, briefs on both sides, and other most important papers relied upon by either party, must be selected, strapped together and placed on top of the bundle of papers to be sent to the conference room.

—on merits.

102. When submission is on merits, two extra copies of petition, the reports of officers previously made on the merits of the claim, abstract of evidence, with the original evidence, requests for findings, briefs on both sides, finding of loyalty, and a statement of the case, made up by filling one of the blank findings printed for the court, including the allegations of the petition, must in like manner be strapped together and put at top of the bundle to be sent to conference room.

BRIEFS AND FACTS IN FRENCH SPOLIATION CASES.

Printed statement.

103. The claimants on account of the vessel, cargo, or insurance, or some one or more

of them concerned in the same seizure, shall have printed twenty-five copies of a printed statement of alleged facts under the heads hereinafter set out. Fifteen of said copies shall be filed in the clerk's office and ten copies shall be retained by claimant for the trial record.

Documents not printed in the record must be numbered, put in envelopes (as far as practicable), and noted on the outside thereof.

Under each head reference must be made to the pages of the printed record and to unprinted and separate documents by number of envelope and number of paper therein, or other convenient designation, relied upon in support of allegations.

Form of statement.

TITLE OF CASE.

Form of statement.

(1) Name of vessel and master:

Docket number of each case with the full names of claimants, and where there are interveners, their names to be set out under the case in which they intervene, with the number of any separate petition by them; to be made up after the manner of the case of the schooner *Phoenix*, reported to Congress, thus:

Schooner Phoenix—Solomon Babson, master.

129. Thomas Cushing, administrator of Marston Watson, claimant.

3162. Charles T. Lovering, administrator of Joseph Taylor, claimant.
James C. Davis, administrator of Cornelius Durant, claimant.

260. Charles F. Adams, administrator of Peter C. Brooks, claimant.
William Sohier, administrator of Nathaniel Fellowes, claimant.

VESSEL.

(2) Names of owners and their respective shares.

(3) When and where built.

(4) Register.

(5) Date of sailing and points of departure and destination.

(6) Seizure and condemnation.

(7) Facts relied upon as showing illegality of condemnation.

(8) Insurance on vessel or freight, naming all the underwriters and amount admitted to have been paid to each owner on account of loss, and from whom received. Refer to policies and other evidence.

CARGO.

(9) Owners of cargo, stating each separately and whether the interest be in whole or divided, with number of case in which they appear.

(10) Value of cargo and of each claimant's interest therein.

(11) Insurance on cargo, naming all the underwriters and amount admitted to have been paid to each owner on account of loss, and from whom received. Refer to policies and other evidence.

VESSEL, CARGO, AND INSURANCE.

(12) Assignments.

(13) When there are adverse claimants,

the facts alleged by each claimant to be specified.

(14) In case of intervention, the date of filing of motion, and case in which filed, to be stated with reference to envelope in which same are to be placed.

(15) Evidence of citizenship of claimants and identity must be referred to under their respective names.

(16) Time of death of partners when administrator sues as representative of survivor.

(17) Administrators, receivers, and assignees, when and where appointed, and evidence of appointments.

(18) When facts relied upon as found in other cases, such cases must be specifically referred to.

RECAPITULATION AND SUMMARY.

Name of each claimant, stating number of petition, and where printed or found, and when an intervener, the date of intervention and where motion is found, and setting forth exactly in items what is claimed by him in all, as owner of vessel or cargo, or as insurer, stated separately and *with references* as aforesaid, so that the court may readily find all the evidence necessary to state each claimant's case distinctly.

The defendants shall file five printed copies of their brief, setting forth in detail all defenses upon which they rely.

The claimant shall file five printed copies of a reply brief, to the new matter relied

on by the defendants, within thirty days after the defendants have made final defenses.

Requests for findings, when to be filed.

Before the submission of any such case the claimants shall make and file their requests for findings of fact if they expect a favorable report to Congress.

No case will be considered as submitted until the provisions of this rule have been complied with.

Every paper filed in spoliation cases shall state at the beginning the name and character of the vessel and the name of the master, and shall be indorsed in like manner.

DISMISSAL ON DEATH OF CLAIMANT.

Dismissal on death of sole party.

104. On the death of a sole claimant, if his executor or administrator does not come in and prosecute the action, as provided in Rule 35, on or before the first ten days of the next term, after the suggestion is made, the case may be dismissed, provided the Attorney-General shall have served notice upon the attorney of record in the case three months at least before the commencement of such term.

NOTICES.

Service made through clerk's office. Computation of time.

105. Parties filing petitions, pleadings, and motions, except motions for calls on Departments, must at the same time leave with the clerk written notice thereof, addressed to the attorney of the adverse party, and the clerk will mail the same and note the

fact on the general docket. All other notices to adverse parties may be served in like manner. The clerk's entry on his docket will be *prima facie* evidence of the service. In the computation of time, the day of the service will be excluded, and the day on which a party is required to appear, or on which an act is required to be done, will be included.

NEW TRIAL.

New trial; when not to be granted.
14 C. Cls. R., 193.
18 C. Cls. R., 202, 289.

106. A new trial will not be granted where, upon the whole case, justice has been done between the parties and the judgment is substantially right, although there may have been some mistakes committed at the trial.

Under Bowman Act, etc., motions for new trial after findings are reported will not be entertained.

In cases transmitted to the court by Congress, or either House, or a committee thereof, or by the head of a Department, under the acts of March 3, 1883, ch. 116 (1 Supp. R. S., 2d ed., 403), and March 3, 1887, ch. 359 (1 Supp. R. S., 2d ed., 559), and in cases under the French spoliation act of January 20 1885, ch. 25 (1 Supp. R. S., 2d ed., 471), motions for new trials will not be entertained after the findings have been reported as required by law.

New trial, grounds of.

107. A motion for a new trial, other than under Revised Statutes, section 1088, must be founded upon one or more of the following grounds: First, error of fact; second, error of law; and third, newly discovered evidence. It must be made at the term in which the judgment is rendered.

—founded on error of fact, what to specify.

108. A motion founded upon an error of fact must specify with minuteness the fact or facts which are regarded as erroneously found or erroneously omitted to be found by the court, with full reference to the evidence which is relied on to support the motion.

—founded on error of law, what to specify.

109. A motion founded upon error of law must specify with like minuteness the points upon which the court is supposed to have erred, with references to the authorities relied upon to support the motion.

Motion for new trial founded on newly discovered evidence, what to set forth.

110. A motion by the claimant upon the ground of newly discovered evidence will not be entertained unless it appear therein that the newly discovered evidence came to the knowledge of the claimant, his attorney of record, or counsel after the trial and before the motion was made; that it was not for want of due diligence that it did not sooner come to his knowledge; that it is so material that it would probably produce a different judgment if the new trial were granted, and that it is not cumulative.

Motion must be accompanied with affidavit, etc.

Such motion must be accompanied by the affidavit of the claimant or his attorney of record, setting forth—

First. The facts in detail which the claimant expects to be able to prove, and whether the same are to be proved by witnesses or by documentary evidence.

Second. The name, occupation, and residence of each and every witness whom it is proposed to call to prove said facts.

Third. That the said facts were unknown to either the claimant or his attorney of rec-

ord, and, if other counsel was employed at the trial, were unknown to such counsel, until after the close of the trial.

Fourth. The reasons why the claimant, his attorney of record, or counsel could not have discovered said evidence before the trial by due diligence.

Motion must be accompanied by brief.

111. A motion for a new trial must also be accompanied by the brief of the moving party. It will be considered by the judges in conference upon such brief and affidavits, if any, and will then either be overruled on the court's own motion or sent to the Law Calendar for argument.

APPEALS.

Appeals, application for, how made.
6 Wall., 101; 7 C. Cls. R., 11.
13 Wall., 664; 7 C. Cls. R., 268.
23 C. Cls., R., 1, 41. See p. 33.

112. Application for appeal to the Supreme Court of the United States from any judgment or decree of this court must be in writing, and signed by the claimant or his attorney of record, if the appeal be on his behalf; or, if taken by the United States, it must be signed by the Attorney-General or the proper Assistant Attorney-General.

Appeals, application for, to be filed in clerks' office, when.

Such application, if made when the court is not in session, must be filed with the clerk and the date of filing the same must be indorsed upon it and noted upon the general docket.

EXAMINATION AND WITHDRAWAL OF PAPERS.

Papers on file, how obtained for examination by parties.

113. Any person having an interest wishing to see any papers on file in the clerk's office will apply therefor to the chief or assistant clerk.

No papers shall be permanently withdrawn or temporarily taken out of the clerk's office, except on motion for good cause shown, and upon such terms as the court or a judge may order.

ENTERING ORDERS AND FILING PAPERS.

When orders to be entered of record.

114. No order will be entered by the clerk unless it be directed from the bench, or be reduced to writing and marked "Allowed" by the Chief Justice or one of the judges.

Papers to be indorsed before filing.

115. The clerk will not file any paper unless it be properly indorsed showing the nature of same, with the title and number of the suit and the name of the attorney filing it.

EXTENSION OF TIME.

Extension of time prescribed by rules.

116. The limitation of time provided in these rules for the doing of any act may be extended on motion for good cause shown.

RELATING TO AUDITORS, CLERKS, AND EMPLOYEES.

Duties of auditors, clerks, and employees.

117. Auditors will investigate in their order of reference only such cases as may be referred to them by the court and in their investigations they will proceed without argument, unless, upon application by counsel in writing therefor, the court, or any judge, shall consent by indorsement thereon to such argument, in which case counsel on both sides shall be heard. And all suggestions from counsel in relation to the law or merits of any case referred to an auditor shall be in writing addressed to the court and filed in the cause.

RULES OF PRACTICE.

IN THE

UNITED STATES PATENT OFFICE.

REVISED JULY 17, 1907.

Rev. Stat., sec. 481, 483, 480.

The following rules of practice, duly adopted and approved by the Secretary of the Interior, designed to be in strict accordance with the Revised Statutes relating to the grant of patents for inventions, are published for gratuitous distribution. Marginal references to corresponding provisions of the Revised Statutes are given for the convenience of the public and of the office.

Marginal references.

Observance of forms recommended.

The observance of the appended forms, in all cases to which they may be applicable, is recommended to inventors and attorneys.

Printed copies of statutes furnished.

Printed copies of the Revised Statutes relating to the grant of patents may be obtained on application to the Commissioner.

(Signed) E. B. MOORE,
Commissioner of Patents.

CORRESPONDENCE.

Business to be transacted in writing.

1. All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be based exclusively on the written record. No attention will be paid to any al-

leged oral promise, stipulation, or understanding in relation to which there is a disagreement or doubt.

Correspondence to be in the name of the commissioner.

2. All office letters must be sent in the name of the "Commissioner of Patents." All letters and other communications intended for the office must be addressed to him; if addressed to any of the other officers, they will ordinarily be returned.

All charges to be prepaid.

3. Express charges, freight, postage, and all other charges on matter sent to the Patent Office must be prepaid in full; otherwise it will not be received.

Personal attendance of applicants unnecessary.

4. The personal attendance of applicants at the Patent Office is unnecessary. Their business can be transacted by correspondence.

Correspondence with assignee.

5. The assignee of the entire interest of an invention is entitled to hold correspondence with the office to the exclusion of the inventor. (See Rule 20.)

Correspondence with inventor and assignee.

6. When there has been an assignment of an undivided part of an invention, amendments and other actions requiring the signature of the inventor must also receive the written assent of the assignee; but official letters will only be sent to the postoffice address of the inventor, unless he shall otherwise direct.

Correspondence with attorney.

7. When an attorney shall have filed his power of attorney duly executed, the correspondence will be held with him.

Double correspondence.

8. A double correspondence with the inventor and an assignee, or with a principal and his attorney, or with two attorneys, can not generally be allowed.

Separate letters.

9. A separate letter should in every case be written in relation to each distinct subject of inquiry or application. Assignments for record, final fees, and orders for copies or abstracts must be sent to the office in separate letters.

Papers sent in violation of this rule will be returned.

Letters relating to applications.

10. When a letter concerns an application it should state the name of the applicant, the title of the invention, the serial number of the application (see Rule 31), and the date of filing the same. (See Rule 32.)

Letters relating to patent.

11. When the letter concerns a patent it should state the name of the patentee, the title of the invention, and the number and date of the patent.

Protests.

12. No attention will be paid to unverified *ex parte* statements or protests of persons concerning pending applications to which they are not parties, unless information of the pendency of such applications shall have been voluntarily communicated by the applicants.

Answer to letters and telegrams.

13. Letters received at the office will be answered, and orders for printed copies filled, without unnecessary delay. Telegrams, if not received before 3 o'clock p. m., can not ordinarily be answered until the following day.

INFORMATION TO CORRESPONDENTS.

Subjects on which information can not be given.

14. The office can not respond to inquiries as to the novelty of an alleged invention in advance of the filing of an applica-

tion for a patent, nor to inquiries propounded with a view to ascertaining whether any alleged improvements have been patented, and, if so, to whom; nor can it act as an expounder of the patent law, nor as counsel or for individuals, except as to questions arising within the office.

Rev. Stat., sec. 475, 481, 484, 4883. Records and models open to inventors.

Of the propriety of making an application for a patent, the inventor must judge for himself. The office is open to him, and its records and models pertaining to all patents granted may be inspected either by himself or by any attorney or expert he may call to his aid, and its reports are widely distributed. (See Rule 209.) Further than this the office can render him no assistance until his case comes regularly before it in the manner prescribed by law. A copy of the rules, with this section marked, sent to the individual making an inquiry of the character referred to, is intended as a respectful answer by the office.

Examiner's digests.

Examiners' digests are not open to public inspection.

Rev. Stat., sec. 4902. Caveats and pending applications kept in secrecy.

15. Caveats and pending applications are preserved in secrecy. No information will be given, without authority, respecting the filing by any particular person of a caveat or of an application for a patent or for the reissue of a patent, the pendency of any particular case before the office, or the subject-matter of any particular application, unless it shall be necessary to the proper conduct of business before the office, as provided by Rules 97, 103, and 108.

Rev. Stat., secs. 475, 481, 484, 4883.
Records and copies in patented cases.

16. After a patent has issued, the model, specification, drawings, and all documents relating to the case are subject to general inspection, and copies, except of the model, will be furnished at the rates specified in Rule 203.

ATTORNEYS.

Attorneys.

17[a] An applicant or an assignee of the entire interest may prosecute his own case, but he is advised, unless familiar with such matters, to employ a competent attorney, as the value of patents depends largely upon the skillful preparation of the specification and claims. The office can not aid in the selection of an attorney.

A register of attorneys will be kept in this office, on which will be entered the names of all persons entitled to represent applicants before the Patent Office in the presentation and prosecution of applications for patent. The names of persons in the following classes will, upon their written request, be entered upon this register.

(*a*) Any attorney at law who is in good standing in any court of record in the United States or any of the States or Territories thereof and shall furnish a certificate of the clerk of such United States, State, or Territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

(*b*) Any person not an attorney at law who shall file proof to the satisfaction of the *Commissioner* that such person is of good moral character and of good repute

a. For Rule 17 as amended, see *post*, p. 1472.

and possessed of the necessary qualifications to enable him to render applicants for patents valuable service, and is otherwise competent to advise and assist them in the presentation and prosecution of their applications before the Patent Office.

(*c*) Any firm will be registered which shall show that the individual members composing such firm are each and all registered under the provisions of the preceding sections.

The Commissioner may require proof of qualifications other than those specified in paragraph (*a*) and reserves the right to decline to recognize any attorney, agent, or other person applying for registration under this rule.

Any person or firm not registered and not entitled to be recognized under this rule as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent certain specified application or applications, but this limited recognition shall not extend further than the application or applications named.

No person not registered as above provided will be permitted to prosecute applications before the Patent Office.

Power of attorney.

18. Before any attorney, original or associate, will be allowed to inspect papers or take action of any kind, his power of attorney must be filed. But general powers given by a principal to an associate can not

be considered. In each application the written authorization must be filed. A power of attorney purporting to have been given to a firm or copartnership will not be recognized, either in favor of the firm or of any of its members, unless all its members shall be named in such power of attorney.

Copartners.

* * * * * * *

Substitution and association.

19. Substitution or association can be made by an attorney upon the written authorization of his principal; but such authorization will not empower the second agent to appoint a third.

Revocation.

20. Powers of attorney may be revoked at any stage in the proceedings of a case upon application to and approval by the Commissioner; and when so revoked the office will communicate directly with the applicant, or such other attorney as he may appoint. An attorney will be promptly notified by the docket clerk of the revocation of his power of attorney. An assignment of an undivided interest will not operate as a revocation of the power previously given; but the assignee of the entire interest may be represented by an attorney of his own selection.

Attorneys' room.

21. Parties or their attorneys will be permitted to examine their cases in the attorneys' room, but not in the rooms of the examiners.

Personal interviews with examiners.

Personal interviews with examiners will be permitted only as hereinafter provided. (See Rule 152.)

Decorum and courtesy in business.

Papers returned.

22.[a] (*a*) Applicants and attorneys will be required to conduct their business with the office with decorum and courtesy. Pa-

a. For Rule 22 as amended see *post*, p. 1473.

pers presented in violation of this requirement will be returned. But all such papers will first be submitted to the Commissioner, and only returned by his direct order.

Complaints against examiners.

(*b*) Complaints against examiners and other officers must be made in separate communications, and will be promptly investigated.

Rev. Stat., sec. 487. Refusal to recognize agents.

(*c*) For gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

Services of Senators or Representatives.

23. Inasmuch as applications can not be examined out of their regular order, except in accordance with the provisions of Rule 63, and members of Congress can neither examine nor act in patent cases without written powers of attorney, applicants are advised not to impose upon Senators or Representatives labor which will consume their time without any advantageous results.

APPLICANTS.

Rev. Stat., sec. 4886.

24. A patent may be obtained by any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than

Applicants.

Rev. Stat., sec. 4887.

two years prior to his application, and not patented in a country foreign to the United States on an application filed more than twelve months before his application, and not in public use or on sale in the United States for more than two years prior to his application, unless the same is proved to have been abandoned, upon payment of the fees required by law and other due proceedings had. (For designs, see Rule 79.)

Rev. Stat., sec. 4896.

Executors and administrators.

25. In case of the death of the inventor, the application will be made by and the patent will issue to his executor or administrator. In such case the oath required by Rule 46 will be made by the executor or administrator. In case of the death of the inventor during the time intervening between the filing of his application and the granting of a patent thereon, the letters patent will issue to the executor or administrator upon proper intervention by him. The executor or administrator duly authorized under the law of any foreign country to administer upon the estate of the deceased inventor shall, in case the said inventor was not domiciled in the United States at the time of his death, have the right to apply for and obtain the patent. The authority of such foreign executor or administrator shall be proved by certificate of a diplomatic or consular officer of the United States.

Act of Feb. 28, 1899.

Insane person.

In case an inventor becomes insane, the application may be made by and the patent issued to his legally appointed guardian, conservator, or representative, who will make the oath required by Rule 46.

Rev. Stat., sec. 4895.

Patents to assignees.

26. In case of an assignment of the whole interest in the invention, or of the whole interest in the patent to be granted, the patent will, upon request of the applicant embodied in the assignment, issue to the assignee; and if the assignee hold an undivided part interest, the patent will, upon like request, issue jointly to the inventor and the assignee; but the assignment in either case must first have been entered of record, and at a day not later than the date of the payment of the final fee (see Rule 200); and if it be dated subsequently to the execution of the application, it must give the date of execution of the application, or the date of filing, or the serial number, so that there can be no mistake as to the particular invention intended. The application and oath must be signed by the actual inventor, if alive, even if the patent is to issue to an assignee (see Rules 30, 40); if the inventor be dead, the application may be made by the executor or administrator.

To inventors and assignees jointly.

Rev. Stat., sec. 4923.

Inventor believing himself to be first inventor.

27. If it appear that the inventor, at the time of making his application, believed himself to be the first inventor or discoverer, a patent will not be refused on account of the invention or discovery, or any part thereof, having been known or used in any foreign country before his invention or discovery thereof, if it had not been before patented or described in any printed publication.

Joint inventors.

28. Joint inventors are entitled to a joint patent; neither of them can obtain a patent for an invention jointly invented by them.

Independent inventors of distinct and independent improvements in the same machine can obtain a joint patent for their separate inventions. The fact that one person furnishes the capital and another makes the invention does not entitle them to make an application as joint inventors; but in such case they may become joint patentees, upon the conditions prescribed in Rule 20.

Rev. Stat., sec. 4887. Foreign patents.

29. The receipt of letters patent from a foreign government will not prevent the inventor from obtaining a patent in the United States, unless the application on which the foreign patent was granted was filed more than twelve months prior to the filing of the application in this country, in which case no patent shall be granted in this country.

THE APPLICATION.

Rev. Stat., secs. 4888 to 4892. Requisites of application.

30. Applications for letters patent of the United States must be made to the Commissioner of Patents, and must be signed by the inventor, if alive. (See Rules 26, 33, 40, 46.) A complete application comprises the first fee of $15, a petition, specification, and oath; and drawings, model, or specimen when required. (See Rules 49, 56, 62.) The petition, specification, and oath must be in the English language. All papers which are to become a part of the permanent records of the office must be legibly written or printed in permanent ink.

Rev. Stat., secs. 4889, 4889, 4890, 4891, 4892, 4894.

31. An application for a patent will not be placed upon the files for examination until all its parts, except the model or specimen, are received.

Incomplete application not filed. Signed or sworn to in blank.

Every application signed or sworn to in blank, or without actual inspection by the applicant of the petition and specification, and every application altered or partly filled up after being signed or sworn to, will be stricken from the files.

Annual series.

Completed applications are numbered in regular order, the present series having been commenced on the 1st of January, 1900.

The applicant will be informed of the serial number of his application.

Abandoned unless completed within one year.

The application must be completed and prepared for examination within one year after the filing of the petition; and in default thereof, or upon failure of the applicant to prosecute the same within one year after any action thereon (Rule 77), of which notice shall have been duly mailed to him or his agent, the application will be regarded as abandoned, unless it shall be shown to the satisfaction of the Commissioner that such delay was unavoidable. (See Rules 171 and 172.)

All parts of application to be filed together.

32. It is desirable that all parts of the complete application should be deposited in the office at the same time, and that all the papers embraced in the application should be attached together; otherwise a letter must accompany each part, accurately and clearly connecting it with the other parts of the application. (See Rule 10.)

The Petition.

Rev. Stat., sec. 4888. Petition.

33. The petition must be addressed to the Commissioner of Patents, and must state the name, residence, and postoffice address

of the petitioner requesting the grant of a patent, designate by title the invention sought to be patented, contain a reference to the specifications for a full disclosure of such invention, and must be signed by the applicant.

The Specification.

Rev. Stat., sec. 4888. Specification.

34. The specification is a written description of the invention or discovery and of the manner and process of making, constructing, compounding, and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make, construct, compound, and use the same.

Rev. Stat., sec. 4888. Detailed description.

35. The specification must set forth the precise invention for which a patent is solicited, and explain the principle thereof, and the best mode in which the applicant has contemplated applying that principle, in such manner as to distinguish it from other inventions.

Rev. Stat., sec. 4888. Improvements.

36. In case of a mere improvement, the specification must particularly point out the parts to which the improvement relates, and must by explicit language distinguish between what is old and what is claimed as new; and the description and the drawings, as well as the claims, should be confined to the specific improvement and such parts as necessarily co-operate with it.

Claims.

37. The specification must conclude with a specific and distinct claim or claims of the

part, improvement, or combination which the applicant regards as his invention or discovery.

Reference to drawings.

38. When there are drawings the description will refer to the different views by figures and to the different parts by letters or numerals (preferably the latter).

Arrangement of specification.

39. The following order of arrangement should be observed in framing the specification:

(1) Preamble stating the name and residence of the applicant and the title of the invention.
(2) General statement of the object and nature of the invention.
(3) Brief description of the several views of the drawings (if the invention admits of such illustration).
(4) Detailed description.
(5) Claim or claims.
(6) Signature of inventor.
(7) Signatures of two witnesses.

Rev. Stat., sec. 4888.
Signature to specification.

40. The specification must be signed by the inventor or by his executor or administrator, and the signature must be attested by two witnesses. Full names must be given, and all names, whether of applicants or witnesses, must be legibly written.

Joinder of inventions.

41. Two or more independent inventions can not be claimed in one application; but where several distinct inventions are dependent upon each other and mutually contribute to produce a single result they may be claimed in one application.

Division of application.

42. If several inventions, claimed in a single application, be of such a nature that a single patent may not be issued to cover them, the inventor will be required to limit the description, drawing, and claim of the pending application to whichever invention he may elect. The other inventions may be made the subjects of separate applications, which must conform to the rules applicable to original applications. If the independence of the inventions be clear, such limitation will be made before any action upon the merits; otherwise it may be made at any time before final action thereon, in the discretion of the examiner.

Cross-references in cases relating to same subject.

43. When an applicant files two or more applications relating to the same subject-matter of invention, all showing but only one claiming the same thing, the applications not claiming it must contain references to the application claiming it.

Reservation clauses not permitted.

44. A reservation for a future application of subject-matter disclosed but not claimed in a pending application, but which subject-matter might be claimed therein, will not be permitted in the pending application.

Rev. Stat., sec. 4888.
Legible writing required.

45. The specification and claims must be plainly written or printed on but one side of the paper. All interlineations and erasures must be clearly referred to in marginal or foot notes on the same sheet of paper. Legal-cap paper with the lines numbered is deemed preferable, and a wide margin must always be reserved upon the left-hand side of the page.

The Oath.

Rev. Stat., sec. 4892. Oath of applicant.

46. The applicant, if the inventor, must make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used, and shall state of what country he is a citizen and where he resides, and whether he is a sole or joint inventor of the invention claimed in his application. In every original application the applicant must distinctly state under oath that the invention has not been patented to himself or to others with his knowledge or consent in this or any foreign country for more than two years prior to his application, or on an application for a patent filed in any foreign country by himself or his legal representatives or assigns more than twelve months prior to his application. If any application for patent has been filed in any foreign country by the applicant in this country, or by his legal representatives or assigns, prior to his application in this country, he shall state the country or countries in which such application has been filed, giving the date of such application, and shall also state that no application has been filed in any other country or countries than those mentioned, and if no application for patent has been filed in any foreign country, he shall so state; that to the best of his knowledge and belief the

Rev. Stat., sec. 4887, 4892. Statement as to foreign patents and public use.

Statement as to foreign applications.

invention has not been in public use or on sale in the United States, nor described in any printed publication or patent in this or in any foreign country, for more than two years prior to his application in this country. This oath must be subscribed to by the affiant.

Additional oath.

The Commissioner may require an additional oath in cases where the applications have not been filed in the Patent Office within a reasonable time after the execution of the original oath.

Rev. Stat., sec. 4896.

Oath by executor or guardian.

47[a]. If the application be made by an executor or administrator of a deceased person or the guardian, conservator, or representative of an insane person, the form of the oath will be correspondingly changed.

Officers authorized to administer oaths.

The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commericial agent holding commission under the Government of the United States, or before any notary public, judge or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be,

December 8, 1899.

whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made, *ex-*

June 29, 1906.

cept that no acknowledgment may be taken by any attorney appearing in the case.

a. For Rule 47 as amended, see *post*, p. 1474.

When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

Certificate of notary.

When the oath is taken before an officer in a country foreign to the United States, all the application papers must be attached together and a ribbon passed one or more times through all the sheets of the application, and the ends of said ribbon brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath was taken, or, if he is not provided with a seal, then each sheet must be initialed by him.

December 6, 1899.

Supplemental oath for matter not originally claimed.

48. When an applicant presents a claim for matter originally shown or described but not substantially embraced in the statement of invention or claim originally presented, he will file a supplemental oath to the effect that the subject-matter of the proposed amendment was part of his invention, was invented before he filed his original application, was not known or used before his invention, was not patented or described in a printed publication in any country more than two years before his application, was not patented to himself or to others with his knowledge or consent in this or any foreign country on an application filed more than twelve months prior to his application, was not in public use or on sale in this country for more than two years before the

date of his application, and has not been abandoned. Such supplemental oath must be attached to and properly identify the proposed amendment.

The Drawings.

Rev. Stat., sec. 4889. Drawings.

49. The applicant for a patent is required by law to furnish a drawing of his invention whenever the nature of the case admits of it.

Requisites of drawings.

50. The drawing may be signed by the inventor, or the name of the inventor may be signed on the drawing by his attorney in fact, and must be attested by two witnesses. The drawing must show every feature of the invention covered by the claims, and the figures should be consecutively numbered, if possible. When the invention consists of an improvement on an old machine the drawing must exhibit, in one or more views, the invention itself, disconnected from the old structure, and also in another view so much only of the old structure as will suffice to show the connection of the invention therewith.

Three editions of drawings.

51. Three several editions of patent drawings are printed and published—one for office use, certified copies, etc., of the size and character of those attached to patents, the work being about 6 by 9½ inches; one reduced to half that scale, or one-fourth the surface, of which four are printed on a page to illustrate the volumes distributed to the courts; and one reduction—to about the same scale—of a selected portion of each drawing for the Official Gazette.

Uniform standard.

52. This work is done by the photolithographic process, and therefore the character of each original drawing must be brought as nearly as possible to a uniform standard of excellence, suited to the requirements of the process, and calculated to give the best results, in the interests of inventors, of the office, and of the public. The following rules will therefore be rigidly enforced, and any departure from them will be certain to cause delay in the examination of an application for letters patent:

Paper and ink.

(1) Drawings must be made upon pure white paper of a thickness corresponding to three-sheet Bristol-board. The surface of the paper must be calendered and smooth. India ink alone must be used, to secure prefectly black and solid lines.

Size of sheet and marginal lines.

(2) The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work and signatures must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring downwardly from the marginal line, a space of not less than 1¼ inches is to be left blank for the heading of title, name, number, and date.

Character and color of lines.

(3) All drawings must be made with the pen only. Every line and let-

ter (signatures included) must be absolutely black. This direction applies to all lines, however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. Sectional shading should be made by oblique parallel lines, which may be about one-twentieth of an inch apart. Solid black should not be used for sectional or surface shading.[a]

Few lines and little or no shading.

(4) Drawings should be made with the fewest lines possible consistent with clearness. By the observance of this rule the effectiveness of the work after reduction will be much increased. Shading (except on sectional views) should be used only on convex and concave surfaces, where it should be used sparingly, and may even there be dispensed with if the drawing is otherwise well executed. The plane upon which a sectional view is taken should be indicated on the general view by a broken or dotted line. Heavy lines on the shade sides of objects should be used, except where they tend to thicken the work and obscure letters of reference. The light is always supposed

*For chart for guidance of draftsmen, see drawing page 1449.

to come from the upper left-hand corner at an angle of forty-five degrees. Imitations of wood or surface graining should not be attempted.

Scale or drawing.

(5) The scale to which a drawing is made ought to be large enough to show the mechanism without crowding, and two or more sheets should be used if one does not give sufficient room to accomplish this end; but the number of sheets must never be more than is absolutely necessary.

Letters of reference.

(6) The different views should be consecutively numbered. Letters and figures of reference must be carefully formed. They should, if possible, measure at least one-eighth of an inch in height, so that they may bear reduction to one twenty-fourth of an inch; and they may be much larger when there is sufficient room. They must be so placed in close and complex parts of drawings as not to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, where there is available space, and connected by short broken lines with the parts to which they refer. They must never appear upon shaded

surfaces, and when it is difficult to avoid this, a blank space must be left in the shading where the letter occurs, so that it shall appear perfectly distinct and separate from the work. If the same part of an invention appear in more than one view of the drawing it must always be represented by the same character, and the same character must never be used to designate different parts.

Signatures of inventor and witnesses.

(7) The signature of the inventor should be placed at the lower right-hand corner of each sheet, and the signatures of the witnesses at the lower left-hand corner, all within the marginal line, but in no instance should they trespass upon the drawings. (See specimen drawing, *post*, p. 1417.)

Title.

The title should be written with pencil on the back of the sheet. The permanent names and title will be supplied subsequently by the office in uniform style.

Large views.

When views are longer than the width of the sheet, the sheet should be turned on its side and the heading will be placed at the right and the signatures at the left, occupying the same space and position as in the upright views, and being horizontal when the sheet is held in an upright position; and all views on the same sheet must stand in

the same direction. One figure must not be placed upon another or within the outline of another.

Figure for Gazette.

(8) As a rule, one view only of each invention can be shown in the Gazette illustrations. The selection of that portion of a drawing best calculated to explain the nature of the specific improvement would be facilitated and the final result improved by the judicious execution of a figure with express reference to the Gazette, but which might at the same time serve as one of the figures referred to in the specification. For this purpose the figure may be a plan, elevation, section, or perspective view, according to the judgment of the draftsman. It must not cover a space exceeding 16 square inches. All its parts should be especially open and distinct, with very little or no shading, and it must illustrate the invention claimed only, to the exclusion of all other details. (See specimen drawing, p. 1417.) When well executed, it will be used without curtailment or change, but any excessive fineness, or crowding, or unnecessary elaborateness of detail will necessitate its exclusion from the Gazette.

Drawings for transmission.

(9) *Drawings transmitted to the office should be sent flat, protected by a sheet of heavy binder's board; or should be rolled for transmission*

in a suitable mailing tube, but should never be folded.

No stamp, advertisement, or address permitted on face of drawing.

An agent's or attorney's stamp, or advertisement, or written address will not be permitted upon the face of a drawing, within or without the marginal line.

Rev. Stat., sec. 4895.
Drawings for reissue applications.

53. All reissue applications must be accompanied by new drawings, of the character required in original applications, and the inventor's name must appear upon the same in all cases; and such drawings shall be made upon the same scale as the original drawing, or upon a larger scale, unless a reduction of scale shall be authorized by the Commissioner.

Defective drawings.

54. The foregoing rules relating to drawings will be rigidly enforced. Every drawing not artistically executed in conformity thereto may be admitted for purposes of examination if it sufficiently illustrates the invention, but in such cases a new drawing must be furnished before the application can be allowed. The office will make the necessary corrections at the applicant's option and cost.

Drawings furnished by office.

55. Applicants are advised to employ competent artists to make their drawings.

The office will furnish the drawings at cost, as promptly as its draftsmen can make them, for applicants who can not otherwise conveniently procure them.

The Model.

Rev. Stat., sec. 4891.
Models, when required.

56. Preliminary examinations will not be made for the purpose of determining

whether models are required in particular cases. Applications complete in all other respects will be sent to the examining divisions, whether models are or are not furnished. A model will only be required or admitted as a part of the application when on examination of the case in its regular order the primary examiner shall find it to be necessary or useful. In such case, if a model has not been furnished, the examiner shall notify the applicant of such requirement, which will constitute an official action in the case. When a model is received in compliance with the official requirement, the date of its filing shall be entered on the file wrapper. Models not required nor admitted will be returned to the applicants. When a model is required, the examination will be suspended until it shall have been filed. From a decision of the primary examiner overruling a motion to dispense with a model an appeal may be taken to the Commissioner in person, under the provisions of Rule 145.

Requisites of model.

57. The model must clearly exhibit every feature of the machine which forms the subject of a claim of invention, but should not include other matter than that covered by the actual invention or improvement, unless it be necessary to the exhibition of the invention in a working model.

Material and dimensions.

58. The model must be neatly and substantially made of durable material, metal being deemed preferable; but when the material forms an essential feature of the invention, the model should be constructed of

that material. The model must not be more than one foot in length, width, or height, except in cases in which the Commissioner shall admit working models of complicated machines of larger dimensions. If made of wood, it must be painted or varnished. Glue must not be used; but the parts should be so connected as to resist the action of heat and moisture. When practicable, to prevent loss, the model or specimen should have the name of the inventor permanently fixed thereon. In cases where models are not made strong and substantial as here directed, the application will not be examined until a proper model is furnished.

Working models.

59. A working model is often desirable, in order to enable the office fully and readily to understand the precise operation of the machine.

Rev. Stat., sec. 485.

Models in rejected and abandoned cases.

60. In all applications which have remained rejected for more than one year, the model, unless it is deemed necessary that it should be preserved in the office, may be returned to the applicant upon demand and at his expense; and the model in any pending case of less than one year's standing may be returned to the applicant upon the filing of a formal abandonment of the application, signed by the applicant in person and any assignée. (See Rule 171.)

Models in patented cases.

Models belonging to patented cases shall not be taken from the office except in the custody of some sworn employee of the office specially authorized by the Commissioner.

Models filed as exhibits.

61. Models filed as exhibits in contested cases may be returned to the parties at their expense. If not claimed within a reasonable time, they may be disposed of at the discretion of the Commissioner.

Specimens.

Rev. Stat., sec. 4890.
Specimens.

62. When the invention or discovery is a composition of matter, the applicant, if required by the Commissioner shall furnish specimens of the composition, and of its ingredients, sufficient in quantity for the purpose of experiment. In all cases where the article is not perishable, a specimen of the composition claimed, put up in proper form to be preserved by the office, must be furnished. (Rules 56, 60, and 61 apply to specimens also.)

THE EXAMINATION.

Order of examination.

63. Applications filed in the Patent Office are classified according to the various arts, and are taken up for examination in regular order of filing, those in the same class of invention being examined and disposed of, as far as practicable, in the order in which the respective applications are completed.

Privileged cases.

The following new applications have preference over all other new cases at every period of their examination in the order enumerated:

(1) Applications wherein the inventions are deemed of peculiar importance to some branch of the

public service, and when for that reason the head of some Department of the Government requests immediate action and the Commissioner so orders; but in such case it shall be the duty of such head of a Department to be represented before the Commissioner in order to prevent the improper issue of a patent.

(2) Applications for reissues.

(3) Applications which appear to interfere with other applications previously considered and found to be allowable, or which it is demanded shall be placed in interference with an unexpired patent or patents.

The following applications, previously acted upon, will have preference over other business:

(1) Cases remanded by an appellate tribunal for further action, and statements of grounds of decisions provided for in Rules 135 and 145.

(2) Applications which have been put into condition for further action by the examiner shall be entitled to precedence over new applications in the same class of invention.

(3) Applications which have been renewed or revived, but the subject-matter not changed.

(4) When the inventor dies and his executor or administrator files a new

application for the same invention, the new application may be given the same status in the order of examination as the original, by order of the Commissioners.

Merits treated throughout. At last form insisted upon.

64. Where the specification and claims are such that the invention may be readily understood, the examination of a complete application and the action thereon will be directed throughout to the merits; but in each letter the examiner shall state or refer to all his objections.

Only in applications found by the examiner to present patentable subject-matter and in applications on which appeal is taken to the examiners-in-chief will requirements in matter of form be insisted on. (See Rules 95 and 134.)

REJECTIONS AND REFERENCES.

Rev. Stat., sec. 4903.

Notice of rejection, with information and references.

65. Whenever, on examination, any claim of an application is rejected for any reason whatever, the applicant will be notified thereof. The reasons for such rejection will be fully and precisely stated, and such information and references will be given as may be useful in aiding the applicant to judge of the propriety of prosecuting his application or of altering his specification, and if, after receiving such notice, he shall persist in his claim, with or without altering his specification, the application will be re-examined. If upon re-examination the claim shall be again rejected, the reasons therefor will be fully and precisely stated.

Re-examination.

On rejection for want of novelty best references to be cited. Requisites of notices of rejection.

66. Upon the rejection of an application for want of novelty, the examiner must cite the best references at his command. When the reference shows or describes inventions other than that claimed by the applicant, the particular part relied on will be designated as nearly as practicable. The pertinence of the reference, if not obvious, must be clearly explained and the anticipated claim specified.

Citation of patents.

If domestic patents be cited, their dates and numbers, the names of the patentees, and the classes of invention must be stated. If foreign patents be cited, their dates and numbers, the names of the patentees, titles of the inventions, and the classes of inventions must be stated, and such other data must be furnished as will enable the applicant to identify the patents cited. If printed publications be cited, the title, date, page or plate, author, and place of publication, or place where a copy can be found, will be given. When reference is made to facts within the personal knowledge of an employee of the office, the data will be as specific as possible, and the reference must be supported, when called for, by the affidavit of such employee (Rule 76); such affidavit shall be subject to contradiction, explanation, or corroboration by the affidavits of the applicant and other persons. If the patent, printed matter, plates, or drawings so referred to are in the possession of the office, copies will be furnished at the rate specified in Rule 203, upon the order of the applicant.

Affidavits.

Adverse decisions on preliminary questions in ex parte cases.

67. Whenever, in the treatment of an *ex parte* application, an adverse decision is made upon any preliminary or intermediate question, without the rejection of any claim, notice thereof, together with the reasons therefor, will be given to the applicant, in order that he may judge of the propriety of the action. If, after receiving such notice, he traverse the propriety of the action, the matter will be reconsidered.

Reconsideration.

AMENDMENTS AND ACTIONS BY APPLICANTS.

Right to attend.

68. The applicant has a right to amend before or after the first rejection or action; and he may amend as often as the examiner presents new references or reasons for rejection. In so amending, the applicant must clearly point out all the patentable novelty which he thinks the case presents in view of the state of the art disclosed by the references cited or the objections made. He must also show how the amendments avoid such references or objections.

Requisites of amendments.

Amendment after claims ready for appeal.

After such action upon an application as will entitle the applicant to an appeal to the examiners-in-chief (Rule 134), or after such appeal has been taken, amendments canceling claims or presenting those rejected in better form for consideration on appeal may be admitted; but the admission of such an amendment or its refusal, and any proceedings relative thereto, shall not operate to relieve the application from its condition as subject to appeal, or to save it from aban-

donment under Rule 171. If amendments touching the merits of the application are presented after the case is in condition for appeal, or after appeal has been taken, they may be admitted upon a showing, duly verified, of good and sufficient reasons why they were not earlier presented. From the refusal of the primary examiner to admit an amendment a petition will lie to the Commissioner under Rule 145. No amendment can be made in appealed case between the filing of the examiner's statement of the grounds of his decision (Rule 135) and the decision of the appellate tribunal. After decision on appeal amendments can only be made as provided in Rule 142, or to carry into effect a recommendation under Rule 139.

Request for reconsideration.

69. In order to be entitled to the reconsideration provided for in Rules 65 and 67, the applicant must make request therefor in writing, and he must distinctly and specifically point out the supposed errors in the examiner's action. The mere allegation that the examiner has erred will not be received as a proper reason for such reconsideration.

Amendments to correspond to original model, drawing, or specification.

70. In original applications which are capable of illustration by drawing or model all amendments of the model, drawings, or specifications, and all additions thereto, must conform to at least one of them as it was at the time of the filing of the application. Matter not found in either, involving a departure from the original invention, can be shown or claimed only in a separate application.

Inaccuracies or prolixity.

71. The specification and drawing must be amended and revised when required, to correct inaccuracies of description or unnecessary prolixity and to secure correspondence between the claim, the specification, and the drawing. But no change in the drawing may be made except by written permission of the office and after a photographic copy of the drawing as originally presented has been filed.

Change in drawing.

Specification not to be returned.

72[a]. After the completion of the application the office will not return the specification for any purpose whatever. If applicants have not preserved copies of the papers which they wish to amend, the office will furnish them on the usual terms.

Model or drawing returned for correction.

The model or drawing, but not both at the same time, may be withdrawn for correction; but a drawing can not be withdrawn unless a model or photographic copy of the drawing has been filed and accepted by the examiner as a part of the application.

Amendments must be specific.

How written.

73. In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant.

Signature to amendments.

Amendments and papers requiring the signature of the applicant must also, in case

a. For amended Rule 72, see *post*, p. 1475.

of assignment of an undivided part of the invention, be signed by the assignee. Rules 6, 107.)

Specification rewritten.

74. When an amendatory clause is amended, it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause, as finally amended, when the application is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange the papers for printing or copying, the examiner or Commissioner may require the entire specification to be rewritten.

Patents showing but not claiming invention.

75. When an original or reissue application is rejected on reference to an expired or unexpired domestic patent which substantially shows or describes but does not claim the rejected invention, or on reference to a foreign patent or to a printed publication, and the applicant shall make oath of facts showing a completion of the invention in this country before the filing of the application on which the domestic patent issued, or before the date of the foreign patent, or before the date of the printed publication, and shall also make oath that he does not know and does not believe that the invention has been in public use or on sale in this country, or patented or described in a printed publication in this or any foreign country for more than two years prior to his application, and that he has never abandoned the invention, then the patent or publication cited will not bar the grant of a patent to the applicant, unless the date of

such patent or printed publication is more than two years prior to the date on which application was filed in this country.

Application rejected on references showing but not claiming invention, etc.

76. When an application is rejected on reference to an expired or unexpired domestic patent which shows or describes but does not claim the invention, or on reference to a foreign patent, or to a printed publication, or to facts within the personal knowledge of an employee of the office set forth in an affidavit (when requested) of such employee (Rule 66), or when rejected on the ground of public use or sale, or upon a mode or capability of operation attributed to a reference or because the alleged invention is held to be inoperative or frivolous or injurious to public health or morals, affidavits or depositions supporting or traversing these references or objections may be received, but affidavits will not be received in other cases without special permission of the Commissioner. (See Rule 141.)

Affidavits supporting and traversing such references or objections may be received.

Rev. Stat., sec. 4894.
Abandonment.

77. If an applicant neglect to prosecute his application for one year after the date when the last official notice of any action by the office was mailed to him, the application will be held to be abandoned, as set forth in Rule 171.

Suspension of application.

Whenever action upon an application is suspended upon request of an applicant, and whenever an applicant has been called upon to put his application in condition for interference, the period of one year running against such application shall be considered as beginning at the date of the last official action preceding such actions.

Acknowledgment of the filing of an application is an official action. Suspensions will only be granted for good and sufficient cause, and for a reasonable time specified.

Only one suspension will be granted by the primary examiner; any further suspension must be approved by the Commissioner.

Amendment and jurisdiction after notice of allowance.

78. Amendments will not be permitted after the notice of allowance of an application, and the examiner will exercise jurisdiction over such an application only by special authority from the Commissioner.

Amendment without withdrawal from issue.

Amendents may be made after the allowance of an application, and after payment of the final fee, if the specification has not been printed, on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the case from issue. (See Rule 135.)

DESIGNS.

Rev. Stat., secs. 4929 to 4933.

Design patents, to whom granted.

79. A design patent may be obtained by any person who has invented any new, original, and ornamental design for an article of manufacture, not known or used by others in this country before his invention thereof, and not patented or described in any printed publication in this or any foreign country before his invention thereof, or more than two years prior to his application, and not caused to be patented by him in a foreign country on an application filed more than four months before his application in this country, and not in public use or on sale in this country for more than two years prior to his application, unless the

same is proved to have been abandoned, upon payment of the fees required by law and other due proceedings had, the same as in cases of inventions or discoveries.

Rev. Stat., sec. 4931. Terms of design patents.

80. Patents for designs are granted for the term of three and one-half years, or for seven years, or for fourteen years, as the applicant may, in his application elect.

Rev. Stat., sec. 4933. Proceedings.

81. The proceedings in applications for patents for designs are substantially the same as in applications for other patents. Since a design patent gives to the patentee the exclusive right to make, use, and vend articles having the appearance of that disclosed, and since the appearance can be disclosed only by a picture of the article, the claim should be in the broadest form for the article as shown.

82. The following order of arrangement should be observed in framing design specifications:

Arrangement of specification.

(1) Preamble, stating name and residence of the applicant, title of the design, and the name of the article for which the design has been invented.
(2) Description of the figure or figures of the drawing.
(3) Claim.
(4) Signature of inventor.
(5) Signatures of two witnesses.

Rev. Stat., sec. 4930. Model.

83. When the design can be sufficiently represented by drawings a model will not be required.

84. The design must be represented by a drawing made to conform to the rules

laid down for drawings of mechanical inventions.

(For forms to be used in applications for design patents, see Appendix.)

REISSUES.

Rev. Stat., secs. 4895, 4916.
Reissue, when granted.

85. A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when the original patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, provided the error has arisen through inadvertence, accident, or mistake and without any fraudulent or deceptive intention.

Reissue applications must be made and the specifications sworn to by the inventors, if they be living.

Abstract of title.
Assent of assignees.

86. The petition for a reissue must be accompanied by an order for a certified copy of the abstract of title to be placed in the file, giving the names of all assignees owning any undivided interest in the patent. In case the application be made by the inventor it must be accompanied by the written assent of such assignees.

Prerequisites.
Oath of applicant for reissue.

87. Applicants for reissue, in addition to the requirements of Rule 46, must also file with their petitions a statement on oath as follows:

(1) That applicant verily believes the original patent to be inoperative or invalid and the reason why.

(2) When it is claimed that such patent is so inoperative or invalid "by reason of a defective or insufficient specification" particularly specifying such defects or insufficiencies.

(3) When it is claimed that such patent is inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," distinctly specifying the part or parts so alleged to have been improperly claimed as new.

(4) Particularly specifying the errors which it is claimed constitute the inadvertence, accident, or mistake relied upon, and how they arose or occurred.

(5) That said errors arose "without any fraudulent or deceptive intention" on the part of the applicant.

New matter.

88. New matter shall not be allowed to be introduced into the reissue specification, nor in the case of a machine shall the model or drawings be amended except each by the other.

Division of reissue of application.

89. The Commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division of such reissued letters patent. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention

claimed in such division; and the drawing may represent only such part or parts, subject to the provisions of Rule 50. Unless otherwise ordered by the Commissioner, all the divisions of a reissue will issue simultaneously; if there be any controversy as to one division, the others will be withheld from issue until the controversy is ended, unless the Commissioner shall otherwise order.

All divisions to issue simultaneously.

Re-examination of reissue claims.

90. An original claim, if reproduced in the reissue specification, is subject to re-examination, and the entire application will be revised and restricted in the same manner as original applications.

Original patent.

91. The application for a reissue must be accompanied by the original patent and an offer to surrender the same, or, if the original be lost, by an affidavit to that effect, and a certified copy of the patent. If a reissue be refused, the original patent will be returned to applicant upon his request.

Matter to be claimed only in a reissue.

92. Matter shown and described in an unexpired patent, and which might have been lawfully claimed therein, but which was not claimed by reason of a defect or insufficiency in the specification, arising from inadvertence, accident, or mistake, and without fraud or deceptive intent, can not be subsequently claimed by the patentee in a separate patent, but only in a reissue of the original patent.

INTERFERENCES.

Rev. Stat., sec. 4909.

Interference defined

93. An interference is a proceeding instituted for the purpose of determining the

question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference, for, although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who proves to be the prior inventor.

When declared.

94. Interferences will be declared in the following cases, when all the parties claim substantially the same patentable invention:

Original applications.

(1) Between two or more original applications containing conflicting claims.

Original application and unexpired patent.

(2) Between an original application and an unexpired patent containing conflicting claims, when the applicant, having been rejected on the patent, shall file an affidavit that he made the invention before the patentee's application was filed.

Original and reissue applications.

(3) Between an original application and an application for the reissue of a patent granted during the pendency of such original application.

Original and reissue applications.

(4) Between an original application and a reissue application, when the original applicant shall file an affidavit showing that he made the invention before the patentee's original application was filed.

Reissue applications.

(5) Between two or more applications for the reissue of patents granted on applications pending at the same time.

Reissue applications.

(6) Between two or more applications for the reissue of patents granted on applications not pending at the same time, when the applicant for reissue of the later patent shall file an affidavit showing that he made the invention before the application was filed on which the earlier patent was granted.

Reissue application and unexpired patent.

(7) Between a reissue application and an unexpired patent, if the original applications were pending at the same time, and the reissue applicant shall file an affidavit showing that he made the invention before the original application of the other patentee was filed.

Reissue application and unexpired patent.

(8) Between an application for reissue of a later unexpired patent and an earlier unexpired patent granted before the original application of the later patent was filed, if the reissue applicant shall file an affidavit showing that he made the invention before the original application of the earlier patent was filed.

Application and patent is sued two years.

(9) An interference will not be declared between an original application filed subsequently to December 31, 1897, and a patent issued more than two years prior to the date of filing such application or an application for a reissue of such a patent.

Preparation for interference.

95. Before the declaration of interference all preliminary questions must be settled by the primary examiner, and the issue must be clearly defined; the invention which is to form the subject of the controversy must be decided to be patentable, and the claims of the respective parties must be put in such condition that they will not require alteration after the interference shall have been finally decided, unless the testimony adduced upon the trial shall necessitate or justify such change.

Failure to prepare for interference.

96. Whenever the claims of two or more applications differ in phraseology, but cover substantially the same patentable subject-matter, the examiner, when one of the applications is ready for allowance, will suggest to the parties such claims as are necessary to cover the common invention in substantially the same language. *The examiner will send copies of the letter suggesting claims to the applicant and to the assignees, as well as to the attorney of record in each case.* The parties to whom the claims are suggested will be required to make such claims and put the applications in condition for allowance within a specified time in order that an interference may be declared. Upon the failure of any applicant to make the claim suggested within the time specified, such failure or refusal shall be taken without further action as a disclaimer of the invention covered by the claim, and the issue of the patent to the applicant whose application is in condition for allowance will not be delayed unless the time for making the claim

and putting the application in condition for allowance be extended upon a proper showing. If a party make the claim without putting his application in condition for allowance, the declaration of the interference will not be delayed, but after judgment of priority the application of such party will be held for revision and restriction, subject to interference with other applications.

