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RULES OF
MONROE COMMON PLEAS.

At a Court of Common Pleas, holden at Rochesterville, in and for the County of Monroe, on the second Tuesday of January, 1822.

PRESENT,

The Hon, ELISHA B. STRONG, Esquire, First Judge.
TIMOTHY BARNARD, JOHN BOWMAN, } Esquires, Judges.
N. ROCHESTER, *Clerk.*

IT WAS ORDERED, by the Court, that the following Rules and orders be adopted for the regulation of the practice of the Court.

1. That the seal, already provided by the Clerk of this Court, and now in the Clerk's office, be adopted as the seal of this Court.

2. That every rule to which a party would, according to the practice of the court, be entitled of course without shewing special cause, shall be denominated a common rule ; and every other rule shall be denominated a special rule ; that all common rules, and all rules by consent of parties, shall be entered with the Clerk, at the Clerk's office in a book to be by him provided and kept for the purpose, and may be entered at any time, as well in vacation as during the term ; and the day when the rule shall be entered shall be noted therein, and every common rule shall be deemed to be taken at the peril of the party taking the same, and if taken improperly or erroneously, may be set aside, unless the party against whom the same shall have been taken, has affirmed

the rule, or by suffering a *lache*, waived any objections thereto.

3. That when any attorney shall commence a suit for a non-resident plaintiff (or a plaintiff who pending the suit shall become a non-resident) the defendant may at any time, by a special motion for that purpose, have a rule, that the plaintiff file security for costs, such as the defendant may in the event of such suit in this court recover against the said plaintiff, which security shall be by a freeholder or householder residing within the jurisdiction of this court, who shall execute and deliver to the defendant's attorney, if an attorney be employed, otherwise to the defendant himself, a bond in the penal sum of fifty dollars, and all proceedings, on the part of the plaintiff, shall be stayed from thenceforth, until such security shall be given; the costs of such motion to abide the event of the suit: And, provided. that in case the defendant or his attorney, as the case may be, shall except against the sufficiency of such security and give notice thereof in four days after the delivery of such bond, such security shall not be holden to be good, unless the obligor shall within four days after notice of such exception make affidavit, that he is a freeholder or householder within the jurisdiction of this court, and worth double the penalty of such bond over and above all debts, dues, or demands against him; and also deliver the same affidavit, within the said four days, to the obligee of the said bond.

4. That when any non-resident, or person not living within the jurisdiction of this court, other than attorneys of this court, shall apply to the clerk for process to be issued in his own name, it shall be the duty of the clerk not to issue such process until such person shall procure a bond to be executed to the defendant in the penal sum of sixty dollars by a

good and able freeholder residing within the jurisdiction of this court conditioned for the payment of such costs as shall, in the event of such suit, be recovered against the said plaintiff by the said defendant, and deliver such bond to the clerk to be kept by him until called for by the defendant; and in case any process shall be issued contrary to this rule, the defendant may, on special motion for that purpose, have judgment of NON-PROS, or as in case of NON-SUIT, as the case may be.

5. That bail to the arrest and bail to the action shall be given in all cases, except in suits on bail bonds and against heirs, devisees, executors, and administrators, who are to be held to bail in cases of devastavit only.

6. That if any defendant shall think himself aggrieved by being held to bail, or if he conceive the sum in which he is required to give bail is unreasonable, application may be made to the court, or in vacation to one of the judges for relief in the premises, and such order shall be taken thereon as justice may require upon due notice to shew cause.

7. That on application to one of the judges in vacation the rule to plead, to declare, to reply, or to join in demurrer, or other pleading may be enlarged if there should be cause for it.

8. That the plaintiff shall be allowed twenty days, inclusive, after actual notice of bail be given to except to the sufficiency thereof, which exception shall be entered on the bail piece.

9. That notice in writing of such exception shall be given to the defendant's attorney, if any attorney be employed, and if no attorney be employed, such notice shall be put up in the clerk's office, and then the bail shall justify in ten days inclusive after such notice, or the defendant shall add other bail, or put in

new bail, who shall justify within the said ten days; in default whereof the plaintiff shall be at liberty to proceed on the bail bond, or by *amercement* or *attachment*.

10. That justification of bail may be taken before one of the Judges of this court: and that four days notice shall be given to the plaintiff's attorney of every intended justification, inclusive of the day on which it is given, and if Sunday intervene, five days notice shall be given.

