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RULES
OF THE
MUNICIPAL COURT
OF THE
CITY OF BOSTON
FOR CIVIL BUSINESS



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RULES OF THE  MUNICIPAL COURT

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CITY OF BOSTON

FOR

CIVIL BUSINESS



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COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, SS.—At a meeting of the Justices of the Municipal Court of the City of Boston, held on the nineteenth day of February, in the year of our Lord one thousand nine hundred and fourteen; present,

Hon. WILFRED BOLSTER, Chief Justice.

Hon. FREDERICK D. ELY,

Hon. JOHN H. BURKE,

Hon. GEORGE L. WENTWORTH,

Hon. JAMES P. PARMENTER,

Hon. WILLIAM SULLIVAN,

Hon. MICHAEL J. MURRAY,

Hon. JOHN DUFF,

Hon. MICHAEL J. CREED,

} Justices.

Ordered, That all the Rules of this Court, for the conduct of civil business, be repealed, from and after the nineteenth day of February, and that the following Rules be established for regulating trials, and for the arrangement and conduct of business in civil cases in this Court, from and after the said day.

RULES OF THE MUNICIPAL COURT.

I.

CLERK'S OFFICE.

THE office of the Clerk of this Court, for the conduct of civil business, shall be open daily from the first day of July to the fifteenth day of September, from nine o'clock in the forenoon to four o'clock in the afternoon, and from the fifteenth day of September to the first day of July, from nine o'clock in the forenoon to five o'clock in the afternoon, provided, however, that said office shall be closed on Saturdays at one o'clock in the afternoon, except in the months of July, August and September, when it shall be closed at twelve o'clock noon.

II.

RECORDS AND FILING OF PAPERS.

The clerk shall be answerable for all records and papers filed in court, or in his office. He shall not allow any writ, petition, complaint, answer, agreement of parties, or other writing, which may be made part of the record, or which is part of any proceeding in court, to be borrowed or taken from the files; and no other paper, filed as aforesaid, shall be taken from his custody, without his consent, unless by order of the court.

III.

Upon every paper, before it is filed, shall be indorsed the number of the action, the names of the parties, the title of the paper, and the name and address of the attorney, or party filing the same. The clerk shall indorse thereon the time when it is filed.

IV.

To enable the clerk to make up and complete his records, it shall be the duty of the prevailing party in every suit, within six months, to file all papers and documents necessary to make up and enter the judgment, and complete the record of the case; and no execution shall issue until the papers are filed as aforesaid, unless on petition and notice the court shall otherwise order.

V.

ENTRIES.

The time allowed for entries shall be from nine o'clock in the forenoon until twelve o'clock noon, on the return day.

Actions may be entered thereafter, upon motion and order, on or before the following Thursday, upon such terms as the court may impose, notice of such late entry to be given to each of the other parties on or before said Thursday, no costs being

allowed to the plaintiff for travel or attendance before the next Saturday. And unless it shall appear on the said next Saturday that such notice has been given and such terms complied with, in any action so entered late, it shall be stricken from the docket, unless the court shall allow further time for notice.

No action shall be entered before the writ is filed, except by order of court.

VI.

APPEARANCES AND RIGHT TO APPEAR.

Upon the entry of each action the name of the plaintiff's attorney shall be entered on the docket. If either party change his attorney, pending the suit, the name of the new attorney shall be substituted on the docket for that of the former attorney, and notice thereof given to the adverse party; until notice of such change, all notices given to or by the attorney first appointed shall be considered, in all respects, as notices to or from the party, except in cases where by law notice is required to be given to the party personally; provided, however, that this rule shall not prevent any party from appearing for himself, in manner provided by law; in which case the party shall be subject to the same rules that are or may be provided for attorneys, in like cases, so far as the same are applicable.

VII.

The right of an attorney of this court to appear for any party shall not be questioned by the opposite party unless the objection be taken before any motion is made in the action, or the reading of the writ on the trial, unless the court shall otherwise order.

When the authority of an attorney at law to appear shall be demanded, if such attorney shall declare that he has been duly authorized to appear, or to commence the action by the party for whom he appears, or by some person whom he believes to have been duly authorized to employ him, such declaration shall be *prima facie* evidence of his authority to prosecute or defend the action.

