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# RULES

AND

# REGULATIONS

MADE IN PURSUANCE OF

AN ACT OF PARLIAMENT PASSED IN THE SECOND YEAR OF THE REIGN OF

*His Majesty King William the Fourth,*

TOUCHING THE

PRACTICE TO BE OBSERVED IN SUITS AND PROCEEDINGS

IN THE SEVERAL

## COURTS OF VICE-ADMIRALTY

ABROAD,

AND ESTABLISHED BY THE KING'S ORDER IN COUNCIL.

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LONDON:

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1842.



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WHEREAS, by an Act passed in the Second Year of His present Majesty, King William IV., entitled *An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts Abroad, &c.*, His Majesty is empowered to make such Rules, Regulations, and Fees, and to alter them from time to time, as may be found expedient, in the Vice-Admiralty Courts Abroad; and whereas, by an Order in Council of the 23rd of June, 1832, His Majesty has been pleased to authorize us to carry into effect the following Rules, Regulations, and Tables of Fees, to be taken and received by the Respective Officers of the said Courts, We send you herewith a Book containing Copy of the aforesaid Act, Order in Council, Table of Fees, and the Regulations of Practice to be observed in the Vice-Admiralty Court under your jurisdiction; and hereby desire and direct, that the Judge, Officers, and Practitioners in the said Court be governed by the same accordingly.

J. R. G. GRAHAM,  
 T. M. HARDY,  
 G. H. L. DUNDAS,  
 S. JOHN BROOKE PETCHELL,  
 G. BARRINGTON,  
 H. LABOUCHERE.

*To the Vice-Admiral, and the respective  
 Officers and Practitioners of the Vice-  
 Admiralty Court of*

By Command of their Lordships,  
 JOHN BARROW.



ANNO SECUNDO GULIELMI IV. REGIS.

CAP. LI.

An Act to regulate the Practice and the Fees in the Vice-Admiralty Courts Abroad, and to obviate Doubts as to their Jurisdiction. [23rd June, 1832.]

WHEREAS it is expedient that Provision should be made for the Regulation of the practice to be observed in the Suits and Proceedings in the Courts of Vice-Admiralty in His Majesty's Possessions Abroad, and for the establishment of Fees to be allowed and taken in the said Courts by the respective Judges, Officers, and Practitioners therein: Be it therefore enacted by the King'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, that it shall be lawful for His Majesty, with the Advice of His Privy Council, from time to time to make and ordain such Rules and Regulations as shall be deemed expedient touching the practice to be observed in Suits and Proceedings in the several Courts of Vice-Admiralty at present or hereafter to be established in any of His Majesty's Possessions Abroad, and likewise from time to time to make, ordain, and establish Tables of Fees to be taken or received by the Judges, Officers, and Practitioners in the said Courts, for all Acts to be done therein, and also from time to time, as shall be found expedient, to alter any such Rules, Regulations, and Fees, and to make any new Regulations and Table or Tables of Fees; and that all such Rules, Regulations, and Fees, after the same shall have been so made and established, or altered, from time to time be entered or inrolled in the Public Books or Records of the said Courts, so far as such Practice and Fees shall relate or apply to each of such Courts respectively.

His Majesty empowered to make Regulations and establish Fees in the Vice-Admiralty Courts Abroad.

Regulations and Fees to be inrolled in the respective Courts.

II. And be it further enacted, that a Copy of every Table of Fees so to be from time to time made and established, or altered, shall be laid before the House of Commons within Three Calendar Months next after the making and Establishment or Alteration thereof respectively, if Parliament shall be then sitting, and if not, then within One Calendar Month next after the subsequent Meeting of Parliament.

The Tables of Fees to be laid before the House of Commons.

III. And be it further enacted, that the several Fees so to be established, and no other, shall, from and after the making and Establishment thereof, and the Entry and Inrolment thereof as aforesaid, be deemed and taken to be the lawful Fees of the several Judges, Officers, Ministers, and Practitioners of the said respective Courts; and such Fees only shall and may be demanded, received, and taken accordingly.

Fees so established to be the only lawful Fees.



Copies of the Regulations and Tables of Fees to be hung up in each Court.

IV. And to the intent that all such Regulations and Fees may be promulgated and publicly made known, be it further enacted, That the Judge and Registrar of every such Court shall cause to be kept constantly hung up and preserved in some conspicuous part of every such Court, and in the Office of the Registrar, a Copy of the Table of Fees so to be from time to time ordained and established in such Courts respectively, so that the said Table may be seen and read by all Persons having any Business in any such Court and Office respectively; and that the Books or Records containing the Entries of the said Regulations and Tables of Fees, as the same shall be in force, shall be at all seasonable times open to the inspection of the Practitioners and Suitors in every such Court.

Appeal to the High Court of Admiralty in Cases of Costs.

V. And be it further enacted, that in all cases in which Proceedings may be had in any of the said Vice-Admiralty Courts, if any Person shall feel himself aggrieved by the Charges made by any of the Officers or Practitioners therein, and the Allowance thereof by such Vice-Admiralty Court, by reason that such Charges are not warranted by the Tables herein-before mentioned, it shall be lawful for such Person or his Agent, under the Regulations to be established in Pursuance of the Powers given by this Act, by summary Application to the High Court of Admiralty, to have the said Charges taxed by the Authority thereof.

Vice-Admiralty Courts to have Jurisdiction in certain Maritime Causes.

VI. And whereas in certain Cases Doubts may arise as to the Jurisdiction of Vice-Admiralty Courts in His Majesty's Possessions Abroad, with respect to Suits for Seamen's Wages, Pilotage, Bottomry, Damage to a Ship by Collision, Contempt in Breach of the Regulations and Instructions relating to His Majesty's Service at Sea, Salvage, and Droits of Admiralty; be it therefore enacted, That in all Cases where a Ship or Vessel, or the Master thereof, shall come within the local Limits of any Vice-Admiralty Court, it shall be lawful for any Person to commence Proceedings in any of the Suits herein-before mentioned in such Vice-Admiralty Court, notwithstanding the Cause of Action may have arisen out of the local Limits of such Court, and to carry on the same in the same manner as if the Cause of Action had arisen within the said Limits.

*At the Court at St. James's, the 27th day of June, 1832;*

PRESENT,

**THE KING'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 19th Instant, in the words following, viz. :—

“Whereas by an Act passed in the second year of Your Majesty's Reign for the regulation of the practice to be observed in the Suits and Proceedings in the Courts of Vice-Admiralty in Your Majesty's Possessions Abroad, and for the establishment of Fees to be allowed and taken in the said Courts by the respective Judges, Officers, and Practitioners therein, it is enacted that it shall be lawful for Your Majesty, with the advice of Your Privy Council, from time to time to make and ordain such Rules and Regulations as shall be deemed expedient, touching the practice to be observed in Suits and Proceedings in the several Courts of Vice-Admiralty, at present or hereafter to be established in any of Your Majesty's Possessions Abroad; and likewise, from time to time, to make, ordain, and establish Tables of Fees to be taken or received by the Judges, Officers, and Practitioners in the said Courts, for all acts to be done therein; and also, from time to time as shall be found expedient, to alter any such Rules, Regulations, and Fees, and to make any new Regulations, and Table or Tables of Fees; and that all such Rules, Regulations, and Fees, after the same shall have been so made and established, or altered, shall, from time to time, be entered or inrolled in the public Books or Records of the said Courts, so far as such Practice and Fees shall relate or apply to each of such Courts respectively.

“And whereas, among other provisions of the said Act, it is ordained, with respect to doubts that may arise as to the jurisdiction of Vice-Admiralty Courts in His Majesty's Possessions Abroad, as to Suits for Seamen's Wages, Pilotage, Bottomry, Damage to a Ship by collision, Contempt in breach of the Regulations and Instructions relating to His Majesty's Service at sea, Salvage and Droits of Admiralty, that in all cases where a Ship or Vessel, or the Master thereof, shall come within the local limits of any Vice-Admiralty Court, it shall be lawful for any Person to commence proceedings in any of the Suits before-mentioned in such Vice-Admiralty Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

“And whereas we deem it of great importance that one uniform system of practice should prevail in all the Vice-Admiralty Courts in Your Majesty's Colonies, we would most humbly submit to Your Majesty that Your Majesty will be pleased, by Your Order in Council, to authorize us to carry into effect the said Rules and Regulations touching the practice in Suits and Proceedings

in the said Courts, as laid down in a Report of certain Referees appointed by the Lords Commissioners of Your Majesty's Treasury, and approved by the Judge and other competent Law Authorities of the High Court of Admiralty of England; and also that the Tables of Fees proposed and approved by the said Authorities may be established by Your Majesty's Order in Council, as the only Fees to be taken and received by the Judges, Registrars, Marshals, Advocates, and Proctors of the Vice-Admiralty Courts of the respective Colonies, as laid down by the Referees and approved by the Law Authorities above mentioned.

“And further that we be authorized to carry into execution all other provisions contained and set forth in the Act of Parliament aforesaid.”

His Majesty, having taken the said Memorial into consideration, was pleased, by and with the advice of His 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 therein accordingly.

W. L. BATHURST.

# RULES AND REGULATIONS.

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## § 1. *As to the holding of Courts.*

COURTS are to be regularly held at short intervals by adjournment from day to day; but the Judge is authorized to sit on any intermediate day as hereinafter provided, in case the despatch of business, or other necessity, shall require. The practice which has prevailed in many of the Vice-Admiralty Courts of presenting a petition to the Judge to appoint a day for holding a court, is from henceforth to cease.

The Judge is to be at convenient times accessible at his chambers, that he may be, if necessary, consulted by the Registrar on any incidental matter, or for the purpose of hearing a motion by Counsel, or directing the sale of perishable goods, or doing any other act which the emergency of a case may render requisite to be done.

## § 2. *Surrogates.*

The admitted Advocates of each Court are to be appointed Surrogates, to do, in the absence of the Judge, ordinary or common form acts (but none other), such as the administering an oath to a witness, decreeing a monition, taking bail, and the like; but in those Courts in which the Advocate is allowed to act as Proctor also, no judicial act of any kind is to be sped by a practitioner in any cause in which he may be professionally retained or interested.