Examiner preparing interference notices, etc.

97. When an interference is found to exist and the applications are prepared therefor, the primary examiner will forward to the examiner of interferences the files and drawings; notices of interference for all the parties (as specified in Rule 103) disclosing the name and residence of each party and that of his attorney, and of any assignee, and, if any party be a patentee, the date and number of the patent; the ordinals of the conflicting claims and the title of the invention claimed; and the issue, which shall be clearly and concisely defined in so many counts or branches as may be necessary in order to include all interfering claims. Where the issue is stated in more than one count the respective claims involved in each count should be specified. The primary examiner shall also forward to the examiner of interferences for his use a statement disclosing the applications involved in interference, fully identified, the name and residence of any assignee, and the names and residences of all attorneys, both principal and associate, and arranged in the inverse chronological order of their filing as completed applications, and also dis-

closing the issue or issues and the ordinals of the conflicting claims.

Conflicting parties having the same counsel notified.

Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner will notify each of said principal parties, and also the attorney, of this fact.

Revision of notices by examiner of interferences.

98. Upon receipt of the notices of interference, the examiner of interferences will make an examination thereof in order to ascertain whether the issue between the parties has been clearly defined, and whether they are otherwise correct. If he be of the opinion that the notices are ambiguous or are defective in any material point, he will transmit his objections to the primary examiner, who will promptly notify the examiner of interferences of his decision to amend or not to amend them.

Reference to Commissioner.

99. In case of a material disagreement between the examiner of interferences and the primary examiner, the points of difference shall be referred to the Commissioner for decision.

Primary examiner retains jurisdiction.

100. The primary examiner will retain jurisdiction of the case until the declaration of interference is made.

Jurisdiction of examiner of interferences.

101. Upon the institution and declaration of the interference, as provided in Rule 102, the examiner of interferences will take jurisdiction of the same, which will then become a contested case; but the primary examiner will determine the motions mentioned in Rule 122, as therein provided.

Primary examiner to determine certain motions.

Rev. Stat., sec. 4904.

102. When the notices of interference are in proper form, the examiner of interfer-

ences will add thereto a designation of the time within which the preliminary statements required by Rule 110 must be filed,

Institution and declaration of interference.

and will, *pro forma*, institute and declare the interference by forwarding the notices to the several parties to the proceeding.

Notices to parties.

103. The notices of interference will be forwarded by the examiner of interferences to all the parties, in care of their attorneys, if they have attorneys, and, if the application or patent in interference has been assigned, to the assignees. When one of the parties has received a patent, a notice will be sent to the patentee and to his attorney of record.

Publication in Official Gazette.

When the notices sent in the interest of a patent are returned to the office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, additional notice may be given by publication in the Official Gazette for such period of time as the Commissioner may direct.

Motion for postponement of time for filing.

104. If either party require a postponement of the time for filing his preliminary statement, he will present his motion, duly served on the other parties, with his reasons therefor, supported by affidavit, and such motion should be made, if possible, prior to the day previously fixed upon. But the examiner of interferences may, in his discretion, *extend such time on ex parte request or upon his own motion.*

Certified copies used in interference proceedings.

105. When an application is involved in an interference in which a part only of the invention is included in the issue, the ap-

plicant may file certified copies of the part or parts of the specification, claims, and drawings which cover the interfering matter, and such copies may be used in the proceeding in place of the original application.

New application for claims not in interference.

106. When a part only of an application is involved in an interference, the applicant may withdraw from his application the subject-matter adjudged not to interfere, and file a new application therefor, or he may file a divisional application for the subject-matter involved, if the invention can be legitimately divided: *Provided*, That no claim shall be made in either application broad enough to include matter claimed in the other.

Disclaimer to avoid interference.

107. An applicant involved in an interference may, with the written consent of the assignee, when there has been an assignment, before the date fixed for the filing of his preliminary statement. (see Rule 110), in order to avoid the continuance of the interference, disclaim under his own signature, attested by two witnesses, the invention of the particular matter in issue, and upon such disclaimer and the cancellation of any claims involving such interfering matter judgment shall be rendered against him, and a copy of the disclaimer shall be embodied in and form part of his specification. (See Rule 182.)

Signature to.

Inspection of claims of opposing parties.

108. When applications are declared to be in interference, the interfering parties will be permitted to see or obtain copies of each other's file wrappers, and so much of their contents as relates to the interference,

after the preliminary statements referred to in Rule 110 have been received and approved; but information of an application will not be furnished by the office to an opposing party, except as provided in Rules 97 and 103, until after the approval of such statements.

Invention shown, but not claimed in application.

109. *An applicant involved in an interference may, at any time within thirty days after the preliminary statements (referred to in Rule* 110) *of the parties have been received and approved, on motion duly made, as provided by Rule* 153, *file an amendment to his application containing any claims which in his opinion should be made the basis of interference between himself and any of the other parties. Such motion must be accompanied by the proposed amendment, and when in proper form will be transmitted by the examiner of interferences to the primary examiner for his determination. On the admission of such amendment, and the adoption of the claims by the other parties within a time specified by the examiner, as in Rule* 96, *the interference will be redeclared, or other interferences will be declared to include the same as may be necessary. New preliminary statements will be received as to the added claims, but motions for dissolution will not be transmitted in regard thereto where the questions raised could have been disposed of in connection with the admission of the claims. Amendments to the specification will not be received during the pendency of the interference, without the consent of the Commis-*

sioner, except as provided herein, and in Rules 106 *and* 107.

Preliminary statements.

110. Each party to the interference will be required to file a concise preliminary statement, under oath, on or before a date to be fixed by the office, showing the following facts:

Requirements of.

(1) The date of original conception of the invention set forth in the declaration of interference.

(2) The date upon which a drawing of the invention was made.

(3) The date upon which the invention was first disclosed to others.

(4) The date of the reduction to practice of the invention.

(5) A statement showing the extent of use of the invention.

(6) The applicant shall state the date and number of any application for the same invention filed within twelve months before the filing date in the United States, in any foreign country adhering to the International Convention for the Protection of Industrial Property or having similar treaty relations with the United States.

If a drawing has not been made, or if the invention has not been reduced to practice or disclosed to others or used to any extent, the statement must specifically disclose these facts.

When the invention was made abroad the statement should set forth:

(1) That the applicant made the invention set forth in the declaration of interference.

(2) Whether or not the invention was ever patented; if so, when and where, giving the date and number of each patent, the date of publication, and the date of sealing thereof.

(3) Whether or not the invention was ever described in a printed publication; if so, when and where, giving the title, place, and date of such publication.

(4) *When the invention was introduced into this country*, giving the circumstances with the dates connected therewith, which are relied upon to establish the fact.

The preliminary statements should be carefully prepared, as the parties will be strictly held in their proofs to the dates set up therein.

If a party prove any date earlier than alleged in his preliminary statement, such proof will be held to establish the date alleged and none other.

The statement must be sealed up before filing (to be opened only by the examiner of interferences; see Rule 111), and the name of the party filing it, the title of the case, and the subject of the invention indicated on the envelope. The envelope should contain nothing but this statement.

(For forms, see 36 and 37, Appendix.)

Opened to inspection.

111. The preliminary statements shall not be opened to the inspection of the opposing parties until each one shall have been filed, or the time for such filing, with any extension thereof, shall have expired, and not then unless they have been examined by the proper officer and found to be satisfactory.

In default.

Any party in default in filing his preliminary statement shall not have access to the preliminary statement or statements of his opponent or opponents until he has either filed his statement or waived his right thereto, and agreed to stand upon his record date.

Notice to amend.

112. If, on examination, a statement is found to be defective in any particular, the party shall be notified of the defect and wherein it consists, and a time assigned within which he must cure the same by an amended statement; but in no case will the original or amended statement be returned to the party after it has been filed. Unopened statements will be removed from interference files and preserved by the office, and in no case will such statements be open to the inspection of the opposing party without authority from the Commissioner. If a party shall refuse to file an amended statement he *may* be restricted to his record date in the further proceedings in the interference.

Unopened statement.

Motion to amend.

113. In case of material error arising through inadvertence or mistake, the statement may be corrected on motion (see Rule 153), *upon a satisfactory showing* that the

correction is essential to the ends of justice. The motion to correct the statement must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

Failure to file preliminary statement.
Failure to overcome prima facie case.

114. If the junior party to an interference, or if any party thereto other than the senior party, fails to file a statement, or if his statement fails to overcome the *prima facie* case made by the respective dates of application, such party will be notified by the examiner of interferences that judgment upon the record will be rendered against him at the expiration of thirty days, unless cause is shown why such action should not be taken. Within this period any of the be taken. Within this period any of the motions permitted by the rules may be brought. Motions brought after judgment on the record has been rendered will not be entertained unless sufficient reasons appear for the delay.

Failure to file testimony excluded setting up invention prior to application date.

115. If a party to an interference fail to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to his application.

Presumption as to order of invention.

116. In original proceedings in cases of interference the several parties will be presumed to have made the invention in the chronological order in which they filed their completed applications for patents clearly illustrating and describing the invention; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

Statement not evidence.

117. The preliminary statement can in no case be used as evidence in behalf of the party making it.

Time for taking testimony.

118. Times will be assigned in which the junior applicant shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior applicant may take rebutting testimony; but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior applicants and to rebut their evidence, and also to meet the evidence of junior applicants.

Failure to take testimony.

119. Whenever the time for taking the testimony of a party to an interference shall have expired, and no testimony shall have been taken by such party, any senior party may, by motion based on a *proper showing* and served on such party in default, have an order entering judgment against such defaulting party, unless the latter shall, at a day set and not less than ten days after the hearing of the motion, show good and sufficient cause why the judgment shall not be entered.

Postponement of hearing.

120. If either party desire to have the hearing continued, he will make application for such postponement by motion (see Rule 153), and will show sufficient reason therefor by affidavit.

Enlargement of time for taking testimony.

121. If either party desire an extension of the time assigned to him for taking testi-

mony, he will make application therefor, as provided in Rule 154 (4).

Motion to dissolve for irregularity, nonpatentability, etc.

122. Motions to dissolve an interference (1) upon the ground that there has been such informality in declaring the same as will preclude a proper determination of the question of priority of invention, or (2) which deny the patentability of an applicant's claim, or (3) which deny his right to make the claim, or (4) which allege that counts of the issue have different meanings in the cases of different parties *should contain a full statement of the grounds relied upon*, and should, if possible, be made not later than the thirtieth day after the statements of the parties have been received and approved. Such motions, and all motions of a similar character, should be accompanied by a motion to transmit the same to the primary examiner, and such motion to transmit should be noticed for hearing upon a day certain before the examiner of interferences. When in proper form the motion presented will be transmitted by the examiner of interferences, with the files and papers, to the proper primary examiner for his determination, who will thereupon fix a day certain when the said motion will be heard before him upon the merits, and give notice thereof to all the parties. If a stay of proceedings be desired, a motion therefor should accompany the motion for transmission.

Statement of grounds.

Motion to transmit.

When the motion has been decided by the primary examiner the files and papers, with

his decision, will be sent at once to the docket clerk.

Motions to shift the burden of proof should be made before, and will be determined by, the examiner of interferences. No appeal from the decision on such motions will be entertained, but the matter may be reviewed on appeal from the final decision upon the question of priority of invention.

Motions to effect stay of proceedings.

123. All lawful motions, except those mention in Rule 122, will be made before and determined by the tribunal having jurisdiction at the time. The filing of motions will not operate as a stay of proceedings in any case. To effect this, motion should be made before the tribunal having jurisdiction of the interference, who will, sufficient grounds appearing therefor, order a suspension of the interference pending the determination of such motion.

Appeal to Commissioner and examiners-in-chief.

124.[a] Where, on motion for dissolution, the primary examiner renders an adverse decision upon the merits of a party's case, as when he holds that the issue is not patentable or that a party has no right to make a claim or that the counts of the issue have different meanings in the cases of different parties, he shall at once reject such claims as may be affected and shall set a time for reconsideration; after reconsideration, if he adheres to his original conclusion, he will make the previous rejection final and fix a limit of appeal. The appeal must go to the examiners-in-chief in the first instance and will be heard *inter partes*. If the appeal is

a. For Rule 124 as amended, see *post*, p. 1476.

not taken within the time fixed, it will not be entertained except by permission of the Commission.

No appeal will be permitted from a decision rendered upon motion for dissolution affirming the patentability of a claim or the applicant's right to make the same or the identity of meaning of counts in the cases of different parties.

Appeals may be taken directly to the Commissioner, except in the cases provided for in the preceding portions of this rule, from decisions on such motions as, in his judgment, should be appealable.

Determination.

125. After the interference is finally declared, it will not, except as herein otherwise provided, be determined without judgment of priority founded either upon the testimony, or upon a written concession of priority by one of the parties, signed by the inventor himself (and by the assignee, if any), or upon a written declaration of abandonment of the invention.

Concession of priority.

Statutory bar suggested.

126. The examiner of interferences or the examiners-in-chief may, either before or in their decision on the question of priority, direct the attention of the Commissioner to any matter not relating to priority which may have come to their notice, and which, in their opinion, establishes the fact that no interference exists, or that there has been irregularity in declaring the same (Rule 122), or which amounts to a statutory bar to the grant of a patent to either of the parties for the claim or claims in interference.

How determined.

The Commissioner may, before judgment on

the question of priority, suspend the interference and remand the case to the primary examiner for his consideration of the matters to which attention has been directed. From the decision of the examiner appeal shall not be so remanded, the primary examiner will, after judgment, consider any matter affecting the rights of either party to a patent which may have been called to his attention, unless the same shall have been previously disposed of by the Commissioner.

Second interference.

127. A second interference will not be declared upon a new application for the same invention filed by either party.

Suspension of interference for consideration of new references.

128. If, during the pendency of an interference, a reference be found, the interference may be suspended at the request of the primary examiner until the final determination of the pertinency and effect of the reference, and the interference shall then be dissolved or continued as the result of such determination. The consideration of such reference shall be *inter partes*.

For addition of new parties.

129. If, during the pendency of an interference, another case appear, claiming substantially the subject-matter in issue, the primary examiner shall request the suspension of the interference for the purpose of adding said case. Such suspension will be granted as a matter of course by the examiner of interferences if no testimony has been taken. If, however, any testimony has been taken, a notice for the proposed new party, disclosing the issue in interference and the names and addresses of the inter-

ferants and of their attorneys, and notices for the interferants disclosing the name and address of the said party and his attorney, shall be prepared by the primary examiner and forwarded to the examiner of interferences, who shall mail said notices and set a time of hearing on the question of the admission of the new party. If the examiner of interferences be of the opinion that the interference should be suspended and the new party added, he shall prescribe the terms for such suspension. The decision of the examiner of interferences as to the addition of a party shall be final.

Nonpatentability at final hearing.

130. Where the patentability of a claim to an opponent is material to the right of a party to a patent, said party may urge the nonpatentability of the claim to his opponent at final hearing before the examiner of interferences as a basis for the decision upon priority of invention, and upon appeals from such decision. A party shall not be entitled to take such step, however, unless he has duly presented and prosecuted a motion under Rule 122 for dissolution upon the ground in question, or shows good reason why such a motion was not presented and prosecuted.

Prosecution or defense by assignee.

131. When, on motion duly made and upon satisfactory proof, it shall be shown that, by reason of the inability or refusal of the inventor to prosecute or defend an interference, or from other cause, the ends of justice require that an assignee of an undivided interest in the invention should be permit-

ted to prosecute or defend the same, *it may be so ordered.*

Claims of defeated parties.

132. Whenever an award of priority has been rendered in an interference proceeding by any tribunal and the limit of appeal from such decision has expired, and whenever an interference has been terminated by reason of the written concession, signed by the applicant in person, of priority of invention in favor of his opponent or opponents, the primary examiner shall advise the defeated or unsuccessful party or parties to the interference that their claim or claims which were so involved in the issue stand finally rejected.

APPEALS.

Rev. Stat., sec. 4909.
Appeal to examiners-in-chief.

133. Every applicant for a patent, any of the claims of whose application have been twice rejected for the same reasons, upon grounds involving the merits of the invention, such as lack of invention, novelty, or utility, or on the ground of abandonment, public use or sale, inoperativeness of invention, aggregation of elements, incomplete combination of elements, or, when amended, for want of identity with the invention originally disclosed, or because the amendment involves a departure from the invention originally presented; and every applicant who has been required to divide his application, and every applicant for the reissue of a patent whose claims have been twice rejected for any of the reasons above enumerated, or on the ground that the original patent is not inoperative or invalid,

or if so inoperative or invalid that the errors which rendered it so did not arise from inadvertence, accident, or mistake, may, upon payment of a fee of $10, appeal from the decision of the primary examiner to the examiners-in-chief. The appeal must set forth in writing the points of the decision upon which it is taken, and must be signed by the applicant or his duly authorized attorney or agent.

Prerequisites.

134. There must have been two rejections of the claims as originally filed, or, if amended in matter of substance, of the amended claims, and all the claims must have been passed upon, and except in cases of division all preliminary and intermediate questions relating to matters not affecting the merits of the invention settled, before the case can be appealed to the examiners-in-chief.

Examiner's statement of grounds of decision.

135. Upon the filing of the appeal the same shall be submitted to the primary examiner, who, if he find it to be regular in form, and to relate to an appealable action, shall, within five days from the filing thereof, furnish the examiners-in-chief with a written statement of the grounds of his decision on all the points involved in the appeal, with copies of the rejected claims and with references applicable thereto. The examiner shall at the time of making such statement furnish a copy of the same to the appellant. If the primary examiner shall decide that the appeal is not regular in form or does not relate to an appealable action, a petition from such decision may be

taken directly to the Commissioner, as provided in Rule 145.

Brief, when to be filed.

136. The appellant shall, before the day of hearing, file a brief of the authorities and arguments on which he will rely to maintain his appeal.

Oral hearing before examiners-in-chief.

137. If the appellant desire to be heard orally before the examiners-in-chief, he will so indicate when he files his appeal; a day of hearing will then be fixed, and due notice of the same given him.

Right to open and close.

138. In contested cases the appellant shall have the right to make the opening and closing arguments, unless it shall be otherwise ordered by the tribunal having jurisdiction of the case.

Rev. Stat., secs. 482 and 4909.

Decision of examiners-in-chief.

139. (*a*) The examiners-in-chief in their decision will affirm or reverse the decision of the primary examiner only on the points on which appeal shall have been taken. (See Rule 133.) Should they discover any apparent grounds not involved in the appeal for granting or refusing letters patent in the form claimed, or any other form, they will annex to their decision a statement to that effect, with such recommendation as they shall deem proper.

Discovery of grounds for granting or refusing patent not involved in appeal.

Appeal from primary examiner.

(*b*) From an adverse judgment of the primary examiner on points embraced in the recommendation annexed to the decision, appeal may be taken on questions involving the merits to the board of examiners-in-chief and on other questions to the Commissioner as in other cases.

Amendment referred to primary examiner.

(*c*) The Commissioner may, when an appeal from the decision of the examiners-in-

chief is taken to him, remand the case to the primary examiner, either before or after final judgment, for consideration of any amendment or action which may be based on the recommendation annexed to the decision of the examiners-in-chief.

Amendment based on discovery of Commissioner referred to primary examiner.

(*d*) If the Commissioner, in reviewing the decision of the examiners-in-chief, discovers any apparent grounds for granting or refusing letters patent not involved in the appeal, he will, before or after final judgment, and whenever in his opinion substantial justice shall require it, give reasonable notice thereof to the parties; and if any amendment or action based thereon be propsed, he will remand the case to the primary examiner for consideration.

Appeals.

(*e*) From the decisions of the primary examiner, in cases remanded as herein provided, appeal will lie to the board of examiners-in-chief, or directly to the Commissioner, as in other cases.

Rev. Stat., sec. 4910.

Appeal from examiners-in-chief to Commissioner.

140. From the adverse decision of the board of examiners-in-chief appeal may be taken to the Commissioner in person, upon payment of the fee of $20 required by law.

Application remanded for reconsideration on affidavits.

141. Affidavits received after the case has been appealed will not be admitted without remanding the application to the primary examiner for reconsideration, but the appellate tribunals may in their discretion refuse to remand the case and proceed with the same without consideration of the affidavits.

Rehearings.

142. Cases which have been heard and decided by the Commissioner on appeal will

not be reopened except by his order; cases which have been decided by the examiners-in-chief will not be reheard by them, when no longer pending before them, without the written authority of the Commissioner; and cases which have been decided by either the Commissioner or the examiners-in-chief will not be reopened by the primary examiner without like authority, and then only for the consideration of matters not already adjudicated upon, sufficient cause being shown. (See Rule 68.)

Jurisdiction.

143. Contested cases will be regarded as pending before a tribunal until the limit of appeal, which must be fixed, has expired, or until some action has been had which waives the appeal or carries into effect the decision from which appeal might have been taken.

Ex parte cases decided by an appellate tribunal will, after decision, be remanded at once to the primary examiner, subject to the applicant's right of appeal, for such action as will carry into effect the decision, or for such further action as the applicant is entitled to demand.

Reconsideration of cases decided by former Commissioner.

144. Cases which have been deliberately decided by one Commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

Petition to Commissioner, without fee.

145. Upon receiving a petition stating concisely and clearly any proper question which has been twice acted upon by the examiner, and which does not involve the merits of the invention claimed, the rejection of a claim or a requirement for division, and

also stating the facts involved and the point or points to be reviewed, an order will be made fixing a time for hearing such petition by the Commissioner, and directing the examiner to furnish a written statement of the grounds of his decision upon the matters averred in such petition within five days after being notified of the order fixing the day of hearing. The examiner shall at the time of making such statement furnish a copy thereof to the petitioner. No fee is required for such a petition.

Report of examiner.

Rev. Stat., secs. 4904, 4909, 4910, 4911.
Sec. 9, act of Feb. 9, 1893.

146. In interference cases parties have the same remedy by appeal to the examiners-in-chief, to the Commissioner, and to the court of appeals of the District of Columbia as in *ex parte* cases.

Briefs in appealed cases.

147. Appeals in interference cases must be accompanied by brief statements of the reasons therefor. Parties will be required to file six copies of printed briefs of their arguments, the appellant five days before the hearing and the appellee one day.

Rev. Stat., sec. 4911; sec. 9, act of Feb. 9, 1893.
Appeal to court.

148. From the adverse decision of the Commissioner upon the claims of an application and in interference cases an appeal may be taken to the court of appeals of the District of Columbia in the manner prescribed by the rules of that court. (See Appendix, pp. 93-95.)

Rev. Stat., sec. 4912; sec. 9, act of Feb. 9, 1893.
Notice to Commissioner of appeal to court.

149. When an appeal is taken to the court of appeals of the District of Columbia, the appellant will give notice thereof to the Commissioner, and file in the Patent Office, within forty days, exclusive of Sundays and holidays, *but including Saturday half holi-*

days, from the date of the decision appealed from, his reasons of appeal specifically set forth in writing.

Pro forma proceedings in Patent Office.

150. *Pro forma* proceedings will not be had in the Patent Office for the purpose of securing to applicants an appeal to the court of appeals of the District of Columbia.

(For forms of appeals and rules of the court of appeals of the District of Columbia respecting appeals, see this Appendix, pp. 1263, 1461, 1463.

HEARINGS AND INTERVIEWS.

Hour of Hearing.

151[a]. Hearings will be had by the Commissioner at 10 o'clock a. m., and by the board of examiners-in-chief at 1 o'clock p. m., and by the examiner of interferences at 11 o'clock a. m., on the day appointed, unless some other hour be specially designated. If either party in a contested case, or the appellant in an *ex parte* case, appears at the proper time, he will be heard. After the day of hearing, a contested case will not be taken up for oral argument except by consent of all parties. If the engagements of the tribunal having jurisdiction are such as to prevent the case from being taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each party in contested cases, and to one-half hour in other cases. After a contested case has been argued,

a. For Rule 151 as amended, see *post*, p. 1476.

nothing further relating thereto will be heard unless upon request of the tribunal having jurisdiction of the case; and all interviews for this purpose with parties in interest or their attorneys will be invariably denied.

Interviews with examiners.

152. Interviews with examiners concerning applications and other matters pending before the office must be had in the examiners' rooms at such times, within office hours, as the respective examiners may designate; in the absence of the primary examiners, with the assistant in charge. Interviews will not be permitted at any other time or place without the written authority of the Commissioner. Interviews for the discussion of pending applications will not be had prior to the first official action thereon.

MOTIONS.

Notice.

153. In contested cases reasonable notice of all motions, and copies of motion papers and affidavits, must be served, as provided

Proof of service.

in Rule 154 (2). Proof of such service must be made before the motion will be entertained by the office.

Jurisdiction.

Motions will not be heard in the absence of either party except upon default after due notice. Motions will be heard in the first instance by the officer or tribunal before whom the particular case may be pending.

Right to open and close.

In original hearings on motions the moving parties shall have the right to make the opening and closing arguments.

Equity practice in cases to which rules do not apply.

In contested cases the practice on points to which the rules shall not be appli-

cable will conform, as near as possible, to that of the United States courts in equity proceedings.

TESTIMONY IN INTERFERENCE AND OTHER CONTESTED CASES.

154. The following rules have been established for taking and transmitting testimony in interference and other contested cases: Rev. Stat., sec. 4905.

(1) Before the depositions of witnesses are taken by either party due notice shall be given to the opposing party, as hereinafter provided, of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and of the names and residences of the witnesses to be examined, and the opposing party shall have full opportunity, either in person or by attorney, to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice. Neither party shall take testimony in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from Notice. Waiver. Reasonable time for travel.

one place of examination to the other can not he had.

Service of notice.

(2). The notice for taking testimony or for motions must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, upon the adverse party. Reasonable time must be given therein for such adverse party to reach the place of examination. Service of such notice may be made in either of the following ways: (1) By delivering a copy of the notice to the adverse party or his attorney; (2) by leaving a copy at the usual place of business of the adverse party or his attorney with some one in his employment; (3) when such adverse party or his attorney has no usual place of business, by leaving a copy at his residence, with a member of his family over fourteen years of age and of discretion; (4) transmission by registered letter; (5) by express. Whenever it shall be satisfactorily shown to the Commissioner that neither of the above modes of obtaining or reserving notice is practicable, the notice may be published in the Official Gazette. Such notice shall, with sworn proof of the fact, time, and mode of service thereof, be attached to

the deposition or depositions whether the opposing party shall have cross-examined or not.

Official certificate.

(3) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition shall be taken. The deposition shall be carefully read over by the witness, or by the officer to him, and shall then be subscribed by the witness in the presence of the officer. The officer shall annex to the deposition his certificate showing (1) the due administration of the oath by the officer to the witness before the commencement of his testimony; (2) the name of the person by whom the testimony was written out, and the fact, if not written by the officer, it was written in his presence; (3) the presence or absence of the adverse party; (4) the place, day, and hour of commencing and taking the deposition; (5) the reading by, or to, each witness of his deposition before he signs the same; and (6) the fact that the officer was not connected by blood or marriage with either of the parties, nor interested, directly or indirectly, in the matter in controversy. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. He shall then, without delay, securely seal up all the evidence, notices,

Depositions to be sealed up, addressed, and forwarded to Commissioner.

and paper exhibits, inscribe upon the envelope a certificate giving the title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall be authenticated by the officer and transmitted in a separate package, marked and addressed as above provided.

Exhibits.

* * * * * *

Motion to extend time for taking testimony.

(4) If a party shall be unable to take any testimony within the time limited, and desires an extension for such purpose, he must file a motion, accompanied by a statement under oath setting forth specifically the reason why such testimony has not been taken, and distinctly averring that such motion is made in good faith, and not for the purpose of delay. If either party shall be unable to procure the testimony of a witness or witnesses within the time limited, and desires an extension for such purpose, he must file a motion, accompanied by a statement under oath setting forth the cause of such inability, the name or names of such witness or witnesses, the facts expected to be proved by such witness or witnesses, the steps which have been taken to procure such testimony, and the dates on

which efforts have been made to procure it. (See Rule 153.)

(5) When a party relies upon a caveat to establish the date of his invention, the caveat itself, or a certified copy thereof, must be filed in evidence, with due notice to the opposite party.

Rev. Stat., sec. 892. Caveat as evidence.

(6) Upon notice given to the opposite party before the closing of the testimony, any official record, and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be used as evidence at the hearing.

Official records and special matter offered in evidence.

(7) All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

Deposition to be filed in Patent Office.

155. The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The testimony must be written upon legal cap or foolscap paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet.

Formalities.

156. The testimony will be taken in answer to interrogatories, with the questions

Formalities.

and answers committed to writing in their regular order by the officer, or, in his presence, by some person not interested in the case, either as a party thereto or as attorney. But with the written consent of the parties the testimony may be taken stenographically, and the deposition may be written out by other persons in the presence of the officer.

Testimony taken stenographically.

Officer competent to take testimony.

Where testimony is taken stenographically, a long-hand or typewritten copy shall be read to the witness, or read over by him, as soon as it can be made, and shall be signed by him as provided in paragraph 3 of Rule 154. No officer who is connected by blood or marriage with either of the parties, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise, is competent to take depositions, unless with the written consent of all the parties.

Testimony taken may be used in in one interference another.

157. *Upon motion duly made and granted (see Rule 153)* testimony taken in an interference proceeding may be used in any other or subsequent interference proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall witnesses whose depositions have been taken, and to take other testimony in rebuttal of the depositions.

Rev. Stat., sec. 4905.

Testimony taken in foreign countries.

158. *Upon motion duly made and granted (see Rule 153)* testimony may be taken in foreign countries, upon complying with the following requirements:

Motion.

(1) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

Motion.

(2) It must appear that the testimony desired is material and competent, and that it can not be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

Interrogatories. Cross-interrogatories.

(3) Upon the granting of such motion, a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness, and serve a copy of the same upon each adverse party, who may, within a designated time, file, in duplicate, cross-interrogatories. Objections to any of the interrogatories or cross-interrogatories may be filed

Objections.

at any time before the depositions are taken, and such objections will be considered and determined upon the hearing of the case.

Papers sent to proper officer.

(4) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the Commissioner will cause them to be forwarded to the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing, and transmit the same, under his official seal and signature, to the Commissioner of Patents, with the certificate prescribed in Rule 154 (3).

Stipulations.

(5) By stipulation of the parties the requirements of paragraph 3 as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties or their agents.

Weight of testimony taken in foreign countries.

(6) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state where it shall be taken, it will not stand on the same footing in the Patent Office as tes-

timony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

Evidence on hearing.

159. Evidence touching the matter at issue will not be considered on the hearing which shall not have been taken and filed in compliance with these rules. But notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof to the office, and also to the opposite party, informing him at the same time that, unless it should be removed, he (the objector) should urge his objection at the hearing. This rule is not to be so construed as to modify established rules of evidence, which will be applied strictly in all practice before the office.

Formal objections to evidence.

Rules of evidence.

Rev. Stat., sec. 4906.

Subpœnas.

160. The law requires the clerks of the various courts of the United States to issue subpœnas to secure the attendance of witnesses whose depositions are desired as evidence in contested cases in the Patent Office.

Inspection.

161. After testimony is filed in the office it may be inspected by any party to the case, but it can not be withdrawn for the purpose of printing. It may be printed by some one specially designated by the office for that purpose, under proper restrictions.

Printing.

Copies of testimony.

162.[a] Thirty-one or more printed copies of the testimony must be furnished, five for the use of the office, one for each of the opposing parties, and twenty-five for the court of appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the twenty-five copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. These copies must be filed not less than ten days before the day of hearing. They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

Printing dispensed with.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case typewritten copies must be furnished—one for the office and one for each adverse party. Printing of the testimony can not be dispensed with upon the stipulation of the parties.

Briefs, size and time of filing.

163. Briefs in all contested cases shall be submitted in printed form, and shall be of the same size and the same as to page and print as the printed copies of testimony. But in case satisfactory reason therefor is shown to the office, typewritten briefs may be submitted. Briefs shall be filed three days before the hearing, except

a. For Rule 162 as amended, see *post*, p. 1477.

as provided in Rule 147. By consent of the parties they may be filed later, but in any case must be filed before the hearing. If either party fail to comply with this regulation, no extension of time will be granted for the purpose, except upon consent of the adverse parties.

ISSUE.

Notice of allowance.

Rev. Stat., secs. 4885, 4893, 4897.

164. If, on examination, it shall appear that the applicant is justly entitled to a patent under the law, a notice of allowance will be sent him or his attorney, calling for the payment of the final fee within six months from the date of such notice of allowance, upon the receipt of which within the time fixed by law the patent will be prepared for issue. (See Rules 206, 207.)

Withdrawal from issue.

New notice.

165. After notice of the allowance of an application is given, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the office a new notice of allowance will be given. When the final fee has been paid upon an application for letters patent, and the case has received its date and number, it will not be withdrawn or suspended from issue on account of any mistake or change of purpose of the applicant or his attorney, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the office, or because of fraud, or illegality in the application, or for interference. (See Rule 78.)

Withdrawal from issue will not stay abandonment.

166. Whenever the Commissioner shall direct the withdrawal of an application from issue on request of an applicant for reasons not prohibited by Rule 165, such withdrawal shall not operate to stay the period of one year running against the application, which begins to attach from the date of the notice of allowance.

DATE, DURATION, AND FORM OF PATENTS.

Rev. Stat., secs. 4885, 4935.
Date of patent

167. Every patent will bear date as of a day not later than six months from the time the application was passed and allowed and notice thereof was mailed to the applicant or his attorney, if within that

Final fee.

period the final fee be paid to the Commissioner of Patents, or if it be paid to the Treasurer or any of the assistant treasurers or designated depositaries of the United States, and the certificate promptly forwarded to the Commissioner of Patents; and if the final fee be not paid within that

Patent withheld.

period, the patent will be withheld. (See Rule 175.)

Not antedated.

A patent will not be antedated.

Rev. Stat., sec. 4884.

168. Every patent will contain a short title of the invention or discovery indicating its nature and object, and a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right

Title of invention.
Grant.
Term.

to make, use, and vend the invention or discovery throughout the United States and the Territories thereof. The duration of

Term of design patent.

a design patent may be for the term of three and a half, seven, or fourteen years,

as provided in Rule 80. A copy of the specifications and drawings will be annexed to the patent and form part thereof.

DELIVERY.

Delivery of patent.

169. The patent will be delivered or mailed on the day of its date to the attorney of record, if there be one; if not, to the patentee; or, if the attorney so request, to the patentee or assignee of an interest therein.

CORRECTION OF ERRORS IN LETTERS PATENT.

Correction of mistakes incurred through fault of the office.

170. Whenever a mistake, incurred through the fault of the office, is clearly disclosed by the records or files of the office, a certificate, stating the fact and nature of such mistake, signed by the Commissioner of Patents, and sealed with the seal of the Patent Office, will, at the request of the patentee or his assignee, be indorsed without charge upon the letters patent, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification and drawing.

Reissue.

Whenever a mistake, incurred through the fault of the office, constitutes a sufficient legal ground for a reissue, such reissue will be made, for the correction of such mistake only, without charge of office fees, at the request of the patentee.

Not incurred through fault of the office.

Mistakes not incurred through the fault of the office, and not affording legal grounds for reissues, will not be corrected after the delivery of the letters patent to the patentee or his agent.

Changes or corrections will not be made in letters patent after the delivery thereof to the patentee or his attorney, except as above provided.

ABANDONED, FORFEITED, REVIVED, AND RENEWED APPLICATIONS.

Rev. Stat., sec. 4894.
Abandoned application.

171. An abandoned application is one which has not been completed and prepared for examination within one year after the filing of the petition, or which the applicant has failed to prosecute within one year after any action therein of which notice has been duly given (see Rules 31 and 77), or which the applicant has expressly abandoned by filing in the office a written declaration of abandonment, signed by himself and assignee, if any, identifying his application by title of invention, serial number, and date of filing. (See Rule 60.)

Prosecution.

Prosecution of an application to save it from abandonment must include such proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment under section 4894 of the Revised Statutes.

Rev. Stat., sec. 4894.
Revival of application.

172. Before an application abandoned by failure to complete or prosecute can be revived as a pending application it must be shown to the satisfaction of the Commissioner that the delay in the prosecution of the same was unavoidable.

New application.

173. When a new application is filed in place of an abandoned or rejected application, a new petition, specification, oath, drawing, and fee will be required; but the old model, if suitable, may be used.

Forfeited or withheld application.

174. A forfeited application is one upon which a patent has been withheld for failure to pay the final fee within the prescribed time. (See Rule 167.)

Rev. Stat., sec. 4897.
New application after non-payment of final fee.

175. When the patent has been withheld by reason of nonpayment of the final fee, any person, whether inventor or assignee, who has an interest in the invention for which such patent was ordered to issue may file a renewal of the application for the same invention; but such second application must be made within two years after the allowance if the original application. Upon the hearing of such new application abandonment will be considered as a question of fact.

Renewal.
Old application papers may be used.

176. In such renewal the oath, petition, specification, drawing, and model of the original application may be used for the second application; but a new fee will be required. The second application will not be regarded for all purposes as a continuation of the original one, but must bear date from the time of renewal and be subject to examination like the original application.

Not cited as references.

177. Forfeited and abandoned applications will not be cited as references.

No notice of subsequent applications.

178. Notice of the filing of subsequent applications will not be given to applicants while their cases remain forfeited.

Copies.

179. Copies of the files of forfeited and abandoned applications may be furnished when ordered by the Commissioner. The requests for such copies must be presented in the form of a petition properly verified as to all matters not appearing of record in the Patent Office. (See Form 35.)

EXTENSIONS.

Rev. Stat., sec. 4924.

180. Patents can not be extended except by act of Congress.

DISCLAIMERS.

Rev. Stat., secs. 4917, 4922. Grounds, form, and effect.

181. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed as his invention or discovery more than he had a right to claim as new, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the fee required by law (ten dollars), make disclaimer of such parts of the thing patented as he or they shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent if his interest in such patent. Such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office; and it shall thereafter be considered as part of the original specification to the extent if the interest possessed by

the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of filing the same, except as to the question of unreasonable neglect or delay in filing it.

Different kinds of disclaimers.

182. Such disclaimer must be distinguished from those which are embodied in original or reissue applications, as first filed or subsequently amended, referring to matter shown or described, but to which the disclaimant does not choose to claim title, and also from those made to avoid the continuance of an interference. Such disclaimers must be signed by the applicant in person and must be duly witnessed, and require no fee. (See Rule 107. For forms of disclaimers, see Appendix, Forms 28 and 29.)

CAVEATS.

183.

184. Obsolete; law relating to caveats repealed by act of July 1, 1910.

185.

186.

187.

188.

189.

190.

Obsolete; law relating to caveats repealed by act of July 1, 1910.

191.

192.

193.

194.

ASSIGNMENTS.

Rev. Stat., sec. 4898.
Assignability of patents.

195. Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under the patent to the whole or any specified part of the United States.

In whom may be vested.

196. Interest in patents may be vested in assignees, in grantees of exclusive sectional rights, in mortgages, and in licenses.

Assignees.

(1) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

Grantees.

(2) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.

Mortgages.

(3) A mortgage must be written or printed and be duly signed.

Licenses.

(4) A licensee takes an interest less than or different from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed.

Rev. Stat., sec. 4898.
Recording.

197. An assignment, grant, or conveyance of a patent will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice unless recorded in the Patent Office within three months from the date thereof.

Act March 3, 1897.
Acknowledgment.

If any such assignment, grant, or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any commissioner of the United States circuit court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section seventeen hundred and fifty of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be *prima facie* evidence of the execution of such assignment, or conveyance.

Prima facie evidence.

Recording.

198. No instrument will be recorded which is not in the English language and which does not, in the judgment of the Commissioner, amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates. Such instrument should identify the patent by date and number; or, if the invention be unpatented, the name of the inventor, the serial number, and date of the application should be stated.

Conditional assignments.

199. Assignments which are made conditional on the performance of certain stipulations, as the payment of money if recorded in the office, are regarded as abso-

lute assignments until canceled with the written consent of both parties or by the decree of a competent court. The office has no means for determining whether such conditions have been fulfilled.

Issue to assignee.

200. In every case where it is desired that the patent shall issue to an assignee, the assignment must be recorded in the Patent Office at a date not later than the day on which the final fee is paid. (See Rule 26.) The date of the record is the date of the receipt of the assignment at the office.

Date of record.

Receipt, recording, and return of assignments.

201. The receipt of assignments is generally acknowledged by the office. They are recorded in regular order as promptly as possible, and then transmitted to the persons entitled to them. (For form of assignment, see Forms 38-43, pp. 1443, 1451.)

OFFICE FEES.

Rev. Stat., sec. 4893.

202. Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance—that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

Payable in advance.

Schedule.

203[a]. The following is the schedule of fees and of prices of publications of the Patent Office:

On filing each original application for a patent, except in design cases	$15 00
On issuing each original patent, except in design cases	20 00
In design:	
For three years and six months	10 00
For seven years	15 00
For fourteen years	30 00

a. For Rule 203 as amendded, see *post*, p. 1478.

On every application or the reissue of a patent	30 00
On filing each disclaimer	10 00
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For 1869-70-71, one volume, full law binding	2 00
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Orders for copies.

204. An order for a copy of an assignment must give the liber and page of the record, as well as the name of the inventor;

otherwise an extra charge will be made for the time consumed in making any search for such assignment.

Copies and tracings made by office only.

205. Persons will not be allowed to make copies or tracings from the files or records of the office. Such copies will be furnished, when ordered, at the rates already specified.

Rev. Stat., sec. 4935.
Mode of payment.

206. All payments of money required for office fees must be made in specie, Treasury notes, national-bank notes, certificates of deposit, postoffice money orders, or certified checks. Money orders and checks should be made payable to the "Commissioner of Patents." Payment may also be made to the Treasurer, or to any of the assistant treasurers of the United States, or to any of the depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor. This receipt or certificate of deposit must be filed in the Patent Office within ten days after the money is paid. Money sent by mail to the Patent Office will be at the risk of the sender. Letters containing money should be registered. In no case should money be sent with models.

Weekly issue and final fees.

207. The weekly issue closes on Thursday, and the patents of that issue bear date as of the *fourth* Tuesday thereafter. If the final fee in any application is not paid on or before Thursday, the patent will not go to issue until the following week.

REPAYMENT OF MONEY.

Rev. Stat., sec. 4936.
Money paid by mistake refunded.

208. Money paid by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for a patent or for the registration of a trade-mark, or to withdraw an appeal, will not entitle a party to demand such a return.

PUBLICATIONS.

Rev. Stat., sec. 489.
Official Gazette. Contents.

209. The Official Gazette, a weekly publication which has been issued since 1872, takes the place of the old Patent Office Report. It contains the claims of all patents issued, including reissues, with portions of the drawings selected to illustrate the inventions claimed. It also contains decisions rendered by the courts in patent cases and by the Commissioner of Patents, and other special matters of interest to inventors.

Subscription. Public libraries.

The Gazette is furnished to subscribers at the rate of $5 per annum. When sent abroad an additional charge is made for the payment of postage. (*See Rule* 203.) Representatives and Senators are each entitled to a copy, and each is entitled to designate eight public libraries to which the Gazette will be sent without charge. Single copies are furnished for ten cents each.

Single copies.

Annual index.

An index is published annually, which is sent to all subscribers and designated libraries without additional cost.

Rev. Stat., sec. 490.
Monthly volumes.
Authentication.

Printed volumes are issued monthly, containing the entire specifications and drawings of all patents issued during the previous month. These are authenticated by the seal of the office, and may be used as evidence throughout the United States. One copy is deposited in the Library of Congress and in each State and Territorial library, and one copy in the custody of the clerk of each United States district court, for general reference.

Depositaries.

LIBRARY REGULATIONS.

Rev. Stat., sec. 480.
Removal of books.

210. Officers of the bureau and members of the examining corps only are allowed to enter the alcoves or take books from the scientific library.

Registration and return.

Books taken from this library must be entered in a register kept for the purpose, and returned on the call of the librarian. They must not be taken from the building except by permission of the Commissioner.

Loss or injury.

Any book lost or defaced must be replaced by a new copy.

Use by the public.

Patentees and others doing business with the office can examine the books only in the library hall.

Translations.

Translations will be made only for official use.

Copies and tracings.

Copies or tracings from works in the library will be furnished by the office at the usual rates.

AMENDMENTS OF THE RULES.

211. All amendments of the foregoing rules will be published in the Official Gazette.

QUESTIONS NOT SPECIFICALLY PROVIDED FOR.

212. All cases not specifically defined and provided for in these rules will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

213. Questions arising in applications filed prior to January 1, 1898, where these rules do not apply, shall be governed by the rules of June 18, 1897.

(Signed) E. B. MOORE,
Commissioner of Patents.

DEPARTMENT OF THE INTERIOR.

Approved, to take effect July 17, 1907.

GEORGE W. WOODRUFF,
Acting Secretary.

APPENDIX OF FORMS.

(Patent Office.)

PETITIONS.

1. By a sole inventor.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that letters patent may be granted to him for the improvement in ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

2. By joint inventors.

To the Commissioner of Patents:

Your petitioners, ... and .....,' citizens of the United States and residents, respectively, of ....., in the county of ..... and State of ....., and of ....., in the county of ..... and State of ..... (or subjects, etc.), whose post-office addresses are, respectively, ... and ....., pray that letters patent may be granted to them, as joint inventors, for the improvement in ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

.....

3. BY AN INVENTOR, FOR HIMSELF AND ASSIGNEE.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that letters patent may be granted to himself and ....., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... whose post-office address is ....., as his assignee, for the improvement in ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

4. PETITION WITH POWER OF ATTORNEY.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that letters patent may be granted to him for improvement in ....., set forth in the annexed specification; and he hereby appoints ....., of ....., State of ....., his attorney, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

5. BY AN ADMINISTRATOR.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of .....

and State of ..... (or subject, etc.), whose post-office address is ....., administrator of the estate of ....., late a citizen of ....., deceased (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said ..... (improvement in .....), set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....
Administrator, etc.

6. BY AN EXECUTOR.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., executor of the last will and testament of ....., late a citizen of ....., deceased (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said ..... (improvement in .....), set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....
Executor, etc.

7. BY A GUARDIAN OF AN INSANE PERSON.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office

address is ....., and who has been appointed guardian (or conservator or representative) of ..... (as by reference to the duly certified copy of the order of court, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said ..... (improvement in .....), set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19 ..

.....,

Guardian, etc.

8. FOR A REISSUE (BY THE INVENTOR).

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that he may be allowed to surrender the letters patent for an improvement in ....., granted to him ....., 19 .., whereof he is now sole owner (or whereof ....., on whose behalf and with whose assent this application is made, is now sole owner, by assignment), and that letters patent may be reissued to him (or the said .....) for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

[Assent of assignee to reissue.]

The undersigned, assignee of the entire (or of an undivided) interest in the above-mentioned letters patent, hereby assents to the accompanying application.

.....

9. FOR A REISSUE (BY THE ASSIGNEE).

[To be used only when the inventor is dead.]

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that he may be allowed to surrender the letters patent for an improvement in ....., No. ....., granted ....., 19.., to ....., now deceased, whereof he is now owner, by assignment of the entire interest, and that the letters patent may be reissued to him for the same invention, upon the annexed amended specification. With this petition is filed an abstract of title (or an order for making and filing the same, etc.),

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

10. FOR LETTERS PATENT FOR A DESIGN.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., prays that letters patent may be granted to him for the term of three and one-half years (or seven years or fourteen years) for the new and original design for ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

11. FOR A CAVEAT.

This form is obsolete; law relating to caveats repealed by act of July 1, 1910.

THE SIZE OF THE SHEET MUST BE EXACTLY
10 x 15 INCHES. SEE RULE 52.(2).

THIS SPACE MUST BE THIRTEEN INCHES

Fig. 1.

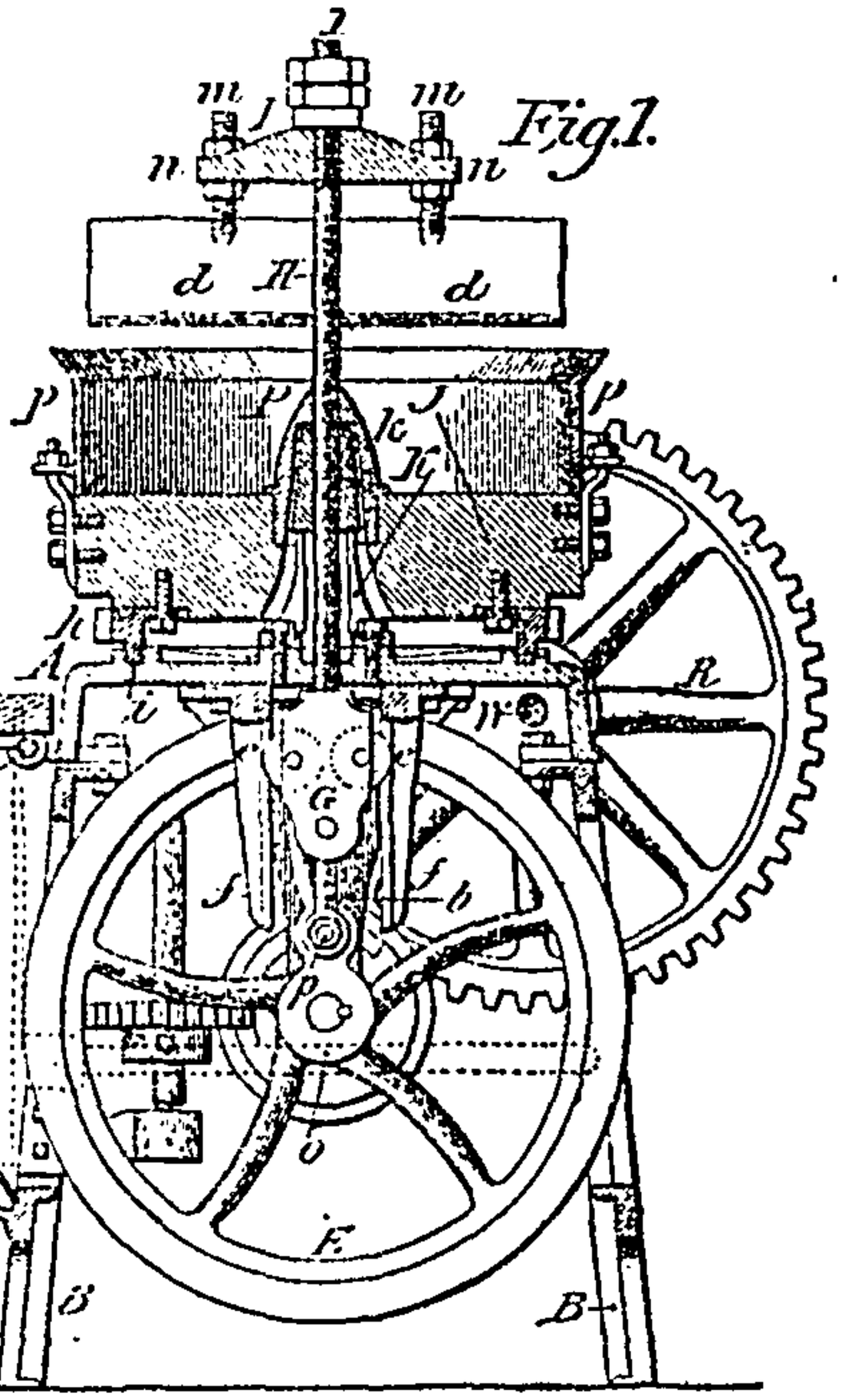


Fig. 2.

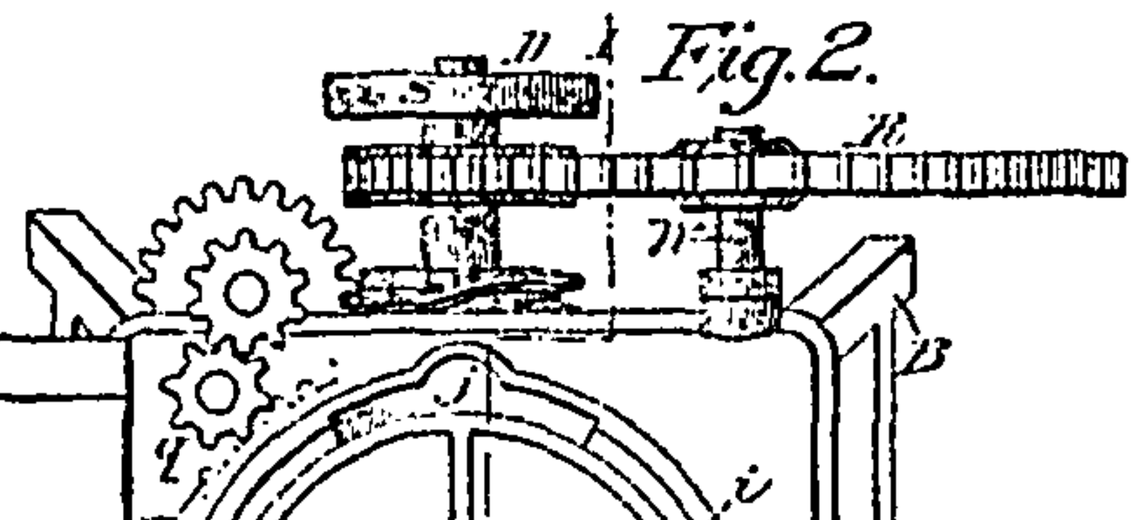


Fig. 3.