No attorney of this court shall be surety upon any bond which may be required in any civil suit or proceeding in this court, nor shall any special attorney be surety in any case in which he is or has been employed, nor shall any attorney for the plaintiff in a trustee process appear or act for the party summoned therein as trustee.

VIII.

The defendant's appearance may be entered on or before Tuesday next after the return day, unless a legal holiday falls on Saturday, Monday or Tuesday, then on or before Wednesday next after the return

day. When said time expires, if no appearance shall have been entered, a default shall be recorded, unless otherwise ordered. All actions not defaulted or disposed of shall be continued, unless the court otherwise order.

IX.

ANSWERS.

Any defence which might have been made by plea in abatement, demurrer, or motion to dismiss, may be made by an answer in compliance with chapter 173 of the Revised Laws, filed on or before Wednesday next after the return day, unless the court otherwise order.

An answer to the declaration shall be filed in actions of contract, tort, and replevin, on or before the Wednesday next succeeding the entry day; but the court may, on motion, allow an answer required by this rule to be filed at any time. If an answer be not filed under the provisions of this rule, a default shall be recorded, unless the court otherwise order.

When an answer in abatement is overruled on demurrer, or when an amendment is allowed and made by the plaintiff in consequence of such answer in abatement, the defendant shall, within two days, answer to the merits.

If an answer be not filed as herein provided, a default may be entered on motion, by order of the court.

X.

SET-OFF.

When a party files a declaration in set-off, he shall, on the day of filing the same, or within such further time as the court may allow, give written notice thereof to the adverse party or his attorney.

An answer to the declaration in set-off shall be filed within forty-eight hours after notice of the filing of the same.

XI.

MOTIONS.

Motions will be heard on Monday at half-past nine o'clock in the forenoon, and a list thereof shall be handed to the clerk on or before Friday preceding. Motions may be heard at other times by a judge in open court or at chambers as he may appoint.

Sufficient written notice of all motions, unless notice in any particular case shall be considered by the court unnecessary, shall be given to the adverse party or his attorney.

Before motions are heard, on Monday, a call will be made for contested motions, and an adverse party who is present in response to a notice received by him, may be excused from further attendance, if the party sending such notice is absent.

XII.

All motions shall be in writing and shall contain a statement of the time and manner of giving the notice required by Rule XI.

The facts upon which motions are grounded shall be verified by affidavit, or other evidence, or apparent on the record or papers on file, or agreed to; and if the court require it, such agreement must be in writing, and signed by the parties. And this rule shall also apply to facts relied on for opposing any motion.

XIII.

MOTIONS FOR CONTINUANCES.

No motion for a continuance, grounded on the want of material testimony, will be allowed, unless supported by affidavit, stating the name of the witness, if known, the particular facts he is expected to prove, with the grounds of such expectation, and the means that have been used to procure his attendance or deposition, and what reason there is to believe that his attendance can be procured, and at what time, that the court may judge whether the diligence used, and prospect of attendance will justify a continuance. And no counter affidavit will be admitted to contradict the statement as to what the absent witness is expected to testify; but any of the other facts stated in such affidavit, may

be disproved by the party objecting to the continuance. No action shall be continued on such motion, if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit, and will agree that the statement shall be received and considered as evidence on trial, in so far as it is competent, in like manner as if the witness were present and had testified thereto; and such agreement shall be in writing, and signed by the party or his attorney.

The same rule shall apply, *mutatis mutandis*, when the motion is grounded on the want of any material document, paper, or other evidence, that might be used on the trial. But where a compliance with this rule would be impracticable, the court may grant a continuance.

XIV.

When an action is continued upon motion, at the time when it might otherwise be tried, the party making the motion shall pay to the adverse party his costs of witnesses, and such other costs as the court may impose, unless the continuance is ordered by reason of some fault of the adverse party, or unless the party making the motion shall have given notice thereof, with a statement of the grounds of such motion to the adverse party, or his attorney, in such season before the sitting of the court, as might have prevented the attendance of the witnesses; or

unless it shall appear that the grounds of the motion were not seasonably known to the party making it. The costs thus paid shall not be included in the costs of the party receiving them, if he prevail.

