

RULES

Made in Pursuance of

AN ACT OF PARLIAMENT PASSED IN THE TWENTY-SIXTH

YEAR OF THE REIGN OF HER MAJESTY

Touching The

PRACTICE TO BE OBSERVED IN THE VICE-ADMIRALTY

COURTS,

with

FORMS AND TABLES OF FEES

And Established by the Queen's Order in Council of the 23<sup>rd</sup> day

of August 1883

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APPENDIX

I. FORMS.

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(These forms not included here)

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT

the 23<sup>rd</sup> day of August 1883.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 22<sup>nd</sup> day of August 1883, in the words following, viz.:

“WHEREAS by an Act passed in the twenty-second year of Your Majesty's Reign, entitled ‘Vice Admiralty Courts Act, 1863’, it was amongst other things provided that ‘Her Majesty may, by Order in Council, from time to time establish Rules touching the practice to be observed in the Vice Admiralty Courts, as also Tables of Fees to be taken by the Officers and Practitioners thereof or all acts to be done therein, and may repeal and alter all existing and all future Rules and Tables of Fees, and establish new Rules and Tables of Fees in addition thereto or in lieu thereof.’

And whereas it appears to us to be expedient that in lieu of the Rules and Tables of Fees now existing in the Vice Admiralty Courts, the Rules and Tables of Fees annexed hereto should on and from the first day of January 1884, be established and be in force in all the Vice Admiralty Courts.

Now therefore it is most humbly submitted that Your Majesty will be graciously pleased by Your Order in Council to direct that all the existing Rules and Tables of Fees in the Vice Admiralty Courts be repealed, and that, in lieu thereof, the Rules and Tables of Fees annexed hereto, shall from the first day of January 1884, be, the Rules and Tables of Fees for all the Vice Admiralty Courts.”

Her Majesty having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve of what is therein proposed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

C.L. PEEL.

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The necessary steps are to be taken for carrying into effect the provisions of Her Majesty's foregoing Order in Council.

A.C.KEY.  
T. BRANDRETH

By Command of their Lordships,  
G. TRYON.  
Admiralty, 24<sup>th</sup> September 1883

ANNO VICESIMO SEXTO VICTORIAE REGINAE.  
CAP. XXIV.

An Act to facilitate the Appointment of Vice Admirals and of Officers in Vice Admiralty Courts in Her Majesty's Possessions abroad, and to confirm the past Proceedings, to extend the Jurisdiction, and to amend the Practice of those Courts.

(8<sup>th</sup> June 1863)

WHEREAS it is expedient to facilitate the Appointment of Vice Admirals and of Officers in Vice Admiralty Courts in Her Majesty's Possessions abroad, and to confirm the past Proceedings, to extend the Jurisdiction, and to amend the Practice of those Courts: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same as follows:

Short Title.

1. This Act may be cited for all Purposes as the "Vice Admiralty Courts Act, 1863."

Interpretation of Terms

2. In the Interpretation and for the Purposes of this Act (if not inconsistent with the Context or Subject Matter) the following Terms shall have the respective Meanings hereinafter assigned to them; that is to say,

"Her Majesty" shall mean Her Majesty, Her Heirs and Successors:

The "Admiralty" shall mean the Lord High Admiral or the Commissioners for executing his Office:

"British Possession" shall mean any Colony, Plantation, Settlement, Island, or Territory, being a Part of Her Majesty's Dominions, but not being within the Limits of the United Kingdom of Great Britain and Ireland, or of Her Majesty's Possessions in India:

"Governor" shall mean the Officer for the Time Being lawfully administering the Government of any British Possession:

"Vice Admiralty Court" shall mean any of the existing Vice Admiralty Courts enumerated in the Schedule marked A hereto annexed, or any Vice Admiralty Court which shall hereafter be established in any British Possession:

"Ship" shall include every Description of Vessel used in Navigation not propelled by Oars only, whether British or Foreign:

"Cause" shall include any Cause, Suit, Action or other Proceeding instituted in any Vice Admiralty Court.

#### Appointment of Vice-Admiral

3. In any British Possession, where the Office of the Admiral is now or shall at any Time hereafter (become vacant) the Governor of such Possession shall be (deemed) Vice-Admiral thereof, until a Notification is received in the Possession that a formal appointment to that Office has been made by the Admiralty in the manner herein-after mentioned.

4. In any British Possession, where the Office of Judge of a Vice Admiralty Court is now or shall at any time hereafter become vacant, the Chief Justice or the principal (Judicial) Officer of such Possession, or the Person for the Time being lawfully authorized to act as such, shall be ex

## Appointment of Judge

officio Judge of the Vice Admiralty Court, until a Notification is received in the Possession that a formal Appointment to that Office has been made by the Admiralty in the Manner herein-after mentioned.

## Appointment of Registrar and Marshal.

5. In any British Possession, where the Office of Registrar or Marshal of any Vice Admiralty Court is now or shall at any Time hereafter become vacant, the Judge of the Court may, with the Approval of the Governor, appoint some Person to the vacant Office until a Notification is received in the Possession that a formal Appointment thereto has been made by the Admiralty in the Manner herein-after mentioned, and may, for good and reasonable cause, to be approved by the Governor, remove the Person so appointed. The Judge may also appoint some Person to act as Registrar or Marshal during the temporary Absence of either of those Officers.

6. On any Vacancy in the Office of Judge, Registrar or Marshal of any Vice Admiralty Court, the Governor of the British Possession in which the Court is established shall as soon as is practicable, communicate to One of Her Majesty's Principal Secretaries of State the Fact of the Vacancy, and the Name of the Person succeeding or appointed to the vacant Office.

Names of Appointees, etc.  
to be notified to the Home Government

7. Nothing in this Act contained shall be taken to affect the Power of the Admiralty to appoint any Vice Admiral, or any Judge, Registrar, Marshal, or other Officer of any Vice Admiralty Court, as heretofore, by Warrant from the Admiralty, and by Letters Patent issued under Seal of the High Court of Admiralty of England.

Saving the Powers of the Admiralty

8. No Act done by any Person in the Capacity of Judge, Registrar, or Marshal of any Vice Admiralty Court, which shall not have been set aside by any competent Authority

Past Proceedings confirmed.

before the passing of this Act, shall be held invalid by reason that such Person had not been duly appointed, but all such Acts shall be as valid and effectual as if done by a Person duly appointed.

(Words in brackets illegible.)

Protection Officers.

9. No Action, Prosecution, or other Proceeding shall be brought against any such Person by reason of the illegality or Informality of any Act hereby declared to be valid and effectual.

Jurisdiction of Vice Admiralty, Courts.

10. The Matters in respect of which the Vice Admiralty Courts shall have Jurisdiction are as follow:

- (1) Claims for Seamen's Wages:
- (2) Claims for Master's Wages, and for his Disbursements on account of the Ship:
- (3) Claims in respect of Pilotage:
- (4) Claims in respect of Salvage of any Ship, or of Life or Goods therefrom:
- (5) Claims in respect of Towage:
- (6) Claims for Damage done by any Ship:
- (7) Claims in respect of Bottomry or Respondentia Bonds:
- (8) Claims in respect of any Mortgage where the Ship has been sold by a Decree of the Vice Admiralty Court and the Proceeds are under its Control:
- (9) Claims between the Owners of any Ship registered in the Possession, in which the Court is established, touching the Ownership, Possession, Employment, or Earnings of such Ship:
- (10) Claims for Necessaries supplied, in the Possession in which the Court is established, to any Ship of which no Owner or Part Owner is domiciled within the Possession at the Time of the Necessaries being supplied:
- (11) Claims in respect of the building, equipping, or repairing within any British Possession of any Ship of

which no Owner or Part Owner is domiciled within the Possession at the Time of the Work being done.

Jurisdiction of Vice Admiralty Courts.

11. The Vice Admiralty Courts shall also have Jurisdiction -
  - (1) In all Cases of Breach of the Regulations and Instructions relating to Her Majesty's Navy at Sea:
  - (2) In all Matters arising out of Droits of Admiralty.

