STATUTORY INSTRUMENTS

1968 No. 725

OVERSEAS TERRITORIES

The Bermuda Supreme Court (Amendment) Rules Order 1968

Made - - - - *8th May* 1968

At the Court at Buckingham Palace, the 8th day of May 1968

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers vested in Her by section 7 of the Colonial Courts of Admiralty Act 1890(a), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation.

1. This Order may be cited as the Bermuda Supreme Court (Amendment) Rules Order 1968.

Approval of Rules of Court.

2. The rules of court entitled the Supreme Court (Amendment) Rules, 1968, made on 22nd August 1967 by the Chief Justice of Bermuda in exercise of the powers conferred by section 7 of the Colonial Courts of Admiralty Act 1890 and section 22 of the Supreme Court Act, 1905(b), of Bermuda and set out in the schedule to this Order are approved.

W. G. Agnew.

SCHEDULE

THE SUPREME COURT (AMENDMENT) RULES, 1968

Amendment of Supreme Court Rules, 1952.

1. The Rules of the Supreme Court, 1952, (hereinafter called "the principal Rules") shall be amended by the addition, after Order 71 thereof, of the following Order:

"ORDER 75

ADMIRALTY PROCEEDINGS

Application and interpretation

1.—(1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order.

(a) 1890 c 27. (b) Laws of Bermuda, Rev. 1965, Title 8, item 1.

(2) In this Order—

" action in rem " means an Admiralty action in rem ;

" Appendix " means the Appendix to this Order ;

" caveat against arrest " means a caveat entered in the caveat book under rule 6 ;

" caveat against release and payment " means a caveat entered in the caveat book under rule 14 ;

" caveat book " means the book kept in the Registry in which caveats issued under this Order are entered ;

" Court " means the Supreme Court or any judge thereof whether sitting in court or in chambers ;

" limitation action " means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1965 of the United Kingdom for the limitation of the amount of their liability in connection with a ship or other property ;

" Merchant Shipping Act " means the Act of the Parliament of the United Kingdom known as " the Merchant Shipping Act 1894 " ;

" Admiralty marshal " or " marshal " means the Provost Marshal General ;

" Registrar " means the Registrar of the Supreme Court ;

" Registry " means the Registry of the Supreme Court ;

" ship " includes any description of vessel used in navigation.

Issue of writ and entry of appearance

3. An action in rem must be begun by writ ; and the writ must be in Form No. 1 in the Appendix.

3A. Order 12 shall apply to an Admiralty action.

Service of writ out of jurisdiction in certain actions in personam

4.—(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ, or notice of a writ, containing any claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships, or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships, or

(iii) non-compliance, on the part of one or more of two or more ships, with any provision of law or regulation made thereunder

is permissible with the leave of the Court if, but only if—

(*a*) the defendant has his habitual residence or place of business within these Islands, or

(*b*) the cause of action arose within territorial waters of these Islands, or

(*c*) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court, or

(*d*) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Order 11, rules 4, 5, 6 and 7 shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) This rule shall not apply to an action in rem.

Warrant of arrest

5.—(1) After a writ has been issued in an action in rem a warrant (in Form No. 3 in the Appendix) for the arrest of the property against which

the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(3) A party applying for the issue out of the registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(4) A warrant of arrest shall not be issued until the party applying for it has filed a praecipe (in Form No. 4 in the Appendix) requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraphs (7), (8) and (9) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in these Islands being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(7) Every affidavit must state—

(*a*) the name, address and occupation of the applicant for the warrant;

(*b*) the nature of the claim or counterclaim in respect of which the warrant is required and that it has not been satisfied; and

(*c*) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(8) Every affidavit in an action in rem brought against a ship by virtue of section 2(4) of the Supreme Court (Admiralty Jurisdiction) Act, 1962, must state—

(*a*) whether the ship against which the action is brought is the ship in connection with which the claim in the action arose;

(*b*) that in the belief of the deponent the person who would, apart from section 3 of that Act, be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer, or in possession or control, of the ship in connection with which the claim arose and was also, at the time of the issue of the writ, the beneficial owner of all the shares in the ship against which the action is brought; and

(*c*) the grounds of the deponent's belief.

(9) Every affidavit in an action in rem for possession of a ship or for wages must state the nationality of the ship against which the action is brought and that the notice (if any) required by paragraph (5) has been sent.