This rule will not prevent the court from imposing any other and additional terms for a continuance, when the justice of the case requires it; neither shall it prevent the party, to whom such previous notice may have been given, from procuring the attendance of his witnesses, if he shall think he has reasonable grounds for opposing such motion. And in such case if the motion is granted, the costs for such witnesses shall be allowed in the costs of the said party, if he prevail.

XV.

No action will be continued on the ground of the absence of a material witness, if it was within the power of the party to summon such witness within a reasonable time before trial, unless such witness has been summoned and his travel and attendance paid or tendered for the day of trial.

XVI.

ACTIONS ON THE DOCKET THREE SITTINGS WITHOUT PROCEEDINGS.

When any action shall remain on the docket three successive sittings without any proceedings had by either party, the clerk shall, unless the court other-

wise order, note therein a continuance under rule; and such action shall be continued without further entry therefor, and shall not be put upon the trial list except by agreement of parties, or upon notice to the opposite party and to any co-defendant therein, such notice to be sent in season to be received not later than the Tuesday preceding the expiration of the time for marking for trial, and state that such action will be placed upon the next trial list, proof of such notice to be by certificate thereof, filed with the clerk at the time the action is marked for trial. No costs shall be allowed while such action is continued as aforesaid.

XVII.

Except as provided in Rule XVI, actions shall be continued from Saturday to Saturday, provided, however, the court may order, or the parties may agree, that any action be continued to a future Saturday, without being entered on the dockets of intermediate Saturdays.

XVIII.

DISMISSAL OF ACTIONS FOR WANT OF PROSECUTION.

Whenever an action shall have remained upon the docket for two years without proceedings had by either party, such action may, upon motion, be dismissed. Whenever such motion to dismiss has

been allowed, such action shall be continued for judgment to the fourth succeeding Saturday after such allowance. At any time before judgment shall have been entered in any action so dismissed, the order for dismissal may be vacated upon motion, for proper cause shown.

XIX.

AMENDMENTS.

All motions to amend shall contain, or have annexed to them the proposed amendment. And no amendment will be allowed without consent, except upon compliance with such terms, if any, as the court may impose.

XX.

ANSWERS TO INTERROGATORIES.

Answers to interrogatories, filed under the provisions of section 3 of chapter 815 of the Acts of 1913, shall be filed in the clerk's office within four days after notice of the filing thereof has been given to the party interrogated, or his attorney, unless upon cause shown, either before or after the expiration of the said four days, further time is allowed by the court.

XXI.

DEPOSITIONS.

Depositions upon interrogatories may be taken at any time; other depositions shall not be taken except by leave of court.

XXII.

The court will grant commissions to take the depositions of witnesses without the state; and either party may, on application to the clerk, obtain a commission, which shall be directed to any commissioner appointed by the Governor of this state to take depositions in any other of the United States, or to any justice of the peace, notary public, or other officer, legally empowered to take depositions, or affidavits, in the state or country where the deposition is to be taken, unless the parties agree upon the commissioner. In each case, unless otherwise ordered, the deposition shall be taken upon interrogatories to be filed by the party applying for the commission, and upon such cross-interrogatories as may be filed by the adverse party, all of which shall be annexed to the commission. The party applying for the commission shall file his interrogatories in the clerk's office, and give notice thereof to the other party, or his attorney, four days at least before taking out the commission, and one day more for every ten miles that such other party, or his attorney, shall live from the clerk's office. No deposition taken by force of any statute, and without such commission, shall be admitted in evidence, unless it shall appear that the adverse party, or his attorney, had sufficient notice of the taking thereof, and opportunity to cross-examine

the witness or that it was impossible to give such notice. When a deposition has been taken and certified by any person, as an officer as aforesaid, by force of such commission, if it is objected that such person was not such officer, the burden of proof shall be on the party objecting; and if a like objection be made to a deposition taken without such commission, it shall be incumbent on the party producing the same, to prove that it was taken and certified by a person duly authorized.

XXIII.