11. Suits on bail bonds shall be stayed on the following terms: If the defendant shall apply to be relieved therefrom on or before the return day of the writ against the bail, then the proceedings in the bail bond suit shall, in all cases, be set aside on payment of cost therein, filing bail and justifying, pleading issuably in the original cause, and taking notice of trial in the same *instanter*: But if such application for relief from the bail bond suit shall be made after the plaintiff has lost a trial in the original cause, or an opportunity of noticing the same for trial, unless the same was lost by his own *laches*, then, in addition to the terms imposed in the first case, the defendant shall file an affidavit of merits, and the plaintiff shall be entitled to judgment on the bail bond as security.

12. That no private agreement or consent between parties or attornies, in respect to the proceedings in a cause, shall be alleged or suggested by either of them against the other, unless the evidence thereof shall be in writing subscribed by the party against whom it shall be so alleged or suggested or entered in the book of common rules, with the assent of the attornies of both parties.

13. That the following rules be observed in respect to the surrendering defendants in exoneration of

bail: The defendant who wishes to be surrendered to the sheriff in discharge of his bail, or the bail who wishes to surrender his principal in exoneration of himself, shall procure from the clerk's office a certified copy of the bail piece, and such defendant shall appear or be brought before one of the judges of this court, the sheriff, or one of his deputies, on notice in writing to be given to him by the said judge or defendant of such intended surrender, shall attend before him for the purpose of receiving into his custody such defendant, such surrender shall be indorsed by the judge aforesaid on such certified copy of the bail piece, which copy shall be filed in the clerk's office and notice given to the attorney for the plaintiff of such surrender, and such surrender to, or taking into custody by the sheriff shall, unless the bail had rendered themselves previously liable, be considered as a full and complete discharge of the bail and make the sheriff liable and the clerk shall note such surrender in the book or docket to be kept by him of the bail entered in the causes arising in this court.

14. That the rule to plead, and every other rule to answer, comprehending the rule in ejectment for the tenant to appear and enter into the consent rule, and the rule on a scire facias for the defendant to plead shall in ejectment or scire facias be a rule of twenty days from the day when the same shall be entered, and in all other cases shall be a rule of twenty days after service of a notice thereof and a copy of the pleading to be answered, except that the rule to join in demurrer to a plea in abatement, and the rule of scire facias for the defendant to appear shall be rules of four days only; and when there shall have been a judgment of respondeas ouster, on a demurrer to a plea in abatement the plaintiff

having served the defendant with the notice of the judgment shall not then be held to accept of any answer to the declaration after four days from the day of the service of such notice; that if the attorney for the plaintiff shall not have received a notice in writing from an attorney that he is retained to defend the suit, then, in every such case, if the service of the notice of the rule to plead and of a copy of the declaration shall not have been on the defendant personally, the service may be if the defendant shall be returned in *custodia* on the sheriff or one of his deputies; and if the defendant shall be returned *cepi corpus*, the service of a copy of the declaration shall not be necessary, and the service of a notice of the rule to plead may be by affixing the same in some conspicuous place in the clerk's office; and when special bail shall not be required, and the writ shall be accordingly returned with the defendant's appearance indorsed, the plaintiff may cause the defendant's appearance to be entered in the book for entering common rules, and in such case also the like service as is last specified, shall be sufficient.

15. That no party shall be entitled to the benefit of the rule to plead or to answer any pleading until the declaration, or other pleading to be answered, shall be filed.

16. The plaintiff shall not be held to accept of a plea in abatement, unless served within ten days, both inclusive, after service of declaration and notice of the rule to plead; nor shall either party be held to accept of any declaration, plea, answer or other pleading after the default for not declaring, pleading or answering shall have been entered.

17. The defendant shall be entitled to twenty days both inclusive after the last day of the term, in

which the writ is returnable, for putting in special bail where bail is required.

18. That the service of a declaration, *de bene esse*, at any time shall not be deemed a waiver of bail or of justification of bail.

19. The defendant may at any time, in vacation or in term, after his appearance shall have been entered, or bail filed and perfected as the case may require, enter a rule that the plaintiff declare before the last day of the term next following the notice of said rule, and the said notice shall be served at least thirty days before the first day of the term; and on the last day of the term to which the court shall continue to sit, the defendant may, upon filing an affidavit of the due service of such notice, and that no declaration has been received, or an acknowledgement of said service by plaintiff's attorney, enter the plaintiff's default; and at the then, or any subsequent term thereafter, enter a rule for judgment of *non pross*.

