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An Act Establishing the Court of Appeals

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AN ACT ESTABLISHING THE COURT OF APPEALS

APPROVED JUNE 28, 1792.

"An additional term was given by an act of the November session following (Chap. 41). In 1795 the original jurisdiction of the Court of Appeals was taken away and vested in the district courts (Chap. 201). In 1796 an act was passed establishing the Court of Appeals, in which the temporary provisions, and such as relate to its original jurisdiction are omitted. The power of awarding writs of mandamus and certiorari is not recognized in that act, (Chap. 277). At the November session of 1798, an act was passed to amend the act of 1796 (Vol. II., Chap. 155)—in 1799, an act was passed (inter alia) for regulating proceedings in the Court of Appeals in certain cases (Vol. II., Chap. 210)—in 1800 an act was passed concerning the Court of Appeals (Vol. II., Chap. 302), in 1801, an act was passed to amend the act establishing the Court of Appeals (Vol. II., Chap. 358), in 1804, the second section of the act of 1801 was repealed (Vol. III, Chap. 185), in 1806, the salaries of the judges were increased (Vol. III., Chap. 370), in 1807, the right to appeal on the dissolution of injunctions on motion was taken away (Vol. III., Chap. 500) and the judges directed to state the governing principles of their decisions (Vol. III, Chap. 484), and to cause their decisions to be reported (Vol. III., Chap. 487.)"

(Vol. I, Litt. Laws of Ky. Chap. XXIV.)

In the case of Garland v. Irvine at the term of 1801, a question was made whether a judgment rendered on the dissolution of an injunction upon motion, was such a final judgment that a writ of error would lie on it; it was adjudged in the affirmative—reconsidered from March until July and confirmed. This decision produced the act of 1801, which after prohibiting appeals and writs of error from judgments not final declares that the final judgment intended by this act is that which finally terminates the suit in the inferior court. This declaration is the part of the act which was repealed by the act of 1804; but it is reproduced in

substance by the act of 1807, first above referred to. (Vol. I, Litt., Laws of Ky. Chap. XXIV.)

A bill of review on account of errors in law, is rendered altogether absurd, by the 34th rule of court, which is in these words:

"At any time during the term, in which the decree is given, the court will, on motion, supported by the certificate of two attorneys belonging to the court, that they verily think there is error in the decree, in the instances enumerated in the certificate; unless the oppositive party shall, at the time of granting such rehearing, assign errors in other parts of the said decree; in which case, such matters so assigned for error, shall be considered as open at the rehearing; or the court will, at their discretion open the decree altogether, so that the whole matter may be fully reheard. In every case of a motion for a rehearing, the court will lay the party praying it, under such terms as the justice of the case may make necessary. No new testimony shall be allowed to be produced on any such rehearing. Every cause directed to be reheard shall be set to some early day in the next term, such day to be fixed by the court at the time of granting such rehearing."

Pendergass v. Jackson and Owings, 1 Sneed, 25.

RULES OF PRACTICE OF THE COURT OF APPEALS OF KENTUCKY.

Extract from the statutes establishing the Court: "The Court of Appeals shall have power to direct the writs, summonses, process, forms and modes of proceeding, to be issued, observed and pursued by said Court of Appeals."—(1 Litt. L. K. 104; 1 Dig. L. K. 381.)

MOTIONS.

(Hardin XXIII.)

1. Motions may be made immediately after the orders of the preceding day are read and the opinions of the Court delivered in; but at no other time, unless in cases of necessity or in relation to a cause when called in course.

2. They are to be made by the attorneys in the following order: First, by the Attorney General; next, by the eldest practitioner at the bar; and so on, in regular succession, to the youngest. But no attorney to make a second motion, until each has had an opportunity of making his motion.

3. Affidavits must be used when a motion is bottomed upon a

matter of fact, which, according to the practice of the Court, should be sworn to.

SUPERSEDEAS.

4. No supersedeas will be granted unless the transcript of the record on which the application is made be complete and so certified by the clerk.

5. When a writ of error shall have been made a supersedeas the clerk shall issue a certificate, in substance, as follows:

Clerk's Office of the Court of Appeals.

I do hereby certify that a writ of error hath issued from this office for the reversal of a judgment obtained by A against B in the..... court of ..... at their ..... term .....18.... in a certain action of ..... for ....., which writ of error is to operate as a supersedeas and as such is to be obeyed.

Given under my hand this .....day of ..... Which certificate shall have the same effect as if a regular supersedeas had issued.

WRIT OF ERROR.