Nothing to restrict existing Jurisdiction.

12. Nothing contained in this Act shall be construed to take away or restrict the Jurisdiction conferred upon any Vice Admiralty Court by any Act of Parliament in respect of Seizures for Breach of the Revenue, Customs, Trade, or Navigation Laws, or of the Laws relating to the Abolition of the Slave Trade, or to the Capture and Destruction of Pirates and Piratical Vessels, or any other Jurisdiction now lawfully exercised by any such Court; or any Jurisdiction now lawfully exercised by any other Court within her majesty's Dominions.

(illegible)

13. The Jurisdiction of the Vice Admiralty Courts, except where it is expressly confined by this Act to matters arising within the Possession in which the Court is established, may be exercised, whether the Cause or Right of Action has arisen within or beyond the Limits of such Possession.

Her Majesty empowered to establish and alter Rules and Tables of Fees.

14. Her Majesty may, by Order in Council, from Time to Time establish Rules touching the Practice to be observed in the Vice Admiralty Courts, as also Tables of the Fees to be taken by the Officers and Practitioners for all Acts to be done therein, and may repeal and alter the existing and all future Rates and Tables of Fees, establish new Rules and Tables of Fees in addition thereto, or in lieu thereof.

Rules and Tables and Fees  
to be laid before the House of Commons

15. A Copy of Any Rules or Tables of Fees which may at any Time be established shall be laid before the House of Commons within Three Months from the establishing thereof, or if Parliament shall not be then sitting or if the Session shall terminate within One Month from that Date, then within. One Month after the Commencement of the next Session.

To be entered in the Records of the Courts.

16. The Rules and Tables of Fees in force in any Vice Admiralty Court shall, as soon as possible after they have been received in the British Possession in which the Court is established, be entered by the Registrar in the public Books or Records of the Court and the Books or Records in which they are so entered shall at all reasonable Times be open to the Inspection of the Practitioners and Suitors in the Court.

To be hung up in courts, etc.

17. A Copy of the Rules and Tables of Fees in force in any Vice Admiralty Court shall be kept constantly hung up in some conspicuous Place as well in the Court as in the Office of the Registrar.

Established Fees to be the only fees taken.

18. The Fees established for any Vice Admiralty Court shall, after the Date fixed for them to come into operation, be the only Fees which shall be taken by the Officers and Practitioners of the Court.

Taxation may be revised  
by the High Court of Admiralty.

19. Any Person who shall feel himself aggrieved by the Charges of any of the Practitioners in any Vice Admiralty Court or by the Taxation thereof by the Officers of the Court, may apply to the High Court of Admiralty of England to have the Charges taxed, or the Taxation thereof revised.

Registrar may administer Oaths.

20. The Registrar of any Vice Admiralty court shall have power to administer Oaths in relation to any matter depending in the Court; and any Person who shall wilfully swear falsely in any proceeding before the Registrar or before any other person authorised to administer oaths in the Court, shall be decreed guilty of perjury, and shall be liable to all the penalties attaching to wilful and corrupt perjury.

As to the hearing of Cross Causes.

21. If a Cause of Damage by Collision be instituted in any Vice Admiralty Court, and the Defendant institute a Cross Cause in respect of the same Collision, the Judge may, on application of either Party, direct both causes to be heard at the same time and on the same evidence: and if the ship of the Defendant in one of the causes has been arrested or security given by him to answer Judgment, but the ship of the Defendant in the other cause cannot be arrested, and security has not been given to answer Judgment therein, the Court may, if it think fit, suspend the proceedings in the former cause until security has been given to answer judgment in the latter cause.

No Appeal save from a Sentence or Order.

22. The Appeal from a Decree or Order of a Vice Admiralty Court lies to Her Majesty in Council; but no appeal shall be allowed, save by Permission of the Judge, from any Decree or Order not having the Force or Effect of a definitive Sentence or final order.

Appeal to be made within Six Months.

23. The Time for appealing from any Decree or Order of a Vice Admiralty Court shall, notwithstanding any existing Enactment to the contrary, be limited to Six Months from the Date of the Decree or Order appealed from; and no Appeal shall be allowed where the Petition of Appeal to Her Majesty shall not have been lodged in the Registry of the High Court of Admiralty and of Appeals within that Time, unless Her Majesty in Council shall, on the Report and

Recommendation of the Judicial Committee of the Privy Council, be pleased to allow the Appeal to be prosecuted, notwithstanding that the Petition of Appeal has not been lodged within the Time prescribed.

Acts repealed saving Rules established  
under 2<sup>nd</sup> & 3<sup>rd</sup> W.4 c.51.

21. The Acts enumerated in the Schedule hereto annexed marked B, are hereby repealed, to the Extent therein mentioned, but the Repeal thereof shall not affect the Validity of any Rules, Orders, Regulations, or Tables of Fees heretofore established and now in force, in pursuance of the Act of the Second and Third William the Fourth, Chapter Fifty-one; but such Rules, Orders, Regulations, and Tables of Fees shall continue in force until repealed or altered under the Provisions of this Act.

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SCHEDULE A.

List of the existing Vice-Admiralty Courts to which this Act applies.

Antigua.	Bermuda.
Bahamas.	British Columbia.
Barbados.	British Guiana.
British Bonduras.	Newfoundland.
Cape of Good Hope.	New South Wales.
Ceylon.	New Zealand.
Dominica.	Nova Scotia, otherwise Halifax.
Falkland Islands.	Prince Edward Island.
Gambia River.	Queensland.
Gibraltar.	Saint Christopher.
Gold Coast.	Saint Helena.
Grenada.	Saint Lucia.
Hong Kong.	Saint Vincent.
Jamaica.	Sierra Leone.
Lebanon.	South Australia.
Lagos.	Tasmania, formerly called Van Diemen's Land.
Lower Canada, otherwise Quebec.	Tobago.
Malta.	Trinidad.

Mauritius.

Vancouver's Island.

Montserrat.

Victoria.

Natal.

Virgin Islands, otherwise Tortola.

Nevis.

Western Australia.

New Brunswick.

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SCHEDULE B.

Acts and Parts of Acts Repealed.

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Reference to Act.	Title of Act.	Extent of Repeal
56 Geo. III c.82 -	An Act to render valid the Judicial Acts of Surrogates of Vice-Admiralty Courts abroad, during Vacancies in Office of Judges of such Courts.	The whole Act, save as regards Her Majesty's possessions In India.
5 Geo. IV c. 113 -	An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade.	Section 29, save as above.
2 & 3 Will.IV.c.51	An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts abroad, and to obviate Doubts as to their Jurisdiction.	The whole Act, save as above.
6 & 7 Vict.c.38 -	An Act to make further Regulations for facilitating the hearing Appeals and other Matters by the Judicial Committee of the Privy Council.	Section 11, so far as it relates to Appeals from Vice Admiralty

Courts, save  
as above.

17 & 18 Vict. c.37	An Act for establishing the Validity of certain Proceedings in Her Majesty's Court of Vice- Admiralty in Mauritius.	The whole Act.
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ANNO TRICESIMO & TRICESIMO PRIMO  
VICTORIAE REGINAE

CAP. XLV.

AN ACT to extend and amend the Vice-Admiralty Courts Act,  
1863. (15<sup>th</sup> July 1867)

Be it enacted by the Queen's most Excellent Majesty, by  
and with the Advice and Consent of the Lords Spiritual and  
Temporal, and Commons, in this present Parliament assembled,  
and by the Authority of the same, as follows:

Short Title.

1. This Act may be cited for all Purposes as the Vice-  
Admiralty Courts Act Amendment Act, 1867.

26 & 27 c.21 appl.

2. This Act shall be read as One Act with the Vice-Admiralty  
Courts Act, 1863.

Interpretation of terms.