When a deposition is taken on interrogatories, neither party shall attend at the taking thereof, either himself, or by an attorney or agent, or communicate in any way with such deponent, while giving his deposition. It shall be the duty of the examiner to take such deposition in a place separate and apart from other persons, and not permit any person to be present during such examination, except the deponent and himself, and such disinterested person, if any, as he may appoint to assist him as clerk, in reducing the deposition to writing. Such examiner shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each, fully and clearly, before proceeding to the next, and not read to, or permit the deponent to read, a succeeding interrogatory, until the answer to

the preceding has been fully taken down. The clerk, on issuing a commission to take a deposition on interrogatories, shall insert therein, or annex thereto, the substance of this order, by way of instruction to the examiner.

XXIV.

When the deposition is filed it shall be in the custody of the clerk, subject to the order of the court, as other documents in the case. When a deposition has been filed, if not read on the trial by the party taking it, it may be used by the other party, if he sees fit, on paying the cost of taking the same. In all cases the court may order a deposition in the possession of any party to be opened and filed, on the application of any of the parties against whom the same was taken; and, if such deposition shall not be opened and filed in pursuance of such order, it shall not be used on the trial.

XXV.

Each deposition shall be opened by the clerk, when presented for that purpose, and he shall indorse upon it the time of opening and filing. No deposition shall be used unless it is filed within forty-eight hours after it is opened; and forty-eight hours after filing shall be allowed for its examination by the opposite party, unless the court, for reasons, in either case, order a longer or a shorter time.

XXVI.

PAYMENT OF MONEY INTO COURT.

In all cases in which money is brought into court under the common rule, the plaintiff shall be entitled to receive the same, together with his costs up to that time; and if the plaintiff shall, in reasonable time, tax his costs, they shall be paid into court, in addition to the money brought in, and shall be for the use of the plaintiff, and paid out to him on request. Whereupon, the amount so brought in shall be considered as stricken out of the plaintiff's demand, to the same effect as if paid. If the plaintiff accepts said amount in satisfaction, all further proceedings in the case shall cease. If the plaintiff elects not to receive the same in satisfaction, but to proceed in his suit, if he shall recover any sum beyond the amount thus paid in, he shall be entitled to a judgment therefor, with costs, to be taxed from the time the money was so brought in. If he does not recover more than the sum thus paid in the defendant shall be entitled to judgment, with costs, to be taxed from the time the money was paid into court.

XXVII.

REFERENCE.

No action referred to an auditor or referee, shall be put upon the trial list until a report is filed, or the reference discharged.

Auditors and referees after making their report or award, shall forthwith submit the same to the court, who shall fix their compensation, the time of payment, and of the filing of the report or award; and if the same shall not be paid for and filed, the action may be dismissed or defaulted with costs, or such judgment entered as justice may require.

No costs shall be allowed while actions are under advisement, or reference, or committed to auditors.

XXVIII.

WRITS OF PROTECTION.

No writ of protection shall issue, except by the order of court, or some one of the justices thereof, such order to be made upon the application of the person for whom such writ of protection is to be issued, or some person by him duly authorized; and no order shall be made for granting such writ of protection, until it shall be made to appear to the court or justice applied to, by affidavit, or other satisfactory evidence, that the application is made in good faith, for the purpose of enabling such person to attend this court as a party, or as a witness, in some cause pending — such cause to be specified; if a party plaintiff, that such suit has not been commenced by him collusively; or if a defendant, that such suit has not been commenced against him by his request or procurement, collusively, and to enable him to obtain such writ; or if a witness,

that he has been duly summoned, to attend as such, and not by his own request or procurement, or collusively, to enable him to obtain the writ of protection prayed for.

XXIX.

ADVERSE CLAIMANTS.

An adverse claimant in a trustee or interpleader process shall file a statement of the particulars of his claim when he enters his appearance, and in trustee process shall have the opening and close.

XXX.

TRIALS.

Lists of continued actions intended for trial shall be handed to the clerk before twelve o'clock noon, on Thursday, unless that day falls on a legal holiday, then before twelve o'clock noon, on Wednesday; and the trial list shall be made up therefrom, and ready for examination of the bar at nine o'clock in the forenoon, on Saturday.