6. Writs of error shall be directed to the clerk or keeper of the records in which the judgment or decree complained of is entered, commanding him to certify a transcript of said record to this court.

7. When a plaintiff in error shall file a record duly certified to be full and complete, before a writ of error issues it shall not be necessary to send such writ to the clerk of the inferior court; but the writ shall be made out and filed by the clerk of this court, with the said record, which record shall be taken and considered as a due return to said writ.

PROCESS ON WRITS OF ERROR.

8. The process on writs of error shall be a subpoena, directed to the sergeant, or to the sheriff of the proper county (or in case the sheriff be interested in the suit, to the coroner), commanding him to summon the defendant in error to appear in court, to show cause, if any he can why the judgment or decree mentioned in the said writ of error should not be reversed.

9. If the subpoena be not returned executed, an alias, pluries, etc. may issue at any time, on the application of the party without a special order of court thereof.

10. Where it shall appear to the court, by satisfactory proof, that a defendant is not an inhabitant of this state, there shall be a day fixed for his appearance and an order to advertise, which order shall be published

once a week for three successive weeks in some one of the newspapers published in Frankfort, the last of which publications shall be four weeks, at least, preceding the appearance day. After publication, as aforesaid, and an affidavit thereof filed with the clerk the cause shall stand for hearing in the same manner as if a subpoena against such defendant had been returned executed.

11. A fee of one dollar shall be allowed for every publication, which shall be taxed and recovered by the plaintiff, if successful, as other costs are.

APPEALS.

12. The clerk shall receive and docket the record of any appeal within the period the court has, by law, a discretion to receive it: provided, however, the court may, on motion, dismiss the appeal, at any time during the term next succeeding for such reasons as would be sufficient to prevent the court from receiving it.

ABATEMENTS AND REVIVALS.

13. When an appeal or writ of error shall abate by the death of either party, a subpoena may be taken out in favor of, or against, the legal representatives of the deceased as the case may be, directed as above prescribed, summoning the defendant, or appellee, to show cause why the suit should not be revived, which being returned executed, the cause shall stand revived without further order, unless cause be shown against the revival; in which case, such order will be made as the nature of the case may require.

14. Or, on the motion of the proper party, the cause may be revived in the names of the representatives of the deceased, without any previous process. But in such case, a copy of the order of revivor shall be served on the defendant, or defendants, before the hearing of the cause.

DOCKETING SUITS FOR HEARING.

15. The clerk shall set the causes for hearing in the order they come into his office, except those hereinafter provided for.

16. Causes which require oral testimony shall be set for trial by the clerk on such days of the term, as may appear to him proper, having regard to the times such causes come into his office, and to the number of suits in the court.

17. Causes to which the commonwealth is a party, shall be set to the fifteenth day of the term.

ASSIGNMENT OF ERROR.

18. In writs of error not operating as supersedeas, and in appeals, the plaintiff or appellant, shall within eight days after filing of the record, assign, in writing, and file with the clerk the particular error or errors of which he complains, no other error shall afterward be alleged by the party, or examined into by the court.

19. If the party fail to assign errors, as aforesaid, a rule to assign errors shall be given, and if errors be not assigned by the expiration of the rule, the cause may, on motion, be dismissed.

20. The plaintiff or appellant shall be allowed four days after the return to a certiorari shall be filed, to assign error in the record brought up by the certiorari, and which were not contained in the record first filed.

ORDER OF PROCEEDING WITH THE SUITS ON THE DOCKET, ETC.

21. Suits set for a particular day will be taken up and disposed of on that day, or as soon thereafter as may be practicable.

22. The other suits shall be called, and heard, continued, or dismissed in the order they stand docketed; saving, however, to the court the right of postponing any cause, or setting it to a particular day, for any sufficient reason appearing to them.

23. The court will not permit a cause to be continued by the consent of the parties only; the consent of the court must be obtained.

24. When a cause is regularly called up, the appellant, or plaintiff, will be called, if he appear not by himself, or counsel, or attorney, the suit will be dismissed for want of prosecution. If he appear, the appellee, or defendant will be called; and if the process so operates as that he is bound to appear, and makes default, the cause shall progress, unless for cause shown.

BRIEFS.

25. The counsel on each side of every chancery cause shall furnish the court, at a convenient time preceding the argument, with a written statement of the material points in the case; but no error or omission therein shall prejudice the counsel in argument, or the court in their adjudication.

REHEARINGS.

26. Rehearings must be applied for by petition in writing, setting forth the cause or causes for which the judgment or decree is supposed to be erroneous. The court will consider the petition without argument

and if rehearing is granted, direct it as to one or more points, as the case shall in their opinion require, but no application for a rehearing will be heard, after leave has been given to take out a copy of the judgment or decree.