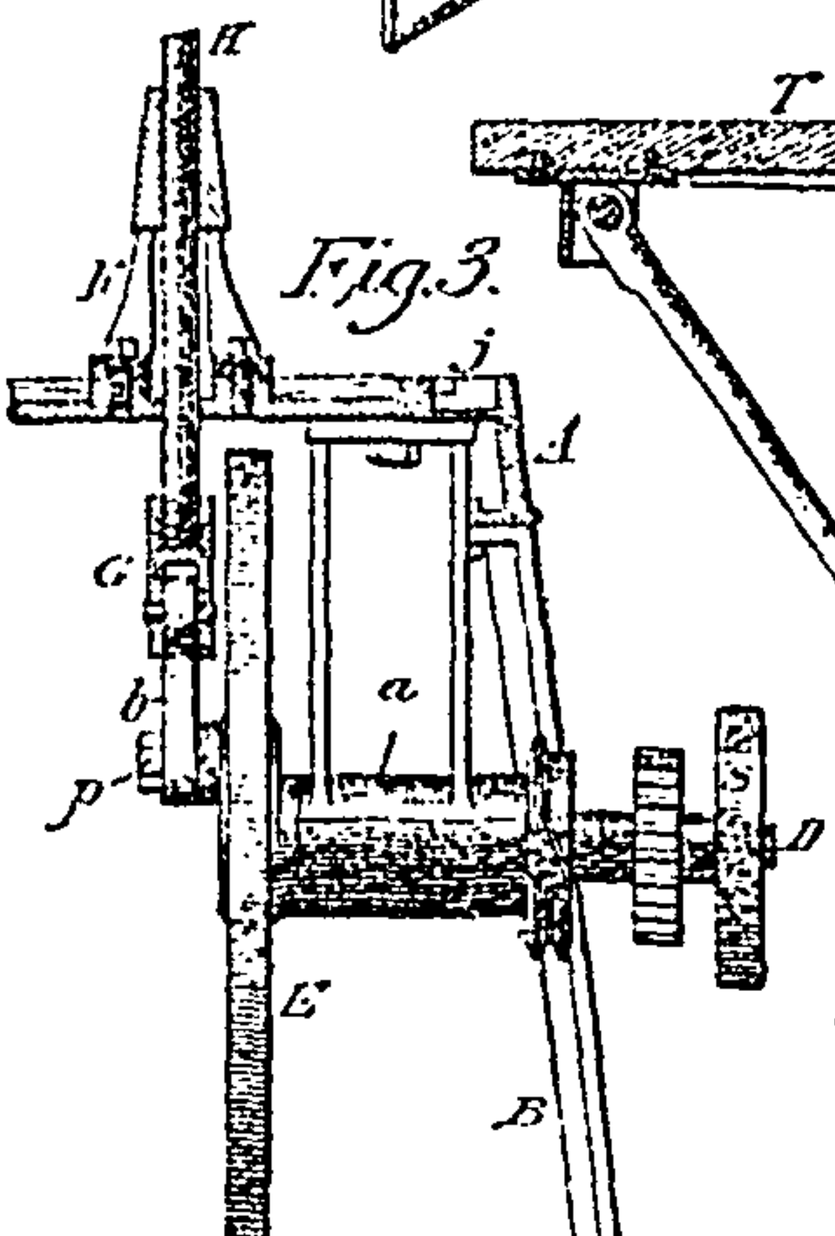
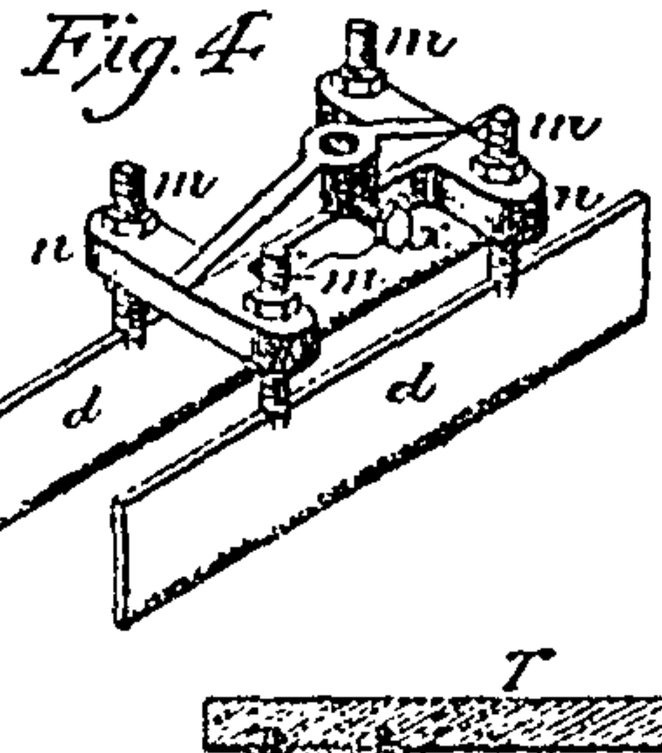


Fig. 4.



Witnesses.

E.....F.....

G.....H.....

Inventor.

A.....B.....

per

C.D.....

Attorney.

THIS SPACE MUST BE EIGHT INCHES

12. FOR THE RENEWAL OF A FORFEITED APPLICATION.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc.), whose post-office address is ....., represents that on ....., 19.., he filed an application for letters patent for an improvement in ....., serial number ....., which application was allowed ....., 19 .., but that he failed to make payment of the final fee within the time allowed by law. He now makes renewed application for letters patent for said invention, and prays that the original specification, oath, drawings, and model may be used as a part of this application.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

SPECIFICATIONS.

13. FOR AN ART OR PROCESS.

To all whom it may concern:

Be it known that I, ..., a citizen of the United States, residing at ....., in the county of ..... and State of ..... (or subject, etc.), have invented new and useful improvements in processes of extracting gold from its ores, of which the following is a specification:

This invention relates to the process of extracting gold from its ores by means of a solution of cyanide of an alkali or alkaline earth, and has for its object to render the process more expeditious and considerably cheaper.

In extracting gold from its ores by means of a solution of cyanide of potassium, sodium, barium, etc., the simultaneous oxidation of the gold is necessary, and this has hitherto been effected by the action of the air upon

the gold which is rendered oxidizable thereby by the action of the cyanide solution.

Instead of depending solely upon the agency of the air for the oxidizing action I employ, to assist the oxidation of the gold, ferricyanide of potassium or another ferricyanogen salt of an alkali or of an earth alkali in an alkaline solution. By this means the oxidation, being rendered very much more energetic, is effected with a considerably smaller quantity of the solvent. Thus, by the addition of ferricyanide of potassium or other ferricyanides to the cyanide of potassium solution, as much as eighty per cent of potassium cyanide may be saved.

It may be remarked that the ferricyanide of potassium alone will not dissolve the gold and does not therefore come under the category of a solvent hitherto employed in processes of extraction. It does not therefore render unnecessary the employment of the simple cyanide as a solvent, but only reduces the amount required owing to the capacity of the ferricyanide to assist the air to rapidly oxidize the gold in the presence of the simple salt. Consequently the cyanogen of the latter is not used to form the gold cyanide compound.

I claim:

The process of extracting gold from its ores consisting in subjecting the ores to the dissolving action of cyanide of potassium in the presence of ferricyanide of potassium, substantially as herein described.

.....

Witnesses:

.....

.....

14. FOR A MACHINE.

To all whom it may concern:

Be it known that I, ..., a citizen of the United States, residing at ....., in the county of .....

and State of ..... (or subject, etc.), have invented a new and useful meat-chopping machine, of which the following is a specification:

My invention relates to improvements in meat-chopping machines in which vertically reciprocating knives operate in conjunction with a rotating chopping block; and the objects of my improvement are, first, to provide a continuously lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which—

Figure 1 is a vertical section of the entire machine; Fig. 2, a top view of the machine as it appears after the removal of the chopping block and knives; Fig. 3, a vertical section of a part of the machine on the line 1 2, Fig. 2; and Fig. 4, a detailed view in perspective of the reciprocating crosshead and its knives.

Similar letters refer to similar parts throughout the several views.

The table or plate A, its legs or standards B B, and the hanger *a*, secured to the underside of the table, constitute the framework of the machine. In the hanger *a* turns the shaft D, carrying a fly-wheel E, to the hub of which is attached a crank *o*, and a crank-pin *p*, connected by a link *b*, to a pin passing through a crosshead G, and to the latter is secured a rod H, having at its upper end a crosshead I, carrying the adjustable chopping knives *d d*, referred to hereinafter.

The crosshead G, reciprocated by the shaft D, is provided with anti-friction rollers *e e*, adapted to guides *f f*, secured to the underside of the table A, so that the reciprocation of this crosshead may be accompanied with as little friction as possible.

To the underside of a wooden chopping block J is secured an annular rib *h*, adapted to and bearing in an annular groove *i* in the table A. (See Figs. 1 and 2.) This annular groove or channel is not of the same depth throughout, but communicates at one or more points (two in the present instance) with pockets or receptacles *j j* wider than the groove and containing supplies of oil, in contact with which the rib *h* rotates so that the continuous lubrication of the groove and rib is assured. The rod H passes through and is guided by a central stand K, secured to the table A, and projecting through a central opening in the chopping block without being in contact therewith, the upper portion of the said stand being contained within a cover *k*, which is secured to the block, and which prevents particles of meat from escaping through the central opening of the same.

The cross-head I, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod H, and can be retained after adjustment by a set-screw *x*, the upper end of the rod being threaded for the reception of nuts, which resist the shocks imparted to the cross-head when the knives are brought into violent contact with the meat or the chopping-block.

The knives *d d* are adjustable independently of each other and of the said cross-head, so that the coincidence of the cutting-edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screw-rods *m m* rise vertically from the back of each knife and pass through lugs *n n* on the cross-head, each rod being furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing *p* is secured to the chopping-block, so as to form on the same a trough P for keeping the meat within proper bounds; and on the edge of the annular rib *h*, secured to the bottom of the block, are teeth *r*, for receiving those of a pinion *q*, which may be driven by the shaft D through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft D may be driven by a belt passing round the pulleys *s*, or it may be driven by hand from a shaft W, furnished at one end with a handle *t*, and at the other with a cog-wheel R, gearing into a pinion on the said shaft D.

A platform T may be hinged, as at *w*, to one edge of the table A, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported are shown in full lines, and the most convenient method of disposing of it when not in use is shown in dotted lines, in Fig. 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I therefore do not claim such a combination broadly; but

I claim:

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess and a pocket communicating with the said recess, all substantially as set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating cross-head carrying knives, each of which is vertically adjustable on the said cross-head independently of the other, substantially as described.

3. The knife *d*, having two screw-rods, *m m*, attached to its back, substantially as shown, for the purpose specified.

4. The combination, in a meat-chopping machine, of the reciprocating rod, carrying the knives, the cross-head secured to the said rod, and having anti-friction rollers, with guides, adapted to the said rollers, all substantially as set forth.

.....

Witnesses:

.....

.....

15. FOR A COMPOSITION OF MATTER.

To all whom it may concern:

Be it known that I, ..., a citizen of the United States, residing at ....., in the county of ..... and State of ..... (or subject, etc.), have invented a new and useful composition of matter to be used for the removal of hair and grease from hides preparatory to tanning, of which the following is a specification:

My composition consists of the following ingredients, combined in the proportions stated, viz.:

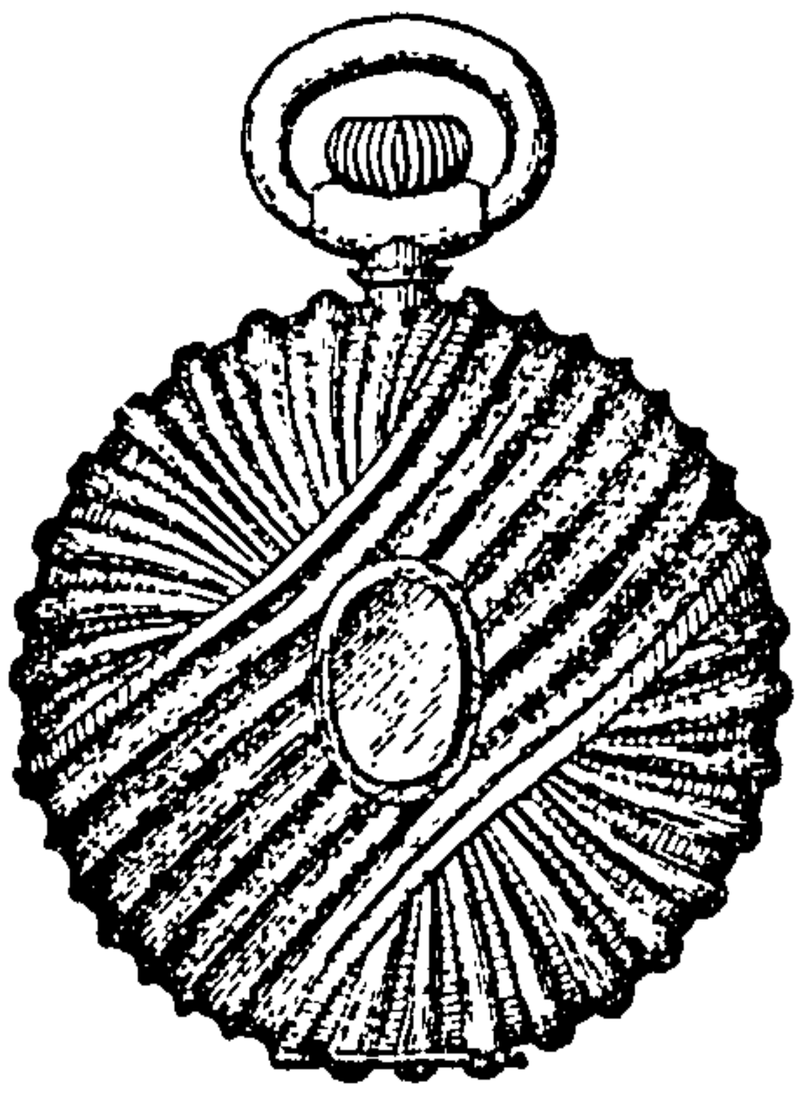
Water substantially pure .....500 gallons
Unslaked lime .....350 pounds
Soda-ash (sodium carbonate) .....100 pounds
Saltpeter (nitrate of an alkali metal) ..... 20 pounds
Sulphur (preferably flowers of sulphur) .... 10 pounds

These ingredients are to be thoroughly mingled by agitation.

In using the above-named composition the hides should first be freed from all salt and impurities by soaking green hides one day and dry hides eight days. The hides so cleaned are then placed in the said solution, and allowed to remain in it forty-eight hours. They should then be removed from the solution and unhaired in the usual way.

By the use of the above composition the hair is speed-

The size of the sheet must be exactly 10x15 inches. See rule 52(2).



This space must be thirteen inches.

Witnesses:
W..... G.....

R..... L.....

Inventor:
T..... B.....
per
G..... C.....

Attorney.

This space must be eight inches.

ily and thoroughly loosened, and the hides, while retaining all of that portion of the substance which can be converted into leather, are at the same time entirely cleaned from grease and other substances which would prevent them from being tanned quickly.

I am aware that a composition consisting of soda-ash, water, lime, and sulphur has been used for the same purpose, and that a patent therefor was granted to C. D., July 10, 18.., No. ..... I am also aware that saltpeter has been used in depilatory processes; but I am not aware that all the ingredients of my composition have been used together.

I claim:

1. The herein-described composition of matter, consisting of water, unslaked lime, soda-ash, saltpeter, and sulphur, substantially as described and for the purpose specified.

2. The herein-described composition of matter for depilating and preparing hides for tanning, consisting of pure water five hundred gallons, unslaked lime three hundred and fifty pounds, soda-ash one hundred pounds, saltpeter twenty pounds, and flowers of sulphur ten pounds, substantially as described.

.....

Witnesses:

.....

.....

16. FOR A DESIGN.

To all whom it may concern:

Be it known that I, ..., a citizen of the United States, residing at ....., in the county of ....., and State of ..... (or subject, etc.), have invented a new, original, and ornamental Design for Watch-Cases,

of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

The figure is a plan view of a watch case, showing my new design.

I claim:

The ornamental design for a watch case, as shown.

.....

Witnesses:

.....

.....

(That a written description is unnecessary to the validity of a design patent, see Dobson v. Dornan, 118 U. S. 10, 30 L. Ed. 63; Ashley v. Samuel C. Tatum Co., 186 Fed. Rep. 339, reversing 181 Fed. Rep. 840; written description having been condemned by the Patent Office and by the Court of Appeals of the District of Columbia as useless, confusing and misleading. Ex parte Mygatt, 117 Off. Gaz. 598; Ex parte Freeman, 23 App. D. C. 226, 109 Off. Gaz. 1339. The Patent Office rules from 1836 to 1904 both permitted and provided for a description of the design, and for most of the time from 1836 to 1897 the Patent Office recommended a claim including a description of the design. In reversing the Patent Office in the Mygatt case, the Court of Appeals of the District of Columbia approved the earlier practice, and sustained an applicant who insisted on a claim setting out the salient features of his design, and a description in accordance with the claim. In re Mygatt, 26 App. D. C. 366, 121 Off. Gaz. 1676. The propriety, and the necessity in some instances, of having a written description, may be regarded as being settled. James E. Tompkins Co. v. New York Woven Wire Mattress Co., 159 Fed. Rep. 133, 86 C. C. A. 323; Ashley v. Samuel C. Tatum Co., 186 Fed. Rep. 339, — C C. A. —.)

17. FOR A CAVEAT.

This form is obsolete; law relating to caveats repealed by act of July 1, 1910.

OATHS.

18. OATH TO ACCOMPANY AN APPLICATION FOR UNITED STATES PATENT.

.....
.....} *ss*:

[1] ....., the above-named petitioner.., being sworn (or affirmed), depose.. and say.. that ..... citizen.. of [2] ..... and resident.. of [3] ....., that

..... verily believe ..... to be the original, first, and [4] ..... inventor.. of the improvement in [5] ..... described and claimed in the annexed specification; that ..... do.. not know and do.. not believe that the same was ever known or used before ..... invention or discovery thereof, or patented or described in any printed publication in any country before ..... invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by ..... or ..... legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by.....or.....representatives or assigns in any country foreign to the United States, except as follows: [6] .....

Inventor's full name: [7] { .....
.....

Sworn to and subscribed before me this ..... day of ....., 19...

[SEAL.]

.....
[Signature of justice or notary.]

[8] .....
[Official character.]

19. OATH TO ACCOMPANY AN APPLICATION FOR UNITED STATES PATENT FOR DESIGN.

..... } ss:
..... }

[1] ....., the above-named petitioner.., being sworn (or affirmed), depose.. and say.. that ..... citizen.. of [2] ..... and resident.. of [3] ....., that ..... verily believe ..... to be the original, first, and [4] ..... inventor of the design for [5] ..... de-

scribed and claimed in the annexed specification; that ..... do.. not know and do.. not believe that the same was ever known or used before ..... invention thereof, or patented or described in any printed publication in any country before ..... invention thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said design has not been patented in any country foreign to the United States on an application filed by ..... or ..... legal representatives or assigns more than four months prior to this application; and that no application for patent on said design has been filed by ..... or ..... representatives or assigns in any country foreign to the United States, except as follows:[6]

.....

Inventor's full name:[7] { .....
.....

Sworn to and subscribed before me this ..... day of ....., 19...

[SEAL.]

[8] .....
[Signature of justice or notary.]

.....
[Official character.]

[1] If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.

[2] If the applicant be an alien, state of what foreign country he is a citizen or subject.

[3] Give residence address in full; as "a resident of....., in the county of ..... and State of .....," or "of No. ..... street, in the city of ....., county of ..... and State (Kingdom, Republic, or Empire) of ....."

[4] "Sole" or "joint."

[5] Insert title of invention.

[6] Name each country in which an application has been filed, and in each case give date of filing the same. If no application has been filed, erase the words "except as follows."

[7] All oaths must bear the signature of the affiant.

8 * * * "When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal."

A certificate of the official character of a magistrate, stating date of appointment and term of office, may be filed in the Patent Office, which will obviate the necessity of separate certificates in individual cases.

When the oath is taken abroad before a notary public, judge, or magistrate, his authority should in each instance be proved by a certificate of a diplomatic or consular officer of the United States.

20. BY AN APPLICANT FOR A REISSUE (INVENTOR).

[When the original patent is claimed to be inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," this form can be modified accordingly.]

..... } ss:
..... }

....., the above-named petitioner, being duly sworn (or affirmed), deposes and says that he does verily believe himself to be the original and first inventor of the improvement set forth and claimed in the foregoing specification and for which improvement he solicits a patent; that deponent does not know and does not believe that said improvement was ever before known or used;[1] that deponent is a citizen of the United States of America, and resides at ....., in the county of ....., and State of .....;[1] that deponent verily believes that the letters patent referred to in the foregoing petition and specification and herewith surrendered are inoperative (or invalid), for the reason that the specification thereof is defective (or insufficient), and that such defect (or insufficiency) consists particularly in[2].....; and deponent further says that the errors which render such patent so inoperative (or invalid) arose from inadvertence (or accident, or mistake), and without any fraudulent or deceptive intention on the part of depo-

nent;[3] that the following is a true specification of the errors which it is claimed constitute such inadvertence (or accident, or mistake), relied upon:[2] .....; that such errors so particularly specified arose (or occurred) as follows:[2] .....

Inventor's full name: {.....
.....

Subscribed and sworn to before me this ..... day of ....., 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

21. BY AN APPLICANT FOR A REISSUE (ASSIGNEE).

[To be used only when the inventor is dead.]

.....
.....} *ss*:

....., the above-named petitioner, being duly sworn (or affirmed), deposes and says that he verily believes that the aforesaid letters patent granted to ..... are (here follows Form 20, the necessary changes being made); that the entire title to said letters patent is vested in him; and that he verily believes the said ..... to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said ..... is now deceased.

.....

Sworn to and subscribed before me this ..... day of ....., 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

---

[1] Rule 46. [2] Rule 87. [3] Rule 87 (5).

22. SUPPLEMENTAL OATH TO ACCOMPANY A CLAIM FOR MATTER DISCLOSED BUT NOT CLAIMED IN AN ORIGINAL APPLICATION.

.....
.....} *ss*:

....., whose application for letters patent for an improvement in ....., serial No. ...., was filed in the United States Patent Office on or about the ..... day of ....., 19.., being duly sworn (or affirmed), deposes and says that the subject-matter of the foregoing amendment was part of his invention, was invented before he filed his original application, above identified, for such invention, was not known or used before his invention, was not patented or described in a printed publication in any country more than two years before his application, was not patented in a foreign country on an application filed more than twelve months before his application, was not in public use or on sale in this country for more than two years before the date of his application, and has not been abandoned.

.....

Sworn to and subscribed before me this ..... day of ....., 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

23. OATH AS TO THE LOSS OF LETTERS PATENT.

.....
.....} *ss*:

....., being duly sworn (or affirmed), depose.. and say.. that the letters patent No. ...., granted to him, and bearing date on the ..... day of ....., 19..,

have been either lost or destroyed; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find them.

.....

Subscribed and sworn to before me this ..... day of ....., 19...

[SEAL.]

.....

[Signature of justice or notary.]

.....

[Official character.]

24. OATH OF ADMINISTRATOR AS TO THE LOSS OF LETTERS PATENT.

.....
.....
} *ss*:

....., being duly sworn, depose.. and say.. that he is administrator of the estate of ....., deceased, late of ....., in said county; that the letters patent No....., granted to said ....., and bearing date of the ..... day of ....., 19.., have been lost or destroyed, as he verily believes; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and especially among the papers of the decedent, and that he has not been able to find said letters patent.

.....

Administrator, etc.

Subscribed and sworn to before me this ..... day of ....., 19...

[SEAL.]

.....

[Signature of justice or notary.]

.....

[Official character.]

25. POWER OF ATTORNEY AFTER APPLICATION FILED.

[If the power of attorney be given at any time other than that of making application for letters patent, it will be in substantially the following form:]

To the Commissioner of Patents:

The undersigned having, on or about the ..... day of ....., 19.., made application for letters patent for an improvement in ..... (serial number ....), hereby appoints .....,[1] of ....., in the county of ..... and State of ....., his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at ....., in the county of ....., State of ....., this ..... day of ....., 19...

.....

26. REVOCATION OF POWER OF ATTORNEY.

To the Commissioner of Patents:

The undersigned having, on or about the ..... day of ....., 19.., appointed ....., of ....., in the county of ..... and State of ....., his attorney to prosecute an application for letters patent, which application was filed on or about the ..... day of ....., 19.., for an improvement in ..... (serial number ....), hereby revokes the power of attorney then given.

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....

---

[1] If the power of attorney be to a firm, the name of each member of the firm must be given in full.

27. AMENDMENT.[2]

To the Commissioner of Patents:

In the matter of my application for letters patent for an improvement in ....., filed ....., 19.. (serial number ....), I hereby amend my specification as follows:

By striking out all between the ..... and ..... lines, inclusive, of page ....;

By inserting the words "....." after the word "....." in the ..... line of the ..... claim; and

By striking out the .... claim and substituting therefor the following:

.....

Signed at ....., in the county of ....., and State of .....

.....,

By .....,

His Attorney in Fact.

DISCLAIMERS.

28. DISCLAIMER AFTER PATENT.

To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States, residing at ....., in the county of ..... and State of ..... (or subject, etc.), represents that in the matter of a certain improvement in ....., for which letters patent of the United States No. ..... were granted to ....., on the ..... day of ....., 19.., he is (here state the exact interest of the disclaimant; if assignee, set out liber and page where assignment is recorded),

---

[2] In the preparation of all amendments a separate paragraph should be devoted to each distinct erasure or insertion, in order to aid the Office in making the entry of the amendment into the case to which it pertains.

and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters this disclaimer to that part of the claim in said specification which is in the following words, to wit:

.....

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19..

.....

Witnesses:

.....

.....

29. DISCLAIMER DURING INTERFERENCE.

Interference.

..... } Before the examiner of interferences.
vs.
..... }

Subject-matter: .....

To the Commissioner of Patents:

SIR: In the matter of the interference above noted, under the provisions of and for the purpose set forth in Rule 107, I disclaim (set forth the matter as given in declaration of interference), as I am not the first inventor thereof, and I herewith transmit an amendment to my application filed ....., 19.., serial number .., for the purpose of having the above disclaimer embodied as part of my specification.

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

Witnesses:

.....

.....

APPEALS AND PETITIONS.

30. FROM A PRINCIPAL EXAMINER TO THE EXAMINERS-IN-CHIEF.

To the Commissioner of Patents:

SIR: I hereby appeal to the examiners-in-chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in ....., filed ....., 19.., serial number ...., which on the ..... day of ....., 19.., was rejected the second time. The following are the points of the decision on which the appeal is taken: (Here follows a statement of the points on which the appeal is taken.)

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19. ..

.....

31. FROM THE EXAMINER IN CHARGE OF INTERFERENCES TO THE EXAMINERS-IN-CHIEF.

To the Commissioner of Patents:

SIR: I hereby appeal to the examiners-in-chief from the decision of the examiner of interferences in the matter of the interference between my applications for letters patent for improvement in ..... and the letters patent of ....., in which priority of invention was awarded to said ..... The following are assigned as reasons of appeal: (Here should follow an explicit statement of alleged errors in the decision of the examiner of interferences.)

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....

32. FROM THE EXAMINERS-IN-CHIEF TO THE COMMISSIONER IN EX PARTE CASES.

To the Commissioner of Patents:

SIR: I hereby appeal to the Commissioner in person from the decision of the examiners-in-chief in the matter of my application for letters patent for an improvement in ....., filed ....., 19.., serial number ..... The following are assigned as reasons of appeal: (Here follow the reason as in Form 30.)

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....

33. FROM THE EXAMINERS-IN-CHIEF TO THE COMMISSIONER IN INTERFERENCE CASES.

To the Commissioner of Patents:

SIR: I hereby appeal to you in person from the decision of the examiners-in-chief, made ....., 19.., in the interference between my application for letters patent for improvement in ..... and the letters patent of ....., in which priority of invention was awarded to said ..... The following are assigned as reasons of appeal: (Here should follow an explicit statement of the alleged errors in the decision of the examiners-in-chief.)

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

34. PETITION FROM A PRINCIPAL EXAMINER TO THE COMMISSIONER.

Application of .....
Serial number .....
Subject of invention .....

To the Commissioner of Patents:

Your petitioner avers—

First. That he is the applicant above named.

Second. That said application was filed on the .... day of ....., 19...

Third. That when so filed said application contained ..... claims.

Fourth. That your petitioner was informed by office letter of the ....., 19.., (1) that his ..... claim was rendered vague and indefinite by the employment of the words "....," which words should be erased; (2) that his ..... claim was met by certain references which were given; and (3) that the ..... claim was mere surplusage and should be eliminated.

Fifth. That on the .... day of ..... your petitioner filed an amendment so eliminating his ..... claim, and accompanied such amendment with a communication in which he declined to amend such ..... claim, and asked for another action thereon.

Sixth. That your petitioner was then informed by office letter of the ..... day of ..... that the former requirement relating to claim ..... would be adhered to, and that no action would be had on the merits of either claim until said amendment so required had been made.

Wherefore your petitioner requests that the examiner in charge of such application be advised that such amendment so required by him to said ..... claim be not in-

sisted upon, and directed to proceed to examine both said remaining claims upon their merits.

A hearing of this petition is desired on the ..... day of ....., 19...

....., *Applicant.*

....., *Attorney for Applicant.*

35. PETITION FOR COPIES OF REJECTED AND ABANDONED APPLICATIONS.

To the Commissioner of Patents:

The petition of ....., a resident of ....., in the county of ..... and State of ....., respectfully shows:

First. That on the ..... day of ....., 19.., patent No. ..... issued to one .....

Second. That your petitioner is informed and believes that on the ..... day of ....., 19.., said patentee filed in the United States Patent Office an application for patent for improvement in .....

Third. That your petitioner verily believes that said application has not been prosecuted during the past two years and upward; and he also verily believes that the last action had therein was on or about the ..... day of ....., 19...

Fourth. That said application has therefore become and now stands abandoned.

Fifth. That on the ..... day of ....., 19.., said patentee began suit, in the circuit court of the United States for the ..... district of ..... against your petitioner, which suit is based upon said patent, and the same is now pending and undetermined.

Sixth. Your petitioner is informed and believes that to enable him to prepare and conduct his defense in such suit it is material and necessary that he be allowed access to and copies of the files of such abandoned case.

Seventh. Your petitioner therefore requests that he or ....., in his behalf and as his attorney, be permitted to inspect and be furnished copies of all or any portion of such case.

.....,
Petitioner.

By .....,
His Attorney.

.....
.....} *ss*:

On this ..... day of ....., 19.., before me, a notary public in and for said county and State, personally appeared ....., the above-named attorney, who, being by me duly sworn, deposes and says that he has read the foregoing petition and knows its contents, and that the same is true, except as to the matters therein stated on information, or belief, and as to those matters he believes it to be true.

.....,
Notary Public.

NOTE.—A copy of this petition must be served upon the applicant named in the abandoned application or upon his attorney of record.

36. PRELIMINARY STATEMENT OF DOMESTIC INVENTOR.

.....
vs. } Interference in the United States Patent Office.
.....

Preliminary statement of .....
....., of ....., in the county of ....., and State of ....., being duly sworn (or affirmed), doth depose and say that he is a party to the interference declared by the Commissioner of Patents, ..., 19.., between .....'s application for letters patent, filed ....., 19.., serial number ....., and the patent to ....., granted ....., 19.., numbered ....., for a .....; that he conceived the invention set forth in the

declaration of interference [1] on or about the ..... day of ..... 19..; that on or about the ..... day of ....., 19.., he first made drawings of the invention (if he has not made a drawing, then he should say that no drawing of the invention in issue has been made); that on or about the ..... day of ....., 19.., he first explained the invention to others; that he first embodied his invention in a full-size machine, which was completed about the ..... day of ....., 19.., and that on the ..... day of ....., 19.., the said machine was first successfully operated, in the town of ....., county of ....., and State of ....., and that he has since continued to use the same, and that he has manufactured others for use and sale to the following extent, viz (if he has not embodied the invention in a full-size machine, he should so state, and if he has embodied it, but has not used it, he should so state).

....,
[Signature of inventor.]

Subscribed and sworn to before me this ..... day of ....., 19...

....,
[Signature of justice or notary.]

....
[Official character.]

37. PRELIMINARY STATEMENT OF FOREIGN INVENTOR.

..... } Interference in United States Patent Office.
vs. }
..... } Preliminary statement of .....

....., of London, in the county of Middlesex, England, being duly sworn, doth depose and say that

[1] If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the terms "the invention set forth in the declaration of interference" he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference," and should specify such claims by number.

he is a party to the interference declared by the Commissioner of Patents, ..., 19.., between his application for patent, filed ....., 19.., serial number ....., and the patent of ....., granted ....., 19.., No. ....., for an improvement in .....; that he made the invention set forth in the declaration of interference,[1] being at that time in England; that patents for such invention were applied for and obtained as follows:

Application filed in Great Britain, ..., 19.., patent dated ....., 19.., No. .....; published the ..... day of ....., 19.., and sealed the ..... day of ....., 19..; application filed in France ....., 19.., patent dated ....., 19.., No. .....; published the ..... day of ....., 19.., and sealed the ..... day of ..... 19... (If a patent has not been obtained in any country it should be so stated.)

That such invention was fully described in a magazine published at ....., on the ..... day of ....., 19.., by ....., entitled ..... (see page ..... of such magazine), and in the following newspapers: ....., of ....., 19..; ....., published at ....., on ....., 19... (If the invention was never described in a printed publication it should be so stated.)

The knowledge of such invention was introduced into the United States under the following circumstances: On ....., 19.., the said ..... wrote a letter to ....., residing at ....., State of ....., describing such invention and soliciting his services in procuring a patent therefor in the United States. This letter, he is informed and believes, was received by the said ..... on

[1] If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the terms "the invention set forth in the declaration of interference," he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference," and should specify such claims by number.

....., 19... Also on ....., 19.., he wrote a letter to the firm of ....., of ....., State of ....., describing such invention and requesting their assistance in manufacturing and putting it on the market, which letter, he is informed, and believes, was received by them on ....., 19... Such invention was manufactured by such firm and described in their trade circulars, as he is informed and verily believes, on or about the ..... day of ....., 19. .. (If the invention has not been introduced into the United States otherwise than by the application papers, it should be so stated, and the date at which such papers were received in the United States alleged.)

.....,
[Signature of inventor.]

Subscribed and sworn to before me this ..... day of ....., 19...

.....,
[Signature of justice or notary.]

.....
[Official character.]

ASSIGNMENTS.

38. OF AN ENTIRE INTEREST IN AN INVENTION BEFORE THE ISSUE OF LETTERS PATENT.

Whereas I, ..., of ....., county of ....., and State of ....., have invented a certain new and useful improvement in ....., for which I am about to make application for letters patent of the United States; and whereas ....., of ....., county of ....., and State of ....., is desirous of acquiring an interest in said invention and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby

acknowledged, I, the said ....., have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto the said ..... the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the ..... day of ....., 19.., preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said ..... as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said ..... and his legal representatives.

In testimony whereof I have hereunto set my hand and affixed my seal this ..... day of ....., 19. ..

.....[SEAL.]

In presence of—

.....

.....

(If assignment, grant, or conveyance be acknowledged as provided for by Rule 197, the certificate will be *prima facie* evidence of the execution of such assignment, grant, or conveyance.)

39. OF THE ENTIRE INTEREST IN LETTERS PATENT.

Whereas I, ..., of ....., county of ....., State of ....., did obtain letters patent of the United States for an improvement in ....., which letters patent are numbered ....., and bear date the ..... day of ....., in the year 19..; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas ....., of ....., county of ....., and State of ....., is desirous of acquiring the entire interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is here-

by acknowledged, I, the said ....., have sold, assigned, and transferred and by these presents do sell, assign and transfer unto the said ..... the whole right, title, and interest in and to the said improvement in ..... and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said ....., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....[SEAL.]

In presence of—

.....

.....

(See note under Form 37.)

40. OF AN UNDIVIDED INTEREST IN LETTERS PATENT.

Whereas, I ....., of ....., county of ....., State of ....., did obtain letters patent of the United States for an improvement in ....., which letters patent are numbered ....., and bear date the ..... day of ....., in the year .....; and whereas ....., of ....., county of ....., State of ....., is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said ....., the undivided one-half part of the whole right, title, and interest in and to

the said invention and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said ....., for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....[SEAL.]

In presence of—

.....

.....

(See note under Form 37.)

41. TERRITORIAL INTEREST AFTER GRANT OF PATENT.

Whereas I, ..., of ....., county of ....., State of ....., did obtain letters patent of the United States for improvement in ....., which letters patent are numbered ..... and bear date the ..... day of ..... in the year 19..; and whereas I am now the sole owner of said patent and of all rights under the same in the below-recited territory; and whereas ....., of ....., county of ....., State of ....., is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that, for and in consideration of the sum of ..... dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said ....., have sold, assigned, and transferred, and by these presents do sell, assign, and transfer unto the said ..... all the right, title, and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the State of

....., and for, to, or in no other place or places; the same to be held and enjoyed by the said ..... within and throughout the above-specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof I have hereunto set my hand and affixed my seal at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

.....[SEAL.]

In presence of—

.....

.....

(See note under Form 37.)

42. LICENSE—SHOP-RIGHT.

In consideration of the sum of ..... dollars, to be paid by the firm of ....., of ....., in the county of ....., State of ....., I do hereby license and empower the said ..... to manufacture in said ..... (or other place agreed upon) the improvement in ..... for which letters patent of the United States No. ..... were granted to me the ..... day of ..... in the year 19.., and to sell the machines so manufactured throughout the United States to the full end of the term for which said letters patent are granted.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

.....

In presence of—

.....

.....

43. LICENSE—NOT EXCLUSIVE—WITH ROYALTY.

This agreement, made this ..... day of ...., .., 19.., between ....., of ....., in the county of ..... and State of ....., party of the first part, and ....., of ....., in the county of ..... and State of ....., party of the second part, witnesseth, that whereas letters patent of the United States No. ....., for improvement in ....., were granted to the party of the first part on the ..... day of ....., 19..; and whereas the party of the second part is desirous of manufacturing ..... containing said patented improvements: Now, therefore, the parties have agreed as follows:

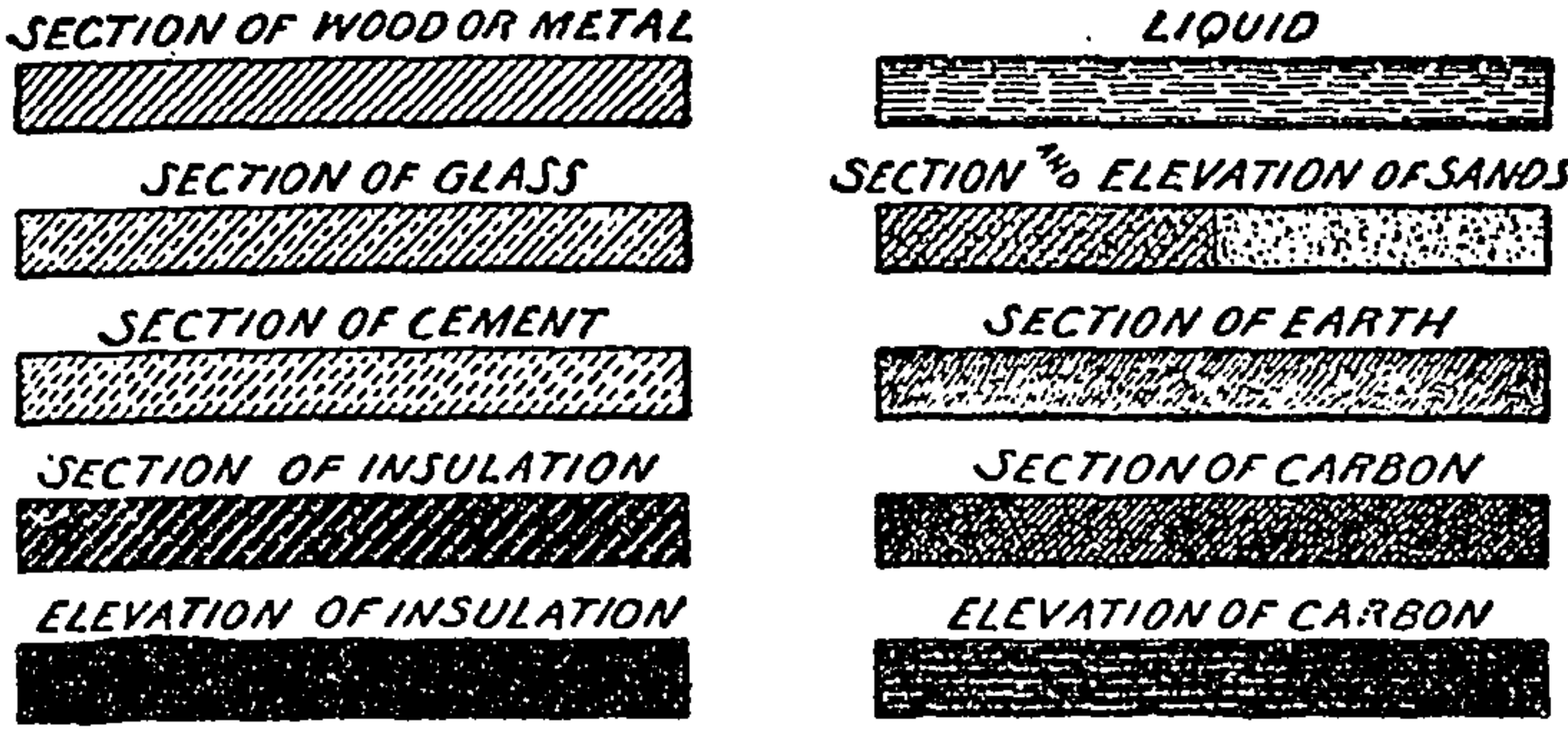
I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in ....., and in no other place or places, to the end of the term for which said letters patent were granted, ... containing the patented improvements, and to sell the same within the United States.

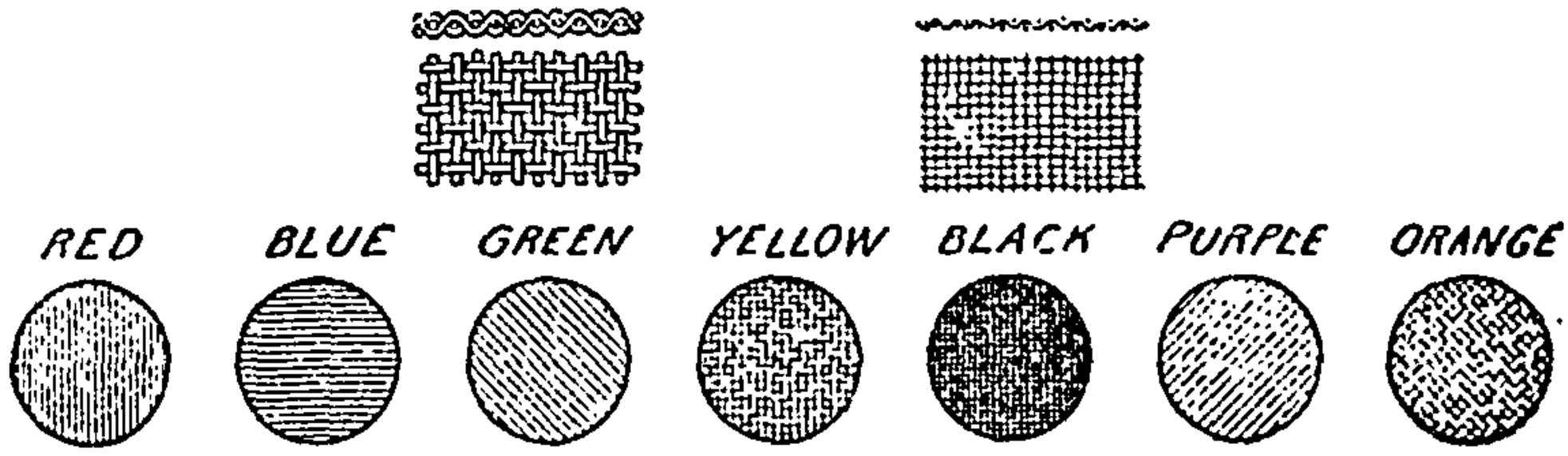
II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of ..... and ..... in each year, of all ..... containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part ..... dollars as a license fee upon every ..... manufactured by said party of the second party containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semiannual returns, or within ..... days thereafter, a discount of ..... per cent shall be made from said fee for prompt payment.

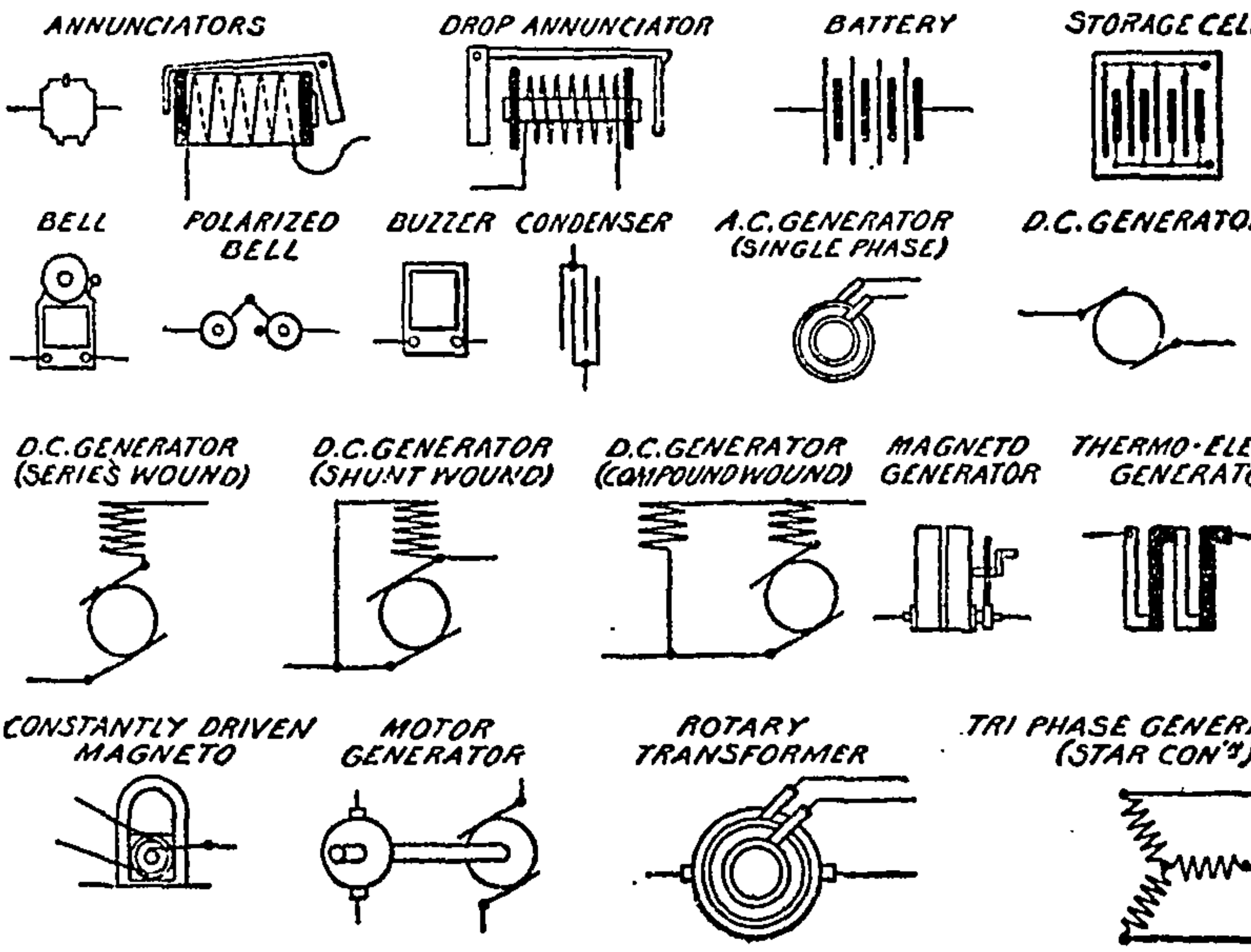
IV. Upon a failure of the party of the second part to make returns or to make payment of license fees, as herein provided for ..... days after the days herein

CHART FOR DRAFTSMEN

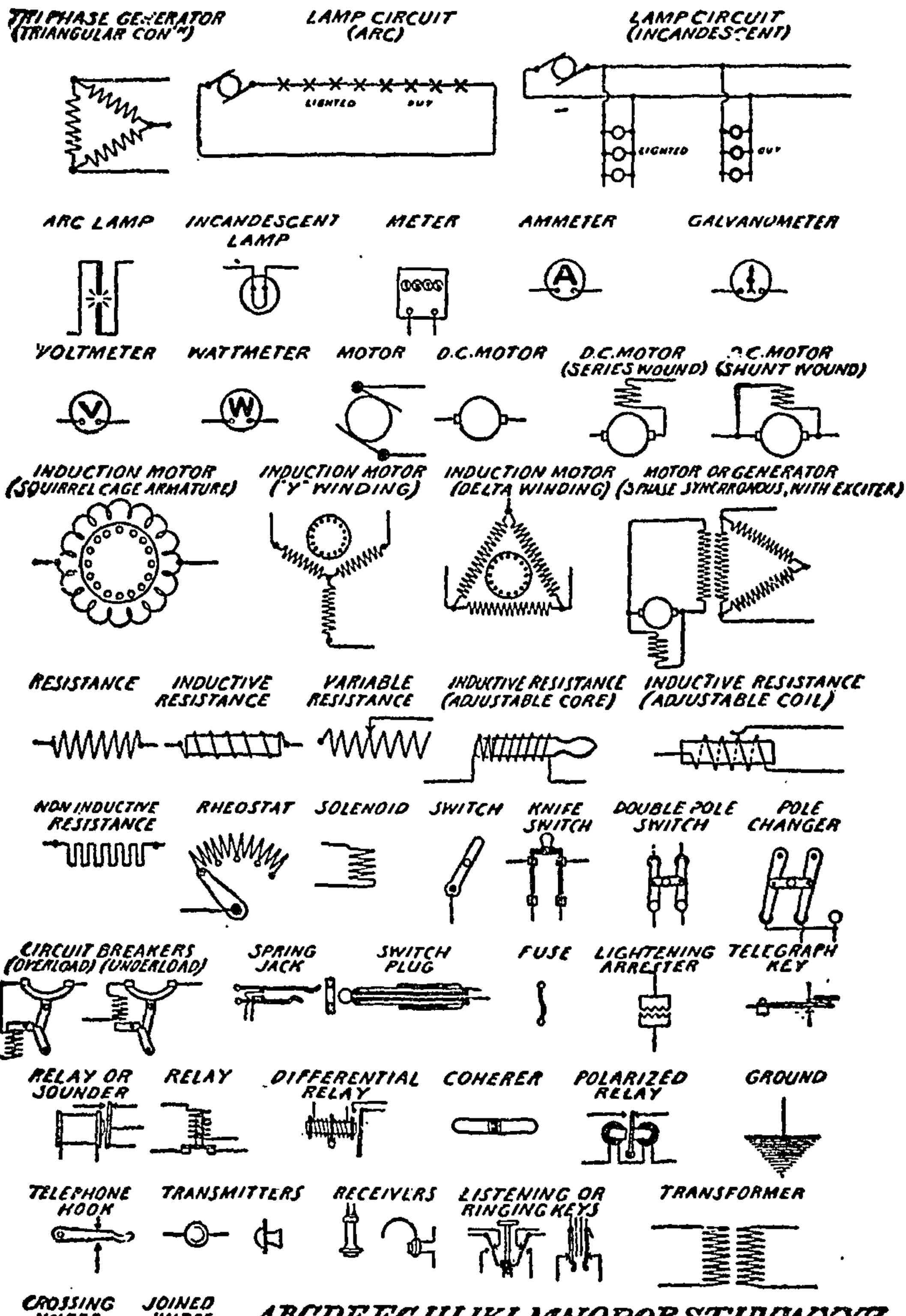




ELECTRICAL SYMBOLS



ELECTRICAL SYMBOLS



named, the party of the first part may terminate this license by serving a written notice upon the party of the second part; but the party of the second part shall not thereby be discharged from any liability to the party of the first part for any license fees due at the time of the service of said notice.