Upon notice and motion, for cause shown, actions may afterwards be placed at the end of the weekly list in the order of the motions therefor.

Unless the court, for cause shown, otherwise orders, no action in which issues have been joined for more than two months prior to the beginning of the sitting for which such action is intended to be

marked, shall be placed upon the trial list for any sitting from, and including, the first Saturday in May until the usual summer suspension.

XXXI.

Trials shall commence on Monday, unless the court otherwise order.

At the opening of the court on each day, the special list of actions in order for trial on such day shall be called. Actions thereon wherein both parties are intending a trial shall be then so notified to the court by both, and marked by the clerk. Actions in which such notice is given by one party only, shall be non-suited or defaulted or otherwise disposed of as the court may order. Actions in which neither party gives such notice shall be continued.

XXXII.

A weekly trial list shall be made up in such order as the court may direct, and actions shall be tried in accordance with such trial list, unless the court, for cause shown, otherwise order; but one action may be substituted for another by consent of all parties to both actions and by leave of the court, and the court may make special assignments of actions. When an action comes on for trial, either party who is not present shall, upon motion of the party present, be non-suited or defaulted, and if neither party is present, the case shall be continued,

unless the court otherwise order; and no action shall be restored to the list except by written agreement of the parties filed with the clerk and order of the court, or by motion grounded upon an affidavit stating why the party or attorney was not present at the time of such disposal; and when defaulted, upon an affidavit of merits in the defence and of its nature, and that such defence was in good faith intended.

XXXIII.

COPIES FOR THE COURT.

Copies of every account, schedule or statement containing more than three items of any matter of action or defence, in each case on the trial list, shall be handed to the clerk before the reading of the writ; otherwise the action may be postponed or continued, or such other terms imposed as the court may order.

XXXIV.

When damages are to be assessed, the plaintiff shall file a statement of his claim, unless the same appears on the record or papers filed in the case.

XXXV.

DELAY OF JUDGMENT.

No second motion to continue any case for judgment shall be allowed except after notice to all adverse parties, the time and manner of giving such notice to be certified in such motion.

XXXVI.

SUPERSEDEAS.

No supersedeas shall issue in any case except after due notice to the adverse party and opportunity to be heard.

XXXVII.

REQUESTS FOR RULINGS AND REPORTS.

Requests for rulings in the trial of causes shall be in writing and presented to the court before the closing arguments unless special leave is given to present further requests later.

A request for a report to the Appellate Division shall contain a clear and concise statement of the ruling upon which a re-hearing is requested, sufficiently full and accurate for identification.

XXXVIII.

REPORTS.

The party requesting a report shall file a draft thereof within five days after notice of the finding in the cause, provided that the cause be then ripe for judgment, except for the pendency of requests for rulings or request for a report; otherwise within five days after the cause becomes so ripe for judgment. The justice whose ruling is complained of may, however, order or consent to the filing of such draft report before the cause is so ripe for judgment.

Such draft report shall set forth in clear and concise terms the rulings upon which the party seeking the report has requested and now asks a re-hearing by the Appellate Division, the stage of the case at which, and the manner in which the same arose, how he claims to be prejudiced by such rulings, and any other facts essential to a full understanding of the questions presented. A hearing shall be had thereon if any party files a written request therefor. The justice shall allow such report or such amended form thereof as may be necessary to conform to the facts, or disallow the same, in whole or part, in any case returning the report to the clerk with his action indorsed thereon. The clerk shall forthwith give notice to the parties and upon the allowance or establishment of any report, shall enter the cause upon the list of causes ready for hearing by the Appellate Division. The justice may amend his report, after hearing and with the consent of the party seeking the same, at any time prior to the hearing upon the merits thereof by the Appellate Division, and said division may at any time recommit the same for amendment.

XXXIX.

APPELLATE DIVISION PROCEDURE.