COPIES OF JUDGMENTS AND DECREES, WHEN THEY MAY BE TAKEN OUT.

27. On motion, permission will be given, as a matter of course, to take out a copy of a judgment or decree of this court at any time after the expiration of fifteen juridical days from the day on which the judgment or decree was rendered, except in those cases in which the title of land or the freehold was in question.

RETURN DAYS.

28. The first of every term shall be general return days for writs of error, and process preparatory to the hearing of a cause. But if they be sued out in term-time they may be made returnable on any day therein expressed, provided it does not exceed the fifteenth day of th term.

29. The first Monday in each month shall be a return day for executions issued from this court. They shall be returnable on some one of those return days; and there shall be at least thirty, and not more than ninety days between their test and return.

ADOPTED FALL TERM, 1810.

Transcripts May Be of Records Used By Either Party.

30. When the transcript of the record of a suit shall be lodged with the clerk of this Court, in any judicial proceeding, such transcript may be used by either party to the record, on any motion for *supersedeas,* appeal or writ of error, made or prosecuted by either of them.

ADOPTED SPRING TERM, 1811.

Taxation of Costs.

31. In all cases where the costs of the record or papers filed in this Court in any suit, be not certified by the clerk of the Court from whence the record or papers came, the clerk of this court shall, when necessary, ascertain the amount of such costs from the record and papers filed.—(1 T. B. Monroe IX).

ADOPTED SPRING TERM, 1817.

Delay Causes.

32. Whenever it may be suggested, and the court, upon inspecting the record, shall be of opinion that any appeal depending in this Court has been taken and prosecuted for the purpose of delay, it will be taken up and disposed of, without having been regularly called upon the docket.

33. In cases which, in the opinion of the Court, have been brought for delay, permission as a matter of course, will be immediately given to take out a copy of the judgment or decree of this Court.

RE-HEARINGS.

34. Petitions for re-hearing must be presented within fifteen judicial days from the time of rendering the judgment or decree sought to be reviewed. (See Rule 2x.) (1 T. B. Monroe X).

ADOPTED SPRING TERM, 1823.

Briefs.

35. No cause shall be argued or submitted to the Court for a decision, unless the counsel or parties, on each side shall, in convenient time before the hearing or submission, furnish the Court with a brief statement in writing, of the points of law relied on, and citation of such appropriate authorities in support thereof, as they may wish to use. The party failing to comply with this rule, shall be considered as making default; and if such failure be on the part of the appellee or defendant in error, the opposite party shall be permitted to proceed alone in the argument: Provided, however, that neither party in the argument, shall be restricted to the use of the authorities cited in such statements. (III Littell XV).

ADOPTED JUNE 2d, 1826.

Judgments and Decrees.

36. After the expiration of fifteen juridical days, from the day on which a judgment or decree is rendered, the clerk shall, as matter of course, deliver copies of such judgment or decree, unless the case is suspended by a petition for a rehearing or otherwise.—(III T. B. Monroe V.)

ADOPTED NOVEMBER 2, 1827.

Executions for Costs.

37. The clerk may issue executions for costs in any case during term time, in cases decided at the same time; Provided that by the rules of the Court the opinion, judgment or decree of the Court may be taken out officially.

ADOPTED JANUARY 5, 1828.

Argument of Cross Appeals.

38. Cases of appeal or writ of error depending on the same record, upon complaint of error by the plaintiff and defendant, will be heard together; the counsel will be heard in the same order as if but one appeal or writ of error were pending; the counsel for the plaintiff below will open the argument upon all the errors assigned, the counsel for the defendant below will conclude the argument.—(XI T. B. Monroe, 3.)

ADOPTED APRIL 13, 1837.

Constructive Service Upon Non-Residents.

39. Whenever—from the official return of the sergeant, or from the affidavit of a credible person, stating special facts—this Court shall be satisfied that a defendant in any writ of error herein depending, is not an inhabitant of this State, a rule shall be made on the order book, warning him to appear on the first day of the next succeeding term; and if he shall not, after such a requisition, enter an appearance on or before the first calling of the cause after the rule day, he shall nevertheless be deemed a party in Court, and the case shall be heard and decided, in all respects as it would have been had he appeared in form and traversed the assign- to costs for any discontinuance, non-suit or affirmance.

ADOPTED APRIL 13, 1837.

Custody of Records.

40. No original record shall, without leave of the Court, be taken from the court room or the office of the clerk.

APPROVED FEBRUARY 8, 1838.

