Meeting of the Advisory Committee on Rules for Civil Procedure held at New Haven, Connecticut, from August 28 to September 2, 1936.

PRESENT;

Hon. William D. Mitchell, Chairman,

Dean Charles E. Clark, Reporter,

Major Edgar B. Tolman, Secretary,

Hon. Warren Olney, Jr.,

Hon. George Donworth,

Mr. Robert G. Dodge,

Prof. Wilbur H. Cherry,

Mr. Edward H. Hammond,

Hon. Scott M. Loftin,

Mr. Leland Tolman,

Mr. Joseph G. Gamble,

Mr. James Wm. Moore.

THE CHAIRMAN: I will explain at the outset why I forced this meeting on you at this time of the year.

I talked at considerable length with the Chief Justice about it. I saw him again at St. Andrews two weeks ago. I think it is fairly evident to everybody that we are not going to have these rules ready on the first of January. The court told us that we had to have them ready for it by December first, but that is a physical impossibility. They would be deep into the term of another

month, and they would not have time to do anything between the first of October and the first of January.

Of course, with that ahead of us it would have been a sensible thing to defer this meeting to October and have a full session and get more suggestions from the bar. But that meant a decision from somebody that we weren't going to have them ready by January first. The Chief Justice was not willing to take the responsibility for it and neither was I, and he advised me that we had better hold the meeting and have our own record clear as making a continuous struggle. Then when the breakdown comes on January first, we won't be in the position of having to throw up our hands and say we could not do it. The whole thing will come of its own weight, and will be due to the delay of the committees in getting in their reports and things of that sort, for which we are not responsible.

I do not want you to think I was pig headed enough to drag you down here unnecessarily. Although we cannot finish up, at the same time we can do some useful work here. That explains why there are so many valuable men missing. I felt we ought to go ahead. The Chief Justice felt that way about it.

It is obvious that we cannot submit anything to the court before the October term.

RULE 1.

(1) Title.

Strike out: "And the Supreme Court of the District of Columbia."

To read: "Rules of Civil Procedure for the District Courts of the United States."

(2) Line 3. Strike out: "and in the Supreme Court of the District of Columbia."

Substitute: "including the District Court of the United States for the District of Columbia."

To read: "These rules shall govern the procedure in the district courts of the United States, including the District Court of the United States for the District of Columbia, " etc.

(3) Lines 4-7:

Strike out in line 4 after the words, "District of Columbia" in old text or after "District courts of the United States" in revised text, the remainder of the sentence.

Substitute:

"In all civil actions, whether heretofore cognizable at law or in equity, subject to the provisions of Rule 90."

RULE 2.

Line 2. Strike out the word "only."

RULE 3.

(1) It is voted with respect to Rules 3 and 6 that the so-called mongrel rule and the so-called hip pocket rule bars the First Alternative Rule; that the Third Alternative Rule of Rule 6 be eliminated, and that the committee embody in its report to the court only the Second Alternative Rule requiring the filing of the complaint with the court in order to commence an action; that the advantages and disadvantages of the so-called hip pocket rule be described in a note for the benefit of the court, together with a statement of the general reaction of the bar to the original three proposals.

(2) It is unanimously agreed that on the filing of the complaint the summons shall be issued by the clerk under the seal of the court.

(3) It is voted that the summons when issued may be served either by the marshal or by a competent person as already prescribed in our draft.

(4) It is agreed that the rules shall provide that the action shall be commenced by merely filing a complaint, and that a delivery to the marshal, or actual service, shall form no part of the

procedure necessary to have an action begun pending.

(5) It is voted that the question of the effect of failing to serve a summons promptly be passed at this time, and be taken up in connection with Rule 48.

(6) It is understood that we will modify the old system by adhering to our proposal that a copy of the complaint shall always be served with the summons.

(7) In Rule 3 under the decisions made the second paragraph in now unnecessary, and may be omitted with appropriate footnote references to this statute.

The third paragraph, lines 24-27, omitted here shall be considered in connection with Rule 4.

(8) The resolution is adopted that we should use the method prescribed by the Equity Rules requiring all process to be served by the marshal or his deputies, or some one specially designated by the court for that purpose. (See Rules 5 and 6)

(9) The resolution is passed that filing papers may be made with the judge instead of the clerk, subject to limitations which we will deal with later.

Add: "The filing of papers with the court as required by these rules shall be made by filing with the clerk, except that the judge

in his discretion may permit the papers to be filed with him, in which case he shall endorse thereon the filing date and forthwith transmit the papers to the clerk's office."

(10) We should make a note to preserve the methods of service prescribed by acts of congress in the District of Columbia.

RULE 4.

(1) Recast Rule 4 (a) as to issuance of summons without a resolution to that effect.

(2) Lines 4-6.

Strike out: "shall be prepared and signed by the plaintiff or his attorney, shall state the address of the signer"

Line 8. Strike out: "upon the signer."

To be inserted (just where, the reporter has no note): "to be signed by the clerk."

Line 11. For "taken" say "rendered."

(3) JUDGE DONWORTH: I don't like the reference to 20 days for the time to serve his answer, because there are a lot of things he may do by the service of his answer. I much perfer the form of summons in the State of Washington: "You are hereby summoned to appear within 20 days after service of this summons and defend."

He is told he must appear within 20 days and defend the action. Section 223, Rem Code.

THE CHAIRMAN (to reporter): Make a note. Equity Rule 12 relating to summons.

(4) DEAN CLARK: Subdivision (c) (1) would read in this fashion:

"Upon the United States, by serving the summons and complaint upon the United States attorney for the district in which the action is brought or upon any assistant United States attorney or clerk lawfully named in the certificate filed by such United States attorney with the clerk of the district court, and by sending," etc. in line 34 and following.

(5) Line 21. Change "when a statute so provides" to read: "when a federal statute so provides."

It ought to be limited to federal statutes.

(6) Subdividion (b). Note to the reporter to put a note under the rule calling it to the attention of the Supreme Court.

THE CHAIRMAN: In a note refer to those statutes which already allow service outside of a district within the territorial

limits of a state, and then add a sentence that in so far as this goes beyond that, there has been some question raised by members of the bar whether it is within the scope of these statutes.

JUDGE DONWORTH: I make a motion that there be a note that the following statutes, namely . .. provide for service of this kind, and that the effect of this rule would be to make it more general, as suggested by the chairman.

(No formal action was taken on Judge Donworth's motion.)

(7) In Subdivision (c), in sub-section (2), line 53; in sub-section (5), line 75 and in sub-section (6), line 85, change "an action" to "any action."

(8) A misprint in subdivision (c) (6) (no line cited), "defendant" (singular) instead of "defendants" (plural).