After notice of the allowance or establishment of a report, seven days, exclusive of Sundays and legal holidays shall be allowed the parties for filing briefs,

unless upon good cause shown further time is allowed by the Appellate Division. Said division may at any time allow supplementary briefs to be filed. The party seeking the report shall also file within said seven days three additional copies of the report as allowed or established. The cause shall be in order for argument at the next regular sitting of the Appellate Division after the expiration of the time allowed for filing briefs. If any party be absent or not ready for argument when reached, said division may dispose of the cause as justice may require. Each party will be allowed one-half hour for argument unless said division shall extend the time. The party who requested the report shall have the right to open and close. There shall be filed with the clerk four copies of all briefs, together with one additional copy for each adverse party, such briefs to be printed or written on paper of the usual quarto size, signed by counsel or party, stating the points on which he intends to rely, and the authorities intended to be cited in support of them.

No oral argument will be heard on behalf of a party for whom briefs have not been so filed unless by special permission of the court.

XL.

APPELLATE DIVISION SITTINGS.

The Appellate Division of this court shall sit at such times and at such places as it shall from

time to time appoint. At the beginning of each sitting the clerk will call the list of all cases in which a claim for a report has been filed, and the further action necessary to preserve the right to a report has not been taken, and the court will make such further orders as the rights of the parties may then require. Motions and formal matters shall be next in order and thereafter arguments on reports in their order upon the calendar unless the court shall otherwise order.

Motions shall be filed with the clerk on or before the day preceding the sitting at which they are to be heard and notice thereof shall be given to the adverse party in like manner as of other motions.

There shall be placed upon the calendar of the Appellate Division at each of its sittings for such action as the court may deem necessary, all actions in which a draft of a report has been filed and no final action had thereon by the trial judge within thirty days after its filing, also all petitions for establishment of a report which have been referred to a single justice, and no final action had thereon by him within thirty days after such reference.

XLI.

ESTABLISHMENT OF REPORTS.

Whenever a claim of report shall be disallowed by a justice of this court as not conformable to the facts, or whenever any justice shall fail to allow such report by reason of physical or mental dis-

ability, death or resignation, or if for any other cause action on said report is unduly delayed, the party seeking the same may within three days after notice of such disallowance or such time as the Appellate Division may allow in any other such case, file with the clerk his petition, verified by affidavit, setting forth in full his claim for such report and all facts material thereto, and shall forthwith give notice to the adverse party by delivering to him, or his attorney of record, a copy of said petition. No party shall be allowed to establish the truth of any such allegations if he has failed to comply with the requirements herein prescribed. Said petition shall upon motion be heard and decided by the Appellate Division, or assigned for hearing and disposition by one or more justices of the court other than the justice whose ruling is complained of; and if heard by the Appellate Division, final action thereon may be taken in like manner as though said cause had been heard by said division upon the merits of the question sought to be presented.

XLII.

NEW TRIALS.

Whenever a new trial shall have been ordered in whole or in part the case may be marked for trial upon any succeeding trial list beginning not less than five days after notice of the entry of such order,

unless appeal is taken in the meantime, and in such case upon any trial list after receipt of rescript from the Supreme Judicial Court, but the provision of Rules XVI and XXX shall apply to all actions in which such new trial is ordered.

XLIII.

APPEALS.

The penal sum of the bond which may be required to prosecute an appeal from a judgment in any case, except in proceedings under chapter 181 of the Revised Laws, shall be one hundred dollars, unless the court otherwise order.

XLIV.

In all cases of appeal, except from a judgment in proceedings under chapter 181 of the Revised Laws, the sufficiency of the surety or sureties may be determined by the clerk, with the right of appeal from his decision, by either party, to any justice of the court.

XLV.

WITNESS FEES.

Witness fees will not be taxed in the costs of the prevailing party in any action, unless the certificate of witnesses is filed in the clerk's office before the entry of judgment.

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XLVI.

HOLIDAYS.

Unless otherwise provided for herein, whenever the time for doing any act or thing under these rules falls on a legal holiday, the time for doing such act or thing shall be extended to the next day on which the court is open for business.

STANDING ORDER.

Sittings of the Appellate Division shall be held on Friday, unless such day falls on a legal holiday, in each week, except in the months of July, August and September, such sittings to begin at half-past ten o'clock in the forenoon.