20. That against a defendant in custody the plaintiff shall be obliged to declare within two terms, inclusive of that in which the writ is returned served, and to proceed to trial within two terms inclusive of that in which issue is joined, otherwise the defendant may be discharged by a writ of *supersedeas*, to be allowed by a judge of this court, unless cause be shown to the contrary in pursuance of an order for that purpose.

21. That all rules for final judgement, except on warrants of attorney, shall be entered *nisi causa ostensa sit sedente curia*, and at the expiration of the rule, the plaintiff may have his costs taxed and issue execution.

22. That all motions for new trials be made the same term in which the verdict shall have been ta-

ken; that notices for executing writs of inquiry shall be for the same time as for trials at bar, and may be given at any time after the default shall have been entered.

23. That all notices of trial, and of executing writs of enquiry, be in writing, and in cases where the defendant resides above forty miles from the place where the trial or inquiry is to be, such notice shall be delivered to the defendant's attorney at least fourteen days, inclusive of the day of delivery, before the day appointed therein for the trial or inquiry, and if only forty miles or under, at least eight days inclusive of the day of delivery before the day appointed therein for the trial of the cause or execution of the writ of inquiry.

24. That in all cases where fourteen days notice of trial or inquiry is necessary a countermand thereof in writing be served at least six days exclusive before the intended trial or inquiry, and in cases where only eight days notice is necessary the countermand thereof shall be delivered at least two days exclusive of the day of delivery thereof; otherwise the plaintiff shall pay to the defendant the like costs and charges as if such notice had not been countermanded.

25. That in all cases where notice of trial shall be given, a copy thereof shall be put in the clerk's office, with a note of the issue and the day when joined, at least four days previous to the sitting of the court, and the clerk shall by the first day of the term make a calender of the causes so noticed, for the judges of this court, in which they shall be placed according to their priority, and if of the same date, they shall be placed in the calender in the order in which the notices were received by the clerk, and it shall also be the duty of the clerk by the said first

day of term to make a copy of said calender for the attornies and other officers of this court.

26. That each cause shall be called on according to its standing on the calender, and if it is put off at the instance of either party, it shall lose its preference and go to the foot of the calender.

27. That all causes noticed for trial shall be noticed for the first day of the term, and if the cause is postponed at the instance of the defendant, and which shall only be on sufficient cause shown to the court, he shall pay the costs of the plaintiff's witnesses until the cause is again called, and in case the plaintiff shall not try the cause pursuant to such notice, without any default on his part the defendant may enter a rule that the plaintiff pay the costs of the term to be taxed, and also that all proceedings on the part of the plaintiff be stayed until such costs are paid, and at any subsequent term on reading and filing an affidavit of having demanded such costs and of the non-payment thereof, the defendant may enter a rule on motion in open court for an attachment.

28. That no special motion shall be made relative to any cause in this court but upon affidavit of the matter on which such motion is to be founded, & unless the opposite party shall have been served with a copy of such affidavit and notice of the motion, but if application is founded on a matter of record or upon a matter appearing upon the minutes of the court, then it shall be sufficient to give notice of the application and of the grounds thereof without making or producing any affidavit.

29. That if any party intending to make a special application to this court in any cause shall deem it necessary to have the proceedings stayed, any one of the judges in vacation shall be authorised to make an order for such purpose, if he be satisfied

that there is sufficient cause shewn to him for such order: and such order when duly served shall have the effect of staying such proceedings until the order of the court thereon, and whenever such order is served on the opposite party, it shall be accompanied with a notice of the intended application, and such order shall take effect only from the delivery of such notice, but no such order shall be made by any judge of this court except the first judge, or other judge who shall be of the degree of counsellor at law in the supreme court of this state, unless due notice be given to the attorney of the opposite party of the time and place of applying for said order.

30. That in causes wherein attornies are employed on both sides, and judgment is had, the attorney of the party in whose favour such judgment is had, shall serve a copy of his bill and give notice of the time and place of taxing his costs to the opposite attorney, two days inclusive of the day of service thereof.