An Act Concerning the Court of Appeals.

Sec. 1. Be it enacted by the General Assembly of the Common-

wealth of Kentucky. That the Court of Appeals of the Commonwealth of Kentucky shall continue in session at each term, not less than forty-eight juridical days. The cases on the docket shall be distributed throughout the forty-eight days, as nearly equal in number and magnitude as may be, and shall be called and heard on the respective days they are set for, unless continued or postponed, or unless taken up and heard at an earlier day, by consent of the Court and counsel.

Sec. 2. Be it further enacted, That the causes shall be decided by the Court, at the term at which they are heard, unless the Court shall order a re-argument at the next term.

Sec. 3. Be it further enacted, That any person or persons may, on executing bond and filing the record and assigning errors, as now required by law, sue out a writ of error with a supersedeas, without an order from the Appellate Judge.

Sec. 4. Be it further enacted, That no supersedeas shall be granted in Court, and the Judges, shall not be bound to grant or refuse them out of Court.

Sec. 5. Be it further enacted, That a motion to submit a cause, as a delay case, shall not be made at the term the case stands for hearing, and the Court may refuse to take the submission of the cause as a delay case, without a brief. Provided, that nothing herein shall be so construed as to prevent the Court from having a recess at any term.

Sec. 6. Be it further enacted, That the Court of Appeals shall cause the Reporter of the Decisions to have the opinions, delivered at one term, pointed by the commencement of the succeeding term; but they may authorize the opinions of two terms to be bound in one volume; and it shall be the duty of the Reporter to print all the cases in which petitions for a rehearing shall be filed, and print the petitions with the decisions. (V. Dana VI.)

ADOPTED FEBRUARY 15, 1838.

An Act to Amend the Law Concerning Writs of Error and Appeals.

SECTION 1. Be is Enacted by the General Assembly of the Commonwealth of Kentucky, That in all cases now pending or which may hereafter be prosecuted in the Court of Appeals, either by appeal or writ of error, the appellee or defendant in error may, without filing an additional record, or suing out a writ of error, or prosecuting a cross appeal, assign as many errors in law in the record filed by the plaintiff in error, or appellant, as he, she or they may think proper; and in deciding the case it shall be the duty of the Court to decide as well the questions

presented on such assignment, as on the errors assigned by the appellant or plaintiff in error. (V. Dana VI.)

ADOPTED APRIL 12, 1838.

Delay Cases.

41. At any time between the eighth day of the first term, after the execution of an appeal bond, or the emanation of a writ of error, operating, by law, as a supersedeas, and the term at which the case might be set for a regular hearing, or, if such writ shall have been issued, or an appeal bond shall have been executed during a term of this Court, then, at any time between the eighth day, succeeding the date thereof, and the term for a regular hearing, the counsel for the defendant or appellee may submit to the Court a copy of the record for a prompt affirmance of the judgment or decree, on the ground that the supersedeas or appeal is intended only for delay, provided that he shall, at the same time, file a brief disclosing all the material points, and also, subscribe and endorse on the record of the suit the following statement: "I have carefully read and considered the within record, and am clearly of the opinion that there is no plausible ground for seeking a reversal," and thereupon (and not otherwise), the Court will examine the record, and if it also be clearly and unanimously of the opinion that there is no reasonable semblance of error, it will forthwith affirm the judgment or decree. (V Dana vi.)

ADOPTED APRIL 12, 1838.

Brief and Argument.

42. In all cases which are regularly tried, it shall be the duty of the Counsel for each party, to show distinctly, in his brief, all the points, and cite all the authorities on which he intends to rely, and neither of them shall, without the consent of the antagonist counsel, or the permission of the Court, urge, in oral argument to the Court, any point or authority not thus previously disclosed; nor shall the Court be bound to notice any other. And it shall be the duty of each party to file his brief, with the record of the suit, one day at least preceding the day of hearing. (V Dana VII.)

ADOPTED OCTOBER 5, 1838.

Appearance by Brief.

43. An appearance by Brief alone shall not hereafter entitle the

party so only, appearing, to a hearing of the cause if the other party shall by himself or counsel personally appear in Court and object thereto; nor shall a successful party appearing only by Brief be entitled to a judgment for an attorney's fee against a party appearing personally in Court, by himself or Counsel. (VII Dana IV.)

ADOPTED MAY 6, 1843.

Commonwealth a Party.

44. Hereafter causes to which the Commonwealth is a party, shall be set for trial on the first day of the term. (III B. Monroe, VIII.)

ADOPTED SEPTEMBER 8, 1843.

