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THE
RULES AND REGULATIONS
OF THE
COURTS OF VICE-ADMIRALTY
IN THE
BRITISH DEPENDENCIES,
WITH THE
IMPERIAL STATUTES

2 Will. 4, C. 51, 26 Vict. C. 24, and 30 and 31 Vict. C. 45.

Alfred A. Stockton

COMPILED BY
ALFRED A. STOCKTON, Esq., LL. B.,
BARRISTER-AT-LAW.

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PREFACE.

The compilation of this work was undertaken for the purpose of applying a felt want in the Profession. Hitherto the Practice of the Court of Vice-Admiralty in this Province has been almost unknown to the majority of the Profession, because of the great difficulty of access to any work containing the Rules and Regulations of the Court. Only two or three copies of the Rules and Regulations governing the practice of Vice-Admiralty Courts in the British Colonies are in the hands of practitioners in this Province, and these copies are almost sealed books, except to their fortunate possessors.

The publication of this work is intended to removed this great inconvenience. Its comparative cheapness will place it within the reach of all. It will be as useful in every British Province, where a Vice-Admiralty Court has been established, as in New Brunswick. The list of existing Courts to which this observation applies, may be seen on page 136.

It will be found to contain all the Rules and Regulations of the Court; all the forms required in ordinary use; full tables of fees; and the Imperial Statutes, 2 Will. 4. C. 51, 26 Vic. C. 24, and 30 and 31 Vict. C. 45, together with the Orders in Council founded upon those Statutes. The Forms are numbered in the order as they appear in this work, but within brackets opposite are the numbers by which they may be referred to in the old book. To have produced in this book all the Forms, would have involved too heavy an outlay, without in reality adding materially to its value. The Forms given are those in common use, and the practitioner will find them amply sufficient for all ordinary purposes. The Imperial Statutes are not generally available, and their publication herewith will be found a valuable addition.

The Index has been carefully prepared, and, it is hoped, will be found to contain all that is required for ready reference.

Mr. COORE in his work on Admiralty Practice says: "The modern growth and present eminence of the Court of Admiralty is one of the prominent facts of the day." In England this growth and public favor were the result of wise legislation, enlarging the jurisdiction of the Court, and the adoption of prudent reforms in procedure. While rendering the Court in England more efficient, and capable of meeting the requirements of modern commerce, the British Par-

liament has not been unmindful of the Vice-Admiralty Courts abroad. The enlarged jurisdiction given them by 26 Vic., Cap. 24, has greatly increased their ability for usefulness, and added to their importance. The Court now exercises jurisdiction over a very large number of matters touching our Merchant Marine, and concerning which disputes are daily arising demanding speedy adjustment. As a Maritime people, our business relations are closely identified and interwoven with extensive and varied shipping interests, and it is a little surprising that more frequent resort has not been had by suitors to this Court for redress. Its proceedings are prompt and effective, and when better understood will command greater favor and support.

In the preparation of this work my thanks are due, and are hereby tendered, to His Honor Mr. JUSTICE WATTERS for valuable suggestions; and to the Advocate General, WM. JACK, Esq., Q. C., for kindly placing at my disposal his copy of the Rules and Regulations of the Court.

A. A. STOCKTON.

18 *Charles Street, St. John, N. B.,*
December, 1876.

RULES AND REGULATIONS.

§ 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 Assignment 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 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 Assignment 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 bailbonds, 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 monies 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 arrest is lawful ; but personal arrest is never to be resorted to when the ends of justice can be otherwise

* See Forms, No. 1 to 6.

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 shewn 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 *Assigment Book*.

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

*See Forms Nos. 7 and 8.

to sign the decree, of which, when signed by the Judge, the Registrar is to make a minute in the Assiguation 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

* See Form No. 9.

† See Form No. 10.

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, or any other party should also proceed against the property, he will be entitled, on 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 poenam*, 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.

§ 11. *Contested Suits.*

In contested suits the property remains in the custody of the Court, but if the release thereof be a material ob-

ject 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 Assigment 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 for the protest and dismiss the suit, or overrule the protest and assign the

* See Form of Affidavit No. 11.

† See Form of Act No. 12.

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

* See Libels, No. 13 to 17.

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 shewing 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 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,

* See Answers, No. 18 to 21.

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 *viva 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 shewn 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

* See Form, No. 22.

† See Forms, No. 23 to 26.

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.

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 shewing 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,

* See Form of Allegations, No. 27 to 31.

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

* See Forms No. 32 and 33.

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, 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. Definite 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 Assiguation 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 Assignment 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 shewn 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 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

* See Acts on Petitions, No. 34 to 36.

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 Mariners' 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 ships' 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 ensure 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 given these suits may be prosecuted by default or *in pccnam*. 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 appraisalment 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

* See Form, No. 37.

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 favor 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 shew 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 favor the decree has been made.

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

§ 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 affi-

* See Form No. 38.

davit. 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 shew 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, shewing 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 shew 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 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 Assiguation 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 [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

* See Forms, No. 39 and 40.

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.

§ 24 [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 shew 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 four-

*See Forms Nos. 41 and 42.

teen 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 *bona 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 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 Cus-

* See Forms, Nos. 43 and 44.

toms, 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.

In cases where it shall be deemed necessary to proceed immediately without waiting for other seizures, and the

* See Libel, No. 45.

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.

§ 25 [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.

§ 26 [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.

§ 27 [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.

§ 28 [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, shewing 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.

§ 29 [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.

§ 30 [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.

§ 31 [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.

§ 32 [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 renitted to the Registrar of the High Court of Admiralty or Court of Appeal.

§ 33 [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 assignation 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 shewn why an assignation made on any intermediate Court-day had not been complied with.

In like manner, when an assignation 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 assignation, are not to be prejudiced by the enforcement of the same on such intermediate Court-day.

§ 34 [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 the 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.

§ 35 [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.

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.

§ 36 [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.

§ 37 [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 instruc-

tions from parties not being themselves entitled to intervene, or not having a legal *personæ standi* to prosecute a cause*.

§ 38 [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 appraisement, and of appraisement 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 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

* See Proxy, No. 46.

† See Form of Affidavit, No. 47.

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 re-taxed 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.

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.

TABLE OF FEES.

BY THE JUDGE.

Fees in the Progress of a Suit or Cause.

Sterling Money.
£. s. d.

For administering an Oath to a Witness or Party in a Cause. Taking Bail, whether by one or more Persons. Decreeing Monition, Commission, Attachment, or any other Instrument; or for any Judicial Act done before or after the Hearing of a Cause, and not otherwise mentioned herein.....	0	2	0
The above Fee of 2s. to be taken by the Surrogate, whenever he performs the duty.			
On Subduction of an Action.....	0	3	6
On pronouncing a Party to be in Default.....	0	8	6
On signing a Decree pronouncing for the interest of a Party proceeding in pœnam.....	0	8	6
On a Sentence or Interlocutory Decree.....	1	6	8

Fees upon the Sealing of Instruments.

Warrant or Arrest, Monition, Commission, Decree, Restitution, or Attachment.....	0	6	6
Compulsory or Subpœna, or any Instrument not otherwise mentioned.....	0	4	0
Exemplification of any Document or Proceeding	0	10	0
Process transmitted to the Court of Appeal.....	0	6	6

BY THE REGISTRAR.

1. *Fees on Instruments prepared by the Registrar.*

For Drawing and Engrossing—			
Warrant to arrest Ship, Goods, or Person.....	0	5	0
Bail Bond.....	0	5	0
Monition, Commission, or Decree, whether of Unlivery, Appraisement or Sale, or otherwise.....	0	13	4
Writ or Instrument of Restitution.....	0	13	4
Compulsory or Subpœna against Witnesses.....	0	5	0
Writ of Attachment.....	0	13	4

NOTE.—This Table of Fees is applicable to Proceedings in the Vice Admiralty Courts established in all the Colonies of Great Britain.

Sterling Money.

If either of the preceding Instruments exceed in length ten folios, for every folio beyond ten..... 0 1 4

NOTE.—The folio mentioned throughout this Table of Fees must contain ninety words, reckoning each figure as a word.

Should the Registrar be required to prepare any other Document, Instrument, or matter whatsoever, not specified in this table, he will be entitled to the same charge as a Proctor, viz.

For Drawing, for every folio..... 0 1 4

For fair Copying or Engrossing, for every folio..... 0 0 8

2. *Fees on Documents not prepared by the Registrar, but by the Proctor, Solicitor, or Advocate in a Cause.*

On a Decree, pronouncing for the interest of a Party proceeding in *pœnam*, being signed by the Judge 0 8 6

On filing Affidavit or Protest of a Master or Mariners, without reference to the number of persons making the same 0 3 6

On filing Libel, Information, Claim, Proxy, or similar Document..... 0 5 4

On filing Exhibit annexed thereto, or to any Affidavit... 0 1 4

On entering (or engrossing) personal Answers of a Party in a Suit, for each folio..... 0 0 8

3. *Fees on taking the Examination of Witnesses.*

On taking the Examination of every Witness on an Information, Libel, Interrogatories, or Plea, a fee of..... 0 8 6

For each folio to which the Examination shall extend, if in English..... 0 1 4

If by Interpretation (Interpreter included)..... 0 2 8

NOTE.—It should be understood, that the Registrar, or whoever acts as the Examiner for him, should take the Depositions in chief of the Witnesses, on the Libel, Information, or Plea itself, without written Interrogatories: putting such relevant questions, *viva voce*, as may suggest themselves: and care should be taken not to lead the Witness. The Libel, Information, or Plea, should therefore always be drawn sufficiently precise and full, to enable the Examiner to take the Examinations accordingly.

The Cross-examinations must, of course, be taken on written Interrogatories.

4. *Fees on Office Copies of Papers or Proceedings.*

For Office Copy of Sentence or Interlocutory Decree, certified under Seal..... 0 12 0

For Office Copy of any Affidavit, Examination, Answers of a Party, or other Documents or Proceedings in a Cause, or Extract therefrom, if under twelve folios... 0 5 0

If exceeding twelve folios, for each folio beyond twelve 0 0 8

Office Copies of Papers and Proceedings to form a Process, to be transmitted to the Court of Appeal, or for any other purpose, for each folio contained therein... 0 0 8

5. *Fees on Translation of Papers.*

Where Papers are translated, the Registrar should charge the Disbursement actually made to the Translator, with an addition of one-fourth, to compensate himself for his trouble, advance, &c.