When an advocate is to be admitted a Surrogate, he is to attend with the registrar before the Judge, and, on being sworn faithfully to execute his office, is to be admitted. The Registrar is then to make an entry of such admission in the Minute or Assignation Book, and attest the same.

## § 3. *Registrar and Marshal to be sworn.*

The persons to be appointed to execute the several offices of Registrar and Marshal are to be sworn faithfully to perform their respective duties.

## § 4. *Registry Office.*

The Registry of the Court is to be accessible to suitors at convenient hours in the day throughout the year; and a person of competent skill and knowledge is to be in regular attendance there for all requisite purposes.

## § 5. *Registrar's Duties.*

The duty of the Registrar is to attend all sittings of the Court, and also before the Judge, or Surrogate in Chambers, and to make Minutes of every act of Court or decree, and to enter the same in an Assignation Book, to be kept for the purpose, which is to form a record of the proceedings of the Court; he is to file, or take the custody of all pleas, depositions, documents, exhibits, and

papers brought into Court, recording the receipt thereof in the Assignment Book, briefly stating the papers so received, and the date of their receipt. He is to take the depositions of all witnesses examined upon pleas and interrogatories. If from illness, or any other sufficient cause, he should be unable to perform this duty, he may, with the consent of the Judge, appoint some other competent person to act for him on those occasions. He is to make, or procure to be made, translations of such documents in foreign languages brought into Court as may be required by the Judge or by the Proctor of either party. He is to make and to attest copies of all records, documents, and papers that may be requisite. He is to draw all bail-bonds, or recognizances, and to be present at and attest the execution thereof before the Judge or Surrogate. He is to prepare, sign, and seal all warrants, commissions, and instruments issuing under the seal of the Court. He is also to collect from the practitioners, and receive for the Judge's use, the fees payable to him. He is to have the custody of all moneys paid into Court, and to remit them when required, by bills of exchange or other valid securities, to England. He is prohibited from acting either as Advocate or Proctor in any suit, matter, or proceeding in the Court of which he is Registrar.

#### § 6. *Marshal's Duties.*

The Marshal is to attend the Judge in Court on all Court-days. He is to inquire and report as to the sufficiency of persons proposed for bail. He is to execute all such warrants, decrees, monitions, and other instruments as shall be issued from the Court, and be directed to him; and he is to make due returns thereof.

In cases where, in order to avoid expense, it may be deemed requisite to employ others than the Marshal to execute process at any great distance from the Court, the instrument is to be addressed as follows:—

“To all and singular Mayors, Justices of the Peace, Bailiffs, Constables, Officers and Ministers of Justice, or literate persons whomsoever, and more especially to the Collector and Comptroller of Our Customs at the port of ———;” or in some similar form, if more appropriate to the existing authorities in the colony.

And on those occasions either the Collector or Comptroller of the Customs is to be preferred, unless they are parties to, or interested in, the suit.

And with the same view of avoiding expense, it is expedient that other duties which properly belong to the office of Marshal, and which require to be performed at a distance from the Court, be executed by others; in which cases, commissions are to be addressed specially to any competent persons by name resident near the place where such duties are to be performed.

#### § 7. *Proceedings by Action.*

These are to commence with an entry by a Proctor, in a book to be kept in the Registry for that purpose, called the “Action Book,”\* of the action in a given sum sufficient to cover the demand and the probable amount of costs; but this sum is on no account to be excessive. Before any warrant is issued, the party applying for the same is to exhibit to the Registrar an affidavit,† setting forth the nature of the demand, that application for payment has been made without effect to the parties concerned, and that the aid and process of the Court are required for the enforcement thereof. Upon the leaving of this affidavit in the Registry, a warrant,‡ specifying the amount of the action, may issue to arrest the property proceeded against, or the person in cases where personal

\* See Forms of Actions, No. 1 to 14.

† See Affidavits to lead Warrants, No. 15 to 20.

‡ See Forms of Warrants, No. 21 to 34.

arrest is lawful ; but personal arrest is never to be resorted to when the ends of justice can be otherwise obtained. The Proctor, having obtained the warrant from the Registrar, is to make a copy of it, and then deliver the warrant and copy to the Marshal, with instructions for the execution of the process. If the instrument is to be served on a ship, cargo, and freight at different places, as many different copies thereof as are requisite must be made by the Proctor for that purpose. Every copy is to be examined with the original by the Marshal, or the person serving the instrument.

§ 8. *Execution of Warrants.*

When a ship is, or a ship and cargo are, to be arrested, the warrant is to be affixed on the mainmast or some conspicuous part of the vessel for a short time, and a collated copy of it left on board; and when goods only are to be arrested (either for the purpose of proceeding against such goods, or the freight due thereon), the warrant is to be affixed for a short time on part of the goods, and a collated copy thereof left thereon, or with any person in whose actual custody the goods may be.

In cases of personal arrest, the warrant under seal of the Court must be shown to the party before he is taken into custody.

A certificate\* of the service of every warrant executed by the Marshal is to be indorsed thereon, and signed by him, in which he is to set forth the time when, and the mode by which, the service was effected.

When a warrant is served by any other person than the Marshal, there must be, in addition to a similar certificate of the person serving it, his affidavit in verification thereof.†

The Warrant having been served is to be delivered back to the Proctor to be by him returned into the Registry at the time when it purports to be returnable; and the Registrar is then to attend with the Proctor before a Judge or Surrogate, and enter a minute in the Assignment Book, that the warrant has been returned duly served and executed.‡

§ 9. *Appearance and Bail.*

After the entry of an action, and before the issue of a warrant, the defendant may voluntarily appear and give bail, and thus avoid the expense consequent on the issue of process.

An appearance alone, without bail, may be sufficient for the purpose of contesting a suit, but in cases of the arrest of property or of the person, either the demand must be satisfied, or competent bail given, before the property or person is released from the arrest.

In order to avoid unnecessary detention when the arrest is to take place at a distance from the Court, a commission for taking bail is to accompany the warrant, as an authority to the party serving the warrant to release the individual or the property on sufficient bail being given.

§ 10. *Proceeding by Default.*

In the case of property arrested, and no party appearing after the return of the warrant, the cause may proceed by default, or *in pœnam contumaciæ*. To this end, on the day the warrant is returned, the parties cited and not appearing, are, at the petition of the Proctor, to be pronounced by the Judge or Surrogate to be in default, and an entry to that effect is to be added by the Registrar to the minute on the return of the warrant in the Assignment Book.§

\* See Forms, No. 35 to 37.

† See Form of Minute, No. 39.

‡ See the Form of this Affidavit, No. 38.

§ See Form of Minute, No. 40.

At the expiration of two months from the return of the warrant, if no appearance be given, the parties cited are again to be pronounced in default, and the promoter is to be entitled to a decree pronouncing for the amount of his demand, and giving him a lien on the property; which decree is to be drawn by the Proctor, who, after it has been perused and settled by the Registrar, is to make a fair copy of it for the Court.\*

An affidavit in verification of all the facts mentioned in the decree is to be made by the party proceeding, which affidavit is to be drawn by the Proctor, and submitted to the Registrar.†

The Proctor is then to prepare a short case detailing the proceedings, which, with a copy of the affidavit, he is to deliver to counsel as instructions to move the Court to sign the decree, of which, when signed by the Judge, the Registrar is to make a minute in the Assignment Book.‡

On the same Court-day, or on any subsequent adjourned Court-day, if an affidavit§ of two persons be exhibited, stating that the property proceeded against is perishable and likely to deteriorate in value, the Judge is to direct a decree of appraisement and sale to issue, of which the Registrar is also to make an entry.|| This decree is then to be delivered by the Registrar to the Proctor, and by the latter to the Marshal, with instructions for its execution.¶ The Marshal is thereupon to select a broker, or other person conversant with the value of the property, and to administer an oath to him justly and faithfully to inventorize and appraise the ship, her tackle, apparel, and furniture, or the goods, as the case may be. An inventory and appraisement are then to be made, and the Marshal is to cause the property to be publicly advertised by printed bills or otherwise, and, after sufficient public notice of the intended sale, to be sold by auction. The sale being completed, the Marshal is to return the decree (with his certificate as to the execution thereof) into Court, or before the Judge or Surrogate in Chambers, and to bring in at the same time the inventory and appraisement, with a more extended return of the Marshal\*\* and appraiser, signed by them, setting forth the particulars and the value of the ship or goods as appraised; and he is also to bring the account of sales and proceeds into the Registry within the time specified in the decree.††

If the property be of considerable value, two brokers or appraisers may be employed, provided there is sufficient reason for the same. The property is never to be sold under the appraised value unless by special order of the Court; and if the appraised value cannot be obtained after an attempt to sell, the Marshal is to exhibit an affidavit,‡‡ of at least two persons, stating that the property had been duly advertised and put up at public auction, when only a certain sum was bid for the same. And if the Judge be then satisfied that all has been done as properly and fairly as if the owner himself had been selling his own property, he is to direct the same to be sold at a reduced price, but not for less than a sum which he in his discretion is to fix. A minute§§ of such order is to be entered by the Registrar in the Assignment Book, and the property is then to be offered again to sale by public auction.

When the proceeds are brought into the Registry, the Registrar may pay out of Court to the party proceeding, on his application for that purpose, the amount of the debt pronounced for, together with the costs of the suit, the same being first duly taxed and allowed by the Judge.

When a decree pronouncing for the interest of a party proceeding by default has been signed by the Judge, if any other party should also proceed against the property, he will be entitled, on

\* See Forms, Nos. 41 and 42.

† See Form, No. 47.

‡ See Decrees of Appraisement and Sale, Nos. 49 and 50.

¶ See Form of Minute, No. 53.

§ See Forms, Nos. 43 and 44.

|| See Minute on granting a Decree of Appraisement and Sale, No. 48.

¶¶ See Forms of Return, Nos. 51 and 52.

§§ See Form, No. 54.

†† See Forms, Nos. 45 and 46.

‡‡ See Form, No. 55.

motion of Counsel, to have his interest pronounced for by an interlocutory decree,\* after the warrant has been returned two months, and a second default has been incurred in his particular suit. On this occasion a similar affidavit must be exhibited to that required on obtaining the decree for the interest of the party who had originally proceeded by default.