Warning Order Against Unknown Heirs.

45. A warning order, such as is required by a rule of this court, against non-resident defendants, and with like effect, may be made against unknown heirs, upon the filing of an affidavit by the plaintiff or plaintiffs in error, that the names of the heirs are unknown to him or them, and he or they have not been able to ascertain them, though diligent inquiry have been made. But if the proper affiidavit was made in the lower Court, to authorize the proceeding against them as unknown heirs, then, if this Court be satisfied, by the affiidavit of any disinterested credible person, that the names of the heirs are still unknown to the plaintiff or plaintiffs, their affidavit may be dispensed with and the warning order made, upon such affidavit being filed. (IV B. Monroe VII.)

ADOPTED SEPTEMBER 23, 1858

Vacancy.

46. Whereas, It will usually occur, when a vacancy takes place in consequence of the death, resignation, or the expiration of the term of office of one of the Judges of this Court that some of the causes which are pending therein may have been heard and held under advisement. It is therefore: Ordered, that in such cases when the vacancy is filled by the election or appointment of another judge, a reargument shall be allowed in any of said cases in which it may be asked for by the parties or either of them, within ten days after the first meeting of the court next ensuing the filing of said vacancy. But the failure to move for a

reargument within that period will be regarded as an implied assent by the parties that the cases in which no such motion is made, shall be disposed of by the Court without any reargument thereof. (I Met. XII.)

ADOPTED JUNE 16, 1860.

47. The Clerk of this Court shall not hereafter place any appeal upon the docket until a complete transcript of the record in the case in which the appeal is granted shall be filed in his office. (2 Met. X.)

ADOPTED OCTOBER 10, 1860.

Transcript of the Record.

48. It shall be the duty of the counsel for the appellants, upon filing a transcript of the record in the Clerk's Office of this Court, to indorse thereon, or on some paper to be filed therewith, the names of all the parties appellant and appellee, as the case is desired to stand on the docket of this Court; and also a reference to the judgment sought to be reversed, designating the page of the record where it may be found, and the term at which the judgment was rendered, and state whether an appeal was granted in the court below or not. (II. Duvall VIII.)

ADOPTED OCTOBER 9, 1863.

49. During the term at which a case is decided, a petition for a rehearing may be filed within fifteen judicial days, not including days of recess, from the time of the decision, and not afterwards, and during such term the decision shall become final, and the mandate shall issue, after the expiration of that period, and not before, unless in delayed cases, or cases involving no difficult question of law or fact, the Court shall otherwise specially direct.

50. Where a case is decided within fifteen judicial days, not including days of recess, before the expiration of the term, a petition for a rehearing, with an indorsement thereon by one of the Appellate Judges ordering it to be filed, and that the decision or mandate therein mentioned shall be suspended until the tenth day of the next term, may be filed within fifteen days after the adjournment of the Court, and not afterwards nor otherwise. If a petition shall be thus endorsed and filed, the mandate shall be suspended until the tenth day of the next term; otherwise, the decision shall become final, and the mandate shall be suspended until the tenth day of the next term; otherwise, the decision shall become final, and the mandate shall issue, after the expiration

of fifteen days succeeding the adjournment of the court and not before. (4 Met. X.)

ADOPTED OCTOBER 10, 1866.

51. But two oral arguments on each side will be allowed in any case and every such argument will be limited to one hour.

52. Where the appellant shall fail to appear, on the calling of the cause, either by himself or counsel, or by brief, the appellee shall on his appearance, either by himself or counsel, or by brief, be entitled to a non-suit, and the Court will, in such cases, so order.

53. In every case hereafter entered, heard or submitted, it shall be the duty of the Clerk to send to the Court, on the same day, the records and papers pertaining to such case. (II Duvall VIII.)

ADOPTED OCTOBER 20, 1868.

54. Records not made out in legible handwriting, or not indexed, are to be condemned, and the Clerk making out such record to be prohibited from collecting anything therefor; and the Clerk of this Court will disregard the expense thereof in taxing costs without any special order in the case. (LXXVIII Ky. 2.)

ADOPTED JULY 7, 1869.

55. The Clerk of this Court shall put no case on the Docket until the attorneys shall make a memorandum on the record, of all the parties appellants and appellees, and the judgment appealed from, designating the page of the record and the term of the court at which it was rendered. (IV W. P. D. Bush XII.)

ADOPTED MARCH 7, 1870.

56. Hereafter the causes as set on the Docket, shall have precedence of argument on the day so set ,and until they are disposed of, if ready for hearing; but if not, they shall be placed among the passed cases, which shall have precedence in that class of cases, according to their number on the Docket, and the agreement of the parties to assign such cases for hearing on a future named day shall not alter this priority. (V W. P. D. Bush XII.)