6. *Incidental Fees in the Progress of a Cause.*

	Sterling Money.		
	£.	s.	d.
On Subduction of an Action.....	0	6	8
For entering every ordinary Act of Court.....	0	1	4
On every Default pronounced against Parties in contempt, in Cases proceeding in pœnam.....	0	5	0
On every Interlocutory Decree or Sentence, including drawing the Act, to be paid by the Party succeeding	0	13	4
Sportulage upon every Sentence or Interlocutory Decree, to be paid by each Party in a Suit.....	0	13	4
Sportulage in a Cause, terminating without a Sentence or Interlocutory Decree, to be paid by each Party in a Suit.....	0	8	6
For every attendance before a Judge or Surrogate, at which any Decree is made, other than an Interlocutory or Sentence.....	0	5	0
For a Receipt for original Documents delivered out of the Registry.....	0	2	0
On a Search or Examination of the Records, by any Person not being a Party in the Cause in which the Search is made.....	0	2	6
NOTE.—No Fee to be charged to the Party in the Cause, or to any Seaman applying for Search.			
For advertising an intermediate or extra Court Day, in addition to the sum paid for Advertisement.....	0	6	8

7. *On paying out Money.*

For preparing Receipt for Money to be paid out of the Registry ...	0	1	4
Poundage on Money paid out of the Registry, for every Pound sterling.....	0	0	2

8. *Taxing Costs.*

For taxing a Bill of Costs, if under six folios, from each Party who attends the Taxation.....	0	4	6
If the Bill of Costs exceed six folios, for every additional folio (besides the Fees above-mentioned), to be paid in equal proportions by each Party who attends; and if but one Party attend to be paid by him solely.....	0	0	6

9. *References of Accounts, &c., by the Judge to the Registrar and Merchants.*

To the Registrar.....	5	5	0
To the Assistant Merchant.....	5	5	0
If two Merchants, Five Guineas each.			

BY THE MARSHAL.

For arresting a Vessel, Goods, or Person.....	1	1	0
For keeping possession of a Vessel and Cargo, jointly, or either of them singly, when the same are not under			

	Sterling Money.
the responsible charge and custody of the Officers of the Customs, for each Day in which they remain in the Marshal's Charge.....	0 4 0
For inquiring into, and certifying the sufficiency of Persons proposed as Sureties in any Suit, for each Surety.....	0 5 0
For release of a Vessel, Goods, or Person from Arrest...	0 5 0
For executing every Monition, or Decree for Answers of a Party, or Compulsory, or other Instrument not specified	0 6 8
For every Default or Decree pronouncing for the interest of a Party proceeding in pœnam.....	0 5 0
For every Attendance in Court, when a Sentence or Interlocutory Decree is pronounced	0 10 0
For executing every Decree or Commission of Appraisement, exclusive of the Appraiser's Fees, but including the making of the Inventory, if the value should not exceed £500 sterling.....	1 6 8
For like duty, when the value exceeds £500 sterling.....	2 0 0
For executing every Decree or Commission of Sale of Ship, or Goods, by Public Auction, when the gross proceeds are under £200 sterling.....	1 6 8
And on every additional £100 sterling.....	0 13 4
On attending the execution of a Decree or Commission of Unlivery of Cargo (when not done for the purpose of Sale), per Day.....	2 2 0
For taking a Person in Execution after Sentence, if the Sum due from such Person does not exceed £20 sterling.....	1 0 0
For the like duty, when the sum is above £20 and under £50 sterling	2 0 0
For the like duty, when the sum is above £50 and under £100 sterling, for every Pound sterling due.....	0 1 0
And on every additional Pound sterling after the first £100.....	0 0 6

NOTE.—Should it be necessary for the Marshal to go any distance, to execute any of the above duties, there should be paid to him for loss of time and Travelling Expenses, in addition to the preceding Fees, the following:—

If the distance exceed Two, and be under Four Miles...	1 1 0
If above Four, and under Eight Miles.....	2 2 0

If the distance be still greater, the allowance to be reasonably increased

BY THE ADVOCATES.

It is not easy to lay down any precise Rules respecting Fees to Counsel, inasmuch as the amount must depend upon the circumstances of each particular case, with reference to its length, importance, and difficulty.

In all undefended Cases, and in matters of no great difficulty, one Counsel ought to be considered sufficient.

Subject to these observations, the following suggestions are made,

for the guidance of the Proctor in seeing Counsel, upon matters which most frequently occur in the progress of a Suit:—

	Sterling Money.		
	£.	s.	d.
Retaining Fee to an Advocate.....	2	2	0
For perusing, settling, and signing Information or Libel, Claim and Affidavit, Act on Petition, responsive Plea (or Replication) to Libel or Information, or Act on Petition, according to the length or difficulty.....	1	1	0
		to	
	4	4	0
For perusing, settling, and signing Interrogatories, Answers, &c. when the same do not exceed twelve folios in length.....	1	1	0
For every additional fifteen folios, to the extent of sixty	1	1	0
NOTE.—It should be understood, that in preparing Interrogatories for the cross-examination of Witnesses, they are not to be drawn separately for each Witness, to whom the same are to be administered; but that, when practicable (as in most instances will be the case), one set of Interrogatories should be prepared, generally applicable to all the Witnesses.			
For a Consultation in any intermediate stage of the Proceedings, should a necessity arise to resort to Counsel for advice; but this ought not too frequently to occur, and only in cases of difficulty....	1	1	0
		to	
	3	3	0
For any Motion necessarily made by Counsel, before the Judge in the progress of a Cause.....	1	1	0
		or	
	2	2	0
The Fee for the final Hearing must depend upon the length of the Evidence, and the great importance and difficulties of the Cause; but, in cases of no great intricacy, the Fee should be from three to five Guineas, and not to exceed the latter sum, unless where the Proceedings are voluminous, or unusually important or difficult	3	3	0
		to	
	5	5	0

BY THE PROCTORS.

Retaining Fee.....	0	6	8
For attending before the Judge, or Judge Surrogate, either in Court or Chambers.....	0	6	8
On extracting any Warrant, Monition, Commission, Writ, or other Instrument.....	0	7	6
Drawing Libel, Information, Plea, Claim, Affidavit, Act on Petition, Interrogatories, Answers, or any other Proceeding whatever, not herein specified, for every folio.....	0	1	4
Fair Copying or Engrossing, for every folio.....	0	0	8
For Consultation with Party, for the purpose of taking Instructions for the Libel, Information, Plea, Act on Petition, or for any other important purpose, during the dependance of a Suit.....	0	6	8
For Consultation with Counsel, if any such should be found requisite, preparatory to the final Hearing of a Cause, or otherwise	0	13	4

Sterling Money.

£. s. d.

For Attendance on Counsel to fee him to peruse, settle and sign any Information, Libel, Replication, or other Plea, Claim, Affidavit, Act on Petition, Answers, Interrogatories, or other matter, or upon any other occasion that may arise on delivering Papers and seeing Counsel.....	0 6 8
NOTE.—Care should be taken not to increase the number of Attendances or Consultations with Counsel, which ought only to be resorted to when absolutely necessary.	
For any necessary Attendance on the Registrar, or on the adverse Proctor during the Progress of a Cause, to adjust any incidental point in the Suit, or on the Marshal, to instruct him, as to the service of any Instrument, Reporting Bail, &c.....	0 5 0
On all Office Copies of Depositions, &c., obtained from the Registrar, one-third of the actual sum paid at the Registry is to be added for trouble of collating and extracting the same.	
For perusing and considering any Papers, Exhibits, or Documents furnished, or introduced into a Cause, by the adverse Party, or furnished by a Party to his own Proctor, for the purpose of being brought forward as Evidence in the Suit, if not exceeding twelve folios...	0 3 4
For every additional twelve folios.....	0 2 0
For attending Informations on the final Hearing of a Cause, when it occupies only a short time, 10s.; if a few hours, 16s. 8d.; if a whole day, £1. 6s. 8d }	0 10 0 0 16 8 or 1 6 8

NOTE.—Proceedings for the Forfeiture of Slaves, Ships, or Goods, and for the Recovery of Penalties consequent thereon, have, in some instances, been carried on by two separate Suits; one for the condemnation of the Property, and the other for the Penalties. This mode of proceeding should be discontinued, one Suit being only necessary to accomplish both objects.

Undefended Prosecutions for Breach of the Acts for the Abolition of the Slave Trade.

In all such Prosecutions carried on under one Monition, where no Party appears to defend—	
To the Judge.....	1 10 0
To the Registrar, including a Copy of the Interlocutory Decree, or Sentence.....	3 0 0
To the Proctor.....	4 0 0
To the Advocate.....	1 1 0
To the Marshal.....	0 15 0
	£10 6 0

Approved.

(Signed)

HERBERT JENNER.
JOHN DODSON.
STEPHEN LUSHINGTON.
JAMES FARQUHAR.
H. B. SWABEY.
WM. ROTHERY.

No. 3 [17].

FORM of AFFIDAVIT to be left in the Registry on the Entry of an Action in a Cause of Bottomry.

In the Vice Admiralty Court of
 [Insert Ship's name and Master.]
 appeared personally _____ of the partners in the house of trade
 acting under the firm of Messrs. _____ of
 and made oath that he, the deponent, and his said partners, are the legal
 holders [or "lawfully constituted attornies of the legal holders," as the fact
 may be] of a bottomry bond upon the said ship or vessel
 (whereof _____ is master), and also upon the freight due for the
 transportation of the cargo laden on board the said ship [and on the said
 cargo," should the same be included in the bond] on a voyage from the port
 of _____ to the port of _____ and he further made oath that the said
 ship or vessel hath arrived in the said port of _____ and that application
 has been made on behalf of this deponent's said house to [insert Master's
 name or Owner's, or Agent's for Owner] for the payment of the amount
 of the said bond, but that the payment thereof cannot be obtained, and
 that the aid and process of this Court is required to enforce the same.

On the _____ day of _____ the said }
 _____ was duly sworn to } (Signed)
 the truth of this affidavit.
 Before me,
 (Signed)

No. 4 [18].

FORM of AFFIDAVIT to be left in the Registry on the Entry of an Action in a Cause of Damage to a Ship by Collision.

In the Vice-Admiralty Court of
 [Insert Ship's name and Master.]
 appeared personally _____ of _____ and made oath that he
 is the owner of the ship or vessel called the _____ (whereof
 was master), which vessel was, on the _____ day of _____ run foul of
 by the above-named vessel called the _____ of _____ (whereof
 now is or lately was master), off _____ whereby great loss and damage
 have been occasioned to the said vessel _____ and her cargo, and that
 he hath applied to [insert the name of the Owner or his Agent] for com-
 pensation for the said damage, but that he has not been able to procure
 the same, and that the aid and process of this Court is therefore necessary
 to enforce his demand.

On the _____ day of _____ the said }
 _____ was duly sworn to } (Signed)
 the truth of this affidavit.
 Before me,
 (Signed)

No. 5 [19].

FORM of AFFIDAVIT to be left in the Registry on the Entry of an Action against a Person in a Cause of Damage by Beating or Assault on the High Sea.