A copy of any such notice must be annexed to the affidavit.

(10) An affidavit in such an action as is referred to in paragraph (6) must have annexed thereto a certified copy of the bottomry bond, or of the translation thereof.

Caveat against arrest

6.—(1) A person who desires to prevent the arrest of any property must file in the registry a praecipe (in Form No. 5 in the Appendix) signed by him or his attorney undertaking—

(*a*) to enter an appearance in any action that may be begun against the property described in the praecipe, and

(*b*) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court;

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

Remedy where property protected by caveat is arrested

7. Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

Service of writ in action in rem

8.—(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought except—

(*a*) where that property is freight, in which case it must be served on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, or

(*b*) where that property has been sold and the proceeds of sale paid into court, in which case it must be served on the Registrar.

(2) A writ need not be served on the property or Registrar if the defendant, by his attorney, undertakes in writing to accept service and enters an appearance, or if the writ is deemed to have been duly served on the defendant by virtue of Order 9, rule 4 or 5.

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the marshal, he must leave the writ and a copy thereof at the registry and file therein a praecipe in Form No. 6 in the Appendix; and where he does so the marshal shall serve the writ on the property described in the praecipe.

The expenses incurred by the marshal in effecting service shall be paid to the marshal on demand by him.

(4) Where the plaintiff in an action in rem, or his attorney, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

Attachment of attorney failing to comply with undertaking

9. Where the attorney of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his attorney to enter an appearance in the action, give bail or pay money into court in lieu of bail, he shall be liable to attachment.

Execution, etc., of warrant of arrest

10.—(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the marshal.

(3) A warrant of arrest shall not be executed until an undertaking in writing, satisfactory to the marshal, to pay the fees and expenses of the marshal has been lodged in the marshal's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the marshal.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) No instrument except a warrant of arrest shall be served on a Sunday.

(8) Within 7 days after the service of a warrant of arrest, the warrant must be filed in the registry by the marshal.

Service on ships, etc. : how effected

11.—(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by—

(*a*) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and

(*b*) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or trans-shipped, be effected—

(*a*) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or

(*b*) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

Applications with respect to property under arrest

12.—(1) The marshal may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the parties to every action against the property.

(2) The marshal shall send a copy of any order made under paragraph (1) to all the parties to every action against the property to which the order relates.

Release of property under arrest

13.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a "release") in Form No. 7 in the Appendix, issued out of the registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (6), be issued with respect to that property.

(3) Unless the Court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the Court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(6) Before a release is issued the party entitled to its issue must—

(*a*) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his attorney requiring the caveat to be withdrawn, and

(*b*) file a praecipe (in Form No. 8 in the Appendix) requesting issue of a release.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the marshal, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(8) The Court, on the application of any party who objects to directions given to him by the marshal under paragraph (7), may vary or revoke the directions.

Caveat against release and payment

14.—(1) A person who desires to prevent the release of any property under arrest in an action in rem and the payment out of court of any money in court representing the proceeds of sale of that property must file in the registry a praecipe in Form No. 9 in the Appendix, and on the filing of the praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

Duration of caveats

15.—(1) Every caveat entered in the caveat book is valid for 6 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in the Appendix.

(2) The period of validity of a caveat may not be extended but this provision shall not be taken as preventing the entry of successive caveats.

Bail

16.—(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in the Appendix; and the sureties to the bond must enter into the bond before a commissioner to administer oaths, not being a commissioner who, or whose partner, is acting as attorney for the party on whose behalf the bail is to be given, or before the Registrar.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner or Registrar before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

Interveners

17.—(1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

(2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.

(3) A person to whom leave is granted to intervene in an action must enter an appearance therein in the registry within the period specified in the order granting leave; and Order 12 shall, with the necessary modifications and so far as applicable, apply in relation to the entry of appearance by an intervener as if he were a defendant named in the writ.

(4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period as may be specified in the order, serve on every other party to the action such pleading as may be so specified.