ADOPTED NOVEMBER 11, 1873.

57. The Docket for each term of this Court shall be made out and

closed twenty days before the commencement thereof; and no case shall be docketed unless the record shall have been filed before the time above fixed for the close of the Docket. (LXXVIII Ky. 3.)

ADOPTED JUNE 28, 1877.

58. Ordered, that the Clerk of this Court shall not place on the Docket for the next term any appeal filed in this office since the first day of last January, whether the judgment was rendered before or since that time, unless an assignment of error in such case be filed in this office twenty days before the next term of this court. (XII W. P. D. Bush XVI.)

ADOPTED JUNE 29, 1878.

59. When there is no cause for argument, the Court will only be open Tuesdays, Thursdays and Saturdays.

When two members of the court desire it, a rehearing shall be granted. (XIII W. P. D. Bush XVI.)

ADOPTED FEBRUARY 10, 1879.

60. When the record of a former appeal in the same case is necessary to the decision of a subsequent appeal, or when a record already in this Court is made part of the record in another case, and not copied into the transcript, the Attorney for the appellant must see to it, on pain of having the appeal dismissed, that such old record is placed with the new record before the cause is submitted. (LXXVII Ky. 4.)

ADOPTED NOVEMBER 19, 1879.

61. A party intending to move that the Clerk of the inferior Court or the adverse party shall be adjudged to pay the costs resulting from a violation by such Clerk or party of such subsection 11 of Section 737 of the Civil Code, shall make such motion at or before the submission of the cause and not thereafter; and such motion shall indicate the portions of the record claimed to have been inproperly copied, and the pages of the transcript where they may be found.

62. If the motion is against the Clerk, he must be served with a copy of the written motion at least five days before the cause is submitted. (LXXVIII Ky. 4.)

ADOPTED MARCH 2, 1881.

63. In cases not on the Argument Docket brief for appellant must be filed five days before calling of the cause, and brief of appellee one day before.

64. When cases are upon the Argument Docket, counsel for appellant must file five days before the time for which the case is set, a brief statement of points intended to be relied upon in argument.

65. Counsel are required to cite, at end of brief or statement, all authorities relied upon.

66. No brief shall be filed after submission of cause, except by permission of Court, and for cause shown. (LXXVIII Ky. 5.)

ADOPTED DECEMBER 15, 1882.

67. After a cause shall have been submitted, no brief shall be filed without giving the opposing counsel ten days' written notice of the motion to file, or obtaining the consent of the Court, and whenever a brief shall be filed after submission, the opposing counsel will be allowed ten days thereafter to file an additional brief. (LXXX Ky. XV.)

ADOPTED NOVEMBER 27, 1882.

If an appellant or his attorney, or appellee with a cross appeal or his attorney, shall for any purpose, withdraw the record from the Clerk's custody without the special order of the Court, and fail or neglect to produce it in Court on call of the case for submission or argument, the appeal or cross appeal, on motion of the adverse party, shall be dismissed for want of proper prosecution. (LXXX Ky. XVI.)

ADOPTED JANUARY 15, 1884.

Ten days' notice of a motion to affirm as a delay case must be given appellant or his attorney; otherwise such motion will not be heard until the case is called for trial on the day it is set on the docket. (LXXXI Ky. XIV.)

ADOPTED MARCH 15, 1884.

Petitions for rehearing must clearly show from the record that some question duly submitted by counsel, and decisive of the case, has been overlooked by the Court, or that the decision is in conflict with a statute, or with a controlling decision to which the attention of

the Court was not drawn, through neglect or inadvertence of counsel Any petition violative of this rule will not be presented to be filed, and if filed, will be stricken from record. (LXXXI Ky. XIV.)

TAX ON APPEAL.

Counsel, in writing briefs, are requtsted by the Court to write only on one side of paper.

The tax on appeal is one dollar, and in all cases must be paid to the Clerk of the Court of Appeals before the case will be docketed. (LXXXI Ky. XIV.)

ADOPTED JUNE 16, 1887.

Ordered, that where time is extended to file a petition for rehearing, and the time expires during vacation, or where the Court adjourns before the time for filing a petition for rehearing has expired the filing of the petition with the Clerk in the Clerk's Office within the time shall be held sufficient. The Clerk has no right to extend the time for filing, and this can only be done by an order from one of the Judges. (I Hines XXI.)

RULES OF PRACTICE.