In the Vice-Admiralty Court of
 [Insert the names of Plaintiff and Defendant.]
 appeared personally _____ and made oath that he was lately serving on
 board the ship or vessel called the _____ (whereof _____ now
 is or lately was master). in the capacity of _____ that whilst so

freight. And he further made oath that he was continued on board and in the service of the said ship or vessel until the day of when he was discharged therefrom; that during all the time he this deponent was in the service of the said ship or vessel, and until he was so discharged, he did well and truly perform his duty as a mate on board the said ship, to the utmost of his skill and ability, and was obedient to all the lawful commands of the said the master and other officers of the said ship or vessel, and did well and truly deserve the wages so agreed on as aforesaid, between him this deponent, and the said the master, and so much or greater wages were then given to persons serving in the like capacities on board ships of the like burthen, and on like voyages. And he further made oath that there is now justly and truly due and owing to him, as the balance of wages for his services on board such vessel, the sum of after deducting therefrom the sum of for cash advanced, and for Greenwich and the Merchant Seaman's Hospitals' dues, as appears by the schedule annexed hereto, and to which he has subscribed his name.

On the day of }
 the said }
 was duly sworn to the truth } (Signed).
 of the foregoing affidavit. }
 Before me, }
 (Signed)

SCHEDULE referred to in the annexed Affidavit.

To wages due to	as mate on board the ship	} £
or vessel	from the to the	
being	months and days at	per month. } £
Deduct cash advanced	- - -	£
For Greenwich and the Merchant-Seaman's Hos-	- - -	} £
pitals' dues,	- - -	
	(Signed)	£ _____

No. 8 [44].

FORM of AFFIDAVIT to be made in Support of a Decree pronouncing for the Interest of a Party proceeding by Default (or in pœnam) in a Cause of Bottomry.

In the Vice Admiralty Court of

[Insert names of Ship and Master.]

appeared personally merchant, one of the partners in the house trading under the firm of of merchants, and made oath that his said house of trade are the legal holders [or "lawfully constituted attorneys of the legal holders," as the fact may be] of the bottomry bond hereunto annexed marked and the deponent further made oath that he hath been informed and verily believes that the said ship or vessel called the whereof was master, the property of being in the month of last, in the prosecution of a voyage from to the port of and back, but then lying in the port of and the said ship being then in want of reparations refittings, provisions, stores, and other necessaries to refit, equip, and set forth the same for sea, and to enable her to perform her said voyage, the said did apply to the aforesaid firm of of aforesaid, to advance and borrow from them a certain sum of money, to pay for such reparations, refittings, provisions, stores, and other necessary expenses: and the deponent verily believes that the said did supply the said with the sum of lawful money of upon the adventure of the said ship, for the purpose of enabling him to set forth and equip the said vessel for sea, and which said sum was applied, as the

deponent hath been informed and verily believes, in the repairs of the said vessel, and to enable the said _____ to set forth and equip her for sea, and in furnishing her with provisions and other necessaries, to enable her to perform her said intended voyage, and which said sum of _____ lawful money of _____ the deponent hath been informed and verily believes the said _____ did advance, and the said _____ did take upon bottomry of the said ship or vessel _____ with all freight and monies to grow due for the charter or hire thereof to _____ together with her tackle, apparel, and furniture, at the premium or risk and adventure of _____ lawful money of _____ for the said voyage; making together the sum of _____ lawful money of _____ and the said _____ in or by the bond or instrument of hypothecation hereto annexed, bearing date the _____ day of _____ by him duly executed, did bind himself and the owner, and freighters of the said vessel, their heirs, executors, and administrators; and more especially did mortgage, hypothecate, assign and make over unto the said _____ their executors, administrators, and assigns, the said vessel _____ and her freight, together with all and singular her tackle, apparel, and furniture, for payment of the said sum of _____ of lawful money of _____ to the said _____ their executors, administrators or assigns, within _____ days after the safe arrival of the said vessel at the port of _____ and the deponent further made oath, that he hath been informed and verily believes that the said vessel _____ arrived at the port of _____ (being her port of destination) on or about the _____ day of _____ last, and that the said bond of hypothecation signed _____ " _____" hath been duly tendered to the said _____ for payment, who acknowledged the same, and that the aforesaid subscription thereto was of the handwriting of the said _____ [as the facts may be] _____ and that the said sum of _____ secured by the said bond to be paid to the said _____ their executors, administrators, or assigns, was a just debt, but that the said _____ refused or declined to discharge the same; and the deponent lastly made oath that the said sum of _____ still remains justly due and owing to the said _____ who have caused the said ship or vessel _____ her tackle, apparel and furniture, and the freight due for the transportation of the cargo, to be arrested by virtue of the power and authority of this Court. On the _____ day of _____ the said _____ was duly sworn } (Signed)
to the truth of this affidavit

Before me,
(Signed)

No 9 [47].

FORM OF AFFIDAVIT as to the perishable state of a Ship or Vessel proceeded against by Default (or in pœnam).

[Insert names of Ship and Master, and date.]

APPEARED personally _____ and _____ and made oath that the said ship or vessel _____ her tackle, apparel and furniture, boats, stores, and appurtenances, have continued under arrest in virtue of the process of this Court since the _____ day of _____ last; that the said ship or vessel is now lying in the _____ exposed to all weather; that during the time the said ship or vessel hath been so under arrest, [or as the facts may be] the deponents have frequently been on board her, and they verily believe that the said ship or vessel is daily sustaining injury and deteriorating in value, and that it will be for the benefit of the persons interested in the said ship or vessel to have the same sold by virtue of a decree from this Court.

Same day, sworn before me, _____ (Signed)
(Signed)

No. 10 [54].

FORM of AFFIDAVIT to be made when appraised Value of a Ship cannot be obtained.

In the Vice Admiralty Court of

[*Insert the names of Ship and Master.*]

appeared personally and and made oath that, in virtue of the authority of this Court, the above-named ship or vessel was appraised at the sum of and due notice was given, by advertisements and otherwise, for the sale thereof, to take place by public auction on the day of that the said ship or vessel was thereupon put up for sale, when the highest sum offered for the purchase thereof was the sum of and no more; and these deponents further make oath that [*insert the cause which may have occasioned the difference in value between the time of appraisement and that of the auction, or any special circumstances that may be necessary*] and that, in consequence thereof, these deponents verily and in their consciences believe that the said ship or vessel ought not to be considered of greater value than the sum of

On the day of the said } (Signed)

and were } (Signed)

duly sworn to the truth thereof

Before me,

(Signed)

No. 11 [69].

FORM of AFFIDAVIT as to Notice of Bail.

[*Insert names of Ship and Master.*]

appeared personally of and made oath that on the day of he the appearer delivered to [*insert the name of Proctor to whose party the bail is to be given*] the following names of bail to answer the action commenced in this behalf, viz of and of that from such time to the time of his being sworn to the present affidavit, more than twenty-fours have elapsed.

On the day of the said } (Signed)

was duly sworn to the } (Signed)

truth of this affidavit.

Before me,

(Signed)

No. 12 [70].

FORM of ACT on PROTEST.

In the Vice-Admiralty Court of

[*Insert name of Ship and Master, and Proctor's name.*]

on the day of exhibited as Proctor and appeared to the action for of and of but nevertheless under protest to the jurisdiction of this Court, and under such his protest alleged them to be the principal owners of the said ship or vessel (whereof now is or lately was master); and he further expressly alleged that the place where the collision in question in this case happened was within thirty yards of the west pier, at the entrance of the Humber dock basin, in the parish of the Holy Trinity, in the south ward of Myton, in the town and county of the town of Kingston upon-Hull, twenty miles up the river Humber, [*or as the facts may be*] and accordingly that the same not having taken place on the high seas, but within the body of a county as aforesaid, is not within the jurisdiction of, nor cognizable by this honourable Court; and in verification of what he so alleged, the said prayed

leave to refer to certain affidavits, exhibits, and other proofs to be by him brought into and left in the Registry of this Court; wherefore he prayed the Worshipful the Judge to admit the validity of his protest to dismiss his parties from all further observance of justice in this cause, and to condemn and the parties promoting the same in costs.

In the presence of the Proctor of of the owner of the ship or vessel the party promoting this suit dissenting and denying the allegations of to be true, and he alleged that the collision in question took place in the afternoon of the day of in the Humber; that the place where the said collision happened was about thirty yards from the outer end of the western pier of the port of Hull, [or as the facts may be] within the flux and reflux of the tide, which was then about three quarters flood, and within the jurisdiction of this honourable Court; and in verification of what he so alleged, the said prayed leave to refer to certain affidavits and other proofs to be by him exhibited and left in the Registry of this Court: wherefore he humbly submitted that this cause of damage is cognizable by this honourable Court, and prayed the Worshipful the Judge to overrule the said protest, to assign the said to appear absolutely and to condemn and his said parties in costs.

In the presence of dissenting and denying the allegations of to be true; whereupon the Judge assigned to hear on petition of both Proctors whensoever.

(Signed)

[To be signed by
the Proctors.]

(Signed)

No. 13 [71].

FORM of LIBEL or Summary Petition in a Cause of Subtraction of Wages.

In the Vice Admiralty Court of

[Insert names of Ship and Master.]

[Insert Proctor's name] on the day of in the year of our Lord exhibited as Proctor for late mate ["cook," or "carpenter," or as the facts may be] on board the ship or vessel called the and for late a mariner on board the same, and made himself a party for them, and under that denomination, and by all better and more effectual ways, means, and methods, and to all intents and purposes in the law whatsoever that may be most beneficial for his said party, did, by way of summary petition, say, allege, and in law articulately propound as follows, to wit—

That in or about the month of in the year of our Lord the said ship or vessel the (whereof the said was master), being in the port of and designed on a voyage from thence to and back again to the said port of the said the master, did, by himself or agent, ship and hire the said to serve as mate, and the said to serve as mariner, on board the said ship or vessel, during the said intended voyage, the said at the rate or wages of per month, and the said at the rate or wages of per month; and accordingly, on the day of the said month of they, the said and entered on board and into the service of the said ship or vessel the in the capacities and at the monthly wages aforesaid, and signed the usual ship's articles or mariner's contract; and the said ship or vessel having taken in a cargo of set sail therewith, and with the said and on board,

for the said port of _____ where she safely arrived. That the said ship or vessel remained in the said port of _____ for _____ months, and during that time disposed of her said outward bound cargo, and took on board a return cargo of _____ That some time in the month of _____ in the year _____ the said ship or vessel sailed therewith from the said port of _____ and then proceeded on her homeward-bound voyage to the said port of _____ where she likewise safely arrived in the month of _____ last with the said _____ and _____ on board, and was there safely moored, and the said _____ discharged them from the service of the said ship or vessel _____ without paying them the wages due to them for the said voyage, though often applied to and requested so to do. That during all the aforesaid voyage or voyages they, the said _____ and _____ did well and truly perform their respective duties on board the said ship or vessel in their respective capacities aforesaid, and were obedient to all the lawful commands of the said master and other officers on board the said ship, and well and truly deserved the wages of _____ and _____ per month, as mentioned and set forth in the schedules hereto annexed, marked A and B, (which the party propounding them prays may be taken as if here read and inserted, and as part and parcel hereof,) and so much or greater wages were then given to persons serving in the like capacities on board other ships of like burthen and on the like voyage or voyages. And this was and is true, public and notorious, and so much the said

[Or "the Owner of the said ship or vessel," or party defendant, as the facts may be] the master, doth know and in his conscience believes to be true, and the party proponant doth allege and propound of any other time, place, person or thing, sum or sums of money, as shall appear from the proofs to be made in this cause, and every thing herein contained jointly and severally.