3. In the Interpretation and for the Purposes of this Act (if not  
inconsistent with the Context or Subject Matter) the following  
Terms shall have the respective Meanings herein-after assigned  
to them; that is to say,

"Judge" shall mean the Person lawfully appointed by the  
Admiralty to be Judge of any Vice-Admiralty Court or, in default  
of such Appointment, the Chief Justice or Principal Judicial  
Officer, or the Person for the Time being lawfully authorized to

act as the Chief Justice or Principal Judicial Officer in the British Possession in which such Court is established:

“Judicial Powers” shall mean all Powers and Authorities which may be lawfully exercised by, and all Duties by Law imposed upon, any such Judge in the Trial, Hearing, or Progress of any Cause:

“Ministerial Powers” shall mean all Powers and Authorities which may be lawfully exercised by, and all Duties by Law imposed upon, any such Judge, not included under the Term “Judicial Powers”:

“Sit” or “Sitting” shall mean Sit or Sitting for the Exercise of Judicial Powers, whether in Court or in Chambers.

#### Terms of Office of Vice-Admiral.

4. On the Governor of any British Possession, who is also Vice-Admiral thereof, vacating the Office of Governor of such Possession, the Office of Vice-Admiral of the same Possession shall thereupon be deemed to be also vacant within the Meaning of the Third Section of the Vice-Admiralty Courts Act, 1863.

5. The Judge of any Vice-Admiralty Court may from Time to Time, with the Approval in Writing of the Governor of the British Possession in which the Court is established, appoint one or more Deputy Judge or Judges to assist or represent him in the Execution of his Judicial Powers.

#### Judicial Powers of Deputy Judge

6. It shall be lawful for any such Deputy Judge to exercise all the Judicial Powers of the Judge; and all Acts done by such Deputy Judge shall be as valid and effectual, to all Intents and Purposes, as if they had been done by the Judge; and all Orders or Decrees made by such Deputy Judge shall be subject to the same Right of Appeal in all respects as if they had been made by the Judge.

Deputy Judge may sit separately.

7. Any Deputy Judge may sit at the principal Seat of Government or elsewhere in the Possession at the same Time that the Judge or any other Deputy Judge is sitting, and either at the same or at any other place in such Possession, and whether the Judge is or is not at that Time within the Possession.

Judge may sit with Deputy Judges.

8. The Judge may, if he thinks fit, require any such Deputy Judge or Judges to sit with him in the same Court, and in such Case the Decision of the Majority, or, if they are equally divided in Opinion, the Decision of the Judge, shall be the Decision of the Court; and such Decision shall be subject to the same Right of Appeal in all respects as if it had been made by the Judge alone.

Judge to regulate the Proceedings.

9. The Judge may direct at what Place and Time any such Deputy Judge shall sit, and what Causes shall be heard before him, and generally make such Arrangements as to him shall seem proper as to the Division and Despatch of the Business of the Court.

Terms of Office of Deputy Judges.

10. The Judge may, if he thinks fit, with the Approval in Writing of the Governor, at any Time revoke the Appointment of any such Deputy Judge or Judges, but the Appointment shall not be determined by the Occurrence of a Vacancy in the Office of the Judge.

Judge may delegate Ministerial Powers.

11. The Judge may, if he thinks fit, from Time to Time delegate all or any of his Ministerial Powers to any such Deputy Judge or Judges.

Judge may appoint Other Registrars and Marshals.

12. The Judge may from Time to Time, if he thinks fit, appoint any competent Persons to act respectively as Deputy Registrars

and Deputy Marshals of the Court, and may, if he thinks fit, at any Time revoke any such Appointment, but the Appointment shall not be determined by the Occurrence of a Vacancy in the Office of the Judge.

Admiralty may revoke Appointments.

13. Notwithstanding anything contained in this Act, it shall be lawful for the Admiralty, if they think fit, at any Time to revoke the Appointment of any Deputy Judge, Deputy Registrar, or Deputy Marshal appointed under this Act.

Deputies to receive Fees.

14. Any Deputy Judge, Deputy Registrar, or Deputy Marshal, appointed under this Act, shall be entitled to the same Fees in respect of any Duty performed by him as would be lawfully payable to the Judge, Registrar, or Marshal respectively for the Performance of the same Duty.

Barristers as Solicitors entitled to  
practice in Vice-Admiral Courts.

15. All Persons entitled to practise as Advocates, Barristers-at-law, Proctors, Attorneys-at-Law, or Solicitors in the Superior Courts of a British Possession, shall be entitled to practise in the same respective Capacities in the Vice-Admiralty Court or Courts of such Possession, and shall have therein all the Rights and Privileges respectively belonging to Advocates, Barristers-in-law, Proctors, Attorneys-at-Law, and Solicitors, and shall in like Manner be subject to the Authority of the Person for the Time being lawfully exercising the Office of Judge of such Court.

Her Majesty may establish a Vice-Admiralty  
Court in a Possession having Legislative Powers.

16. It shall be lawful for Her Majesty to empower the Admiralty, by Commission under the Great Seal, to establish One or more Vice-Admiralty Courts in any British Possession, notwithstanding that such Possession may have previously acquired independent Legislative Powers; and the Jurisdiction and Authority of all the existing Vice-Admiralty Courts are hereby declared to be confirmed, to all Intents and Purposes, notwithstanding that the Possession in which any such Court

has been established may at the Time of its Establishment have been in possession of Legislative Powers.

Extended to the Straits Settlements.

17. The Vice-Admiralty Courts Act, 1863, shall, together with this Act, apply to any Vice-Admiralty Court now established or hereafter to be established in the Straits Settlements.

26 & 27 Vict. c.24s.... extended to Appeals from Vice-Admiralty Courts in Indian Possessions.

18. The Limitation of the Time allowed for Appeals contained in the Twenty-third Section of the Vice-Admiralty Courts Act, 1863, shall be held to apply to all Decrees or Orders pronounced in any Vice-Admiralty Court now established or hereafter to be established in any of Her Majesty's Possessions in India.

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RULES

for the

VICE-ADMIRALTY COURTS IN HER MAJESTY'S POSSESSIONS  
ABROAD

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1. In the constructions of these rules, and of the forms and tables of fees annexed thereto, the following terms shall (if not inconsistent with the context or subject matter) have the respective meanings herein-after assigned to them; that is to say

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“Possession” shall mean any colony, plantation, settlement, island, or territory, being a part of Her Majesty’s dominions, but not being within the limits of the United Kingdom of Great Britain and Ireland;

“Court” shall mean any Vice-Admiralty court now existing or which shall hereafter be established in any Possession;

“Registry” shall mean the registry of the court or any district registry thereof;

“Judge” shall mean the judge of the court, or any person lawfully authorised to act as judge thereof;

“Registrar” shall mean the registrar of the court, or any deputy or assistant registrar thereof;

“Marshal” shall mean the marshal of the court, or any deputy or assistant marshal thereof;

“Action” shall mean any action, cause, suit, or other proceeding instituted in the court;

“Counsel” shall mean any advocate, barrister-at-law, or other person entitled to practise in the court;

“Solicitor” shall mean any proctor, solicitor, or attorney entitled to practise in the court;

“Plaintiff” shall include the plaintiff’s solicitor, if he sues by a solicitor;

“Defendant” shall include the defendant’s solicitor, if he appears by a solicitor;

“Party” shall include the party’s solicitor, if he sues or appears by a solicitor;

“Ship” shall include every description of vessel used in navigation not propelled by oars only;

“Month” shall mean calendar month.

### ACTIONS

2. Actions shall be of two kinds, actions in rem and actions in personam.

3. Actions for condemnation of any ship, boat, cargo, proceeds, slaves, or effects or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the Crown.

4. All actions shall be numbered in the order in which they are instituted, and the number given to any action shall be the distinguishing number of the action, and shall be written or printed on all documents in the action as part of the title thereof. Forms of the title of an action will be found in the Appendix hereto, Nos. 1, 2 and 3.

### WRIT OF SUMMONS

5. Every action shall be commenced by a writ of sums, which, before being issued, shall be endorsed with a statement of the

nature of the nature of the claim, and of the relief or remedy required, and of the amount claimed, if any. Forms of writ of summons and of the endorsements thereon will be found in the Appendix hereto, Nos. 4, 5, 6, and 7.