In witness whereof the parties above named have hereunto set their hands the day and year first above written at ....., in the county of ..... and State of .....

In the presence of— .....

....

DEPOSITIONS.

44. NOTICE OF TAKING TESTIMONY.

....., ..., ..., 19..

In the matter of the interference between the application of ..... for a ..... machine and the patent No. ....., granted ....., 19.., to ....., now pending before the Commissioner of Patents.

SIR: You are hereby notified that on Wednesday, ..., 19.., at the office of ....., esq., No. ..... street, ..., ..., at ..... o'clock in the forenoon, I shall proceed to take the testimony of ....., and ....., all of ....., as witnesses in my behalf.

The examination will continue from day to day until completed. You are invited to attend and cross-examine.

.....,

By .....,

His Attorney.

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19...

Witnesses: .....

.....

.....

Proof of service.

.....} ss:
.....}

Personally appeared before me, a ..... (or other officer), the above-named ....., who, being duly sworn, deposes and says that he served the above notice upon ....., the attorney of the said ....., at ..... o'clock .....of the ..... day of ....., 19.., by leaving a copy at his office in ....., in the county of ..... and State of ....., in charge of .....

Sworn to and subscribed before me at ....., in the county of ..... and State of ....., this ..... day of ....., 19...

[SEAL.]

.....
[Signature of justice or notary.]

.....
[Official character.]

(Service may be acknowledged by the party upon whom it is made as follows:

Service of the above notice acknowledged this ..... of ....., 19...

.....,
By ....., *his Attorney.*)

45. FORM OF DEPOSITION.

Before the Commissioner of Patents, in the matter of the interference between the application of ..... for a ..... and Letters Patent No. ....., granted....., 19.., to .....

Depositions of witnesses examined on behalf of ....., pursuant to the annexed notice, at the office of ....., No. ..... street, ..., ..., on ....., ..., 19... Present,.. ....., esq., on behalf of ....., and ....., esq., on behalf of .....

....., being duly sworn (or affirmed), doth depose and say, in answer to interrogatories proposed to him by ....., esq., counsel for ..... as follows, to wit:

Question 1. What is your name, age, occupation, and residence?

Answer 1. My name is .....; I am ..... years of age; I am a manufacturer of ..... and reside at ....., in the State of .....

Question 2, etc. .....

.....

And in answer to cross-interrogatories proposed to him by ....., esq., counsel for ....., he saith:

Cross-question 1. How long have you known .....?

Answer 1. .....

.....

46. CERTIFICATE OF OFFICER.

[To follow deposition.]

.....
.....
} ss:

I, ..., a notary public within and for the county of ..... and State of ..... (or other officer, as the case may be), do hereby certify that the foregoing deposition of ..... was taken on behalf of ..... in pursuance of the notice hereto annexed, before me, at ....., in the city of ....., in said county, on the ..... day (or days) of ....., 19..; that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by myself (or by ..... in my presence); that the opposing party, ..., was present (or absent or represented by counsel) during the taking of said testimony; that said testimony was taken at ..... and was commenced at ..... o'clock ..... on the ..... of ....., 19.., was continued pursuant to adjournment on the ....., ... (etc.) and was concluded on the .....of said month; that the deposition was read by, or to, each witness, before the witness signed the same;

that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In testimony whereof I have hereunto set my hand and affixed my seal of office at ....., in said county, this ..... day of ....., 19...

[SEAL.]

.....

[Signature of justice or notary.]

.....

[Official character.]

(The magistrate will then append to the deposition the notice under which it was taken, and will seal up the testimony and direct it to the Commissioner of Patents, placing upon the envelope a certificate in substance as follows:)

I hereby certify that the within deposition of ..... (if the package contains more than one deposition give all the names), relating to the matter of interference between ..... and ....., was taken, sealed up, and addressed to the Commissioner of Patents by me this ..... day of ....., 19...

.....

[Signature of justice or notary.]

.....

[Official character.]

47. NOTICE OF MOTIONS FOR DISSOLUTION OF INTERFERENCE, AND TRANSMISSION OF SAID MOTION TO THE PRIMARY EXAMINER.

(From Johnson v. Mueser, 29 App. D. C. 61.)

In the United States Patent Office.

In Interference No. 24,078.

Albert L. Johnson,

v.

William Meuser.

Corrugated Bars.

To William Meuser, the above named applicant, and William R. Baird and Shipley Brashears, his attorneys:

You are hereby notified that on Monday, November 7, 1904, at ten o'clock in the forenoon, or as soon thereafter as counsel can obtain a hearing, said Johnson will present his motion to the Examiner of Interferences for the dissolution of the above entitled interference, and move said Examiner of Interferences to transmit such motion to dissolve to the Primary Examiner and to stay proceeding in said interference pending the determination thereof.

You will please take notice and govern yourselves accordingly.

A. L. JOHNSON,
By CARR & CARR and
E. S. CLARKSON,
His attorneys.

We hereby acknowledge receipt of the above notice together with a copy of said motions to dissolve, to transmit, and to stay proceedings.

WM. MUESER,
By SHIPLEY BRASHEARS.

Washington, D. C., November 5, 1904.

48. MOTION TO TRANSMIT THE MOTION TO DISSOLVE TO THE PRIMARY EXAMINER.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

Now comes Albert L. Johnson, a party to the above entitled interference and presents his motion for the dissolution of the above entitled interference, and thereupon he moves the Examiner of Interferences to transmit said motion to dissolve to the Primary Examiner for determination.

And said Johnson further moves that all proceedings in said interference be stayed pending the determination of his motion to dissolve said interference.

A. L. JOHNSON,
By CARR & CARR and
E. S. CLARKSON,
His attorneys.

Washington, D. C., November, 1904.

49. MOTION TO DISSOLVE AN INTERFERENCE.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

Now this day comes Albert L. Johnson, a party to the above entitled interference and moves that the same be dissolved upon the ground that there has been such irregularity in declaring the same as will preclude a proper determination of the question of priority, and upon the further ground that the claims in issue are not patentable.

In support of this motion, said Johnson alleges that the claims are obscure and vague in the definition of the supposed patentable features, 1st, because the meaning of the words "a large number" is necessarily indefinite and relative only; 2d, because the expression "substantially continuous but actually much interrupted" is paradoxical and contradictory to such an extent as to render the meaning of the claims indefinite and obscure; and, 3d, because the claims rely for the definition of the patentable feature upon a recital of a function that is not necessarily accomplished by the construction otherwise described, whereas the claim should specifically describe the structure that performs the function.

The claims in issue lack patentable novelty, 1st, because they call for nothing more than the roughening of

a plain bar; and, 2d, because they are anticipated by the following patents:

British patent to Chorarne, No. 586 of 1894;
Patent to Thacher, No. 691,416, June 21, 1902;
Patent to Ransome, No. 516,111, March 16, 1894;
Patent to Johnson, No. 633,285, September 19, 1899;
Patent to Watson, No. 710,308, September 30, 1902;
Patent to Ransome, No. 647,904, April 17, 1900;
Patent to Pelton, No. 652,219, June 19, 1900;
Patent to Marsden, No. 654,905, July 31, 1900;
Patent to De Man, No. 625,544, May 23, 1899;
Patent to Venezia, No. 633,252, September 19, 1899;
Patent to Bell, No. 685,318, October 29, 1901.

A. L. JOHNSON,
By CARR & CARR and
E. S. CLARKSON,
His attorneys.

Washington, D. C., November 7, 1904.

(Endorsed:) Docket Clerk, U. S. Patent Office November 5, 1904.

APPEALS

FROM THE

COMMISSIONER OF PATENTS TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(Official.)

INSTRUCTIONS TO APPELLANTS.

The act of Congress creating the court of appeals of the District of Columbia, approved February 9, 1893, gives to that court jurisdiction of appeals from final decisions of the Commissioner of Patents both in *ex parte* cases and in interference cases.

Where an appeal of either class is to be prosecuted to the court of appeals of the District of Columbia, the first step is to file with the Commissioner of Patents a notice of appeal, together with an assignment of reasons of appeal. This step must be taken within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the date of the decision of the Commissioner of Patents sought to be reviewed.

The next step in the prosecution of such an appeal is to file with the clerk of the court of appeals of the District of Columbia a certified transcript of the record and proceedings in the Patent Office relating to the case in question, together with a petition for appeal, addressed to the court of appeals of the District of Columbia, make a deposit of $15, and have the appearance of a member of the bar of that court entered for the appellant.

The notice of appeal and reasons of appeal required to be served upon the Commissioner of Patents may be signed by the appellant or by his attorney of record in the Patent Office, but the petition for an appeal that is filed in the court of appeals of the District of Columbia must be signed by a member of the bar of the court of appeals of the District of Columbia, who should enter a regular appearance in the case in the clerk's office.

After the petition for the appeal, the certified transcript, and the docket fee of $15 have been lodged in the office of the clerk of the court of appeals of the District of Columbia, the clerk will send to the solicitor of record an estimate of the cost of printing the petition, transcript, etc.

When the amount called for is deposited, the clerk will cause the printing to be done under his supervision, and when the printing is completed the case will be put on the calendar for hearing at the next term at which patent appeals are heard.

In interference cases the clerk is authorized to receive printed copies of the evidence, such as have been used in the Patent Office, thus saving to the appellant the cost of reprinting such evidence. When such printed copies are supplied, twenty-five copies must be furnished.

As above stated, the notice of appeal and the reasons of appeal are required to be filed with the Commissioner of Patents within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the date of the decision appealed from, but the petition for appeal and the certified transcript which are to be filed in the court of appeals of the District of Columbia are required to be filed in that court within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the time of the giving of the notice of appeal; that is to say, if the decision complained of was rendered, for instance, on the 1st day of

July, 1906, the party aggrieved might file his notice of appeal, with the reasons of appeal, at any time within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, thereafter; but if he filed his notice of appeal and reasons therefor on the 10th day of July, 1906, he would be required to file his petition for appeal and the certified transcript in the court of appeals of the District of Columbia within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the 10th day of July, 1906.

For convenience of appellants and to secure uniformity in practice the following forms are suggested as guides in the prosecution of patent appeals:

FORMS.

1. FORM OF NOTICE OF APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN EX PARTE CASE, WITH REASONS OF APPEAL AND REQUEST FOR TRANSCRIPT.

IN THE UNITED STATES PATENT OFFICE.

In re Application of .....
Serial No .....
Filed .....
Improvements in .....

To the Commissioner of Patents:

SIR: You are hereby notified of my appeal to the court of appeals of the District of Columbia from your decision, rendered on or about the ..... day of ....., 19..,

rejecting my above-entitled application and refusing me a patent for the invention set forth therein.

The following are assigned as reasons of appeal:

[Here insert in separate counts the specific errors complained of.]

....,

By ....,

His Attorney.

2. FORM OF PETITION FOR AN APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN EX PARTE CASE.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

In re Application of

....

Serial No. ....

Filed ....

Improvements in ....

To the Court of Appeals of the District of Columbia:

Your petitioner, ..., of ....., in the county of ....., and State of ....., respectfully represents:

That he is the original and first inventor of certain new and useful improvements in .....

That on the ..... day of ....., 19.., in the manner prescribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That such proceedings were had in said Office upon said application; that on the ..... day of ....., 19.., it was rejected by the Commissioner of Patents and a patent for said invention was refused him.

That on the ..... day of ....., 19.., your petitioner, pursuant to sections 4912 and 4913, Rev. Stat.,

United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his refusal to issue a patent to him for said invention upon said application as aforesaid, and filed with him, in writing, the following reasons of appeal:

[Here recite the reasons of appeal assigned in the notice to the Commissioner.]

That the Commissioner of Patents has furnished him a certified transcript of the record and proceedings relating to said application for patent, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the Commissioner as aforesaid, and that said appeal may be determined and the decision of the Commissioner be revised and reversed, that justice may be done in the premises.

.....,
By .....,
His Attorney.

[To be signed here by a member of the bar of the court of appeals of D. C.]

.....,
Solicitor and of Counsel.

3. FORM OF NOTICE OF APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN INTERFERENCE CASE, WITH REASONS OF APPEAL AND REQUEST FOR TRANSCRIPT.

IN THE UNITED STATES PATENT OFFICE.

BEFORE THE COMMISSIONER OF PATENTS.

.... *vs.*	Interference No. ..... Subject matter: Improvements in .....

And now comes ....., by ....., his attorney, and give notice to the Commissioner of Patents of his appeal to the court of appeals of the District of Columbia from the decision of the said Commissioner, rendered on or about the ..... day of ....., 19.., awarding priority of invention to ..... in the above-entitled case, and assigns as his reasons of appeal the following:

[Here set out in separate counts the specific errors in the Commissioner's decision complained of.]

.....,
By .....,
His Attorney.

4. FORM OF PETITION FOR AN APPEAL TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA IN AN INTERFERENCE CASE.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

In re Interference No. .....

.....,
Appellant,
vs.
.....

To the Court of Appeals of the District of Columbia:

Your petitioner, ..., of ....., in the county of ..... and State of ....., respectfully represents:

That he is the original and first inventor of certain new and useful improvements in .....

That on the ..... day of ....., 19.., in the manner prescribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That thereafter, to-wit, on the ..... day of ....., 19.., an interference proceeding was instituted and declared between his said application and a pending application of one ....., serial No. ....., filed ....., for a similar invention.

That the subject-matter of said interference as set forth in the official declaration was as follows:

[Here state the issues of the interference.]

That thereafter, to-wit, on the ..... day of ....., 19.., the case having been submitted upon the preliminary statements and evidence presented by the parties thereto, the Examiner of Interferences rendered a decision awarding priority of invention to .....

That, pursuant to the statutes and the rules of practice in the Patent Office in such case made and provided, ... appealed from the said adverse decision of the Examiner of Interferences to the Board of Examiners-in-Chief, and the case having been argued and submitted to said board, a decision was rendered by said board on the ..... day of ....., 19.., affirming (or reversing) the decision of the Examiner of Interferences.

That thereafter, pursuant to said statutes and rules, ... appealed from the said adverse decision of the Board of Examiners-in-Chief to the Commissioner of Patents, and the same coming on to be heard and having been argued and submitted, a decision was, on the ..... day of ....., 19.., rendered by the Commissioner adverse to your petitioner, affirming (or reversing) the decision of the Board of Examiners-in-Chief and awarding priority of invention to the said .....

That on the ..... day of ....., 19.., your petitioner, pursuant to sections 4912 and 4913, Rev. Stat., United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his de-

cision awarding priority of invention to said ....., as aforesaid, and filed with him, in writing, the following reasons of appeal:

[Here insert reasons of appeal assigned in notice to Commissioner.]

That the Commissioner of Patents has furnished your petitioner a certified transcript of the record and proceedings relating to said interference case, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the Commissioner, as aforesaid, and that said appeal may be determined and the decision of the Commissioner be revised and reversed that justice may be done in the premises.

.....,
By .....,
His Attorney.

[To be signed here by a member of the bar of the court of appeals of D. C.]

.....,
Solicitor and of Counsel.

5. FORM OF WRIT OF ERROR FROM UNITED STATES SUPREME COURT TO COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(From Johnson v. Mueser, 29 App. D. C. 61.)

United States of America, ss:

The President of the United States, to the Honorable, the Judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Court of Appeals before you, or some of you, between Albert

L. Johnson, appellant, and William Mueser, appellee, a manifest error hath happened, to the great damage of the said appellant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of April, in the year of our Lord one thousand nine hundred and seven.

(Seal of the Supreme Court of the United States.)

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed, but not operate as a supersedeas.

WILLIAM R. DAY,
Associate Justice of the Supreme Court
of the United States.

6. APPEAL BOND FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA TO THE UNITED STATES SUPREME COURT.

(From Johnson v. Mueser, 29 App. D. C. 61.)

Know all men by these presents, That we, Expanded Metal and Corrugated Bar Company as principal and Federal Union Surety Company as surety are held and firmly bound unto William Mueser in the full and just

sum of five hundred dollars to be paid to the said William Mueser, his heirs, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of April in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at the term A. D. 1907, of the Court of Appeals of the District of Columbia, in the suit depending in said Court between Albert L. Johnson, appellant plaintiff and William Mueser, appellee defendant judgment was rendered against the said Albert L. Johnson and the said Albert L. Johnson has obtained a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to the said William Mueser citing and admonishing him to be and appear in the Supreme Court of the United States, at the City of Washington, thirty days from and after the date of said Citation.

Now the Condition of the Above Obligation is Such, That if the said Albert L. Johnson shall prosecute said writ to effect, and answer all costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

EXPANDED METAL & CORRUGATED BAR CO.
(Seal.)
(Seal of Expanded Metal and Corrugated Bar Co.)
D. E. Garrison, Pres't.
(Seal.)

FEDERAL UNION SURETY COMPANY,
By R. H. McNeill, (Seal.)
Resident Vice-President.

Attest: E. R. S. Croggon,
Resident Assistant-Secretary.
(Seal of Federal Union Surety Company.)

Approved, April 11, 1907.

WILLIAM R. DAY,

Associate Justice, U. S. Supreme Court.

(Endorsed:) No. 392, Patent Appeal Docket. Court of Appeals of the District of Columbia. Albert L. Johnson, Appellant vs. William Mueser. Bond on Writ of Error. Court of Appeals, District of Columbia. Filed April 19, 1907, Henry W. Hodges, Clerk.

7. CITATION; ON APPEAL FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA TO THE UNITED STATES SUPREME COURT.

(From Johnson v. Mueser, 29 App. D. C. 61.)

United States of America, ss:

To William Mueser, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Albert L. Johnson is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William R. Day, Associate Justice of the Supreme Court of the United States this 6th day of April, in the year of our Lord one thousand nine hundred and seven.

WILLIAM R. DAY,

Associate Justice, Supreme Court of the United States.

Service accepted this — day of April, A. D. 1907.

WILLIAM R. BAIRD,

Attorney for William Mueser.

(Endorsed:) Court of Appeals, District of Columbia. Filed April 19, 1907. Henry W. Hodges, Clerk.

8. ASSIGNMENT OF ERRORS, IN UNITED STATES SUPREME COURT ON WRIT OF ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption).

The plaintiff-appellant in this cause, in connection with the petition for writ of error, makes the following assignment of errors which he avers occurred upon the trial of this cause, to-wit:

I. That the Court of Appeals of the District of Columbia erred in refusing to consider the question of the petentablity of the issues in interference.

II. That said Court erred in refusing to consider the question of interference in fact between the applications of the respective parties.

III. That said Court erred in refusing to consider the right of the party Mueser to make claims corresponding to the issues in interference.

IV. That said Court erred in adjudicating in this case the question of priority of invention, and in positively refusing to adjudicate or to inquire into the question of the patentability of the issues or the question of interference in fact between the applications of the respective parties, or the question of the right of the party Mueser to make claims corresponding to the issues in interference.

V. That said Court erred in deciding the question of priority of invention in favor of William Mueser, whereas if said Court had jurisdiction to decide the question of priority of invention at all it should have decided in favor of Albert L. Johnson.

VI. That said Court erred in assuming and exercising jurisdiction of this case with respect to the question of priority of invention, whereas it had no such jurisdiction for the following reasons: (a) because the interfer-

ence issues constituting the matter in controversy do not set forth a patentable invention; (b) because there is no interference in fact between the applications of the respective parties; and (c) because the party Mueser has no right to make claims for the subject-matter of said interference issues.

VII. That the Court erred in not overruling and reversing the decision of the Commissioner of Patents.

Wherefore the said Albert L. Johnson, plaintiff-appellant, prays that this assignment of errors be filed in said Court, that a writ of error to remove the case to the Supreme Court of the United States be granted and that the judgment of said Court of Appeals of the District of Columbia may be reversed.

MELVILLE CHURCH,
Attorney for Plaintiff-Appellant.

(Endorsed:) Patent Appeal Docket No. 392. Albert L. Johnson, Appellant vs. William Mueser. Assignment of Errors. Court of Appeals, District of Columbia. Filed April 19, 1907. Henry W. Hodges, Clerk.

9. PRAECIPE FOR PREPARATION OF TRANSCRIPT ON WRIT OF ERROR FROM COURT OF APPEALS OF THE DISTRICT OF COLUMBIA TO THE SUPREME COURT OF THE UNITED STATES.

(From Johnson v. Mueser, 29 App. D. C. 61.)

(Omitting caption)

The Clerk in preparing the transcript of record on the Writ of Error to the Supreme Court of the United States in the above entitled cause will include the following papers, and those only, namely:

1. The printed record and addition threto.
2. The argument of the cause.
3. The opinion.

4. The judgment.
5. The writ of error and allowance thereof.
6. The bond on writ of error.
7. The citation.
8. The assignment of errors filed April 19, 1907.

MELVILLE CHURCH,
Counsel for Appellant.

SUPPLEMENT TO PATENT OFFICE RULES.

Acting under the provisions of section 483 of the Revised Statutes and with the approval of the Secretary of the Interior, Rules 17, 22, 47, 72, 124, 151, 162, and 203 of the Rules of Practice in the United States Patent Office have been amended by substituting therefor the following:

17. An applicant or an assignee of the entire interest may prosecute his own case, but he is advised, unless familiar with such matters, to employ a competent *patent* attorney, as the value of patents depends largely upon the skillful preparation of the specification and claims. The office can not aid in the selection of an attorney.

A register of attorneys will be kept in this office, on which will be entered the names of all persons entitled to represent applicants before the Patent Office in the presentation and prosecution of applications for patent. The names of persons in the following classes will, upon their written request, be entered upon this register:

(*a*) Any attorney at law who is in good standing in any court of record in the United States or any of the States or Territories thereof and shall furnish a certificate of the clerk of such United States, State, or Territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

(*b*) Any person not an attorney at law *who is a citizen or resident of the United States and* who shall file proof to the satisfaction of the Commissioner that such person is of good moral character and of good repute and possessed of the necessary *legal and technical* qualifications to enable him to render applicants for patents valuable service and is otherwise competent to advise

and assist them in the presentation and prosecution of their applications before the Patent Office.

(*c*) *Any foreign patent attorney not a resident of the United States, who is a citizen or subject of a country granting the same reciprocal rights to citizens of the United States, who shall file proof to the satisfaction of the Commissioner that he is registered and in good standing before the Patent Office of the country of which he is a citizen or subject, and is possessed of the qualifications stated in paragraph (b).*

No foreign patent attorney will be recognized in any application filed after June 30, 1908, unless entitled to registration under the provisions of this rule.

(*d*) Any firm will be registered which shall show that the individual members composing such firm are each and all registered under the provisions of the preceding sections.

The Commissioner may require proof of qualifications other than those specified in paragraph (*a*) and reserves the right to decline to recognize any attorney, agent, or other person applying for registration under this rule.

Any person or firm not registered and not entitled to be recognized under this rule as an attorney or agent to represent applicants generally may, upon a showing of circumstances which render it necessary or justifiable, be recognized by the Commissioner to prosecute as attorney or agent certain specified application or applications, but this limited recognition shall not extend further than the application or applications named.

No person not registered *or entitled to recognition* as above provided will be permitted to prosecute applications before the Patent Office.

22. (*a*) Applicants and attorneys will be required to conduct their business with the office with decorum and courtesy. Papers presented in violation of this require-

ment will be returned. But all such papers will first be submitted to the Commissioner, and only returned by his direct order.

(*b*) Complaints against Examiners and other officers must be made in separate communications, and will be promptly investigated.

(*c*) For gross misconduct the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal will be duly recorded and be subject to the approval of the Secretary of the Interior.

(*d*) *The Secretary of the Interior may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Patent Office any person, firm, corporation, or association shown to be incompetent, disreputable, or who refuses to comply with the rules and regulations thereof, or who shall, with intent to defraud, in any manner deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement, or by guaranteeing therein the successful prosecution of any application for patent or the procurement of any patent, or which word, circular, letter, or advertisement shall contain therein any false promise or misleading representation.* (*Sec. 5, Act approved July 4, 1884.*)

47.[1] If the application be made by an executor or administrator of a deceased person, or the guardian, conservator, or representative of an insane person, the form of the oath will be correspondingly changed.

The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a for-

[1] The amendment to Rule 47 requiring that a ribbon or tape be passed one or more times through all the sheets of all applications, etc., will take effect December 1, 1908.

eign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the Government of the United States, or before any notary public, judge, or magistrate having an official seal and authorized to administer oaths in the foreign country in which the applicant may be, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States, the oath being attested in all cases in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made, except that no acknowledgment may be taken by any attorney appearing in the case. When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal.

When the oath is taken before an officer in *any country including the United States*, all the application papers must be attached together and a ribbon *or tape* passed one or more times through all the sheets of the application, and the ends of said ribbon *or tape* brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath was taken, or, if he is not provided with a seal, then each sheet must be initialed by him.

72. After the completion of the application the office will not return the specification for any purpose whatever. If applicants have not preserved copies of the papers which they wish to amend, the office will furnish them on the usual terms.

The drawing may be withdrawn only for such corrections as can not be made by the office; but a drawing cannot be withdrawn unless a photographic copy has been filed and accepted by the Examiner as a part of the application. Permissible changes in the construction

shown in any drawing may be made only within the office and after an approved photographic copy has been filed. Substitute drawings will not be admitted in any case unless required by the office.

124. Where, on motion for dissolution, the Primary Examiner renders an adverse decision upon the merits of a party's case, as when he holds that the issue is not patentable or that a party has no right to make a claim, or that the counts of the issue have different meanings in the cases of different parties, *he shall fix a limit of appeal not less than twenty days from the date of his decision. Appeal lies to the Examiners-in-Chief in the first instance and will be heard inter partes.* If the appeal is not taken within the time fixed, it will not be entertained except by permission of the Commissioner.

No appeal will be permitted from a decision rendered upon motion for dissolution affirming the patentability of a claim or the applicant's right to make the same or the identity of meaning of counts in the cases of different parties.

Appeals may be taken directly to the Commissioner, except in the cases provided for in the preceding portions of this rule, from decisions on such motions as, in his judgment, should be appealable.

151. Hearings will be had by the Commissioner at 10 o'clock a. m., and by the Board of Examiners-in-Chief at 1 o'clock p. m., and by the Examiner of Interferences *upon interlocutory matters at 10 o'clock a. m., and upon final hearings at 11 o'clock a. m.*, on the day appointed unless some other hour be specifically designated. If either party in a contested case, or the appellant in an *ex parte* case, appears at the proper time, he will be heard. After the day of hearing, a contested case will not be taken up for oral argument except by consent of all parties. If the engagements of the tribunal having jurisdiction are such as to prevent the case from be-

ing taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each party in contested cases, and to one-half hour in other cases. After a contested case has been argued, nothing further relating thereto will be heard unless upon request of the tribunal having jurisdiction of the case; and all interviews for this purpose with parties in interest or their attorneys will be invariably denied.

162. Thirty-one or more printed copies of the testimony must be furnished—5 for the use of the office, 1 for each of the opposing parties, and 25 for the court of appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the 25 copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. *These copies of the record of the junior party's testimony must be filed not less than forty days before the day of final hearing, and in the case of the senior party, not less than twenty days.* They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case typewritten copies must be furnished—one for the office and one for each adverse party. Printing of the testimony can not be dispensed with upon the stipulation of the parties.

203. The following is the schedule of fees and of prices of publications of the Patent Office:

On filing each original application for a patent, except in design cases	$15.00
On issuing each original patent, except in design cases	20.00
In design cases:	
For three years and six months	10.00
For seven years	15.00
For fourteen years	30.00
On every application for the reissue of a patent	30.00
On filing each disclaimer	10.00
On an appeal for the first time from the Primary Examiner to the Examiners-in-Chief	10.00
On every appeal from the Examiners-in-Chief to the Commissioner	20.00
For certified copies of patents if in print:	
For specification and drawing, per copy	.05
For the certificate	.25
For the grant	.50
For certifying to a duplicate of a model	.50
For manuscript copies of records, for every one hundred words or fraction thereof	.10
If certified, for the certificate, additional	.25
For twenty-coupon orders, each coupon good for one copy of a printed specification and drawing, and receivable in payment for prints, Official Gazette, and Roster of Attorneys	1.00
For one hundred coupons in stub book	5.00
For uncertified copies of the specifications and accompanying drawings of patents, if in print, each	.05
For the drawings, if in print	.05
For copies of drawings not in print, the reasonable cost of making them.	
For photo prints of drawings, for each sheet of drawings:	
Size 10 by 15 inches, per copy	.25
Size 8 by 12½ inches, per copy	.15
For recording every assignment, agreement, power of attorney, or other paper, of three hundred words or under	1.00
Of over three hundred and under one thousand words	2.00
For each additional thousand words or fraction thereof	1.00
For abstracts of title to patents or inventions:	
For the search, one hour or less, and certificate	1.00
Each additional hour or fraction thereof	.50
For each brief from the digest of assignments, of two hundred words or less	.20
Each additional hundred words or fraction thereof	.10

For searching titles or records, one hour or less	.50
Each additional hour or fraction thereof	.50
For assistance to attorneys in the examination of publications in the Scientific Library, one hour or less	1.00
Each additional hour or fraction thereof	1.00
For copies of matter in any foreign language, for every one hundred words or a fraction thereof	.10
For translation, for every one hundred words or fraction thereof	.50
THE OFFICIAL GAZETTE:	
Annual subscriptions	$5.00
For postage upon foreign subscriptions, except those from Canada and Mexico, $5 or more as required. Moneys received from foreign subscribers in excess of the subscription price of $5 will be deposited to the credit of the subscriber and applied to postage upon the subscription as incurred. *All communications respecting the Gazette and all subscriptions should be addressed to the Superintendent of Documents, Government Printing Office.*	
Single numbers	.10
Decision leaflets	.05
Trade-mark supplements	.05
For bound volumes of the OFFICIAL GAZETTE:	
Semiannual volumes, from January 1, 1872, to June 30, 1883, full sheep binding, per volume	4.00
In half sheep binding, per volume	3.50
Quarterly volumes, from July 1, 1883, to December 31, 1902, full sheep binding, per volume	2.75
Bimonthly volumes, from January 1, 1903, *to March* 1, 1906, full sheep binding, per volume	2.50
Bimonthly volumes, from March 1, 1906, *to January* 1, 1909, *tan duck binding*	2.50
Monthly volumes, from January 1, 1909, *tan duck binding, per volume*	2.50
Monthly volumes, unbound, with title page, digest, and index, per volume	.50
For the annual index, from January, 1872, *to January* 1, 1906, full law binding, per volume	2.00
In paper covers, per volume	1.00
For the annual index from January 1, 1906, *buckram binding*	2.00
In paper covers, per volume	1.00
For the general index—a list of inventions patented from 1790 to 1873—three volumes, full law binding, per set	10.00
For the index from 1790 to 1836—one volume, full law binding	5.00

For the Library edition, monthly volumes *to January* 1, 1906, containing the specifications and photolithographed copies of the drawings of all patents issued during the month, certified, bound in full sheep, per volume	5.00
In half sheep *to January* 1, 1906, per volume	3.00
For the Library edition, monthly volumes from January 1, 1906, *tan duck binding*	5.00
For the index to patents relating to electricity, granted by the United States prior to June 30, 1882, one volume, 250 pages, bound	5.00
In paper covers	3.00
Annual appendixes for each fiscal year subsequent to June 30, 1882, paper covers	1.50
For Commissioner's Decisions:	
For 1869-70-71, one volume, full law binding	2.00
For 1872-73-74, one volume, full law binding	2.00
For 1875-76, one volume, with decisions of United States courts in patent cases, full law binding	2.00
In paper covers	1.00
Annual volumes with decisions of United States courts, for 1877 *to* 1906, *full law binding, per volume*	2.00
In paper covers	1.00
Subsequent annual volumes, buckram binding	2.00
In paper covers	1.00
Roster of Attorneys	.20

EDWARD B. MOORE, *Commissioner.*

NOVEMBER 19, 1908.

FORMS—ACTIONS AT LAW

DECLARATION.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74.)

In the United States Circuit Court, in and for the Northern District of California, Ninth Circuit.

Of the February term of said Court of the year eighteen hundred and ninety-three.

HERMAN CRAMER, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY (a corporation) and WILLIS B. FRY, Defendants.

The said Herman Cramer, as plaintiff, complains of The Singer Manufacturing Company and Willis B. Fry, as defendants, and for cause of action alleges:

I.

That the defendant, The Singer Manufacturing Company is and at all times herein mentioned was a corporation organized and existing under the laws of the State of New Jersey, and is and at all times herein mentioned engaged in the business of manufacturing sewing machines, and selling the same throughout the United States. That as a part of its said business it maintains and conducts and at all times herein mentioned has maintained and conducted a branch establishment for selling and trading in sewing machines at the City and County of San Francisco, State of California, and in the Northern District thereof, and in connection with its said business it has and has had at all said times a Managing Agent in said State and District of California, as plaintiff is informed and so believes the truth to be.

II.

That the defendant, Willis B. Fry, is the Managing Agent of said defendant, The Singer Manufacturing Company, in said State and District of California, and is a citizen and resident of said State of California, and the Northern District thereof.

III.

That heretofore, and prior to the 25th day of May, A. D. 1882, the plaintiff above named was the original, first and sole inventor of certain new and useful Improvements in Sewing Machines, entitled "Improvements in Treadle for Sewing Machines," which were and are fully shown and described in the letters patent hereinafter referred to. That the same was a new and useful invention, and was not known or used by others in this country, nor patented nor described in any printed publication in this or any foreign country prior to the application of said plaintiff for a patent therefor, nor had it been in public use or on sale for two years, nor abandoned, nor was it proved to have been abandoned.

IV.

That the said plaintiff, being as aforesaid the original and first inventor thereof, did, on the said 25th day of May, 1882, file his application in the United States Patent Office for a patent therefor, and thereafter, to-wit: On the 30th day of January, A. D. 1883, letters patent for said invention were issued by the patent office of the United States, and delivered to the said plaintiff, granting unto him, the said plaintiff, his heirs and assigns, for the term of seventeen (17) years from said last named day, the full and exclusive right and liberty to make, use and vend the said invention throughout the United States and the Territories thereof.

That the said letters patent were issued in due form of law under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, and were numbered 271,426, and bore date the 30th day of January, A. D. 1883, and were on said last named day issued and delivered to the said plaintiff, which said letters patent, or a duly authenticated copy thereof, is ready in court to be produced.

That prior to the issuance of said letters patent, all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patents for new and useful inventions.

That by virtue of the premises the plaintiff is now, and during all the times hereinafter mentioned was the sole and exclusive owner of the invention set forth and claimed in and by said letters patent, and of all the rights and privileges granted and secured thereby.

Yet, notwithstanding the premises, the defendant herein, having full knowledge thereof, and in violation of the exclusive rights and privileges secured to plaintiff by said letters patent, and utterly disregarding the same, and contriving to injure and damage plaintiff and his said rights since the date of plaintiff's said letters patent, and prior to the commencement of this action, without the license or consent of plaintiff, or any license or authority whatever, in the State of California and Northern District thereof, have wrongfully made, used and sold sewing machines containing and embracing the invention described, claimed and patented in and by the letters patent aforesaid.

That the sewing machines made, used and sold by the said defendants were and are, and each of them is and was an infringement upon said letters patent No. 271,426, and were made and used according to the specification thereof, all contrary to the law and the Statutes of the United States, in that behalf made and provided.

Whereby, and by reason of the premises and the infringement aforesaid, the plaintiff has been greatly injured and damaged and deprived of large royalties, gains and advantages which he otherwise would have derived, and has sustained actual damages thereby in a large sum, to-wit: One million ($1,000,000.00) dollars.

Wherefore, and by force of the Statutes of the United States a right of action has accrued to plaintiff to recover the said actual damages, and such additional sum, not exceeding in the aggregate three times the amount of said actual damages, as the court may see fit to adjudge and order, besides costs of suit.

Yet the defendants, though often requested, have never paid the same, nor any part thereof, but have refused and still refuses so to do, and therefore plaintiff brings this suit.

JOHN L. BOONE and
CHARLES F. HANLON,
Attorneys for Plaintiff.

DECLARATION.

(From Cassidy vs. Hunt Bros. Fruit Packing Co., 64 Fed. Rep. 585, 12 C. C. A. 316.)

TRESPASS ON THE CASE.

In the Circuit Court of the United States for the Northern District of California.

Of the February term of the year one thousand eight hundred and ninety-one.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF CALIFORNIA, } ss:

John W. Cassidy of the city of Petaluma, county of Sonoma, in the State of California, and a citizen of the said State of California, plaintiff in this action, by Langhorne & Miller his attorneys, complains of the Hunt

Brothers Fruit Packing Company, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at the city of Santa Rosa, county of Sonoma, in the said State of California, and the Northern District thereof, of a plea of trespass on the case.

For that heretofore, to-wit: on and prior to the 8th day of March A. D. 1875, plaintiff was the original and first inventor of a certain new and useful invention, to-wit: an improvement in Drying Apparatus.

That said invention related to an improved device for dessicating fruit and other substances by means of artificial heat and consisted among other things of a novel means of moving the trays on which the fruit is held within the drying chamber from the time it is admitted until it is removed therefrom as will more fully appear from the letters patent therefor hereinafter set out to which reference is hereby made for a fuller description.

And for that the said invention was new and useful, and was not known or used by others prior to the invention thereof by the said plaintiff, and at the time of his application for letters patent therefor, as hereinafter mentioned, had not been in public use or on sale in the United States for two years, nor abandoned, nor proved to have been abandoned.

And for that the said plaintiff, being as aforesaid the inventor thereof, did on the 8th day of March, A. D. 1875 make application to the Government of the United States for the issuance to him of letters patent for said invention, and thereafter, to-wit: on the 25th day of January, A. D. 1876 after proceedings duly and regularly had and taken in the matter of said application, letters patent of the United States were granted, issued and delivered to said plaintiff for said invention, granting and securing to him, his heirs and assigns for the full term of seventeen years from said last-named day the

sole and exclusive right to make, use and vend said invention throughout the United States and Territories thereof.

And for said letters patent were issued in due form of law under the seal of the Patent Office of the United States and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of Patents of the United States, and bear date the day and year last aforesaid, and were numbered No. 172,608, all of which will more fully appear by said letters patent, which are ready in court to be produced by plaintiff or a duly certified copy thereof, and of which he hereby makes profert.

And for that prior to the issuance of said letters patent all proceedings were had and taken which were required by law to be had and taken previous to the issuance of letters patent for new and useful inventions.

And for that ever since the issuance of said letters patent plaintiff has been and now is the sole and exclusive owner and holder of said letters patent, and the invention therein claimed, for, to, in and throughout the United States of America and Territories thereof.

And for that since the issuance of said letters patent in the exercise of the rights and liberties thereby granted, the plaintiff has made, used and sold the improvement so patented and had and maintained until the infringement hereinafter complained of, possession of said invention under and by virtue of said letters patent and has never acquiesced in any invasion or infringement of his said rights.

Yet notwithstanding the premises the defendant, having full knowledge thereof, and in violation of the exclusive rights and privileges secured by said letters patent, and utterly disregarding the same and contriving and intending to injure and damage the plaintiff, since

the issuance of said letters patent and prior to the commencement of this action, without the license or consent of plaintiff, but contrary thereto in the State of California and the Northern District thereof, has wrongfully and unlawfully made, used and sold large numbers of machines containing and embracing the inventions described and claimed in and by the said letters patent.

That said machines so made, used and sold by defendant are infringements upon said letters patent No. 172,608 and were made according to the specification thereof: All contrary to law and the form, force and effect of the Statutes of the United States in that behalf made and provided.

Whereby and by reason of the premises and the infringement aforesaid the plaintiff has been greatly injured and damaged and deprived of large royalties, gains and profits which he would have derived from practicing said invention and has sustained actual damages thereby in a large sum, to-wit: Five thousand dollars ($5000).

Wherefore, by force of the Statutes of the United States a right of action has accrued to plaintiff to recover the said actual damages and such additional amount not exceeding in the aggregate three times the amount of such actual damages as the court may see fit to adjudge and order, besides costs of suit.

Yet the defendant though often requested has never paid the same nor any part thereof, but has refused and still does refuse so to do, and therefore plaintiff brings this suit.

LANGHORNE & MILLER,
Attorneys for Plaintiff.

DECLARATION.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the United States Circuit Court, Ninth Circuit, in and for the Northern District of California.

A. BRILL, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY (a corporation), Defendant.

} Complaint.

A. Brill the above-named plaintiff complaining of the said defendant and for cause of action alleges:

I.

That the plaintiff is a citizen and a resident of the State of California, residing in the city and county of San Francisco.

II.

That the said defendant is a foreign corporation, duly incorporated and organized as such, under the laws of the State of New Jersey before the year 1872. That such corporation was organized for the purpose of carrying on, and ever since has been and is now engaged in the business of manufacturing, using and selling sewing machines, in all the States and Territories of the United States. That said defendant as such corporation, has a general and permanent office in the city and county of San Francisco, in the State of California, where its principal business in said State of California is carried on, and where its principal place of business is located. That it has a general agent and manager of its business duly appointed thereto by defendant, residing in said

city, county and State, who is now and has been ever since its said corporation, in charge of defendant's said business, conducting and carrying on the said business of said defendant, in said State of California, and in said city and county.

III.

That the statutes and laws of the State of California, provide and require that the defendant, and all foreign corporations doing business in this State, shall designate in writing some person residing in the county in which the principal place of business of such corporation is located, upon whom process in any suit commenced in the State of California against such corporation may be served, and shall file such designation in the office of the Secretary of State of the State of California, and that it shall be lawful to serve upon such person any process issued in such action. And it is also likewise further provided that where such designation shall not be made as aforesaid, it shall be lawful to serve such process on any person who shall be found within the said State of California, acting as the agent of such corporation or doing business for them.

IV.

That the defendant has failed and neglected to file with the Secretary of State, of the State of California, such designation of a general agent and manager to reside in said State of California, and of a person upon whom service of process might be made in any action brought against it in said State of California, as required by the laws of said State as aforesaid. That Willis B. Fry is the general agent and manager of the defendant, and resides in the city and county of San Francisco, and as such general agent and manager, duly ap-

pointed by said defendant as aforesaid, is carrying on and conducting a large and extensive business for defendant in said State, in the manufacture, use and sale of sewing machines.

V.

That heretofore, to-wit: Before the 2d day of July, 1872, the plaintiff, A. Brill, was the original and first inventor of a certain new and useful invention, viz: Improvement in Treadles for Sewing Machines.

VI.

That the same was not known or used by others before the invention thereof by the plaintiff, and at the time of the plaintiff's application for a patent thereof had not been in public use for two years, nor abandoned, nor was it proved to have been abandoned.

VII.

That being the inventor thereof as aforesaid upon due application therefor, letters patent of the United States, numbered 128,460 were on the 2d day of July, 1872, duly issued to the said plaintiff, A. Brill, granting and securing to him, his executors, administrators and assigns, for the full term of seventeen years from the date thereof, the full and exclusive right and liberty of making, using and vending to others to be used, the said inventions and improvements throughout the United States and Territories thereof.

VIII.

That said letters patent were issued in due form of law, under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior,

and countersigned by the Commissioner of Patents of the United States, and dated the day and year last aforesaid, a description whereof and of said inventions more fully appear in said letters patent, which said letters patent are ready in court to be produced by the plaintiff, or a duly certified copy thereof.

IX.

That prior to the issuing of said letters patent, all proceedings were had and taken which were required by law to be had or taken previous to the issuance of letters patent granting special privileges, rights and liberties for new and useful inventions.

X.

That since the issuance of said letters patent to him as aforesaid, the plaintiff has been in the constant exercise of the rights and privileges thereby granted and confirmed to him, and has granted privileges to use said inventions under said letters patent, to various parties in that part of the United States lying east of the Rocky Mountains, but in no other place or places.

XI.

That the defendant well knowing the premises, and contriving to injure the plaintiff, has since the 2d day of July, 1872, unlawfully and wrongfully, and without the consent or allowance, and against the will of plaintiff, made and sold a large number, to-wit: Fifteen millions of treadles for sewing machines, containing the inventions and improvements described and claimed in said letters patent.

XII.

That as plaintiff is informed and believes two millions of such treadles so made and sold by defendant as aforesaid, were sold by defendant between the date of said patent and the 2d day of July, 1889, within the State of California and within the jurisdiction of this Honorable Court, and in violation and infringement of the exclusive privileges, rights and liberties secured to the plaintiff by said letters patent and contrary to the law and form of the statutes in such cases made and provided.

XIII.

And plaintiff further avers, that on account of said acts of the said defendant herein set forth, the plaintiff has been greatly injured and damaged, and deprived of great profits which he might and otherwise would have derived from the said inventions and letters patent, and that he has sustained actual damages therefrom and thereby in the sum of one hundred thousand ($100,000) dollars, and that by force of the statutes aforesaid, an action has accrued to him, the plaintiff herein to recover the said actual damages as the court may see fit to order and adjudge.

Wherefore, plaintiff prays judgment against the said defendant for the sum of one hundred thousand ($100,000) dollars, actual damages, together with such further sum not exceeding in the aggregate three times the amount of such actual damages as the court may adjudge, and for costs of suit.

SCRIVNER & SCHELL and
C. W. M. SMITH,
Attorneys for Plaintiff.

ANSWER.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74; 192 U. S. 265, 48 L. Ed. 347.)

(Title of Court and Cause.)

Comes now the defendant above named and denies generally and specifically each and every allegation contained in plaintiff's amended declaration on file herein, and says that he is not guilty of the grievances therein charged against him, nor of either nor of any of them, nor of any part thereof, and of this the defendant puts himself upon the country.

Further answering defendant denies that the plaintiff is, or ever was, the original and first and sole or any inventor of the alleged improvements or any thereof in treadles for sewing machines, mentioned in said amended declaration and described in the letters patent mentioned in said amended declaration. Defendant denies that the said alleged improvements were, at the time of the alleged invention thereof, or are now, new and useful or new or useful. Defendant further denies that the said alleged improvements in treadles for sewing machines or any thereof now are, or ever were, an invention within the meaning of the patent law. On the contrary, defendant avers that the first conception or origination of said so-called improvement or improvements involved no exercise whatever of the inventive faculty, and that the first conception or origination thereof required nothing more than the usual knowledge of an ordinarily skilled mechanic.

Further answering defendant denies that the said alleged invention or improvements or any thereof was not or were not known or used by others in this country be-

fore the alleged invention thereof by the plaintiff, and denies that at the time of plaintiff's application for a patent therefor, the said alleged invention or improvement or improvements had not been in public use for more than two years. Defendant denies that said invention or improvement had not been abandoned by the plaintiff prior to his application for a patent therefor. On the contrary, defendant avers that said plaintiff was not the first or original or any inventor or discoverer of the alleged invention or improvement, or inventions or improvements, set forth in, or intended to be claimed in said letters patent; but that the said alleged inventions or improvements were and each of them was substantially shown and described in the following described letters patent, prior to the alleged invention and discovery thereof by the said plaintiff, to-wit:

(Here follows list of patents and patentees.)

Further answering defendant avers that he will prove upon the trial of this suit that the alleged inventions and improvements described and claimed, or intended to be described and claimed, in plaintiff's said letters patent, were and each of them was, long prior to the alleged invention thereof by said plaintiff, known to and used by the following named persons during the years from 1862 to 1882, at the following named places, to-wit:

(Here follows list of places and parties who used same.)

Further answering, as to the allegations contained in paragraph three of plaintiff's said amended declaration, defendant avers that he has no information concerning the facts alleged in said paragraph, and therefore denies that on the 25th day of May, 1882, or at any other time, or at all, the *defendant* filed his application in the United States Patent Office for a patent for said alleged invention or improvement, and denies that on the 30th day of January, 1883, or at any other time, or at all, letters

patent for said or any invention were issued and delivered or issued or delivered to said plaintiff, and denies that said or any letters patent granted to the said plaintiff, his heirs and assigns, or any of them, for the term of seventeen years, or at all, any exclusive or other right or liberty to make, or to use, or to vend the said alleged invention or improvement throughout the United States and Territories thereof. Defendant further denies that said letters patent were issued in due form of law, and denies that prior to the issuance of said letters patent, all proceedings were duly had and taken that were required by law to be had or taken prior to the issuance of letters patent for new and useful inventions.

Further answering defendant denies that the plaintiff is now or ever was the sole and exclusive, or sole or exclusive, owner of the so-called invention set forth and claimed in and by said letters patent mentioned in said amended declaration, and denies that any right or privilege whatever was granted and secured, or granted or secured, by the said letters patent.

Further answering defendant denies that defendant, either in violation of plaintiff's alleged rights, or disregarding the same, or contriving to injure or to damage plaintiff and his said rights, or otherwise or at all, either in the State of California and Northern District thereof, or anywhere else, has wrongfully or otherwise made or used or sold sewing machines or any sewing machine containing and embracing the said alleged invention or improvement described and claimed in any by plaintiff's said letters patent. Defendant further denies that any sewing machines which defendant has made or used or sold were or are, and denies that any of them ever was, or is, an infringement of said letters patent No. 271,426, and denies that they were, or that any of them was, made

or used according to the specifications of said letters patent, or contrary to the law and statutes of the United States.

Further answering defendant avers that during more than twelve years last past, The Singer Manufacturing Company, which is a corporation created and existing under and by virtue of the laws of the State of New Jersey, and which has its principal place of business in the said State of New Jersey, has been carrying on the business of manufacturing and using and selling sewing machines of a particular kind, which have been known in the markets of the world as Singer Sewing Machines. That the said corporation, The Singer Manufacturing Company, has been doing a very large business during all of said years, and has manufactured and sold during said time a large proportion of all the sewing machines that have been manufactured in the whole world.

That during more than twelve years last past, the said corporation, The Singer Manufacturing Company, has had and maintained a place of business in the city of San Francisco, in the said Northern District of California, where it has carried on a local business in selling the said Singer Sewing Machines, and which machines it sent from its factory in New Jersey to said city of San Francisco for that purpose. Defendant further avers that in carrying on its said business of selling said sewing machines, the said corporation, The Singer Manufacturing Company, has employed this defendant to act as its employee in making sales of said sewing machines, and in attending to said local business in said city of San Francisco and this defendant has acted as the employee of said corporation, The Singer Manufacturing Company, in repairing, and using so far as it was necessary to use them for testing their condition, and in selling the said sewing machines, and has done whatever was necessary in and about the carrying on of said local

business in the city of San Francisco, as the employee of said corporation, The Singer Manufacturing Company, and in no other way or manner whatever. That he has neither made nor used nor repaired nor sold any sewing machines or sewing machine treadles in his own right, nor in his own name, but that all the making, repairing, using and selling of sewing machines or sewing machine treadles that has been done by this defendant, and which is claimed to constitute any infringement of said letters patent, has been the making or repairing or using or selling done and performed by the said corporation, The Singer Manufacturing Company, by and through this defendant as its employee, and in no other way. That this defendant has not, at any time, been the owner of any sewing machines or treadles, and has not, at any time, either made, or used, or repaired, or sold any sewing machines, or sewing machine treadles, or sewing machine apparatus, or sewing machine attachments of any nature or kind, otherwise than as employee as aforesaid, or otherwise than as such acts were the acts of said corporation, The Singer Manufacturing Company.

Further answering defendant avers that if the plaintiff herein has any cause of action arising out of the sale of said or any sewing machine treadles by defendant, the said cause of action exists against said corporation, The Singer Manufacturing Company, and not against defendant, and that the defendant is not a necessary nor proper party to this action.

Defendant further avers that this court has no jurisdiction whatever over the said corporation, The Singer Manufacturing Company, and that this action has been brought against defendant because the plaintiff could not maintain an action in said district against the said corporation, and has been brought for the purpose of vexing and annoying the said corporation, and not because plaintiff has any cause of action whatever against this defendant.

Further answering defendant avers that the sewing machine treadles which the said corporation, The Singer Manufacturing Company, has sold through this defendant, as employee of said corporation, as aforesaid, and on account of the sale of which this action has been commenced against defendant, were constructed under and according to specifications and claims of certain letters patent of the United States, No. 306,469, bearing date October 14, 1884, and issued to Philip Diehl, as assignor to said corporation, The Singer Manufacturing Company; and defendant further avers that ever since the issuance of said last mentioned letters patent, the said corporation, The Singer Manufacturing Company, and this defendant as their employee as aforesaid, have had the right to make and sell sewing machines and sewing machine treadles constructed according to the specifications and claims of said last mentioned letters patent.