That the said ship or vessel _____ on or about the _____ day of _____ arrived at the port of _____ within the jurisdiction of his Majesty's Vice-Admiralty Court of _____ and that, by reason thereof, all and singular the premises have been rightly and duly complained on the part and behalf of the said _____ and _____ to the Worshipful _____ the Judge thereof, and to the said Court, and the party proponant doth allege and propound as before.

That all and singular the premises were and are true.

The Schedule A.

Wages of	the mate, from the	day of	to	} £
the	day of	being	months and	
the rate of	per month.....		days, at	} £
Deduct Cash received by advance	£			
Greenwich Hospital and Merchant Seaman's Hospital dues.....				} £
Balance of wages due to the said				

The Schedule B.

Wages of	mariner, from the	day of		} £
to the	day of	being	months and	
the rate of	per month.....		days, at	} £
Deduct Cash received by advance	£			
Greenwich Hospital and Merchant Seaman's Hospital dues.....				} £
Balance of wages due to the said				

No. 14 [72].

FORM of LIBEL or Summary Petition pleading special Matter in a Cause of Subtraction of Wages.

IN the Vice-Admiralty Court of
 [Insert names of Ship and Master.]
 on the day of in the year of our Lord
 exhibited as Proctor for late mariner on board the said ship or
 vessel called the and made himself a party for him, and under
 that denomination, and by all better and more effectual ways, means, and
 methods, and to all intents and purposes in the law whatsoever that may
 be most beneficial for his said party, did, by way of summary petition,
 say, allege, and in law articulately propound as follows, to wit—
 That some time in or about the day of in the year of our
 Lord the said ship or vessel whereof now is or
 lately was master and sole owner, being then in the port of and
 designed on a voyage to the island of in the West Indies and back
 again to the port of the said the master, did, by himself
 or his agent, ship and hire the said to serve as a seaman on board
 the said ship or vessel, on her then intended voyage, and for his services
 did agree to pay him wages at and after the rate of per month,
 and on or about the said day of the said went on
 board and entered into the service of the said ship in the capacity and at
 the wages aforesaid, and signed the usual ship's articles or mariner's
 contract accordingly. That shortly after the said had been so
 shipped as aforesaid, an assorted cargo of merchandize having been taken
 on board the said ship, proceeded with the same and with the said
 on board for the said island of where she safely arrived on or
 about the day of the month of and there discharged her
 said cargo. That upon the afternoon of the day of the said month
 of whilst the said ship was lying at the said island of the
 chief mate of the said ship gave permission to the said and two
 others of his shipmates to go on shore; and they accordingly, about three
 o'clock of the said afternoon, went on shore. That there being at that
 time no very urgent duty to perform on board the said ship, they did not
 return on board again the same night, but about eleven o'clock of the
 following day, being the day of the said month of
 whilst the said and his two shipmates were coming down to their
 ship they were apprehended by the civil authorities, at the instance of
 the said the master who charged them with intending to desert
 the said ship; and notwithstanding their positively denying the said
 charge, and declaring they were perfectly willing to return on board the
 said ship, the said and one of his shipmates, were, at the
 instance of the said committed and sent to prison, and for the
 first forty eight hours of their confinement therein were not furnished
 with anything either to eat or drink. That the said was then
 continued in prison for seventy-five days, without receiving proper nutri-
 ment, and was fed on the worst food, whereby he became very ill, and his
 health has been greatly impaired. That on the day of the month
 of following, the said came to the prison in which the
 said was confined, and he being then in a weak state, was taken,
 by the orders of on board the said ship, but prohibited from doing
 any duty on board during the whole of the return voyage, the said
 informing him that if he attempted to do any duty during any part of
 the return voyage, he the said would blow his brains out, and
 for which purpose he kept his pistols always loaded. That the said ship
 then proceeded with a cargo of sugar and coffee on her return to the port

of where she safely arrived in the beginning of the month of following and there discharged her cargo; and the said not having been, during any part of the said voyage, permitted (although perfectly willing) to do any duty in his power, but constantly threatened with personal violence by the said during the whole of that period, was, on the day of the said month of duly discharged from the service of the said ship. That the said ship by her aforesaid voyage earned very considerable freight. That during all the time he the said was in the service of the said ship or vessel when permitted by the said he did well and truly perform his duty as a seaman on board the said ship or vessel, and was always obedient to all the lawful commands of the said the master, and others his superior officers, and well deserved the wages schedule, and so much or greater wages were then given to persons serving in the like capacity on board ships of the like burthen and on like voyages. That the said has made various applications to the said the master and owner of the said ship, for the payment and satisfaction of the balance of wages due to him for his services on board the said ship, without being able to obtain the same. And so much the said the master and owner of the said ship, doth know, and in his conscience believes to be true; and the party proponent doth allege and propound of any other time, place, person or thing, sum or sums of money, as shall appear from the proofs to be made in this cause, and every thing herein contained jointly and severally.

That the said ship or vessel on or about the day of arrived at the port of within the jurisdiction of his Majesty's Vice-Admiralty Court of and that, by reason thereof, all and singular the premises have been rightly and duly complained on the part and behalf of the said to the Worshipful the Judge thereof, and to the said Court; and the party proponent doth allege and propound as before. That all and singular the premises were and are true.

Schedule to which the aforesaid Summary Petition refers.

To wages due to	as a seaman on board the ship	}
from	to being months	
and	days, at the rate of	per month.....}
By cash received.....	£	}
Hospital dues.....		
Balance.....	£	

No. 14 [73].

FORM of LIBEL or Summary Petition in a Cause of Pilotage.

IN the Vice-Admiralty Court of

[Insert names of Ship and Master.]

on the day of in the year of our Lord exhibited as Proctor for late pilot on board the said ship or vessel called the and made himself a party for him, and under that denomination and by all better and more effectual ways, means and methods, and to all intents and purposes in the law whatsoever that may be most beneficial for his said party, did by way of summary petition, say, allege, and in law articulately propound as follows, to wit—

That the said ship or vessel whereof the said then was master, being on her voyage from with a cargo of divers merchandize on board to the port of where her said voyage was to end and be complete, he the said did by himself or agent, to wit, on or about the day of engage and hire the said to pilot the

said ship or vessel from to and did engage and agree to pay to him wages for the same at and after the rate of That the said did accordingly on or about the said day of go on board and enter into the service of the said ship in the capacity of pilot, and for the purpose of piloting the said ship safely up to aforesaid ; and on the said ship's arrival at he the said did further engage and hire the said to pilot the said ship from thence to where she arrived on or about the day of the same month, and was there safely moored, whereby the said voyage and agreement were fully completed and ended ; and the party proponent doth further allege and propound that soon after the said ship's arrival at her moorings at as aforesaid, the said gave to him the said a draft or order on of for the payment to him of the sum of the amount of his aforesaid wages or pilotage ; and the party proponent doth further allege and propound, that the said was and is a skilful pilot, and at and during all the time he was as aforesaid on board and in the service of the said ship, he did well and truly perform his duty as a pilot to the best of his skill and ability, and well and truly deserved the wages or pilotage for which he was engaged and hired as aforesaid, and so much or greater wages or pilotage were then given to pilots for piloting ships of the like burthen from to and the said hath frequently applied to the said for the payment of his said wages and of the said draft or order, but that the same hath always been refused him, and that the said sum of still remains justly due and owing to him for such his aforesaid service on board the said ship. And this was and is true, public and notorious, and so much the said doth know, and in his conscience believes to be true ; and the party proponent doth allege and propound of any other time, place, person or thing, sum or sums of money, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this summary petition contained jointly and severally.

That in supply of proof of part of the premises mentioned and set forth in the next preceding article, the party proponent doth exhibit and hereto annex, and prays to be here read and inserted and taken as part and parcel hereof, a certain paper-writing marked with the letter A, and doth allege and propound the same to be and contain the original draft or order drawn by the said the master of the said ship on the said for the payment of the said sum of to him the said for piloting the said ship as mentioned in the said preceding article. That all things were so had and done as therein contained, and that and the ship therein mentioned, and the master of the said ship party in this cause, and several times herein before mentioned, and the ship proceeded against in this cause, were and are the same persons and ships and not divers ; and further that the whole body, series, and contents of the said paper-writing or exhibit, and the name thereto set and subscribed, were and are all of the proper hand writing and subscription of the said the master and not divers. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said ship or vessel the on or about the day of arrived at the port of within the jurisdiction of His Majesty's Vice Admiralty Court of and that by reason thereof all and singular the premises have been rightly and duly complained on the part and behalf of the said to the Worshipful the Judge thereof, and to the said Court, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

No. 16 [74].

FORM of LIBEL in a Cause of Damage by Collision.