The balance of proceeds, if any remain in the Registry after satisfying the amount pronounced for and costs, may, on production of the Ship's Register, or other satisfactory evidence of ownership, be paid out to the owner. But if his application be made within a year and a day from the return of the warrant, he is to give bail to answer latent demands.†

The sufficiency of sureties is to be reported upon by the Marshal, and the bail must be given in the manner hereinafter mentioned respecting bail to answer an action in a contested suit.

In a case proceeding by default, or *in pœnam*, the owners of the property are to be allowed to contest the suit at any time before the expiration of a year and a day from the return of the warrant; but if they neglect to appear until they have been pronounced in default, they must, on appearing; pay contumacy fees, viz., all the costs occasioned by such their neglect, including the charges for keeping possession beyond the time specified in the warrant for its return, which costs are to be taxed by the Court.

### § II. *Contested Suits.*

In contested suits the property remains in the custody of the Court, but if the release thereof be a material object to the owner, or to the party defendant, it may be delivered to him on sufficient bail by two persons severally in the amount for which the action has been entered. Causes of possession, however, are notailable unless by the special direction of the Judge. Bail to answer an action, and all bail-bonds or recognizances are to be given in the following manner:—

The Proctor who is to produce the sureties is to furnish the Marshal and also the adverse Proctor with the particulars, in writing, of the names of the proposed bail, their address and occupation; and the Marshal, having made due inquiry as to their sufficiency, is to deliver his report ‡ thereon to the Proctor proposing the bail, who is then to instruct the Registrar to prepare the bail-bond.§ The Registrar, the two Proctors, and their sureties, are then to attend the Judge or Surrogate, and, upon the recognizances being duly entered into, the property is to be released upon an instrument ¶ to be drawn by the Marshal and issued immediately after bail has been given. This form is to be dispensed with when the bail is taken by commission.

It is competent to the adverse Proctor to object to the proposed sureties, in which case the Judge is immediately to decide on the validity of the objections. If the adverse Proctor do not attend at the production of the sureties, the bail may be taken *ex parte* upon an affidavit, ¶ to be prepared by the Proctor producing them, that he has given twenty-four hours' notice in writing of their names, address, and occupation, which affidavit is to be left in the Registry.

Should a party appear under protest, either objecting to the jurisdiction of the Court or on any other ground on which he means to contend that he is not liable to answer the action, his appearance must be entered by the Registrar in the Assiguation Book, as given under protest, and the party so appearing is to be assigned to deliver his act on protest to the adverse Proctor within a limited time.\*\* The same course of proceeding is to be pursued on the act on protest as in cases of acts on petition (hereafter stated) up to the time of the hearing, when the Judge is either to pronounce

\* See Form, No. 56.

§ See Bail-Bonds, No. 59 to 67.

† See Form of Bond, No. 57.

¶ See Form of Release, No. 68.

\*\* See Form of Act, No. 70.

‡ See Form of Report, No. 58.

¶ See Form of Affidavit, No. 69.



for the protest and dismiss the suit, or overrule the protest and assign the party to appear absolutely, and the cause is then to proceed as if no appearance on protest had been given.

In contested suits the facts may be established either by libel or plea, and the examination of witnesses thereon styled "Plea and Proof;" or by an "Act on Petition," supported by affidavits, to which may be annexed exhibits or other documents to be verified in the affidavits.

### § 12. *Proceedings by Plea and Proof.*

When an appearance has been entered, the defendant is entitled to an assignation on the plaintiff to exhibit a libel within a time to be limited by the Judge.

The libel or plea is to be drawn by the plaintiff's Proctor\* and settled by Counsel, and then a fair copy, signed by Counsel, is to be made for the Court, and brought in pursuant to the assignation; a copy is also to be delivered to the adverse Proctor, and each Proctor is entitled to make copies for the use of his Counsel at the hearing.

There may be annexed to the libel or plea, documents or exhibits pleaded or referred to therein, of which copies are to be made in like manner, the originals being brought into Court. And upon the libel or plea being brought in, the Judge is to assign to hear, on admission thereof, on the next Court-day, or at a time to be named by him. The defendant's Proctor may then lay the libel or plea before Counsel for his advice, if the same be opposable, and if it be deemed by him not sufficient in law (supposing it to be true) to warrant the plaintiff's prayer, the admission of it may be opposed; whereby, if the plaintiff has no legal cause of action, the suit may be stopped *in limine*, it being the duty of the Judge to reject all pleas, which, if assumed to be true, will not justify him in pronouncing a decree for the party giving in such plea. Or if the plea contains matter unnecessary or irrelevant to the cause of action, or is drawn in too diffuse or argumentative a manner, the admission thereof may be opposed. Upon these objections coming on to be debated, the Judge will order the plea to be admitted, reformed, or altogether rejected, as he shall see cause. If ordered to be reformed, the Judge will in his discretion direct the objectionable matter to be expunged and other points modified.† If ordered to be rejected, such rejection puts an end to the suit.

On the libel being debated, a case on each side is to be prepared by the respective Proctors, and delivered to Counsel with copies of the libel and of the exhibits, if any, which copies, however, must afterwards serve for the use of Counsel at the final hearing.

Pleas, the admissibility of which is not objected to, are admitted to proof of course.

Pleas or allegations given in the subsequent stage of a cause, may be admitted, reformed, or rejected in a similar manner.

On the libel being admitted, the Proctor giving in the same is to be assigned to prove its contents by evidence within a time to be limited by the Judge, and the party giving in the plea is entitled, if he desire it, to the personal answers in writing of the adverse party.§ In that case a decree for answers is to be extracted from the Registry, and served on the party, by showing him the original under seal, and leaving with him a copy thereof. The Answers are to be drawn by the Proctor for the party required to give in the same, who must answer specifically to all the facts or allegations in the plea which are within his own knowledge, by either admitting or denying the same; and as to all other matters, he must answer to his belief or disbelief.

No extraneous or irrelevant matter is to be introduced, but the party may set forth any matter necessary to explain his answer. If any facts are introduced which are capable of proof by

\* See Libels, No. 71 to 75.

† See Form of Minute on bringing in Libel, No. 76.

‡ See Minutes admitting, reforming, or rejecting Libel, No. 77 to 80.

§ See Decree for Answers, No. 81.

witnesses, they must be established by evidence regularly taken on a plea. The answers\* are to be settled by Counsel, and then the party attended by his Proctor is to be sworn† to the truth thereof before the Judge or Surrogate in the presence of the Registrar, who is to make and sign an attestation at the foot thereof. The Registrar is then to file them and make a minute‡ in the Assignment Book of their having been sworn and brought into Court. The adverse Proctor may immediately inspect them without waiting for publication, and may have an office copy of them. And if they be insufficient, redundant, or contain matter not pertinent, may be objected to in the same manner as a libel or plea.

If after the return of a decree personally served the party does not give in his answer within the time assigned, the Judge may decree an attachment against him for his contumacy; but, notwithstanding this measure, the Proctor for the plaintiff may proceed with the production of his witnesses, and take other requisite steps in the cause.

§ 13. *Examination of Witnesses.*

The name of the witness,§ and a designation of the specific articles of the libel or plea on which he is to be examined, must be delivered to the adverse Proctor and to the Registrar or Examiner, whereupon the Proctor giving in the plea is to attend the witness and produce him before the Judge or Surrogate, in Court or chambers, when the witness is to be immediately sworn in the presence of the Registrar.¶ Due notice of his intended production must be given to the adverse Proctor, who may attend if he think fit. On the witness being so sworn, the Registrar is to make an entry thereof in the Assignment Book.¶¶

The deposition in chief is not to be taken upon written interrogatories, but by relevant questions put *vivâ voce* by the Registrar or Examiner,\*\* and arising out of the circumstances pleaded, but not so put as to lead the witness. If there are several pleas, witnesses are to be examined on each plea. The witness must not be dismissed until the lapse of twenty-four hours from the time of his production, so that the adverse Proctor may have an opportunity to cross-examine him by interrogatories in writing if he think fit; and this time may be extended on reasonable cause to be shown by the Proctor through the Registrar to the Judge.†† Such interrogatories are to be drawn by the adverse Proctor, and, when practicable, settled by Counsel. They are then to be copied for and signed by Counsel, and delivered to the Registrar, with instructions as to the particular interrogatories to be administered to each witness. When the witness has been examined in chief, and also upon interrogatories, if any are to be administered, the depositions in chief, and also the answers to the interrogatories (if any), are to be read over to or by the witness, and signed by him, and he is then to attend with the Registrar before the Judge or Surrogate in chambers, and make a declaration that he knows the contents of his deposition, and that the same are true in virtue of the oath by him taken on his being produced; and an attestation thereof is to be made at the foot of the deposition by the Registrar or Examiner.

The evidence of the witnesses is in all cases to be kept closely sealed, and the contents thereof are not to be divulged until publication shall have been passed; after which, but not sooner, the Proctor administering the interrogatories, if any are administered, is to deliver a copy thereof to the Proctor producing the witness.

\* See Answers, No. 82 to 85.

† See Oath, No. 86.

‡ See Minute, No. 87.

§ See Form, No. 88.

¶ See Oath, No. 89.

¶¶ See Minute, No. 90.

\*\* See Forms used in the High Court of Admiralty, No. 91 to 95.

†† See Forms, No. 96 to 99.

In the event of any witness refusing to attend to be examined, his necessary expenses having been tendered to him (but not otherwise), a compulsory or subpoena,\* to be prepared by the Registrar, may be extracted, and served on the person so refusing to attend, by showing to him the original instrument under seal, and leaving with him a collated copy thereof; and if he do not appear to this process, an attachment may issue against him for his contempt.

The witnesses for the plaintiff being all examined, his Proctor may on the first court-day afterwards pray publication of the evidence, which is to be decreed to take place at a time to be fixed by the Judge;† and at the expiration of that time, it is imperative on the opposite party to plead if he intends to do so at all; for this purpose, he is to attend before the Registrar or Surrogate, and declare in a minute‡ of Court that he intends to offer an allegation§ or counter-plea, and the same must be brought into Court within a reasonable time, to be assigned by the Judge. In that case, publication of the evidence taken must be stayed until the allegation be disposed of, either by being admitted or rejected by the Court, or by the party abandoning the intention of giving it in. If admitted, publication must be stayed until the whole evidence in the cause be taken. In the event of no allegation or counter-plea being given, or, if given, being rejected by the Court, or withdrawn by the party, publication of the evidence is to take place; and thereupon the depositions may be inspected on each side, and copies thereof furnished to the parties at the request of their Proctors, who may make copies thereof for their respective Counsel.