Preliminary acts

18.—(1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, unless the Court otherwise orders, the plaintiff must, within 2 months after issue of the writ, and the defendant must, within 2 months after entering an appearance in the action, and before any pleading is served, lodge in the registry a document (in these rules referred to as a preliminary act) containing a statement of the following particulars:—

(i) the names of the ships which came into collision and their ports of registry;

(ii) the date and time of the collision;

(iii) the place of the collision;

(iv) the direction and force of the wind;

(v) the state of the weather;

(vi) the state, direction and force of the tidal or other current;

(vii) the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;

(viii) the lights (if any) carried by the ship;

(ix) (*a*) the distance and bearing of the other ship if and when her echo was first observed by radar;

(*b*) the distance, bearing and approximate heading of the other ship when first seen;

(x) what light or combination of lights (if any) of the other ship was first seen;

(xi) what other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision, and when;

(xii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (vii) up to the time of the collision, and when, and what measures (if any), other than alterations of course or speed, were taken to avoid the collision, and when;

(xiii) the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;

(xiv) what sound signals (if any) were given, and when;

(xv) what sound signals (if any) were heard from the other ship, and when.

(2) Every preliminary act shall be sealed by the Registrar and shall be filed in a closed envelope (stamped with an official stamp showing the date of filing) and, unless the Court otherwise orders, no envelope shall be opened until the pleadings are closed and a consent signed by each of the parties or his attorney to the opening of the preliminary acts is filed with the Registrar.

(3) Where the Court orders the preliminary acts to be opened, the Court may further order the action to be tried without pleadings but, where the Court orders the action to be so tried, any party who intends to rely on the defence of compulsory pilotage must give notice of his intention to do so to the other parties within 7 days after the opening of the preliminary acts.

(4) Where the Court orders the action to be tried without pleadings, it may also order each party, within such period as may be specified in the order, to file a statement of the grounds on which he charges any other party with negligence in connection with the collision and to serve a copy thereof on that other party.

(5) Order 20, rule 1 (*b*) shall not apply to an action in which preliminary acts are required but, unless the Court orders the action to be tried without pleadings, the plaintiff must serve a statement of claim on each defendant within 14 days after the latest date on which the preliminary act of any party to the action is filed.

Failure to lodge preliminary act: proceedings against party in default

19.—(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 27, rules 2, 3, 4, 5, 6 and 9 shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to deliver a defence within the period fixed by or under these rules for delivery thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rules 2, 3, 4, 5, 6 or 9, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to deliver a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(1) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Special provisions as to pleadings in collision actions

20.—(1) The plaintiff in any such action as is referred to in rule 4(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court.

(2) If in such an action there is a counterclaim and no defence to counterclaim by the plaintiff, then there is an implied joinder of issue on the counterclaim, and the joinder of issue operates as a denial of every material allegation of fact made in the counterclaim.

Judgment by default

21.—(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if—

(*a*) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his attorney to procure the entry of the caveat, and

(*b*) that party or his attorney does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by attachment of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to enter an appearance within the time limited for appearing, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(4) Where a defendant to an action in rem fails to deliver a defence, then, after the expiration of the period fixed by or under these rules for delivery of the defence and upon filing an affidavit stating that no defence was delivered by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to deliver a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for delivery of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was delivered by the first-mentioned defendant during that period, and an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any such action as is referred to in rule 4(1).

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the

applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into Court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 27 (except rule 1) shall not apply to actions in rem.

Order for sale of ship: determination of priority of claims

22.—(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may—

(*a*) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(*a*), or

(*b*) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order—

(*a*) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;

(*b*) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the order;

(*c*) that within 7 days after the date of payment into court of the proceeds of sale the marshal shall send for publication in Lloyd's List and Shipping Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(*c*) must state—

(*a*) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;

(*b*) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(*c*) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(*d*) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment, should do so before the expiration of that period.

(4) The marshal must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(*c*) appeared.

(5) The expenses incurred by the marshal in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(*a*) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be

served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

Appraisement and sale of property

23.—(1) A commission for the appraisement and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in the Appendix.

(2) Such a commission must, unless the Court otherwise orders, be executed by the marshal and must be in Form No. 13 in the Appendix.

(3) A commission for appraisement and sale shall not be executed until an undertaking in writing satisfactory to the marshal to pay the fees and expenses of the marshal on demand has been lodged in the marshal's office.

(4) The marshal shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the marshal's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of a Registrar made in taxation proceedings under Order 65 and paragraphs 39 to 41 of rule 27 of that Order shall apply accordingly with the necessary modifications.

Payment into and out of court

24.—(1) Order 22 (except rules 2, 3 and 4) shall apply in relation to an Admiralty action as it applies to an action for debt or damages.