(9) Lines 87-91. Methods of Service by Publication. (line 87). This rule shall not affect the methods prescribed in the federal statutes for the service of summons by publication, or in the case of the District Court of the United States for the District of Columbia, prescribed by any law in force and effect in said district.

JUDGE OLNEY: I move that this exception, which is provided in lines 87-91, shall include, by reference to the section, all other cases in which a method of service by publication, applicable to the United States courts in general, is provided, and that likewise it shall separately except the statutes which are peculiarly applicable to actions in the District of Columbia.

THE CHAIRMAN: You don't mean that the District of Columbia statute should be referred to?

JUDGE OLNEY: No.

(The motion was carried as made.)

RULE 5.

(1) (a) Line 9, add the word "federal" before the word "statute," to be consistent.

In Rule 91, add "venue" in conjunction with Rule 5 (a).

(2) A note to the reporter to consider whether there is not an unnecessary duplication in Rule 4 (b) and Rule 5 (a).

(3) Make the summons by the marshal of the district in which the service is made.

(4) It is agreed that while writs of summons must be served by the marshal, writs of subpoena may be served by other persons, and subdividion (b) amended occordingly.

(5) It is the sense of the meeting that there shall be as many duplicates or copies as anybody wants to ask for, so that he can have more than one, and that alias summonses may be called for and issued, and that some combination of these old rules will fit the situation.

(6) It is moved that we take the substance of Equity Rules 12 and 14 respecting the return, and make the summons returnable, requiring it to be returned and providing for alias summonses.

RULE 6.

(1) Subdivision (a), the words at the end of the first sentence to read:

"Upon each of the pa rties who is not in default affected thereby,"

or words to that effect.

(2) It is voted that a copy of the pleading or other papers be served at his last known address, and if he has no known address, then on the clerk for him.

(3) Subdivision (a), line 14, strike out that part of the sentence commencing with the words, "or unless."

(4) For lines 50-58, substitute:

"The complaint shall be filed with the court before the summons is issued. All

other pleadings and all papers in the case shall also be filed. When a time is prescribed for the service of a pleading or other paper, the same shall be filed as well as served within such time."

NOTE: In the above amendment to lines 50-58 the phrase "all other papers" has been questioned, and the reporter and the Style Committee should consider the question of being more specific and of limiting that phrase to court papers which would naturally be a part of the record in the cause.

THE CHAIRMAN: It is the sense of the meeting that in defining the phrase "all other papers," it is not the intention of the committee that documents offered in evidence should be within the rule.

RULE 7.

(1) The motion is carried that Mr. Morgan's suggestion, as modified by the chair so as to make the time the time of application instead of the time of the order, be adopted.

(2) It is the sense of the meeting that enlargements of time may be made by the court ex parte and without notice in its discretion.

(3) We want to amend Rule 7 so as to provide that applications for enlargements of time other than appeals and records, etc. may be made ex parte and without notice in the discretion of the court, and secondly, that an order may be made enlarging the time after the existing time expired, provided an application or motion is made before that time expires.

(4) Lines 18-20. Substitute for the second sentence of the paragraph the following:

"The expiration of a term of court shall in no wise affect the power of a court to do any act or take any proceeding."

(5) Line 15. Strike out "required." Substitute "provided."

(6) For lines 37-40 substitute the following:

"Whenever a party has the right or is required to do some act or take some proceeding within a prescribed time after the service of a notice or other paper upon him, and such notice or paper is served upon him by mail, three days shall be added to such prescribed time."

RULE 8. No action.

RULE 9. No action.

RULE 10.

(1) It is moved that the rule stand as it is in respect to verification.

(2) Line 16, strike out the words:

"and reasonable costs may be assessed against the party."

RULE 11.

(1) Lines 5 and 6, the words "if assigned" are stricken out.

(2) Lines 18-24. It is the sense of the meeting that these lines be left as they are.

(3) Insert the words "or motion" after the word "pleading," in lines 25 and 26.

(4) Line 27, after the word "pleading" add "or in any motion."

RULE 12.

(1) Our criticism of subdividion (c) is that it is inconsistent and does not adopt any theory. It starts out on the theory that you shall, if practicable, take up the allegations one by one and admit or deny. Then it abandons this and allows a general denial. Then it says if you overlook a paragraph and don't deny or admit it, it is

admitted.

THE CHAIRMAN: Let's refer this to the reporter and Mr. Morgan to see if they can present something at the next meeting of the committee that will meet the objections that have been offered to this. Unless there is objection, we will so dispose of it.

(2) Subdivision (d), lines 55-60, it is voted to amend to read as follows:

> "Except as to a party against whom a judgment is rendered by default, the judgment shall grant the relief to which the party in whose favor it is rendered is entitled upon the pleadings and the evidence, even if the pa rty has not asked for such relief in his demand for judgment."

(3) It is understood that Rule 63 (c) will also be revised to conform to Rule 12 (d).

(4) It is voted that Rule 12 (b) stand as it is as to lines 15-20.

(5) It is voted that we pass "that proviso" with a request on the reporter that in connection with the discovery provisions there be incorporated a provision requiring a denial under oath of documents whose authenticity is claimed. If not

so denied, their authenticity should be deemed to be admitted so that the other party cannot contest it.

RULE 13.

(1) It is voted that subdivision (6) of section (a) be omitted from the rule.

(2) Strike out all of subdivision (1) of section (a) after the word "capacity" in line 15.

(3) Line 11, substitute (in substance) the following for the sentence commencing "A party desiring," etc:

> "A party desiring to raise an issue as to the legal existence or the capacity to sue or be sued of a party must specifically deny such existence or capacity; and when the issue concerns its existence or his or its capacity, shall state the particulars concerning the lack thereof."

THE CHAIRMAN: We will leave this to the reporter to work out.

(4) Strike out subdivision (5) of section (a).

(5) Subdivision (4) of section (a), take the New York statutes but apply it to these judicial or quasi-judicial tribunals as well as to courts.

(6) Line 69, for "fellow-service" substitute "injury by fellow servant."

RULE 14.

(1) The reporter and stylists are to consider whether Rule 21 is not out of place; whether or not it ought not to go back and follow Rule 14.

RULE 15.

(1) It is the sense of the meeting that we defer the special suggestions of the patent lawyers relating to patent cases until after we have heard from Washington.

(2) Add to Rule 15 that the counterclaim has got to be set forth in the manner prescribed for the complaint by Rule 14.

RULE 16.