After the evidence has been inspected, neither party can claim as a matter of right to give any further plea or allegation in the principal cause; but if the Judge shall be satisfied by affidavit that there is any matter important to the issue, which could not have been pleaded before by reason that knowledge thereof had not come to the party prior to, or that the fact had occurred after, the publication; the Judge in his discretion may allow such matter to be pleaded.

Allegations exceptive to the testimony of witnesses|| may be given after publication in cases only where the matter on which they are founded arises out of the evidence of the witness or witnesses excepted to, and where the contradiction, if proved, would tend materially to destroy his or their credit; but no allegation exceptive to the testimony of witnesses is to be admitted, if the facts it contains either have been or could have been pleaded before publication. After publication, no allegation, pleading generally that the witness is not worthy to be believed on his oath, is to be received. Any such allegation, when offered, must precede publication, and must plead generally that the witness is of bad character and reputation, and not to be believed on his oath, without imputing to him any specific charges.

When several pleas are given in a cause, witnesses are to be examined on each plea; and all other steps are to be pursued in the same manner as directed in respect of the plaintiff's libel.

It is the duty of the Proctors to take especial care that the libel and defensive allegation contain all the facts material to the decision of the cause, so that several pleas may not unnecessarily be given.

When publication shall have taken place on all pleas, the cause is to be set down to be heard at a time to be appointed by the Judge. Counsel are to be furnished with copies of all material papers, viz., pleas, exhibits, and depositions of witnesses, but not of warrants, decrees, or other formal instruments, unless from circumstances the contents of such instruments may be material to the discussion of the cause. A case for hearing on each side is to be prepared by the respective Proctors,

\* See Form, No. 100.

† See Minute, No. 101.

‡ See Minute, No. 102.

§ See Forms of Allegations, No. 103 to 107.

|| See Forms, Nos. 108 and 109.

briefly stating the proceedings which have taken place, and calling the attention of Counsel to the decree which each party may pray the Judge to pronounce. The evidence is not to be abstracted, nor are documents of which Counsel are furnished with copies to be more than merely described in the case. All lengthened details are to be avoided, but the attention of Counsel is to be directed to the principal points. A reasonable fee is to be paid to Counsel on the hearing; and if the case takes more than one day in argument, a moderate additional or refreshing fee is to be given for each subsequent day. Definitive sentences in writing are only requisite in derelict and piratical cases. In other causes the judgment may be given by interlocutory\* decree, and entered by the Registrar in the Assignation Book.

If it become necessary to enforce a judgment, a monition† is to be taken out against the party principal and his bail, and served in the manner before directed in regard to instruments requiring personal service. Upon the return into Court of the monition, with a certificate of its due service indorsed thereon, and the tenor thereof not being obeyed, the Judge, upon motion of Counsel, may decree an attachment‡ against the person of the party monished for his contempt; directing either the attachment to issue immediately, or to be suspended for a reasonable time, as circumstances may in his judgment require. This attachment§ is to be extracted from the Registry. The previous service of a monition may not always be necessary. Where the disobedience is manifest upon the face of the proceedings, and it is clear that the order of the Court must be known to the party, an attachment may be decreed without a previous monition; but in cases where sureties are to be attached, a previous monition is indispensable. Upon compliance with the order for disobedience of which the attachment issued, and upon payment of the costs of the attachment, the Marshal, or other person executing it, is to release the party, certifying to the Judge fully what has been done; but in cases of doubt he may resort to the Judge for directions previous to the release.

§ 14. *Proceeding by Act on Petition.*

In case bail has been given to the action, a minute is to be made in the Assignation Book by the Registrar, assigning the Proctor for the party proceeding to deliver his act on petition to the adverse Proctor by a time to be fixed by the Judge. The Proctor is then to set forth the facts of his case|| in a plain narrative manner, without argument, and concluding with his prayer. This, having been settled by Counsel (for which purpose he is to be furnished with a copy), is to be copied fair for the Court, and then delivered to the adverse Proctor that he may reply thereto, and, with the reply, it must be returned to the Proctor of the party proceeding, that he may make a rejoinder thereto if necessary. The reply and rejoinder must also be settled by Counsel in the same manner as the act.

The facts alleged in the act on petition are to be supported by affidavits; and any necessary exhibits, or documents annexed thereto, are to be verified in such affidavits, which are to be confined to the material averments, and are not to be settled by Counsel.

Should any delay occur in the delivery of the act from one Proctor to the other, either of them may allege the same, in the presence of the Registrar, before the Judge, who is to direct the act to be returned by a time to be specified; and if it be not returned by that time, or good cause shown for the delay, the Judge is to assign to hear the act on petition *ex parte*, that no unnecessary postponement may take place, for which purpose a copy of the act, instead of the original, together with the

\* See Interlocutory Decrees, No. 110 to 130.

† See Monitions, No. 131 to 135.

‡ See Minutes, No. 136 to 139.

§ See Attachments, No. 140 to 145.

|| See Acts on Petition, No. 146 to 148.

affidavits on behalf of the party, must be brought in by the Proctor applying to have the cause so heard.

When the act is concluded, it is to be signed by both Proctors, who are to attend before the Judge or Surrogate, in the presence of the Registrar, to bring in the same, together with the original affidavits and exhibits. No further affidavits or documents are to be afterwards received, unless by leave of the Judge obtained on special application. The Judge is then to appoint the cause for hearing, and thereupon one copy of the affidavits and exhibits is to be made for each of the Counsel, and one for the adverse Proctor, to be delivered to him when the originals are brought in. The adverse Proctor is also to make copies for his own Counsel. The same rules, as to the preparing the case for hearing, delivering copies of papers, and fees to Counsel, and the same proceedings for enforcing obedience to the decree, are to be observed as in a cause conducted by plea and proof.

### § 15. *Suits for Mariner's Wages.*

The same regulations as to the arrest of a Ship, the subsequent proceeding by default or *in pœnam*, and the Rules for conducting a cause by plea and proof, are to be applicable to the suit of a mariner for his wages, which is called a cause of subtraction of wages, in which the mariner may proceed against the ship, freight, and master, or the ship and freight, or the owner or the master alone; and any number of mariners, not exceeding six, may proceed jointly in one action.

When an appearance is given, the Proctor for the party proceeding is entitled to an assignation on the defendant\* to bring into court the mariner's contract and ship's books; and he is not compellable to file his libel until they are so brought in.

The libel, if in common form, and pleading no special matter, should state the hiring, rate of wages, performance of service, and the refusal of payment; and should have annexed to it a schedule, stating the whole amount of wages, with the sum received on account, and the balance claimed to be due. This plea is termed a summary petition, and should not be settled by Counsel.

### § 16. *Suits for Pilotage.*

Suits for the recovery of pilotage, where no party appears to defend the action, may be conducted by default or *in pœnam*. When contested, the proceeding will be by plea and proof; the libel or plea, as in suits for wages, if containing no special matter, is also called a summary petition, and need not be settled by Counsel.

### § 17. *Suits of Bottomry.*

These suits may likewise be conducted by default or *in pœnam*, and ships may be sold, in virtue of a decree of the Court, for the payment of bottomry bonds without any appearance having been given to defend the action.

When the validity of the bond is contested, the cause generally proceeds by act on petition and affidavits, but the party promoting the cause may, if he thinks proper, proceed by plea and proof: and it is competent to the defendant, on his appearance, to require the cause to be conducted in that manner, for which purpose he must pray the Judge to assign the promoter to bring in a libel.

Before the warrant is extracted from the Registry, the original bond must be exhibited to the Registrar in addition to the usual affidavit.

§ 18. *Causes of Damage by Collision.*

These causes may also be prosecuted by default or *in pœnam*. When defended, the suit is conducted by plea and proof, and differs in no respect from that mode of proceeding already detailed.

*Suits of Damage by Beating or Assault on the High Sea.*

In these cases the suit is by plea and proof, and the warrant is necessarily against the person.

*Prosecutions for Contempt in breach of the Maritime Law, and of the Regulations and Instructions relating to His Majesty's Service at Sea.*

These prosecutions can only be instituted on complaint by an Officer in His Majesty's Navy, and under the directions of the Lord High Admiral or the Commissioners, for executing the office of Lord High Admiral of the United Kingdom, or of some one of the Admirals or Commanders in Chief of the naval squadrons abroad, and are to be conducted in the following manner:—

An affidavit\* of two persons is to be exhibited by the Proctor for the Crown, stating the name and description of the party intended to be proceeded against, and detailing the particulars of the offence committed, which affidavit, with a short case, is to be delivered to the Advocate for the Crown to move the Judge to decree the warrant of arrest, who, in making the decree, is to specify the amount of the bail to be given as he shall consider sufficient to insure the personal appearance of the party prosecuted when judgment shall be pronounced. This amount is to be stated in the Action Book and on the face of the warrant. The Marshal is then to execute the warrant by the arrest of the person of the offender, who is to be liberated on giving sufficient bail, which is to be taken in the usual manner.

On the appearance being given, the Proctor for the Crown† is to be assigned to exhibit articles pleading the offence within a short time to be specified by the Judge.

These articles are to be prepared by the Proctor for the Crown, and may be settled by Counsel, and the cause is then to proceed like other suits, by plea and proof, with the following exceptions:—

1st. On the articles or plea being admitted to proof, the defendant must be assigned to declare in act of Court, within a reasonable time, generally whether he denies the facts pleaded, which is termed giving a negative issue, or whether he confesses them, which is termed giving an affirmative issue.

2ndly. In case of an affirmative issue, the judgment of the Court may be immediately pronounced; on which occasion the defendant is to be allowed to exhibit affidavits in mitigation of punishment, but not to deny the offence charged.

3rdly. Extended personal answers in writing to the different positions or averments of the articles cannot be required from the defendant.

4thly. Where a negative issue is given, the defendant may be at liberty to offer a defensive plea.

After the evidence is taken, if the Judge shall decide that the charge is established, he will proceed to give sentence, imposing the fines due by law on the defendant, and condemning him in the costs. In very aggravated cases the defendant may also be imprisoned for a limited time. Affidavits in mitigation may be offered, and are to be received, when the offence has been proved by evidence.