6. In action for seaman's or master's wages, or for master's wages and disbursement, or for necessaries, or for bottomry, or in any action in which the Plaintiff desires an account, the endorsement on the writ of summons and of the endorsement on the writ of summons may include a claim to have an account taken.

7. The writ of summons shall be endorsed with the name and address of the Plaintiff, and with an address, to be called an address for service, not more than three miles from the registry, at which it shall be sufficient to leave all documents required to be served upon him.

8. The writ of summons shall be prepared and endorsed by the Plaintiff, and shall be issued under the seal of the court, and a copy of the writ and of all the endorsements thereon, signed by the Plaintiff, shall be left in the registry at the time of sealing the writ.

9. The judge may allow the Plaintiff to amend the writ of summons and the endorsement thereon in such manner and on such terms as to the judge shall seem fit.

#### Service of Writ of Summons

10. In an action in rem, the writ of summons shall be served -

- (a) upon ship, upon cargo, freight, or other property, if the cargo or other property is on board a ship, by attaching the writ for a short time to the mainmast or the single mast, or to some other conspicuous part of the ship, and by leaving a copy of the writ attached thereto.
- (b) upon cargo, freight, or other property, if the cargo or other property is not on board a ship, by attaching the writ for a short time to such cargo or property, and by leaving a copy of the writ attached hereto.
- (c) upon freight in the hands of any person, by showing the writ to him and by leaving with him a copy thereof.
- (d) upon proceeds in court, by showing the writ to the registrar and by leaving with him a copy thereof.

11. If access cannot be obtained to the property on which it is to be served, the writ may be served by showing it to any person appearing to be in charge of such property, and by leaving with him a copy of the writ.

12. In an action in personam, the writ of summons shall be served by showing it to the Defendant, and by leaving with him a copy of the writ.

13. A writ of summons against a firm may be served upon any member of the firm, or upon any person appearing at the time of service to have the management of the business of the firm.

14. A writ of summons against a corporation or a public company may be served in the mode, if any, provided by law for service of any other writ or legal process upon such corporation or company.

15. Where no such provision exist, a writ of summons against a corporation may be served upon the mayor or other head officer, or upon the town clerk, clerk, treasurer, or secretary of the corporation, and a writ of summons against a public company may be served upon the secretary of the company, or may be left at the office of the company.

16. If the person to be served is under disability, or if for any cause personal service cannot, or cannot promptly, be effected, or if in any action, whether in rem or in personam, there is any doubt or difficulty as to the person to be served, or as to the mode of service, the judge may order upon whom, or in what manner service is to be made, or may order notice to be given in lieu of service.

17. The writ of summons, whether in rem or in personam, may be served by the Plaintiff or his agent within six months from the date thereof, and shall, after service, be filed with a certificate of service endorsed thereon.

18. The certificate shall state the date and mode of service, and shall be signed by the person who served the writ. A form of certificate of service will be found in the Appendix hereto, No. 8.

## APPEARANCE

19. A party appearing to a writ of summons shall file an appearance at the place directed in the writ.

20. A party not appearing within the time limited by the writ may, by consent of the other parties or by permission of the judge, appear at any time on such terms as the judge shall order.

21. If the party appearing has set-off or counterclaim against the Plaintiff, he may endorse on his appearance a statement of the nature thereof, and of the relief or remedy required, and of the amount, if any, of the set-off or counterclaim. But if in the opinion of the judge such set-off or counterclaim cannot be conveniently disposed of in the action, the judge may order it to be truck out.

22. The appearance shall be signed by the party appearing, and shall state his name and address, and an address, to be called an address for service, not more than three miles from the registry, at which it shall be sufficient to leave all documents required to be served upon him. Forms of Appearance and of Endorsement of set-off or counterclaim will be found in the Appendix hereto, Nos. 9, and 10.

## PARTIES

23. Any number of persons having interest of the same nature arising out of the matter may be joined in the same action whether as Plaintiffs or as Defendants.

24. The judge may order any person who is interested in the action, though not named in the writ of summons, to come in either as Plaintiff or as Defendant.

25. For the purpose of the last preceding rule an underwriter, or insurer shall be deemed to a person interested in the action.

26. the judge may order upon what terms any person shall come in, and what notice and documents, if any, shall be given to and served upon him, and may give such further directions in the matter as to him shall seem fit.

#### CONSOLIDATION OF ACTIONS

27. Two or more actions in which the question at issue are substantially the same, or for matters which might properly be combined in one action, may be consolidated by order of the judge upon such terms as to him shall seem fit.

28. The judge, if he thinks fit, may order several actions to be tried at the same time, and on the same evidence in one action to be used as evidence in another, or may order one of several actions to be tried as a test action, and the other actions to be stayed to abide the result.

#### WARRANTS

29. In action in rem, a warrant for the arrest of property may be issued by the registrar at the time of, or at any time after the

issue of the writ of summons, on an affidavit being filed, as prescribed by the following rules. A form of affidavit to lead warrant will be found in Appendix hereto, No. 11.

30. The affidavit shall state the nature of the claim, and that the aid of the court is required.

31. The affidavit shall also state -

(a) In an action for wages, the national character of the ship, and if the foreign, that notice of action has been served upon a consular officer of the State to which the ship belongs, if there is one resident in the Possession:

(b) In an action for necessaries, or for building, equipping, or repairing any ship, the national character of the ship, and that, to the best of the deponent's belief, no owner of the ship was domiciled in the Possession at the time when the necessaries were supplied or the work was done:

(c) In an action between co-owners relating to the ownership, possession, employment, or earnings of any ship registered in the Possession, the port at which the ship is registered and the number of shares in the ship owned by the party proceeding.

32. In an action for bottomry, the bottomry bond in original and, if it is in a foreign language, a translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

33. The registrar, if he thinks fit, may issue a warrant, although the affidavit does not contain all the prescribed particulars, and in an action for bottomry, although the bond has not been produced; or he may refuse to issue a warrant without the order of the judge.

34. The warrant shall be prepared in the registry, and shall be signed by the registrar, and issued under the seal of the court. A form of warrant will be found in the Appendix hereto, No. 12.

35. The warrant shall be served by the Marshal, or his officer in the manner prescribed by these rules for the services of a writ of summons in an action in rem, and thereupon the property shall be deemed to be arrested.

36. The warrant may be served on Sunday, Good Friday, or Christmas Day, as well as on any other day.

37. The warrant shall be filed by the Marshal within one week after the service thereof has been completed, with a certificate of service endorsed thereon.

38. The certificate shall state by whom the warrant has been served, and the date and mode of service, and shall be signed by the Marshal. A form of certificate of service will be found in the Appendix hereto, No. 13.

#### BAIL

39. Whenever bail is required by these rules, it shall be given by filing one or more bail bonds, each of which shall be signed by

two sureties, unless the judge shall, on special cause shown, order that one surety shall suffice.

40. Every bail bond shall be prepared in the registry and shall be signed before the registrar, or by his direction before a clerk in the registry, or before a commissioner appointed by the court, to take bail. Forms of bail and commission to take bail will be found in the Appendix hereto, No. 14 and 15.

41. Sureties may attend to sign a bond either separately or together.

42. If bail is taken before a commissioner, the sureties shall justify by affidavit.

43. The commissioner to take bail and the affidavit of justification shall be prepared in the registry, and issued with the bailbond, and shall with the bailbond, when executed, be returned to the registry by the commissioner.

44. No commissioner shall be entitled to take bail in any action in which he, or any person in partnership with him, is acting as solicitor or agent.

45. Before filing a bailbond, notice of bail shall be served upon the adverse party, and a certificate of such services shall be endorsed on the bond by the party filing it. A form of Notice of Bail will be found in the Appendix hereto, No. 16.

46. If the adverse party is not satisfied with the sufficiency of any surety, he may file a notice objecting to such surety, or requiring him to justify, if he has not already done so. Forms of Notice to Justify, of Affidavit of Justification, and of Notice of Objection to bail, will be found in the Appendix hereto, Nos. 17, 18, and 19.