Defendant further avers that the state of the art relating to the manufacture of sewing machines and sewing machine treadles, at the time of plaintiff's alleged invention and improvement in said treadles, as disclosed by the various letters patent hereinbefore cited, and by the testimony of the parties whose names are hereinbefore especially noticed and set forth, was such that plaintiff's said alleged invention or improvement, if any existed, was extremely narrow and trivial in its nature, and that the claims of his patent were not and are not, and none of them has been or is, infringed by the manufacture or sale of treadles constructed according to the description contained in said letters patent issued as aforesaid to said Philip Diehl, assignor to said corporation.

Defendant further avers that when said plaintiff made his original application to the United States Patent Office for his said patent, he represented to said Patent Office in the specification which accompanied his said ap-

plication, that his invention consisted of a treadle, having a bar with V-shaped ends and resting in sockets constructed in the brace of the machine, and further represented to said Patent Office that said V-shaped treadle bar in the brace of the machine constituted the improvement or invention which he claimed. Defendant further avers that the specific elements and details of construction in combination, which are shown and described in the claims of plaintiff's said patent as they now appear therein, were not included in any claim or claims which accompanied plaintiff's said original application for said patent. Defendant further avers that plaintiff's said original application was rejected by said Patent Office, and that said Patent Office at the time of the rejection of said original application, notified said plaintiff that his alleged invention was exhibited in United States Letters Patent No. 256,563, granted on April 18, 1882, to G. W. Gregory.

Defendant further avers that upon the rejection of plaintiff's said original application as aforesaid, the plaintiff filed in said Patent Office a new and first amended specification, and in his new and first amended specification represented to said Patent Office and claimed that his invention consisted of the brace of a machine, having sockets or bearings for a treadle bar, with mufflers at the end of the treadle bar, in combination with the treadle bar itself. Defendant further avers that the specific elements and details of construction in combination, which are described and claimed in the claims of plaintiff's said patent, as they now appear therein, were not included in plaintiff's said first amended specification, nor in any claim or claims which accompanied plaintiff's said first amended specification. Defendant further avers that plaintiff's said application, when accompanied by said first amended specification, was again rejected by said Patent Office, and that said

Patent Office at the time of said last mentioned rejection, notified said plaintiff that his alleged invention, as described in his said first amended specification, was met by United States Letters Patent No. 243,529, granted on June 28, 1880, to John E. Donovan.

Defendant further avers that upon the said last mentioned rejection of his said application, the plaintiff filed in said Patent Office a new and second amended specification, and in his said second amended specification represented to said Patent Office and claimed that his invention consisted in the specific elements and details of construction in combination, as the same now appear and are described and claimed in the claims of plaintiff's said patent.

Defendant further avers that it was only by this limiting his claims to the precise combination of specifically mentioned elements and details of construction of which the claims of his said patent are now composed, that plaintiff was able to obtain the issuance of said patent at all, and that if he had not so limited his claim to invention in said Patent Office no patent would have been granted to him at all.

Defendant further avers that by the aforesaid amendments of his specification and by so, as aforesaid, limiting his claim to invention, the plaintiff entirely abandoned, in said Patent Office, any and all claim to a treadle hung or swinging generally in the brace of a machine, and is now estopped from asserting any claim to a treadle hung or swinging in the brace of a machine, excepting in the precise combination and precise manner, and in combination with the precise elements and exact details of construction shown and claimed in the claims of his said letters patent, as the same now appear.

Further answering defendant denies that the plaintiff has ever been in any manner injured and damaged or injured or damaged on account of any act or acts of this

defendant, and denies that by reason of any act or acts of defendant plaintiff has been deprived of large or any royalties, or of large or any gains, or of large or any advantages which plaintiff would otherwise have derived, and denies that plaintiff has sustained actual or any damages by reason of any act or acts of defendant, either in the sum of twenty thousand dollars or in any other sum whatever, or at all.

Further answering defendant avers that the cause of action set forth in the amended declaration on file herein is, and at the time of the commencement of this action was, barred by section 339 and subdivision I of said section of the Code of Civil Procedure of the State of California.

Wherefore, having fully answered plaintiff's amended declaration, defendant demands that he be hence dismissed with his costs in this action incurred.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendant.

ANSWER.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

A. BRILL, Plaintiff,

vs.

THE SINGER MANUFACTURING COMPANY (a corporation), Defendant.

Now comes the said defendant and denies generally and specifically each and every allegation contained in the plaintiff's complaint, on file herein, and says that it is not guilty of the grievances therein charged against

it or any or either, or any part thereof, and of this the defendant puts itself upon the country.

Wherefore, defendant demands judgment for its costs.

WHEATON, KALLOCH & KIERCE,
and F. M. HUSTED,
Attorneys for Defendant.

SPECIAL DEMURRER.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74; 192 U. S. 265, 48 L. Ed. 347.)

(Title of Court and Cause.)

Special demurrer of the defendant, "The Singer Manufacturing Company," to the jurisdiction of the court over the person of this defendant.

And the said defendant, "The Singer Manufacturing Company," by its attorneys, Messrs. Wheaton, Kalloch & Kierce, excepts and demurs to the complaint herein filed upon the one special ground that the said declaration shows that this court had no jurisdiction of this defendant, for the following reasons:

That said complaint shows that this defendant is a corporation created and existing under the laws of the State of New Jersey and that it is an inhabitant of the said State of New Jersey; that the jurisdiction of the United States Courts does not attach in this case because the plaintiff and defendants are citizens of different states but because that such jurisdiction attaches on account of the subject matter of the action; and that for these reasons the defendant is not liable to be sued outside of the said State of New Jersey of which state only it is an inhabitant and citizen.

Wherefore this defendant prays the judgment of this court whether it has jurisdiction of this defendant and asks to be dismissed with judgment for its costs; but, should the court overrule this demurrer and exception, this defendant then asks time and leave to answer to the merits, though excepting to the action of the court in overruling this demurrer.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendants.

I certify that in my opinion the above and foregoing demurrer of the defendant, "The Singer Manufacturing Company," to the declaration of Herman Cramer, plaintiff, is well founded in law, and is proper to be filed in the above entitled action.

F. J. KIERCE,
Attorney for Defendant.

CITY AND COUNTY OF SAN FRANCISCO. } ss.
STATE OF CALIFORNIA,

Willis B. Fry, being duly sworn, says that he is the agent of the defendant, "The Singer Manufacturing Company" in the State of California, named in the above and foregoing entitled action; that he has read the above and foregoing demurrer of said defendant to the declaration in said action and that the same is not interposed for the purpose of delaying said action or any of the proceedings therein.

WILLIS B. FRY.

Subscribed and sworn to before me this 12th day of June, 1893.

GEO. T. KNOX,
Notary Public.

[SEAL.]

PLEA IN BAR.

(From Bowers vs. San Francisco Bridge Co., 69 Fed. Rep. 640; 91 Fed. Rep. 381.)

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

ALPHONZO B. BOWERS, Plaintiff,

vs.

SAN FRANCISCO BRIDGE CO., Defendant.

To the February Term, A. D. 1892.

Now comes the defendant, San Francisco Bridge Company, by its attorney, R. Percy Wright, and defends the wrong and injury when, etc., and says: That it is not guilty of the grievances laid to its charge by the plaintiff in the declaration filed herein, or any or either of them, or any part thereof. And of this, the defendant puts itself upon the country.

And for a further plea in that behalf, the defendant says: That none of the matters covered by the letters patent No. 318,859, mentioned in said declaration, nor any part thereof, was a statutory subject of a patent, at the time said patent was issued, or at any other time. And this, the defendant is ready to verify.

And for a further plea in this behalf, the defendant says: That the alleged invention of said plaintiff, mentioned in said declaration, was not useful, at the time said letters patent No. 318,859 were issued, or at any other time. And of this, the defendant puts itself upon the contrary.

And for a further plea in this behalf, the defendant says: That the invention claimed in said letters patent No. 318,859, is substantially different from any indi-

cated, suggested or described in the original application therefor. And this, the defendant is ready to verify.

And for a further plea in this behalf, the defendant says: That the claims in said letters patent No. 318,859, are not distinct, and said claims do not particularly point out the part, improvement or combination which the plaintiff claims as his invention or discovery. And this the defendant is ready to verify.

R. PERCY WRIGHT,
Attorney for Defendant.

I hereby certify that the foregoing pleas are, and each of them is, in my opinion, well founded in point of law.

R. PERCY WRIGHT,
Attorney and Counsel for the Defendant.

NOTICE OF SPECIAL MATTER.

(From Brill vs. Singer Mfg. Co., 154 U. S. 517, 38 L. Ed. 1077.)

In the United States Circuit Court, Northern District of California.

A. BRILL, Plaintiff,
vs.
THE SINGER MANUFACTURING COMPANY (a corporation), Defendant.

The plaintiff and Messrs. Scrivner & Schell and C. W. M. Smith, his attorneys will please take notice that upon the trial of the above entitled cause the defendant will prove in accordance with the Statute of the United States in such cases made and provided that the patentee A. Brill to whom the letters patent on which this suit is based were granted, and which are set out in plaintiff's declaration herein filed was not the first and original, or any inventor of the invention and discovery described in and claimed by the said letters pat-

ent, but that the said invention and discovery was in fact invented and discovered by and the same principle was known to and had previously been combined by others, and was described in the following United States letters patents, which were respectively granted to the following named persons at the following named dates, to-wit:

(Here follows list of Patents and Patentees.)

You will further take notice that the said alleged invention of A. Brill was described in the following printed publications prior to the supposed invention or discovery thereof by the said A. Brill, to-wit:

(Here follows List of Publications.)

.....,

Attorneys for Defendants.

SEPARATE DEMURRER OF ONE DEFENDANT TO DECLARATION.

(From Cramer vs. Singer Mfg. Co., 59 Fed. Rep. 74; 192 U. S. 265, 48 L. Ed. 347.)

(Title of Court and Cause.)

The separate demurrer of the defendant Willis B. Fry, one of the defendants, to the declaration of the plaintiff, Herman Cramer:

The defendant Willis B. Fry, by his attorneys Messrs. Wheaton, Kalloch and Kierce, demurs to the declaration on file in said action upon the following grounds:

1. That the said declaration does not state facts sufficient to constitute a cause of action against the said defendant.

2. This defendant demurs to the said declaration upon the ground that there is a misjoinder of parties defendant in this, that this defendant is joined as a defend-

ant with The Singer Manufacturing Company which is a corporation organized, created and existing under and by virtue of the laws of the State of New Jersey, and is therefore a citizen and resident of the State of New Jersey, and this court has no jurisdiction over it and cannot therefore join it as a defendant herein.

WHEATON, KALLOCH & KIERCE,
Attorneys for Defendants.

(Here follows certificate and affidavit, same as to demurrer of Singer Company.)

QUI TAM ACTION: PETITION.

In the District Court of the United States, Eastern District of Missouri, Eastern Division.

BYRON C. ANDERSON, for himself and the United States, Plaintiff, *vs.* LOCK SAFETY PIN COMPANY, Defendant.	Action for Penalties under Section 4901, R. S. U. S. No. 3788.

Count 1.

Plaintiff, Byron C. Anderson, a citizen of the State of Missouri and of the United States, brings this his petition in behalf of himself and of the United States, and for cause of action states:

That at the time of the commission of the offense hereinafter complained, Defendant, Lock Safety Pin Company, was, and it now is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri; and that heretofore and on the

second day of January, 1905, in the city of St. Louis, State of Missouri, and within the Eastern Division of the Eastern Judicial District of Missouri, the defendant did wrongfully and unlawfully mark upon or affix to one or more cards or labels, upon each of which said cards or labels were mounted and affixed six certain unpatented articles; to-wit, safety pins, the words,

"U. S. Patents, Dec. 29, '03.
Mar. 22, '04, April 12, '04.
April 12, '04. May 17, '04."

That from the character of the articles, the said words and figures could not be affixed upon the articles themselves; that the said words were so marked or affixed upon said cards or labels by being printed thereon; and that the said words imported that the said safety pins so mounted upon each of said cards or labels were patented, for the purpose of deceiving the public; contrary to the form of the statute in such case made and provided, and in violation of Section 4901, of the Revised Statutes of the United States.

Whereby an action accrued to plaintiff according to the provisions of said statute, and the defendant became liable to the plaintiff in the penal sum of one hundred ($100.00) dollars (one-half for his own use and the other half for the use of the United States), with costs.

Wherefore plaintiff prays judgment against defendant in the sum of one hundred ($100.00) dollars, together with the costs of this suit.

WRIT OF ERROR.

[Official Form of Writ of Error for use in the United States Circuit Co urt of Appeals, Eighth Circuit.]

UNITED STATES OF AMERICA, ss.

The President of the United States of America,

To the Honorable Judges of the (1) .....
..... Greeting:

BECAUSE, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said ..... Court, before you, at the.....
..... Term, 19.., thereof, between (2) .....
a manifest error hath happened, to the great damage of the said (3) ..... as by .....
complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the (4) .....
day of ..... 19.., to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this ..... day of ..... in the year of our Lord one thousand nine hundred .....

ISSUED at office in ..... with the seal of the (5) ..... and dated as aforesaid.

.....
Clerk of .....

ALLOWED BY

....
..... Judge.

WRIT OF ERROR—RETURN.

[Official Form of Return to be endorsed on Writ of Error by the Clerk of the Court to which the writ is addressed.]

UNITED STATES OF AMERICA, } ss.
..... }

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of (6) .....

.....
Clerk of .....

NOTES—(1.) Here insert correct name of the Court to which the writ is addressed and whose judgment is to be reviewed.

(2.) Here insert correct style of cause showing who was plaintiff and who defendant in Court below.

(3.) Here insert name of party who sues out writ of error.

(4.) Rule XIV, subdivision 5, requires writs of error and appeals to be made returnable sixty days after citation is signed.

This blank must be filled accordingly, naming a day not more than sixty days after the date of the citation.

(5.) This blank should be so filled as to show whether the writ is issued by the Clerk of a United States District Court or by the Clerk of the Circuit Court of Appeals.

(6.) Here describe the Court to which the writ is addressed.

[Official Form of Citation.]

UNITED STATES OF AMERICA,

To ....Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to (1) ..... filed in the Clerk's Office of the (2) ..... wherein ..... is (3) ..... and you are (4) .....,, to show cause, if any there be, why the (5) ..... rendered against the said (6) ..... as in said (7) ..... mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable .... Judge of ..... this ..... day of ..... A. D. 19 ..

.....

Judge of .....

NOTES—(1.) Insert (a writ or error) or (an appeal allowed and).

(2.) Insert name of Court to which writ of error is addressed, or from which appeal is allowed.

(3.) Insert Plaintiff in Error or Appellant.

(4.) Insert Defendant in Error or Appellee.

(5.) Insert Judgment or Decree.

(6.) Insert Plaintiff in Error or Appellant.

(7.) Insert Writ of Error or Appeal.

MANDAMUS.

PETITION: RULE TO SHOW CAUSE, RETURN: MOTION FOR JUDGMENT: ORDER DISCHARGING RULE.

(From United States ex rel. Steinmetz vs. Allen, 192 U. S. 543, 48 L. Ed. 555.)

PETITION.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ, *vs.* FREDERICK I. ALLEN, Commissioner of Patents.	At Law. No. 45620.

To the Supreme Court of the District of Columbia:

Your petitioner, Charles P. Steinmetz, respectfully represents:

1. That he is a citizen of the United States, and resides at Schenectady, in the county of Schenectady, and State of New York.

2. That prior to the 21st day of November, 1896, he was the true, original and first inventor and discoverer of certain new and useful improvements in motor meters, not known or used by others in this country and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, and not in public use or on sale in this country for more than two years prior to his hereinafter-mentioned application for letters patent therefor; and so being the true, original and first inventor thereof, he, on the said 21st day of November, 1896, filed in the United

States Patent Office an application for letters patent of the United States for said invention.

3. That said application was made, by your petitioner, in writing, and addressed to the Commissioner of Patents, in due form, as required by the statutes of the United States, and by the rules of practice in the United States Patent Office in such case made and provided and with said application was filed by your petitioner a written description of his said invention, and of the manner and process of making, constructing, practicing and using the same, in such full, clear, concise and exact terms as to enable any person skilled in the art of science to which said invention appertains or with which it is most closely connected, to make, construct, practice and use the same; and in such written description the principle of your petitioner's said invention and the best mode in which your petitioner contemplated applying the same were explained; and your petitioner particularly pointed out and distinctly claimed in his said application the parts, improvements, combinations and methods which he claimed as his invention; and the specification and claims of said applications were signed by your petitioner and attested by two witnesses;

4. That your petitioner did further furnish with said application drawings of his said invention, signed by his attorney and attested by two witnesses;

5. That your petitioner did further make oath before a proper officer, according to law, that he verily believed himself to be the original and first and sole inventor and discoverer of the said invention for which he solicited a patent, that he did not know and did not believe that the same was ever known or used, and did state of what country he was a citizen;

6. That your petitioner at the time of the filing of his said application did pay to the said Commissioner of

Patents fifteen dollars, the fee required by law and did in all other respects fully comply with the statutes of the United States and with the rules of practice in the United States Patent Office in such cases made and provided and that the said application became known and designed as application Serial No. 612,943.

7. That the said application contained and contains the following claims of invention to which your petitioner believes himself entitled, viz.:

1. The herein-described method of measuring alternating electric currents, which consists in setting up or establishing a shifting field of magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature in a motor meter arranged within the energizing coils producing said lines of magnetization.

2. The herein-described method of actuating an alternating-current motor meter, which consists, in setting up or establishing a shifting field of magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature arranged within the energizing coils producing said lines of magnetization.

3. The herein-described method of actuating a single phase alternating-current motor meter, which consists in setting up or establishing a shifting field or magnetism from three intersecting lines or axes of magnetization and adapted to actuate a rotatable armature arranged within the energizing coils producing said lines of magnetization.

4. The herein-described method of actuating an alternating current motor meter, which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting

lines and subjecting an armature to the inductive action of said field.

5. The herein described method of actuating an alternating-current motor meter which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting lines, one magneto-motive force being proportional to the current and the other two to the electro-motive force, and subjecting an armature to the inductive action of said field.

6. The herein-described method of actuating an alternating-current motor meter which consists in setting up or establishing a shifting field of magnetism by means of magneto-motive forces acting along three intersecting lines, one magneto-motive force being proportional to the current and the other two to the electro-motive force, the several magneto-motive forces being so proportioned and related to each other than the resultant of the last two is displaced in phase from the first by the complement of the angle of lag, and subjecting an armature to the inductive action of said field.

7. In a watt meter for alternating electric currents, means for producing a magnetic flux proportional to the current and varying in phase therewith, means for producing a second magnetic flux proportional to the electromotive force and lagging in phase behind the same, and means for producing an auxiliary flux along a line at an angle to said second flux and of such magnitude and phase that the resultant of the two last-mentioned fluxes will lag behind the first by the complement of the angle of lag.

8. The combination in an electric motor of a field-magnet system and means for inducing therein magnetic fluxes of three phases, one a flux due to a series coil and proportional to the current, a second flux due to a shunt

potential coil and lagging behind the electro-motive force and a third flux lagging behind said second flux and having a fixed angular relation thereto such that the resultant of the second and third fluxes is dephased by substantially the complement of the angle of lag fron the flux due to the series coil.

9. The combination in a recording electric meter of a field-magnet system acting on the armature and having a piurality of intersecting magnetic axes, means for inducing along one of said magnetic axes a flux proportional to the current and varying in phase therewith, and means for inducing along the other magnetic axes a plurality of other fluxes dependent upon the potential of the metered circuit, which lag behind the electro-motive force by different amounts and act upon the armature at different points said fluxes being so proportioned in value and phase that their joint action upon the armature will enable the meter to register the true energy consumed in an alternating-current circuit without being substantially affected by changes of phase relation.

10. In a watt meter for alternating currents, the combination of a field-magnet system having three intersecting magnetic axes, means for producing along one of said axes a magnetic flux proportional to the current and varying in phase therewith, means for producing along another of said axis an alternating flux proportional to the electro-motive force and lagging behind the same and means for producing along the third axis an auxiliary magnetic flux also proportional to the electro-motive force, of such a magnitude and phase that the joint action of the several fluxes upon the armature will enable the meter to register the true energy consumed in an alternating-current circuit without being substantially effected by changes of phase relation.

11. In a meter for alternating currents, the combination of a field-magnet system having three intersecting magnetic axes, means of producing along one of said axes, a magnetic flux proportional to the current and carrying in phase therewith, means for producing along another of said axes an alternating flux proportional to the electro-motive force and lagging behind the same, and means for producing along the third axis an auxiliary magnetic flux also proportional to the electro-motive force and of such magnitude and phase that the joint action of the two potential fluxes upon the armature will produce a torque sufficient to overcome the static friction of the meter.

12. In a single-phase alternating-current meter, the combination of a field-magnet system having three intersecting magnetic axes, a field coil in which the current phase varies as the conditions of the circuit change, producing a magnetization along one magnetic axis, a potential coil producing a magnetization along another magnetic axis, a reactance device in series with said potential coil for lagging the current behind the electro-motive force and a second potential coil depending for its current upon the first potential coil, producing a magnetization along the third magnetic axis; the two potential coils conveying currents which differ in phase from each other, and each generating a flux which acts upon the armature at a point removed from the point at which the flux due to the other potential coil acts upon the armature.

13. In an electric meter, the combination of a multipolar field-magnet structure having three magnetic axes, current coils mounted upon some of the field poles and producing a magnetization along one of said magnetic axes, potential coils mounted upon other field poles and producing a magnetization along another one of said

magnetic axes, and other potential coils mounted upon a portion only of the last-named field poles, or some of them, and producing a magnetization along the third magnetic axis and an armature acted upon by the flux induced by the field coils.

8. That on or about the 15th day of May, 1900, the primary examiner to whom, according to law, your petitioner's said application was referred by the Commissioner of Patents for examination, examined and considered said application and decided that your petitioner must cancel from said application his aforesaid claims numbered 7, 8, 9, 10, 11, 12 and 13, the same being all claims for the apparatus part of your petitioner's said invention and notified your petitioner of such decision.

9. That, after receiving the notice of said decision your petitioner persisted in his said claims in said application without altering his specification in any way and his said application was thereupon, by the primary examiner, reconsidered and his aforesaid claims numbered 7, 8, 9, 10, 11, 12 and 13 were, on or about the 31st day of July, 1900, a second time required to be cancelled from said application.

10. That on, or about the 4th day of August, 1900, your petitioner regarding the last-mentioned decision a second final rejection and refusal of his said claims Nos. 7, 8, 9, 10, 11, 12 and 13, by the primary examiner, and feeling aggrieved thereby, appealed therefrom, by written petition, to the board of examiners-in-chief, in accordance with the statute in such case made and provided and with the rules of practice in the United States Patent Office regulating such appeals, and paid to the Commissioner of Patents the statutory fee of $10, required for such appeal.

11. That on or about the 9th day of August, 1900, the primary examiner, contrary to his duty, refused to

answer said appeal and to forward the said appeal with his answer thereto and the statement required by the rules of practice in the United States Patent Office, to the said board of examiners-in-chief, and on or about the 16th day of August, 1900, upon your petitioner's request for a reconsideration of said action repeated his said last-mentioned decision and refusal;

12. That on or about the 20th day of August, 1900, your petitioner petitioned the Commissioner of Patents to direct the said primary examiner to answer and forward said appeal, which petition was, on or about the 28th day of September, 1900, denied;

13. That thereafter, to-wit, on or about the 16th day of January, 1902, your petitioner petitioned the present Commissioner of Patents, the said Frederick I. Allen, to direct the said primary examiner to answer said appeal, to forward said appeal with his said answer thereto and with the statement required by the rules of practice of the United States Patent Office to the said board of examiners-in-chief for the determination of said board, which petition was on the 7th day of February, 1902, denied.

14. That your petitioner is advised and believes that the said decision of the primary examiner of the 31st day of July, 1900, repeating his previous decision of the 15th day of May, 1900, requiring the cancellation from your petitioner's said application of all claims covering the apparatus part of his said invention, namely, his aforesaid claims 7, 8, 9, 10, 11 and 13, constituted and constitutes, in fact and in law, an adverse decision upon the merits of your petitioner's aforesaid application and was and is a second rejection of the said claims 7, 8, 9, 10, 11, 12 and 13 of said application and that he is entitled, as a matter of right, under the statutes of the United States in such case made and provided, to an appeal from said adverse decision and second rejection of

said claims by said primary examiner to the said board of examiners-in-chief and is entitled, as a matter of right, to have the validity of said adverse decision and second rejection revised and determined by the said board of examiners-in-chief;

15. That, under the rules of practice of the United States Patent Office, it became and was the duty of the said primary examiner to, within five days of the filing of your petitioner's aforesaid appeal, answer such appeal by furnishing the board of examiners-in-chief with a written statement of the grounds of his decision on all the points involved in the appeal and to forward such answer and statement with such appeal, to the said board of examiners-in-chief, for the revision and determination by said board of such appeal;

16. That upon the refusal of the primary examiner to furnish such answer and statement and to forward the same to the said board of examiners-in-chief as aforesaid, it became and was the duty of the said Frederick I. Allen, Commissioner of Patents, to direct the said primary examiner to furnish said answer and statement and forward the same with such appeal to the board of examiners-in-chief, and the failure and refusal of the said Frederick I. Allen, Commissioner of Patents, when so requested by your petitioner as aforesaid, to perform said duty and to make such direction rendered and renders it impossible for your petitioner to have the validity of the said rejection and refusal by the said primary examiner of the aforesaid claims Nos. 7, 8, 9, 10, 11, 12, and 13, of his said application, revised and determined by the said board of examiners-in-chief, and in turn, if necessary, by the other duly constituted statutory tribunals of higher authority and operates to the great wrong and injury of your petitioner in the premises;

17. That, well hoping that the said board of examiners-in-chief might take jurisdiction of his said appeal

and revise and determine the same, even without an answer or statement from the primary examiner in regard thereto and notwithstanding the action of the said Frederick I. Allen, Commissioner of Patents, aforesaid, your petitioner on the 28th day of February, 1902, petitioned the said board of examiners-in-chief, praying that said board of examiners-in-chief take jurisdiction of said appeal and revise and determine the same and reverse the aforesaid adverse decision of the said primary examiner but said petition was, on the 6th day of March, 1902, denied by said board of examiners-in-chief on the ground that said board could not revise and determine said appeal without the said primary examiner's answer and statement, and further, in view of the decision of the said Frederick I. Allen, Commissioner of Patents, in the premises;

18. That by the refusal of the said Frederick I. Allen, Commissioner of Patents, to so direct the said primary examiner to furnish his said answer and statement and to forward the same with petitioner's said appeal to the board of examiners-in-chief, as requested, your petitioner was and is deprived of a legal right vested in him by the laws of the United States relating to the granting of letters patent for inventions and is entirely without redress or remedy in the premises, unless this Honorable Court by writ of mandamus shall interpose in his behalf.

Wherefore your petitioner prays that a writ of mandamus may be issued by this Honorable Court to the said Frederick I. Allen, Commissioner of Patents, commanding him to direct the primary examiner to forward your petitioner's said appeal to the board of examiners-in-chief with his proper answer and statement required by the rules of practice of the United States Patent Office, to the end that the aforesaid adverse decision of the primary examiner and the aforesaid second rejection of the

said claims 7, 8, 9, 10, 11, 12 and 13, of your petitioner's said application by said primary examiner, complained of, may, by said board of examiners-in-chief, be revised and determined according to law, and that speedy justice may be done your petitioner in the premises. And as in duty bound your petitioner will ever pray, etc.

CHARLES P. STEINMETZ.

O. K.
A. S. D.
CHURCH & CHURCH, Attorneys.
ALBERT G. DAVIS, Of Counsel.

STATE OF NEW YORK,
COUNTY OF SCHENECTADY, } ss.

Charles P. Steinmetz, being duly sworn deposes and says, that he has read the foregoing petition by him signed and knows the contents thereof; that the statements therein contained are true to his own knowledge, except as to those matters therein stated to be on information and belief and as to such matters he verily believes it to be true.

CHARLES P. STEINMETZ.

Subscribed and sworn to before me this 28th day of August, 1902.

BENJAMIN B. HULL.
(Seal) Notary Public, Schenectady County, N. Y.

RULE TO SHOW CAUSE.

Filed September 9, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ, Petitioner,

vs.

FREDERICK I. ALLEN, Commissioner of Patents, Respondent.

At Law. No. 45620.

Upon consideration of the petition for mandamus in the above-entitled cause, it is ordered, on this 9th day of September, 1902, the respondent herein show cause, on the 17th day of September, 1902, at 10 o'clock a. m., before me at the special term of the court, why a writ of mandamus should not issue, as prayed in said petition; provided a copy of this order and of said petition be served upon the respondent on or before the 17th day of September, 1902.

JOB BARNARD.
Associate Justice of the Supreme Court of the District of Columbia.

RETURN OF RESPONDENT.

Filed September 17, 1902.

In the Supreme Court of the District of Columbia.

THE UNITED STATES EX REL. CHARLES P. STEINMETZ,
vs.
FREDERICK I. ALLEN, Commissioner of Patents.
At Law. No. 45620.

To the Honorable, the Justices of the Supreme Court of the District of Columbia:

The return of the respondent to the rule to show cause issued herein upon the 9th of September, 1902.

The said Frederick I. Allen, Commissioner of Patent, comes and for answer to the order to show cause why the said writ of mandamus should not issue says, upon information and belief:

1. The respondent admits the allegations of the first paragraph of the petition.

2. The respondent admits the allegations of the second paragraph of the petition.

3. As to the third paragraph of the petition, the respondent denies that the application was in due form

as required by the statutes and rules of practice, since it included claims to an apparatus and claims to a process. The respondent admits that in other respects the application was in proper form.

4. The respondent admits the allegations of the fourth paragraph of the petition.

5. The respondent admits the allegations of the fifth paragraph of the petition.

6. As to the sixth paragraph of the petition, the respondent denies that the application fully complied with the statutes and rules of practice, since it included claims to an apparatus and claims to a process.

7. The respondent admits the allegations of the seventh paragraph of the petition.

8. As to the eighth paragraph of the petition, the respondent admits that the examiner having charge of the relator's application wrote a letter to him on May 15, 1900, saying:

"In accordance with office letter of January 2, 1900, applicant is required to cancel from this case all claims except those for the method."

In further explanation of this matter, the respondent says that prior to May 15, 1900, and on October 9, 1899, the primary examiner wrote a letter to the relator, requiring division between the process claims and the apparatus claims, in accordance with Rule 41, before further action would be given upon the merits of the case. In a reply filed December 15, 1899, the respondent asked that his process claims be placed in interference with the claims of a patent granted to one Duncan, and said:

"It is therefore requested that the retirement for division be waived for the present in order that an interference with the patent to Duncan above referred to may be declared."

The examiner then wrote a letter on January 2, 1900, saying:

"Pending the determination of the interference applicant may retain the method and apparatus claims in this case, but the acceptance of an interference on one of the method claims will be held by the office to be an election of the prosecution of the method claims, and further prosecution of the apparatus claims in this application will not be permitted."

The relator's reply, filed January 19, 1900, was:

"It is respectfully requested that the interference with the Duncan Patent, No. 604,464, be declared as soon as possible."

The interference was thereupon declared on February 7, 1900, and the decision therein was in favor of the relator and against Duncan. After that decision the examiner wrote the said letter of May 15, 1900.

By his request for the interference in reply to the examiner's warning as to the effect of such request, the relator eliminated from consideration the question which of the two inventions claimed would be retained in this case if division was finally insisted upon, and he is estopped from denying that the apparatus, if either, must be presented in a separate application. His action in accepting the ruling of the office upon the question of election, and thereby obtaining the interference, left open for final decision only the question whether division should be required, and it was upon this question that the examiner ruled in this letter of May 15, 1900.

9. As to the ninth paragraph of the petition, it is admitted that the relator filed a letter on July 16, 1900, asking for a reconsideration of the examiner's action, and that the examiner thereupon repeated his action.

10. The respondent admits that the relator filed an appeal and paid the fee, but denies that the statute and

rules of practice provide for such appeal, as alleged in the tenth paragraph of the petition herein.

11. The respondent admits that the primary examiner refused to answer and forward the appeal, as alleged in the eleventh paragraph of the petition.

12. The respondent admits the allegations of the twelfth paragraph of the petition; a copy of the decision denying the petition is hereto attached, as Exhibit A.

13. The respondent admits the allegations of the thirteenth paragraph of the petition, and attaches hereto and as a part hereof a copy of his decision dated February 7, 1902, marked Exhibit B.

The respondent further alleges that before the date of the said petition and decision, the relator had under the provision of Rule 145 petitioned the respondent as Commissioner of Patents to review and reverse the action of the primary examiner requiring division, and after a full consideration of the matter the respondent was of the opinion that the requirement for division was proper and for that reason denied the petition on January 2, 1902.

14. The respondent denies that the examiner's letter of July 31, 1900, was a second rejection of claims made by the relator, and denies that the relator has the right of appeal therefrom to the examiners-in-chief. The examiner's action was merely a ruling that the relator should present in two applications, in accordance with the provisions of Rule 41, approved by the Secretary of the Interior, the two inventions now claimed in one application, and did not involve the rejection of any claim or an action upon the merits of any claim made by the relator. The statutes and Rule 133 of the rules of practice do not provide for an appeal to the examiners-in-chief from an examiner's requirement for division, and the examiners-in-chief have no jurisdiction to pass upon the question whether or not division should be required.

15. The respondent denies that it was the duty of the primary examiner to forward the appeal and to furnish a statement of the grounds of his action, as alleged in the fifteenth paragraph of the petition herein.

16. The respondent denies that it was his duty to direct the primary examiner to forward the appeal, for the reason that no authorized appeal had been filed, as alleged in the sixteenth paragraph of the petition herein.

17. The respondent admits the allegations of the seventeenth paragraph of the petition.

18. The respondent denies that the relator has by the action of the respondent been deprived of any legal right vested in him by the laws of the United States, as alleged in the eighteenth paragraph of the petition herein.

The respondent further says that by reason of the facts hereinbefore alleged, he should be dismissed with his reasonable costs.

FREDERICK I. ALLEN.

JOHN M. COIT, Attorney.

DISTRICT OF COLUMBIA, ss.:

On this day personally appeared before me, a notary public in and for the said District of Columbia, Frederick I. Allen, and made oath that he is the respondent in the above-entitled cause; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

FREDERICK I. ALLEN.

Given under my hand this 16th day of September, 1902.

A. M. BUNN,

(Seal) Notary Public for the District of Columbia.

EXHIBIT A.

Filed September 17, 1902.

Where applicant does not care to comply with the examiner's requirements in a matter of division such as is here involved, it has been the practice for the past thirty years to treat the question not as one of merits and appealable to the examiners-in-chief, but as a proper matter for petition to the Commissioner. I see no reason for overturning this practice. The petition is denied.

WALTER H. CHAMBERLIN,
Assistant Commissioner.

September 28, 1900.

EXHIBIT B.

Filed September 17, 1902.

United States Patent Office. Ex Parte Charles P. Steinmetz.

Motor Meters.

Petition.

Application filed November 21, 1896; No. 612,943. Mr. Albert G. Davis for applicant.

This is a petition from the action of the primary examiner refusing to forward to the examiners-in-chief an appeal in the above-entitled case.

The examiner required division in this application between claims to the apparatus and claims to the process, and this action was clearly correct under the express provisions of Rule 41. The applicant then asked for an interference with a patent containing the process claims, and that interference was declared, the applicant being informed that the request for an interference upon the process was considered an election to retain the process claims in this case, and that after the conclusion of the interference he would be required to cancel from the

case the apparatus claims. The interference was decided in favor of this applicant and the examiner then insisted upon his requirement that the application be divided and that the apparatus claims be canceled. The petitioner states that this action amounted to a refusal of the apparatus claims, and therefore took an appeal to the examiners-in-chief. The examiner refused to forward the appeal, upon the ground that the questions involved are petitionable to the Commissioner and are not appealable to the examiners-in-chief.

The requirement for division is clearly a matter of form, not involving the merits of the claims, since the claims may be, and in the present case are, regarded as allowable. The examiner has not refused to grant a patent to this application upon any of the claims presented, but has merely required that they be included in two patents instead of one. It is a question of procedure or of the manner of securing the protection which is in controversy and not the right of the applicant to a patent upon any of the claims presented.

The examiner was right in taking the position that the question involved is not appealable to the examiners-in-chief, and although it is a general rule of law that the appellate tribunal is the one to determine whether or not it has jurisdiction when an appeal is taken to it, it is not considered necessary in the office practice to follow that practice strictly, since the Commissioner is the head of the office and has the final decision upon all questions arising within it and may settle questions of this kind upon direct petition. The examiner's decision upon the question whether or not an appeal to the examiners-in-chief is regular and proper is not final, since it may be reviewable by the Commissioner upon petition, but he has authority to pass upon that question in the first instance.

The petition is denied.

February 7, 1902.

F. I. ALLEN,
Commissioner.

MOTION FOR JUDGMENT.

Filed September 25, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ,

vs.

FREDERICK I. ALLEN, Commissioner of Patents.

At Law. No. 45620.

And now comes the relator, by Church & Church, his attorneys, and moves the court for judgment for a peremptory writ of mandamus against the respondent, notwithstanding the return of the respondent herein.

CHURCH & CHURCH,
Attorneys for Relator.

FINAL JUDGMENT.

Filed December 19, 1902.

In the Supreme Court of the District of Columbia.

UNITED STATES EX REL. CHARLES P. STEINMETZ,

vs.

FREDERICK I. ALLEN, Commissioner of Patents.

At Law. No. 45620.

This cause coming on to be heard upon the relator's petition for a writ of mandamus against the respondent, the rule to show cause, the return and the motion of the relator for a peremptory writ of mandamus notwithstanding the return, and having been argued by counsel for the respective parties and considered by the court, it is by the court this 19th day of December, 1902, ordered and adjudged that the rule to show cause is hereby discharged and that the relator's petition be, and the same is hereby, dismissed at the costs of the relator.

The relator having prayed an appeal to the Court of Appeals of the District of Columbia from the judgment of this court dismissing his petition, such appeal is hereby allowed, and the bond is fixed in the penalty of two hundred and fifty dollars.

JOB BARNARD, Justice.

Approved as to form:
JOHN M. COIT,
Attorney for Respondent.

FORMS---SUITS IN EQUITY

BILL OF COMPLAINT—PATENT INFRINGEMENT.

(From Westinghouse vs. Boyden Power Brake Company, 170 U. S. 537, 42 L. Ed. 1136.)

Circuit Court of the United States in and for the District of Maryland. No. — of — Term, 19—.

GEORGE WESTINGHOUSE, JR., and THE WESTINGHOUSE AIR BRAKE COMPANY,

vs.

BOYDEN POWER BRAKE COMPANY; CHARLES A. BOYDEN, President; CHARLES B. MANN, Secretary, and WILLIAM WHITRIDGE, Treasurer. } In Equity.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Maryland:

George Westinghouse, Jr., a resident of Pittsburg, Allegheny County, Pennsylvania, and the Westinghouse Air Brake Company, a corporation duly organized under the laws of the State of Pennsylvania, and doing business at Pittsburg aforesaid, and both being citizens of said State, bring this their bill of complaint against Boyden Power Brake Company, a corporation organized under the laws of the State of Maryland, and doing business at Baltimore, in said State; George A. Boyden, president of said corporation last named;

Charles B. Mann, secretary thereof; and William Whitridge, treasurer thereof—all residing in Baltimore aforesaid, and all being citizens of the State last named.

And thereupon your orators complain and say that George Westinghouse, Jr., one of your orators was and is the true, original and first inventor of certain new and useful improvements in air valve for power brakes, not known or used before his invention thereof, and not,

for more than two years prior to the date of his application for a patent thereof, in public use or on sale.

And your orators further show unto your honors that the said George Westinghouse, Jr., so being the inventor of said improvement, and being a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the fifth day of October, A. D. 1875, letters patent of the United States No. 168,359, signed, sealed and executed in due form of law, for his invention were issued and delivered to the aforesaid George Westinghouse, Jr., whereby there was secured to him and to his heirs, legal representatives and assigns, for the term of seventeen years from the fifth day of October, in the year A. D. 1875, the full and exclusive right of making, using and vending to others to be used, the said improvement.

And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed accompanied by certain drawings referred to in said last-mentioned schedule, and forming part of said letters patent. The said letters patent, and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct), were duly recorded in the Patent Office.

And thereupon your orators further complain and say that the said George Westinghouse, Jr., was and is the true, original and first inventor of certain new and useful improvements in fluid-pressure automatic brake mechanism, not known or used before his invention thereof, and not, for more than two years prior to the date of his application for a patent therefor, in public use or on sale.

And your orators further show unto your honors that the said George Westinghouse, Jr., so being the inventor of said improvement, and being a citizen of the United States, made application to the proper department of the Government of the United States for letters patent, in accordance with the then existing laws of Congress, and having duly complied in all respects with the conditions and requisitions of said laws, on the 29th day of March, A. D. 1887, letters patent of the United States No. 360,070, signed, sealed and executed in due form of law, for his invention, were issued and delivered to the aforesaid George Westinghouse, Jr., whereby there was secured to him and to his heirs, legal representatives and assigns, for the term of seventeen years from the 29th day of March, in the year A. D. 1887, the full and exclusive right of making, using, and vending to others to be used, the said improvement.

And your orators further show that a description or specification of the aforesaid improvement was given in the schedule to the aforesaid letters patent annexed accompanied by certain drawings referred to in said last-mentioned schedule, and forming part of said letters patent. The said letters patent, and the said specification thereto annexed (which, or an exemplified copy of which, your orators will produce as your honors may direct), were duly recorded in the Patent Office.

And your orators further show unto your honors that prior to the commission of the acts of infringement charged, by virtue of said patents and a certain instrument in writing, duly executed and recorded in the United States Patent Office, the said recited patents, and the entire right, title and interest therein and thereunder, became and still is duly vested in your orators, as by said patents and instrument in writing, or duly certified copies thereof, ready in court to be produced, will fully and at large appear.

And your orators further show unto your honors that the said patented inventions are so nearly allied in character as to be capable of conjoint as well as separate use in the construction and operation of railway fluid-pressure brake mechanism, and have been so used by the defendants herein.

And your orators further show that they, your orators, have extensively applied the said several improvements to practical use, and have seen, and but for the infringement hereinafter complained of, to-wit, of claim 7 of patent No. 168,359, and claims 1, 2, 4 and 5 of patent No. 360,070, your orators would still be in the undisturbed possession, use and enjoyment of the exclusive privileges secured by the said letters patent and in the receipt of the profits of the same.

And your orators further show your honors, as they are informed and believe, that the said defendants herein named, well knowing all the facts hereinbefore set forth, are now constructing, selling and using railway fluid-pressure brake apparatus in material parts thereof substantially the same in construction and operation as in the said several letters patent mentioned, the exclusive right and privilege to make and use which, and vend the same to others to be used, is thus by law vested in your orators.

And so it is, may it please your honors, that the said defendants, as your orators are informed and believe, without the license of your orators, against their will and in violation of their rights have made, sold and used, and intend to continue still to make, sell and use the said improvement within the —— District of Maryland and elsewhere in the United States, and refuse to pay your orators any of the profits which they have made by such unlawful manufacture and use, or to desist from the further infringement of said recited letters patent, all of which acts and doings are in violation of the ex-

clusive rights and privileges so as aforesaid vested in your orators and by virtue of said recited letters patent Nos. 168,359 and 360,070, and are contrary to equity and good conscience, and tend to the manifest injury of your orators in the premises.

To the end, therefore, that the defendants may, if they can, show reason why your orators should not have the relief hereby prayed, and that they may make a full disclosure and discovery of all the matters aforesaid, and upon their corporal oaths and under corporate seal, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters and things hereinbefore stated and charged.

And that the said defendants may answer the premises, and that they may be decreed to account for and pay over the income or profits thus unlawfully derived, or which might have been derived from the violation of the rights of your orators, as aforesaid, your orators pray that your honors, upon entering of the decree in favor of your orators against said defendants for infringement, as above prayed for, may also proceed to assess, or cause to be assessed, under your directions, as well the profits or income derived therefrom, to be accounted for as aforesaid, as also, in addition thereto, the damages sustained by your orators by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement committed by said defendants as hereinbefore set forth; and further, that the said defendants may be restrained from any further violation of the rights of your orators as aforesaid, your orators pray that your honors may grant a writ of injunction issuing from and under the seal of this honorable court, or issued by one of your honors, perpetually en-

joining or restraining the said defendants, their clerks, attorneys, servants, agents and workmen, from any further construction, or sale, or use in any manner of said patented improvements, or any part thereof, in violation of the rights of your orators as aforesaid. And your orators further pray that a provisional or preliminary injunction be issued, restraining the said defendants from any further infringement of said recited letters patent, pending this cause, and they pray for such other relief as the equity of the case may require and to your honors may seem meet.

May it please your honors to grant unto your orators not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpoena of the United States of America, directed to the said Boyden Power Brake Company, George A. Boyden, Charles B. Mann and William Whitridge, commanding them, on a day certain therein to be named, to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet and may be required by the principles of equity and good conscience.

GEORGE H. CHRISTY,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF PENNSYLVANIA, } ss.

Before me, the subscriber, duly authorized to administer oaths, personally came H. H. Westinghouse, general manager of The Westinghouse Air Brake Company, one of the complainants in the foregoing bill named, who, being duly sworn, deposes and says that, so far as the statements herein contained are within his own knowledge, they are true, and so far as they are derived from the information of others he verily believes them to be true. And he further says that he verily believes the

said George Westinghouse, Jr., in said bill named, to be the original, true and first inventor of the new and useful improvements which are described in the letters patent Nos. 168,359, and 360,070 granted to George Westinghouse, Jr., and mentioned in the foregoing bill. And further, that the said deponent verily believes that the title of the said complainants is as set forth in said bill.

H. H. WESTINGHOUSE.

Sworn and subscribed before me this tenth day of December, A. D. 1889.

H. H. WHITTLESEY,
Notary Public.

(Notary's seal)

AMENDED BILL, SUIT TO ENJOIN PROSECUTION OF SUIT FOR INFRINGEMENT.

(Kessler vs. Eldred, 206 U. S. 285, 51 L. Ed. 1065.)

AMENDED BILL.

United States Circuit Court, Northern District of Illinois.

WILLIAM F. KESSLER,
vs.
GEIRGE S. ELDRED.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois.

William F. Kessler, a citizen of the State of Indiana, residing at Auburn, in DeKalb County in said State, by leave of the court granted, brings this his amended bill against George S. Eldred, a citizen of the State of Illinois, and an inhabitant of the Northern District of said State, upon a cause of action in which the matter in dispute exceeds, exclusive of interest and costs, the sum and value of two thousand dollars.

I.

And thereupon your orator complains and says that prior to the year 1898, and from that time to the present continuously he was and has continued to be engaged, under the business name and style of the Standard Manufacturing Company, in the manufacture and sale of electric cigar lighters; that on the 10th day of October, 1898, said defendant, George S. Eldred, filed a bill in the Circuit Court of the United States for the District of Indiana against your orator as defendant, in which bill it was alleged among other things that the complainant therein was the owner of a certain patent granted out of the Patent Office of the United States to Josephus C. Chambers on the 7th day of March, 1893, and numbered 492,913, for an Electric Lamp Lighter, and that the defendant (your orator herein) had infringed said patent by the manufacture and sale of electric cigar lighters embodying the elements of the invention described and claimed in said patent: Your orator appeared to said bill and answered the same, setting up, among other defenses, that he had not infringed said patent; the complainant in said cause filed a replication to said answer, and proofs were taken by the parties respectively, and said cause submitted for final hearing by said court upon the bill, answer, replication, proofs and argument of counsel on the 13th day of June, 1899, and take under advisement by the court; afterwards, to-wit: on the 22d day of February, 1900, said court made and rendered its decision in said cause in which it found for the defendant upon the grounds, stated in the opinion filed at the time of the decision, that the electric cigar lighter manufactured and sold by the defendant in said cause (your orator here), of which a specimen was in evidence before the court, was not an infringement of said patent; and thereupon said court on the 19th day of June, 1900, made and

entered a final decree by which it was ordered and adjudged that said bill be dismissed for want of equity.

And thereupon said George S. Eldred, complainant there and defendant here, prayed an appeal from said judgment and decree to the United States Circuit Court of Appeals for the Seventh Circuit, which was granted, and after due proceedings had said George S. Eldred filed a duly certified transcript of the pleadings, record, proceedings and judgment in said cause with his appeal bond as required by the court in the office of the clerk of said United States Circuit Court of Appeals for the Seventh Circuit, and the said cause came on to be heard in due form on appeal in said court on the ..... day of ..... 1900, and was argued by counsel, and taken under advisement until the 7th day of February, 1900, when the said court rendered its decision in said cause and affirmed the said judgment of the United States Circuit Court for the District of Indiana. The opinion of said United States Circuit Court of Appeals making and announcing said decision and stating the ground of the same is printed in the February Reporter, Volume 106, Page 509, to which reference is hereby made. A printed copy of the record of said cause in the Circuit Court of the United States for the District of Indiana is filed herewith marked Exhibit A, and a copy of the judgment of said United States Circuit Court of Appeals affirming the judgment of the said Circuit Court is filed herewith marked Exhibit B.

II.

And your orator, further complaining, shows to the court on information and belief that afterwards, to-wit: on the ..... day of ..... said George S. Eldred, defendant herein, instituted a suit by bill in equity in the United States Circuit Court for the Western District of New York against one Alfred T. Kirkland, in which

he set up the same United States patent to Josephus C. Chambers, numbered 492,913 granted March 7, 1893, for Electric Lamp Lighter which was set up in his said suit against your orator, and in which he alleged that the defendant Kirkland had bought, used and sold certain electric cigar lighters which were infringements of said Chambers patent, and prayed an injunction, damages and other relief. Said cause came on for final hearing in said court and was decided in favor of the defendant, and it was adjudged that the said bill be dismissed for want of equity. And thereupon said Eldred took an appeal from said judgment to the United States Circuit Court of Appeals for the Second Circuit, by which court said judgment of the United States Circuit for the Western District of New York was reversed April 19, 1904, and said cause was remanded to the circuit court with directions to enter a decree for the complainant, and is now still pending for an accounting and such other proceedings as may be ordered. Your orator, further complaining, shows to the court on information and belief that the electric cigar lighter handled, used and sold by said Alfred T. Kirkland and put in evidence in said suit, and to which said judgment of said United States Circuit Court of Appeals for the Second Circuit related, was not manufactured by your orator, but by another manufacturer; that your orator was not a party to said suit, nor in any way connected therewith, and was not in any manner bound nor affected by said judgment.

III.

Your orator, further complaining, shows to the court on information and belief that on the 15th day of June, 1904, the defendant brought suit by bill in equity in the Circuit Court of the United States for the Western District of New York against John Breitwieser and Edward Breitwieser, setting up the same United States patent to

Josephus C. Chambers, numbered 492,913 dated March 7, 1893, which was set up in said suit against your orator and alleging infringement thereof by the manufacturers, use and sale of electric cigar lighters by the defendants therein containing the invention covered by said patent, and praying a permanent and also a temporary injunction, and is intending and threatening to push said suit to final hearing. Said John Breitwieser and Edward Breitwieser, defendants in said cause, are customers of your orator and all the electric cigar lighters which they have handled, used or sold were, as your orator is informed and believes, manufactured by your orator and sold to them by him and not by the manufacturer of the cigar lighters which were before the court in the said suit of said defendant Eldred against Alfred T. Kirkland, aforesaid.

IV.

Your orator, complaining further, shows to the court that since before the commencement of the suit hereinbefore recited by the defendant herein against your orator in the Circuit Court of the United States for the District of Indiana he has manufactured a style and type of electric cigar lighter identical in its construction and operation with the particular device which was introduced in evidence in said suit and referred to in the finding and judgment of both said circuit court and said United States Circuit Court of Appeals for the Seventh Circuit; that all the electric cigar lighters which he has sold to said John Breitwieser and Edward Breitwieser and which are the sole subject of said suit against them, were of the same kind and construction, and were and are identical in construction with the electric lighter which was the subject of the adjudication in said decrees in this complainant's favor against said Eldred. Inasmuch, therefore, as the particular issue decided in those

judgments between your orator and the defendant herein was whether or not the electric cigar lighter then in evidence and before the court was an infringement of said Chambers patents, and inasmuch as those courts decided and adjudicated that it was not such infringement, it follows as your orator respectfully submits, that that question of infringement was finally adjudicated by said judgments as between your orator and the defendant herein both as to the particular cigar lighter in evidence and before the courts and all others of the same construction which your orator might make afterward; and further that as to all such lighters the right of your orator's customers to buy, sell or use the same was conclusively adjudicated by said judgments. Your orator shows further that he has assumed, as was his duty to do, the defense of said suit against John Breitwieser and Edward Breitwieser, and will be compelled in the proper discharge of his duty to assume the burden and expense of all suits which may be brought by said defendant herein against customers of his for alleged infringement of said Chambers patent in the purchase, use or sale of electric cigar lighters sold to them by him, which will lead to great multiplicity of suits and great and unjust expense to your orator.

V.