§ 19. *Suits for Salvage.*

The ordinary course of proceeding is by act on petition, but in cases where no appearance is

\* See Affidavit, No. 150.

† See Form, No. 151.

given, these suits may be prosecuted by default or *in pœnam*. The property must on no account be released from arrest until a value shall be agreed upon between the parties, and alleged in minute\* of Court, which is to be entered by the Registrar in the Assignment Book.

If the value cannot be agreed upon, a decree† of appraisement must be extracted by the Proctor for the salvors, and executed and returned into Court before the property is released. This constat of the value is necessary both for regulating the amount of bail to be taken, and for guiding the Judge at the final hearing in fixing a proper remuneration for the services of the salvors, with reference to the value of the property saved.

### § 20. *Causes of Possession.*

These causes are to commence by the entry of an action at the suit of the owners or owner of a majority of interest in the ship, and a warrant is to be issued to obtain possession thereof from any party who may withhold the same. No amount of action need be inserted in the Action Book or on the face of the warrant.

An affidavit‡ of the party proceeding is to be prepared by his Proctor, and laid before Counsel, with a short case stating the circumstances, in order to move for the warrant, which can be obtained only on motion of Counsel. The affidavit need not previously, as in other cases, be left in the Registry. On this occasion the Judge or Surrogate is to be attended by the Proctor, Counsel, and Registrar; and the Judge, on reading the affidavit, if it be satisfactory, will, on motion of Counsel,§ decree the warrant citing all persons in general to appear and answer to the party proceeding in a cause of possession. The warrant having been served on the ship, is to be returned into the Registry, and if no appearance be given within a month from such return, the Judge, if satisfied that the party proceeding has a majority of the legal interest, is, on the affidavit originally brought in, or on further proofs, if necessary, being exhibited on motion of Counsel on the next regularly adjourned Court-day, by interlocutory decree to order possession of the ship to be delivered to the party proceeding, or if necessary assign a further limited time for entering an appearance, and on any subsequent regularly adjourned Court-day in like manner pronounce his decree, which is issued by the Registrar from the Registry.||

Should any party appear to contest the right of possession, the cause is to proceed by act on petition and affidavits, the ship remaining in the custody of the Court until the final hearing, because the object of the suit which is to obtain actual possession of the property cannot otherwise be secured.

Upon an interlocutory decree being pronounced in favour of either party, a decree of possession is to be issued accordingly.

During the dependence of the suit, on proof by affidavit being exhibited that the ship's register is in the possession of any person whomsoever, a monition¶ may be issued requiring him to bring it in, or show cause why it should not be brought into the Registry to abide the event of the suit. Or after the hearing, should the ship's register remain in the possession of any person, the Judge may, on proof thereof, issue a monition\*\* directing him to deliver up the same to the party in whose favour the decree has been made.

Causes of possession may also be conducted by plea and proof, at the option of either party.

\* See Minute, No. 152.

§ See Minute, No. 155.

† See Decree, No. 153.

|| See Form, No. 156.

¶ See Form, No. 157.

‡ See Form, No. 154.

\*\* See Form, No. 158.

§ 21. *Action to obtain Security for the safe Return of a Vessel.*

Actions of this description occur when a part owner is dissatisfied with the management of his co-owners, and requires the ship to be restrained from proceeding on a voyage until bail shall be given for her safe return to the port to which she belongs.

An affidavit\* of the party is first to be made, setting forth the number of shares of which he is the legal owner, that he is dissatisfied with the management of the ship, and is desirous of obtaining bail for her safe return to the port to which she belongs to the amount of the value of his shares, which value is to be stated in the affidavit. And upon this affidavit, which need not previously be left in the Registry, the Judge or Surrogate in chambers is to be moved by Counsel to issue the warrant of arrest.†

The action should be entered in the amount of the value of the shares of the party proceeding, and in a further moderate sum to cover the costs; and on bail‡ being given, the vessel is to be released and allowed to proceed on her voyage.

In case of the parties differing as to the value of the vessel, she must be appraised under the authority of the Court; and the actual value of the shares of the party proceeding at the period of giving bail, whether the ship be appraised or not, is the amount to be recovered in case the bond shall ultimately be pronounced to be forfeited.

The costs of the arrest are to be borne by the party proceeding; and the costs of giving bail by the defendant, unless the Judge shall see cause to order otherwise.

In the event of the loss of the vessel before her return to the port to which she belongs (until which time the bail bond remains in force), the party principal and his sureties may be called on by monition§ to show cause why they should not bring in the amount of their recognizances, in order to abide the judgment of the Court. To obtain this monition an affidavit must be exhibited, showing that the bond has become forfeited, and it must be moved for by Counsel before the Judge or Surrogate. The monition, when obtained, requires personal service.

Should an appearance be given and the suit be contested, the Proctor of the party proceeding is to be assigned to deliver an act on petition to the adverse Proctor, and the cause is then to take the same course as other cases conducted by act on petition.

§ 22. *Derelict Cases.*

In cases of derelict, the action is to be entered and the warrant extracted by the Proctor for the Admiralty, without any amount of action being stated in the Action Book or on the warrant, and no affidavit is necessary to obtain the warrant, which, when issued, is to be served by affixing it for a short time on the ship or goods found derelict, and by leaving thereon affixed a true copy thereof. The warrant is then to be returned by the Proctor into the Registry.

After the lapse of three months from the return of the warrant (the property remaining in the custody of the Court), the Judge, on the next regularly adjourned Court-day, at the petition of the Proctor, and on his allegation|| in Court that the warrant has been returned upwards of three months, and that no appearance has been given, is to decree a monition¶ to issue, calling upon all persons to appear and show cause why the property should not be condemned, at the expiration of a year and a day from the return of the warrant, as droits and perquisites of His Majesty in his office of Admiralty. The monition is to be made returnable at three months after its date, and is

\* See Form, No. 159.  
 § See Form, No. 162.

† See Minute, No. 160.  
 || See Minute, No. 163.

‡ See Form of Bond, No. 161.  
 ¶ See Monition, No. 164.



to be served by affixing the original for a short time either on the Court-House or on the Exchange, or place of common resort of merchants, or as the usage of the colony or settlement may be, and by leaving thereon affixed a true copy thereof. The object of this general service is to give the utmost publicity, so that the contents of the monition may be most likely to reach the knowledge of all parties interested. After this service, the monition is to be returned into the Registry, with a certificate of service indorsed thereon.

If the property be in a perishable condition, and the Judge be satisfied by affidavit at any period after the arrest that it would be for the benefit of all parties interested therein that the same should be forthwith sold, it may be appraised and sold under the direction and authority of the Court, and the proceeds paid into the Registry.

At the expiration of a year and a day from the return of the warrant, if no claim or appearance be given for the owners, the Judge, on the next regularly adjourned Court-day, is to proceed to condemn by sentence the property as droits and perquisites of His Majesty in his office of Admiralty. The sentence\* is to be prepared by the Proctor, who is to make a fair copy thereof for the Judge's signature, which is to be signed in Court in the presence of the Registrar, and a certificate† is to be added by the Registrar on the sentence, and a minute made in the Assignment Book of the same having been so signed.

The owners of property proceeded against as derelict, may appear at any time before the termination of the cause, and claim the same without being liable to any fees of contumacy incurred prior to their appearance. The claim, with an affidavit‡ in verification thereof, is to be drawn by the Proctor, and should set forth the name, residence, and occupation of the owner, the title of the party to, and the identity of, the ship or goods claimed. Documents or exhibits in support of the affidavit may be annexed thereto. When the claim and affidavit have been settled by Counsel, the Proctor is to attend his party before the Judge or Surrogate, to be sworn to the same in the presence of the Registrar, and the Judge will then assign to hear on admission thereof on the next Court-day, or at any other time to be by him fixed, of which notice is to be given to the parties. A copy of the affidavit and claim is to be given to the Proctor for the Crown, and if the Counsel for the Crown be satisfied that the party claiming is entitled to restitution of the property, he is to consent to the same being restored, which on motion of Counsel§ before the Judge may be immediately done on payment of the salvage, and the expenses on behalf of the Crown. The instrument of restitution|| is to be prepared by the Registrar, and extracted from the Registry by the Proctor for the claimant. The interests of salvors are always to be protected, and to this end, if restitution be consented to, and if salvage has not been previously paid, bail¶ to our Sovereign Lord the King, in his office of Admiralty, in a sum sufficient to answer salvage, must be given by two persons on behalf of the owners before the instrument of restitution is to be issued.

If the title to the property is contested, the cause must come on to be heard in Court; a case and papers being delivered to Counsel as in other contested causes.

### § 23. *Prosecutions against the Ships and Goods of Pirates.*

On a ship or goods taken from the possession of pirates being brought into port, it is the duty of the Proctor for the Crown\*\* to prepare an affidavit, to be made by some of the seizers, detailing the circumstances of the seizure, and he is then to enter an action against the property as in

\* See Sentence, No. 165.

† See Minute, No. 166.

‡ See Forms, Nos. 167 and 168.

§ See Forms of Interlocutories, No. 128 to 130. || See Form, No. 169.

¶ See Form of Bond, No. 170.

\*\* See Form, No. 171.

derelict cases. The warrant of arrest is then to be decreed by the Judge or Surrogate on the motion of the Advocate for the Crown. The warrant being extracted, is to be served on the property, and returned into the Registry, with a certificate of service thereof; and if no appearance be given, the suit is to proceed in a similar manner in every respect as in a case of derelict. At the expiration of a year and a day from the return of the warrant, if there be no appearance or claim,\* the Judge, on the next regularly adjourned Court-day, is to condemn the property by sentence,† as droits and perquisites of His Majesty in his office of Admiralty, upon the Affidavit originally brought in, and without further evidence.

If an appearance be entered or claim given on behalf of the persons from whose possession the property may have been seized, a libel is to be filed on behalf of the Crown, detailing all the circumstances. And if any of the persons from whose possession the property may have been seized have been convicted of piracy, such conviction is to be pleaded, and an official copy of the record thereof annexed to the libel. The case is then to proceed as by plea and proof.