### RELEASES

47. A release for property arrested by warrant may be issued by order of the judge.

48. A release may also be issued by the registrar, unless there is a caveat outstanding against the release of the property -

- (a) On payment into court of the amount claimed, or of the appraised value of the property arrested, or, where cargo is arrested for freight only, of the amount of the freight verified by affidavit:
- (b) On one or more bail bonds being filed for the amount claimed, or for the appraised value of the property arrested; and on proof that twenty-four hours' notice of the names and addresses of the sureties has been previously served on the party at whose instance the property has been arrested:
- (c) On the application of the party at whose instance the property has been arrested:
- (d) On a consent in writing being filed signed by the party at whose instance the property has been arrested:
- (e) On discontinuance or dismissal of the action in which the property has been arrested.

49. Where property has been arrested for salvage, the release shall not be issued under the foregoing rule, except on discontinuance or dismissal of the action, until the value of the property arrested has been agreed upon between the parties or determined by the judge.

50. The registrar may refuse to issue a release without the order of the judge.

51. The release shall be prepared in the registry, and shall be signed by the registrar, and issued under the seal of the court. A form of release will be found in the Appendix hereto, No. 20.

52. The release shall be served on the Marshall, either personally, or by leaving it at his office, by the party by whom it is taken out.

53. On service of the release and on payment to the Marshal of all fees due to and charges incurred by him in respect of the arrest and custody of the property, the property shall be at once released from arrest.

#### PRELIMINARY ACTS

54. In an action for damage by collision, each party shall, within ONE WEEK from an appearance being entered, file a Preliminary Act, sealed up, signed by the party, and containing a statement of the following particulars:-

- (1) The names of the ships which came into collision, and the names of their masters;
- (2) The time of the collision;
- (3) The place of the collision;
- (4) The direction and force of the wind;
- (5) The state of the weather;
- (6) The state and force of the tide;
- (7) The course and speed of the ship when the other was first seen;
- (8) The lights, if any, carried by her;
- (9) The distance and bearing of the other ship when first seen;

- (10) The lights, if any, of the other ship, which were first seen;
- (11) The lights, if any, of the other ship, other than those first seen, which came into view before the collision;
- (12) The measures which were taken, and when, to avoid the collision;
- (13) The parts of each ship which first came into collision;
- (14) What fault or default, if any, is attributed to the other ship.

### PLEADINGS

55. Every action shall be heard without pleadings, unless the judge shall otherwise order.

56. If an order is made for pleadings, the Plaintiff shall, within ONE WEEK from the date of the order, file his petition, and, within ONE WEEK from the filing of the petition, the Defendant shall file his answer, and within ONE WEEK from the filing of the answer the Plaintiff shall file his reply, if any, and there shall be no pleading beyond the reply, except by permission of the judge.

57. The Defendant, may, in his answer, plead any set-off or counterclaim. But if, in the opinion of the judge, such set-off or counterclaim cannot be conveniently disposed of in the action, the judge may order it to be struck out.

58. Every pleading shall be divided into short paragraphs, numbered consecutively, which shall state concisely the facts on which the party relies; and shall be signed by the party filing it. Forms of pleadings will we found in the Appendix hereto, No. 21.

59. It shall not be necessary to set out in any pleadings the words of any document referred to therein, except so far as the precise words of the document are material.

60. Either party may apply to the judge to decide forthwith any question of fact or of law raised by any pleading, and the judge shall thereupon make such order as to him shall seem fit.

61. Any pleadings may at any time be amended, either by consent of the parties, or by order of the judge.

## INTERROGATORIES

62. At any time before the action is set down for hearing any party desirous of obtaining the answers of the adverse party on any matters material to the issue, may apply to the judge for leave to administer interrogatories to the adverse party to be answered on oath, and the judge may direct within what time and in what way they shall be answered, whether by affidavit or by oral examination.

63. The judge may order any interrogatory that he considers objectionable to be amended or struck out; and if the party interrogated omits to answer or answers insufficiently, the judge may order him to answer, or to answer further, and either by affidavit or by oral examination. Forms of interrogatories and of answers will be found in the Appendix hereto, Nos. 22 and 23.

## DISCOVERY AND INSPECTIONS

64. The judge may order any part to an action to make discovery, on oath, of all documents which are in his possession or power relating to any matter in question therein.

65. The affidavit of discovery shall specify which, if any, of the documents therein mentioned the party objects to produce. A form of affidavit of discovery will be found in the Appendix hereto, No. 24.

66. Any party to an action may file a notice to any other party to produce, for inspection or transcription, any document in his possession or power relating to any matter in question in the action. A form of notice to produce will be found in the Appendix hereto, No. 25.

67. If the party served with notice to produce omits or refuses to do so within the time specified in the notice, the adverse party may apply to the judge for an order to produce.

## ADMISSION OF DOCUMENTS AND FACTS

68. Any party may file a notice to any other party to admit any document or fact (saving all just exceptions) and a party not

admitting it after such notice shall be liable for the costs of proving the document or fact, whatever the result of the action may be, unless the taxing officer is of opinion that there was sufficient reason for not admitting it. Forms of notice to admit will be found in the Appendix hereto, Nos 26 and 27.

69. No costs of proving any document shall be allowed, unless notice to admit shall have been previously given, or the taxing officer shall be of opinion that the omission to give such notice was reasonable and proper.

### SPECIAL CASE

70. Parties may agree to state the questions at issue for the opinion of the judge in the form of a special case.

71. If it appears to the judge that there is any action a question of law which it would be convenient to have decided in the first instance, he may direct that it shall be raised in a special case or in such other manner as he may deem expedient.

72. Every special case shall be divided into paragraphs, numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the question at issue.

73. Every special case shall be signed by the parties, and may be filed by any party.

### MOTIONS

74. A party desiring to obtain an order from the judge shall file a notice of motion with the affidavits, if any, one which he intends to rely.

75. The notice of motion shall state the nature of the order desired, the day on which the motion is to be made, and whether in court or in chambers. A form of notice of motion will be found in the Appendix hereto, No. 28.

76. Except by consent of the adverse party, or by order of the judge, the notice of motion shall be filed TWENTY-FOUR HOURS at least before the time at which the motion is made.

77. When the motion comes on for hearing, the judge, after hearing the parties, or, in the absence of any of them, on proof that the notice of motion has been duly served, may make such order as to him shall seem fit.

78. The judge may, on due cause shown, vary or rescind any order previously made.

### TENDERS

79. A party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim, shall pay into court the amount tendered by him, and shall file a notice of the terms on which the tender is made.

80. Within A WEEK from the filing of the notice to adverse party shall file a notice, stating whether he accepts or rejects the tender, and if he shall not do so, he shall be held to have rejected it. Forms of notice of tender and of notice accepting or rejecting it will be found in the Appendix hereto, Nos. 29 and 30.

81. Pending the acceptance or rejection of a tender, the proceedings shall be suspended.

### EVIDENCE

82. Evidence shall be given either by affidavit or by oral examination, or partly in one mode, partly in another.

83. Evidence on a motion shall in general be given by affidavit, and at the hearing by the oral examination of Witnesses; but the mode or modes in which evidence shall be given, either on any motion or at the hearing, may be determined either by consent of the parties, or by order of the judge.

84. The judge may order any person who has made an affidavit in an action to attend for cross-examination thereon before the judge, or the registrar, or a commissioner specially appointed.

85. Witnesses examined orally before the judge, the registrar, or a commissioner, shall be examined, cross-examined, and re-examined in such order as the judge, registrar, or commissioner may direct; and questions may be put to any witness by the judge, registrar, or commissioner, as the case may be.

86. If any witness is examined by interpretation, such interpretation shall be made by a sworn interpreter of the court, or by a person previously sworn according to the form in the Appendix hereto, No. 31.

### OATHS

87. The Judge may appoint any person to administer oaths in Vice-Admiralty proceedings generally, or in any particular proceedings. Forms of Appointments to administer oaths will be found in the Appendix hereto, No. 32.