(1) It is voted that subdivision (b) be made to read substantially as follows:

> "All objections concerning the sufficiency of the service of process, jurisdiction over the person of the defendant or venue shall be raised by the defendant at one time by motion. This motion shall be made before answer and shall constitute a special appearance without being denominated as such; and shall be decided as a

preliminary matter. No such objection shall be raised by a defendant at any other time or in any other manner."

The reservation is made that that motion is adopted subject to further consideration of the phrase about special appearance.

Lines 24-32 are not affected.

(2) Line 17, insert "only" after "constitute."

(3) Line 14, Refer to the Stylist Committee the passage: "All objections concerning the sufficiency of the service of process, venue," etc.

"And lack of the court's jurisdiction," line 14, goes out. (See note 1, supra, under Rule 16)

(4) THE CHAIRMAN: I suggest that the use of the word "venue" is a matter for the Style Committee and the reporter, and if there is any doubt, that they make it clear as to whether the defendant is sued in the right district or division; whether or not it is good practice in drawing a complaint that you must allege the facts showing that the defendant was sued in the right district.

(5) Line 49, subdivision (c), substitute "may" for "shall."

(6) A patent law suggestion relating to Rule 16, which ought to be considered -- the peculiar statute as to venue.

(7) See correction No. 2 under Rule 17, regarding line 6 of Rule 16.

RULE 17.

(1) JUDGE DONWORTH: Whether made at the same time or not, I will move that in Rule 17, line 3, "10" be changed to "20" days after service of any pleading, as to everything we are going to put in the rule.

THE CHAIRMAN: You would put it before the answer?

JUDGE DONWORTH: Yes.

(The motion was carried.)

(2) In line 6 of Rule 16 substitute "20" for the figure "10."

(3) THE CHAIRMAN: It has been moved, in substance, that Rule 17 be amended so that the proposed new motion is to be embodied in it to dismiss the bill on the ground that it does not state a cause of action, and that it shall be coupled with another motion for a bill of particulars or to make more definite, and that in case they are coupled and the motion to make more definite is granted, a motion to dismiss should be considered as directed at the amended bill. That's the substance of it.

(The motion was carried.)

(4) Lines 11-15, "Unless the party . . . . . determine the motion," are stricken out.

(5) Line 25, strike out the words, "its service." Substitute the words, "notice of the order."

(6) Lines 16-21 are stricken out. Substitute:

"If the motion is denied, the moving party shall have 5 days after notice of the denial within which to serve his responsive pleading."

(7) In Rule 22, line 12, page 39, after the word "pleading" add, "or pleading supplemented by a bill of particulars,".

RULE 18:

(1) The motion was made to amend Rule 18 so that where the counterclaim (see line 3 of the rule) arising out of the same transaction is the subject of a pending suit, it shall be optional with the defendant to assert it as a counterclaim, leaving it to the Style Committee and the reporter to fix the terms.

MR. LOFTIN: I move as a substitute motion that this particular matter be postponed until

the October meeting, and that in the meantime the reporter be requested to have his staff prepare a memorandum on the question and circulate it to the members of the committee, so that we may have it for consideration before the October meeting.

(The substitute motion was carried.)

(2) Line 28, substitute the word "may" for the word "shall."

(3) Line 4, substitute the word "any" for the word "a" before "plaintiff," making it read: "against any plaintiff."

(4) Line 4, after the words "at the time" insert the words "of filing the answer."

(5) Lines 6 and 7, strike out the words "has jurisdiction to entertain the claim and," making no substitution.

(6) Lines 14-16, strike out the word "likewise" and the words "has jurisdiction to entertain the claim and," so as to read:

> "provided that the court can, if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties."

Then state in a note that all these rules respecting counterclaims are subject to the broad provisions of Rule 91.

(7) Lines 21-24, the style is to be improved by the reporter, and reference in a foot note is to be made to the general effect that the federal statutes relating to assigned claims in diversity cases are not intended to be modified.

(8) Lines 10 and 11 are to be stricken out: "If the action proceeds . . . . . shall be barred."

(9) That part of Rule 18 commencing with line 59 to the end is stricken, and in its place is substituted the following:

> "Judgment may be given as provided in Rule 63 (b), which shall include the right to give a judgment or judgments on the counterclaim or cross-claim, even though the action has been dismissed or otherwise disposed of as to the plaintiff, if the court has jurisdiction so to do."

Then transfer from Rule 18 to Rule 63 that part of Rule 18 commencing with the words "In case" in line 69 and ending with line 72.

(10) Lines 19 and 20, after the words "need not" the words, "be one diminishing or defeating the recovery," etc.

(11) Line 39, substitute "reply" for "answer."

(12) Line 70, substitute "stay" for "delay."

RULE 19.

(1) Line 4, it is voted that the rule be amended in some way so that the move for leave may be made ex parte, if made at or before the answer is served. If after the answer is served, it is to be on notice.

(2) It is moved that we postpone for further consideration the question of broadening out Rule 19 so as to allow the defendant to summon in the third party as a matter of right, as under the 5th and 6th Admiralty Rule.

(3) Lines 20-22, This is to be noted as only a matter of form.

(4) Line 17, in place of the word "codefendant" substitute the words "other party."

RULE 20.

(1) Lines 10-13, strike out commencing with the words "and may interpose" in Lines 10 and 11 down to and including the word "averment," line 13.

(10) Lines 19 and 20, after the words "need not, the words, "be one diminishing or defeating the recovery," etc.

(11) Line 39, substitute "reply" for "answer."

(12) Line 70, substitute "stay" for "delay."

RULE 19.

(1) Line 4, it is voted that the rule be amended in some way so that the move to leave may be amended ex parte, if made at or before the answer is served. If after the answer is served, it is to be on notice.

(2) It is moved that we postpone for further consideration the question of broadening out Rule 19 so as to allow the defendant to summon in the third party as a matter of right, as under the 5th and 6th Admiralty Rule.

(3) Lines 20-22, This is to be noted as only a matter of form.

(4) Line 17, in place of the word "co-defendant" substitute the words "other party."

RULE 20.

(1) Lines 10-13, strike out commencing with the words "and may interpose" in lines 10 and 11 down to and including the word "averment", line 13.

(2) In line 16, strike out commencing with the word "pursuant" down to and including the word "him" at the end of that sentence.

(3) Line 4, change the word "pleaded" to "denominated" so that it will read:

"denominated as such."

(4) Line 15, the same change, changing the word "pleaded" to "denominated."

RULE 21. No action.

RULE 22.

(1) Subdivision (b), lines 21-22, the following suggestions are given the reporter:

(a) (By the chairman) "During a hearing or trial the pleadings shall be deemed amended to conform to issues tried by consent of the parties, express or implied."