By the Court,

WILLIAM F. DONOVAN,

Clerk.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss.—At a meeting of the Justices of the Municipal Court of the City of Boston, held on the sixteenth day of February, in the year of our Lord one thousand nine hundred and fifteen;

Ordered, that rule thirty-eight be amended by striking out in the seventeenth line thereof, after the word “presented,” the following, “A hearing shall be had thereon if any party files a written request therefor. The justice shall allow such report or such amended form thereof as may be necessary to conform to the facts, or disallow the same, in whole or part, in any case returning the report to the clerk with his action indorsed thereon,” and inserting in place thereof, the following, “A copy thereof shall be delivered or mailed forthwith to the adverse party, and a hearing shall be had on said report if any party files a written request therefor. The justice shall thereupon settle the form of his report, or disallow the claim of a report,” so that said rule when amended will read as follows:—

XXXVIII.

REPORTS.

The party requesting a report shall file a draft thereof within five days after notice of the finding in the cause, provided that the cause be then ripe for judgment, except for the pendency of requests for rulings or request for a report; otherwise within five days after the cause becomes so ripe for judg-

ment. The justice whose ruling is complained of may, however, order or consent to the filing of such draft report before the cause is set ripe for judgment.

Such draft report shall set forth in clear and concise terms the rulings upon which the party seeking the report has requested and now asks a re-hearing by the Appellate Division, the stage of the case at which, and the manner in which the same arose, how he claims to be prejudiced by such rulings, and any other facts essential to a full understanding of the questions presented.

A copy thereof shall be delivered or mailed forthwith to the adverse party, and a hearing shall be had on said report if any party files a written request therefor. The justice shall thereupon settle the form of his report, or disallow the claim of a report. The clerk shall forthwith give notice to the parties and upon the allowance or establishment of any report, shall enter the cause upon the list of causes ready for hearing by the Appellate Division. The justice may amend his report, after hearing and with the consent of the party seeking the same, at any time prior to the hearing upon the merits thereof by the Appellate Division, and said division may at any time recommit the same for amendment.

By the Court,

WILLIAM F. DONOVAN,

Clerk.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss.—At a meeting of the Justices of the Municipal Court of the City of Boston, held on the twenty-seventh day of February, in the year of our Lord one thousand nine hundred and fourteen; present,

Hon. WILFRED BOLSTER, Chief Justice.

Hon. FREDERICK D. ELY.

Hon. JOHN H. BURKE,

Hon. GEORGE L. WENTWORTH,

Hon. JAMES P. PARMENTER,

Hon. WILLIAM SULLIVAN,

Hon. MICHAEL J. MURRAY,

Hon. JOHN DUFF,

Hon. MICHAEL J. CREED,

} Justices.

Ordered, that the following additional rules be established for regulating trials, and for the arrangement and conduct of business in civil cases in this Court from and after the twelfth day of March, A. D., 1914.

NEW TRIALS.

(Stat. 1866, c. 279, Sec. 10,

Stat. 1914, c. 35, Sec. 3.)

XLVII.

A new trial may be granted on motion at any time before final judgment, for newly discovered evidence, or for mistake of law injuriously affecting the substantial rights of the moving party.

Anything in this rule to the contrary notwithstanding the court may of its own motion grant a new trial at any time before final judgment, if deemed necessary to prevent a failure of justice.

[OVER]

XLVIII.

A new trial granted for causes affecting a part only of the matter in controversy, or some or one only of the parties, shall, if the matter be separable, be limited to the part or party so affected; and no new trial shall be granted for a cause affecting only the amount of damages recoverable or available in reduction of damages, if the party claiming the same will in writing remit the excess.

XLIX.

No motion for a new trial based upon any matter preceding the trial or any ruling of law in the course of the trial, or upon any allegation that the finding is against the evidence, shall be sustained unless within two days after notice of the finding in the case, a motion for new trial shall be filed, specifying the grounds of complaint, and a copy thereof delivered or mailed to the adverse party or counsel on the day of filing or within such further time as the court may allow. The court may in its discretion extend the time for filing such motion.

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If a new trial is refused, the court may impose terms upon the moving party, which shall be taxed as costs.

By the Court,

WILLIAM F. DONOVAN,
Clerk.

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