88. If any person tendered for the purpose of giving evidence objects to take an oath, or is objected to as incompetent to take an oath, or is by reason or any defect or religious knowledge or belief incapable of comprehending the nature of an oath, the Judge or person authorised to administer the oath shall, if satisfied that the taking of an oath would have no binding effect on his conscience, permit him, in lieu of an oath, to make a declaration. Forms of oath, and of declaration in lieu of oath will be found in the Appendix hereto, Nos 33 and 34.

### AFFIDAVITS

89. Every affidavit shall be divided into short paragraphs numbered consecutively, and shall be in the first person.

90. The name, address, and description of every person making an affidavit shall be inserted therein.

91. The names of all the persons making an affidavit, and the dates when, and the places where it is sworn, shall be inserted in the jurat.

92. When an affidavit is made by any person who is blind, or who from his signature or otherwise appears to be illiterate, the person before whom the affidavit is sworn shall certify that the affidavit was read over to the deponent, and that the deponent appeared to understand the same, and made his mark or wrote his signature thereto in the presence of the person before whom the affidavit was sworn.

93. When an affidavit is made by a person who does not speak the English language, the affidavit shall be taken down and read over to the deponent by interpretation either of a sworn interpreter of the court, or of a person previously sworn faithfully to interpret the affidavit. A form of Jurat will be found in the Appendix hereto, No. 35.

94. Affidavits may, by permission of the Judge, be used as evidence in an action, saving all just exceptions.

- (1) If sworn to, in the United Kingdom of Great Britain and Ireland, or in any Possession, before any person authorised to administer oaths in the said United Kingdom or in such Possession respectively.
- (2) If sworn to, in any place not being a part of Her Majesty's dominions, before a British Minister, Counsel, Vice-Counsel, or notary public, or before a judge or magistrate, the signature of such judge or magistrate being authenticated by the official seal of the court to which he is attached.

95. The reception of any affidavit as evidence may be objected to, if the affidavit has been sworn before the solicitor for the party on whose behalf it is offered, or before a partner or clerk of such solicitor.

#### EXAMINATION OF WITNESSES BEFORE TRIAL

96. The judge may order that any witness, who cannot conveniently attend at the trial of the action, shall be examined previously thereto, before either the judge, or the registrar, who shall have power to adjourn the examination from time to time and from place to place, if he shall think necessary. A form of order for examination of witnesses will be found in the Appendix hereto, No. 36.

97. If the witness cannot be conveniently examined before the judge or the registrar, or is beyond the limits of the Possession, the judge may order that he shall be examined before a commissioner specially appointed for the purpose.

98. The commissioner shall have power to swear any witnesses produced before him or examination, and to adjourn, if necessary, the examination from time to time, and from place to

place. A form of commission to examine witnesses will be found in the Appendix hereto, No. 37.

99. The parties, their counsel and solicitors, may attend the examination, but, if counsel attend, the fees of only one counsel on each side shall be allowed on taxation, except by order of the judge.

100. The evidence of every witness shall be taken down in writing, and shall be certified as correct by the judge, or registrar, or by the commissioner, as the case may be.

101. The certified evidence shall be lodged in the registry, or, if taken by commission, shall forthwith be transmitted by the commissioner to the registry, together with his commission. A form of return to commission to examine witnesses will be found in the Appendix hereto, No. 38.

102. As soon as the certified evidence has been received in the registry, it may be taken up and filed by either party, and may be used as evidence in the action, saving all just exceptions.

#### SHORTHAND WRITER

103. The judge may order the evidence of the witnesses whether examined before the judge, or the registrar, or a commissioner, to be taken down by a shorthand writer, who shall have been previously sworn faithfully to report the evidence, and a transcript of the shorthand writer's notes, certified by him to be correct and approved by the judge, registrar, or commissioner, as the case may be, shall be lodged in or transmitted to the registry as the certified evidence of such witnesses. A form of oath to be administered to the shorthand writer will be found in the Appendix hereto, No. 39.

#### PRINTING

104. The judge may order that the whole of the pleadings and written proofs, or any part thereof, shall be printed before the trial, and the printing shall be in such manner and form as the judge shall order.

105. Preliminary Acts, if printed, shall be printed in parallel columns.

### ASSESSORS

106. The judge, on the application of any party, or without any such application if he considers that the nature of the case requires it, may appoint one or more assessors to advise the court upon any matters requiring nautical or other professional knowledge.

107. The fees of the assessors shall be paid in the first instance by the Plaintiff, unless the judge shall otherwise order.

### SETTING DOWN FOR TRIAL

108. An action shall be set down for trial by filing a notice of trial. A form of notice of trial will be found in the Appendix hereto, No. 40.

109. If there has not been any appearance, the Plaintiff may set down the action for trial, on obtaining from the judge leave to proceed ex parte -

- (a) In an action in personam, or an action against proceeds in court, after the expiration of TWO WEEKS from the service of the writ of summons.
- (b) In an action in rem (not being an action against proceeds in court), after the expiration of TWO WEEKS from the filing of the warrant.

110. If there has been an appearance, either party may set down the action for trial -

- (a) After the expiration of ONE WEEK from the entry of the appearance, unless an order has been made for pleadings, or an application for such an order is pending;
- (b) If pleadings have been ordered, when the last pleading has been filed, or when the time allowed to

the adverse party for filing any pleadings has expired without such pleadings having been filed.

In collision cases the Preliminary Acts may be opened as soon as the action has been set down for trial.

111. Where the writ of summons has been endorsed with a claim to have an account taken, or the liability has been admitted or determined, and the question is simply as to the amount due, the judge may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may have the matter set down for trial.

### TRIAL

112. After the action has been set down for trial, the registrar shall send notice to the parties of the day on which it will be tried.

113. At the trial's of a contested action the Plaintiff shall in general begin. But if the burden of proof lies on the Defendant, the judge may direct the Defendant to begin.

114. If there are several Plaintiffs or several Defendants, the judge may direct which Plaintiff or which Defendant shall begin.

115. The party beginning shall first address the court, and then procedure his witnesses, if any. The other party or parties shall then address the Court, and procedure their witnesses, if any, in such order as the judge may direct, and shall have a right to sum up their evidence. In all cases the party beginning shall have the right to reply, but shall not produce further evidence, except by permission of the judge.

116. Only one counsel shall in general be heard on each side; but the judge, if he considers that the nature of the case requires it, may allow two counsel to be heard on each side.

117. If the action is uncontested, the judge may, if he thinks fit, give judgment on the evidence adduced by the Plaintiff.

## REFERENCES

118. The judge may, if he thinks fit, refer the assessment of damages and the taking of any account to the registrar either alone, or assisted by one or more merchants as assessors.

119. The rules as to evidence, and as to the trial, shall apply mutatis mutandis to a reference to the registrar, and the registrar may adjourn the proceedings from time to time, and from place to place, if he shall think necessary.

120. Counsel may attend the hearing of any reference, but the costs so incurred shall not be allowed on taxation unless the registrar shall certify that the attendance of counsel was necessary.

121. When a reference has been heard, the registrar shall draw up a report in writing of the result, showing the amount, if any, found due, and to whom, together with any further particulars that may be necessary. A form of the Report will be found in the Appendix hereto, No. 41.

122. When the report is ready, notice shall be sent to the parties, and either party may thereupon take up and file the report.

123. With TWO WEEKS from the filing of the Registrar's Report, either party may file a notice of motion to vary the Report, specifying the items objected to.

124. At the hearing of the motion the judge may make sure order thereon as to him shall seem fit, or may remit the matter to the registrar for further inquiry or report.

125. If no notice of motion, to vary the report is filed within TWO WEEKS from filing the registrar's report, the report shall stand confirmed.

## COSTS

126. In general costs shall follow the result, but the judge may in any case make such order as to the costs as to him shall seem fit.

127. The judge may direct payment of a lump sum in lieu of taxed costs.

128. If any Plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision), or any Defendant making a counterclaim is not resident in the Possession, the judge may, on the application of the adverse party, order him to give bail for costs.

129. A party claiming an excessive amount, either by way of claim, or of set-off or counter-claim, may be condemned in all costs and damages thereby occasioned.