Your orator, further complaining, shows to the court that by many years of devotion to business he built up an extensive and profitable trade in electric cigar lighters, extending to all parts of the United States; that his customers are chiefly jobbers and wholesale dealers in cigars who give away the cigar lighters purchased by them to their customers with cigars sold to them as compliments or premiums to stimulate trade; that the defendant herein is also a manufacturer of electric cigar lighters and your orator's competitor in the

business; that in his said business he has adopted and manufactured a form of lighter substantially similar to that introduced and used by your orator and entirely dissimilar from that described in said Chambers patent; that it is not a matter of great importance to the jobbers and wholesale dealers in cigars whether they buy and use the lighters manufactured by your orator or those manufactured by the defendant, and it is, therefore, a comparatively easy matter for the defendant to deter buyers from dealing with your orator by fears of suit. From which circumstances it has happened that many of your orator's customers have been intimidated by said suit against John and Edward Breitwieser aforesaid and have ceased to send orders as they have been accustomed to do for lighters and have refused to pay for lighters heretofore sold and delivered to them by your orator.

Inasmuch, therefore, as your orator is without any remedy except in a court of equity, your orator prays that said defendant may be required to make full and direct answer to this bill (but not under oath, the answer under oath being hereby waived); that the defendant George S. Eldred may be enjoined against proceeding further with the prosecution of his said suit in the Circuit Court of the United States for the Western District of New York against John Breitwieser and Edward Breitwieser and also perpetually enjoined against bringing any suit or suits against any one in any court of the United States for alleged infringement of said patent to Josephus C. Chambers, numbered 492,913, dated March 7, 1893, by purchase, use or sale of any electric cigar lighter manufactured by your orator and identical or substantially identical with the electric cigar lighter which was in evidence and before the Circuit Court of the United States for the District of Indiana, and the United States Circuit Court of Appeals for the Seventh Circuit in the trial, hearing and adjudication of the said

suit by said George S. Eldred against William F. Kessler, your orator herein, heretofore specified; and that your orator may have such other and further relief as the equity of the case may require.

Your orator shows further that he has reason to fear and does fear that unless restrained by the order of this court pendente lite said defendant will continue to send threatening letters and circulars to your orator's customers, as he has done in the past, and to bring other suits against customers of your orator, as he has done in the past, all for the purpose of intimidating his said customers and deterring them and others from buying electric cigar lighters from your orator and from paying your orator for such lighters, already sold and delivered, so that before an injunction granted after final hearing can be issued your orator will have suffered remediless loss in his business, and the main object of this suit will have been defeated.

Wherefore your orator prays that upon notice hereafter to be served an injunction may issue pendente lite and until the further order of the court, restraining the defendant as your orator has hereinbefore prayed.

And may it please your honors to grant unto your orator a writ of subpoena ad respondendum issuing out of and under the seal of this honorable court and directed to the said George E. Eldred, and commanding him to appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this court shall seem just.

And your orator will ever pray.

WILLIAM F. KESSLER,
R. S. TAYLOR,
Solicitors for Complainant.

TAYLOR & HULSE,
Solicitors and of counsel.

State of Indiana, }
County of Allen. }

William F. Kessler, having been duly sworn, on his oath says that he is the complainant named in the foregoing bill; that he has read the same, and that the same is true of his own knowledge except as to those matters which are stated upon information and belief, and that as to those matters he believes them to be true.

Subscribed and sworn to before me this 11th day of February, 1905.

EDWIN M. HULSE,
Notary Public.

[SEAL.]

Commission expires January 23, 1909.

(Endorsed.) Filed February 13, 1905, Marshall E. Sampsell, Clerk.

BILL OF COMPLAINT, TO ENJOIN BREACH OF PRICE RESTRICTION.

(From Victor Talking Machine Company, United States Gramophone Company and Berliner Gramophone Company vs. The Fair, 123 Fed. Rep. 424, 61 C. C. A. 58.)

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois:

The Victor Talking Machine Company, a corporation duly organized and existing under the laws of the State of New Jersey, and having its principal office in the City of Camden, State of New Jersey, the United States Gramophone Company, a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, having its principal office in Harper's Ferry, State of West Virginia, and the Berliner Gramophone Company, a corporation duly organized and existing under the laws of the State of Virginia, having its principal office in the City of Roanoke, State of Virginia,

bring this their bill of complaint, against The Fair, a corporation organized and existing under the laws of the State of Illinois, having an office and store and regular and established place of business in the City of Chicago, State of Illinois, and within the Northern District of Illinois.

And thereupon your orators complain and say:

1. That Emile Berliner, of the City of Washington, District of Columbia, was the original, first and sole inventor of certain new and useful improvements in gramophones being improvements relating to recording and reproducing speech, and other sounds, which improvements were not known or used by others in this country before his invention thereof, and were not patented or described in any printed publication in this or any foreign country before his invention thereof, and were not in public use or on sale in the United States for more than two years prior to his application for a patent therefor and which have not been abandoned.

2. Your orators further show unto your honors, that the said Emile Berliner, being as aforesaid, the first inventor and discoverer of the said new and useful improvement in gramophones or improvements relative to recording and reproducing speech and other sound, did, on the thirtieth day of March, 1892, duly make application to the Honorable Commissioner of Patents at Washington, D. C., for Letters Patent of the United States for said invention, and on the said date filed his application with the said Honorable Commissioner of Patents in due and proper form, and thereafter duly filed and fully prosecuted said application.

3. Your orators further show that the said Emile Berliner, being then the sole and exclusive owner of the said invention, and of Letters Patent of the United States to be issued therefor, did during the pendency of the said application, by instrument in writing duly ex-

ecuted the twenty-ninth day of January, 1895, and recorded at the Patent Office at Washington, D. C., in Liber C 51, p. 185, etc., of Transfers of Patents, assign, sell, transfer and set over unto your orator, the United States Gramophone Company, the exclusive and entire right, title and interest in and to the said invention, and in and to all letters patent to be issued therefor, and all rights of the said Berliner therein and thereunder whatsoever, as by reference to the said instrument, or a duly authenticated copy thereof, in court to be produced, will more fully and at large appear.

4. Your orators further show, that upon the said application of the said Emile Berliner, letters patent of the United States were issued in the name of the said Emile Berliner, to your orator, the United States Gramophone Company, as assignee of the entire right, title and interest therein as aforesaid, in due form of law, in the name of the United States of America, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents of the United States, and duly delivered, bearing date the nineteenth day of February, 1895, and numbered 534,543; whereby there was granted and secured to your orator, the United States Gramophone Company, its successors and assigns, for the term of seventeen years from the date of said letters patent, and within the United States and its Territories, the full and exclusive right and liberty of making, constructing, using and vending the said invention and improvements, as set forth in the said letters patent, a duly certified copy of which is ready here in court to be produced, and by virtue whereof, and of the said assignment, your said orator, the United States Gramophone Company became the sole owner of all rights and privileges, granted and secured, by the said letters patent, and of all rights of the said Emile Berliner in the

premises. A copy of said Letters Patent No. 534,543 being annexed hereto, and marked Exhibit "A."

5. Your orators further show unto your honors, that by agreement dated the second day of September, A. D. 1895, and recorded in the United States Patent Office in Liber S, 52, pages 207, etc., your orator, the United States Gramophone Company, as licensor, made and entered into an agreement with William C. Jones, of the City of New York, State of New York, as licensee, subject to the conditions therein contained, by which said Jones acquired as licensee, the sole and exclusive right to manufacture, sell, lease and deal in, in the United States, the said invention hereinbefore referred to, patented by Letters Patent No. 534,543, dated February 19, 1895, together with other inventions and letters patent issued to the said Emile Berlinger, assignor to said United States Gramophone Company relating to sound recording and reproducing with the right to assign the same to others. That by agreement also dated the second day of September, A. D. 1895, between the said Emile Berliner and the said William C. Jones, and recorded in the Patent Office of the United States in Liber S, 52, pages 314, etc., the said agreement above noted, was *inter alia,* confirmed by the said Emile Berliner unto the said William C. Jones.

That by agreement dated the fourth day of October, A. D. 1895, between the said United States Gramophone Company and the said William C. Jones, recorded in the said Patent Office at Washington, D. C., in Liber S, 52, pp. 216, etc., the said agreement of September 2, 1895, between the same parties was modified in matters relative to the payment of royalty.

6. And your orators further show unto your honors that by declaration of trust dated the fifteenth day of October, A. D. 1895, recorded in the Patent Office at Washington, D. C., in Liber S, 52, pp. 219, etc., and by

agreement dated the first day of November, A. D. 1895, recorded in the said Patent Office at Washington, D. C., in Liber P 52, pp. 326, etc., the said William C. Jones transferred and assigned to your orator, the Berliner Gramophone Company, its successor and assigns, his entire right, title and interest as sole and exclusive licensee in and to the said Letters Patent No. 534,543, and in and to the said invention therein described and claimed, and in and to the aforesaid agreement and assignments, and in and to all inventions, letters patent and rights therein and thereunder.

7. And your orators further show that by agreement dated the twenty-eighth day of September, 1901, recorded in the Patent Office at Washington, D. C., April 16, 1902, in Liber Z 64, p. 323 of the Transfer of Patents, the said Berliner Gramophone Company, being the sole owner of the said exclusive license in the said invention and inventions, did grant and convey, assign and set over unto Eldridge R. Johnson, of the City of Philadelphia, State of Pennsylvania, the said exclusive license and all its rights therein and thereunder, to manufacture, sell, use and deal in said invention and inventions, with the right to the said Johnson to assign the same unto your orator, the Victor Talking Machine Company.

8. Your orators further show unto your Honors that by agreement dated the fifth day of October, 1901, recorded in the Patent Office at Washington, D. C., April 16, 1902, in Liber Z 64, p. 325, of the Transfer of Patents, the said Eldridge R. Johnson, being then the sole owner of the said exclusive license in the said invention and inventions, did grant and convey, assign and set over your orator, the Victor Talking Machine Company, a corporation organized and existing under the laws of the State of New Jersey, the said exclusive license and all his right therein, and thereunder to manufacture, sell, use and deal in the said invention and inventions.

9. And your orators further show unto your Honors that by virtue of the premises your orator, the United States Gramophone Company, is now, and has been at all times since the date of the said assignment to it, the sole and exclusive owner of the said Letters Patent No. 534,543, and that your orator, the Victor Talking Machine Company, is now and has been at all times since the date of the said agreement with it, and the said transfers and assignments of the said rights to it, the sole and exclusive licensee as aforesaid under the said Letters Patent No. 534,543 for the manufacture and sale of said invention patented in said letters patent throughout the United States. Your orators show unto your Honors that they are now and were at the time of the commission of the acts hereinafter complained of the sole and exclusive owners of the legal and equitable title in and to the said Letters Patent No. 534,543, and in and to the improvements therein contained, and of all rights of action thereto pertaining, as will more fully and at large appear by reference to the said agreements, assignments and proofs in court to be produced.

10. And your orators further show unto your Honors that they have expended large sums of money in practicing said invention and improvements patented in said Letters Patent No. 534,543, and in introducing the same into public use, and the same are of great commercial value and practical utility; that a great public interest has been manifested therein, and a large demand created for apparatus constructed in accordance with, or embodying the same, which demand your orators are ready and able to supply; that the public generally in all parts of the United States have recognized and acquiesced in the facts that the said Emile Berliner was the first and original inventor of the said invention, and that the Patent No. 534,543, is good and valid; that the public have also acknowledged the claims of your orators to

the exclusive right of the said invention under said patent; and that, but for the infringements and wrongs hereinafter complained of and a few recent infringements encouraged by the unlawful acts of this defendant, your orators would be now in peaceful possession and enjoyment of the said letters patent and invention, and of the income derivable therefrom; and that your orators and the said Berliner have never acquiesced in any infringement of their rights in the premises at any time.

11. And your orators further show, that they have given notice to the public that the same invention is patented, and have affixed, or caused to be affixed, to the apparatus and devices manufactured and sold under the authority of your orators the word "patented," together with the day and year of the grant of the said patent, of which notice the said defendant has had full knowledge.

12. Your orators further show that your orator the Victor Talking Machine Company, the said exclusive licensee under the said patent (as well as of other patents, under which the said talking machines and records are and have been made and sold by it) has caused to be placed and securely fixed upon each of the said talking machines manufactured by it under the said patent, since about March of the present year, a large conspicuous label having printed thereon in clear, legible type the following notice containing the conditions and restrictions under which each of the said machines were licensed for sale and use and under the subject to which they were purchased, as follows:

"NOTICE.

"This machine, which is registered on our books as No. —— is licensed by us for sale and use only when sold to the public at a price not less than $——. No license is granted to use this machine when sold at a less price.

Any sale or use of this machine when sold in violation of this condition will be considered as an infringement of our United States patents under which this machine, and records used in connection therewith, are constructed, and all parties so selling or using this machine contrary to the terms of this license will be treated as infringers of said patents, and will render themselves liable to suit and damages.

"This license is good only so long as this label and the above noted registered number remains upon the machine; and erasures, or removals, of this label will be construed as a violation of this license. A purchase is an acceptance of these conditions. All rights revert to the undersigned in the event of any violation.

"VICTOR TALKING MACHINE COMPANY.

"March 1st, 1902."

(The number of the machine and the minimum price is left blank in the above conditions of license. This being the blank form which is filled in before the machine leaves the factory.)

13. That prior to April, 1902, your orator, the Victor Talking Machine Company, manufactured a certain talking machine under the patent in suit of the type known as the "Victor Monarch, Jr.," and securely attached to the bottom of the said machine a large, conspicuous label having printed thereon in clear, legible type the said notice above noted containing all the conditions and restrictions therein noted. That the said label in addition contained the number "23,157" on the first line, which was the number of the said machine given to it by your orator, the Victor Talking Machine Company, before it left the factory, and the price "$25," was printed on the third line of the label, being the minimum at which the machine was licensed legally to be sold under the conditions of the license

That on or about the 18th day of April, 1902, your orator, the Victor Talking Machine Company, sold the said machine to a jobber under and subject to all the conditions and restrictions as set forth on the said notice and label, which restrictions and conditions the said purchaser accepted and agreed to at the time of the purchase.

That the said notices containing the said conditions and restrictions have always heretofore been and are brought by your orator, the Victor Talking Machine Company, conspicuously to the attention of the trade when the said machines containing the said labels are sold or licensed for sale, and all said machines are purchased by the jobbers and dealers, and all who buy, under and subject to each and all of the said conditions and restrictions, and a purchase is, and always has been, an acceptance of the said conditions and restrictions.

That in addition to the said notice on the said patented machine your orator, the Victor Talking Machine Company, has always, since about March, 1902, supplied all purchasing jobbers and dealers with a discount card upon which the said notice and conditions of sale were also clearly printed.

14. That the defendant herein, having knowledge at the time of the said conditions and restrictions under which the said machine of your orators was sold to the said jobber, purchased and acquired possession of the said machine, No. "23,157," with other similar machines, subsequently to the eighteenth day of April, 1902, directly or indirectly, from the jobber or dealer to whom your orator sold the said machine, as hereinbefore set forth. That the said machine at the time the same was so purchased by the said defendant contained the said label having the said notice of conditions and restrictions conspicuously thereon, which said machine is ready in court to be produced.

The said defendant for some time past has been and is doing business at the corner of Adams and Dearborn streets, in the city of Chicago, State of Illinois, as a dealer in musical and other instruments, and as a general department store.

15. That the said defendant well knowing the conditions and restrictions under which it purchased the said machine (and other similar machines) subsequently advertised and sold the said machine, "23,157" at its said store in the city of Chicago, in the Northern District of Illinois at eighteen ($18.00) dollars, on or about the 11th day of August, 1902, without any right or license whatsoever so to do, and in direct violation of the terms and conditions of the said license under which the said machine was privileged to be sold and in violation and infringement of the said Letters Patent No. 534,543, of your orator.

16. That the defendant has now in its possession and is selling and advertising for sale, and threatening to sell to the public at the same cut price and in the same unlicensed manner, in infringement of your orator's said rights, many other similar talking machines manufactured by your orator, the said Victor Talking Machine Company, under the said patent in suit, similarly marked and licensed by your orator for sale only under the said restrictions and conditions. And the said defendant is now engaged in securing possession of many others of said machines from sundry dealers for a similar purpose with intent to damage and injure your orator's business.

17. That your orators since the early part of March, 1902, have done a business in the sale of the said talking machines and records manufactured under the said patent in suit, of several hundred thousand dollars, and all of the said machines sold by it during that time have been licensed for sale only under the said restrictions and conditions, and so purchased.

Your orators further show that your orators are obliged to treat all jobbers and dealers alike, and cannot grant unequal licenses and privileges but are required to maintain as far as in their power reasonable uniform prices; they are and have been, therefore, obliged in selling their goods to impose a restricted license upon all, a violation of which is an infringement of the said patent in suit, as well as of other patents of your orators not involved in this suit. Your orators further show that the said restrictions and conditions are reasonable and tend to a fair and even distribution of the said goods to the public generally throughout this country, at a fair and reasonable price, a violation of which said licenses immediately destroys, and tends to destroy, the profits of the jobbers and dealers and to prevent them from freely handling said goods, to the great and irreparable damage and injury of your orators.

18. Yet, as your orators are informed and believe, and further show unto your Honors, that the said defendant herein named, well knowing all the facts herein set forth, but contriving to injure your orators and deprive them, and each of them, of the benefits and advantages which might and otherwise would accrue to them, and each of them, from said patented devices, methods and things, has made, sold and used and is now making and selling and using, and is threatening to make, sell and use apparatus and things relative to sound recording or reproducing, having and containing the devices and things patented in said Letters Patent No. 534,543, particularly in claims numbered 5, 32, 35, and employing methods covered by the said letters patent, or in all substantial respects the same; the exclusive right to make, use and vend which to others to use is legally vested in your orators.

19. And your orators further show unto your Honors, that notwithstanding the fact that the said defend-

ant has been duly notified by your orators of your orators' rights in the premises, and of the fact that the said defendant was infringing the said letters patent of your orators, and that the said defendant should desist from such infringements, the said defendant has continued, and is still continuing, to the great and irreparable damage and injury of your orators, the manufacture, sale and use of the said infringing devices and things.

20. And so it is, may it please your Honors, that the said defendant as your orators are informed and believe, without the license of your orators or any of them, and without any license whatsoever, against the will of your orators, and in violation of their rights, has made and sold, and intends to continue to make and sell, within the Northern District of Illinois, and elsewhere within the United States, said patented devices and things, each having and containing the said patented features, substantially the same in all material respects in construction, operation and effect as in your orators' said letters patent mentioned, and employing methods covered by said letters patent; and that the said defendant is largely advertising said infringements, to the great damage and injury of your orators, and that the said defendant refuses to pay unto your orators any of the profits which the said defendant has made by such unlawful sale and use or to desist from the further infringement of the said letters patent, though requested so to do; all of which acts and doings are in violation of the exclusive rights and privileges, so as aforesaid, vested in your orators under and by virtue of the said letters patent; are contrary to equity and good conscience; tend to the manifest injury of your orators in the premises, and will, if said defendant is allowed to continue said infringements, irreparably damage and injure your orators, and each of them, depreciate or destroy the value of the exclusive franchises to which your orators are en-

titled under the patent aforesaid, and will deprive your orators of the benefits and advantages for the loss of which there exists no adequate legal remedy.

And your orators, therefore, pray as follows:

I. That the said defendant be required by decree of this Honorable Court to account for and pay over to your orators such gains and profits as have accrued or risen or been earned or received by the said defendant and all such gains and profits as would have accrued to your orators but for the unlawful doings of said defendant, and all damages your orators have sustained thereby.

II. That the said defendant may be compelled by the order of this Honorable Court to deliver up to the judicial custody for destruction, in manner to be provided for in said order, all infringing apparatus in the possession of or under the control of said defendant.

III. That the said defendant, its associates, attorneys, servants, agents and workmen, may be perpetually enjoined and restrained, by a writ of injunction issuing out of and under the seal of this Honorable Court, from directly or indirectly, making or causing to be made, using or causing to be used, selling or causing to be sold, any machine or apparatus or sound record, embodying or constructed or operated in accordance with the invention or improvements set forth in the letters patent aforesaid.

IV. That your Honors will grant unto your orators a preliminary injunction issuing out of and under the seal of this Honorable Court, enjoining and restraining the said defendant, its associates, servants, clerks, agents and workmen to the same purport, tenor and effect as hereinbefore prayed for with regard to said perpetual injunction; and

V. That this defendant be decreed to pay the costs of this suit; and

VI. That your orators may have such other and further relief as the equity of the case may require.

To the end, therefore, that the defendant may, if it can, show why your orators should not have the relief prayed and may full, true and direct answer make, but not under oath (answer under oath being expressly waived) according to the best and utmost of its knowledge, information, remembrance and belief to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were repeated paragraph by paragraph, and said defendant thereto severally and specifically interrogated, may it please your Honors to grant your orators a writ of *subpoena ad respondendum* issuing out of and under the seal of this Honorable Court, directed to said defendant, The Fair, commanding it to appear and make answer to this bill of complaint and to perform and abide by such order and decree herein as to this court may seem just.

And your orator will ever pray.

HORACE PETTIT,
Of Counsel for Complainant.

August, 1902. PIERCE & FISHER,
Solicitors for Complainants.

STATE OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

Leon F. Douglass, being duly sworn, deposes and says: That he is Vice President and General Manager of the Victor Talking Machine Company, one of the complainants named in the foregoing bill; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, save of the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

LEON F. DOUGLASS.

Sworn to and subscribed before me this 25th day of August, 1902.

JOHN F. GRADY,
Notary Public.

(Notarial Seal.)

ANSWER.

(From Westinghouse vs. Boyden Power Brake Co., 170 U. S. 537, 42 L. Ed. 1136.)

In the Circuit Court of the United States for the District of Maryland.

GEORGE WESTINGHOUSE, JR., and THE WESTINGHOUSE AIR BRAKE COMPANY.
vs.
BOYDEN POWER BRAKE COMPANY; GEORGE A. BOYDEN, President; CHARLES B. MANN, Secretary; WILLIAM WHITRIDGE, Treasurer. } In Equity.

To the Honorable, the Judges of the Circuit Court of the United States in——for the District of Maryland.

The joint and several answer of the Boyden Power Brake Company of Baltimore City and of George A. Boyden, Charles B. Mann, and William Whitridge to the bill of complaint of George Westinghouse, Jr., and the Westinghouse Air Brake Company against these defendants in this court exhibited.

These defendants now and at all times hereinafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, insufficiencies and inaccuracies in the complainants' said bill of complaint contained, for answer thereto or unto so much and to such parts thereof as these defendants are advised that it is material to make answer unto, say:

1. They admit that the first-named defendant is a corporation created under the laws of the State of Maryland and doing business in the said State, and that the said Boyden, Mann and Whitridge are, respectively, the president, secretary and treasurer of the said company and that they reside in the city of Baltimore and are citizens of the State of Maryland.

2. They admit that the said company is engaged in manufacturing and selling a fluid-pressure brake; but they deny that the said brake, or any part thereof, is an infringement on the letters patent issued to the complainants and described in said bill of complaint and they deny all the allegations contained in the said bill except such as may be specially admitted in this answer.

3. For further answer they deny, on information and belief, that the said George Westinghouse, Jr., was the true and original and first inventor of the apparatus covered by the letters patent mentioned in the said bill; and they further say, on information and belief, that the said apparatus was not an invention when produced by the said George Westinghouse, Jr., and that it was not novel, but that an apparatus substantially identical in character therewith was previously patented in letters patent of the United States granted to George Westinghouse, Jr., on March 5, 1872; and that like apparatus was previously described in the following patent of the United States:

No. 138,827 to George Westinghouse, Jr., May 13th, 1873.
No. 144,006 to George Westinghouse, Jr., October 28th, 1873.
No. 163,089 to Henry E. Marchand, May 11th, 1875.
No. 166,405 to H. Lansing Perine, August, 3, 1875.
No. 168,359 to George Westinghouse, Jr., October 5, 1875.
No. 172,064 to George Westinghouse, Jr., January 11th, 1876.
No. 220,556 to George Westinghouse, Jr., October 14, 1879.
No. 280,285 to George A. Boyden, June 26, 1883.

4. And these defendants further answering, on information and belief, say that the said alleged invention was in public use more than two years before the said George Westinghouse, Jr., made any application for let-

ters patent thereon, and that the said George Westinghouse, Jr., actually abandoned the said invention before any application was made.

5. And further answering so much of the said bill as alleged an infringement of the seventh claim of letters patent No. 168,359, they say that the said claim can only be construed as covering the specific construction named in the said claim, and that these defendants do not use the said construction; and that the construction used by these defendants cannot infringe the subject-matter of the said claim, for the reason that it is substantially found in several of the prior patents above cited.

6. And for answer to so much of said bill as alleges an infringement of the first, fourth and fifth claims of letters patent No. 360,070, these defendants say that the valve used by them does not embody the combination of parts set forth in the said claims and does not infringe any patent included therein.

7. And in respect to the alleged infringement of the second claim in the said letters patent, these defendants say that the said second claim is invalid and should not have been granted, because the combination of parts therein named is inoperative to perform and incapable of performing the function set forth in said claim; and that if the said claim be considered merely as the combination of parts therein set forth and without reference to the function described as performed by it, it is invalid for the reason that the same combination of parts is shown in most of the prior patents above cited, and has been publicly used by the complainants for a long time prior to the date of the said letters patent No. 360,070.

8. And, further, these defendants say that the said second claim is uncertain and ambiguous, and that if the functions which are recited in the said claim should be so construed as amplifying the description of the elements or parts composing the combination as to distinguish this

combination from that shown in most of the prior patents above cited, then the defendants say that the said claim is anticipated by the prior patent issued to George A. Boyden on June 26, 1883; for the reason that air-brake valves made in accordance with the last mentioned patent embody the same combination of parts, and will perform the same functions and operate in substantially the same manner as stated in the said second claim.

Wherefore, these defendants humbly pray to be hence dismissed with their reasonable costs and charges in that behalf wrongfully sustained.

BOYDEN POWER BRAKE COMPANY,
By G. A. BOYDEN, President.
BARTON & WILMER,
COWEN & CROSS,
Solicitors for all the Respondents.

(Seal of Company.)

DISTRICT OF MARYLAND,
UNITED STATES OF AMERICA, } To wit:

I, George Morris Bond, a Commissioner of the United States of America in and for the District of Maryland, do hereby certify that on the 3d day of February, in the year eighteen hundred and ninety, personally appeared before me in my said district, George A. Boyden, and made oath that the matters and things stated in the foregoing answer as of his own knowledge are true, and that the matters and things therein stated as upon information and belief, are true to the best of his knowledge, information and belief.

GEORGE MORRIS BOND,
United States Commissioner for the District of Maryland.

(Commissioner's Seal.)

G. A. BOYDEN, President.

ANSWER.

(From Kessler vs. Eldred, 206 U. S. 285, 51 L. Ed. 1065.)

Circuit Court of the United States, for the District of Indiana, sitting at Fort Wayne.

GEORGE S. ELDRED, Complainant,
vs.
WILLIAM KESSLER, Defendant.
} In Equity. No. 135.

ANSWER.

The answer of the defendant, William F. Kessler, to the bill of complaint of the complainant, George S. Eldred.

Said defendant for answer to the bill, or to so much and such parts thereof as he is advised are material for him to answer, says:

He admits that a United States Patent, No. 492,913, and dated March 7, 1893, for alleged improvements in lamp lighters was granted to Josephus C. Chambers; and that another United States Patent, No. 532,727, and dated July 10, 1894, for alleged improvement in electric lamp lighter was granted to Josephus C. Chambers; and that another United States Patent No. 522,934, and dated July 10, 1894, for alleged improvement in Electric cigar lighters, was granted to John J. Eberhard and Carl G. Schimkatt; but whether said patents and each of them were duly applied for and issued according to law the defendant does not know, and whether the complainant has acquired title to any or all of said patents the defendant does not know; and upon all said matters the complainant is required to make proof.

Said defendant denies that said Josephus C. Chambers was the true, original and first inventor of the apparatus covered by said patent 492,913; and he avers that said

apparatus in said patent described was not an invention when produced by said Chambers; and that it was not novel at that time and that in the state of the art then existing it required not invention but only mechanical skill to produce said apparatus; and that the same when produced by said Chambers was not a patentable combination, but a mere aggregation.

Said defendant further denies that said Josephus C. Chambers was the original, true and first inventor of the apparatus covered by said patent 522,727; and he avers that said apparatus in said patent described was not an invention when produced by said Chambers; and that it was not novel at that time; and that in the state of the art then existing it required, not invention, but only mechanical skill to produce said apparatus; and that the same when produced by said Chambers was not a patentable combination, but a mere aggregation.

Said defendant further denies that said Eberhard and Schimkatt were the true, original, first and joint inventors of the apparatus covered by said patent No. 522,934; and he avers that said apparatus in said patent described was not an invention when produced by said Eberhard and Schimkatt; and that in the state of the art then existing it required, not invention, but only mechanical skill to produce said apparatus; and that the same when produced by said Eberhard and Schimkatt was not a patentable combination, but a mere aggregation; and further that the invention, if any there was, was not the joint invention of said patentees, but was the sole invention of one of them.

Said defendant answering further as to all the patents mentioned in said bill says that he denies that the validity of said patents or any of them has been generally recognized or acquiesced in by the public; and he denies that he has ever made, sold or used any apparatus covered by all or any of said patents in said bill of com-

plaint mentioned; and he denies all infringement of said patents and each of them; and likewise denies that he ever derived any profit from such making, selling or using; and likewise denies that the complainant ever incurred any damage from any such transactions committed or caused to be committed by the defendant.

All of which defenses said defendant is ready to aver, maintain and prove as this Honorable court shall direct; and he prays to be dismissed hence with his costs in this behalf sustained.

WILLIAM F. KESSLER,
By R. S. TAYLOR,
His Solicitor.

STIPULATION FOR USE OF UNCERTIFIED COPIES OF PATENTS; FOR EXCHANGE OF COPIES; THAT ANY OFFICER HAVING SEAL MAY ACT AS SPECIAL EXAMINER, ETC.

(From H. F. Brammer Mfg. Co. vs. Witte Hdw. Co., 159 Fed. Rep. 726, 86 C. C. A. 207.)

It is hereby admitted and stipulated by and between counsel for the respective parties to the above entitled cause, as follows:

1. That the uncertified printed copies of United States Letters Patent as issued by the United States Patent Office, and the blue book or printed copies of British or other foreign patents issued by the respective foreign countries and uncertified, may be introduced as exhibits in this cause by either party, subject to the usual objections as to relevancy and competency, with the same force and effect as though the Letters Patent so offered were duly certified by the proper authorities issuing the original of such patents, and subject also to the correction at any time for typographical errors.

II. That each party will furnish to the other party without cost or charge a legible copy of all depositions taken by him, and also, so far as practicable, copies or duplicates of exhibits.

III. That in order to save undue expense the depositions may be taken by either party before any notary public or other officer having a seal and acting as special examiner, subject, of course, to the usual objections with respect to the introduction of proofs; and that the depositions and proofs when filed may be used with the same force and effect on the final or other hearing in this cause as if they had been taken before a commissioner of this court or an examiner specially appointed for the purpose.

IV. That all exhibits offered in evidence may be retained in the custody or control of the counsel offering the same until the final hearing of this cause, subject, however, to inspection at all reasonable times by the opposing counsel or his expert or agent, all such exhibits to be produced at the final hearing, and also to be produced at such other hearing as may be had when notice is served upon opposing party for the production of such exhibits for such special hearing.

V. It is further stipulated and admitted by counsel for the defendant that complainant's Exhibit No. 2 was manufactured by the defendant, The Michigan Washing Machine Company, at Muskegon, Michigan, and that it was sold by the defendant, The Witte Hardware Company, at St. Louis, Missouri, after the date of the Plagman patent in suit, complainant's Exhibit No. 1, and prior to the filing of the bill of complaint herein.

DECREE OF DISMISSAL.

(From H. F. Brammer Mfg. Co. v. Witte Hardware Company, 159 Fed. Rep. 726, 86 C. C. A. 207.)

(Caption.)

This cause came on to be heard at this term and has been argued by counsel for the respective parties and submitted to the court upon the pleadings and proofs ad-

duced; the court now being advised in the premises, doth find the issues herein joined in favor of said defendants; and it is therefore ordered, adjudged and decreed that the bill of complaint in this cause be and the same is hereby dismissed for want of equity at costs of said complainant.

JOHN C. POLLOCK,
Judge.

REPLICATION.

(From Westinghouse vs. Boyden Power Brake Co., 170 U. S. 537, 42 L. Ed. 1136.)

United States Circuit Court, District of Maryland.

GEORGE WESTINGHOUSE, JR., and THE WESTINGHOUSE AIR BRAKE COMPANY, *vs.* THE BOYDEN POWER BRAKE COMPANY; GEORGE A. BOYDEN, President; CHARLES B. MANN, Secretary, and WILLIAM WHITRIDGE, Treasurer.	In Equity. No. 321.

The replication of George Westinghouse, Jr., and The Westinghouse Air Brake Company, complainants, to the answer of The Boyden Power Brake Company; George A. Boyden, president; Charles B. Mann, secretary, and William Whitridge, treasurer, defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants; without this that any other matter or thing whatsoever in the said answer contained,

material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, and not herein replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct; and they humbly pray, as to and by their bill they have already prayed.

GEORGE H. CHRISTY,
Solicitor for Complainants.

DECREE.

(From Westinghouse vs. Boyden Power Brake Co., 170 U. S. 537, 42 L. Ed. 1136.)

And now, to-wit, this 25th day of April, 1895, the above-entitled cause having come on regularly for hearing, before the Honorable Thomas J. Morris, district judge, holding circuit court, on bill, answer, replication and proofs taken by and on behalf of the respective parties hereto, and having been argued by Mr. George H. Christy and Mr. Frederic H. Betts, for complainants, and by Mr. Lysander Hill, Mr. Skipwith Wilmer and Mr. Hector T. Fenton, for defendants, and the court having considered the same, and being duly advised in the premises, it is thereupon ordered, adjudged, and decreed:

1st. That the letters patent recited in complainant's bill of complaint, to-wit, letters patent of the United States, No. 360,070, dated March 29, 1887, and granted to George Westinghouse, Jr., for a new and useful improvement in fluid-pressure automatic brake mechanism, are a good and valid patent in all respects as regards and to the extent of the subject-matter of invention referred to and summed up in the several claims declared upon herein, to-wit, claims numbered one, two and four of said recited patent; that George Westinghouse, Jr.,

was the true original and first inventor thereof; and that the complainants have a good and sufficient title thereto, and are entitled to the exclusive right therein and thereunder.

2d. That the defendants above named, by the manufacture, use and sale of fluid-pressure automatic brake mechanism, as set forth and shown in and by the proofs herein, and (for greater certainty herein) more particularly as shown and described in certain letters patent of the United States, No. 481,134 and No. 481,135, both dated August 16, 1892, and both granted to The Boyden Brake Company, assignee of George A. Boyden, defendants herein, have infringed the said second claim of said recited patent No. 360,070, and have violated the exclusive right of the complainants therein and thereunder, and that a writ of injunction, conformable to the prayer of said bill, and in the usual form, be issued by the clerk, perpetually enjoining and restraining the said defendants and each of them from any further manufacture, use or sale of the apparatus, mechanism and devices complained of herein, and of any other apparatus, mechanism or devices substantially such in construction and operation as that which is referred to in and constitutes the subject-matter of said second claim, and from doing any act or thing in infringement of said second claim, or in violation of the exclusive right so as aforesaid vested in said complainants therein and thereunder.

3d. That reference be made herein to G. Morris Bond, Esq., as master, to take, state and make return of an account of the gains and profits made by said defendants, as also of the damages suffered by said complainants by or on account of said infringement, and that the parties appear before the master and produce books and papers and render accounts as he may, from time to time, direct.

4th. That as regards claims one and four of said patent No. 360,070, the court being of the opinion that de-

fendants' device hereinbefore referred to does not infringe the same, injunction is refused and the bill of complaint is, in reference to such claims, hereby dismissed.

5th. And it is further ordered that all questions of the allowance of costs are reserved until the final decree.

THOS. J. MORRIS, Judge.

PETITION FOR APPEAL.

(From H. F. Brammer Mfg. Co. vs. Witte Hardware Company, 159 Fed. Rep. 726, 86 C. C. A. 207.)

The above named complainant, conceiving itself aggrieved by the order and decree made and entered on the 3d day of July, 1907, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

St. Louis, Missouri, July 6th, 1907.

TAYLOR E. BROWN,
THOMAS G. RUTLEDGE,
Solicitors for Complainant.

TAYLOR E. BROWN,
C. CLARENCE POOLE,
Of Counsel.

Filed July 9, 1907. James R. Gray, Clerk.

ASSIGNMENT OF ERRORS.

(From Westinghouse vs. Boyden Power Brake Co., 170 U. S. 537, 42 L. Ed. 1136.)

And *eo die* come the complainants in the above-entitled cause and file, with their foregoing petition for appeal, these their assignments of error:

1st. That the court erred in finding that defendant's apparatus did not contain an auxiliary valve within the meaning of claims one and four of patent No. 360,070, and of each of them.

2d. That the court erred in holding that it is an essential feature of the auxiliary valve of the patent in suit that it "performs none of the functions of the main valve of the ordinary triple-valve device."

3d. That the court erred in finding that the quick action or emergency valve 22 of defendants' apparatus is in any practical or operative or commercial sense a main valve, or that in practical use it has the capacity or does the work of a main valve, or that to any practical or material extent it "performs the functions of a main valve of the triple valve."

4th. That the court erred in holding that the valve *i j k* of defendants' apparatus is not a main valve within the meaning of claims one and four of patent No. 360,070 and of each or either of said claims.

5th. That the court erred in holding that the defendants' apparatus did not contain the invention of claims one and four and of each of them.

6th. That the court erred in not holding that in defendants' apparatus, and for the purposes of this case, the valve *i j k* is or represents the valvular appliance by or through which the ordinary service work of the brake is done, and valve 22 is or represents the valvular appliance by or through which quick action or emergency work is done, and also in not holding that such use and

operation of defendants' apparatus involves an unauthorized use of the invention of claims one and four of patent No. 360,070, and is an infringement thereof.

7th. That the court erred in refusing and in not granting an injunction under each and both of said claims.

Wherefore, these appellants, George Westinghouse, Jr., and The Westinghouse Air Brake Company, pray that the decree of the Circuit Court of the United States for the District of Maryland may be reversed by this Honorable Court in respect of the matters herein appealed, and that the said circuit court be directed by the mandate of this court to enter a decree for an injunction and account under claims one and four of the patent in suit, No. 360,070, with costs to the appellants herein and complainants below.

BERNARD CARTER,
Solicitor for Appellants.

Service of copy of the within admitted this 13th day of May, 1895.

BARTON & WILMER,
Solicitors for Defendant.

ORDER FOR BOND IN LIEU OF INJUNCTION.

(From H. F. Brammer Mfg. Co. vs. Witte Hardware Company, 159 Fed. Rep. 726, 86 C. C. A. 207.)

H. F. BRAMMER MANUFACTURING COMPANY,
vs.
THE WITTE HARDWARE COMPANY.

In Chancery.
No. 5171.

This cause having come on to be heard on June 8, 1905, upon motion of complainant for an injunction *pendente lite*, and in pursuance of the order of Hon. John H. Rogers, United States Judge, entered herein May 22, 1905, and upon reading notice of said motion and of said order and proof of service thereof, and of the affidavits

filed on behalf of the defendant, and said matter having been argued by A. C. Denison, Esq., counsel for defendant, as well as by Taylor E. Brown, Esq., counsel for complainant, and briefs having been submitted by the respective counsel, and the same having been duly considered by the court; now, therefore, it is hereby ordered, adjudged and decreed:

That if the defendant, or some one on its behalf, will on or before Monday the 10th day of July, 1905, give a bond in the sum of five thousand dollars, with good and sufficient surety to be approved by the court or the clerk thereof, conditioned that defendant will pay, or cause to be paid, to complainant all damages, profits and costs, judgments or awards, that may be adjudged, ordered or found in favor of the said complainant and against the said defendant, if any, upon the final hearing of this cause, on account of infringing the letters patent described in the bill of complaint, and if defendant will file with the clerk of this court every sixty days a statement setting forth the number of "Guarantee Washing Machines" sold during the sixty days then last past, together with the number of machines then on hand, then the writ of preliminary injunction prayed for by complainant shall not issue until the further order of the court or a judge thereof.

But should the defendant fail or refuse to furnish said bond, or file said statements within the time fixed herein, then and in such case a temporary writ of injunction shall issue restraining the defendant, its officers agents, clerks and employees, until the further order of this court, from selling, or causing to be sold, giving away or disposing of in any manner any washing machines such as are known by the name "Guarantee," or such as are similar to "Complainant's Exhibit, Defendant's Infringing Machine," or which in any manner are constructed in accordance with or embody the invention set

forth and claimed in complainant's letters patent No. 608,220: Provided that such temporary injunction shall not issue until the complainant, or some one in its behalf, has filed a bond in the penal sum of five thousand dollars, to be approved by the court or clerk, with good and sufficient sureties, conditioned that if on final hearing said bill of complaint be dismissed for want of equity or other cause, complainant will pay to the defendant such damages, if any, as it may have sustained in consequence of the issuance of said injunction or the interruption of its business during the time that such temporary injunction shall remain in force.

(Signed.) G. A. FINKELNBURG, Judge.

ORDER ALLOWING APPEAL.

(From H. F. Brammer Mfg. Co. vs. Witte Hardware Company, 159 Fed. Rep. 726, 86 C. C. A. 207.)

Now at this day comes said complainant by its solicitor and files and presents to the court its assignment of errors and petition for appeal from the final decree heretofore rendered herein to the United States Circuit Court of Appeals for the Eighth Circuit; upon due consideration whereof the court doth order that said appeal be and the same is hereby granted as prayed and that the amount of the appeal bond to be given for costs be fixed at two hundred and fifty dollars; and now said complainant presents such a bond conditioned as required by law, which is approved by the court and filed, and a citation citing and admonishing said defendants to be and appear at and before said Court of Appeals within sixty days from this date is signed by the judge, and it is further ordered that the clerk of this court make out and certify to said Court of Appeals a full, true and complete transcript of the record and proceedings in this

cause, omitting therefrom any and all exhibits heretofore or hereafter withdrawn by the party offering same, leave for such withdrawal being now and here given.
July 9, 1907. DAVID P. DYER, Judge.
Filed July 9, 1907, James R. Gray, Clerk.

APPEAL BOND.

(From H. F. Brammer Mfg. Co. vs. Witte Hardware Company, 159 Fed. Rep. 726, 86 C. C. A. 207.)

Know all men by these presents, That we, H. F. Brammer Manufacturing Company, as principal, and the National Surety Company as surety, are held and firmly bound unto the Witte Hardware Company and Michigan Washing Machine Company, in the full and just sum of two hundred and fifty dollars ($250.00) to be paid to the said Witte Hardware Company and Michigan Washing Machine Company, their heirs, executors, administrators, successors or assigns; to which payment well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this ninth day of July, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at the March term, A. D. 1907, of the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, in a suit depending in said court between H. F. Brammer Manufacturing Company, complainant, and Witte Hardware Company and Michigan Washing Machine Company, defendants, a decree was rendered against the said H. F. Brammer Manufacturing Company, and the said H. F. Brammer Manufacturing Company has obtained an order of the said court allowing an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Witte Hardware Company and Michigan Wash-

ing Machine Company, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said H. F. Brammer Manufacturing Company shall prosecute said appeal to effect, and answer all damages and costs if it fail to make good its plea, then this obligation to be void, else to remain in full force and virtue.

H. F. BRAMMER MANUFACTURING COMPANY,
By TAYLOR E. BROWN, Its Attorney.
(Seal)

Signed and delivered in the presence of Marie I. McDonald, as to National Surety Company.

NATIONAL SURETY COMPANY,
By PAUL W. GRAY, Its Attorney in fact.
(Seal.)

Approved by David P. Dyer, Judge.

ORDER OF SUPERSEDEAS, EMBRACED IN ORDER GRANTING APPEAL.

(From Rice-Stix Dry Goods Co. vs. J. A. Scriven Co., 165 Fed. Rep. 639, 91 C. C. A. 475.)

The above named defendant, Rice-Stix Dry Goods Company, having duly filed its assignment of errors and petition for appeal, on motion of S. L. Swarts, Esq., and F. W. Lehmann, Esq., solicitors for the defendant, it is ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit, from the order, judgment and decree entered hereon on the 7th day of December, 1907, be, and the same is hereby, allowed to the defendant, and that a certified transcript of the record, testimony, stipulations and all proceedings herein other than the original exhibits, be forthwith transmitted to the said United States Circuit Court of Appeals.

It is further ordered, complainant consenting, that the clerk of the court also send up with said transcript the original exhibits filed herein.

It is further ordered that the appeal bond be fixed at the sum of ten thousand dollars ($10,000.00), conditioned that if the said defendant shall prosecute its appeal to effect, and answer all costs and damages that may be awarded against it if it shall fail to make good its said plea, then the bond to be void; otherwise in full force and virtue.

And it is further ordered that upon giving such bond the injunction ordered herein is suspended, pending the appeal of this case.

And the defendant thereupon presents its appeal bond, as hereinbefore provided, and the same is approved and ordered filed herein.

DAVID P. DYER, Judge.

PETITION FOR REHEARING, IN THE UNITED STATES SUPREME COURT.

(From Westinghouse vs. Boyden Power Brake Company, 170 U. S. 537. 42 L. Ed. 1136.)

Your petitioners George Westinghouse, Jr., and the Westinghouse Air Brake Company, complainants and appellees, hereby respectfully represent to this court as follows:

First. That, as they are advised and believe, this court has been led into error in its opinion filed May 9th, 1898, in finding that the "auxiliary valve" of Boyden (valve 22) is *located* and *arranged* in combination with the other parts of the triple-valve structure, in a substantially different manner from that of the auxiliary valve of the Westinghouse patent in suit (valve 41), and so as to be productive of different results from those produced by the Westinghouse auxiliary valve; and in finding that a passage for train-pipe air (admitted by

said valve) *through* the valve chamber, is substantially different from a by-passage for train-pipe air *around* said valve chamber.

Whereas, as your petitioners believe, this difference in location of the auxiliary valves, and passages opened thereby, is *not* material, and has been so proved in the record, and is in substance so admitted on the part of the defendants in one of the Boyden Patents No. 481,136 (Record, pp. 817,823).

Second. That, as they are advised and believe, this court has been led into error in its finding that there is "*no partition in the proper sense of the word,*" in the valve structure of the Westinghouse Patent in suit, "*or at least, none located as in the Boyden device,*" and "*no aperture in such partition open for the express purpose of maintaining differential pressures on opposite sides of a check-valve which opens in emergencies to admit train-pipe air to the brake cylinder.*"

Whereas, as a matter of fact, there has always existed in the said Westinghouse "quick-action" structure, and is described in the Westinghouse Patent in suit a restricted port 35, in an extension of the main valve, which constitutes a partition substantially of the character of that in the Boyden structure, and is located in substantially the same relation to the other parts of the structure, and said restricted aperture necessarily operates to produce "differential pressures" on opposite sides of the Westinghouse check-valve, and is productive of substantially the same results as those produced by the said restricted aperture in the Boyden structure, and this is substantially admitted in the record, and is clearly to be inferred from the said Boyden Patent No. 481,136 (Record, pp. 823-4).

Third. That this court has been led into error in supposing that the device of the defendants' is substantially different from that of Westinghouse, and "*is a novel one*

and a manifest departure from the Westinghouse Patent," because, as was supposed by the court, Boyden "*made a more perfect brake than the one described in the Westinghouse Patent.*"

Whereas, there is no proof in the record that the defendants' device is, in any way, or to any degree, better, simpler or more efficient in producing "quick action" or quickened "serial action" or "quick action without shocks," at the rear end of a long train, than the exact form of apparatus described and illustrated in the patent in suit, but, on the contrary, the proof is that the said Boyden valve is, if anything, inferior to that of the patent in suit.

In support of the first paragraph or section of this petition your petitioners respectfully represent as follows:

The location of the Boyden auxiliary valve 22 upon one side—viz., on the auxiliary-reservoir side—of the triple valve piston (and hence *in* the valve chamber), instead of upon the other, or the train pipe side, of the triple valve piston (and hence *outside* of the valve chamber), and the consequent difference of flow of train-pipe air admitted by said valve *through* the valve chamber (as described by Boyden), instead of *around* the valve chamber (as described by Westinghouse) is admitted in the patent of Mr. Boyden himself to be a difference which does not affect either essential features of the structure, or the mode of operation or the result.

The Boyden Patent No. 481,136 (August 16, 1892, Record, pp. 817-828) describes a form of quick-action valve operating by the same "momentary differential pressures" (See Rec., p. 821, 5th line from foot of page), as the form involved in this suit, but differs therefrom by using a *slide* valve, instead of a *poppet* valve. Said patent contains several illustrations of *essentially* the same structure.

In one form (Figs. 2 and 11) train pipe air is admitted by a *by*-passage (containing a check valve) *around* the triple valve chamber, and, in another form (Fig. 12) train pipe air is admitted to produce quick action *through* the triple valve chamber.

Also in one form (Fig. 2) the "partition 9," with the "restricted port B" therein is movable (substantially as illustrated in the Westinghouse Patent in suit), and in other forms (Figs. 11 and 12) the "partition" and "restricted port" therein (B^1 in Fig. 11, B^2 in Fig. 12) is *stationary*.

This Boyden Patent expressly admits that the two organizations of the structure *are substantially alike*. It says (p. 823, 8th line from bottom of page):

"The restricted passage B for the supply of auxiliary reservoir air when applying the brakes for emergency stops is shown in Figs. 2, and 10, for the purpose of clear illustration, as a small hole through the partition 9; but a special hole or passage is not necessary, as the partition 9 may fir the bushing *b* loosely enough to leave a small space between the rim 9^a of the partition and the wall of the bushing. Such looseness of fit or the space formed thereby, may constitute the restricted passage, and I have used valves constructed in this manner. The restricted passage may also be formed as a distinct channel in the case, as at B^1 in Fig. 11 or as B^2 in 12. *The partition may be located differently* from what is shown in Figs. 2 and 11. It is obvious that it may be anywhere on the stem g^2, so that it is not withdrawn from the bushing when the piston completes its stroke to the left. *It may also be stated that the piston may, under certain conditions, be made to serve as a partition.* This is illustrated in Fig. 12.

Fig. 12 illustrates a modification in the construction and arrangement of the parts of a valve embodying my

invention. This form of valve, *although differently organized from that shown in Figs. 2 to 11, inclusive, has the same parts, or their equivalents, and has the same mode of operation and produces the same result.* The valve shown in Fig. 12 differs from that shown in the other figures chiefly in that slide valve of Fig. 12 is *located on the train-pipe side* of the actuating piston, where as in the other figures it *is located on the auxiliary-reservoir* side of said piston.'' (Italics ours.)

In further support of your petitioner's contention that the location of the partition, with its restricted aperture, and the location of the ''auxiliary'' valve, are not substantially different in the Boyden structure from those illustrated in the Westinghouse structure, your petitioner respectfully represents as follows:

In the Boyden structure in suit the ''partition 9'' is a fixed partition, located between the auxiliary reservoir and the triple valve chamber. and the ''restricted aperture'' of said partition restricts the free flow of air from the auxiliary-reservoir to the brake cylinder for three purposes:

(*a*) To hold the high pressure at the back of the triple valve piston, so as to cause the piston to move when train-pipe pressure on the opposite side is reduced.

(*b*) To prevent high pressure from existing under the check valve (in the passage from the train pipe), and thus permit said check valve to open.

(*c*) To supplement train-pipe air with reservoir air (*slowly admitted*).

In the Westinghouse structure the part which acts as a ''partition,'' and ''restricted aperture'' therein, is a *moving* part instead of a *fixed* part. It is the extended end of the main valve with the restricted port 35.

The operation and effect of that partition, and restricted aperture therein, is precisely the same as the corresponding parts of the Boyden structure, viz.:

(*a*) To hold the high pressure at the back of the triple valve piston, to cause it to move when train pipe pressure on the opposite side is reduced.

(*b*) To prevent high pressure from existing under the check valve (in the passage from train pipe) and thus permit said check valve to open.

(*c*) To supplement train-pipe air with reservoir air (*slowly admitted*).

The fact that the partition in one case is a moving one, and in the other case a fixed one; and that in one case it restricts the flow of auxiliary reservoir air *into* the valve chamber, and in the other case *out of* the valve chamber (in *both* cases *on its way to the brake cylinder*), are shown to be in material differences by the express admissions already quoted from the patent to Boyden, No. 481, 136.