(2) Subject to paragraph (3), money paid into court shall not be paid out except in pursuance of an order of the Court.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say—

(*a*) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision ;

(*b*) where property has been sold and the proceeds of sale thereof paid into court, and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons ;

(*c*) where in any other case there is no dispute between the parties.

Summons for directions

25.—(1) Unless the Court otherwise directs, the summons for directions shall be heard by the Court but, subject to that, Order 30 shall apply to Admiralty actions (other than limitation actions) as it applies to other actions.

(2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors, whether Elder Brethren of Trinity House, nautical assessors or other assessors.

(3) The trial shall be before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.

(4) An order may be made on the summons for directions, or a direction may be given at the trial, limiting the witnesses who may be called at the trial, whether they are expert witnesses or not.

(5) Any such order or direction as is referred to in paragraph (2), (3) or (4) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by the Court, or, with the Court's consent, by the Registrar.

Fixing date for trial, etc.

26.—(1) The Court may at any stage of an action, either on an application made by summons by any party or by order made by virtue of rule 35, fix a date for the trial and vacate or alter any such date.

(2) Not later than 7 days after a date for the trial of the action has been fixed, the action shall be set down for trial—

(*a*) where the date was fixed on an application made under paragraph (1), by the applicant;

(*b*) where the date was fixed by order made by virtue of rule 35, by the plaintiff.

(3) Not less than 7 days before the date fixed for the trial, or such other period before that date as may be specified in general directions given by the Chief Justice, the party by whom the action was set down for trial must, without prejudice to anything in Order 29, rule 28 and unless the Court otherwise orders, file in the Registry—

(*a*) if trial with one or more assessors has been ordered, a praecipe for his or their attendance, and

(*b*) 3 copies or, in the case of a trial with one or more assessors, 4 copies (if with one assessor) and 5 copies (if with two) of any pleadings, preliminary acts, notices given under rule 18(3) and statements filed under rule 18(4).

(4) If an action which has been set down for trial is settled or withdrawn it shall be the duty of all the parties to notify the registry of the fact without delay and take such steps as may be necessary to vacate the date fixed for the trial.

(5) Order 26, rule 2 shall not apply to Admiralty actions.

Stay of proceedings in collision, etc., actions until security given

27. Where an action in rem, being an action to enforce any such claim as is referred to in rule 4(1) is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counter claim arising out of that occurence is made in the first mentioned action, then—

(*a*) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but

(*b*) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

Inspection of ship, etc.

28. The Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

Examination of witnesses and other persons

30.—(1) The power conferred by Order 37, rule 5 shall extend to the making of an order authorising the examination of a witness or person

on oath before a judge sitting in court as if for the trial of a cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 5 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect—

(*a*) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness ;

(*b*) any attorney of either of the parties shall have authority to administer the oath to the witness ;

(*c*) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the attorney for the party whose witness was examined, and that attorney shall file it in the registry ;

(*d*) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the attorneys who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 37, rule 5, authorising any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

(5) Order 37 shall apply in relation to an Admiralty cause or matter.

Admiralty examiners

31. The Chief Justice may appoint such number of barristers and attorneys as he thinks fit to act as examiners of the Court in connection with Admiralty causes and matters, and may revoke any such appointment.

Proceedings for apportionment of salvage

33.—(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained must be begun by motion.

(2) The originating notice of motion, together with the affidavit in support thereof, must be filed in the registry 7 days at least before the hearing of the motion, unless the Court gives leave to the contrary, and a copy of the notice and of the affidavits must be served on all the other parties to the proceedings before the originals are filed.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act.

Filing and service of notice of motion

34.—(1) Notice of a motion in any action, together with the affidavits (if any) in support thereof, must be filed in the registry 3 days at least before the hearing of the motion unless the Court gives leave to the contrary.

(2) A copy of the notice of motion and of the affidavits (if any) in support thereof must be served on all the other parties to the proceedings before the originals are filed.

Agreement between attorneys may be made order of court

35. Any agreement in writing between the attorneys of the parties to a cause or matter, dated and signed by those attorneys, may, if the Registrar

thinks it reasonable and such as the Court would under the circumstances allow, be filed in the registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the Court.

Originating summons procedure

36.—(1) Order 12 shall apply in relation to an originating summons in Admiralty to which appearance is required to be entered.