130. If a tender is rejected, but is afterwards accepted, or is held by the judge to be sufficient, the party rejecting the tender shall, unless the judge shall otherwise order, be condemned in the costs incurred after tender made.

131. A party, who has not admitted any fact which in the opinion of the judge he ought to have admitted, may be condemned in all costs occasioned by the non-admission.

132. Any party pleading at unnecessary length or taking any unnecessary proceedings in an action may be condemned in all costs thereby occasioned.

### TAXATION OF COSTS

133. A party desiring to have a bill of costs taxed, shall file the bill, and, as soon as conveniently may be, the registrar shall send to the parties notice of the time at which the taxation will take place.

134. At the time appointed, if either party is presented, the taxation shall be proceeded with.

135. Within ONE WEEK from the completion of the taxation application may be made to the judge to review the taxation.

136. Costs may be taxed either by the judge or by the registrar, and as well between solicitor and client, as between party and party.

137. If in a taxation between solicitor and client more than ONE SIXTH of the bill is struck off, the solicitor shall pay all the costs attending the taxation.

#### APPRAISEMENT AND SALE, ETC

138. The judge may, either before or after final judgment, order any property under the arrest of the court, to be appraised, or to be sold with or without appraisement, and either by public auction or by private contract.

139. If the property is deteriorating in value, the judge may order it to be sold forthwith.

140. If the property to be sold is of small value, the judge may, if he thinks fit, order it to be sold without a commission of sale being issues.

141. The judge may, either before or after final judgment, order any property under arrest of the court to be removed, or any cargo under arrest on board ship to be discharged.

142. The appraisement, sale, and removal of property, the discharge of cargo, and the demolition and sale of a vessel condemned under any Slave Trade Act, shall be effected under the authority of a commission addressed to the marshal. Forms of commissions of appraisement, sale, appraisement and sale, removal, discharge of cargo, and demolition and sale, will be found in the Appendix hereto, Nos. 42 to 47.

143. The commission shall, as soon as possible after its execution, be filed by the marshal, with a return setting forth the manner in which it has been executed.

144. As soon as possible after the execution of a commission of sale, the marshal shall pay into court the gross proceeds of the sale, and shall with the commission file his accounts and vouchers in support thereof.

145. The registrar shall tax the marshal's account, and shall report the amount at which he considers it should be allowed, and any party who is interested in the proceeds may be heard before the registrar on the taxation.

146. Application may be made to the judge on motion to review the registrar's taxation.

147. The judge may, if he thinks fit, order any property under the arrest of the court to be inspected. A form of order for inspection will be found in the Appendix hereto, No. 48.

#### DISCONTINUANCE

148. The Plaintiff may, at any time, discontinue his action by filing a notice to that effect, and the Defendant shall thereupon be entitled to have judgment entered for his costs of action on filing a notice to enter the same. The discontinuance of an action by the Plaintiff shall not prejudice any action consolidated therewith or any counterclaim previously set up by the Defendant. Forms of notice of discontinuance and of notice to enter judgment for costs will be found in the Appendix hereto, Nos. 49 and 50.

#### CONSENTS

149. Any consent in writing signed by the parties may, by permission of the registrar, be filed, and shall thereupon become an order of court.

#### APPEALS\*

150 A party desiring to appeal shall, within ONE MONTH from the date of the decree or order appealed from, file a notice of appeal, and give bail in such sum, not exceeding 300/ as the judge may order, to answer the costs of the appeal. A form of notice of appeal will be found in the Appendix hereto, No. 51.

151. Notwithstanding the filing of the notice of appeal, the judge may, at any time before service of the inhibition, proceed to carry the decree or order appealed from into effect, provided that he party in whose favour it has been made gives bail to abide the event of the appeal, and to answer the costs thereof, in such sum as the judge may order.

152. An appellant desiring to prosecute his appeal is to cause the registrar to be served with an inhibition and citation, and a monition for process, or is to take such other steps as may be required by the practice of the Appellate Court.

153. On service of the inhibition and citation all proceedings in the action will be stayed.

154. On service of the monition for process, the registrar shall forthwith prepare the process at the expense of the party ordering the same.

155. The process, which shall consist of a copy of all the proceedings in the action, shall be signed by the registrar and sealed with the seal of the court, and shall be transmitted by the registrar to the registrar of the Appellate Court.

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\* Under the Act 26 and 27 Vict. c.24 by s. ...”The appeal from a decree or order of a Vice-Admiralty Court lies to Her Majesty in Council; but no appeal shall be allowed, save by permission of the judge, from any decree or order not having the force or effect of a definitive sentence or final order.”

By s.23, “The time for appealing from any decree or order of a Vice Admiralty Court shall, notwithstanding any existing enactment to the contrary, be .... to six months from the date of the decree or order appealed from, and no appeal shall be allowed where the petition of appeal to Her Majesty shall not have been lodged in the registry of the High Court of Admiralty and of Appeal within the time, unless Her Majesty in Council shall, on the report and recommendation of the Judicial Committee of the Privy Council, be pleased to allow the appeal to be prosecuted, notwithstanding that the petition of appeal has not been lodged within the time prescribed.

Rules (Nos. 148-53) relate only to the proceedings to be taken in the Vice-Admiralty Courts. The procedure in the Appellate Court is regulated by the Rules for appeals in ..... and ..... Established by Order in Council of the 11<sup>th</sup> Premier, ..... Sec. ....

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### PAYMENTS INTO COURT

156. All moneys to be paid into court shall be paid, upon receivable orders to be obtained in the registry, to the account of the registrar at some bank in the Possession to be approved by

the judge, or, with the sanction of the local government into the Treasury of the Possession. A form of receivable order will be found in the Appendix hereto, No. 52.

157. A bank receipt for the amount shall be filed, and thereupon the payment into court shall be deemed to be complete.

#### PAYMENTS OUT OF COURT

158. No money shall be paid out of court except upon an order signed by the judge. On signing a receipt to be prepared in the registry, the party to whom the money is payable under the order will receive a cheque for the amount, signed by the registrar, upon the bank in which the money has been lodged, or an order upon the Treasury in such form as the local government shall direct. A form of order for payment out of court will be found in the Appendix hereto, No. 53.

#### CAVEATS

159. Any person desiring to prevent the arrest of any property may file a notice undertaking, within THREE DAYS after being required to do so, to give bail to any action or counterclaim that may have been, or may be brought against the property, and thereupon the registrar shall enter a caveat in the caveat warrant book hereinafter mentioned. Forms of notice and of caveat warrant will be found in the Appendix hereto, Nos. 54 and 55.

160. Any person desiring to prevent the release of any property under arrest, shall file a notice, and thereupon the registrar shall enter a caveat in the caveat release book hereinafter mentioned. Forms of notice and of caveat release will be found in the Appendix hereto, Nos. 56 and 57.

161. Any person desiring to prevent the payment of money out of court shall file a notice, and thereupon the registrar shall enter a caveat in the caveat payment book hereinafter mentioned. Forms of notice and of caveat payment will be found in the Appendix hereto, Nos. 58 and 59.

162. If the person entering a caveat is not a party to the action, the notice shall state his name and address, and an address

within three miles of the registry at which it shall be sufficient to leave all documents required to be served upon him.

163. The entry of a caveat warrant shall not prevent the issue of a warrant, but a party at whose instance a warrant shall be issued for the arrest of any property in respect of which there is a caveat warrant outstanding, shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the judge good and sufficient reason to the contrary.

164. The party at whose instance a caveat release or caveat payment is entered, shall be condemned in all costs and damages occasioned thereby, unless he shall show to the satisfaction of the judge good and sufficient reason to the contrary.

165. A caveat shall not remain in force for more than SIX MONTHS from the date of entering the same.

166. A caveat may at any time be withdrawn by the person at whose instance it has been entered, on his filing a notice withdrawing it. A form of notice of withdrawal will be found in the Appendix hereto, No. 60.

167. The judge may overrule any caveat.

#### SUBPOENAS

168. Any party desiring to compel the attendance of a witness shall serve him with a subpoena, which shall be prepared by the party and issued under the seal of the court. Forms of subpoenas will be found in the Appendix hereto, Nos. 61 and 62.