In the Vice-Admiralty Court of
 [Insert names of Ship and Master, and date.]
 before you the Worshipful Judge and Commissary of His Majesty's
 Vice-Admiralty Court of lawfully constituted and appointed the
 Proctor of the sole owner of the late schooner or vessel called the
 (whereof was late master), against the said ship or
 vessel called the (whereof now is or lately was master),
 her tackle, apparel, furniture, and freight, and also against all persons
 having or pretending to have any right, title, or interest therein, or any
 other person or persons lawfully intervening herein on their behalf, doth
 by way of complaint, and hereby complaining unto you, say, allege, and
 in law articulately propound as follows, to wit—
 That on the day of the said schooner or vessel
 (whereof the said was master) sailed from with a cargo of
 bound for That the said schooner was of the burthen, by
 admeasurement, of tons, or thereabouts, and was navigated by a crew
 consisting of the said the master, and other persons.
 That the said schooner at the time she so sailed from was tight,
 staunch, and in good condition. That on the morning of the next day the
 day of the said schooner arrived off That the
 wind was then blowing hard from the and in consequence thereof
 the said schooner together with about twenty sail of other vessels, one of
 which was the brig or vessel of (whereof was
 master), being the vessel proceeded against in this cause, were during
 the said day occasionally reaching and lying to under the north side of
 the for shelter. That about o'clock in the evening of the
 said day the mate, whose watch it then was, and a seaman,
 wore the said schooner and laid her to with her head to the southward,
 under the fore-staysail, foresail, fore-topsail, and mainsail; that the fore-
 topsail was full, and the foresail hauled close to windward with the
 bow-line made fast to the foremast shroud, and the topsail was aback,
 and the mainsail scandalized with the helm in the lee becket. That in
 about a quarter of an hour after the said schooner had been so laid to,
 the said perceived a brig to windward upon the said schooner's
 starboard bow, which he afterwards found was the said brig
 proceeded against in this cause. That the evening was rather dark, but
 not at all hazy, and vessels at the distance of about a mile from each
 other could at such time be very well discerned. That the land and the
 said brig were discerned from the deck of the said schooner. That when
 the said brig was so first seen by the said the mate, she appeared to
 be standing towards the land, on the larboard tack; but she soon after-
 wards altered her course, and came towards the said schooner. That the
 said the mate, having noticed the same, observed to the said
 "What is this brig about?" Upon which the said came to the
 said who was standing upon the starboard side of the main-deck,
 just before the main rigging; and the said then said to him, "It
 looks as if she was coming on board of us." That at this time the said
 brig had wore round, and had got the wind aft, and was coming towards
 the said schooner, when her larboard main-braces and starboard fore-
 braces checked, and all her sails full. That as she neared the said
 schooner, and got before the wind, the braces appeared to be gradually
 drawn in. That as the said brig continued to get nearer to the said
 schooner, the said when she came within hail, called to the
 persons on board, "Brig, ahoy!" and then added, "What do you mean

to do?—do you intend to come on board of us?” And he then called out to them, “Put your helm down, put your helm astarboard,” or expressed himself to that very effect. That no answer was made by either of the persons on board the said brig, and the said the mate, perceiving that she would inevitably strike the schooner, ran to the helm, and took it out of the becket, and then ran forward; just at which time the said brig struck the said schooner. That the peak of the mainsail of the said brig was then up, and her fore-topmast staysail set, with the sheet hauled in to leeward, and her bowsprit carried away the three starboard foremast shrouds of the said schooner, and went abaft the foremast but the aftermast shroud held. That the said brig was, at the time of the said accident, to windward of the said schooner, and the said collision occurred solely through the inattention or want of skill of the persons on board the said brig, and not by or through the inattention or want of skill of the persons on board the said schooner. And this was and is true, public and notorious; and the party proponent doth allege and propound of any other time or place, person or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this libel contained jointly and severally.

That notwithstanding the crews of the said vessels used their utmost exertions to separate them, they were unable to do so; and the said expressed great apprehension that both vessels, in consequence thereof, might be lost, and requested the said the master of the said schooner, as a means of effectuating their separation, to cut the lanyard of the only remaining shroud of the starboard fore rigging of the said schooner; but the said apprehending that, were the same done, the mast would go by the board, stated such to be his opinion to the said That the said notwithstanding, continued to be very urgent to have the said lanyard cut, and assured the said that the mast would stand, and that it would be the means of ensuring the safety of both vessels. That at length the said yielded to the representations of the said and consented to the said lanyard being cut; and the same having been done by the carpenter belonging to the said schooner, the mast to which it was attached, owing to the motion of the vessel, almost immediately gave way by the springs of the deck, and fell over to leeward, and hung by the stays over the larboard side. That before the said vessels could be separated, the bowsprit of the said brig stove the schooner's boat. That by the aforesaid collision of the said vessels, the bow of the schooner was stove in, and the covering-boards split and started; and the upper part of the paint-streak, as far as the midships, also split; and the bulwark and staunchions were carried away as far as the main-rigging: and she was otherwise considerably injured. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That when the said vessels at length were separated, all the crew of the said schooner were on board the said brig. That the brig's boat was thereupon hoisted out, and they returned on board the said schooner; and on sounding the pumps, found she was making water; and they thereupon nailed all the spare tarpauling they had over such parts of the covering-board and paint-streak as were most damaged. That the said upon the schooner's mast falling, promised to stay by her, and tow her into the port of and the said believing that he would so do immediately on getting again on board the said schooner, caused the tow-line and warp to be got on deck, and the lines to be put into the said brig's boat, and sent the same, and all his people therewith, back again to the said brig: but the said then declined to take the schooner in tow, alleging that they were too far off the land, and that he was afraid they could not fetch it. That the crew of the said schooner

then went directly to a cod smack, called the _____ of _____ (whereof _____ was master), which had perceived them in distress, and was lying to, and got the smack's lines into the boat; and the mate and two of the smack's crew pulled on board the schooner with one end of the line, and made it fast to the tow-line; and the people on board the said smack attempted to haul the end of the tow line on board, for the purpose of taking the schooner in tow; but the smack missed stays three times, in consequence of the sea being so heavy, and broke the lines, and after making several fruitless attempts to take the schooner in tow, the master of the said smack said it was of no use, even if they then had her in tow; they had drifted so far from the land, and the gale had increased so much, that he thought they could not tow her, but would have to cut her adrift. That the pump was again sounded, and upwards of two feet of water was found to be in the hold, and the sea was then making a free passage over the schooner, and she was then making a great deal of water, and quite unmanageable in consequence of the loss of the foremast; whereupon, between eleven and twelve o'clock, all hands left the said schooner, and got on board the said smack to save their lives, and soon after the said schooner sunk, and was totally lost, and the next day the master and crew were landed at _____. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said schooner _____ at the time she was struck and damaged as aforesaid, was, save as to the injury she then sustained, of the value of _____ or thereabouts, at the least. That she was built in the year _____

at _____ and the cargo she had on board, at the time she was so injured, consisted of _____ which was, at such time, of the value of _____ or thereabouts, at the least; and that the freight which she would have earned thereon, had she completed her intended voyage, would have amounted to _____ or thereabouts. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the ship or vessel _____ having arrived at the port _____ within the jurisdiction of this Court, all and singular the premises have been rightly and duly complained on the part and behalf of the said _____ to you, the Worshipful _____ the Judge aforesaid, and to this Court; and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

No. 17 [75].

FORM of LIBEL in a Cause of Damage by Beating.

In the Vice-Admiralty Court of _____

[Insert names of Ship and Master, and date.]

before you the Worshipful _____ Judge and Commissary of His Majesty's Vice Admiralty Court of _____ lawfully constituted and appointed the Proctor of _____ late a mariner on board the ship or vessel called the _____ (whereof _____ now is or lately was master), against the said _____ and against all and every other person or persons whomsoever, lawfully intervening for him in judgment before you by way of complaint; and hereby complaining unto you in this behalf, doth say, allege, and in law articulately propound as follows, to wit—

That in the month of _____ in the year of our Lord _____ the said ship or vessel _____ (whereof the said _____ was then master), being in the port of _____ and bound on a voyage to _____ the said _____ did, by himself or agent, ship and hire the said _____ to serve as a mariner [or as the fact may be] on board the said ship for and during the said voyage; and the said ship _____ having taken on board her complement of _____

officers and men, did, on or about the day of the said month of proceed therein, with the said on board, and having been to returned to the aforesaid port of with a full ship, in the month of last. And this was and is true, public and notorious; and so much the said doth know, in his conscience believes, and hath confessed to be true; and the party proponent doth allege and propound of any other time or place, person or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this libel contained jointly and severally.

That during the whole time the said continued on board the said ship or vessel. He did well and truly perform his duty on board her, was obedient to all the lawful commands of the said the master, and the other officers on board the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That during the time of the said voyage, and while the said ship or vessel was lying off and within the jurisdiction of this Court, (to wit,) on the day of in the said year whilst the said was in the fore hold handing up billet wood, the officer on board the said ship or vessel charged him with not working so well as he could, nor so fast as another *mariner* [or as the facts may be] of the name of That the said replied, "that the said worked too fast to last long;" or he the said made use of words to that or the like effect, when the said immediately made complaint to the chief officer, that he the said had been very impertinent to him; whereupon, and for no other cause whatever, the said then ordered him to be taken from his duty, and placed below in irons, where he continued till the day of the said month of following. That upon the said the master, coming on board the said vessel, (from which he had been absent the whole of the before-mentioned period,) he, immediately upon the complaint being made by the said and without hearing the said in his defence, ordered him to the gangway, and caused him to be flogged with lashes; and although the said most humbly and repeatedly urged the said the master, for some water, to allay the thirst and fever that he then suffered from the punishment aforesaid and previous imprisonment, the said absolutely refused to let the master-at-arms give him any water. That the said then fainted, and was much exhausted by the said flogging or punishment so inflicted. That the said would not permit the surgeon to give the said any ointment or lotion to apply to his back, but ordered him, in his fainting and exhausted state, to return to his duty. That the said in consequence of the flogging aforesaid, suffered extreme pain, and was greatly injured thereby. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said by reason of the said cruelty and violent assault which he suffered by the act of the said the master, as hereinbefore pleaded and set forth, hath sustained a damage to the amount of of lawful money of And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said at the time he so flogged and ill-treated the said as set forth in the third article of this libel, was commander of the said ship or vessel called the and that the said cruelty and ill-treatment were inflicted in the said ship off and within the jurisdiction of this Court; and that, by reason of the premises, it hath been and is rightly and duly complained on the part and behalf of the said to you the Worshipful the Judge aforesaid, and to this

Court ; and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

No. 18 [82]

FORM of PERSONAL ANSWERS of a Party to a Summary Petition or Libel given on behalf of a Mariner in a Cause of Subtraction of Wages.

IN the Vice-Admiralty Court of

[Insert names of Ship and Master.