(2) Order 54 (in so far as it applies to originating summonses) shall apply in relation to Admiralty proceedings begun by originating summons as it applies in relation to other proceedings so begun.

(3) Rule 26 (except paragraph (3)) shall, with any necessary modifications, apply in relation to an Admiralty cause or matter begun by originating summons.

Limitation action: parties

37.—(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other.

(5) In this rule and rules 38, 39 and 40 " name " includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

Limitation action: summons for decree or directions

38.—(1) Within 7 days after the entry of appearance by one of the defendants named by their names in the writ, or, if none of them enters an appearance, within 7 days after the time limited for appearing, the plaintiff, without delivering a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving—

(*a*) the plaintiff's case in the action, and

(*b*) if none of the defendants named in the writ by their names has entered an appearance, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state—

(*a*) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and

(*b*) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof, must, at least 7 clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 30.

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the registry and serve a copy on the plaintiff and on any other defendant who has entered an appearance.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

Limitation action: proceedings under decree

39.—(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, any decree in the action limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action)—

(*a*) need not be advertised,

(*b*) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action)—

(*a*) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;

(*b*) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which rule 40 applies, take out a summons if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2) (*a*) shall, unless for special reasons the Registrar or the Court thinks fit otherwise to provide, be a single advertisement in each of 3 newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2) (*b*) file in the registry a copy of each newspaper in which the advertisement required under paragraph (2) (*a*) appears.

(4) The time to be allowed under paragraph (2) (*b*) shall, unless for special reasons the Registrar or the Court thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed, no appearance may be entered, claim filed or summons taken out to set aside the decree except with the leave of the Registrar or, on an appeal, of the judge.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) may make any such provision as is authorised by section 504 of the Merchant Shipping Act.

Limitation action : proceedings to set aside decree

40.—(1) Where a decree limiting the plaintiff's liability (whether made by a Registrar or on the trial of the action) fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who—

(*a*) was not named by his name in the writ as a defendant to the action, or

(*b*) if so named, neither was served with the writ nor entered an appearance

may, within that time, after entering an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 30.

References to Registrar

41.—(1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision must, within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, deliver a copy of the claim to every other party.

(2) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(3) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(4) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(5) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file—

(*a*) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and

(*b*) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed ;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(6) If the claimant fails to comply with paragraph (1) or (5)(*b*), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

Hearing of reference

42.—(1) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(2) At or before the hearing of a reference, the Registrar may give a direction limiting the witnesses who may be called, whether expert witnesses or not, but any such direction may, on sufficient cause being shown, be revoked or varied by a subsequent direction given at or before the hearing.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon, and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by the court stenographer, and in such case a transcript of the stenographer's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's decision.

(4) When the hearing of the reference has been concluded, the Registrar shall—

(*a*) reduce to writing his decision on the questions arising in the reference (including any order as to costs) and cause it to be filed ;

(*b*) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit ; and

(*c*) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

Objection to decision on reference

43.—(1) Any party to a reference to the Registrar may, by motion in objection, apply to a judge in court to set aside or vary the decision of the Registrar on the reference, but notice of the motion specifying the points of objection to the decision, must be filed within 14 days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 14 days after the date on which that notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but unless he or the Court otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard, but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

Appeal from Registrar

45.—(1) Except in the cases provided for in rule 43 of this Order, an appeal shall lie to a judge in chambers from any decision, order or decree of the Registrar.

(2) The appeal shall be brought by serving on every other party to the proceedings in which the decision, order or decree in question was made a notice to attend before the judge on a day specified therein.

(3) Unless the Court otherwise orders, the notice must be served within 5 days after the decision, order or decree appealed against was made and at least one clear day before the day fixed for hearing the appeal.

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

Drawing up orders

46. Every order made in an Admiralty cause or matter shall be drawn up in the registry and shall be entered by an officer of the registry in the book kept for the purpose.

47. The fees set forth in the First Schedule to the Rules of the Supreme Court, 1952, shall be payable into the registry in respect of the various matters specified in the said First Schedule, and the costs set forth in the Second Schedule to the said Rules shall be payable to attorneys in respect of the various matters specified in the said Second Schedule.