Rules of Court Spring Term, 1810 Hardin XXIII.

Rule of Court Spring Term 1823 III Littell XV.

Rules of Practice Fall Term 1824 I T. B. Monroe V.

Adopted Spring Term, 1810, 1811, 1817, 1823.

Rules of Practice April Term ,1825 II T. B. Monroe XVI.

Rules of Practice June 2d, 1826 III T. B. Monroe V.

Statute. An act concerning writs of error on Appeal and for other purposes, January, 1827, IV T. B. Monroe III.

Session Acts of 1826, Page 30, Chap. XXIII.

Statute. Jurisdiction and mode of Spring Term 1825, Proceedings. II T. B. Monroe III.

Rules of Practice Rule 37, Adopted 1827, Rule 38, 1828, VI T. B. Monroe III.

Rules of Practice January and February 1829, I J. J. Marshall III.

Rules of Court Spring Term ,1837, V. Dana V.

Rules of Practice Fall Term 1840, I. B. Monroe III. Rule 43.

Rule of Court Fall Term 1842, III B. Monroe VIII. Rule 44.

Rule of Court Fall Term 1843, IV B. Monroe VII. Rule 45.

Rule 1858 (Metcalfe XII) not numbered.

Rule Adopted June 16, 1860,II Metcalfe X, not numbered.

Rule Adopted October 9, 1863, IV Metcalfe X, not numbered.

Rules of Practice Summer Term 1865, II Duvall VIII, not numbered.

Rule of Court July 7, 1869, IV W. P. D. Bush XII, not numbered.

Rule of Court July 7, 1869, March 7, 1870, VI W. P. D. Bush, XVI, not numbered.

Rule of Court July 7, 1869, March 7, 1870, V W. P. D. Bush XI, not numbered.

Same Rule as above VII W. P. D. Bush XVI, not numbered.

Rule of Court Winter Term 1873, X W. P. D. Bush XVI, not numbered.

Rule of Court June 28, 1877 XII W. P. D. Bush XVI, not numbered.

ADOPTED NOVEMBER 16, 1882.

FIRST. Appeals from the Superior Court shall stand for trial during the first term, beginning not less than twenty days after the appeal shall have been granted by the Superior Court.

SECOND. The Clerk shall arrange the Appeals from the Superior Court upon the regular Docket of this Court, giving them place in the order granted at the head of and before other cases from the same Judicial District from which they may be taken.

THIRD. No summons shall be necessary where all the proper parties were before the Superior Court.

FOURTH In other respects the rules applicable to appeals from the Circuit Court, except that no additional or other transcript than that upon which the case was tried in the Superior Court shall be filed or brought up, unless application for that purpose shall have been made to, and improperly refused by the Superior Court. (LXXX Ky. XVI.)

In accordance with Section 118 of the Constitution, this Court, after January 1, 1895, will be divided into two departments, each one of which shall consist of three Judges, besides the Chief Justice, who shall preside over each department. Each division shall sit on alternate days during each week, when not in joint session to hear arguments and motions and deliver opinions. Opinions shall be delivered without reference to the department delivering them. When the Chief Justice is absent, or if present from any cause fails to preside, the Judge next oldest in commission shall preside with each department, and shall require the presence of a Judge from either department when necessary to constitute a majority of the entire body. The cases when submitted, shall be assigned by the Chief justice to each department, and in such a manner as to equalize the burden. (95 Ky. XVII.)

Whenever a case involves a constitutional question, either Federal

or State, or in any case where, in the opinion of the Chief Justice, the importance of the case requires, both departments shall hear the argument, whether oral or written, and pass on the question involved; and in cases where the Judges composing one department do not concur, it shall be the duty of the Chief Justice to notify the other department, and have the question at issue disposed of in joint session. (95 Ky. XVII.)

When a majority of either department, including the Chief Justice, shall desire a joint session for the purpose of passing on any question, or hearing any cause, the entire body shall be assembled for that purpose. (95 Ky. XVII.)

After all cases heretofore continued for argument and the submitted cases shall be disposed of, a docket embracing all pending cases will be published in sufficient time to enable parties to comply with the rules of this Court. (95 Ky. XVII.)

Petitions for rehearing shall be considered by a Judge other than the one who delivered the opinion in the case. (95 Ky. XVIII.)

There shall be held three terms of the Court of Appeals in each year as follows:

September Term, beginning third Monday in September and ending the second Saturday in December.

January Term, beginning first Monday in January, and ending the last Saturday in March .

April Term, beginning second Monday in April and ending first Saturday in July. (95 Ky. XVIII.)