31. That bail sued on recognizance of bail, shall have four days in term to surrender the principal, after the bail has been served with the capias, and if sued by scire facias, may surrender the principal at any time before or upon the last day of the term in which the scire facias is returned, or on the return day of the alias scire facias, if the first be returned nihil upon payment of costs in the respective proceedings.

32. That every attorney of this court, who does not reside in the county of Monroe, shall appoint some attorney resident in the village of Rochesterville, or Brighton, or the deputy clerk, for his agent, whose name shall be put and kept up, in some conspicuous place in the clerk's office: and that the service of all pleadings, rules, notices and papers, made on

such agent, shall be good: when no such agent shall be appointed by such non-resident attorney and his name put up as aforesaid, services of all pleadings, rules, notices and papers, may be made in the same manner as when no attorney is employed.

33. That whenever any cause shall be at issue, so that it might have been tried or regularly noticed for trial at a previous term, and is not tried, the defendant at any term after may enter a rule in the common rule book, requiring the plaintiff to bring the same on to be tried by the first day of the next term thereafter, or judgment as in *case of non-suit*, a notice of which rule, and that the defendant intends to move at next term for judgment as in case of non-suit, shall be served on the plaintiff's attorney at least ten days before said term, and if the plaintiff shall neglect to notice, or having noticed shall fail (owing to his own lache) to try said cause at said term, the defendant, on affidavit of the service of said notice, shall on motion in open court, after the jury are discharged, be entitled to judgment as in case of non-suit, unless the plaintiff shall shew reasonable cause to the court for not having tried said cause, and pay the costs of the said motion (as well as the costs of the term, if the cause was noticed for trial) in twenty days after the same shall be demanded of the plaintiff or his attorney, and on filing an affidavit of a service of a copy of the taxed bill of costs, and demand of payment on the plaintiff or his attorney, and of the non-payment of the same within twenty days after said demand, then such rule shall become absolute and judgment be perfected in vacation and filed as of the preceding term.

34. That the party entitled to costs, or his attorney, or either, by an authority in writing given to a third person, may in all cases demand cost, which

shall be as valid as if done in person by the said party, and a demand of costs in all cases made on the attorney of the party in default, shall be as valid as if made on the party himself.

35. That if the defendant shall plead the general issue, and if the plaintiff shall not within twenty days after the service of a copy of the plea, either demur thereto or amend the declaration, or if either party shall in pleading in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to the pleading within twenty days after the service of a copy thereof, the cause shall in each of these cases, be deemed to be at issue, and if a cause shall be put at issue in the vacation, or if it shall be put at issue in term, and there shall not be three days in term thereafter, then and in this case the days so remaining in term shall be the time limited to obtain a rule for a commission to examine witnesses, or for a view, or for a struck jury, whereby the defendant's obtaining the rule may stay the plaintiff from bringing the cause on to trial, or whereby the plaintiff's obtaining the rule may stay the defendant from entering a rule to bring the cause on to trial, and where the rule shall be subsequently obtained by the defendant, the plaintiff may bring the cause on to trial and where it shall be so obtained by the plaintiff, the defendant may enter a rule to bring the cause on to trial, and be entitled to judgment thereupon notwithstanding the commission may not be returned, or the jury may not be balloted for the view, or may not be struck, as the case may be; and if at the time of giving notice of the trial, the jury on such subsequent rule obtained by the defendant, shall not be balloted for the view, or not be struck, as the case may be, the plaintiff may proceed to trial on the ordinary jury process, but if the rule be obtained within the time

above limited and there shall be a delay in the party obtaining the rule, to have the commission returned or to have the jury balloted for the view, or struck, the court may on motion of the other party order the rule to be discharged and otherwise or further order as the case may or shall be adjudged to require.

36. Ordered, That the plaintiff may at any time before default for not replying shall be entered, if the plea shall be a special plea, or a plea in abatement, or within twenty days after service of a copy of the plea, if it shall be the general issue, amend the declaration, and the rule to plead, which may have been taken against the defendant, shall then be deemed to be only from the day of service of the copy of the amended declaration, and in like manner where there shall be a demurrer to a declaration, or any other pleading not being a plea in abatement, the party against whom the demurrer shall be taken, may at any time before the default for not joining in demurrer shall be entered, amend the pleading demurred to; and further the respective parties may amend of course and without costs, but shall not be entitled so to amend more than once.