APPENDIX TO ORDER 75

SPECIAL ADMIRALTY FORMS

No. 1

Writ of summons in action in rem issued out of Registry

(O. 75, r. 3)

In the Supreme Court of Bermuda 19 , Folio

Admiralty action in rem against:

[The ship "X" or as may be describing the res]

[The owners of the ship "Y" or as may be] Plaintiffs

and

[The owners of the ship "X" or as may be describing the res] Defendants

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith:

To the [owners of and other] persons interested in the ship of the port of [or cargo, etc. as may be].

We command you that within 8 days after the service of this writ, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of ; and take notice that in default of your so doing the plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this writ is then under arrest of the Court it may be sold by order of the court.

Witness , day of 19 .

NOTE:—This writ may not be served more than 12 calendar months after the above date unless renewed by order of the Court.

Directions for entering appearance

The defendants may enter an appearance in person or by their attorney by handing in the appropriate forms duly completed at the registry.

Indorsements to be made on writ before issue

Indorsement of claim

The plaintiffs' claim is for

[If the plaintiffs sue, or the defendants are sued, in a representative capacity, this must be stated in the indorsement of claim.]

Indorsement as to attorney and address

This writ was issued by of attorney for the said plaintiffs whose address is

[or This writ was issued by of agent for of attorney for the said plaintiffs whose address is]

[or This writ was issued by the said plaintiffs who reside at and (if the plaintiffs do not reside within the jurisdiction) whose address for service is]

Indorsement as to service

This writ was served by me at on on the day of 19 by [stating manner of service].

(Signed)

(Address)

Writ of summons in Admiralty action in personam

NOTE:—

Form No. 1, 2 or 5 in Appendix A, Part I, as is appropriate, should be used.

Memorandum of appearance for use in Admiralty actions

NOTE:—

Form No. 1 in Appendix A, Part II should be used.

No. 3

Warrant of arrest

(O. 75, r. 5 (1))

[Title as in action]

ELIZABETH THE SECOND, etc. [as in Form No. 1]

To the Admiralty Marshal of Our Supreme Court, Greeting!

We hereby command you to arrest the ship
of the port of
[and the cargo now or lately laden therein, together with the freight due for the transportation thereof]
or [and the freight due for the transportation of the cargo now or lately laden therein] and to keep the same under safe arrest until you shall receive further orders from Us.

Witness [as in Form No. 1]

The plaintiffs claim is for [copy from the writ]
Taken out by [attorneys for] the

Marshal's indorsement as to service

No. 4

Praecipe for warrant of arrest

(O. 75, r. 5 (4))

[Title as in action]

We of [attorneys for]
the plaintiffs request a warrant to arrest [description of property giving name, if a ship].

Dated the day of 19 .

(Signed)

No. 5

Praecipe for caveat against arrest

(O. 75, r. 6)

[Description of property giving name, if a ship]

We of [attorneys for
of] request a caveat against the arrest of
[description of property giving name, if a ship] and hereby undertake to enter an appearance in any action that may be begun in the Supreme Court against the said and, within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding pounds or to pay that sum into court. We consent that the writ of summons and any other document in the action may be left for us at .

Dated the day of 19 .

(Signed)

No. 6

Praecipe for service of writ in rem by Marshal

(O. 75, r. 8 (3))

[Title as in action]

We of [attorneys for] the plaintiffs request that the writ of summons left herewith be duly served on .

Dated the day of 19 .

(Signed)

No. 7

Release

(O. 75, r. 13 (1))

[Title as in action]

ELIZABETH THE SECOND, etc. [as in Form No. 1]

To the Admiralty Marshal of Our Supreme Court, Greeting!

Whereas in this action We did command you to arrest that the and to keep the same under safe arrest until you should receive further orders from Us. Now We do hereby command you to release the said from the arrest effected by virtue of Our warrant in this action.

Witness [as in Form No. 1]

Taken out by [attorneys for] the

Marshal's indorsement

On the day of 19 , the was released from arrest pursuant to this Instrument.

(Signed)

Admiralty Marshal.

No. 8

Praecipe for issue of release

(O. 75, r. 13 (6))

[Title as in action]

We of [attorneys for] the plaintiffs [or defendants] in this action against [description of property giving name, if a ship] now under arrest by virtue of a warrant issued out of the registry request the issue of a release with respect to the said

Dated the day of 19 .

(Signed)

No. 9

Praecipe for caveat against release and payment

(O. 75, r. 14)

[Description of property giving name, if a ship]

We of [attorneys for of] request a caveat against the issue of a release with respect to [description of property giving name, if a ship] now under arrest and, should the said property be sold by order of the Court, a caveat against payment out of court of the proceeds of sale.