In support of the second section or paragraph of this petition, your petitioners respectfully represent that, while it is true that the Westinghouse Patent in suit does not describe the restriction of size of the "Port 35" as being "*for the express purpose* of maintaining differential pressures on opposite sides of a check valve which opens in emergencies to admit train-pipe air to the brake-cylinder," and although it is true that the Westinghouse Patent does not, in itself, state such "express purpose," yet the evidence shows that the Westinghouse valves made under said patent were always so constructed, and that the structure could not possibly have been operated to pi oduce "quick action" unless so constructed as to conta ı a restricted passage through a separating partition (which prevents the *free* flow of auxiliary reservoir air at the time quick action is to be effected), and that

this was well understood long prior to Boyden's alleged invention of the "partition" and "restricted port B."

Hence, as your petitioners respectfully represent, the use of a partition, and a restricted passage therein, cannot be claimed as a *novelty* by Mr. Boyden or those acting under him.

In support of the third section or paragraph of this petition, your petitioners respectfully represent that there is no proof in the record that the defendants' device is better, simpler or more efficient than that of Westinghouse, or has ever been introduced into public use on railroads to any considerable extent. But, on the contrary, the proof is that the said Boyden apparatus has never gone into extensive practical use, and is not to be distinguished from that of Westinghouse by reason of any greater efficiency, as will fully appear by reference to the citations from the record (and from public documents) in the brief accompanying this petition.

Your petitioners further represent, as a reason for a rehearing of this cause, upon the points specified in this petition, that the aspect in which this case has heretofore been presented upon the question of infringement has been principally, if not wholly, such as not to call the proofs relating to the specific contentions here presented, to the attention of the court.

The contentions of the respective parties, as heretofore presented, have been chiefly upon the question whether the Boyden "valve 22" was or was not an "auxiliary valve" which performed the function of the auxiliary valve 41 of the Westinghouse Patent in suit in admitting train-pipe air to the brake cylinder in "quick action."

The contention on behalf of the defendants has been that the said Boyden structure contained only and solely a "main valve" and a "graduating valve," but *no* "auxiliary valve" for "quick action."

The contention on behalf of the complainant has been that the valve 22 of the Boyden structure was essentially a "quick-action" "auxiliary valve," and not the "main valve" of a triple valve structure.

The question has not been, as your petitioners believe, thoroughly, if at all, argued, whether, *if* it should be held (*as this court has now held*) that the valve 22 is *in fact* an "auxiliary valve" for "quick-action," the mere location of the same inside of the valve-chamber (on the auxiliary-reservoir side of the triple valve piston) instead of outside the valve-chamber (or on the train-pipe side of the triple-valve piston), and the consequent incident of a passage for train-pipe air *through* the valve-chamber, instead of *around* it, and the further consequent incident of the location of the part which acts as a "partition" and "restricted port," to prevent free flow of auxiliary-reservoir air, at the place where *it enters* the valve chamber, instead of at the place where it *leaves* said valve chamber, constitute material differences of structure or are productive of any materially different results.

Wherefore, your petitioners respectfully ask that this cause be reheard upon the specific question, whether the difference in location of the auxiliary valve 22 of the Boyden structure from that of the auxiliary valve 41 of the Westinghouse structure, and the consequent incident of a passage for train-pipe air through the valve chamber, instead of around it, constitutes a material and substantial difference between the two structures, and whether the difference in location and form of the restricted aperture to prevent the free flow of air from the auxiliary reservoir in "quick action," by locating the same in one case at the point where the air enters the valve chamber on its way to the brake cylinder (as in the Boyden structure), instead of locating the same at the point where the air leaves the valve chamber on

its way to the brake cylinder (as in the Westinghouse structure), is a material and substantial difference; or whether either of said differences are sufficient to avoid the charge of infringement.

And your petitioners will ever pray, etc.

(Sd.) WESTINGHOUSE AIR BRAKE CO.,
BY GEORGE WESTINGHOUSE,
President.

(Sd.) GEORGE WESTINGHOUSE, JR.

We hereby certify that in our opinion the foregoing petition is well founded in point of law and in point of fact, and is not presented for delay.

FREDERIC H. BETTS,
GEORGE H. CHRISTY,
Counsel.

SUPERSEDEAS BOND AND ORDER APPROVING SAME.

(From Rice-Stix Dry Goods Co. vs. J. A. Scriven Co., 165 Fed. Rep. 639, 91 C. C. A. 475.)

Know all Men by These Presents, That we, Rice-Stix Dry Goods Company and National Surety Company of New York, are held and firmly bound unto J. A. Scriven Company in the full and just sum of Ten Thousand Dollars ($10,000), to be paid to the said J. A. Scriven Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 7th day of December, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at the September term of the United States Circuit Court for the Eastern Division of the Eastern Judicial District of Missouri, in a suit depending in said court between J. A. Scriven Company, complain-

ant, and Rice-Stix Dry Goods Company, defendant, a decree was rendered against the said Rice-Stix Dry Goods Company, defendant, and the said Rice-Stix Dry Goods Company, defendant, has prayed its appeal to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, to reverse the final judgment and decree rendered in the above entitled cause on the 7th day of December, 1907, and a citation directed to the said J. A. Scriven Company, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, Therefore, The condition of this obligation is, that if the said Rice-Stix Dry Goods Company shall prosecute its said appeal to effect, and answer all costs and damages that may be awarded against it if it shall fail to make good its said plea, then this obligation to be void; otherwise in full force and virtue.

RICE-STIX DRY GOODS COMPANY,
BY ELIAS MICHAEL, President.

NATIONAL SURETY COMPANY OF NEW YORK,
[SEAL.] BY W. D. HEMENWAY, Resident Vice President.
ATTEST: FRANK R. GRAY,
Resident Assistant Secretary.

Taken and approved by me this 7th day of December, 1907.

DAVID P. DYER,
United States District Judge.

PETITION AND ORDER MAKING AN ADDITIONAL PARTY DEFENDANT.

(From Westinghouse vs. Boyden Power Brake Co., 170 U. S. 537, 42 L. Ed. 1136.)

In the Circuit Court of the United States for the District of Maryland.

GEORGE WESTINGHOUSE, JR., and THE WESTINGHOUSE AIR BRAKE COMPANY,

vs.

BOYDEN POWER BRAKE COMPANY; GEORGE A. BOYDEN, President; CHARLES B. MANN, Secretary, and WILLIAM WHITRIDGE, Treasurer.

PETITION OF THE BOYDEN BRAKE COMPANY.

To the honorable the judges of the Circuit Court of the United States for the District of Maryland:

The petition of the Boyden Brake Company respectfully represents that since the filing of the bill in this case, the said Boyden Power Brake Company assigned unto your petitioner all its right, title and interest in the patents mentioned in said bill of complaint, and also all the property of the said Boyden Power Brake Company of every kind and description; all its property, choses in action and estate of every description whatsoever; and that it is the successor of the said Boyden Power Brake Company, and as such is engaged in the manufacture of the fluid pressure of the brake apparatus mentioned in said bill of complaint, and it prays this honorable court that it may be substituted as defendant in said case, and have leave to answer the said bill of complaint.

And as in duty, etc.

COWEN & CROSS,
BARTON & WILMER, Solicitors.

ORDER.

On the foregoing petition, it is, this 10th day of February, 1890, ordered by the court that the said Boyden Brake Company be made party defendant in said cause, and that it have leave to answer therein.

THOS. J. MORRIS, Judge.

PETITION FOR REHEARING.

(From Lockwood vs. Wickes, 75 Fed. Rep. 118, 21 C. C. A. 257.)

To the Honorable United States Circuit Court of Appeals for the Eighth Circuit:

Your petitioners, the above-named appellants, J. E. Lockwood, C. H. Upton and N. Nyberg, co-partners as Lockwood, Upton & Co., respectfully petition this Honorable court for a rehearing of the appeal herein, and that the opinion of this court heretofore filed be set aside and judgment entered sustaining the appeal and reversing and setting aside the decree for injunction below; and for reasons submit as follows, to-wit:

That the court erred—

First. In finding that the injunction was granted at the instance of defendants.

Second. In finding that the defendants were not entitled to appeal from the interlocutory decree granting the injunction.

Third. In holding that error in granting the decree excluded the defendants from relief by appeal.

Fourth. In holding that the appeal from the interlocutory decree granting the injunction was not authorized by law.

Fifth. In holding that an appeal from an interlocutory decree granting an injunction was not intended to be authorized by Congress.

Sixth. In holding that it has generally been supposed that the Act of March 3, 1891, was intended to apply

only to orders for preliminary injunctions, and that there are no decisions to the contrary.

Seventh. In holding that to permit an appeal from an interlocutory decree granting an injunction would increase the burden of expense of litigation.

Eighth. In holding that such appeal would involve more than one hearing of the same questions by the Appellate Court.

Ninth. In that it did not find that the decree for injunction was improperly granted; that complainant's patent was neither valid nor infringed; and reverse the interlocutory decree and order that the injunction be set aside and the decree be dismissed at complainants' cost.

J. E. LOCKWOOD,
C. H. UPTON and
N. NYBERG,
Appellants.
BY ROBERT H. PARKINSON.

We hereby certify that the foregoing petition for rehearing is, in our opinion, well founded in law and ought to be granted.

BY ROBT. H. PARKINSON.
P. H. GUNCKEL,
Counsel for Appellants.

BILL FOR SPECIFIC PERFORMANCE, BASED ON ORAL CONTRACT TO CONVEY PATENTS; WITH ANSWER.

(From Pressed Steel Car Company vs. Hansen, 137 Fed. Rep. 403, 71 C. C. A. 207.)

BILL.

The Pressed Steel Car Company, a corporation duly created, organized and operating under and by virtue of the laws of the State of New Jersey and having its principal office in Jersey City, in said district and State

of New Jersey, and a citizen and inhabitant thereof, brings this, its Bill of Complaint, against John M. Hansen, of Pittsburg, in the State of Pennsylvania, and a citizen of and an inhabitant within the State and Western District of Pennsylvania.

And thereupon your orator complains and says that your orator was incorporated under the laws of the State of New Jersey on or about the 12th day of January, 1899, and to, as thereafter it did, succeed to the business, good will, patents, trade-marks, etc., of the Schoen Pressed Steel Company, with manufacturing works located at Pittsburg, in the State of Pennsylvania, where it had been for several years prior thereto successfully carrying on the manufacture of trucks, truck-frames, bolsters, center plates and frames and pressed steel cars, and of the Fox Pressed Steel Equipment Company, with manufacturing works located at both said Pittsburg and Joliet, in the State of Illinois, where it had likewise for several years prior thereto successfully carried on the manufacture of similar pressed steel articles and shapes, and that since its said incorporation, it has and is now continuing such manufacturing business on, however, an enormously enlarged and increasing scale, especially in the manufacture of trucks, truck-frames and pressed steel cars, the designs and construction of which are throughout and in all substantial and essential details, covered by letters patent of the United States owned by your orator, and mostly acquired by it from its aforementioned predecessors, in addition to such as has since been issued to it as assignee, for inventions and improvements made and developed in its works by this respondent and other of its employees within the scope of their employment, and duly assigned to it in obedience to an understanding and agreement to duly assign to your orator all such inventions and improvements made while in its employ.

And your orator further shows unto your honors, that the respondent, John M. Hansen, was, for several years prior to your orator's incorporation, in the employ of the afore-mentioned Schoen Pressed Steel Company, in various capacities, and finally in that of Chief Engineer, whereupon the said respondent entered your orator's upon its incorporation, succeeded to the business, good will, etc., of the said Schoen Pressed Steel Company, which position he continued to occupy until your orator, employ as its Chief Engineer, under an agreement and understanding to devote his entire time, ability and skill to your orator's business and its advancement, and that all inventions or improvements that he might make during the period of his said employment, and all letters patent that might be obtained therefor, should be the sole property of your orator, which position he continued to occupy—in addition to that of assistant to the president, to which he was assigned on or about October 1, 1900—until the 1st day of January, 1902, when he left your orator's employ; that as your orator's Chief Engineer, the respondent had the charge, direction and control of the drafting, engineering and construction department of your orator's business, and especially that of the developing of working drawings and the designing, inventing and developing of new constructions and improvements upon, or relating to, the trucks, truck-frames, pressed shapes, pressed steel cars, and other articles manufactured by your orator, and for the manufacture of which your orator was incorporated.

And your orator further shows unto your honors, that the respondent, by reason of his ability and the training and experience which he has acquired while in the employ of your orator's predecessor, the Schoen Pressed Steel Company—for when he entered the employ of that company he had substantially no training or experience in, or relating to, the designing or constructing of pressed

steel cars, or of any parts relating thereto, all such training having been acquired by him while in the employ of that company,—was, when he entered your orator's employ an engineer, having a thorough knowledge of the business, for the carrying on of which your orator was incorporated, and, of what was still requisite and necessary to fully perfect and develop that manufacturing business and in every way qualified for the position of its Chief Engineer,—a position of great trust and responsibility,—and with every probability that he would by reason of his aforesaid ability, training and experience, succeed, as he thereafter did, in making valuable inventions and improvements in the line of your orator's manufacture, and in realization thereof by your orator, it was a condition of his employment, as Chief Engineer, and in part consideration for the salary paid to him as such and his employment as such implied, and as upon the express understanding and agreement by him, that all designs, inventions and improvements that he might make or develop, while in your orator's employ, and all letters patent that might be obtained therefor, should become, and be, the sole and exclusive property of your orator, and that for all such designs, inventions and improvements, if found or regarded as patentable, he would, from time to time, as he made or developed such designs, inventions or improvements, disclose the same to your orator's solicitor, and, through him, and at your orator's expense, make all necessary and proper applications for letters patent, and execute all necessary and proper papers to that end, and that he would, from time to time, as such applications were executed and filed, likewise execute and deliver to your orator, with such applications, properly executed assignments, of all such applications, inventions therein specified and letters patent that might be granted thereon and therefor, with directions to the Commissioner of Patents to issue all such let-

ters patent to himself as assignor to your orator, of all his right, title and interest in and to all such letters patent, which should be the entire right, title and interest therein; that such being the terms and conditions of the respondent's employment by your orator, and in full appreciation and consideration therefor, and of the inventions and improvements that he might make and letters patent that he might obtain therefor, he was paid by your orator a salary at the rate of $4,000 per year to January 1, 1900; at the rate of $5,000 per year to September, 1900; at the rate of $6,000 per year to October 1, 1901; and at the rate of $10,000 per year down to January 1, 1902, when he left your orator's employ.

And your orator further shows unto your honors that the respondent, having entered into the employ of your orator, as its Chief Engineer, upon the terms and conditions hereinbefore set forth, proceeded to, and did thereafter, and until about the middle of December, 1901, devote his entire time, ability and skill to your orator's business and to its advancement, and in the course thereof made many valuable inventions and improvements in, for and relating to your orator's manufacture, and in obedience to and in compliance with the implied and express terms of his said employment, as Chief Engineer and from time to time as he made such inventions and improvements, disclose the full character and extent thereof to your orator's solicitor, who thereupon prepared all necessary and proper applications for letters patent therefor, which were duly executed by the respondent, and who, at the same time, duly executed proper assignments to your orator, of all such inventions and applications for letters patent therefor and letters patent that might be granted thereon and therefor, except as hereinafter set forth, with directions to the Commissioner of Patents to issue all such letters patent to himself as assignor to your orator; that all such

letters patent did so issue to your orator, as assignee of the respondent, that is to say, letters patent of the United States No. 32,543, of April 17, 1900, to John M. Hansen, Assignor to your orator, for "Design for an End Sill for Cars;" No. 647,927, of April 17, 1900, to Charles T. Schoen and John M. Hansen, Assignors to your orator, for "Metallic Car;" No. 648,884, of May 1, 1900, to Charles T. Schoen and John M. Hansen, Assignors to your orator, for "Door-Operating Device for Hopper-Bottom Cars;" No. 649,981, of May 15, 1900, to John M. Hansen, Assignor to your orator, for "Brake-Beam;" No. 650,791, of May 29, 1900, to John M. Hansen, Assignor to your orator, for "Pressed Steel Pole;" No. 650,792, of May 29, 1900, to John M. Hansen, Assignor to your orator, for "Underframe for Railway Cars;" No. 662,698, of November 27, 1900, to Charles T. Schoen and John M. Hansen, Assignor to your orator, for "Draft-Rigging for Railway Cars;" No. 34,080, of February 12, 1901, to John M. Hansen, Assignor to your orator, for "Design for a Stop for Double Doors;" No. 673,849, of May 7, 1901, to Charles T. Schoen and John M. Hansen, Assignors to your orator, for "Metallic Cars;" No. 688,777, of December 10, 1901, to John M. Hansen, Assignor to your orator, for "Extension Side for Railway Car Bodies;" and No. 688,809, of December 10, 1901, to John M. Hansen, Assignor to your orator, for "Center-Dump Ballast Car;" all of which said letters patent were applied for and obtained at the sole expense of your orator and are now its sole and exclusive property, including two pending applications, serial No. 21,244, for "Underframe for Railway Cars," filed August 21, 1901; and Serial No. 73612, for "Body Bolsters for Railway Cars," filed August 28, 1901, and both of which were duly assigned to your orator by the respondent.

And your orator further shows unto your honors, that during the summer of 1901, and prior to October, 1901,

and while still in your orator's employ, the respondent made and developed in your orator's works, within its time, and by the aid of its other employees, and at its sole expense, certain other valuable inventions and improvements in, for and relating in its manufacture, the full character and extent of which he promptly communicated to your orator's solicitor, who thereupon prepared and forwarded to him for execution the proper and necessary applications for letters patent, embracing the said several improvements and inventions and accompanied, as usual, with proper assignments to your orator and containing the usual directions to the Commissioner of Patents that the letters patent granted thereon and therefor should issue to the respondent, assignor to your orator, whereupon the respondent did duly execute said applications for letters patent and returned them to your orator's solicitor for filing, but unaccompanied with the usual assignments therefor to your orator, which assignments the respondent has not only neglected, but still declines and refuses to execute and deliver to your orator, transferring to it the entire right, title and interest in and to the said inventions, applications for letters patent and letters patent that may be granted therefor and thereon, notwithstanding the fact that the said inventions, applications for letters patent, and letters patent may be granted therefor and thereon, belong to and are the sole and exclusive property of your orator; that the extent and character of the said inventions and improvements were by the respondent, in his capacity as your orator's Chief Engineer, and in the usual course of business, communicated to your orator's solicitor, in the form of blue prints of working drawings, and full accompanying description, during the month of October, 1901, and with instructions to prepare the necessary applications for letters patent therefor and to return the same for execution; and that thereupon your orator's solicitor

proceeded to and did prepare the proper and necessary applications for letters patent therefor, which applications—seven in number—he forwarded by mail to respondent, at your orator's office in Pittsburg, Pennsylvania, on November 8th, November 18th, December 7th, December 10th, December 12th, December 14th and December 16th, 1901, and accompanied with the usual and proper assignments of said applications and letters patent that might be granted therefor and thereon, with directions to the Commissioner of Patents to issue the same to the respondent, assignor to your orator, and with request that the respondent promptly execute said applications and assignments, and so executed return them to your orator's solicitor for filing and properly recording in the Patent Office in accordance with the past practice; that said applications were retained by the respondent until on or about the 7th day of January, 1902, when, having properly executed them, he returned them to your orator's solicitor for filing, but unaccompanied with the usual assignments to your orator, which had been sent to him for execution with the said applications, with the single exception of the application for "Underframe for Box Cars," the assignment for which to your orator he did duly execute and return to your orator's solicitor with the said applications, and assigning as his reason for neglecting and refusing to execute the other assignments to your orator covering the other six applications, that, "In view of the fact that I have left the Pressed Steel Car Company, and have organized a new company, it is my desire to retain what of these patents I can for myself;" that the said applications having been so returned to your orator's solicitor, and wherein he was appointed the solicitor to prosecute said applications to an allowance in the Patent Office, he, on the 9th day of January, 1902, filed the said applications, viz: Serial No. 89,053, for "Truck-Frame for Railway

Cars;" Serial No. 89,054, "Truck-Frame for Railway Cars;" Serial No. 89,055, "Truck-Frame for Railway Cars;" Serial No. 89,056, "Under-Frame for Box Cars," Serial No. 89,057, "Swinging-Motion Truck-Frames for Railway Cars;" Serial No. 89,058, "Hopper-Bottom Cars;" Serial No. 89,059, "Bolster Truck for Railway Cars," and which applications are now pending in the Patent Office of the United States; and with the single exception of the application Serial No. 89,056, the respondent has neglected and refused to assign said applications to your orator, to whom they belong, and at whose sole expense said applications were prepared and filed by your orator's said solicitor.

And your orator further shows unto your honors, that your orator's executive officer did not know, and was not advised until on or about the 10th day of January, 1902, of the neglect and refusal of the respondent to assign to your orator the said six pending applications and letters patent that might be granted thereon or therefor, and with the necessary and usual directions to the Commissioner of Patents to issue all such patents to your orator as his assignee; whereupon your orator, through its executive officer, notified this respondent of his neglect and refusal to so assign, and demanded that he forthwith execute such proper assignments to your orator of the said pending applications and letters patent that might be issued thereon or therefor, to whom they belong, the inventions and improvements of the said applications having been made and developed by the respondent while in your orator's employ, and, consequently, subject to and within the implied and express terms and conditions of his employment, as your orator's Chief Engineer, as hereinbefore set forth; yet, notwithstanding said notice and demand, respondent has refused, and still continues to refuse, to assign to your orator the said

inventions, pending applications therefor and letters patent that may be granted thereon or therefor.

And your orator further shows unto your honors that the aforesaid inventions and improvements of the respondent, as embodied in said six unassigned pending applications for letters patent, are of great value to your orator in its said manufacturing business, and that the respondent, while still in your orator's employ, and certainly as early as the months of October and November, 1901, took an active part in procuring two large contracts for cars embodying certain of the aforementioned inventions and improvements involved in said six unassigned pending applications, and that at no time during the period of the respondent's employment by your orator did he assert ownership or interest in the said inventions, pending applications therefor, and letters patent that might be granted or issued therefor or thereon, nor any right title or interest therein or thereto adverse to your orator's sole and exclusive right, title and interest therein and thereto.

And your orator further shows unto your honors, that the respondent, while still in your orator's employ, together with certain other of your orator's employees, including H. J. Gearhart and Peter F. McCool, conspired and confederated together for the formation of a corporation to engage in a competing business with your orator, and, in furtherance thereof, and, to that end, this respondent, and the said Gearhart and McCool, did, on the 13th day of December, 1901, and while still in your orator's employ publish in the "Pittsburg Dispatch" notice of their intention to apply for a charter for a corporation to be known as "the Standard Steel Car Company," to engage in "The Manufacture of Iron or steel or both, or of any other metal, or any article of commerce from metal or wood, or both, at Pitts-

burg, Pennsylvania;'' and, thereafter, and after leaving your orator's employ on the 31st day of December, 1901, they did obtain a charter for, and incorporate, The Standard Steel Car Company, the incorporators of which were this respondent and the said H. J. Gearhart and Peter F. McCool, with the avowed intention of engaging in the manufacture of pressed trucks, truck-frames, pressed steel cars, and like articles, in duplication of, and in competition with, like articles manufactured by your orator; and your orator believes that the respondent's neglect and refusal to assign the said inventions, pending applications therefor and letters patent that may be granted and issued therefor or thereon, are a part of the conspiracy and confederacy under which the said Standard Steel Car Company was incorporated, and are prompted by the desire and intention, if possible, on the part of the respondent, to wrongfully reserve said inventions, applications for letters patent, and letters patent that may be granted and issued therefor or thereon, to the benefit, use and advantage of the Standard Steel Car Company, of which he is the majority stockholder, the articles of association of the said Standard Steel Car Company showing that: while it has a nominal capital of $3,000,000, only 3,000 shares thereof, of the par value of $300,000 have been issued, of which the said John M. Hansen subscribed for 2,500 and the said H. J. Gearhart and Peter F. McCool for 250 each.

And your orator further shows unto your honors that the amount involved in this controversy exceeds the sum of two thousand ($2,000) dollars.

And so it is, may it please your honors, that the said respondent, well knowing the premises, and that your orator is the sole and exclusive owner of the said inventions embodied in the said six unassigned pending applications for letters patent, and, as such, entitled to

have assigned to it the said applications and letters patent that may be granted thereon, with directions to the Commissioner of Patents to issue such letters patent to himself as assignor to your orator, and that he should have so assigned, and ought now to duly assign them over to your orator, yet has neglected and refused, and still neglects and refuses so to do, all of which is contrary to equity and good conscience and tends to the manifest and irreparable injury of your orator in the premises.

In consideration whereof, and for as much as your orator is without remedy at law, and can have adequate relief only in this court, sitting as a Court of Equity, wherein alone matters of this and a like nature are properly cognizable and relievable: Now, to the end, therefore, that the respondent may, if he can, show reason why your orator should not have the relief herein and hereby prayed, and that he may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer (answer under oath being hereby expressly waived) make to the several allegations of this bill, as though specially interrogated relative thereto, and more especially that he answer particularly:

1st. Whether he did not enter your orator's employ as its Chief Engineer on its incorporation and remain in its employ until and including the 31st day of December, 1901.

2d. Whether he did not make the inventions or improvements set forth in the hereinbefore referred to pending applications for United States letters patent, Serial No. 89,053, 89,054, 89,055, 89,056, 89,057, 89,058, and 89,059, while in the employ of your orator and prior to the 1st day of November, 1901, and did not, during the month of October, 1901, disclose full information

as to those inventions or improvements, in the form of blue prints, drawings, tracings and accompanying descriptions, to William H. Finckel, the patent solicitor of your orator, with instructions to said Finckel to prepare the necessary applications for letters patent covering the said inventions or improvements.

3d. Whether the said Finckel, as solicitor of your orator, did not, in accordance with such instructions, prepare the necessary applications for letters patent, embodying the said inventions or improvements, and between the 8th day of November and the 17th day of December, 1901, forward such applications to him, and which were duly received by him in due course of mail, and each accompanied by an assignment, to be executed by him, assigning to your orator such application and the letters patent to be granted and issued thereon, with directions to the Commissioner of Patents to issue such patents to himself as assignor to your orator.

4th. Whether the referred to assignments which accompanied said applications for letters patent were not the same as those previously sent to him by your orator's patent solicitor, the said Finckel, accompanying the applications which said Finckel had previously prepared and forwarded to him, based upon and covering the inventions and improvements which he had previously made while in the employ of your orator, and which assignments he had always executed and returned with the corresponding applications for letters patent.

5th. Whether he did not retain the said above referred to seven applications for letters patent,—all of which he received from the said Finckel between the 6th day of November and the 18th day of December, 1901,—until on or about the 7th day of January, 1902, and then execute and return the same to the said Finckel,—by whom they were received on or about the 8th day of

January, 1902,—without executing and returning to the said Finckel the accompanying assignments intended to assign to your orator the said applications and letters patent to be granted thereon, with the single exception of the assignment of the application which became, when filed, Serial No. 89,056, which assignment he did execute and return to the said Finckel.

6th. Whether he has not neglected and refused, and does not still neglect and refuse, to assign to your orator the aforesaid six pending applications known as Serial No. 89,053, 89,054, 89,055, 89,057, 89,058, 89,059; and the letters patent that may be granted thereon, with instructions to the Commissioner of Patents to issue to your orator such patents, when granted.

7th. Whether he did not write to the said Finckel the several letters which are annexed to the said Finckel's affidavit entitled for use on motion for injunction herein and filed simultaneously with this Bill of Complaint, and did not send to the said Finckel the blue prints, drawings, and tracings referred to in the said several letters, the blue prints therein referred to being those referred to in the affidavit of the said Finckel.

And your orator prays that the respondent may be ordered and compelled to specifically convey and assign to your orator, by proper assignments and instruments in writing, each and every of the hereinbefore specified pending applications for letters patent of the United States, viz., Nos. 89,053, 89,054, 89,055, 89,057, 89,058; and 89,059; and the letters patent of the United States that may be granted thereon or for the inventions or improvements therein set forth, and with authority and direction to the Commissioner of Patents to issue all such patents to himself as assignor of the entire right, title and interest therein to your orator, or, if such letters patent issue *pendente lite*, that he be ordered and

compelled to so convey and assign each and every of them, and that, upon his failure to so convey and assign to your orator, a Master be appointed by this Honorable Court, who shall be directed and authorized to, in the name of the respondent, make such conveyances and assignments to your orator as will fully possess it of all the right, title and interest in and to the said inventions and improvements, applications for letters patent and letters patent; and that the respondent be restrained and enjoined *pendente lite* and perpetually from conveying or assigning to any party or parties whomsoever, other than your orator, the said inventions or improvements embodied in the said six pending applications for letters patent, or the said six pending applications for letters patent, or the letters patent that may be granted or issued therefor or thereon, either in whole or part, or any right, title or interest therein, thereto or thereunder, and from granting any rights, privileges or licenses therein, thereto, or thereunder, and from cancelling the Power of Attorney given by him to William H. Finckel, of Washington, D. C., to prosecute said pending applications in the Patent Office, and from in any way interfering with the prosecution of the said pending applications in the Patent Office, and from abandoning or withdrawing the said pending applications, or any of them, and from in any manner interfering with the grant and issue of letters patent thereon and therefor, until the further order of this court, and that your orator may have such further and other relief as to this Honorable Court may seem meet and the equity of the case may require.

May it please your honors to grant unto your orator not only a restraining order and a writ of injunction *pendente lite* and perpetual, but also a writ of subpoena of the United States of America, directed to the said John M. Hansen, commanding him to appear and answer unto

this Bill of Complaint (answer under oath being hereby waived) and to abide and perform such order and decree in the premises as to the court shall seem meet, and be required by the principles of equity and good conscience.

PRESSED STEEL CAR CO.,
BY F. N. HOFFSTOT, President.

BAKEWELL & BYRNES,
Solicitors for Complainant.
KNOX & REED,
JOHN R. BENNETT,
W. C. STRAWBRIDGE,
Of Counsel for Complainant.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.

F. N. Hoffstot, President of the Pressed Steel Car Company, the complainant in the foregoing bill named, being duly sworn, deposes and says: That he has read the said bill by him subscribed and knows the contents thereof, and that so far as the statements therein contained are within his own knowledge, they are true, and so far as they are derived from the information of others, he verily believes them to be true.

F. N. HOFFSTOT.

Subscribed and sworn to before me this third day of March, in the year nineteen hundred and two (1902).

GEORGE H. SONNEBORN,
Notary Public,
New York County.

(Seal.)

ANSWER.

To the Honorable, the Judges of the Circuit Court of the United States in and for the Western District of Pennsylvania.

The answer of John M. Hansen, defendant, to the bill of complaint of the Pressed Steel Car Company, complainant.

This defendant saving and reserving unto himself, all and all manner of benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says as follows:

1. This defendant is not sufficiently informed as to the alleged incorporation of the complainant, the Pressed Steel Car Company, or of the Schoen Pressed Steel Company, or of the Fox Pressed Steel Equipment Company, set forth in the first paragraph of the bill of complaint, or of the right of succession of one company to its predecessor, or of the manufacture and sale by the said companies of each and all the specific articles enumerated in said first paragraph to admit the same as therein stated, and he therefore formally denies the same and leaves the complainant to make such proof thereof as it may be advised.

2. This defendant denies that the designs and constructions of the trucks and truck-frames and pressed steel cars made by complainant are throughout and in all substantial and essential details, covered by letters patent of the United States owned by the complainant and mostly acquired by it from its predecessors; and further denies that any of the letters patent issued to

the complainant as assignee of this defendant, or of any other of its employees known to this defendant, were duly assigned to the complainant in obedience to any understanding and agreement to assign to such complainant all such inventions and improvements made while in its employ, as stated in said first paragraph; and this defendant avers that all assignments to said complainant of inventions made by him and of patents procured by him as recited in said bill were voluntarily made by him without consideration, and were not made in accordance or compliance with any contract, agreement or mutual understanding, of any kind.

3. This defendant denies that when he entered into the complainant's employ as its chief engineer, or in any other capacity at any other time, he did so under any contract, agreement or mutual understanding that all inventions or improvements he might make during the period of his employment, or that all letters patent that might be obtained therefor, should be the sole property of complainant, as set forth in the second paragraph of the said bill of complaint; or that it was a condition of his employment as chief engineer, or in part consideration for the salary paid to him as such, or that his employment as such implied, or that it was upon the express understanding and agreement by him that any designs, inventions, or improvements he might make or develop while in complainant's employ, or any or all letters patent that he might obtain therefor, should become and be the sole and exclusive property of the complainant; or that he should disclose the same to the complainant's solicitor, or through him or at the complainant's expense make application for letters patent for the same or execute assignments of such applications or inventions to the complainant; or that it was upon such terms or conditions that he was paid the salaries he received from the complainant as its chief engineer, or as

assistant to the president, as set forth in the third paragraph of said bill of complaint; or that he entered the employ of the complainant upon the terms and conditions so as above set forth; or that in obedience to or in compliance with the implied or expressed terms of his said employment as chief engineer, or as assistant to the president, he made application for letters patent, and assigned the same to the complainant, as set forth in the fourth paragraph of said bill of complaint. But this defendant avers that there never was any contract, agreement or understanding between him and the said complainant, or its predecessors, the Schoen Manufacturing Company, or the Schoen Pressed Steel Company, or with any officer or representative of the said complainant, or the other companies, providing either in substance or in terms or effect that he should assign any design, inventions or improvements made or developed by him, or any patent obtained by him relating to car construction, or to any other subject to either or any of the said companies; that when he entered the complainant's employ as its chief engineer there was no agreement or understanding of any kind that all or any designs, inventions or improvements he should make or develop should become the sole property of the complainant; that it was not a condition of his employment, or in part consideration of the salary or upon understanding or agreement of any kind that any designs, inventions or improvements made or developed by him should be the sole and exclusive property of the complainant, or that he should make application and execute assignments to the complainant for the same or for patents thereon; and further avers that all assignments to the complainant of inventions made by him and of patents procured by him were made voluntarily by him and without consideration, and were not made in accordance or compliance with any contract, agreement or mutual understanding of any kind.

4. This defendant further answering avers that he was employed as chief engineer of the complainant company by Mr. Charles T. Schoen, who was then president of the said company and appointed the heads of the different departments; that prior to that time he had been in the employ of the Schoen Pressed Steel Company and its predecessor, the Schoen Manufacturing Company in different positions, being gradually advanced from draftsman into the engineering work, and finally appointed chief engineer; and that upon the formation of the complainant company, its said president, Mr. Schoen, informed him that he would be the chief engineer of the company, and that the engineering departments of the Schoen Pressed Steel Company and the Fox Pressed Steel Equipment Company would be consolidated and placed in his charge; and that he assumed the duties of chief engineer simply under such direction from Mr. Schoen, the said president, and without any question as to any inventions made or to be made by him or any right to patents therefor, and without any contract or agreement or understanding that he should make any assignment or other grant of any inventions made or patents procured by him to the complainant company.

5. This defendant further avers that the salaries paid to him by the complainant company were not in part in consideration of the assignments of inventions made by this defendant, but solely for his services as chief engineer, and later also as assistant to the president; that his salary was raised from time to time without request by him, and as the voluntary act of the company on account of his said services, as a large portion of the most important and valuable work of the company was intrusted to him; and that there was no contract, agreement or mutual understanding at any time when his salary was so increased, or at any other time, that such salary included in part a consideration for assignments

to the complainant of any inventions made by him or of patents granted to him; that his said service included the general supervision of the mechanical work of the company and the direction of the inspection of the cars manufactured, the soliciting for and closing of contracts for the purchase of cars; and that as assistant to the president during the last year of his employment by the complainant company, he did the principal work in obtaining and closing contracts, approximating $12,000,000, the entire orders received by the company during that year being about $30,000,000; and that the salary paid to him was lower than the salaries paid to the other general officers of the company (and less than his services were actually worth to the company) though his work was more pressing than and equally as valuable as that of any of the other officers.

6. This defendant further answering states that he has made the several inventions set forth in the fifth paragraph of the said bill of complaint for which applications for letters patent of the United States were filed on the 9th day of January, 1902, Serial Numbers 89,053, 89,054, 89055, 89,056, 89,057, 89,058, 89,059; that except as to application Serial No. 89,056 the said applications were filed by him through Mr. Finckel as a solicitor in his employ and who was notified at the time of the filing of the same that they were his personal property, and who accepted his position as solicitor with that knowledge. He further states that the said applications for letters patent, Serial Numbers 89,053 and 89,058, 89,059 related to inventions which were developed in the works of the complainant company and by the aid of its employees and for the most part at its expense, and this defendant recognizes and does not intend to dispute that the complainant is legally entitled to exercise a shop-right license limited to its own manufacture, for the use of the inventions set forth in said three last recited ap-

plications, but alleges that such is the utmost extent of its rights therein or thereunder. Defendant further avers that the inventions set forth in the said other three applications, Serial Numbers 89,054 and 89,055, 89,057, relates to improvements in a truck-frames, substantially different from anything used by the complainant company in its manufacture of cars, and that the said inventions thereof were not made or developed in the complainant company's time, or with its facilities or at its expense, and he denies that the complainant company has, or is entitled to claim any title therein or any right or license for the use of the same, or any right of any kind under the same or in, to or under any patent or patents which may be issued therefor. Complainant's payment of certain patent solicitor's and other fees appertaining to said last recited applications, was made voluntarily by complainant, after this defendant had offered payment of the same, and after complainant had knowledge of this defendant's claim of exclusive right therein.

7. This defendant further answering admits that the improvement in what was known as the "Hansen Diamond Frame Truck" was agreed to be embodied in the cars for which certain orders were taken by the Pressed Steel Car Company in October and November, 1901, and that this defendant took an active part in procuring said orders; but this defendant avers that the use of such improvements in the cars to be built under these orders by the complainant will give to the complainant profits largely in excess of anything expended by it in the development of the said invention or improvement, and this defendant denies that said complainant is entitled to have or claim, in respect of the said invention, anything more than a shop-right license.

8. This defendant without waiving the benefit of any demurrer he may file or be entitled to file, further an-

swering, denies that he entered into any conspiracy or federation with H. J. Gearhart and Peter F. McCool, or either of them, or with any other person or persons, or took any unlawful steps, or did any unlawful act for the organization of a company to manufacture steel cars, and the several parts thereof, in competition with the steel cars manufactured by the complainant company; or that he took any steps to wrongfully reserve any inventions made by him during his employ by the complainant company to the benefit, use and advantage of either himself or of the Standard Steel Car Company as alleged in paragraph eight of the said bill of complaint; or that any conspiracy or arrangement was entered into by the said parties relating to or having any connection with the pending applications referred to in this bill of complaint. And he prays the same benefit hereof as if on demurrer to that portion of the bill. Defendant avers that the Standard Steel Car Company of which this defendant is president, was organized in lawful manner, and was not the result of any unlawful conspiracy whatever, and that it was organized for the manufacture more particularly of what might be called structural steel cars, as distinguished from the pressed steel cars made by the Pressed Steel Car Company, in which a majority of the parts were pressed shapes, while it is the expectation and intention that the cars to be built by the Standard Steel Car Company on the completion of its works will be more particularly made up of structural shapes and plates, and will differ substantially from complainant's cars in respect of any and all features covered by complainant's patents. He further avers that the Standard Steel Car Company is capitalized at $2,000,000, that more than $2,500,000 of this has been subscribed at par by responsible parties, and that all of the stock is to be subscribed at par, and all payable in cash, so that the

company will have the full amount of its capital invested in its works and in the development of its business; that about $1,000,000 of the stock of the company, has been paid in; that it has purchased property for the erection of its plant, and that the buildings and all the machinery are under contract, and that orders have been given for the same amounting to over $800,000, and the contracts for machinery and building require the completion and delivery by July 15, 1902.

In answer to the interrogatories propounded in the bill of complaint, this defendant says:

1. To the first interrogatory he answers: "Yes."

2. He admits that he made the inventions referred to in the second interrogatory and that he sent drawings, blue prints and descriptions to W. H. Finckel, a patent solicitor of Washington, D. C., to prepare applications therefor, but he denies that the said Finckel was complainant's patent solicitor as to the said applications, Serial Numbers 89,053, 89,054, 89,055, 89,057, 89,058 and 89,059, but avers that he was defendant's solicitor as to the same, and he also avers that the inventions of applications Serial Numbers 89,054, 89,055 and 89,057 were not made or developed or perfected in complainant's time.

3. He admits that the said Finckel prepared applications for letters patent embodying said six inventions and forwarded them to him, each accompanied by an assignment to the complainant, as stated in the third interrogatory, but denies that he ever authorized or instructed the said Finckel to prepare or send to him such assignments, and states that upon returning the executed applications for patents he instructed the said Finckel that he did not desire to assign the same to the complainant company, and that the said Finckel filed the applications for patents after receiving such informa-

tion and when acting as defendant's personal attorney in fact, or solicitor for said applications.

4. Not having all the assignments before him, nor having access thereto, this defendant cannot answer this interrogatory further than he has already answered it in and by the averments and denials of his foregoing answers.

5-7. He admits the truth of the fact set forth in interrogatories 5, 6 and 7, but he denies any conclusions of law favorable to complainant otherwise than as already admitted, and he specifically denies that the complainant has any right to the assignments of said several unassigned applications for patents referred to in said bill of complaint, for the reason that there never was any contract or agreement providing that this defendant should assign to the complainant the inventions made or patents procured while in its employ, nor was any consideration ever paid, or agreed to be paid, therefor. This defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. M. HANSEN.

KAY & TOTTEN,
Solicitors for Defendant.
JAMES I. KAY,
G. H. CHRISTY,
WM. SCOTT,
Of Counsel.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF PENNSYLVANIA, } ss.

Before me, the subscriber, duly authorized to administer oaths, personally came John M. Hansen, the defendant named in the foregoing answer, who being duly sworn, deposes and says that so far as the statements

therein contained are within his own knowledge they are true, and so far as they are derived from the information of others he verily believes them to be true.

J. M. HANSEN.

Sworn to and subscribed before me this 29th day of April, A. D. 1902.

ARTHUR L. OVER,
Notary Public.

(Seal)

(My commission expires February 27, 1905.)

BILL FOR SPECIFIC PERFORMANCE, BASED ON WRITTEN CONTRACT TO CONVEY PATENTS; WITH ANSWER AND EXHIBITS.

(From Mississippi Glass Company vs. Nicklas Franzen, 143 Fed. Rep. 501, 74 C. C. A. 135.)

Your orator, The Mississippi Glass Company, a Missouri corporation, brings this, its bill of complaint, against Nicklas Franzen, a citizen of the State of Pennsylvania, and an inhabitant of the Western District of said State.

And thereupon, your orator complains and says:

First. That it is now and at all times hereinafter mentioned has been a corporation duly organized under and existing by virtue of the laws of the State of Missouri, and at all the times hereinafter mentioned was, and now is, engaged in the manufacture and sale of glass, wire glass and glassware, having a factory therefor at Port Allegany, in the county of McKean and State of Pennsylvania.

Second. The defendant is a citizen of the State of Pennsylvania and an inhabitant of the Western District of that State.

Third. The amount in controversy herein, exclusive of interest and costs, exceeds the sum or value of two thousand dollars ($2,000).

Fourth. On or about the fourth day of September, 1901, the defendant entered into a contract in writing with your orator, a copy of which contract is attached to this bill, marked "Exhibit A" and made a part hereof. The defendant, at the time of the making of said agreement, was given employment by your orator and in consideration therefor covenanted as set forth in said contract that

> "All inventions and discoveries made by (him) during the term of his employment, shall at all times and for all purposes be regarded as acquired and held by (him) in a fiduciary capacity and solely for the benefit of the employer (your orator)."

The contract contained the further covenant:

> "That the employee (the defendant) will, when required, make and execute any and all assignments in writing which may be deemed by the employer (your orator) proper or necessary to transfer and vest in the employer (your orator) the entire right, title and interest in all inventions and discoveries made by the employee (the defendant) during the term of his employment."

Fifth. The defendant continued in the employment of your orator under the terms of the contract, "Exhibit A," up to the 9th day of May, 1903, and during the term of said employment, as your orator is informed and verily believes, and now charges the fact to be, invented a certain new and useful improvement in the method of manufacturing wire glass, and thereafter, to-wit: on the 5th day of June, 1903, applied for letters patent of the United States thereon. Said application was filed in the Patent Office on June 17, 1903, and is Serial Number 161,901 and letters patent of the United States Number 741,125 were issued under said application on October 13, 1903.

Sixth. Your orator is informed and verily believes, and charges the fact to be that said letters patent are for an invention and discovery made by the defendant wholly at the expense of your orator and during the course of the employment of defendant, and that said defendant in devising and inventing the same was only performing his duty as an employee of your orator under the terms of the contract, "Exhibit A." The manufacture of wire glass is one of the businesses in which your orator is lawfully engaged under the terms of its charter and in which it was so engaged during the entire period of the employment of the defendant under the contract, "Exhibit A." Your orator says that it is in equity and good conscience the true and rightful owner of the Letters Patent No. 714,125, dated October 13, 1903, issued to the said defendant, as the equitable assignee of the defendant, and that said defendant is bound in equity and good conscience to make an assignment thereof to your orator.

Seventh. Your orator further shows, on information and belief, that during the term of the employment of the defendant the latter invented and devised certain other new and useful improvements in machinery or apparatus used in connection with the manufacture of wire glass by the method described in the before mentioned Letters Patent No. 741,125, and thereafter made application for letters patent of the United States therefor, which said application is now on file in the Patent Office and is Serial No. 164,495. Your orator charges on information and belief that said application is for letters patent on an invention or discovery made by the defendant wholly at the expense of your orator and during the course of the defendant's employment by your orator; and the said defendant in devising and inventing the same was only performing his duty as an employee of your orator under the terms of his contract, "Exhibit A."

Eighth. Your orator shows that it is in equity and good conscience the true and rightful owner of the invention described in application Serial Number 164,495, and that if the same includes any patentable claims, your orator is entitled to the patent to be issued thereon as the equitable assignee of the defendant and that the said defendant is bound in equity and good conscience to make an assignment to your orator of his rights in said application and of the letters patent to be issued thereon.

Ninth. Your orator further charges on information and belief that the defendant's resignation from the employment of your orator on the 9th day of May, 1903, was part of an attempt by the defendant to file the applications, Serial Numbers 161,901 and 164,495, and to obtain letters patent thereon without regard to the rights of your orator in the premises. Your orator is further informed and verily believes that the said defendant had no experience in the manufacture of wire glass prior to his employment by your orator and that whatever knowledge he has gained of such manufacture has been gained while in the employment of your orator under the terms of the said contract, "Exhibit A."

Tenth. The defendant has made no discovery to your orator of the inventions so made by him as above set forth and as described in the applications for letters patent, Serial Numbers 161,901 and 164,495, and though upon discovery of the fact that said applications had been filed your orator often requested defendant so to do, yet the said defendant has refused and continuously refused to make and execute assignments in writing to your orator for the purpose of transferring and vesting in your orator the entire right, title and interest in the said inventions and discoveries. That your orator has been, at all times, ready and willing and has offered to pay the costs and charges incident upon the making of such transfers and assignments and has offered to em-

ploy, at its expense, a solicitor for the purpose of drawing the same. That your orator has done and offered to do, and is now ready and willing to do all things required of it to be done under and by virtue of the said contract of employment, and to comply in every manner with all requirements reasonably made under the terms of said contract and the relationship between your orator and the defendant.

To the end, therefore, that your orator may have that relief which it can only obtain in a court of equity, and that the said defendant may answer the premises but not upon oath or affirmation, the benefit whereof is expressly waived by your orator, your orator now prays:

1. That your Honors may decree that the defendant, Nicklas Franzen, in specific performance of the agreement, Exhibit A, made between him and your orator, assign to your orator by proper instruments in writing, his entire right, title and interest in and to the Letters Patent No. 714,125, dated October 13, 1903, and in and to the application for letters patent, Serial Number 164,495, and the letters patent to be granted thereon.

2. That the defendant may be enjoined and restrained during the pendency of this action from in any manner disposing of or dealing with the Letters Patent No. 741,125 dated October 13, 1903, and the application for letters patent, Serial Number 164,495, and from granting any license thereunder.

3. That a writ of subpoena in due form of law, according to the rules of this Honorable Court, be directed to Nicklas Franzen, the defendant, commanding him on a certain day to appear and answer unto this bill of complaint, but not upon oath or affirmation, the benefit whereof is expressly waived, and to abide and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

4. That your Honors may decree such other and further relief as the equity of the case requires and to your Honors seems meet.

And your orator will ever pray, etc.

ARTHUR J. BALDWIN,
Solicitor for, and of Counsel for Complainant.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

Before the undersigned authority, a notary public of the State and county aforesaid, at New York City, on this 10th day of December, 1903, personally appeared Edward W. Humphreys, who, being duly sworn according to law, says that he is vice-president of the Mississippi Glass Company, a corporation of the State of Missouri, which is the complainant presenting the foregoing bill. That he has read the said bill. That so far as the averments and representations therein purport to be within the knowledge of the complainant's officers they are each and all true, and that so far as the said averments and statements purport to be upon information and belief they are stated in strict accord with credible information and are verily believed by affiant to be true.

EDWARD W. HUMPHREYS,

Sworn to before me this 10th day of December, 1903.

(L. S.) HENRY SCHOENKERR,

Notary Public, Kings County, certificate filed in New York City.

"Exhibit A."

This agreement made this fourth day of September, 1901, by and between the Mississippi Glass Company, a Missouri corporation, hereinafter called "the employer," and Nicklas Franzen, hereinafter called "the employee,"

Witnesseth, that in consideration of the employment

by said Mississippi Glass Company of the person above named as employee, it is agreed:

First. That the employer is engaged in the manufacture of glass, glassware, and mechanical devices in connection therewith, and that such manufacture is carried on by means of certain secret formulae, methods, processes, tools, machinery, patterns and appliances, and the same are the property of the employer, and intended to be kept and guarded by the employer as secrets; and that all knowledge and information which the employee now possesses or shall hereafter acquire respecting such secrets, and all inventions and discoveries made by said employee during the term of his employment shall at all times and for all purposes be regarded as acquired and held by the employee in a fiduciary capacity and solely for the benefit of the employer.

Second. That the employee shall not during the term of such employment, or thereafter, in any manner whatsoever, except to the extent authorized in writing by the employer, disclose, make known or give any information respecting any such secrets, and shall not permit any person or persons to acquire any knowledge or information respecting the same, if able to prevent.

The employees shall not at any time have in his possession any sort of a description or representation of such secrets, formulae, methods, processes, tools, machinery, patterns and appliances.

Third. No breach by the employer of any contract of employment or of any other contract, and no act of omission by the employer, shall be deemed or considered an excuse or justification for any violation of any of the obligations herein contained on the part of the employee.

Fourth. That the employee will, when required, make and execute any and all assignments in writing which may be deemed by the employer proper or necessary to

transfer and vest in the employer the entire right, title and interest in all inventions and discoveries made by the employer during the term of his employment.

In witness whereof, the employee above named has hereunto subscribed his name and affixed his seal the day and year first above written.

(Signed) NIK FRANZEN.

In the presence of
(Signed) LOUIS LEMAIRE,
(Signed) LASALLE GIRTS.

STATE OF PENNSYLVANIA, } ss.
COUNTY OF MCKEAN. }

Nik. Franzen, being duly sworn, says: I am the employee named in the foregoing instrument. I signed and sealed the same as my own free and voluntary act and deed, with full knowledge of its contents. I further promise and swear that I will in good faith keep and perform all the obligations of said agreement.

Sworn to before me this 29th day of March, 1902.

(Signed) M. C. FIELD,
Justice of the Peace, Port Allegany, Pennsylvania.
Commission expires May 7, 1906.

ANSWER.

The answer of Nicklas Franzen to the Bill of Complaint of the Mississippi Glass Company.

This defendant, now and at all times hereafter saving and reserving to himself all benefit or advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said Bill of Complaint contained, for answer thereunto, or unto so much thereof as he is advised that it is material or necessary for him to make answer unto, answering, says:

First. This defendant is not advised, save by the Bill of Complaint herein, of the organization of the complain-

ant, nor of the powers conferred upon it by charter; denying therefore all material averments relative thereto, this defendant leaves complainant to make proof thereof.

This defendant admits that he is a citizen of the United States, and was, on the filing of the bill of complaint herein, resident within the Western District of the State of Pennsylvania.

Second. This defendant denies that on or about the fourth day of September, 1901, he entered into a contract in writing with the complainant, such as is set forth in "Exhibit A." He denies that he was given employment by complainant in consideration of either or any of the alleged covenants set forth in paragraph IV of the Bill of Complaint.

Defendant avers the facts to be these:

That on the 31st day of August, 1901, he entered into an agreement with the Mississippi Glass Company, and under that agreement entered the employ of the said Mississippi Glass Company upon September 4, 1901; that the copy of this agreement annexed hereto and marked "Defendant's Exhibit B," is a correct copy thereof; that subsequently, after he had continued in the employ of the Mississippi Glass Company for some time, and long after September 4, 1901, being requested so to do by the Mississippi Glass Company, he executed an agreement of which he believes "ExhibitA" to be a substantially correct copy. This agreement was in print; all the employees of the Mississippi Glass Company were required to sign duplicates thereof. Defendant signed this agreement because requested so to do by the Mississippi Glass Company, but received no additional consideration beyond the wages which he had up to that time received in the course of his employment.