If an appearance on the part of the original owners of the ship or goods seized be given, a claim and Affidavit are to be prepared, as in derelict cases, to which may be annexed any documents or exhibits necessary to establish the identity and ownership of the property. Copies of the claim and affidavit, when brought into Court, must be furnished to the Proctor for the Crown; and should the Counsel for the Crown be satisfied of the proof and identity of the property,‡ he is to consent to restitution thereof, on payment of salvage and the expenses on behalf of His Majesty in his office of Admiralty.

By the Statute 6 Geo. IV., cap. 49, the salvage due on British property retaken from pirates is, as in prize recaptures, fixed at one-eighth of the value, and in practice this one-eighth is calculated in the High Court of Admiralty of England after the expenses on *both sides* are deducted. The same practice is to prevail in Vice-Admiralty Courts.

#### § 24. *Bounty Money upon the Capture of Piratical Vessels.*

By the before-mentioned Statute, 6 Geo. IV., c. 49, the commanders, officers, and crews of His Majesty's ships of war are entitled to certain bounties on the capture or destruction of vessels and boats manned by pirates or by persons engaged in acts of piracy.

The proceeding to be taken on this occasion is wholly separate and distinct from that of obtaining the confiscation of a ship or goods, and is as follows:—

1st. An affidavit§ is to be prepared detailing all the circumstances of the capture or destruction of the piratical vessel or boat, and setting forth, as correctly as can be, the number of men on board thereof at the commencement of the attack, and distinguishing the numbers of those killed during the attack, as well as of those taken and secured. This affidavit is to be made by the officer in command of the capturing vessel at the time of the capture or destruction of the pirate vessel, and by one or more other persons present thereat. If any papers have been found on board the pirate vessel, they should be annexed to the affidavit and verified therein, or if any such have been destroyed, the fact of their destruction should be stated in the affidavit.

2ndly. A petition|| is then to be prepared, detailing briefly the facts stated in the affidavit, praying the decision of the Court, which affidavit and petition are to be deposited with the Registrar, and by him delivered to the Judge, preparatory to the hearing, without any previous warrant, monition, or other process; and Counsel, being furnished with copies of the affidavit¶ and petition, is to move the Court to pronounce as prayed.

\* See Monition, No. 172.

§ See Form, No. 175.

† See Sentence, No. 173.

|| See Form, No. 176.

‡ See Interlocutory, No. 174.

¶ See Interlocutory, No. 177.

§ 25. *Prosecutions for a Breach of the Laws for the Abolition of the Slave Trade.*

Foreign slave vessels cannot be detained at sea except for violation of treaty, and then only by such of His Majesty's ships of war as are provided with special instructions for that purpose; nor can the search of any such foreign slave-vessel be made by any officer holding a rank inferior to that of Lieutenant in the navy of Great Britain.

With respect to these seizures of foreign slave-vessels, the Vice-Admiralty Courts have no jurisdiction. The only tribunals which can legally adjudicate thereon are the "Mixed Commission Courts," established in pursuance of treaties with certain foreign powers.

When a vessel engaged in the slave trade is seized for a violation of the municipal law of the United Kingdom of Great Britain and Ireland, it is the duty of the captor to send her with the slaves, if any on board, for the purpose of adjudication, to the nearest and most convenient port in any colony or settlement where there is a Vice-Admiralty Court.

Upon the arrival in port of the vessel and slaves seized, and also in a case of a seizure of slaves on shore an immediate representation of the seizure is to be made to the Registrar of the Court of Vice-Admiralty, and the seizer is to make an affidavit,\* detailing all the circumstances connected therewith, and stating especially by what breach of the law the forfeiture of the slaves has been incurred. And, in the case of the seizure of a vessel, there are to be annexed to the affidavit, and verified therein, all original papers that may have been delivered up to the seizer, or, if the ship's papers shall have been concealed, thrown overboard, or otherwise destroyed, that fact is to be stated in the affidavit.

The affidavit† being duly sworn and exhibited before the Judge or Surrogate, he is to decree a monition‡ to issue, returnable fourteen days after service, citing by name the owners or persons implicated, if known, and all others in general, to appear and show cause why the forfeiture should not be decreed and the penalties pronounced for.

Where the owners or persons implicated are not known, the monition must only cite all persons in general. If the monition contain the names of the owners or others, from whom penalties are sought to be recovered, it should be personally served on the parties in the manner of other instruments requiring personal service. In all cases the monition must be served on the Exchange or the Court-house, or other public place, as before directed in derelict cases. If the monition issue against all persons in general, and not against any individual in particular, it need only be served in the manner last mentioned.

If, when the monition has been served, no appearance be given, the Judge, upon the return of the monition, is, immediately or on the next regularly adjourned Court-day, to proceed to pronounce, by interlocutory decree,§ for the forfeiture of the slaves and the vessel (if any), and for the penalties due by law, without requiring any further evidence.

If it shall appear to the Judge, by affidavit, that personal service cannot be effected on the parties, if any, named in the monition, by reason that they have purposely absented themselves to avoid service, the Judge is to pronounce his decree; but if he has reason to believe that the parties are *bonâ fide* ignorant thereof, he ought to reserve his judgment, so far as relates to the penalties sued for, and also as to the slaves and vessel, if any doubt shall arise upon the evidence.

In the case of a monition citing all persons in general, and not describing any person by name,

\* See Forms, No. 178 to 180.

† See Minutes, No. 181 to 183.

‡ See Monitions, No. 184 to 187.

§ See Interlocutory Decrees, Nos. 188 and 189.

no penalties against individuals can be pronounced for; but if the persons by whom the offence has been committed shall afterwards be discovered, a subsequent monition may issue in the same suit against him or them for recovery of the penalties.

In order to move for the interlocutory decree, a case, together with a copy of the affidavit, must be placed in the hands of Counsel as in other cases.

At any time before the interlocutory decree, a claim may be given on behalf of the owners, and the claimant may, if he think fit, require the seizer to proceed by plea and proof, and pray him to be assigned to give in his information or libel, to which the claimant may give in a responsive plea or allegation.

To the claim must be annexed an affidavit, containing the names, additions, and residence of the owners, and a detail of all the circumstances on which the claimant means to rely as the ground of his defence. The same course in all respects is to be pursued in giving in the claim as before directed in derelict cases.\*

When a claim is given and no libel prayed, the court may proceed to adjudge the case on the facts and circumstances stated in the affidavit of the seizer exhibited on praying the monition, and in the claim and affidavit in support thereof.†

Should the Judge consider the case not sufficiently proved by such evidence, to enable him to proceed to sentence, he may direct a libel to be filed‡ by the seizer, and witnesses to be examined thereon, to which libel the claimant's Proctor may give a responsive plea or allegation, and in like manner examine witnesses. The proceedings will then be the same as directed in cases contested by plea and proof.

In the event of the Judge not in the first instance condemning or restoring the slaves, he is required in certain cases, by the Act 5 Geo. IV., chap. 113,§ to order them to be valued, and, upon the valuation || being approved by the Court, they are to be delivered over pursuant to the Act to persons specially appointed to receive, protect, and provide for them.¶ The same course is to be followed when a decree restoring or condemning slaves is suspended by appeal. And in no case whatever are slaves to be delivered to claimants on bail, to answer the adjudication.

Where a seizure of several slaves belonging to the same owner, is made by the same seizer for one and the same cause of forfeiture, there is to be only one affidavit and one monition required to enable the Court to proceed.

Where several slaves, whether belonging to the same or different owners, are seized for the same cause of forfeiture, but by different seizers, there must be a separate affidavit by each seizer, but the slaves may all be included in one monition.\*\*

Where several slaves belonging to the same or to different owners are seized by the same seizer, or by different seizers, for different causes of forfeiture, there must be as many affidavits and monitions as there are different causes of forfeiture; but the Judge may afterwards at his discretion consolidate the proceedings, so as to form but one suit to come before the Court for hearing.

Care is to be taken, in consolidated proceedings, that the monition, and also the libel when that proceeding is required, be drawn conformably with the several circumstances, and that the different seizures be described in separate articles or Counts of the libel or information.

In order to avoid the injury which owners may sustain by the delay of the seizer to proceed, any claimant or owner may apply to the Court†† for a monition against the seizer, returnable in

\* See Forms of Claim and Affidavit, Nos. 190 and 191.

† See Interlocutory Decrees, Nos. 192 to 194.

‡ See Form, No. 195.

§ See Interlocutory Decrees, No. 196 to 198.

|| See Decree of Appraisal, No. 199.

¶ See Marshal's Return, No. 200.

\*\* See Monition, No. 187.

†† See Minute, No. 201.

three days after service, requiring him immediately to proceed to the adjudication\* of any slave or slaves so claimed.

§ 26. *Proceedings in the case of the ill treatment of Slaves Apprenticed, cognizable in the Courts of Vice-Admiralty, pursuant to the 24th section of 5 Geo. IV., Cap. 113.*

When any such case occurs, the Judge, upon complaint being preferred to him, is to cause the substance thereof to be reduced to writing, to the truth of which the complainant is to be sworn, and the Judge is then to issue a summons to be served by the Marshal upon the person complained against; and in case the accused appears, and the Judge, on hearing the complaint on the oath of the complainant and of the witnesses (if any) in support thereof, and also the accused and his witnesses (if any), should be of opinion that the charge is established, or if the party accused shall not appear, the Judge, being satisfied that the summons has been duly served and the complaint well founded, is to proceed to carry the provisions of the Act into execution.

§ 27. *Prosecutions for breach of the Revenue or Navigation Laws.*

An affidavit† is to be made by the seizer, detailing the grounds of the seizure and the circumstances attending the same, to which, in the case of a vessel being seized, is to be annexed all original papers that have been delivered up at the time of seizure, and which must be verified in the affidavit. Or if the ship's papers have been concealed, thrown overboard, or destroyed, the fact of such concealment or destruction should be stated in the affidavit.

The affidavit‡ is to be exhibited to the Judge or Surrogate, who is to decree a monition§ to issue, returnable fourteen days after service, citing by name the owners or persons implicated (if known) in special, and all others in general, to appear and show cause why the forfeiture should not be decreed, and the penalties due by law pronounced for; but where the parties are not known the monition must only cite all persons in general.

When the monition specifies the names of the parties cited, it must be personally served on them like other instruments requiring personal service, and must also, like other monitions where the names of parties are not mentioned, be served on the Exchange, or Court-house, or other public place, as before directed respecting instruments requiring service against all persons in general.