Dated the day of 19 .

(Signed)

No. 10

Praecipe for withdrawal of caveat

(O. 75, r. 15)

[Description of property giving name, if a ship]

We of [attorneys for of] request that the caveat [state nature of caveat] entered on the day of 19 on behalf of be withdrawn.

Dated the day of 19 .

(Signed)

No. 11

Bail Bond

(O. 75, r. 16)

[Title as in action]

WHEREAS this Admiralty action in rem against the above mentioned property is pending in the Supreme Court and the parties to the said action are the above mentioned plaintiffs and defendants:

NOW, THEREFORE, WE, A.B. of

and C.D. of

hereby jointly and severally submit ourselves to the jurisdiction of the said Court and consent that if they, the above mentioned defendants [or plaintiffs, in the case of a counterclaim] do not pay what may be adjudged against them in this action, with costs, or do not pay any sum due to be paid by them in consequence of any admission of liability therein or under any agreement by which this action is settled before judgment and which is filed in the said Court, execution may issue against us, our executors or administrators, goods and chattels, for the amount unpaid or an amount of pounds whichever is the less.

(Signed)

This bail bond was signed by the said A.B. and C.D., the sureties, the day of 19 .

Before me

A Commissioner for Oaths.

No. 12

Praecipe for commission for appraisement and sale

(O. 75, r. 23)

[Title as in action]

We of [attorneys for] the plaintiffs [or defendants] request a commission for the appraisement and sale of [description of property giving name, if a ship] which was ordered by the Court on the day of 19 .

Dated the day of 19 .

(Signed)

No. 13

Commission for Appraisement and Sale

(O. 75, r. 23)

[Title as in action]

ELIZABETH THE SECOND, etc. [as in Form No. 1]

To the Admiralty Marshal of Our Supreme Court, Greeting!

WHEREAS in this action the Court has ordered [description of property giving name, if a ship] to be appraised and sold ;

WE hereby authorise and command you to choose one or more experienced persons and to swear him or them to appraise the said
according to the true value thereof, and such value having been certified in writing by him or them to cause the said
to be sold by [private treaty] [public auction] for the highest price that can be obtained for it, but not for less than the appraised value unless the Court on your application allows it to be sold for less.

AND WE further command you, immediately upon the sale being completed, to pay the proceeds thereof into court and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness [as in Form No. 1]

Taken out by [attorneys for] the

No. 14

Release and Warrant of Possession

(O. 75)

[Title as in action]

ELIZABETH THE SECOND, etc. [as in Form No. 1]

To the Admiralty Marshal of Our Supreme Court, and to all and singular his substitutes, Greeting! :

WHEREAS in this action the Court has ordered possession of the ship [name to be stated]
her tackle, apparel and furniture to be delivered up to or to his attorney for his use:

WE hereby command you to release the said ship, her tackle, apparel and furniture from the arrest made by virtue of Our warrant in that behalf and to deliver possession thereof to the said
or to his attorney for his use.

Witness [as in Form No. 1]

Taken out by [attorneys for] the

Marshal's Indorsement

On the day of 19 , the ship was released from arrest pursuant to this warrant.

(Signed)

Admiralty Marshal.

Receipt

Received from the Admiralty Marshal on the day of 19 , the ship and everything on board belonging to her.

(Signed) ".

2. The First Schedule to the principal Rules shall be amended by the addition of the following:— Amendment of Schedule to the principal Rules.