A. L. KING.

AN EXPLANATION IS DUE.

Our attention has recently been called to Michigan Public Acts 1907, Act 239, which is as follows:

> An act to provide for the lawful taking of suckers, mullet, dogfish and lawyers from the waters of the Sturgeon river in Houghton county, Michigan.
>
> The People of the State of Mighican enact:
>
> Section 1. It shall be lawful during the months of December, January, February, March and April to take suckers, mullet, dogfish and lawyers from the waters of Sturgeon river, Houghton county, Michigan, by means of nets or in any other manner not destructive to other kinds of fish: Provided, that the taking of suckers, mullet, dogfish, and lawyers from said waters shall be done in such manner as not to destroy other kinds of food fish, protected under the laws of this State from being taken with nets or in other ways prohibited by law, etc.

The above act makes one wonder how the Legislature came to class lawyers and suckers together.

KENTUCKY LAW JOURNAL

Published Monthly at the State University of Kentucky by the Students of the College of Law

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All subscriptions should be addressed to the Business Manager. Rates: 15c. per copy; one dollar a year; fifty cents for six months.

This number concludes the issues of the Kentucky Law Journal for the school session of 1913 and 1914, and marks the end of the second years of its life. Like the lawyer, whom it represents, its days of incubation have been had, endured and enjoyed and are fast becoming history. It has concreted its foundation by constant labor and toil and now with a circulation throughout the state is ready and willing to repay tenfold its readers and advertisers, who gave it aid during its infant struggle for existence.

The Kentucky Law Journal was brought into being, by the students of the College of Law of the University of Kentucky, in order to create an educational co-operative relation between Kentucky lawyers and the students of law; to give an unpolitical and truthful discussion of controverted points of Kentucky law; and to voice the opinions of a strong alumni organization, which the hand of time will soon mould into the leading legal advisers of this state.

As yet the Kentucky Law Journal has not sufficiently progressed to throw much light upon its purpose. But this year marks a great advancement over the last by removing financial impediments and securing its existence. After being thus forged in the furnace of experience, we contemplate its future and the prospects seem bright and glowing. Over a hundred graduates of the College of Law are now scattered about over the state. Each succeeding year will greatly increase their proficiency, fortune and fame. While thus mediating and dreaming, we childishly gaze through the mist of future years and fancy that we see the hand of the alumni rocking the cradle of state. We believe that this dream could be hestily realized by the concerted action and plans of the alumni if a strong organization was now perfected and their opinions voiced.

The Kentucky Law Journal was created to be used by them in advancing the science of jurisprudence and will ever deem it a duty

and pleasure to voice their opinion. Like a trumpet it would sound their voice over the state of Kentucky and call them together to execute their plans. The lawyers and laymen are servants of the people and should disclose to them their opinion and plans. The Kentucky Law Journal is ever ready to make this disclosure. During the next session of school its columns should be filled with their diction. The trumpet now sounds the call of the servant to duty. We trust that each alumnus will obey the call.

We the staff in delivering the care and publication of the Kentucky Law Journal into the safe hands of our successors, with earnest solicitation ask that they be aided by each and every practicing attorney of the commonwealth of Kentucky.

BOOK REVIEWS

"Principles of Judicial Proof," Complied by John Henry Wigmore, Professor of the Law of Evidence in the North Western University Law School. (Little, Brown & Co., Boston) I Vol. $6.00 Net.

A scientific treatment of the subject by an able author. Professor Wigmore is as well known as any authority on the law of evidence in this country.

Following are some of the recent comments on his work in Evidence:

"Not only the best but the only authority in this country and England"—Harvard Law Review. "The Standard authority on Questions of Evidence,"—Justice D. J. Brewer, Supreme Court of the United States. In the present work of the author advances the proposition that heretofore too much consideration has been given to the Question of Admissibility and not enough to the Science.—The Principles of Proof,—The Value of a Mass of Evidence, and Law to ascertain that value. The author treats the subject in a very thorough, interesting, and scientific manner. He takes for his basis, Psychology, and General Experience and illustrates by Judicial Trials.

Following is a brief summary of the Contents: Introductory: General Theary of Proof. Part I. Circumstantial Evidence, which embraces, Evidence to prove an event, condition, quality, course, or effect of external inanimate nature; Evidence to prove identity; Evidence to prove a human trait, quality or condition, including Evidence to prove moral character, motive intent, etc.; Evidence to prove the doing of a human act; and the Datum Solvendum. Part II. Testimonial Evidence, which embarces Genuine Human Traits affecting the trustworthiness of testimony, including race, age, sex, mental disease, moral