The personal answers of late master of the said ship or vessel party in this cause to all and every the positions or articles of a certain libel or summary petition bearing date on the day of and the exhibit marked A, thereto annexed, and therein pleaded and referred to, given in and admitted in this cause by or on the part and behalf of the other party in this cause, made and given in by virtue of the corporal oath of the said follow, to wit—

To the first position or article of the said libel or summary petition the respondent saith, he admits that on or about the day of the said ship or vessel being then in the port of and designed on a voyage from thence to and back, the respondent did ship and hire the said to serve as a seaman on board the said ship or vessel during her then intended voyage, and did agree to pay him wages at and after the rate of per month, and that he the said went on board and entered into the service of the said ship or vessel accordingly, and signed the usual ship's articles or mariner's contract for the performance of such voyage, and he also admits that a general cargo having been taken on board the said ship, she on or about the day of sailed with the same, and the said on board, to where she arrived on or about the day of following, and discharged her said cargo, and then took on board another general cargo for the port of where she arrived and made freight as articulate, but he denies that whilst lying at to wit, on the day of as articulate, the said quitted the said ship for the purpose of entering into the service of his Majesty, on board his Majesty's ship or that he so did on that day, for the respondent positively saith that the said continued on board and in the service of the said ship until about ten o'clock in the morning of the day of when in company with another of the seamen belonging to the said ship or vessel, he the said deserted from the service of the said ship for the purpose, as he verily believes, of entering into the service of the Brazilian navy ; and the respondent further answering saith, he admits that the said ship proceeded on her return voyage to where she safely arrived in or about the month of following as articulate, but the respondent denies that during all the time the said was in the service of the said ship, he did well and truly perform his duty as a seaman, and was obedient to all the lawful commands of the respondent and others his superior officers, and deserved the wages schedule, for on the contrary the respondent saith that the said on various occasions refused to perform his duty, and absented himself without leave, but more particularly that on the day of the said ship having completed the lading of her return cargo, and being ready for sea, all hands were turned out to clear the hawse and unmoor the ship, when the said positively refused to assist in so doing ; that on the following

morning the day of the said month, all hands were again turned out to unmoor the ship for sea, when the said and others also again refused to do, and likewise that on the next following morning at about o'clock all hands were again turned out to clear the hawse and unmoor the ship, when the starboard anchor having been weighed, and the other anchor having been got a-peak, the said and also refused to weigh the same, whereby the said ship was placed and left in a state of great danger, in consequence whereof the respondent immediately went on shore for assistance; that during such the respondent's absence the said and also the said quitted and finally deserted the service of the said ship as af resaid; and the respondent further saith, that in consequence of the refusal of the said and the other seamen as aforesaid to weigh the anchors and proceed to sea until the respondent was enabled to procure other seamen in their stead, the said ship with a valuable cargo on board was detained at a considerable expense and in a dangerous situation, and did not sail from till the day of and further or otherwise he denies and disbelieves the said article to be true, save that he knows not to answer at what time the said was discharged from the service of His Majesty's said ship and also save that he has refused and doth refuse to pay the said the wages articulate, by reason of his disobedience of lawful commands and desertion aforesaid.

To the second position or article of the said libel or summary petition, this respondent answers and says, he denies the said exhibit to be true, so far as the same states that the said entered on board his Majesty's said ship on the day of by reason that of his own knowledge the said did not quit the respondent's said ship until the day of as by him before answered; and further or otherwise this respondent knows not of his own knowledge to answer, but has no reason to disbelieve, and therefore admits the same to be true.

To the third position or article of the said libel or summary petition the respondent answering saith, he admits and believes what he has admitted and believed, and denies and disbelieves what he hath denied and disbelieved.

On the day of repeated } (Signed)
 and acknowledged before
 Judge, (or Surrogate,) in his chambers. }
 In the presence of
 (Signed) Registrar.

No. 19 [83].

FORM of PERSONAL ANSWERS of a Party to a Responsive Plea given on the part of a Mariner in a Cause of Subtraction of Wages.

IN the Vice-Admiralty Court of

[Insert names of Ship and Master.]

The personal answers of party in this cause, to all and every the positions or articles of a certain allegation bearing date the day of given in and admitted in this cause by or on the part and behalf of the other party therein made and given in by virtue of the corporal oath of the said follow, to wit—

To the first position or article of the said allegation this respondent answering saith, he admits that in the second position or article of the allegation, given in and admitted in this cause on his part and behalf, it is amongst other things alleged and pleaded in the words and to the effect recited in the said article; and further answering the respondent saith, he denies and disbelieves that at the time the said

and the rest of his shipmates signed articles at _____ for the performance of the voyage in question, the rate of wages then usually given to mariners in the port of _____ for such voyages was _____ pounds and _____ shillings per month, and this respondent admits that he did offer and endeavour to persuade the said _____ and others of the crew of the said ship to take _____ pounds and _____ shillings per month, which he considered to be the usual and fair rate of wages, but that they refused to take the same, and the respondent, rather than delay the sailing of his ship, then fully loaded, until he obtained mariners at a lower rate of wages, which he had no doubt he could have done, was induced to comply with their demands; and although the respondent did then, as he does now, consider that the said _____ and the others of the crew who acted with him therein took advantage of his situation to extort a higher rate of wages than was usually given at the time, he denies that he was much irritated against the said _____ or that he did either alone or in conjunction with the chief mate, take every or any opportunity during the voyage to make the said _____ uncomfortable, nor did he on the most frivolous or on any occasions, and without any just cause, swear at and abuse him; and further answering the respondent saith, he denies that on the occasion of the said ship coming to an anchor in the _____ on or about the _____ of _____ the said _____ upon being found fault with and reproved by the respondent, did not conduct and behave himself in a most insolent manner towards the respondent, or that he did say "he would be damned if he would do any duty that he did not think proper or approve of," and that he would not be controlled by the captain in what he should do, "as he was not on board a damned man of war;" and he saith that such the conduct and behaviour of the said _____ did tend to produce disorder, insubordination, and mutiny amongst the rest of the crew, and the respondent denies that on the said occasion there were so many of the crew employed as to be in each other's way, and that the said _____ in consequence thereof quitted the cable and went to put the pot on the fire for making breakfast, or that he, this respondent, putting himself into a passion, asked the said _____ what business he had to leave the cable, or that he the said _____ expressed himself as articulate in answer to such question, and he denies that he the respondent used the expression articulate or any opprobrious epithets to that or the like effect towards the said _____ and further or otherwise the respondent denies and disbelieves the said position or article to be true.

To the second position or article of the said allegation this respondent answering saith, he admits and confesses that in the third article of the said allegation given in and admitted in this cause on his behalf, it is alleged and pleaded in the words or to the effect recited; and further answering the respondent saith, he admits that it is customary when at sea to serve out to every mariner a certain quantity of peas and flour, together with salt provisions, but the respondent disbelieves that upon various occasions during the said voyage the steward only served out to the said _____ and two or three others of his shipmates salt beef and biscuit whilst the rest of the crew had the usual allowance of peas and flour, and he expressly denies that he ever gave the steward any order to do so, and he disbelieves that the said steward ever stated that he had received such orders from him; and this respondent admits that the said _____ did on one occasion, being the occasion mentioned in the said recited third article of the said allegation, given in and admitted on behalf of this respondent, bring a piece of beef to him, but he denies that the said _____ humbly complained of the deprivation he suffered or requested the respondent to authorize the steward to give to him the customary allowance; and this respondent further answering saith, that

he denies that on such occasion he flew into a violent passion, and swore at and abused the said as articulate, although he did reprove him for his improper behaviour at the time, and he denies that the said did thereupon, without making any reply, leave the said or that he did not swear at the respondent and conduct himself in a most insubordinate manner as pleaded in the second recited article, or that he behaved himself in an orderly and obedient manner to this respondent; and further or otherwise this respondent denies and disbelieves the said position or article to be true.

To the third position or article of the said allegation this respondent answering saith, he admits and confesses that in the fourth article of the said allegation, given in and admitted in this cause on his behalf, it is alleged and pleaded in the words or to the effect in the said position or article recited; and further answering, the respondent denies that the said was in his proper station forward on the occasion articulate, for, on the contrary, he absented himself from his duty and was by the cook's galley, and remained there until ordered to do his duty by the respondent, and that at such time the squall was most severe, and the services of the whole crew were then requisite to get in the sails, and thereby prevent the ship from upsetting, and the respondent expressly denies that the said quitted his station in order to go aft to assist in hauling down the trysail, and that upon coming aft the respondent immediately said, "You damned rascal, you have been skulking in the galley," and that upon the said denying the same and being corroborated therein by one of his shipmates, he the respondent continued to abuse the said and called him a damned lying rascal, and shaking his fist at him said, "Wait till I get you under the cliffs at and I'll work you up for this." The respondent denies that the articulate conversation or anything to that or the like effect took place between him and the said and he saith that the said upon the occasion articulate did not perform his duty as a good seaman on board the said ship, and denies that he the said was obedient to the lawful command of, or that he did not behave in an insolent and insubordinate manner to the respondent, for he saith that he the said did refuse and neglect to do his duty in reefing the topsails, and that great confusion was occasioned by the said on board the said ship, which was much endangered by his conduct; and further and otherwise the respondent denies the said position or article to be true.

To the fourth position or article of the said allegation this respondent answering saith, he admits and confesses that in the fifth position or article of the aforesaid allegation on behalf of the respondent, it is alleged and pleaded in the words or to the effect in this article recited: and further answering this respondent saith, he disbelieves and denies that after having landed and rolled all the empty casks to the warehouse, and whilst waiting for more casks to arrive from the ship, the said being very thirsty, merely went to a water-pipe a few hundred yards off to obtain a draught of water, and that having obtained the same he instantly returned to his shipmates. The respondent saith the conduct of the said on the occasion articulate did not happen under his own personal observation, but from the report thereof made to him immediately afterwards, and which he has reason to believe, and does believe, was true, the said was absent without leave on the said occasion whilst his shipmates were at work, and that on being reprimanded for such conduct by the second mate, and required to return on board the ship, he refused to do so, and behaved in a very insolent manner to him in the presence of his said shipmates. The respondent knows not otherwise what excuse the said offered for his absence on the said occasion, nor in what particular words the second mate reprov'd him; and save that the said afterwards returned on board the ship, he further or otherwise denies and disbelieves the said position or article to be true.

To the fifth position or article of the said allegation the respondent answering saith, he admits and confesses that in the sixth article of the aforesaid allegation on his behalf, it is alleged and pleaded in the words or to the effect in the said position or article recited; and further answering the respondent said, he denies and disbelieves that the said did not desert from the said ship, and that he was about to return to the ship on the day of articulate at noon, when he was arrested, for the respondent saw him near about miles from the ship, in a wrong direction to be returning to the ship; and the respondent was informed, and he believes that he was arrested at where he had been and was then staying, and, on being required by the constable to accompany him to the magistrate he refused to do so, and the said constable was ultimately obliged to procure assistance to arrest him; and he the respondent saith he did accompany the said a part of the way to the office of the magistrate, but he denies on such occasion addressing himself to the said he said, "Now, you damned rascal, I'll work you up for it;" and he also denies that on the said being called upon to state what he had to say why he should not be committed to prison, he the said humbly but strenuously submitted that he had not been guilty of any misconduct amenable to the laws, or that he contended that he had a right to return on board the said ship, or that he added that on his return to if he had been guilty of any misconduct, the respondent had it in his power to make the usual deductions from his wages, on the contrary saith that the said declared in a most insolent manner that he acknowledged no authority over him in the island of and that he would give no answer to the questions put to him; and he refused to return on board the said ship, and that in consequence thereof, and not at the instance of the respondent, the magistrate committed him to the common gaol in the said island. The respondent further saith he knows not in what manner the said was treated in the said gaol, but denies that he caught the fever of the country as articulate; and further answering the respondent saith, he admits and believes that on or about the of following, the said and another of the mariners of his said ship who had deserted with him, were then again brought before the said magistrate at the instance of the respondent, and he saith they were again required to return to their duty on board the said ship, but so far from the said claiming a right to return on board the ship as articulate, he on the contrary refused to do so, and was thereupon, but not at the instance of the respondent, remanded to the said gaol. The respondent denies that on such occasion he shook his fist at the said and called him a damned rascal, and said that if it was in his power he should never again go on board the said ship; and further answering the respondent saith, he believes the said continued in prison until the day of following, and that he was then taken out and sent on board the said ship; and this respondent further answering saith, that the said may have been visited several times by his shipmates at the said prison, but if so visited by them, the respondent knows not what the said may have stated to them; and further or otherwise the respondent denies and disbelieves the said position or article to be true.