" PART 10

FEES IN ADMIRALTY PROCEEDINGS NOT ELSEWHERE PROVIDED FOR IN THIS SCHEDULE

75. On filing—			
(*a*) a consent to release	1	0	0
(*b*) a praecipe under Order 75, Rules 5(4), 6(1), 8(3), 13(6)(*b*), 14(1) or 23(1), or a notice under Order 75, Rule 13(2) ...	1	0	0
(*c*) an agreement under Order 75, Rule 35(1)	1	0	0
(*d*) an admission of liability	1	0	0
(*e*) a request for the attendance of Trinity Masters or other assessors	1	0	0
(*f*) any other document		5	0
76.—(*a*) On entering a reference for hearing by the Registrar ...	6	0	0
(*b*) Such further fee for any Trinity Master, merchant or assessor as the Registrar may consider reasonable.			
77. On sealing a notice of appeal from the Registrar or a District Registrar to a judge in chambers	1	0	0
78. On a certificate by the Registrar as to a judgment or order	1	0	0
In the Marshal's Office			
79. On lodging with the Marshal any instrument under Order 75, Rules 5(1), 13(1) or 21(2)	4	0	0
80. On the appointment and swearing of appraisers ... ... [Note: This fee may be taken by transfer from money in Court.]	2	0	0
81. On the delivery of a ship or goods to a purchaser	4	0	0
82. On the sale of a ship or goods for every £100 or fraction of £100 of the price ... ... [These fees are paid by transfer from the proceeds in court to the account of fees on proceedings.]	1	0	0

83. For attending the discharge of a cargo or the removal of a ship or goods for each day of attendance ... ... 5 0 0".

Amendment of Second Schedule to the principal Rules.

3. The Second Schedule to the principal Rules shall be amended by the addition of the following:—

"ADDITIONAL PROCEEDINGS ARISING ONLY IN CONNECTION WITH ADMIRALTY CAUSES AND MATTERS

184. Procuring issue and service of warrant of arrest 6 0 0

Note to item 184

This item includes procuring the warrant affidavits and other documents required in connection with the issue and service of the warrant and any attendances required to procure its issue and service, the swearing of any such affidavit and the filing of any such document.

185. Procuring issue of instrument of release under Order 75, Rule 13 ... ... 6 0 0

Note to item 185

This item includes drawing the instrument and other documents required in connection with the issue of the instrument, obtaining any consent so required and any attendances required to procure the issue of the instrument and the filing of any such document.

186. Procuring entry, renewal or withdrawal of caveat against the issue of a warrant, the release of property or the payment of money out of Court 1 0 0

Note to item 186

This item includes drawing and filing any document required to procure the entry, renewal or withdrawal and any attendances so required.

187. Giving bail—

(*a*) one surety 7 0 0

(*b*) two sureties 7 10 0

Note to item 187

This item includes drawing the bail bond, affidavits and other documents required in connection with the giving of bail and any attendances required to procure the signing of the bond, the swearing of any such affidavit and the filing and service of any such document.

188. Giving guarantee or undertaking in lieu of bail 4 0 0

Note to item 188

This item includes preparing the guarantee or undertaking and any attendances required to procure the signing and stamping thereof.

Note to items 187 and 188

The commission or fee paid to a person becoming surety to a bail bond or giving a guarantee or undertaking in lieu of bail, not exceeding £1 per cent. of the amount for which the bond, guarantee or undertaking is given, shall be allowed on taxation.

189. Obtaining bail 3 10 0

Note to item 189

This item includes perusing notice of bail and other relevant documents and any attendance to make enquiries as to sufficiency of sureties or to ensure that documents relating to bail have been filed.

190. Obtaining—	
(*a*) guarantee in lieu of bail	3 10 0
(*b*) undertaking in lieu of bail	2 0 0
Note to item 190 This item includes perusing the guarantee or undertaking and other relevant documents.	
191. Procuring the issue and execution of commission of appraisement or of appraisement and sale	3 0 0
Note to item 191 This item includes drawing and filing any document required in connection with the issue and execution of the commission and any attendances so required.	
192. Attending adverse attorney to limit questions in dispute on reference under Order 75, Rule 41	2 10 0
And for every half hour beyond the first	1 0 0
193. Negotiating agreement under Order 75, Rule 35	1 10 0 to 5 0 0
Note to item 193 This item includes taking instructions in connection with the agreement, drawing and filing the agreement and any attendances required in connection with the negotiation, making and filing of the agreement.	
194. Negotiating agreement with respect to amount of damages, interest or other sums payable by opposite party	Discretionary
Note to item 194 This item includes any attendances and other work done in connection with the calculation of, and in obtaining agreement as to, the amount payable.".	

4. These Rules shall not come into operation until the date when the approval thereof by Her Majesty-in-Council is made known by a notification published in the Gazette.

Made this 22nd day of August, 1967.

M. J. ABBOTT
Chief Justice.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

In pursuance of section 7 of the Colonial Courts of Admiralty Act 1890 this Order approves rules of court regulating the procedure and practice of the Supreme Court of Bermuda in the exercise of the jurisdiction conferred by that Act.