169. A subpoena may contain the names of any number of witnesses, or may be issued with the names of the witnesses in blank.

170. Service of the subpoena must be personal, and may be made by the party or his agent, and shall be proved by affidavit.

#### ORDERS FOR PAYMENT

171. On application by a party to whom any sum has been found due, the judge may order payment to be made out of any money in court applicable for the purpose.

If there is no such money in court, or if it is insufficient the judge may order that the party liable shall pay the sum found due, or the balance thereof, as the case may be, within such time as the judge shall deem fit. The party to whom the sum is due may then obtain from the registry and serve upon the party liable an order for payment under seal of the court. A form of order for payment will be found in the Appendix hereto No. 63.

### ATTACHMENT

172. If any person disobeys an order of the court, or commits a contempt of court, the judge may order him to be attached. A form of attachment will be found in the Appendix hereto, No. 64.

173. The person attached shall without delay be brought before the judge, and if he persists in his disobedience or contempt, the judge may order him to be committed. Forms of order for committal and of committal will be found in the Appendix hereto, Nos. 65 and 66.

The order for committal shall be executed by the marshal.

### EXECUTION

174. Any decree or order of the Court may be enforced in the same manner as a decree or order of the Supreme Court of the Possession may be enforced.

### INSTRUMENTS

175. Every warrant, release, commission, attachment, and other instrument to be executed by any officer of, or commissioner acting under the authority of the court, shall be prepared in the registry and signed by the registrar, and shall be issued under the seal of the court.

176. Every document issued under the seal of the court shall bear date on the day of sealing, and shall be deemed to be issued at the time of the sealing thereof.

177. Every document requiring to be served shall be served within *six months* from the date thereof, otherwise the service shall not be valid.

178. Every instrument to be executed by the marshal shall be left with the marshal by the party at whose instance it is issued, with written instructions for the execution thereof.

#### NOTICES FROM THE REGISTRY.

179. Any notice from the registry may be either left at, or sent by post to, the address for service of the party to whom notice is to be given.

#### FILING

180. Documents shall be filed by leaving the same in the registry, with a minute stating the nature of the document, and the date of filing it. A form of minute on filing any document will be found in the Appendix hereto, No. 67.

181. Any number of documents in the same action may be filed with one and the same minute.

182. No documents except preliminary acts, bail bonds, documents issued from the registry, and minutes, shall be filed without a certificate endorsed thereon, signed by the party filing the same, that a copy thereof has been served upon the adverse party, if any.

#### TIME

183. If the time for doing any act or taking any proceeding in an action expires on a Sunday, or on any other day on which the registry is closed, and by reason thereof such act or proceeding cannot be done or taken on that day, it may be done or taken on the next day on which the registry is open.

184. Where, by these rules or by any order made under them, any act or proceeding is ordered or allowed to be done within or after the expiration of a time limited from or after any date or event, such time, if not limited by hours, shall not include the day of such date or of the happening of such event, but shall commence on the next following day.

185. The judge may, on the application of either party, enlarge or abridge the time prescribed by these rules or forms or by any order made under them for doing any act or taking any proceeding, upon such terms as to him shall seem fit, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time prescribed.

### SITTINGS OF THE COURT

186. The judge shall appoint proper and convenient times for sittings in court and in chambers, and may adjourn the proceedings from time to time and from place to place as to him shall seem fit.

### REGISTRY

187. The registry shall be open to suitors during fixed hours to be appointed by the judge.

188. The registrar shall obey all the lawful directions of the judge. He shall attend all sittings whether in court or in chambers, and shall take minutes of all the proceedings. He

shall have the custody of all records of the court. He shall collect for the judge's use the fees payable to him. He shall not act as counsel or solicitor in the court.

### MARSHAL

189. The marshal shall execute by himself or his officer all instruments issued from the court, which are addressed to him, and shall make returns thereof.

190. Whenever, by reason of distance or other sufficient cause, the marshal cannot conveniently execute any instrument in person, he shall employ some competent person as his officer to execute the same.

### HOLIDAYS

191. The registry and the marshal's office shall be closed on Sundays, Good Friday, Easter Monday, Easter Tuesday, and Christmas Day, and on such days as are appointed by law or by the Governor of the Possession to be kept as holidays or fast days.

### RECORDS OF THE COURT

192. There shall be kept in the registry a book, to be called the minute book, in which the registrar shall enter in order of date, under the head of each action, and on a page numbered with the number of the action, a record of the commencement of the action, of all appearances entered, all documents issued or filed,

all acts done, and all orders and decrees of the court, whether made by the judge, or by the registrar, or by consent of the parties in the action. Forms of minute of order of court, of minute on examination of witnesses, of minute of decree, and of minutes in an action for damage by collision, will be found in the Appendix hereto, Nos. 68 to 71.

193. There shall be kept in the registry a caveat warrant book, a caveat release book, and a caveat payment book, in which all such caveats respectively and the withdrawal thereof shall be entered by the registrar.

194. Any solicitor may, free of charge, inspect the minute and caveat books.

195. The parties to any action may, while the action is pending and for ONE YEAR after its termination, inspect, free of charge, all the records in the action.

196. Except as provided by the two last preceding rules, no person shall be entitled to inspect the records in a pending action without the permission of the registrar.

197. In an action, which is terminated, any person may, on payment of a search fee, inspect the records in the action.

#### COPIES

198. Any person entitled to inspect any document in an action shall, on payment of the proper charges for the same, be entitled to an office copy thereof under seal of the court.

## FORMS

199. The forms in the appendix to these rules shall be followed with such variations as the circumstances may require, and any party using any other forms shall be liable for any costs occasioned thereby.

## FEES

200. Subject to the following rules, the fees set forth in the tables of fees in the appendix hereto shall be allowed on taxation.

201. Where the fee is per folio, the folio shall be counted at the rate of 72 words, and every numeral, whether contained in columns or otherwise written, shall be counted and charged for as a word.

202. Where the sum in dispute does not exceed 50, or the value of the res does not exceed 100, one half only of the fees set forth in the Table hereto annexed shall be charged and allowed.

203. Where costs are awarded to a Plaintiff, the expression "sum in dispute" shall mean the sum recovered by him in addition to the sum, if any, counter claimed from him by the Defendant, and where costs are awarded to a Defendant, it shall mean the sum claimed from him in addition to the sum, if any, recovered by him.

204. The judge may in any action order that half fees only shall be allowed.

205. If the same practitioner acts as both counsel and solicitor in an action, he shall not for any proceeding be allowed to receive fees in both capacities, nor to receive a fee as counsel where the act of a solicitor only is necessary.

REPEALING CLAUSE

206. From and after the 1<sup>st</sup> of January 1884, except in regard to actions commenced before that day, the under-mentioned rules, and regulations, together with all forms thereto annexed, and all tables of fees now in force in any court shall be repealed viz.

(a) The rules and regulations touching the practice to be observed in suits and proceedings in the several Courts of Vice-Admiralty abroad, established by an Order in Council of the 27<sup>th</sup> June 1882.

(b) The twenty-fifth section of rules and regulations touching the practice to be observed in suits and proceedings in the several courts of Vice-Admiralty abroad, substituted in ..... Section 23 in the former rules and regulations, and established by an Order in Council of the 25<sup>th</sup> June 1851.

(c) The additional rules and regulations for the several courts of Vice-Admiralty abroad, established by an Order in Council of the 6<sup>th</sup> July 1859.

(d) Any of the above-mentioned Rules and Regulations as extended by subsequent Orders in Council in other Vice-Admiralty Courts.

#### CASES NOT PROVIDED FOR

207. In all cases not provided for by these Rules the practice of Admiralty Division of the High Court of Justice of England shall be followed.

#### COMMENCEMENT OF RULES

208. These rules shall come into operation on the 1<sup>st</sup> day of January 1884, and shall apply to all actions commenced on or after that day. Actions commenced before that day may by consent of parties, and with permission of the judge, be continued under these rules on such terms as to the judge shall seem fit.

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