To the sixth position or article of the said allegation, this respondent answering saith, he admits and confesses that in the and articles of the said allegation on his behalf, it is alleged and pleaded (amongst other things) in the words or to the effect in this article recited; and further answering the respondent saith, he denies that the said was anxious and willing to return and do his duty on board the said ship, and was refused permission to do so, but on the contrary he refused to return thereto; and further answering the respondent saith, he denies and disbelieves that the said from and after his having been taken out of prison and put on board

the said ship, was willing to do any duty on board thereof, and so expressed himself; and he also denies and disbelieves that he was prevented upon the return voyage from doing any duty entirely through fear of his personal safety from this respondent; but the respondent further answering saith, that the said _____ was not at any time required or directed by him the respondent, or by any other of the officers of the ship, to do any duty on board thereof during the homeward voyage, by reason that they considered him as not belonging thereto; and further or otherwise this respondent denies the said position or article to be true.

To the seventh position or article of the said allegation, this respondent answering saith, he admits and confesses what he hath admitted and confessed, and denies and disbelieves what he hath denied and disbelieved.

On the _____ day of _____ repeated and } (Signed)
 at _____ acknowledged before _____ Judge, }
 (or Surrogate,) in his chambers. Present, }
 (Signed) _____ Registrar.

No. 20 [84.]

FORM of PERSONAL ANSWERS of a Party to a Libel in a Cause of Damage by Collision.

In the Vice-Admiralty Court of _____

[Insert names of Ship and Master.]

The personal answers of _____ the master and sole owner of the said brig or vessel called the _____ party in this cause, to all and every the positions and articles of a certain libel bearing date the _____ day of _____ given in and admitted in this cause on behalf of _____ and _____ the owners of a certain schooner or vessel called the _____ (whereof _____ was master), the other parties in this cause, made and given in by virtue of the corporal oath of the said _____ follow, to wit—

To the first position or article of the said libel the respondent answering saith, he believes and therefore admits that on the day of _____ last. the said schooner _____ whereof the said _____ was master, may have sailed from _____ with a cargo of _____ bound as articulate, and that the said schooner was of the burthen by admeasurement of _____ tons or thereabouts, and was navigated by a crew consisting of the said _____ the master and _____ other persons, but he knoweth not save from the said libel whether at the time she so sailed from _____ she was tight, stanch, and in good condition; and the respondent further answering saith, he believes and admits that on the morning of the next day, the _____ of _____ the said schooner arrived off _____ and the wind was then blowing hard, though not from south-west or south-west by south as pleaded, but from west-south-west, varying to south-west, [as the fact may be] and that in consequence thereof the said schooner, together with about twenty sail of other vessels, one of which was the brig _____ belonging to _____ and not _____ as pleaded, whereof the respondent was master, being the vessel proceeded against in this cause, were during the said day occasionally reaching and lying to under the north side of _____ for shelter: and the respondent further answering saith, he disbelieves and denies that about five o'clock in the evening of the said day the said schooner was wore and laid to with her head to the southward, but admits she was under the fore-stay, foresail, fore-top-sail, and mainsail, and that the fore-staysail was full and the mainsail scandalized, but disbelieves and denies that the foresail was hauled close to windward with the bow-line fastened to the foremast-shroud and the topsail aback with the helm in the becket; and the respondent further answering saith, he disbelieves and denies that in about a

quarter of an hour after the said schooner had been so laid to, a brig was perceived to windward upon the said schooner's starboard bow, which was afterwards found to be the brig proceeded against in this cause; and he further answering saith, he admits that the evening was rather dark, but not at all hazy, and that vessels at the distance of about a mile from each other might at such a time be very well discerned, and that the land and the said brig might have been discerned from the deck of the said schooner, but he disbelieves and denies that the said brig was at such time between the land and the said schooner, and he also disbelieves and denies that at the time articulate the said brig was or appeared to be standing towards the land on the larboard tack, or that she soon afterwards altered her course and came towards the said schooner; and the respondent further answering saith, he knoweth not, save from the said allegation, whether the conversation took place between and as articulate, but he expressly denies that at such time the said brig wore round and got the wind aft and came towards the schooner with her larboard main-braces and starboard fore-braces checked and all her sails full, or that as she neared the said schooner and got more before the wind the braces were gradually drawn in, and he also disbelieves and denies that the said when he came within hail, called to the persons on board the said brig in a loud tone of voice, "Brig a-hoy," or then added "What do you mean to do—do you intend to come on board of us?" or that he then called out to them, "Put your helm down, put your helm a-starboard," or that he expressed himself to that very effect, but he admits that no answer was made to any hailing by either of the persons on board the said brig, because no such hailing was heard by them, nor does he believe that any such took place; and the respondent further answering saith, he disbelieves and denies that the said perceiving that the said brig would strike the schooner, ran to the helm and took it out of the becket and then ran forward, but admits that at the time when the said vessels came in contact, the peak of the mainsail of the brig was up, and her fore-topmast staysail set, with the sheet hauled in to leeward; and he also admits that her bowsprit carried away the three starboard foremast-shrouds of the said schooner, and went abaft the foremast and that the aftermost shroud held; and the respondent further answering saith, he denies that the said brig was to windward of the said schooner, until after the said schooner had struck the said brig, and he saith that during the time the said brig and the said schooner were entangled, the said brig was momentarily to windward of the said schooner, but previously thereto the said schooner was to windward of the said brig, and he denies that the collision in question occurred in any degree through the inattention or want of skill of the persons on board the said brig; and further or otherwise denies the said position or article to be true.

To the second position or article of the said libel, the respondent answering saith, he admits that notwithstanding the crews of the said vessels used their utmost exertions to separate them, they were unable to do so for some time, but the respondent denies that he expressed great apprehension that both vessels in consequence thereof might be lost, though he admits he requested the said the master of the said schooner, as a means of effecting their separation, to cut the lanyard of the only remaining shroud of the starboard fore-rigging, and the same was at his solicitation accordingly cut, but he denies that the mast to which it was attached almost immediately gave way by the sparrings of the deck, and fell over to leeward and hung by the stays over the larboard side; and the respondent further answering saith, he admits that the boat of the said schooner was stove by the bowsprit of the said brig, but he disbelieves and denies that by the aforesaid collision the bow of the said schooner was stove, but he admits that the bulwark and stanchions on the starboard side were carried away, but whether the covering boards were split and

started, and the upper part of the paint-streak as far as the midships were also split, and she was otherwise considerably injured. the respondent is unable to answer: and further or otherwise the respondent denies the said position or article to be true.

To the third position or article of the said libel, the respondent answering saith, he admits that when the said vessels were separated all the crew of the said schooner were on board the said brig, and that the brig's boat was thereupon hoisted out and they returned on board of their own vessel, but whether on sounding the pumps they found she was then making water, or that the said crew nailed all the spare tarpauling they had over such parts of the covering-board and paint-streak as were most damaged, this respondent knows not, not being on board the said schooner: and the respondent further answering saith, he admits that he promised to stay by the said schooner and tow her into _____ but he expressly denies that the crew of

the said schooner, when they returned to the brig, brought any tow-line, warp, or lines with them, that could be of any use in towing the said schooner, or that he the respondent ever declined to take the said schooner in tow. but he admits that her crew went to a cod-smack called the _____ which was lying to, but

not being on board the said smack or schooner, nor sufficiently near them to witness the transaction which subsequently took place on board the said two vessels as set forth in the said third article, he cannot of his own knowledge form any belief or disbelief respecting the same, nor whether the pump of the said schooner was sounded and upwards of two feet of water was found to be in the hold, or that the sea was then making a free passage over her, nor whether she was making a great deal of water and quite unmanageable in consequence of the loss of the foremast, nor whether between eleven and twelve o'clock all hands left the said schooner and got on board the smack to save themselves, nor whether the said schooner soon after sunk and was totally lost, nor whether the crew were the next day landed at _____ and further or otherwise to the said article this respondent

knows not to answer.

To the fourth position or article of the said libel the respondent answering saith, he disbelieves and denies that the said schooner at the time she was damaged as aforesaid, save as to the injury she then sustained, was of the value of _____ or thereabouts at the least, for the respondent saith that at the time she was purchased by her present owners, one of them told him they had so purchased her for _____ and the same person subsequently informed him that her additional

stores had cost them _____ and the respondent further answering saith, he knows not, save from the said libel, whether the said schooner was built in the year _____ at _____ nor whether the cargo she had then on board consisted of the quantity of _____ articulate, nor whether they were of the value of _____ or thereabouts, nor whether the freight which she would have earned thereon, had she completed her intended voyage, would have amounted to _____ or thereabouts; and further or otherwise to the said position or article this respondent cannot answer.

To the fifth position or article of the said libel the respondent answering saith, he admits the collision between the said schooner and brig _____ did occur on the high and open sea, and within the flux and reflux thereof, and he admits and denies not the jurisdiction of this honourable Court.

On the _____ day of _____ repeated and acknowledged } (Signed)
before _____ Judge, (or Surrogate,) in his }
chambers. Present,

(Signed)

Registrar.

No. 21 [85].

FORM of PERSONAL ANSWERS of a Party to a Responsive Allegation in a Cause of Damage by Beating or Assault.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

The personal answers of one of the parties in this cause, to all and every the positions and articles of a certain allegation, bearing date the day of given in and admitted in this cause on the part and behalf of the other party in this cause, made and given in by virtue of the corporal oath of the said follow, to wit—

To the first position or article of the said allegation, this respondent answering saith, that he denies that he did not, during the whole time he continued on board the said ship or vessel (that is to say) from the month of until the month of well and truly perform his duty on board the said ship or vessel, and that he was not obedient to all the lawful commands of the said the master, and others the officers on board the said ship; and this respondent further answering, denies that he frequently neglected to perform his duty, particularly during his watch, or was disobedient and refused or neglected to obey the lawful commands of the master and others the officers on board the said ship, or treated them with great insolence and contempt or was frequently reprimanded for such conduct, or that upon any occasions he made insolent and irritating replies to the said and others his superior officers, or said he was only on board a "bloody merchantman," or made use of many other expressions to that or the like effect; and this respondent denies the rest of the said article to be true.