Third. This defendant admits that from September 4, 1901, to May, 1903, he continued in the employ of the Mississippi Glass Company; he denies, however, that

this employment began or continued under the terms of the contract, "Exhibit A."

This defendant denies that during the said term of his employment, or during any term of employment by the Mississippi Glass Company, he invented a certain new and useful improvement in the method of manufacturing wire glass, as averred in paragraph V of the Bill of Complaint.

Fourth. Defendant admits that letters patent of the United States No. 741,125, were granted him on October 13, 1903. He denies that the said letters patent are for an invention and discovery made by him wholly or at all at the expense of complainant; denies that the said invention and discovery were made during the course of any employment by complainant; denies that in devising or inventing the said invention and discovery he was performing any duty as an employee of complainant under the terms of the contract, "Exhibit A," or under the terms of any other contract with said company.

Defendant denies that complainant is in equity or in good conscience the true and rightful owner of the said patent as equitable assignee thereof or otherwise; and denies that he is bound in equity or in good conscience to make an assignment thereof to complainant.

Defendant avers the facts to be these:

That prior to any employment by the Mississippi Glass Company, and prior to August 31, 1901, the defendant invented a certain new and useful improvement in the method of manufacturing wire glass, for which letters patent of the United States No. 741,125 were granted him on October 13, 1903; that subsequent to the termination of his employment by the Mississippi Glass Company, defendant took steps to protect the said invention made by him prior to August 31, 1901, as aforesaid; and that to that end he filed an application in the United States Patent Office on June 17, 1903, which application

bore Serial Number 161,901, and in pursuance of which the said Letters Patent No. 741,125 were granted.

Fifth. Defendant denies that during the said term of his employment, or during any term of employment by the Mississippi Glass Company he invented or devised certain other new and useful apparatus used in connection with the manufacture of wire glass, as averred in paragraph VII of the Bill of Complaint.

Sixth. Defendant admits that he has invented certain new and useful improvements in machinery or apparatus used in connection with the manufacture of wire glass; and that he has made application for letters patent of the United States therefor; and that such application is now on file in the Patent Office, and is Serial Number 164,495. He denies that the said application is for letters patent on an invention or discovery made by him wholly or at all at the expense of complainant; denies that the said invention or discovery was made during the course of any employment; denies that in devising and inventing the said invention or discovery he was performing any duty as an employee of complainant under the terms of the contract, "Exhibit A," or under the terms of any other contract with said company.

Defendant denies that the complainant is in equity or in good conscience the true and rightful owner of the invention described in application Serial Number 164,495; denies that complainant is entitled as equitable assignee thereof or otherwise to the patent which may be issued thereon; and denies that he is bound in equity or in good conscience to make an assignment to complainant of his rights in said application and of the letters patent which may be issued thereon.

Defendant avers the facts to be these:

That prior to any employment by the Mississippi Glass Company, and prior to August 31, 1901, he, the defendant, invented a certain new and useful improvement in

machinery, for making wire glass; that, subsequent to the termination of his employment by the Mississippi Glass Company, defendant took steps to protect the said invention made by him prior to August 31, 1901, as aforesaid; and that to that end he filed an application for letters patent in the United States Patent Office, which application bears Serial Number 164,495.

Seventh. Defendant submits that, in respect to any alleged invention made by him for which application for letters patent is, or may be pending, complainant is entitled to no disclosure and to no information; that all such applications are confidential as between the applicant and the Patent Office, and that until complainant shows itself entitled to disclosure respecting such matter, defendant is entitled to protection in maintaining all such matters secret. Defendant denies that during any employment of *him* by the Mississippi Glass Company he made any invention or discovery for which he has made application for letters patent. To seek to obtain information regarding any application for letters patent which is or may be pending and made by this defendant, under pretense of the enforcement of any alleged agreement between complainant and defendant, is an unlawful and inequitable expedient, which, it is submitted, is contrary to equity and to good conscience. Defendant denies the fact; and submits that, in so doing, he has fully answered complainant, in so far as complainant is entitled to any answer.

Eighth. Defendant avers in respect to the contract, "Exhibit A," that, in so far as it contains covenants or obligations not contained in the contract, "Defendant's Exhibt B," it was given without consideration and is void; and further that, in respect to its covenants and provisions, and particularly in respect to the covenants and provisions recited in paragraph IV of the Bill of Complaint, it is contrary to equity and good conscience, and is void.

Ninth. This defendant admits that he resigned from the employment of the Mississippi Glass Company in the month of May, 1903; he denies that his resignation was an attempt or any part of an attempt to file any application or applications, or to obtain any letters patent or letters patents in violation of any right or rights of complainant therein.

Tenth. This defendant, denying that he has done any act or thing, or is doing any act or thing, or proposes to do any act or thing in violation of any right secured to complainant by or under the contract, "Exhibit A," or any other contract, denies that complainant is entitled to an assignment of any invention, application for letters patent, or letters patents, or to an injunction, or to any other relief; without this, that any other matter or thing in the Bill of Complaint contained, material or effectual in law to be answered unto, confessed and avoided, traversed, or denied, and not hereinbefore well and sufficiently answered unto, confessed and avoided, traversed, or denied, is true. Wherefore this defendant prays to be hence dismissed with his reasonable costs most wrongfully sustained. NICKLAS FRANZEN

CHRISTY & CHRISTY,

Solicitors for Defendant.

UNITED STATES OF AMERICA,
WESTERN DISTRICT OF PENNSYLVANIA. } SS.

Before me, the subscriber, duly authorized to administer oaths, personally came Nicklas Franzen, the defendant herein, who, being by me duly sworn, deposes and says that the averments and statements contained in the foregoing answer are true. NICKLAS FRANZEN.

Sworn to and subscribed before me this———day of January, 1904.

Notary Public.

(Seal) F. E. GAITHER,

"DEFENDANT'S EXHIBIT B."

Agreement made this (31st) thirty-first day of August, 1901, between the Mississippi Glass Company, a corporation represented by Louis Lemaire, its agent, party of the first part, and Nicklas Franzen, of Floreffe, State of Pennsylvania, party of the second part.

Witnesseth. That the said party of the first part hereby employs party of the second part to work for it as assistant superintendent at its factory at Port Allegany, State of Pennsylvania, first party paying to second party for his services the sum of one hundred ($100.00) dollars, payable semi-monthly from date hereof.

During the continuance of employment, said second party covenants, promises and agrees to and with the party of the first part to devote his entire time and attention to said employment, and to diligently and faithfully fulfill the duties of said employment to the best of his skill and ability. He will not reveal to any person any of the secrets or anything relating to the business of said party of the first part.

It is agreed between the parties hereto that either party may terminate said employment and this agreement by giving fifteen days notice in writing to the other party.

In witness whereof, the party of the first part, has executed this agreement by its agent, and the party of the second part has hereunto set his hand and seal the day and year aforesaid.

MISSISSIPPI GLASS COMPANY,
By LOUIS LEMAIRE, Agent.

Attest:
LASALLE GIRTS.

INTERVENING PETITION.

(From Sanitary Devices Mfg. Co. v. Sanitary Compressed Air Vacuum Co., not reported; in The United States Circuit Court, District of Colorado.)

(Omitted caption).

Your petitioner, The General Compressed Air Housecleaning Company, respectfully shows unto your honors that it is a corporation organized and existing under and by virtue of the laws of the State of Missouri, a citizen of said State, and having its principal place of business in the City of St. Louis, in said State; and that it is engaged in the business of manufacturing compressed air housecleaning machinery.

And your petitioner further shows unto your honors that there has been a bill in equity recently filed in this court by the Sanitary Devices Manufacturing Company, charging said defendants, Sanitary Compressed Air Vacuum Co., with infringement of letters patent of the United States, No. 695,162, of March 11, 1902, granted to Agustus Lotz, on March 11, 1902, for an improvement in an apparatus for cleaning carpets, by making, using, and selling machines containing and embodying said alleged invention, praying process and injunction restraining the further use or sale by the said Sanitary Compressed Air Vacuum Co., et al., of the said apparatus for cleaning carpets, alleged to be an infringement of the patent aforesaid.

And your petitioner further shows unto your honors that the said apparatus for cleaning carpets, alleged to be an infringement of the patent aforesaid, was manufactured by your petitioner at St. Louis, under letters patent Nos. 634,042, October 3, 1899; 663,943, December 18, 1900; (naming several other patents), and was purchased from it by the said (respondents), and your petitioner says that it has a large number of vendees throughout this country who are selling its apparatus for cleaning

carpets, similar in construction to those sold by said (respondents), and that the (complainants) threaten to bring suit against other vendees of your petitioners, thereby greatly injuring its business and unnecessarily harrassing its customers and multiplying suits.

And your petitioner further says that said defendants have not sufficient interest in the result of this suit to properly defend the same, and that your petitioner has great interest in the result of this controversy, in that if a decree be entered against the said (respondents) herein, and an injunction granted, as prayed in the bill of complaint herein, your petitioner fears that the said (complainants) will pursue its vendees and file suits against them, as it threatens to do, and that preliminary injunctions will be granted in such suits on the ground of prior adjudication of the validity of the patent, all of which will tend to greatly injure the business of your petitioner to his irreparable loss.

And your petitioner further shows unto your honors that the said (complainants) has never brought suit against your petitioner charging it with infringement of said patent, although your petitioner has been manufacturing, advertising, and selling an apparatus for cleaning carpets like those alleged to be an infringement in the bill of complainant herein, and that said (complainants) knew well that your petitioner was so doing long before they filed their bill herein.

Wherefore your petitioner prays that it may be made party defendant herein and be allowed to intervene, and be made defendant herein and to file an answer and to defend the same, and for all other and further relief.

THE GENERAL COMPRESSED AIR HOUSECLEANING CO.
By John S. Thurman, President.

Higdon & Longan,
Solicitors and of Counsel for
Petitioner.

United States of America,
State of Missouri, } ss.
City of St. Louis.

On this 29th day of August, 1905, before me personally appeared John S. Thurman, President of The General Compressed Air Housecleaning Company, the petitioner herein, who, having been by me duly sworn, deposes and says that he has read the foregoing petition, subscribed by the complainant corporation by him as its President, and that the said petition is true of his own knowledge, except as to matters therein which are stated as of information and belief, and, as to those matters, he believes them to be true.

JOHN S. THURMAN.

Subscribed and sworn to before me, the day and year last aforesaid.

MARTIN P. SMITH,
Notary Public.

(Seal)

ORDER GRANTING PETITION FOR LEAVE TO INTERVENE.

From Sanitary Devices Mfg. Co. Sanitary Compressed Air Cacuum Co., not reported; in the United States Circuit Court, District of Colorado.)

This cause being heard this 5th day of September, 1905, upon petition of the General Compressed Air Housecleaning Co., for leave to intervene and defend the same, said petition showing the said General Compressed Air Housecleaning Co. to be the manufacturer of the devices charged as infringement of the patent sued on herein, and counsel having been heard for the respective parties, it is ordered that the said petitioner have leave to intervene as defendant and to defend the same.

MOSES HALLETT, Judge.

PETITION FOR WRIT OF CERTIORARI.

(From Dowagiac Manufacturing Company vs. Minnesota Moline Plow Co., No. 875. The petition was granted by the Supreme Court, October term, 1910.)

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Dowagiac Manufacturing Company, a Michigan corporation, respectfully represents:

I. That in the case at bar the United States Circuit Court of Appeals for the Eighth Judicial Circuit has specifically overruled the United States Circuit Court of Appeals for the Sixth Judicial Circuit, on the same patent, on substantially the same infringement, and on substantially the same record (many of the depositions being stipulated into the case from the case in the Sixth Circuit). The ruling of the said Circuit Court of Appeals for the Sixth Judicial Circuit is in the following language:

> "Complainant offered proof tending to show the profits made by defendants in sales of the entire structure without making any apportionment of them to the patented feature, as distinguished from the balance of the drill. It claimed the doctrine of apportionment to have no application; first, because although the patent contains but one novel element, the combination of that element with the others constitutes an appropriation of all of them in combination. In other words, the contention is, that because the Hoyt patent is a combination patent in which one novel feature is combined with several not novel, each and all of the elements, associated in that combination, are, for the purposes of an accounting, to be considered as appropriated by the patentee and if there is an infringement of the novel feature all the profits made by the infringer upon the whole combined structure are recoverable, and

that proof of those made by reason of the novel feature alone is unnecessary. Reliance for this contention is placed upon the cases of McSherry Mfg. Co. vs. Dowagiac Mfg. Co., 89 C. C. A., 26, 160 Fed. 948, and Brennan Mfg. Co. vs. Dowagiac Mfg. Co., 89 C. C. A. 392, 162 Fed. Rep. 472.

Without now analyzing these cases, it serves our present purpose to say, that if they support the contention of the complainant they seem out of harmony with the doctrine of the Supreme Court and our court as disclosed in many cases and particularly the following: Garretson vs. Clark (supra); Tilghman vs. Procter, 125 U. S. 136; McCreary vs. Pennsylvania Canal Co., 141 U. S. 459; Crosby Valve Co. vs. Supply Valve Co., 141 U. S. 441, 453; Sessions vs. Romadka, 145 U. S. 29; Keystone Mfg. Co. vs. Adams, 151 U. S. 139, 147; Westinghouse Elec. & Mfg. Co. vs. Wagner Elec. & Mfg. Co., —— C. C. A. ——, 173 Fed. 361.

These cases have recently been considered by us in an opinion written by Van Devanter, Circuit Judge, in the case of Brown vs. Lanyon Zinc Co., —— C. C. A. ——, 179 Fed. 309, where a conclusion was reached adverse to complainant's present contention.

These authorities make it clear, we think, that an apportionment of profits between the patented and unpatented parts of the drill was indispensably necessary. The invention did not inhere in the entire machine as an entity, but was only an improvement in a single element of an otherwise well known device."

There is thus absolutely adverse and contrary decisions by the said Courts of Appeals on the same state of facts and law.

II. That the rule of law relative to profits established by this court is that:

Where the patented invention is for "a complete thing, consisting of a certain combination of elements," resulting in a new or improved machine or manufacture, and the defendant in violation of complainant's rights under the patent has sold machines or manufactures which embody in their construction such invention, "the whole of it," thereby having been guilty of selling the patented machine or manufacture; in such a case the complainant is entitled to recover all the profits made by the defendant in the manufacture and sale of such infringing machines or manufactures. Elizabeth vs. Pavement Co., 97 U. S. 126, 141; Hurlbut vs. Schillinger, 130 U. S. 456, 472; Crosby Valve Company vs. Safety Valve Co., 141 U. S. 441, 453, 454.

III. That this court has ruled that "since the Act of July 8, 1870, in cases where the injury sustained by the infringement is plainly greater than the aggregate of what was made by the defendant, the complainant is entitled to recover the damages he has sustained in addition to the profits received." Coupe vs. Royer, 155 U. S. 582:

> "There is a difference between the measure of recovery in equity and that applicable in an action at law. In equity, the complainant is entitled to recover such gains and profits as have been made by the infringer from the unlawful use of the invention, and, since the Act of July 8, 1870, in cases where the injury sustained by the infringement is plainly greater than the aggregate of what was made by the defendant, the complainant is entitled to recover the damages he has sustained, in addition to the profits received. At law the plaintiff is entitled to recover, as damages, compensation for the pecuniary

loss he has suffered from the infringement, without regard to the question whether the defendant has gained or lost by his unlawful acts—the measure of recovery in such cases being not what the defendant has gained, but what plaintiff has lost. As the case in hand is one at law, it is not necessary to pursue the subject of the extent of the equitable remedy; but reference may be had to Tilghman vs. Procter, 125 U. S. (31 L. Ed. 664), where the cases were elaborately considered and the rule above stated was declared to be established."

IV. That it further appears as the established rule of law, from decisions of this court, that, in the absence of proof establishing a specific royalty or an established license fee or the sale of the separated invention, general evidence must necessarily be resorted to, the rule of this court being in the following language (Suffolk vs. Hayden, 3 Wall. 315-320, 18 Law. Ed. 76; 7 Brod. 405):

"It is also urged that the value of the improvement was not a proper subject for the consideration of the jury in estimating the damages. This may be admitted. But looking at the term value, in the connection in which it was used, it is quite clear that it had reference only to the utility and advantages or value of the use of the improvement over the old mode of cleaning cotton; not the value of the patent itself.

"This question of damages, under the rule given in the statute, is always attended with difficulty and embarrassment both to the court and jury. There being no established patent or license fee in the case, in order to get at a fair measure of damages, or even an approximation to it, general evidence must necessarily be resorted to. And what evidence could be more appropriate and pertinent than that of the utility and advantage of the invention

over the old modes or devices that has been used for working out similar results? With a knowledge of these benefits to the persons who have used the invention, and the extent of the use by the infringer, a jury will be in possession of material and controlling facts that may enable them, in the exercise of a sound judgment, to ascertain the damages, or, in other words, the loss to the patentee or owner, by the piracy, instead of the purchase of the use of the invention.

"It is proper to say, as was said in the court below, that the jury, in ascertaining the damages upon this evidence, is not to estimate them for the whole term of the patent, but only for the period of the infringement. A recovery does not vest the infringer with the right to continue the use, as the consequences of it may be an injunction restraining the defendant from the further use of it."

V. That it further appears as an established rule of law, approved by this court, that where all of the proofs possible are before the court, it becomes the duty of the court in the exercise of a sound judgment to ascertain the damages so that justice may be done, the specific language approved by the court being the following language of the Court of Claims, in McKeever vs. United States, 14 Brodix 414; 23 O. G. 1525, which was specifically approved by this, the Supreme Court on appeal:

> "It is apparent here that the claimant has produced about all the evidence that the nature of his case admits of; and it is to be noted that the defendants have produced no evidence whatever to controvert it. The claimant perhaps might have produced experts to estimate the value of the other inventor's original improvement, but the manufactured article has been before us, and it is manifest that the testi-

mony of such witnesses would have been entirely conjectural, and would amount to nothing more than substituting their judgment, from an inspection of the article, for that of the court.

"'The rate of damages in patent cases may now be said to be generally (1) that the plaintiff may recover in equity the profits which the infringer has made from the use of the invention, or (2) that he may recover at law the profits which he, the plaintiff, has lost by reason of the defendant's infringement; and that these profits lost, where it can properly be done, will be regarded as simply the fee which would have been charged if the infringer had produced a license. But in cases where the plaintiff has evinced an intention to exercise an exclusive use of his invention, and in cases where the sales of licenses have been too few to establish a criterion of their actual or market value, courts have sought for other elements or evidences to determine the profits lost. In Suffolk vs. Hayden, 3 Wall. R. 15 (7 Am. & Eng. 405), Mr. Justice Nelson said:

"'The question of damages under the rule given in the statute is always attended with difficulty and embarrassment both to the court and jury. There being no patent or license fee in the case, in order to get at a fair measure of damages or even an approximation to it, general evidence must necessarily be resorted to. And what evidence could be more appropriate and pertinent than that of the utility and advantage of the invention over the old modes or devices that had been used for working out similar results? With a knowledge of these benefits to the persons who have used the invention, and the extent of the use by the infringer, a jury will be in possession of the material and controlling facts that may enable them, in the exercise of a sound judg-

ment, to ascertain the damages, or, in other words, the loss to the patentee or owner by the piracy instead of the purchase of the use of the invention.' "

VI. Your petitioner further shows that in the case at bar a fundamental error consists in assuming that the invention of the patent in suit is to a novel element and not to a true combination, the error of the court appearing in the following language:

"It (complainant) claimed the doctrine of apportionment to have no application; first, because although the patent contains but one novel element, the combination of that element with the others constitutes an appropriation of all of them in combination. In other words, the contention is, that because the Hoyt patent is a combination patent in which one novel feature is combined with several not novel, each and all of the elements, associatel in that combination, are, for the purposes of an accounting, to be considered as appropriated by the patentee and if there is an infringement of the novel feature all the profits made by the infringer upon the whole combined structure are recoverable and that proof of those made by reason of the novel feature alone is unnecessary."

Whereas, a consideration of the patent and the prior art shows that there was not even a single element that was novel but the structure of the patent was a true and novel combination, as held in the following decisions by the judges named therein:

Dowagiac Mfg. Co. vs. McSherry Mfg. Co., 101 Fed. Rep. 716, in the United States Circuit Court of Appeals for the Sixth Circuit, Judges Taft, Lurton and Day, affirming the decision of the United States Circuit Court for the Southern District of Ohio, Western Division, by Judge Clark.

Dowagiac Mfg. Co. vs. Minnesota Moline Plow Co., 118 Fed. Rep. 136, in the United States Circuit Court of Appeals for the Eighth Judicial Circuit, Judges Sanborn and Carland, with Thayer dissenting as to one infringement.

Dowagiac Mfg. Co. vs. Brennan & Co., 127 Fed. Rep. 988, United States Circuit Court of Appeals for the Eighth Circuit, Judges Caldwell, Sanborn and Thayer.

Dowagiac Mfg. Co. vs. Brennan & Co., 127 Fed. Rep. 143, in the United States Circuit Court of Appeals for the Sixth Circuit, Judges Lurton, Severens and Richards.

Which position was also considered and specifically applied by the United States Circuit Court of Appeals for the Sixth Circuit in McSherry vs. Dowagiac, 160 Fed. Rep. 948, and in Brennan vs. Dowagiac, 162 Fed. Rep. 472, these being the cases specifically overruled in the case at bar.

VII. That heretofore, to-wit, on or about February, 1898, your petitioner filed its Bill of Complaint in the District of Minnesota, Fourth Division, alleging infringement of the Hoyt patent No. 446,230 of February 10, 1891, being the patent in suit.

That thereafter answer and replication were filed and proofs taken which were submitted to the court, and thereafter Judge Lochren in an opinion passed upon the matter and held, following the decisions of the United States Circuit Court of Appeals for the Sixth Circuit, as reported in Dowagiac vs. McSherry, 101 Fed. Rep. 716, that claims 1, 2 and 3 of the patent were infringed by one of defendant's structures and not infringed by the defendant's new structure.

That thereupon both parties appealed to the United States Circuit Court of Appeals for the Eighth Judicial

Circuit, and that upon a hearing upon said appeal, the finding of the court below was modified so that both structures were held to infringe, the opinion of the Court of Appeals being by Judge Carland, there being a dissenting opinion by Judge Thayer as to one infringement, the said decision accepting and following as authority the opinion of the United States Circuit Court of Appeals for the Sixth Circuit in the said McSherry case.

That this matter was then referred to Mr. George F. Hitchcock, Jr., as special master, to take an accounting of the profits and damages and that said special master held that the complainant had failed to apportion between the patented and unpatented features, and awarded nominal damages in the sum of one dollar, the master in making such finding saying:

> "I am aware that a different conclusion has been reached in the accounting in the McSherry case in the Sixth Circuit, but the evidence presented to the Master there is not before us, and we do not know what it is. Certainly it must have been widely different from the evidence in this case * * *"

Whereas, the evidence was largely the same, and although the report of the master in the McSherry case had been affirmed by his Honor, Judge Clark, the same was overruled by this special master.

That thereafter exceptions were filed to the report of Master Hitchcock, as appears at page 67 of the record, where, on final hearing by the court, Judge Amidon, of South Dakota, presiding, he having been specially assigned, overruled the exceptions, thus ruling contrary to the decision of Judge Clark in the McSherry case.

That from the decision and decree of Judge Amidon, after he had overruled a petition for rehearing, an appeal was taken to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, where there were

elaborate and complete assignments of error, and that on full hearing the decision of Judge Amidon was affirmed, the court of Appeals for the Eighth Circuit, consisting of Judge Hook, Adams and McPherson, specifically overruling the United States Circuit Court of Appeals for the Sixth Circuit in

Brennan & Co. vs. Dowagiac Mfg. Co., 162 Fed. Rep. 473,

McSherry Mfg. Co. vs. Dowagiac Mfg. Co., 160 Fed. Rep. 948,

affirming the ruling of Judge Amidon. This ruling was adhered to on a petition for rehearing.

VIII. That this ruling was fundamentally erroneous in that it takes into consideration an element of a combination where a claim is to a combination of elements, and requires an apportionment of both profits and damages between the patented and the unpatented features, where the particular structure produced, as had been repeatedly previously ruled, is to an entirety and a true combination of elements, like a new chemical compound.

IX. That the showing made to the court in this case at bar is as complete as it is possible to make in a patent case, the record being very voluminous and developing fully all the facts, showing completely the whole situation as to the marketing of complainant's grain drills, comparing the same with the only unpatented grain drill that was on the market, showing the facts fully by stipulation as to the defendant's grain drills, and including a large number of depositions of people familiar with the market, showing conclusively that the Hoyt grain drill had solved effectively the seeding problem for a limited territory, where special conditions obtain in the growing of spring wheat, and showing conclusively, when the structure is considered as a true combination, that the success of the device was due to such combina-

tion, and showing that the Dowagiac shoe grain drill made under the patent in suit was the first to effectively solve the problem,—all of which proofs should certainly have been considered by the court so that justice could be done.

Therefore your petitioner believes that the aforesaid opinion of the United States Circuit Court of Appeals for the Eighth Circuit affirming the decree of the United States Circuit Court for the District of Minnesota, Fourth Division, thus depriving your petitioner of a substantial recovery on account of the profits made by the respondent in the sale of its infringing grain drills accounted for before the master, is erroneous and in conflict with the decisions of this court in analogous cases, as well as in conflict with the decisions of the United States Circuit Court of Appeals for the Sixth Circuit and other circuits; and has resulted in depriving your petitioner of property rights granted to it by the statutes of the United States, and in accordance with the provisions of the Constitution of the United States; and that the patent laws, as construed in the case at bar by the opinion of the United States Circuit Court of Appeals for the Eighth Circuit, contrary to the opinion of this court rendered by Chief Justice Marshall in the case of Grant vs. Raymond, 6 Peters 242, have not been construed so as "to execute the contract" (the patent) "fairly on the part of the United States."

Your petitioner also respectfully submits, for the reasons stated in this petition for *certiorari* and more fully amplified in its brief in support of the same, that the opinion of the Court of Appeals for the Eighth Circuit in the case at bar, in a matter of gravity, where a large amount is involved, establishes a precedent which must necessarily affect almost incalculable value in the way of property rights under letters patent for inventions.

Wherefore, your petitioner respectfully prays: That a writ of *certiorari* may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding the said court to certify and send to this court, on a certain day to be therein designated, a full and complete transcript of the record of all proceedings of the said Court of Appeals in the said case therein, entitled Dowagiac Manufacturing Co., Appellant, v. Minnesota Moline Plow Company, et al., Appellees, in Equity No. 3041, to the end that the said case may be reviewed and determined by this court as provided in section 6 of Act of Congress entitled, "An Act to establish Circuit Courts of Appeal and define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes, approved March 3, 1901," and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act.

And your petitioner will ever pray.

FRED L. CHAPPELL,

Solicitor and of Counsel for Petitioner, the Dowagiac Manufacturing Co.

OTIS A. EARL, Of Counsel.

I hereby certify that I am solicitor and of counsel for the Petitioner herein, Dowagiac Manufacturing Company; that in accordance with the request of said Petitioner the foregoing petition has been prepared; that the allegations contained in said petition are true, to the best of my knowledge and belief; and that said petition is, in my opinion, well founded in law as well as in fact.

FRED L. CHAPPELL.

FORM OF SUPERSEDEAS OR COST BOND.

KNOW ALL MEN BY THESE PRESENTS,

That we, ... are held and firmly bound unto ..... in the full and just sum of .... to be paid to the said ..... heirs, executors, administrators, successors or assigns, to which payment well and truly to be made, we bind ouselves, our heirs, executors and administrators, successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this ..... day of ....., in the year of our Lord one thousand nine hundred..... .....

WHEREAS, lately at the ..... term of the .... in a suit depending in said court between ...., plaintiff, and ....., defendant, ... was rendered against the said .... and the said ..... has obtained ..... of the said court to reverse the ..... in the aforesaid suit, and a citation directed to the said ..... citing and admonishing ..... to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation.

Now, the condition of the above obligation is such, that if the said ..... shall prosecute said ..... to effect, and answer all damages and costs if ..... fail to make good ..... plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

.....[SEAL.]

.....[SEAL.]

Approved by .....[SEAL.]

.....

(*The foregoing bond and citation is adapted for appeals in equity cases as well as in cases of writs of error in actions at law.*)

MANDATE—FROM CIRCUIT COURT OF APPEALS TO CIRCUIT COURT.

(From St. Louis Street Flushing Machine Co. vs. Sanitary Street Flushing Mach. Co., 178 Fed. Rep. 923, —— C. C. A. ——.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America,
To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Missouri.

GREETING:

Whereas, lately in the Circuit Court of the United States for the Eastern District of Missouri, before you, or some of you, in a cause between the Sanitary Street Flushing Machine Company, a Corporation, complainant, and the St. Louis Street Flushing Machine Company, William Ratican, Stephen Joseph Ratican and James C. Wilson, defendants, wherein the decree of the said Circuit Court in said cause, entered on the 29th day of July, A D. 1909, is in the following words, viz:

"This cause having come on to be heard, upon the pleadings, proceedings and proofs herein, on behalf of both parties, and after hearing James L. Hopkins, Esquire, counsel for complainant, and Henry W. Allen, Esquire, and James A. Carr, Esquire, counsel for respondents, and after due proceedings had, the court doth, upon consideration, order, adjudge and decree as follows:

First. That the letters patent of the United States, No. 736,135, issued on the 11th day of August, 1903, to Thomas M. Murphy, assignor of one-half to William Ratican, for improvements in Street Washers, are good and valid in law.

Second. That the said Thomas M. Murphy was the first true and original inventor of the inventions and improvements described and claimed in said letters patent, and set forth in Claims 1, 2 and 3 thereof, respectively.

Third. That the complainant, Sanitary Street Flushing Machine Company, is the sole and exclusive owner of the said letters patent.

Fourth. That the defendants, St. Louis Street Flushing Machine Company, William Ratican, Stephen Joseph Ratican and James C. Wilson have infringed upon the said letters patent and upon the exclusive rights of the complainant under the claims thereof.

Fifth. That the complainant have and recover of the defendants, and each of them, the profits, gains and advantages which the said defendants have derived by reason of their said infringment of said letters patent, and that the complainants have and recover of the said defendants any and all damages which the complainant has sustained, or may hereafter sustain by reason of said infringement of the said letters patent by the said defendants.

Sixth. And this cause is hereby referred to Rhodes E. Cave as a master of this court, who is hereby appointed and empowered to take and state the account of said gains, profits and advantages, and to assess such damages and to report thereon to the court with all convenient speed; and the defendant William Ratican, his agents, servants, and employees as well as the defendants Stephen Joseph Ratican and James C. Wilson, their agents, servants and employees, and the St. Louis Street Flushing Machine Company, its directors, officers, attorneys, clerks. servants and workmen, are hereby directed and required to attend before said master from time to time as required, and to produce before him such books, papers, vouchers and documents, and to submit to such oral examination as the master may require.

Seventh. That a perpetual injunction issue out of and under the seal of this court. directed to the said defendants William Ratican, Stephen Joseph Ratican and James C. Wilson, their agents, servants and employees,

as well as the said defendant St. Louis Street Flushing Machine Company, its officers, directors and stockholders, forever and perpetually enjoining and restraining them, and each of them, from directly or indirectly making or causing to be made, or using or causing to be used, or selling or causing to be sold, in any manner, any machine for flushing or washing streets, containing, embodying or employing the combinations described in either of the three claims of the said letters patent or from further infringing upon or violating the said letters patent in any way whatever.

Eighth. And it is further ordered, adjudged and decreed that the complainant have and recover of the defendants its costs herein to be taxed by the clerk under the direction of the court, and that execution issue therefor.

July 29, 1909.

(Signed) SMITH MCPHERSON, Judge."

As by the inspection of the transcript of the record of the said Circuit Court, which was brought into the United States Circuit Court of Appeals, Eighth Circuit, by virtue of an appeal, agreeable to the Act of Congress, in such case made and provided, fully and at large appears;

And Whereas, in the present term of December, in the year of our Lord one thousand nine hundred and nine, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of the record from the Circuit Court of the United States for the Eeastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said Circuit Court, in this cause, be, and the same is hereby, reversed; and that the St. Louis Street Flushing

Machine Company, William Ratican, Stephen J. Ratican and James C. Wilson, have and recover against the Sanitary Street Flushing Machine Company and the sum of One Hundred Fifty-Six and 20|100 Dollars, the same being two-thirds of all of the costs in this court, and shall also recover against the said Sanitary Street Flushing Machine Company two-thirds of the fee for the transcript upon the appeal and that excution may issue for the collection of the above mentioned costs and fee.

It is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree sustaining the patent and directing an accounting as to the "Nine London Wagons" only.

April 27, 1910.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, the Seventh day of July in the year of our Lord one thousand nine hundred and ten.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals,
Eighth Circuit.

BOND FOR COSTS.

UNITED STATES OF AMERICA,
Eastern Division of the
Eastern Judicial District of Missouri. } ss.

In the Circuit Court of the United States in and for said Division and District.

A. B., ... *Plaintiff,*
vs.
C. D., ... *Defendant.* } *No.* .....

We, the undersigned, stand indebted for and undertake to pay all costs that have accrued, or may hereafter accrue, in the above entitled case; and hereby stipulate and agree that execution may issue against us, and each of us, for any costs taxed against the plaintiff herein in favor of the opposite party, or court officers, or that may be created by the plaintiff in the course of any proceeding in this case.

Signed with our names and sealed with our seals, and dated this 1st day of June, A. D. 1911.

A. B.
E. H.

E. F., obligor, in the within bond, being duly sworn, ... on his oath deposes and says, that he resides as stated therein, and is worth, over and above all his debts and liabilities, the sum of Five Thousand dollars; and that he owns real estate to that amount, subject to execution, within the Eastern District of Missouri.

Subscribed and sworn to by said E. F..... the above-named affiant, this 1st day of June, A. D. 1911, before me, at office, in the City of St. Louis, J. R. G. } E. F.

Notary Public.

FORMS RELATING TO THE TAKING OF TESTIMONY IN EQUITY CAUSES.

1. NOTICE OF TAKING TESTIMONY.

(From General Compressed Air & Vacuum Mach. Co. vs. American Air Cleaning Co., 177 Fed. Rep. 272.)

Please Take Notice that on Tuesday, August 10, 1909, at eleven o'clock in the forenoon, we shall proceed to take testimony on behalf of the defendant in the above entitled cause at our office, No. 800 Pabst Building, corner East Water and Wisconsin Streets, in the City of Milwaukee, County of Milwaukee and State of Wisconsin, before Chas. L. Goss, Esq., a notary public in and for the County of Milwaukee, State of Wisconsin, as Examiner.

The witness to be examined is Henry W. Carter, Esq., residing at Chicago, Illinois, and possibly others.

You are invited to attend the taking of said testimony and to cross-examine the witnesses examined.

The defendant desires the testimony to be taken orally by question and answer, and reduced to writing either in shorthand or directly upon the typewriting machine, and the testimony will be so taken under the statutes and the rules governing the taking of testimony in the Federal Courts.

Yours truly,
WINKLER, FLANDERS, BOTTUM & FAWSETT,
Solicitors for Defendant.

Dated, July 30, 1909,
To HIGDON & LONGAN,
Missouri Trust Bldg.,
St. Louis, Mo.

Service acknowledged this 2d day of August, 1909.
(Signed) HIGDON & LONGAN,
Solicitors for Complainant.

2. INTRODUCTION OF DEPOSITION.

(From Union Biscuit Company vs. Peters, 125 Fed. Rep. 601, 60 C. C. A. 337.)

(Omitting title of Court and Cause.)

Testimony of complainant's witnesses, taken at room 706 Lincoln Building, New York City, before John A. Shields, Esq., United States Commissioner, on the 27th day of March, 1902, under the substituted 67th rule in equity.

3. CERTIFICATE.

(From Union Biscuit Company vs. Peters, 125 Fed. Rep. 601, 60 C. C. A. 337.)

UNITED STATES OF AMERICA,
Southern District of New York. } ss.

I, John A. Shields, United States Commissioner for the Southern District of New York, do hereby certify that on the days indicated in the foregoing depositions, at Nos. 1 and 3 Union Square West, New York City, New York, I was attended by C. K. Offield, Esq., Edmund Wetmore, Esq., and Earl D. Bast, Esq., of counsel for complainant, and Paul Bakewell, Esq., and D. A. Jamison, Esq., of counsel for defendants, and by the witnesses who were of sound mind and lawful age, having been by me heretofore first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the above entitled cause, gave their testimony, which was taken down in the presence of the respective witnesses, and from their statements by a typewriter appointed by me for that purpose, and under my direction and control, and the said witnesses having read over their respective depositions subscribed the same, and swore to the same in my presence.

I further certify that the reason for taking the foregoing depositions is that the witnesses are material and

necessary in the cause in the caption of the said depositions named, and that they live at a greater distance than one hundred miles from the place of trial of the within entitled cause.

I further certify that a notification of the time and place of taking the said depositions signed by Boyle, Priest & Lehmann, Offield, Towle & Linthicum and Earl D. Bast, solicitors for complainant, was made out and served on Collins, Jamison & Chappell, solicitors for defendants, as appears from said notice which is hereunto annexed.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal, this ninth day of April, in the year of our Lond one thousand nine hundred and two, and of the Independence of the United States the one hundred and twenty-sixth.

(Signed) J. A. SHIELDS,
U. S. Commissioner Southern District of New York.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

Signed at Paris, March 20th, 1883.—Acceded to by Her Majesty's Government, March 17th, 1884.—Presented to both Houses of Parliament by Command of Her Majesty, 1884.—As modified by an additional Act, signed at Brussels, December 14th, 1900. Ratified by the United States March 29th, 1887. See § 503.

ARTICLE I.

The Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Servia, and Switzerland constitute themselves into a Union for the Protection of Industrial Property.

ARTICLE II.

The subjects or citizens of each of the Contracting States shall, in all the other States of the Union, as regards patents, industrial designs or models, trade-marks, and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens of the internal legislation of each State.

ARTICLE III.

The subjects or citizens of States which are not parties to the Union shall be assimilated to the subjects or citizens of the Contracting States, provided that they are domiciled in or have industrial or commercial establishments, real and effective, in the territory of one of the States of the Union.

ARTICLE III. *bis*.

The patent, in each country, shall not be liable to forfeiture on account of failure to utilize it until after the expiration of at least three years from the date of the deposit of the application in the country concerned, and then only provided the patentee cannot show reasonable cause for his inaction.

ARTICLE IV.

Any person who shall have duly applied for a patent, industrial design, or model or trade-mark in one of the Contracting States, shall enjoy, in order to admit of such request being lodged in the other States, during the periods of time mentioned below, a right of priority, the rights of third parties being reserved.

Consequently, subsequent registration in one of the other States of the Union, before the expiration of such periods of time, shall not be invalidated by any acts accomplished in the interval—either, for instance, by another registration, by the publication of the invention, or by the working of it, by the sale of patterns of the design or model, or by the use of the trade-mark. The above-mentioned periods of time during which priority is guaranteed shall be twelve months for patents with respect to inventions, and four months for patents for industrial designs or models, as well as for trade or merchandise marks.

ARTICLE IV. *bis.*

Patents applied for in the various Contracting States by persons admitted to the benefits of the Convention in the terms of Article II. and III., shall be independent of the patents obtained for the same invention in the other States, whether such States be or be not parties to the Union.

This stipulation shall apply to patents already existing at the time when it shall come into effect.

The same stipulation shall apply, in the case of the accession of new States, with regard to patents in existence, either on one side or the other, at the time of accession.

ARTICLE V.

The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the States of the Union shall not entail forfeiture.

Nevertheless, the patentee shall remain bound to work his patent in conformity with the laws of the country into which he introduces the patented objects.

(Articles VI, to X, do not affect patents and thus are omitted.)

ARTICLE X. *bis*.

Persons resorting to the countries referred to in the Convention (Article II, and III.), shall enjoy in all the States of the Union the protection accorded to nationals against dishonest competition.

ARTICLE XI.

The High Contracting Parties shall, in conformity with the legislation of each country, accord temporary protection to inventions susceptible of being patented, and to industrial designs or models, as well as to trade-marks or merchandise marks, in respects of products which shall be exhibited at official or officially recognized international exhibitions held in the territory of one of them.

ARTICLE XII.

Each of the High Contracting Parties agrees to establish a special Government Department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade-marks.

ARTICLE XIII.

An international office shall be organized under the name of "Bureau International de l'Union pour la Protection de la Propriete Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Government of all the Contracting States, shall be placed under the high authority of the Central Administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the States of the Union.

ARTICLE XIV.

The present Convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the Union.

To this end Conferences shall be successively held in one of the Contracting States by Delegates of the said States. The next meeting shall take place in 1885, at Rome.

ARTICLE XV.

It is agreed that the High Contracting Parties respectfully reserve to themselves the right to make separately, as between themselves, special arrangements for the Protection of Industrial Property, in so far as such arrangements do not contravene the provisions of the present Convention.

ARTICLE XVI.

States which have not taken part in the present Convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the classes, and the admission to all the advantages stipulated by the present Convention.

ARTICLE XVII.

The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the Constitutional laws of those of the High Contracting Parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ARTICLE XVIII.

The present Convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing State, the Convention remaining in operation as regards the other Contracting Parties.

ARTICLE XIX.

The present Convention shall be ratified, and the ratifications exchanged in Paris, within one year at the latest.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their seals.

Done at Paris, the 20th March, 1883.

(L. S.) (Signed) BEYENS, ETC.

COUNTRIES WITHIN THE CONVENTION.

The following is a complete list of the countries who are now adherents to the International Convention:

Austria.
Belgium.
Brazil.
Cuba.
Denmark with the Faroe Islands.
France with Algeria and Colonies.
Germany.
Great Britain with Australia, Ceylon, New Zealand, and Trinidad and Tobago.
Hungary.
Italy.
Japan.
Mexico.

Netherlands with the Dutch East Indies, Surinam, and Curacoa.
Norway.
Portugal with the Azores and Madeira.
Santo Domingo.
Servia.
Spain.
Sweden.
Switzerland.
Tunis.
United States of America.

PROTOCOL OF THE CLOSE.

At the moment of proceeding to sign the concluded Convention of the present date between the governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia and Switzerland, for the protection of industrial property, the undersigned plenipotentiaries have agreed upon as follows:

1. The words *industrial property* are to be understood in their broadest acceptation, in the sense that they apply not only to the products of industry, properly speaking, but also to products of agriculture (wines, grain, fruits, cattle, etc.) and to mineral products delivered to commerce (mineral waters, etc.).

2. Under the name of patents of invention are comprised the different kinds of industrial patents admitted by the legislations of the contracting states, such as patents of importation, patents of improvement, etc.

3. It is mentioned that the final stipulation of Article 2 of the Convention is in no way prejudicial to the legislation of each of the contracting states, as regards the procedure practiced before the courts and the competency of those courts.

3a. The patentee, in each country, can only have his patent forfeited, on account of its not having been worked, after a minimum delay of three years, lasting from the application in the country in question, and in case the patentee does not justify the cause of his inaction.

4. The first paragraph of Article 6 is to be understood in the sense that no trade mark can be excluded from protection in any of the states of the Union by the fact alone that it does not comply from the point of view of the signs of which it is composed, with the conditions of the legislation of that state, provided it complies on that point with the legislation of the country of its origin and it has been duly registered in the latter country. Saving this exception, which only concerns the form of the mark and under reserve of the stipulations of the other articles of the Convention, the interior legislation of each of the states will be applied in each case.

In order to avoid all false interpretation, it is understood that the use of public armorial bearings and insignia may be considered as contrary to public order, in the sense of the final paragraph of Article 6.

5. The organization of the special service of industrial property, mentioned in Article 12, will comprise as far as possible the publication in each state of an official periodical paper.

6. The expense of the International Office, instituted as per Article 13, will be borne mutually by the contracting states. They are not, in any case, to exceed the sum of sixty thousand francs per year.

In order to determine the contributive portion of each of the states towards the total sum of the expenses, the contracting states and those that will ultimately become members of the Union, will be divided into six classes,

each contributing in the proportion of a certain number of units, viz.:

1st class	25 units.	4th class	10 units.
2nd class	20 units.	5th class	5 units.
3d class	15 units.	6th class	3 units.

These coefficients will be multiplied by the number of the states of each class and the sum of the products thus obtained will supply the number of units by which the total expense is to be divided. The quotient will give the amount of the outlay unit.

The contracting states are classed as follows, in view of the division of the expenses:

1st class	France, Italy
2d class	Spain
3d class	Belgium, Brazil, Portugal, Switzerland
4th class	The Netherlands
5th class	Servia
6th class	Guatemala, Salvador

The Swiss administration supervises the expenses of the International Office, advances the needful funds and makes up the yearly account, which will be forwarded to all the other administrations.

The International Office will centralize the information of whatever nature with reference to the protection of international property and will combine same into general statistics to be distributed to all the administrations. It will study the common usefulness which interests the Union and will draw up, with the aid of the documents which are placed at its disposal by the different administrations, a periodical in the French language on the questions concerning the object of the Union.

The number of the periodical, the same as all documents published by the International Office, will be dis-

tributed amongst the administration of the states of the Union in proportion to the number of the above-mentioned contributive units. Any supplementary copies and documents which may be asked for, either by the said administrations or by societies or individuals, will be paid for apart. The International Office must hold itself always at the disposal of the members of the Union, in order to supply them on the questions relating to the international service of industrial property, the special information which they may require.

The administration of the country where the next conference is to be held will prepare, with the assistance of the International Office, the work of that conference.

The manager of the International Office will assist at the sittings of the conferences and will take part in the discussions, however, without deliberative vote. He will make a yearly report about his management, which will be communicated to all the members of the Union.

The official language of the International Office will be the French language.

7. The present closing protocol, which will be ratified at the same time as the convention concluded on this day's date, will be considered as forming an integral part of this Convention and will have the same force, value and duration.

In witness whereof the undersigned plenipotentiaries have drawn up this present protocol.

FOURTH INTERNATIONAL CONGRESS OF AMERICAN STATES.

Conventions Relating to Patents, Trade Marks, Designs, Etc.

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,

Washington, D. C., February 23, 1911.

The following conventions relating to patents, designs, and industrial models, trademarks, and literary and artistic copyrights, which were prepared at the request of the Secretary of State by the Commissioner of Patents, who was designated by the President of the United States as the Expert Attache to the delegation of the United States of America to the Fourth International Congress of American States, were adopted by said Congress, which met at Buenos Ayres, June 9 to August 30, 1910, and have been approved by the United States Senate.

EDWARD B. MOORE,
Commissioner of Patents.

CONVENTION.

Inventions, Patents, Designs, and Industrial Models.

The Excellencies the Presidents of the United States of America, the Argentine Republic, Brazil, Chili, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay and Venezuela:

Being desirious that their respective countries may be represented at the Fourth International American Con-

ference, have sent thereto the following delegates, duly authorized to approve the recommendations, resolutions, conventions, and treaties which they might deem advantageous to the interests of America.

United States of America: Henry White, Enoch H. Crowder, Lewis Nixon, John Bassett Moore, Bernard Moses, Lamar C. Quintero, Paul Samuel Reinsch, David Kinley.

Argentine Republic: Antonio Bermejo, Eduardo L. Bidau, Manuel A. Montes de Oca, Epifanio Portela, Carlos Rodriguez Larreta, Carlos Salas, José A. Terry, Estanislao S. Zeballos.

United States of Brazil: Joaquim Murtinho, Domicio da Gama, José L. Almeida Nogueira, Olavo Bilac, Gastão da Cunha, Herculano de Freitas.

Republic of Chili: Miguel Cruchago Tocornal, Emilio Bello Codecido, Aníbal Cruz Díaz, Beltrán Mathieu.

Republic of Colombia: Roberto Ancízar.

Republic of Costa Rica: Alfredo Volio.

Republic of Cuba: Carlos García Vélez, Rafael Montoro y Valdés, Gonzalo de Quesada y Aróstegui, Antonio Gonzalo Pérez, José M. Carbonell.

Dominican Republic: Américo Lugo.

Republic of Ecuador: Alejandro Cárdenas.

Republic of Guatemala: Luis Toledo Herrarte, Manuel Arroyo, Mario Estrada.

Republic of Haiti: Constantin Fouchard.

Republic of Honduras: Luis Lazo Arriaga.

Mexican United States: Victoriano Salado Alvarez Luis Pérez Verdía, Antonio Ramos Pedrueza, Roberto A. Esteva Ruiz.

Republic of Nicaragua: Manuel Pérez Alonso.

Republic of Panama: Belisario Porras.

Republic of Paraguay: Teodosio González, José P. Montero.

Republic of Peru: Eugenio Larrabure y Unánue, Carlos Alvarez Calderón, José Antonio de Lavelle y Pardo.
Republic of Salvador: Federico Mejia, Francisco Martínez, Suárez.
Republic of Uruguay: Gonzalo Ramírez, Carlos M. de Pena, Antonio M. Rodríguez, Juan José Amézaga.
United States of Venezuela: Manuel Díaz Rodríguez, César Zumeta.

Who, after having presented their credentials, and the same having been found in due and proper form, have agreed upon the following convention on inventions, patents, designs, and industrial models.

ARTICLE I. The subscribing nations enter into this convention for the protection of patents of inventions, designs, and industrial models.

ART. II. Any persons who shall obtain a patent of invention in any of the signatory States shall enjoy in each of the other States all the advantages which the laws relative to patents of invention designs, and industrial models concede. Consequently, they shall have the right to the same protection and identical legal remedies against any attack upon their rights, provided they comply with the laws of each State.

ART. III. Any person who shall have regularly deposited an application for a patent of invention or design or industrial model in one of the contracting States shall enjoy, for the purpose of making the deposit in the other States and under the reserve of the rights of third parties, a right of priority during a period of twelve months for patents of invention, and of four months for designs or industrial models.

In consequence the deposits subsequently made in any other of the signatory States before the expiration of these periods cannot be invalidated by acts performed in the interval, especially by other deposits, by the publica-

tion of the invention or its working, or by the sale of copies of the design or of the model.

ART. IV. When, within the terms fixed, a person shall have filed applications in several States for the patent of the same invention, the rights resulting from patents thus applied for shall be independent of each other.

They shall also be independent of the rights arising under patents obtained for the same invention in countries not parties to this convention.

ART. V. Questions which may arise regarding the priority of patents of invention shall be decided with regard to the date of the application for the respective patents in the countries in which they are granted.

ART. VI. The following shall be considered as inventions: A new manner of manufacturing industrial products, a new machine or mechanical or manual apparatus which serves for the manufacture of said products, the discovery of a new industrial product, the application of known methods for the purpose of securing better results, and every new, original, and ornamental design or model for an article of manufacture.

The foregoing shall be understood without prejudice to the laws of each State.

ART. VII. Any of the signatory States may refuse to recognize patents for any of the following causes:

(a) Because the inventions or discoveries may have been published in any country prior to the date of the invention by the applicant.

(b) Because the inventions have been registered, published, or described in any country more than one year prior to the date of the application in the country in which the patent is sought.

(c) Because the inventions have been in public use, or have been on sale in the country in which the patent has been applied for, one year prior to the date of said application.

(d) Because the inventions or discoveries are in some manner contrary to morals or laws.

ART. VIII. The ownership of a patent of invention comprises the right to enjoy the benefits thereof, and the right to assign or transfer it in accordance with the laws of the country.

ART. IX. Persons who incur civil or criminal liabilities, because of injuries or damage to the rights of inventors, shall be prosecuted and punished in accordance with the laws of the countries wherein the offense has been committed or the damage occasioned.

ART. X. Copies of patents certified in the country of origin, according to the national law thereof, shall be given full faith and credit as evidence of the right of priority, except as stated in Article VII.

ART. XI. The treaties relating to patents of invention, designs, or industrial models, previously entered into between the countries subscribing to the present convention, shall be superseded by the same from the time of its ratification in so far as the relations between the signatory States are concerned.

ART. XII. The adhesion of the American Nations to the present convention shall be communicated to the Government of the Argentine Republic in order that it may communicate them to the other States. These communications shall have the effect of an exchange of ratifications.

ART. XIII. A signatory nation that sees fit to retire from the present convention, shall notify the Government of the Argentine Republic, and one year after the receipt of the communication the force of this convention shall cease, in so far as the nation which shall have withdrawn its adherence is concerned.

In witness whereof, the plenipotentiaries have signed the present treaty and affixed thereto the seal of the Fourth International American Conference.

Made and signed in the city of Buenos Ayres on the 20th day of August in the year 1910, in Spanish, English, Portuguese, and French, and deposited in the ministry of foreign affairs of the Argentine Republic, in order that certified copies be made for transmission to each of the signatory nations through the appropriate diplomatic channels.

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