(b) (By Mr. Dodge) "When issues not raised by the pleadings are tried by express or implied consent of the parties, judgment shall not be set aside on account of variance."

(c) (By Judge Donworth) I think instead of using the word "judgment" there should be some paraphrase that would cover the idea that the proceedings shall not be deemed a variance on that account.

(d) (By Judge Olney) "The consent should be implied from the fact that the parties have tried without objection an issue that is not within the pleadings."

(2) Lines 16-18, strike out the sentence commencing with the words, "when appropriate ....."

(3) Lines 37-40, strike out everything and substitute the following:

"The court shall allow the pleadings to be amended and overrule the objection."

(4) Line 12, after the word "pleading" add "or pleading supplemented by a bill of particulars."

NOTE: This correction is also noted as correction No. 7 in notes under Rule 17, supra.

(5) After a full discussion the committee concluded to allow subdivision (c) to remain. We felt that there was sufficient procedural justification for it to bring it within the scope of our authority.

(6) Lines 29-31. Strike out the word "or" in line 29, and insert in lieu thereof the words: "and make such order as to."

Then in line 31 strike out the words "upon such terms. Strike out the word "are" in Line 31,

and insert the words "may be."

RULE 23.

Lines 4-5, strike out the words "and substantial."

RULE 24.

(1) With respect to the provision in Rule 24 about suits by the real party in interest questions arise under the patent law as to who is the real party in interest, and we will defer that until the patent bar have their hearing in Washington.

(2) Strike out lines 24-36 and substitute the Equity Rule 70, the verbiage of which is to be modified by the reporter to suit our style, and the substance of which is to be modified to allow the appointment of a guardian ad litem to sue as well as defend.

(3) See suggestion No. 3 under Rule 64, infra, respecting appointment of guardian ad litem.

RULE 25.

(1) Lines 1-2, instead of "a party may in one complaint or counterclaim state," insert:

"The plaintiff may in one complaint or the defendant by way of counterclaim may state," etc.

(2) It is suggested that the reporter check Rule 25 against Rule 19 to be sure that in a third party complaint you can join more than one claim; and the same with cross claims.

(3) Lines 9-12, it is suggested that the reporter be asked to consider whether the last sentence of Rule 25 is not already covered by another rule.

RULE 26.

The patent bar has suggestions as to Rule 26.

RULE 27. No action.

RULE 28.

(1) The suggestion is agreed to, in substance, that we strike out the provision in the first sentence of the rule reading: "In accordance with the provisions of Rule 27 providing for joinder of parties in the alternative," and substitute:

"Persons having conflicting claims may be joined as defendants and required to interplead," etc.

(2) Add later in the same section: "Nothing in this rule shall be construed to limit the remedies provided for in Rule 27."

RULE 29.

Line 21, before "26" insert "19" so that it will read: "rules 19, 26, 27 and 28."

RULE 30.

(1) It is voted that the statute (Section 516, Rev. Acts of 1934) be preserved in the rule.

(2) The resolution is adopted to refer it to the reporter to draw an appropriate section on the change of interest.

(3) It is voted that with respect to cases now covered by the federal statutes, i.e. suits against officers and substitutions of representatives of deceased parties, the limitations of six months and two years respectively be retained; that in incorporating in the rule provisions for substitution in cases of devolution like a trustee in bankruptcy or an assignee of claims, there be no time limit prescribed.

(4) Line 28, instead of "shall" substitute the word "may."

(5) Lines 26-29, strike out the word "but" in line 26 and change "and" to "but" at the end of line 27, so that it will read:

> "The action shall not abate. The death shall be suggested upon the record, but the action may proceed in favor of/or against the surviving parties."

(6) The resolution is made that we make a note on the point that where a party dies and heirs or legatees succeed to his interest, there should be some method provided for service of notice upon them and of bringing them into the action in case they are without the jurisdiction of the court.

(7) A resolution is also made to call attention to the fact that we haven't any rule at all on the rule for practice on the substitution of lawyers.

RULES 31 - 44 inclusive.

It is voted that action on these rules be postponed to the meeting of the plenary committee.

RULE 45.

(1) It is understood that some provision shall be made either in line 13 or 16, as the reporter may think best, that allows the court to grant a longer time.

(2) It is voted in line 10 after the words "last pleading" to insert the words: "involving such an issue as to him."

NOTE: It is agreed to make this insertion subject to be reserved for further condideration by the committee.

(3) Line 5, it is suggested that the sentence commencing in that line be amended to read in substance as follows:

"Any party may demand a trial by jury of the issues triable by jury as of right under the constitution or laws of the United States in any civil action by serving," etc.

It is agreed that this suggestion be followed in substance and connected up and smoothed out by the reporter.

(4) It is understood that the Alternative Rule 45 is stricken out.

RULE 46.

It is moved that the word "or" in line 16 be striken out.

NOTE: The question of striking out "or" in line 16 will have to go to the plenary(?) committee.

RULE 47.

(1) It is voted that the problem by left to the local rules in the matter of assignment of cases for trial.

(2) It is the understanding that Alternative Rule 47 is stricken out.

(3) THE CHAIRMAN: The reporter is to go over Rule 47 to keep the alternatives in, add another alternative or otherwise. In other words, it is understood that we would adopt the substance of Rule 47, leaving it to the local court to provide the rule; that he mention the first and second methods specified here as open to him and allow him to adopt some other method if not mentioned. That is the sense of it.

RULE 48.

(1) It is voted that Alternative Rule 48 be redrafted to provide, first, for dismissal as a matter of right before issues joined; to provide, secondly, for dismissal as a matter of right upon filing a stipulation of the pa rties; third, upon motion as already provided in subdivision (2), and, fourth, as provided in lines 62-67; and that in redrafting it, where dismissal is a matter of right, the filing of a notice of dismissal with a stipulation shall operate to dismiss, but in the other cases an order should be required; that the rule for the present at least be confined to dismissal by the plaintiff.

(2) It is understood that in redrafting Rule 48 no such provision like that in lines 41-44 will be inserted.

(3) It is voted that we pass the matter until we have a redraft to be made by the reporter for submission at the next meeting along the following lines: As to matter involved in old Rule 48, which involve action by the court for reasons of public policy and for the protection of the court, that clauses be put in that the court may dismiss the cause for certain causes to be enumerated, without any designation that it is with or without prejudice, for the time being as a matter of draftsmanship.

(4) Subdivision (d) - - The plaintiff's right to involuntary non suit without any element of discretion and without anybody's permission should be preserved. It is understood that we leave the point open for the reporter.

RULE 49. No action.

RULE 50.