37. That where any writ returnable in this court, shall not have been returned on the day allowed for the return thereof, the party who may have sued out such writ, may then take a rule against the person or officer required to make return of such writ, to return the same within twenty days after service of notice of the rule, or that an attachment will be issued against him, and if the writ shall not thereupon be returned, the party taking the rule may at any time after the expiration thereof, and on filing an affidavit of the service of notice thereof and that such writ is not returned, enter a rule against such officer or other person for an attachment, and may

at any time thereafter and without waiting until the next term, take out an attachment of course, and on return of cepi corpus, wherein bail shall have been required, the plaintiff may enter a rule that the sheriff or other officer bring in the body of the defendant in twenty days after notice of said rule, or shew cause by the first day of the then next term why an attachment should not issue against him, and if no cause be then shewn, on due proof being made of the service of notice of such rule, a rule for attachment may be entered on motion of course.

38. That where the defendant is in actual custody, or so returned on the capias, eight days notice of inquiry or trial, in writing, inclusive of the day of delivery, served on the defendant in person, the sheriff or jailor, shall be deemed a good service.

39. That on filing affidavit of the due service of a declaration in ejectment, the rule shall be, that the tenant appear, file common bail, enter into the consent rule, and plead not guilty, in twenty days, or that judgment be entered against the casual ejector for want of a plea.

40. That if the defendant on a writ or plaint in replevin be returned summoned, the rule shall be, that the defendant appear in four days, or that an attachment issue against him, and if on the attachment he be returned attached, the rule shall be, that he appear in four days, or that *distringas* issue against him, requiring issues to be levied to ten dollars with costs, and a distringas shall be so repeated against him from time to time until he shall appear to answer the plaintiff; but no notice of such rule shall be necessary, and if the attachment be returned nihil, or if no issues are returned on the distringas, then in either case the plaintiff, after due service of the declaration and notice of rule to plead, may as in

other cases, proceed to enter the defendant's default for not appearing and pleading, and may take the like judgment as if the defendant had appeared and confessed the taking of the goods or chattels in the writ or plaint mentioned.

41. That inquests by default may be taken at the opening of the court, on the first and second days of term, and that in issues where it may be proper, in which inquests by default are intended to be taken, such intention shall be expressed in the notice of trial; and in such cases, unless the defendant or his attorney shall before the inquest be taken, file a satisfactory affidavit of merits, and serve the plaintiff's attorney with a copy thereof, he shall be held liable to pay the costs of taking the inquest, if it shall be afterwards set aside, and the inquest shall remain until such costs be paid.

42. That the jurors' fees shall be paid by the plaintiff's attorney in all cases.

43. Defaults in vacation for the want of a plea, shall be set aside on the defendant's paying costs, accepting a declaration, and pleading issuably, and accepting a notice of trial instanter, and delivering to the plaintiff's attorney an affidavit of merits; provided such plea is offered or tendered to the opposite party, fourteen days prevous to the first day of next term, after such default shall have been entered.

44. That on or before the first day of each term, the Clerk of this Court shall make out an account, and enter the same at the end of the calender of causes made out for the Judges, specifying in said account the amount of the Judge's fees due from each attorney of this court on all writs of capias ad respondendum returned served, or an appearance indorsed in the preceding term and vacation; and the

said clerk shall also make out and deliver on the first day of the term to each of the attorneys of this court, (who shall be present) or his agent, an account of the Judge's fees due as aforesaid from him, and on the second day of the term at the opening of the court each of the attorneys attending the term shall pay to the clerk the amount of said fees on pain of contempt, and if any attorney not attending as aforesaid, shall omit paying said fees, the clerk shall suspend filing the record for the plaintiff's attorney in those causes wherein the Judge's fees are unpaid, until the same shall be paid; and further, at the succeeding term the clerk shall report the names of the attorneys in default who at that time shall pay the said fees.

45. That the clerk, on filing every capias, alias or pluries capias ad respondendum, returned cepi corpus, enter of course in the common rule book, as on motion of plaintiff's attorney, a rule for body or that the sheriff be amerced, as practiced by the clerks of the supreme court.

46. That services of rules, or notices of rules, and other papers, made on the under sheriff, or any one of the sheriff's deputies, residing in the village of Rochesterville or of Brighton, or upon the regular clerk of the sheriff's office in the said office, when the same is kept in either of said villages, shall be as valid and of the same effect as if made on the sheriff himself.

