

**EQUITY PRACTICE IN THE UNITED STATES
CIRCUIT COURTS. A COMPILATION OF
THE PROVISIONS GOVERNING THE SAME
AS FOUND IN THE STATUTES OF THE
UNITED STATES, RULES IN EQUITY AND
DECISIONS OF THE SUPREME COURT**

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Equity Practice in the United States Circuit Courts. A Compilation of the Provisions Governing the Same as Found in the Statutes of the United States, Rules in Equity and Decisions of the Supreme Court by Oliver P. Shiras

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OLIVER P. SHIRAS

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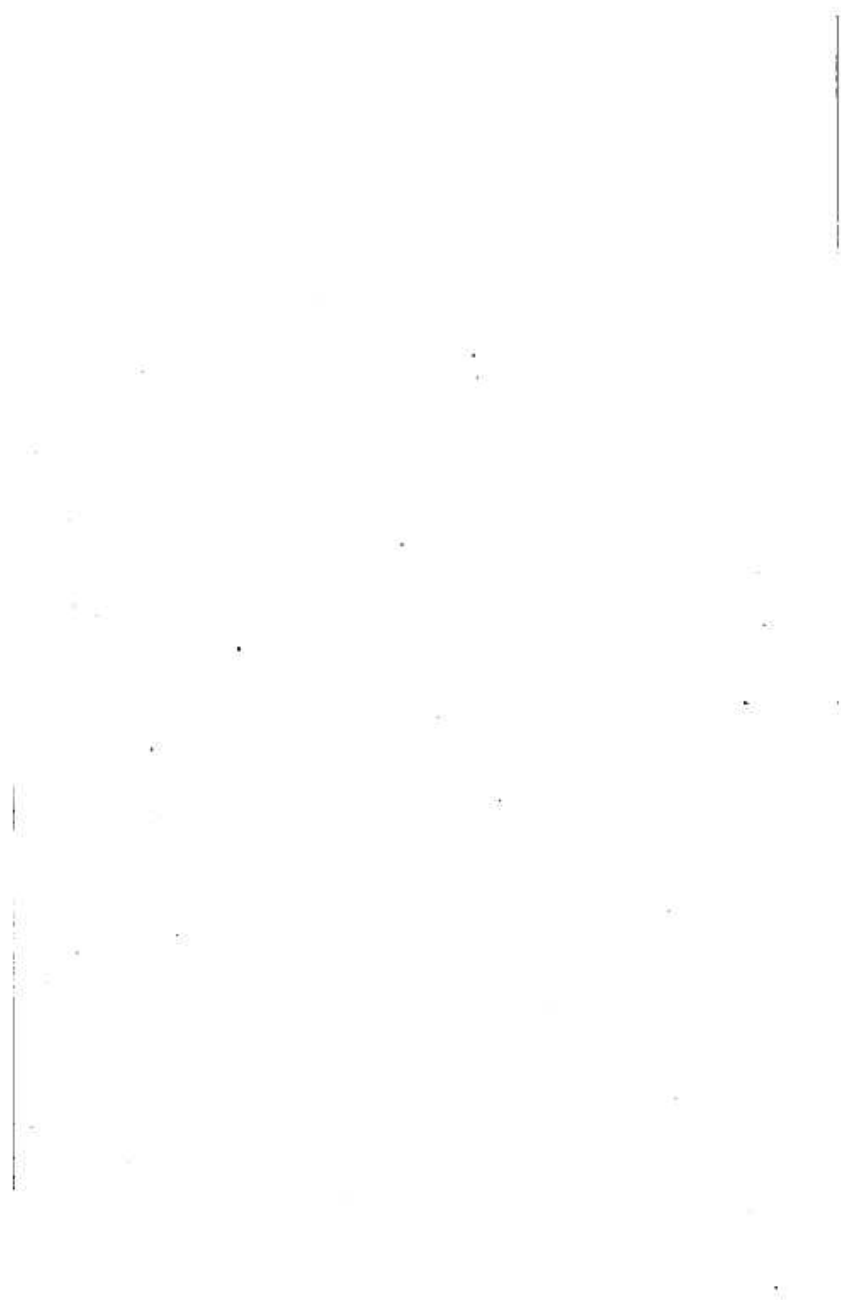
OLIVER P. SHIRAS,

DISTRICT JUDGE FOR THE NORTHERN

District of Ills.

CHICAGO:
CALLAGHAN AND COMPANY,
1889.