NOTE: Major Tolman suggested that action be postponed until the next meeting (1) pending outcome of correspondence that the major is having with Mr. Morgan, and (2) that the patent bar has not been heard, and (3) other questions may be introduced on the proposal by Prof. Wigmore, by which we may state in short compass the substance

of forty statutes mentioned in the note, and he is not yet ready to make the redraft. The suggestion, however, was not adopted. The committee discussed the rule.

(1) Lines 4-6. It was voted that the second sentence of the first paragraph of Rule 50 stand as written rather than to use Mr. Morgan's suggestion.

NOTE: Mr. Morgan's suggestion for the second sentence of the rule is as follows:

"Every witness shall be competent to testify if he would be competent to testify under the rules applied in the courts of the United States in any civil or criminal proceeding, or if he would be competent to testify were the action being tried in a court of general jurisdiction of the state of the United States wherein the United States court is held."

(2) Line 45, strike out the word "has" Substitute the words "may have."

(3) Lines 45-47, strike out the sentence commencing with the word "When."

(4) Lines 33-35, strike out the words "and shall have requested that it be made to appear of record."

(5) Lines 20-21, strike out the words "or his agents or employees" so that it will read:

"or the officers, directors or managing agents of any public or private corporation," etc.

In line 22 strike out the words "agents or employees" and substitute the words "managing agents."

(6) It is agreed to postpone further consideration of lines 18-26 until Mr. Morgan is present.

(7) It is voted to insert in the rule the sentence recommended by Mr. Griffith reading as follows: "When a party has introduced a witness and has examined him as to some of the issues, the opposite party may cross-examine the witness upon all the material and pertinent issues of the case."

(8) Line 17, after the word "records" add ", and business records," and then to read: "as provided by statutes of the United States."

(9) Line 14, after the word "state" insert the words: "and all evidence admissible under any statute of the United States."

(10) Lines 14-18, strike out the sentence beginning "Nothing in these rules, however, shall limit or restrict" down to the words "statutes of the United States."

RULE 51.

(1) It is suggested that in subdivision (a) a provision be inserted giving the right to a witness against whom a subpoena to produce documents has been issued, to move to quash on the ground that the subpoena is unreasonable or oppressive.

NOTE: In connection with the agreed amendment to subdivision (a), Rule 51, which is to provide for machinery for a motion by a witness to quash a subpoena duces tecum, the suggestion is made for the reporter to embody in it some provision by which the court may require the person issuing the subpoena to advance and pay the reasonable cost of producing the documents as a condition to an order denying the motion to quash.

(2) It is agreed that in Rule 51 a provision be inserted allowing service of the subpoena by any competent person. This should be transferred from Rule 5.

(3) Line 72, substitute "failure" for "refusal."

(4) It is voted that lines 41-50 be transferred to Rule 34, subdivision (b) having to do with depositions.

(5) Line 34, strike out "office." Substitute "place of business or employment."

(6) Lines 21-22, strike out "an affidavit of."

(7) Line 27, insert after word "tecum" the word "directed."

RULE 52. No action.

RULE 53.

(1) It is understood in principle that lines 1-11 be revised by the reporter. The substance of the revision is, first, that the court may permit the entire examination of prospective jurymen to be made by counsel, or the court may conduct an examination himself, but if the court conduct the examination, he shall either allow counsel to supplement it in a reasonable way or shall himself submit to the jurymen, in addition to the questions the court has already asked, such additional questions as counsel submit and as the court shall deem reasonable and proper.

(2) Strike out lines 28-34 and substitute: "Each party shall be entitled to one peremptory challenge in choosing alternate jurors."

(The language is to be left to Dean Clark in following the language of the statute.)

RULE 54. No action.

RULE 55. No action.

RULE 56.

(1) Line 13, after the words "evidence is" insert the words "denied or for any reason." To read: "Denied or for any reason not granted."

(2) Line 2, make it read this way: "In any action tried by a jury a motion by one party for a directed verdict at the close of the evidence offered by an opponent shall not be a waiver of his right," etc.

(3) It is voted that the first sentence in lines 1-6 be stricken out and in place of it the following: "except with the consent of the court a motion for a directed verdict shall not be made after the parties have rested."

(4) JUDGE DONWORTH: I want to call the attention of the reporter to the desirability that in subdivision (d) of Rule 48 after the words "by the court in its discretion" in line 24 there be inserted the words "on motion of either party."

(5) Line 20 of Rule 56 after the word "if" insert (in substance) the words: "the jury has disagreed, or for some other reason no verdict has been

returned," etc.

(6) In line 33 where it says "the court shall not reserve," since in the first part of the rule we say "we deem to have reserved," the suggestion is approved that it read:

"shall not, without the consent of the jury, reserve or be deemed to have reserved," etc.

(7) It is the sense of the meeting that the appropriate amendment be made in lines 20-26 of Rule 56 and in Rule 69 to allow judgment to be forthwith entered by the clerk without an order of the court upon the verdict, unless the court otherwise directs, notwithstanding the pendency of this reserved question.

(8) It is the understanding that there ought to be an express provision by some sort of motion or renewal that this question that was raised by the motion to direct must be renewed to the court within a limited time after verdict.

(9) It is the understanding that this renewal may be made within the time allowed for motion for new trial, and he may at his option couple the two and may include it in his motion for new trial in the alternative.

RULE 57.

(1) Lines 1-3, it is voted should read as follows:

"In any action tried by a jury any party, before the close of the evidence or at such earlier time as the court may reasonably direct, may file written requests that the court instruct the jury," etc.

(2) Line 6, strike out the words "so far as is practicable."

(3) Line 13, after the word "retired" insert: "to consider its verdict."

(4) The resolution is adopted that the word "proposed" in line 7 be referred to the reporter. It is a matter of phraseology.

RULE 58.

(1) Lines 11-17 about presenting the order to the master to go to the reporter to be clarified and to let it be fixed by him.

(2) Lines 19-20, strike out the words "at the costs of the party procuring the reference."

(3) Lines 11-20, in place of the last sentence insert: "When such a reference is made, the clerk shall forthwith supply the master with a certified copy of the order of reference. Upon receipt

thereof the master shall forthwith set a time and place for a preliminary meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference, unless the order of reference has otherwise provided, and shall notify the parties or their attorneys and at said meeting shall proceed as provided in Rule 59."

(Subject to revision and reform by the reporter)

(4) From line 3 on let everything stand down to the words "matters of account." After the word "account," in line 7 add: "In actions which are to be tried without a jury and save in matters of account, the reference shall be made only upon a showing that some exceptional condition requires it." (Subject to polishing by the reporter by the next meeting.)