47. That no person shall be permitted to practice as an attorney or counsellor in this court, unless he shall have been admitted an attorney of the supreme court of this state, or shall have served a regular clerkship with some attorney of the said supreme court, or of this court, of seven years: but any portion

classical studies may be deducted, and every such person (unless he produce a licence of his admission as an attorney of the supreme court) on due proof of a certifiuate of the person or persons with whom he has served, certifying as to the time of his pursuing juridical studies, in his office, and the goodness of his moral character, and also his own affidavit of having pursued classical studies where any abridgement of time shall be claimed, specifying what studies he purused, and how long each: if found of sufficient learning, on examination in open court, may be admitted to practice as an attorney and counsellor of this court: Provided that in case any person has or shall have practiced as an attorney or counsellor two years prior to the application for his admission to practice as an attorney or counsellor of this court, he shall not be entitled to such admission unless he produce the certificate of the first or senior judge or of the court of common pleas of the county in which he last resided and practiced previous to his coming to this county, that he sustains in such county a fair character in point of honesty and upright professional practice: but such certificate shall not be required of the attornies or counsellors who resided in the county of Genesee or Ontario on the 22d of February 1821.

48. That on application of every candidate for admission as attorney or counsellor of this court, the credentials of such applicant shall be referred by the court to a committee of three of the senior members of the bar then present, to report to this court whether such candidate comes within the meaning and possesses the qualifications and credentials required in the preceding rule.

49. That in all cases not provided for by these rules, the practice of the supreme court shall be a-

dopted as nearly as may be, when the same shall not operate against any statute regulating this court.

50. That the clerk of this court shall always have in open court one or more copies of the preceding rules for the inspection of the court, and the practitioners thereof.

51. That upon any appeal from the judgment of a justices court, under the act of April 10, 1818, being duly entered before any justice according to the act, if the justice shall not make a return of the proceedings within the time required by law, then either party may on filing an affidavit shewing the performance of the several matters required by the act in order to the entering an appeal, cause a rule to be entered in the common rule book in term or vacation requiring the justice to make such return within twenty days after service of notice of that rule, or that an attachment will issue against him; and if the rule be not complied with, then on filing an affidavit shewing due service of the rule and also shewing such noncompliance, a rule may be entered as aforesaid for an attachment against the justice and an attachment may, at any time thereafter and without waiting until the next term issue of course.

52. That if any attorney shall be retained for either party and shall give notice thereof, all subsequent notices for that party shall be served on such attorney, or his agent as in other cases: and in all cases of appeal, under said act, the appellant's attorney shall put up, in some conspicuous place in the clerk's office, within twenty days from and after the time limited for entering the appeal before the justice, and before giving notice of hearing, a notice of his retainer to prosecute such appeal: And in default thereof, all notices from the appellee's attorney may

be addressed to the appellant and be served, by affixing in the clerk's office.

53. That at the election of either party, an appeal in any cause before a justice which according to law would be triable by a jury, may be so tried, on the hearing before this court: Provided the party electing the same shall with notice of trial give notice also that he demands a trial by jury.

54. That either party to the appeal may notice the same for hearing; and notices for such purpose, by either party, shall be given in the same manner and for the same times respectively, as notices for trials in other cases, according to the residence of the opposite party: and in case both parties shall notice the cause for trial by jury, the clerk shall make out but one venire, in the cause upon such notice.

55. That appeals shall be entered on the calender according to their priority: to be determined by the filing of the returns in the clerk's office.

56. That where an appeal comes on for hearing, the same shall be opened by the party who ought to have opened the same before the justice.

57. That when any appeal, not to be tried by jury, is called upon the calender, and only one party shall be ready to proceed to the hearing thereof, then if the party who shall be ready to proceed, shall prove by affidavit, or acknowledgement in writing of the opposite attorney, due service of notice of hearing upon the opposite party, judgment shall thereupon be rendered upon the default of the party not ready:— Provided however that upon good cause shewn, the hearing may be postponed.

58. That upon the decision of an appeal, a record shall be made and filed by the prevailing party, in which after the placita and a memorandum,

shortly stating the bringing of the appeal and by and against what parties, the return of the justice shall be entered verbatim and if either party demanded a jury, an entry thereof shall be made showing by which party the same was demanded; and which record shall also set forth the default or appearance of the parties, the continuances if any, and the judgment and other proceedings, according to the nature of the case, and the usages of law.

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