The monition having been served, and no appearance being given, the Judge is to proceed by interlocutory decree to condemn the property; but such condemnation is not to take place on any other than a regularly adjourned Court-day, and not until the expiration of fourteen days from the return of the monition; and if it has been personally served, the Judge may, without requiring any further evidence than the affidavit to lead the monition, pronounce for the penalties due by law.

If a personal service of the monition cannot be effected by reason that the persons named therein have purposely absented themselves to avoid the service, the Judge may pronounce a similar decree; but if he has reason to believe that the persons named in the monition are *bonâ fide* ignorant thereof, he is to reserve his judgment so far as relates to the penalties sued for, and also as to the property, should any doubt arise upon the evidence.

In the case of a monition citing all persons in general, and not describing any person by name, no penalties can be pronounced for; but if the persons by whom the offence was committed shall

\* See Monition, No. 202.

† See Minutes decreeing same, Nos. 205 and 207.

‡ See Forms, Nos. 203 and 204.

§ See Monitions, Nos. 208 and 211.

afterwards be discovered, a subsequent monition may be issued in the same suit against him or them for recovery of the penalties.

In order to move for the interlocutory decree,\* a case, with a copy of the affidavit, must be delivered to Counsel.

A claim may be given on behalf of the owners at any time before the interlocutory decree, and the claimant may, if he think fit, require the seizer to file an information or libel to which the claimant may give in a responsive plea or allegation, and the case will then proceed by plea and proof in the manner before mentioned.

To the claim must be annexed an affidavit, containing the names, descriptions, and residence of the owners, and a detail of all the circumstances on which the claimant means to rely as the grounds of his defence.

The claim and affidavit† are to be prepared and given in as directed in derelict cases; but in compliance with the Act 6 Geo. IV., cap. 114, sec. 62, security must be given on behalf of the claimant in the sum of £60 sterling,‡ to answer costs before any claim can be received.

Upon a claim being filed, the Judge, with the consent of the Collector and Comptroller of the Customs, may order the delivery of the property to the claimant, on his giving bond, with two sufficient sureties, to answer double the value of the same, as provided by the 58th section of the said Act.

The Court, on the application of the officer of the Customs, or parties interested, may, at any time before condemnation, direct the property to be sold, if it shall satisfactorily appear by affidavit that a sale will be beneficial to all parties interested.

When a claim is given, and no libel prayed, the Court may proceed to adjudge the case upon the facts and circumstances stated in the affidavits on both sides;§ but if it shall appear to the Judge that the case is not sufficiently proved by such evidence, he may direct an information or libel to be filed by the seizer,|| and give leave to the claimant to file a responsive allegation; in which case witnesses are to be examined on both sides, and the cause will proceed as in plea and proof cases.¶ After condemnation, the sale must take place according to the provisions of the 56th section of the said Act.

In order to remedy complaints which have been made of the burthensome law charges in the Colonies, on proceedings in revenue cases of small value, it is directed, that any number of seizures, not exceeding in the aggregate value £300, and not individually exceeding the sum of £100, may be included in one monition, and that different seizing officers may proceed conjointly in the same prosecution,—care being taken that the monition, and also the libel where that proceeding is required, be drawn conformably with the several circumstances, and that the different seizures be described in separate articles or counts of the libel or information. And to obviate any possible delay in the proceedings of the seizing officer,\*\* any claimant is to be at liberty to take out a monition†† against the seizer, returnable three days after service thereof, requiring him immediately to proceed to the adjudication of the property seized. For this purpose, and also to enable the seizer to determine whether to proceed separately as to one seizure, or to wait for the chance of including other seizures in the same process, by a consideration of the expenses of warehousing and custody of the seizure, the seizer is without delay, in all cases where the probable amount of the seizure does not exceed in value £100, to report the facts to the Registrar of the Court.

\* See Forms, Nos. 212 and 213.

† See Forms, Nos. 214 and 215.

‡ See Bond, No. 216.

§ See Interlocutory Decrees, Nos. 217 and 218.

|| See Libel, No. 219.

¶ See Interlocutory Decrees, Nos. 220 and 221.

\*\* See Minute, No. 222.

†† See Monition, No. 223.

In cases where it shall be deemed necessary to proceed immediately without waiting for other seizures, and the value is under £100, the several charges of the proceeding and adjudication are to be reduced £25 per cent. upon the usual charges; and if the property separately proceeded against does not exceed the value of £50, one-half of the usual fees only are to be charged.

§ 28. *General Rules to be observed in Practice.*

*Subduction of an Action.*

If a party proceeding, determine to abandon his suit, or has compromised the same, he may at any period be allowed to subduct the action; to which end, the Proctor who has extracted the warrant is to sign a short entry to that effect in the Action Book, and the property, if any have been arrested, is to be immediately released.

§ 29. *Tender.*

Whenever a tender is made on behalf of a defendant to pay a certain sum of money, the sum tendered must be brought into the Registry, and an undertaking given for payment of the costs incurred up to that time; this must be done before the Judge or Surrogate, in the presence of the Registrar and the adverse Proctor, and a minute\* thereof is to be entered in the Assignment Book, and the Proctor for the plaintiff is to be assigned to declare whether he will accept the tender or not, within a time to be limited by the Judge.

If the tender be refused, and the Court shall ultimately consider the same to have been sufficient, the plaintiff, in general cases, is to be subject to all the costs incurred subsequent to the refusal, but under special circumstances, where the enforcement of this rule may be attended with injustice or hardship, the Court may exercise its discretion by forbearing to condemn him in costs.

§ 30. *References.*

In cases where a reference of the subject in litigation may be expedient, the Judge, either for his own satisfaction or at the instance of either of the parties, may refer any accounts or demands, or any matter incidental thereto, to the Registrar, directing him to take to his assistance one or two merchants, and to investigate and report on the matter,—the merchants to be selected by the Registrar and approved by the Judge.

The reference being ordered, the Registrar is forthwith to make an appointment with the Proctors of the parties, and with the assisting merchant or merchants, and all necessary documents being produced, the Registrar and merchants are to hear the matters in dispute discussed by the Proctors and the parties principal, or their agents. The Registrar is afterwards to draw up the result of the investigation, and of their joint deliberation thereon, in a written report,† to be brought into Court, and a minute‡ to that effect is to be thereupon made in the Assignment Book.

The Judge is to direct the report to be confirmed, unless objected to by either party by the succeeding adjourned Court-day, or within a time to be limited by him. The report may be confirmed at the prayer of either of the Proctors,§ and either may object to the report wholly or in part; but the party objecting must so declare in act of Court, and is to be assigned by the Judge to deliver in an act on petition, setting forth his objections to the adverse Proctor, within a time to be limited. And the subsequent proceedings are then to be conducted as on all other acts on petition.

\* See Minute, No. 224.

† See Report, No. 225.

‡ See Minute, No. 226.

§ See Minute, No. 227.

### § 31. *Taxation of Costs.*

The Proctor of the party who has obtained a decree or order condemning another party in the costs, is to furnish the adverse Proctor and the Registrar each with a copy of his bill, and to attend the Registrar to procure an appointment to tax the same, of which notice is to be given to the adverse Proctor, that he may be present thereat; and if he shall decline, or neglect to attend, the taxation may proceed in his absence upon an affidavit being exhibited to and filed with the Registrar, showing that a copy of the bill had been furnished, and that twenty-four hours' previous notice of the appointment had been given to him.

If the amount of the costs ascertained by the Registrar be not forthwith paid, the Registrar is to report the amount to the Court, when, if no objection be made, the Judge is to sign the bill, which completes the taxation, and a minute\* thereof is to be entered in the Assignment Book.

If the adverse Proctor be dissatisfied with the amount proposed to be allowed, he is, on the same being reported and before the bill is signed by the Judge, so to declare in Court; and in that case the Judge is to assign him to deliver an act on petition† in objection to the taxation within a short time to be specified, and subsequently the same course is to be pursued as in other acts on petition.

When the Judge has signed the bill, whether as originally reported by the Registrar, or with any subsequent alteration, he is to decree a monition‡ for payment thereof; and if the costs be not immediately paid, such monition may be extracted and served as usual, and may be followed up by attachment, if necessary.

### § 32. *Incidental Monitions.*

In any cause, however commenced, monitions may incidentally become necessary, which are to be made returnable at a period to be fixed by the Judge; and if the tenor of the monition be not complied with, the Judge, on proof that it has been duly served, may enforce obedience thereto by attachment.

### § 33. *Commissions.*

Commissions to take bail, to take the answers of parties to a libel or allegation, to take the oaths of parties or others to affidavits, to examine witnesses, and the like, may, under the authority and at the discretion of the Judge, issue in cases where the parties reside at so great a distance that the transaction of the business by commission will be attended with less expense than their personal appearance before the Court.

Commissions may also issue for the unlivery of a cargo, for the appraisement or sale of a ship or cargo, or for the appraisement and sale of a ship and cargo in cases when, by reason of the distance, the Marshal cannot be conveniently employed for the purpose without great expense.§

All commissions are to be directed to respectable merchants, or professional men named by the Proctors; and when they can agree thereto, one Commissioner will be sufficient, otherwise a Commissioner is to be nominated by each party.

### § 34. *Acts on Petition.*

In cases where any incidental matter may become the subject of dispute, and either of the parties shall desire it, or if the judge shall deem it necessary for his own satisfaction to have the facts further elucidated, he may direct the circumstances to be set forth in an act on petition.

\* See Minute, No. 228.

† See Minute, No. 229.

‡ See Monition, No. 135.

§ See Forms, No. 230 to 235.



### § 35. *Appeals.*

All appeals from decrees of the Vice-Admiralty Courts are to be asserted by a party in the suit within fifteen days after the date of the decree, which is to be done by the Proctor declaring the same in Court; and a minute thereof is to be entered in the Assignment Book.\* And the party must also give bail within fifteen days from the assertion of the appeal in the sum of £100 sterling, to answer the costs of such appeal.

In all cases, however, in which an appeal is asserted, except respecting slaves, the Judge may proceed to carry his sentence into execution provided the party in whose favour the decree has been made give bail to abide the event of the appeal,† by two sureties in the amount of the value of the property or subject in dispute, together with the further sum of £100 sterling to answer costs, in the event of the same being awarded by the superior Court.