(5) It is understood that in revising Rule 58 the reporter shall consider an appropriate provision that provides for some definite notice of the first hearing to be given the parties.

RULE 59.

Lines 1-6 are stricken out.

RULE 60.

(1) It is agreed that a provision be added which

provides for the master's making a record of the evidence excluded in substantially the same manner as is provided in Rule 50. Just how the reporter will do that is a matter of detail.

(2) Line 32, instead of "accept" substitute "receive in evidence."

(3) Lines 24-25 after the words "Rule 51" strike out the word "refusal", so that it reads:

"The failure of any witness to appear or his refusal to give evidence, without good excuse, shall be deemed a contempt," etc. Let the reporter revise it.

RULE 61.

(1) Line 24. The suggestion was made that Mr. Dodge be asked to present at the next meeting any proposed amendment that he thinks will clear up the expression "prima facie evidence."

Mr. Dodge made a note of it.

(2) Line 21, strike out the word "include". Substitute the word "return."

(3) The suggestion is made to the reporter that he insert after line 15 a provision in substance as follows:

"In cases not to be tried by a jury, before filing his report the master shall

exhibit a copy thereof to counsel for the parties, and shall receive their suggestions with reference thereto in such time and manner as he may direct." (Subject to the reporter's revision.)

RULE 62.

At the end of line 20 add, changing the period to a comma, "or the court may in its discretion hold the delinquent party in contempt."

RULE 63.

(1) Subdivision (b) is referred to the reporter for a redraft to be presented at the next meeting.

Suggestion by Judge Donworth: "A judgment or final order which terminates the claim with respect to any claim involved therein shall give the right of appeal."

Suggestion by Major Tolman: Where you have separate issues for trial and they are so separated, judgment may be entered. Also the idea to think over, whether or not it is desirable, when the judgment is entered, to require the recording of the residence and business address, if known, of the judgment debtor, so as to distinguish him from all other persons of the same name, (where questions of title to realty or where liens are involved.)

(2) Line 14, it is agreed not to strike out after the word "purposes" the clause "including the right to appeal therefrom," but to note that it is the idea of the committee that when these judgments are made final under these rules, they should be appealable.

RULE 64.

(1) The suggestion of the chairman is adopted that the provision of the first paragraph of Rule 64, which says that upon proof of service of the complaint such and such things may be done, be broadened in an appropriate way by the reporter to include any other order or process other than the complaint requiring the defendant to appear or plead -- something of that kind.

Suggestion by Prof. Cherry: "On proof being filed," etc.

Suggestion by Major Tolman: "On proof of service of a party as provided by these rules or by statute."

(2) It is voted as to section (2) that the requirement for a new service upon the minor himself in any event should not be made; that one service upon a minor is sufficient to give a court jurisdiction over his person.

(3) It is voted that if we have not already done so by our revision of Rule 24, those provisions be enlarged so as to make it the duty of the court to appoint a guardian ad litem in the case of a minor who does not appear by general guardian, whether he has got a general guardian or not.

(4) It is voted that Rule 64 be amended so as to prevent judgment by default against a minor or incompetent, unless represented by a general guardian who has appeared.

(5) It is suggested by the chairman that the reporter make a note in dealing with Rule 64 on judgments by default to see whether any exceptions need be made to objections to suits against the United States under the Tucker Act.

RULE 65.

(1) Suggestion of wording by Judge Donworth: (no line reference given) "The addition of the motion for new trial to the other motion shall not be a waiver of the renewal of a motion for directed verdict.

(2) It is voted that paragraph (d) be stricken out with no substitute.

(3) Subdivision (c), as a last sentence to follow the words in line 37 "not exceeding 20 days" the

following: "The court may permit the filing of reply affidavits."

Also the following resolution in substance: "the moving party's affidavits filed when he makes his motion."

(4) See items (1) and (2) of notes on Rule 66, infra, and items (2) and (5) on Rule 68, infra.

RULE 66.

(1) It is voted to strike out of subdivision (b) of Rule 66 that part of subdivision (3) commencing in line 18 down to the word "trial" in line 27, and to add to subdivision (b) in Rule 65 a provision in substance that a motion for new trial on the ground of newly discovered evidence may be entertained after the ten days specified generally but only on leave granted to file it on motion and hearing before the time for appeal has expired.

(2) It is voted in line 22 of Rule 65 (b) to insert a new sentence as follows: "The court may, however, after said ten days but within the time for appeal, entertain a motion for new trial on the ground of material evidence newly discovered, which the moving party could not by the exercise of reasonable diligence have discovered and produced at the trial, provided that no such motion

may be filed except upon leave of the court first obtained after notice and hearing."

(3) It is voted that in subdivision (b), Rule 66, there be added a sentence stating that no motion made under this subdivision shall operate to affect the finality or operation of a judgment, or something of that kind. The filing of a motion under this subdivision shall not affect the finality of the judgment or suspend its operation.

A suggestion to Dean Clark from the chairman: In framing the language about finality, see cases cited in 270 U.S. Morse v. United States, and see if the court has not used some phrase relating to the finality of a judgment which you can adopt.

(4) It is voted to combine subdivisions (1) and (2) of Rule 66 (b) to read: "fraud, accident, mistake, surprise or inadvertence," leaving out the rest of (1) and (2).

RULE 67. No action.

RULE 68.

(1) It is voted in line 4 after the word "thereon" to add the words "and order the entry of an appropriate judgment."

(2) It is voted that Rule 65 as we have amended it with Judge Olney's amendments to Rule 68 stand as

it is.

(3) Line 15, between the words "for" and "judgment" insert the words "entry of."

(4) In Rule 69, line 10, between the words "for" and "judgment" insert the words "entry of."

(5) In Rule 65, at the top of page 113, line 22, there should be inserted between the words "for" and "judgment" the words "the entry of."

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(At the close of the evening meeting on Tuesday, September 1st the date of the next meeting was set for October 22 to 28.)

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(Mr. Gamble, who left the meeting August 28 for New York, made the following remarks:)

MR. GAMBLE: I want to direct the committee's attention to Rule 50 of the Equity Rules: (Reading)

> RULE 50. When deemed necessary by the court or officer taking testimony, a stenographer may be appointed who shall take down testimony in shorthand, and, if required, transcribe the same. His fee shall be fixed by the court and taxed ultimately as costs. The expense of taking a deposition, or the cost of a transcript, shall be advanced by the party calling the witness or ordering the transcript.

I should like to see our rules preserve that power in actions for the reason that there are no official stenographers in the federal courts generally, and we have made reference to transcripts of the evidence particularly in provisions concerning repeals, where we are disposing of the narrative form of statement.