THE following compilation is not intended to be a treatise upon equity practice at large, but only to bring together in compact form the provisions found in the rules in equity prescribed by the supreme court, in the sections of the statutes of the United States, and in the decisions of the supreme court, which recognize, prescribe or explain the steps ordinarily required to be taken in carrying through suits in equity in the circuit courts of the United States. The purpose sought to be achieved is the furnishing a manual for ready reference for the busy practitioner and a guide to the novice, explaining the mode of procedure in bringing, preparing for hearing, and submitting suits in equity, including the means employed for the enforcing, reversing or appealing from final decrees.



METHOD OF PROCEDURE
IN
EQUITY CAUSES
IN
THE UNITED STATES CIRCUIT COURTS.

CHAPTER I.

THE CIRCUIT COURT AS A COURT OF EQUITY—JURISDICTION—RULE DAYS—MOTIONS AND ORDERS GRANTABLE BY CLERK OR JUDGE.

I. With the exception of cases to which a state is a party, or which affect ambassadors, foreign ministers, their domestic servants, consuls or vice-consuls, of which, by section 2, article 3, of the constitution and section 687 of the Revised Statutes, original jurisdiction is conferred upon the supreme court, and of cases arising under the revenue, national banking and bankrupt laws, and the few other special matters enumerated in section 563 of the Revised Statutes, in which jurisdiction, exclusive or concurrent, is conferred upon the district courts, the original jurisdiction of causes in equity, cognizable in the courts of the United States, is vested in the circuit courts.

Revised Statutes, section 629; 18 Statutes at Large, 470; 25 Statutes at Large, 483. -

II. The forms of process used and the modes of procedure had in suits in equity in the courts of the United States are according to the principles, rules and usages obtaining in courts of equitable jurisdiction, and especially in the high court of chancery in England, subject to alteration or addition by statute or by rules of courts duly adopted; power being given to the supreme court to adopt from time to time general rules for the regulation of the equity practice in all the courts of the United States, under which authority a series of rules have been promulgated, known as *The Rules of Practice for the Courts of Equity of the United States*.

Revised Statutes, sections 913, 917. Rule 90.

III. The circuit courts, as courts of equity, are always open for the purpose of filing bills, answers and other pleadings, for the issuance of process and for the making all interlocutory motions, orders and rules, and the directing such other proceedings as may be necessary to prepare causes for hearing upon their merits.

Rule 1.

IV. The first Monday of each month is a rule day, on which days the clerk is required to be in attendance at his office for the purpose of receiving, entering and disposing of all motions, rules, orders and other proceedings grantable as a matter of course.

Rule 2.

V. All motions and applications filed in the clerk's office, for the issuing of subpoenas for de-

pendants, subpoenas for witnesses, for filing bills, answers, exceptions, pleas, demurrers and other pleadings; for making amendments to bills before answer, plea or demurrer thereto; for making amendments to answers before replication thereto; for taking bills *pro confesso* for want of entry of appearance, or for want of a pleading; for filing exceptions and all other proceedings which do not require action by the court or judge thereon, are deemed matters grantable of course.

Upon cause shown, proceedings had as matter of course may be altered, suspended or rescinded by a judge of the court.

Rule 5.

VI. Either of the judges of the court may at any time at chambers, or on the rule days at the clerk's office, make and direct all such interlocutory orders, rules and other proceedings as may be needed to prepare causes for hearing upon their merits.

This rule is intended to apply to such proceedings as are not grantable as a matter of course by the clerk, but which require the action of the court or a judge thereon.

In some instances the order, leave or rule may be granted by the court or judge without notice to the adversary party of such application.

In others, notice must be given.

Where the rules provide that notice shall be given of an application for a certain order or other proceeding, such notice is essential,— and unless a different time is assigned by a judge, the same will be for

hearing on the rule day next after that on which the motion is made.

Where the rules provide that a court or judge may grant a named order or leave, but is silent in regard to notice, then the same may be granted without notice other than the entry upon the order book by the clerk, although the court or judge may, at discretion, require notice to be given.

Application for orders, rules and other proceedings may be made orally or in writing.

Generally, the better practice is to prepare the application in writing and submit or send it to the judge, asking him to indorse the required order or leave thereon, or, if notice is required of the application, to indorse thereon the time and place of hearing the same, of which notice must be given to the adversary party or his solicitor.

Rule 6.

VII. It is the duty of the clerk to keep an order book, in which is entered, on the day they are made, all motions, rules, orders and other proceedings made and directed at chambers or on the rule days, and, except in cases where personal or other notice is specially required or directed, the entry in such order book is notice to the parties and their solicitors of such motion, order, rule or other proceeding.

Rule 4.