The party appealing, having complied with these regulations, is then to cause the Judge and Registrar to be served with an inhibition from the High Court of Admiralty, restraining them from further proceeding in the cause, and also with a monition to transmit the process.

This process will consist of a fair copy of the proceedings under the seal of the Vice-Admiralty Court, to be made and signed by the Registrar, at the expense of the party ordering the same, which is to be transmitted to the superior Court pursuant to the monition.

The proceeds, if in Court, or in the hands of any individual, must, on a special monition for that purpose being served, be remitted to the Registrar of the High Court of Admiralty or Court of Appeal.

### § 36. *Regulations as to Sittings of the Court.*

Before the rising of the Court, the Judge is always to adjourn the same to a day to be by him fixed at his discretion, and proclamation thereof is thereupon to be made in open Court, by the Marshal or Officer of the Court. It is, however, competent to the Judge, notwithstanding such adjournment, subsequently to appoint any intermediate day or days, as may appear to him to be necessary, for the expediting any particular cause or causes before the Court.

Forty-eight hours' notice of such intermediate Court-days must always be published in the Gazette, or public newspaper of the Colony by the Registrar, at the expense of the party at whose instance, or for whose benefit, the Court is to be so called, which expense is to be paid by his Proctor.

Care is always to be taken that on such intermediate Court-days, no assignment be sped, or order made, precluding the right, or to the manifest injury, of any absent party, when it shall appear that he cannot have received sufficient notice of the sitting of the Court; and absent parties are always to be entitled to the favourable consideration of the Judge, if, on the next succeeding regularly adjourned Court-day, cause shall be shown why an assignment made on any intermediate Court-day had not been complied with.

In like manner, when an assignment has been made for an act to be done by a limited time, shall not have been duly complied with, and an intermediate Court-day shall be subsequently held, parties who cannot by possibility have been cognizant of such intermediate Court, and who may have very conclusive reasons to allege why they have been unable to comply with such assignment, are not to be prejudiced by the enforcement of the same on such intermediate Court-day.

\* See Form, No. 236.

† See Form, No. 237.

§ 37. *As to the Return and Service of Warrants, Monitions, and other Instruments.*

In general cases, warrants, monitions, and other instruments, are to be made returnable, and parties cited to appear at the Registry, either on a certain day mentioned, or at the expiration of a certain number of days after service, to be specified in the instrument, and between any two hours of the day most usually appropriated to public business.

Monitions to pay costs or a sum of money, or to do any specific act within a certain number of days, are to be returnable at the expiration of the usual hours of business at the Registry, on the furthest or last day assigned to the party to do the act.

If no appearance be given thereto, the Registrar is, immediately on the expiration of the time specified, to attend before the Judge or Surrogate in Court or Chambers, with the Proctor who is to return the instrument; and the proceedings are subsequently to be continued according to the requisites of the cause. The day of such return is the period from which is to be reckoned, for all future purposes, the contumacy or default of the party cited and not appearing.

Instruments against all persons in general, and which are served only on the ship or goods, or on the Exchange, or principal resort of merchants, or on the Court-house, can only be further proceeded on *in pœnam* on the regularly adjourned Court-days. But an instrument which has been personally served and duly returned, may be followed up by all further proceedings, even to attachment, without more regard to the regularly adjourned Court-days, than would be necessary respecting any other incident in the proceedings, because in such cases the party who has been served must always be aware of the liabilities to which he is exposed by his own laches, or contempt.

If an instrument be served on a ship, or goods laden on board a ship, when the master is on board, and the action be one to which he ought to appear and become a defendant, such service may, for the purpose of future proceedings, be considered equivalent to a personal service on him.

Whenever any monition or other instrument is served by any other person than the Marshal, the Certificate\* of the service thereof must be verified by an affidavit of the person serving the same.

All warrants, monitions, and other instruments requiring ulterior proceedings *in pœnam*, in case of no appearance or of non-obedience, must be duly returned at the time specified for their return; and if not then duly returned, no further proceedings can be had thereon.

§ 38. *Interlocutory Decree.*

The interlocutory decree, which must always be moved by Counsel, is the final act of adjudication in the principal cause of action in any suit. But in some few instances a suit may be terminated without it, viz. :—

Where a libel is rejected.

Where a defendant is dismissed because the promoter does not bring in his libel.

Where a protest is pronounced for, and the party appearing under protest is dismissed.

Where an action is subducted.

If sureties apply to be dismissed from their recognizances, it must be done by interlocutory decree; but if they are dismissed by the interlocutory decree in the principal cause, no further decree of that kind is necessary for their dismissal.

\* See Forms of Certificate and Affidavit, No. 238.

The fees due to the Judge and Officers on an interlocutory decree, are chargeable to all parties who receive benefit under the same; thus, in a cause of derelict, the fees are chargeable to the claimant who obtains restitution of the property, and to the salvors to whom salvage may be awarded.

No decree is to be made, nor act of Court be sped, by the Judge or Surrogate, without the presence of the Registrar, by whom a minute or record thereof must be made and attested, except only in case of the Registrar's unavoidable absence, on which occasion the Judge or Surrogate may assume an actuary to attest *pro hac vice* the act to be done. Any practitioner of the Court, provided he be not concerned in the suit in which the act is to be done, may perform this part of the Registrar's duty, attesting by his signature the entry of the act in the Assignment Book.

### § 39. *Monitions.*

If a monition be not decreed at the time an interlocutory decree is made, it may, at the petition of the Proctor on either side, be decreed on any Court-day afterwards.

No monition to pay costs can be extracted until after such costs shall have been regularly taxed by the Court.

### § 40. *Proxies.*

Although proxies are not usually exhibited in maritime suits, yet they may sometimes be required, in order to prevent Proctors from proceeding in causes on instructions from parties not being themselves entitled to intervene, or not having a legal *personæ standi* to prosecute a cause.\*

### § 41. *Other General Rules.*

Upon the execution of commissions to take bail, the sureties must always justify their sufficiency before the Commissioners, by being sworn to an affidavit,† to be drawn by the Registrar and annexed to the commission; and when bail is not taken by commission, and the Court orders the sureties to justify, a similar affidavit must be made.

When a cargo has been delivered to the consignee, and he has not paid the freight, or when freight has been paid, and is in the possession of the owner of the ship, master, broker, or any other person, such freight may be arrested by service of a warrant, upon the consignee or the person in whose hands the freight remains.

The same course is to be pursued when, under similar circumstances, a monition is to be served to bring the freight into the Registry.

All commissions of unlivery, of appraisalment, and of appraisalment and sale, are to be extracted by the Proctor for the plaintiff or promoter in the cause.

In those Courts in which it may be necessary that the same individual should act as advocate and Proctor, he may elect in which of the two capacities his fee, in those instances where the duties are necessarily exercised together, shall be charged, and the practitioner is in no instance to be allowed to receive fees for the same business in both capacities, nor to take a fee as Counsel where the act of a Proctor only is necessary. The same rule will apply to the fee specified in the table for a consultation in any intermediate stage of the proceeding, should a "necessity arise to resort to

\* See Proxy, No. 239.

† See Form of Affidavit, No. 240.

# *McAlone Davis*

## RULES AND REGULATIONS.

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Counsel for advice;" but an Advocate's fee for consultation is not to be charged on any occasion where a reference to Counsel would not have been necessary. The Practitioner in such cases is only to be entitled to the fee for consultation as a Proctor.

If the Practitioner charges the Advocate's fee for motion necessarily made by Counsel before the Judge in the progress of the cause, he is not to charge or be allowed the Proctor's fee for attending such motion, and where he charges the Advocate's fee "for the hearing," he is not also to charge or be allowed the Proctor's fee "for attending informations on the final hearing;" nor is he in any case, when acting as Counsel in the cause, to charge the Proctor's fee for attendance to fee Counsel.

In the case of the charges for drawing, and the fee for settling any plea, affidavit, interrogatories, answers, and the like, the Practitioner acting in both capacities is not to be entitled to the full fee for drawing, and to charge a copy to settle, and also a fee for settling the same; but may be allowed, instead thereof, to charge such fee as the Table prescribes for the Advocate on settling, and also a moiety of the charges allowed by the Table to the Proctor for drawing and copying.

It being provided by the 5th section of the Act, under the authority of which these Regulations are established, that persons feeling themselves aggrieved by the allowance of any charges made by any Officers or Practitioners in the said Vice-Admiralty Courts as not warranted by the established Tables of Fees, may have such charges retaxed by the authority of the High Court of Admiralty of England, upon summary application thereto.

It is requisite, when such applications are intended to be made to that Court, that a set of the copies of all papers previously made out and used in the proceedings upon which the charges objected to have arisen, or so many of them as may be necessary to explain or support the disputed charges, be transmitted to England; or if such copies cannot be transmitted without incurring an expense disproportionate to the object, it will be sufficient, as a substitute for the same, that an affidavit be made stating summarily the nature of the proceedings and the decree in the cause, a description of the different papers and the number of folios contained in each of them, and such facts or circumstances as will explain the nature of the cause and the charges objected to; which affidavit is to be filed in the Registry of the Vice-Admiralty Court, to give the Officer or Practitioner whose charges may be objected to an opportunity of replying thereto, which he should do within a period not exceeding fourteen days, to be limited by the Judge, who is then to order the costs already taxed to be referred for revision to the High Court of Admiralty, with copies of the affidavits. But, previous to any such order of reference being made, the party complaining must pay to the adverse Proctor such part of the allowed charges as is not objected to, and must bring the remainder into the Registry of the Vice-Admiralty Court, to abide the decision of the High Court of Admiralty.

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NOTE.—*The foregoing Rules and Regulations touching the practice and proceedings in the several Courts of Vice-Admiralty Abroad, are extracted from a Report addressed to the Lords Commissioners of His Majesty's Treasury, drawn up and signed by*

JAMES FARQUHAR,  
H. B. SWABEY,  
WILLIAM ROTHERY,

*and perused and approved by*

HERBERT JENNER,  
JOHN DODSON,  
STEPHEN LUSHINGTON.

*And the whole, together with the Table of Fees for the respective Colonies (regulated and approved by the same persons), were submitted to and approved by the Right Honourable Sir CHRISTOPHER ROBINSON, Judge of the High Court of Admiralty.*

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