If that provision is preserved, I should like to call attention to Rule 64 of the Federal Equity Rules, which provides that depositions and affidavits 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 at a subsequent hearing.

In Ohio we have a statute which provides that the original shorthand notes of the evidence or any part thereof taken upon the trial in any court of record of this state by the shorthand reporter of such court shall be certified by said reporter, and shall be admissible in evidence on any re-trial of the cause, and for purposes of impeachment in any case, and shall have the same force and effect as depositions so far as applicable. I should like very much to see a similar provision included in these rules. I don't think that it constitutes a rule with respect to the law of evidence, but merely with respect to the method of taking evidence like the rules concerning depositions such as we already have.

I have had several experiences which illustrate the advisability of such a rule. One particularly in a trial in the federal court, where towards the end of the trial the judge became ill and the trial had to be continued. By agreement of the parties on the re-trial the transcript of the reporter was used for those witnesses who were not available. It resulted in a saving of a lot of money to each of the litigants. I think it might be a subject that ought to be considered.

DEAN CLARK: On page 56, Rule 31, we have something that was supposed to incorporate the substance of Rule 64. Lines 80-88.

THE CHAIRMAN: It only relates to depositions and not to evidence taken at the trial.

DEAN CLARK: It may be a good thing to broaden it.

MR. GAMBLE: I just wanted to suggest that.

One other thing, in the event that I cannot come back and be here when you consider it, is that I very earnestly urge that you retain in the rules the provision authorizing the taking of exceptions to the court's charge outside of the presence of the jury. I think it is a most salutary provision, and really ought to be included in the rules.

I further want to urge that you retain the provision that exceptions after objections to the introduction of evidence need not be noted of record, but shall be taken of course. A few of the district judges in the comments, suggestions and criticisms that I have object to both of these rules. I do not think their objections are well founded.

THE CHAIRMAN: Would you mind stating the reasons?

MR. GAMBLE: Where the charge is given orally, it is usually the last thing that happens in the trial before the submission of the case to the jury. I have practiced in some courts where the judge because of the state practice conformed to the state rule, although he didn't have to, and gave his charge previously. But when the counsel for either party at the conclusion of the charge has/to get up in court in the presence of the jury at the end of the case and make objections which to a layman might indicate a quarrel with the court, I think it has a very bad effect on the particular party before the jury, when it should not, because the objections might be well founded.

MR. DODGE: You favor our present rule on that?

MR. GAMBLE: Yes, but if I were going to make any change I would make it stronger, and have the objections made before it was delivered, because there are frequent instances where the court will correct its charge because of a correction which is made, and that in the ordinary oral charge is confusing to the jury, too. In the end I think it will probably save the judges some work.

Those were the points, Mr. Mitchell, that I wanted to mention particularly.

Minutes of the
MEETING OF THE ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

September 2, 1936 - 10:30 A.M.

RULE 68

MR. MITCHELL. Agreed that the Reporter shall, before the next meeting of the Committee, prepare an alternative Rule 68, relating to the effect of findings by the court in cases tried without a jury and shall, if he conveniently can, distribute copies of his proposal to the members before the meeting.

RULE 69

MR. MITCHELL. Suggestion an insertion in this rule, a provision in substance as follows: "The judgment shall be effective from the date of its entry by the clerk." - Agreed.

Judge OLNEY. In addition, that where a decree is signed by the judge the filing of the signed decree by the judge, the filing of the signed decree by the clerk shall constitute its entry. Reporter is asked to consider this suggestion.

RULE 70

MR. MITCHELL. In Line 7, it was agreed that the word "reversing" should be stricken out. Motion made and carried that "vacate" be substituted. Motion made and carried to strike out "annulling".

RULE 71

MR. CHERRY. In Line 7, after the words "in accordance with" insert "any applicable statutes and".

MR. MITCHELL. Suggests in Line 5, strike out the words "must be sought, allowed and perfected" and insert in lieu thereof "shall be taken by petition of appeal allowance and citation as prescribed by law and the Rules of the Supreme Court of the United States." Motion made and agreed that this suggestion be carried.

Rule 71 - continued.

MR. MITCHELL. It is moved and seconded that a note be added to this rule calling the court's attention to the lack of uniformity in the method of taking appeals resulting from this rule and that it is the opinion of the Committee that it would be advisable for the court to consider dispensing with allowance and citations in direct appeals so as to produce uniformity in practice.

RULE 72

MR. MITCHELL. Strike out the words in lines 14-15 "shall contain appellants assignments of error" and add to that subdivision "assignments of error shall be contained in the notice of appeal or accompany same and may be filed with the trial court within _____ days after the notice of appeal is filed."

MR. MITCHELL. Motion made and carried to strike out lines 21 to 26 and insert a requirement for assignments of error in the lower court to be contained in the notice of appeal or otherwise filed to the trial court.

MR. MITCHELL. Attention of the Reporter is called to the possible necessity of mentioning in Rule 71 an assignment of error in direct appeals to be filed with petition of allowance.

JUDGE DONWORTH. The suggestion is made that in Line 9 after the word "appeal" there be added a provision as follows: "or be given an oral notice of appeal in open court in the presence of all opposing parties or their attorneys, which oral notice of appeal shall be entered upon the records of the court." My own thought is that we should omit a reference to the opposing parties or their attorneys but should incorporate that this oral notice could only be given in open court at the time the judge signs or directs the judgment on the verdict.

MR. DODGE. Motion is made in lines 7 and 8 to strike out the words "by serving upon each appellee and" and substituting therefor "by filing with the clerk of the district court a notice of appeal. The clerk shall thereupon mail to the parties a

Rule 72 - continued

notice of the filing of such appeal but the mailing of such notice shall not be jurisdictional." [Judge OLNEY] "Upon the filing of the notice of appeal it shall be the duty of the clerk to notify the parties but such notice shall not be jurisdictional."

MR. DODGE. Line 14 - All of paragraph b after the word "from" be stricken out and that there be substituted for that the words "and shall specify the court to which the appeal is taken".

MR. MITCHELL. Movesto strike out lines 21 to 23, ending with the words "error added". Motion carried.

MR. MITCHELL. Suggests that subdivision b of Rule 72 be amended by adding the sentence "No assignments of error need be filed in the district court." Motion made and carried.

MR. MITCHELL. It is the sense of the Committee that subdivision c be amended, so as to provide that an appeal bond shall have a surety or sureties but that a surety approved by the clerk shall be sufficient. It is also the sense of the meeting that after the word "sufficiency" in line 44 there shall be a provision in substance that such objection shall be determined by the clerk.

MR. DODGE. It is agreed that in line 43 of this rule the words "or supersedeas" shall be stricken.

MR. MITCHELL. It is suggested that subdivision c be amended to require the bond on appeal to be filed within 5 days after the notice of appeal is filed, subject, of course, to the later provision permitting the court to allow bond to be filed at a later date.

MR. MITCHELL. It is agreed that subdivision c also be amended to provide that if a bond is not filed within the time specified or the one filed is found insufficient a bond may be filed within such time as may be fixed by the district court or by the appellate court.

Rule 72 - continued.

MAJOR TOLMAN. It is moved and seconded that in line 32 of Rule 72, we strike out "regular in form and shall" and insert in lieu thereof the words "conditioned to".

MR. HAMMOND (for MR. MORGAN). The suggestion is made that in line 41 we strike out "unless" and insert in lieu thereof the word "if" and in line 42 strike out the word "not". Agreed.

MR. MITCHELL. Lines 49 and 50. Strike out the words "must be regular in form and shall" and insert in lieu thereof the words "conditioned to".

MR. MITCHELL. Suggests that the first sentence in subdivision d be changed to read in substance as follows: "Whenever an appellant desires a supersedeas he may present to the court" etc. Agreed.

MR. MITCHELL. Line 49. Suggests in subdivision d a provision be inserted after "bond" as follows: "with such surety or sureties as may be required by the court" or words to that effect. Agreed.

MR. MITCHELL. Proposal is made to add to this rule some appropriate provision that surety subjects himself to the court and may be subjected to a judgment on the bond without an independent suit. Agreed.

MR. MITCHELL. Line 77. Motion made to insert after "action" the words "just damages for the delay". Agreed.

Meeting adjourned at 12:45

Meeting opened at 1:45. September 2, 1936

RULE 73

MR. MITCHELL. Suggests the following substitute for the first paragraph:

"When a judgment or order has been entered in favor of or against two or more parties jointly, one or more of them may appeal without the necessity of summons and severance. Such other joint parties may appeal in like manner. Parties interested jointly, severally or otherwise in a judgment or order may join in an appeal therefrom or they may each appeal separately as herein provided."

and continue lines 25-34 as suggested.

MR. MITCHELL. Line 4. After the word "appeal" in line 4 as quoted, there should be some appropriate express provision that we are talking both about appeals to the Supreme Court and the C.C.A. Agreed.

RULE 77

MR. MITCHELL. Line 24. Change to read: "shall be made by such court except with the concurrence of two of its judges" etc.

DEAN CLARK. Add new paragraph at the end of the rule as follows:

"Provisions of this rule are not intended in any way to limit the power conferred upon an appellate court or a judge or justice thereof to suspend, modify or restore or grant an injunction or otherwise affect proceedings during pendency of an appeal." Agreed.

RULE 78

DEAN CLARK. In the footnote there should be a reference to the present law of lis pendens and a statement showing that the Committee has not dealt with it as it is a matter of substantive law and a state rule of property. See United States v. Lumber Co., 236 Fed. 196.

RULE 81

MAJOR TOLMAN. Line 2. Strike out, subject to further check by the Reporter, the words "pending or adjudicated". Agreed.

Rule 81 - continued.

MR. MITCHELL. Line 7. After the word "party" insert: "and by leave of court".

DEAN CLARK. Line 12. Substitute "fiduciary" for "trustee".

RULE 82

MR. MITCHELL. Line 3. Make it read "more than 10 days before the case is reached for trial or before the trial begins".

RULE 83

MR. MITCHELL. Judge DONWORTH suggests to the Reporter that he consider whether there should be some precautionary addition to Rule 83 to make it clear we are not depriving the court of equity of the power to order payment of money or disposition of property in a proper case. [Mr. DODGE.] and punished by contempt.

RULE 84

MAJOR TOLMAN. Line 26. After the word "shall" at the end of that line, there be inserted the words "upon application to the clerk,". Agreed.

MR. MITCHELL. It has been suggested that lines 28 and 29 be stricken; and that in line 26 after "party" be inserted "in whose favor it is rendered" or words to that effect. Agreed.

JUDGE OLNEY. Line 7. Strike out the words "after notice of the order or judgment;". Agreed.

MR. MITCHELL. Line 21. After "real or personal" insert "within its jurisdiction". Agreed.

RULE 85

MR. MITCHELL. Motion made and approved that we accept the alternative rule.

Rule 85 - continued.

JUDGE OLNEY. Suggests there be added to alternative rule, or what is now Rule 85, a provision that will permit the registration of a certified copy of any satisfaction or order affecting or modifying or vacating the order. Agreed.

MR. MITCHELL. Suggests that at the end of alternative Rule 85, some appropriate provision be inserted that any proceedings in the original district where a judgment was rendered which affect or suspend the operation of the judgment may be recorded in the district where registered. Agreed.

JUDGE DONWORTH. Suggests in line 103, before the word "court" there be inserted the words "clerk of the".

MR. MITCHELL. Suggestion of Judge DONWORTH withdrawn.

RULE 87

DEAN CLARK. Line 13. Substitute "a" for "the". Agreed.

MR. MITCHELL. Suggests after the word "judgment" in line 36 there be inserted the words "other than a judgment entered forthwith on a verdict as provided in these rules". Agreed.

RULE 88

MR. MITCHELL. Suggests an insertion in line 2 as follows: "Unless local conditions in the district make it impracticable each district court shall establish," etc. Agreed.

RULE 89

J. W. MOORE. Suggests substitute for lines 38 and 39 as follows: Calendar of all cases ready for trial shall be prepared under the direction of the court".

MR. HAMMOND. Line 28. After the word "entitled" insert in the quotation marks the word "civil". Agreed.

MR. HAMMOND. Line 28. After the word "keep" insert "for civil actions". Agreed.

Rule 89 - continued.

MR. HAMMOND. Line 36. Insert after the word "the" the word "civil".

RULE 90

MAJOR TOLMAN. Lines 29-30. Change by striking out the words "and judicial decisions" and then by adding in place of the rest of the sentence "and the state judicial decisions construing the same shall include the statutes of that state and the state judicial decisions construing the same." Agreed.

RULE 91

MR. MITCHELL. Line 3. After the word "extending" insert "or limiting". Agreed.

MR. MITCHELL. Add to rule. Make appropriate amendment to rule making the same declaration to the statutes above venue. Agreed.

RULE A

JUDGE DONWORTH. Line 13. Take out "all" and insert "a".

MR. MITCHELL. Line 19. Insert "may" in place of "shall".

MR. MITCHELL. Suggests that the Reporter consider the preparation of a rule dealing with proceedings in forma pauperis. Agreed.

Meeting adjourned at 5:50 P.M.