To the second position or article of the said allegation this respondent answering, denies that he on the day of having been ordered to assist in handing some billet wood from the fore-hold into the deck of the said ship, was idle and inattentive in the performance of such duty, and in receiving the wood from one person and handing it to another, and thereby greatly impeded and delayed the performance of the said duty; and this respondent further answering, denies that the sixth officer or mate of the said ship, who was superintending the performance of the said work, several times remonstrated with him on his conduct, and desired him to be more diligent; and this respondent denies that he replied with great insolence, or said that he should take it easy, and that there was plenty of time, he should not hurry himself, or to that effect; on the contrary this respondent expressly saith that upon the said occasion of handing up the billet wood the said the sixth officer, only once spoke to respondent, and then charged him with not working so well as he could, nor so fast as another seaman of the name of and the only reply the respondent made was, "that the said worked too fast to last long;" and this respondent further answering, denies that the man who handed the wood to this respondent several times complained of his indolence, by which he was frequently kept with a billet in his hand waiting until this respondent, who had delivered the preceding billet, and was standing idle, chose to receive the billet from him; and this respondent also denies that the said observing such man standing idle, ordered the respondent to take the billet from such man, neither did respondent upon any occasion, when performing such duty, insolently reply to the said "he would be damned if he would," or to that effect; neither did respondent make use of violent expressions, or treat the said with great insolence and contempt; and this respondent further answering saith, he believes that the said made a faithful representation of respondent's conduct to the chief mate of the said ship, the said the master being then on shore on the necessary concerns of the said

ship; and this respondent further answering, admits that the said the chief mate, ordered this respondent to be confined in irons which was accordingly done, but respondent knows not whether the said by letter informed the said of any circumstances relating to this respondent, or whether the said ordered a court of inquiry to be held; and this respondent further answering saith, he admits that upon the following day he was had up before the said and the second, third, and fifth (but not the fourth) officers of the said ship, and was by them interrogated as to his alleged insolence to the said when respondent positively denied the same, and requested permission to call his shipmates as his witnesses in his defence, which request was peremptorily refused; and this respondent denies that upon such pretended examination it appeared from the testimony of any witnesses that the respondent had refused to obey the orders of the said and had conducted himself in a mutinous manner; and this respondent further answering, admits that he was continued in confinement and in irons until the said returned to the said ship, which respondent says he did not do until the day of the said month; and this respondent further answering saith, he knows not what representations were made to the said by the said officers, but he saith that the said without hearing this respondent in his defence, although he humbly supplicated him so to do, ordered respondent to receive three dozen lashes from a cat-o-nine-tails, which were inflicted on him upon the same day; and the respondent further answering, denies that after he had received one or two lashes he admitted that he had been very insolent to the said and asked to be forgiven, on the contrary this respondent saith that during the time of the said flogging this respondent several times called out that he was being thus barbarously punished without any just cause; and the respondent further answering saith, he denies that he did not suffer any fever from the closeness of his aforesaid confinement, and that he did not at the time he was so as aforesaid unjustifiably punished, urge the said to let him have some water, and he also denies that the said did not refuse to let the master-at-arms give him any; on the contrary this respondent saith that so intolerable was the fever and thirst he experienced by the time he had received two dozen of the said lashes, that respondent earnestly entreated the said and his shipmates who were near him, to give him a little water; that the boatswain's mate, who was flogging him stopped, and the master-at-arms ran to him and held a jug of water to his mouth, upon which the said in the most cruel manner ordered the master-at-arms instantly to take away the water, and then threatened the boatswain's mate, who had been inflicting the punishment, that if he did not instantly proceed with the said punishment he should have two dozen himself; and this respondent denies that the punishment he received was necessarily inflicted for the sake of example, and to preserve discipline on board the said ship; and this respondent also denies that the said did not refuse to permit the surgeon of the ship to give respondent any ointment or lotion for his back; and he also denies that he was not in consequence of the said punishment in a fainting and exhausted state, and that he did not suffer excruciating pain and was much injured thereby; and further or otherwise this respondent denies the said position or article to be true.

To the third position or article of the said allegation, this respondent answering saith, he admits and believes that which he hath admitted and believed, and denies and disbelieves that which he hath denied and disbelieved.

On the day of repeated and } (Signed)
 acknowledged before
 Judge, (or Surrogate) in his cham- }
 bers. In the presence of
 (Signed) Registrar.

No. 22 [88].

FORM OF DESIGNATION of a Witness or Witnesses intended to be examined on any Libel, Allegation, or other Plea.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

[Insert name
of Witness.]to the first, second and fifth articles of the libel.
to the third, fourth, sixth and seventh articles.

No. 23 [96].

FORM OF INTERROGATORIES to be administered, where necessary, to Witnesses examined in support of a Libel or Summary Petition (in which Special Matter is Pleaded) in a Cause of Subtraction of Wages.

Interrogatories to be administered, on the part and behalf of [insert name of Master] the master of the said ship or vessel called the [insert the name of Ship] one of the parties in this cause, to the witnesses produced or to be produced, sworn and examined on the positions or articles of a certain summary petition bearing date the day of given in and admitted in this cause on the part and behalf of late a mariner on board the said ship, the other party in this cause, follow, to wit:—

LET the nature of an oath, and the sin and danger of perjury, and the punishment due to a false witness be explained to each witness; then let him be admonished to give his evidence in this cause candidly and impartially, without favour to either party.

[This Admonition, and the three following Interrogatories, may be administered in any case in which it may be deemed advisable.]

Let each witness who shall be designed hereto be asked, At whose request do you attend to become a witness in this cause? Have you had any, and how many meetings or consultations with the producent or his proctor, agent or solicitor, or any other person, and whom by name, concerning your being examined? If yea, set forth what passed at such meetings or consultations.

Let each witness who shall be designed hereto be asked, Have you been taught or instructed, or have any hints been given you by any person, and whom by name, what to depose or what to avoid deposing in this cause? Set forth the instructions or hints you have received, and whether by word of mouth or in writing.

Let each witness who shall be designed hereto be asked. Have you received, been promised, or do you expect or hope to receive any reward, gratuity, present or satisfaction, or to be benefitted in any and what way for giving your evidence in this cause? From whom by name have you received or do you expect or hope to receive the same?

Let each witness who shall be designed hereto be asked, In what situation of life are you, and how do you support or maintain yourself? Were you not a seaman on board the or in some way engaged on board her at the time the producent was serving on board her? If yea, For what reason have you left serving on board the said ship, and when did you leave her?

Let each witness who shall be designed hereto be asked, Did not the producent, to your knowledge or belief, whilst on board the said ship called the several times conduct himself in a disobedient and insolent manner, contrary to the good order and discipline necessary to be observed by seamen on board merchant vessels, and tending to produce insubordination in the crew? Did he not, as you know or believe, on the day of last, whilst the said ship was coming to an anchor in leave his duty when in the

act of paying out cable to bring up with? Was he not found fault with by the master of the said ship, for so doing? Did he not thereupon conduct himself in a most insolent manner towards the said tending thereby to produce disorder and insubordination and mutiny amongst the crew of the said ship? Will you positively swear that you did not see the said the producent, on the day of or about that time, conduct himself as interrogate?

Let each witness who shall be designed hereto be asked, Did not the said the producent, on or about the day of last, while at dinner with the rest of the crew of the said ship, take up a piece of beef, and in a most insolent and provoking manner demand of the said the master of the said ship, if that was provision fit for him to eat? And did he not otherwise conduct himself in a most insubordinate manner, tending to produce discontent among the crew of the said ship? Did not the said the master of the said ship, upon hearing the complaint of the said in regard to the provision, appeal to the remainder of the said crew, and ask them if they were satisfied with such provision; and did not the remainder of the said crew declare that it was of the best quality, and that they were perfectly satisfied therewith? Will you positively swear that you were not present at the transaction interrogate, or that the said on the said occasion did not conduct himself as interrogate?

Let each witness who shall be designed hereto be asked, Did not the said the producent, on or about the day of last, when the said ship was close off the island of in the in a violent squall, refuse or neglect to do his duty in close reefing the topsails when required so to do; and upon being remonstrated with for so neglecting or refusing to do his duty, did he not behave in a most insolent and unseamanlike manner, causing great confusion on board the said ship, and great risk of losing the said ship? Will you positively swear that you were not present at the transaction interrogate, or that the said on the said occasion did not conduct himself as interrogate?;

Let each witness who shall be designed hereto be asked, Did not the said on or about the day of last, without leave of any person having authority to give the same, go on shore at in the said island of in a boat then in charge of the second mate of the said ship? Did not the said upon being required by the said second mate to return on board the said ship and to do his duty, refuse to do so, and behave in a most insolent manner to the said second mate?

Let each witness who shall be designed hereto be asked, Did not the the master, and the mate of the said ship on or about the day of the said month of last, in consequence of the conduct of the said and of his having deserted from the said ship, attend on Esquire, one of His Majesty's Justices of the Peace for the said island of and made complaint on oath of such the conduct and desertion of the said ? Did not the said Justice of the Peace cause the said to be brought before him? Did not the said in consequence thereof attend before the said Justice of the Peace, and upon being called upon to state the reasons for his said conduct, did he not reply to the said Justice of the Peace in a most insolent manner, and declare that he acknowledged no authority over him in that island, and that he should give no answer to the questions put to him? Was not the said in consequence of his so refusing to account for his said conduct and to return on board the said ship, committed by the said the Justice of the Peace, to the common jail in the said island? Will you positively swear that you were not present on the occasion interrogate? or that the said did not conduct himself as interrogate? and that he was not committed by the Justice aforesaid to the common jail in the island of as interrogate?

Let each witness who shall be designed hereto, be asked, Did not the said _____ as you know or believe, remain in confinement in the said common jail of the island of _____ from the said _____ day of _____ until the _____ day of _____ following? And was he not again brought before the said _____ the Justice of the Peace aforesaid? And was he not required by the said Justice to return to his duty on board the said ship _____? Did he not refuse so to do, and was he not in consequence remanded by the said Justice to the common jail? Did not the said _____ in consequence of his persisting in not returning to his duty on board the said ship, remain in custody in the said common jail until the _____ day of _____? Was he not then, by the order of the said Justice of the Peace, taken from the said jail and put on board the said ship, she being then about to leave the said island, and the law of the said island requiring the master to take the said _____ with him?

Let each witness who shall be designed hereto, be asked, Was not the said _____ on or about the _____ day of _____ last, by order of the said _____ Justice of the Peace aforesaid, brought on board the said ship _____ from the common jail in the said island of _____? Did not the said ship shortly afterwards leave the said island, and did not the said _____ remain on board the said ship until her arrival at the port of _____ on the _____ day of _____ last, without doing any duty.

Let each witness who shall be designed hereto be asked, Did not two more of the crew of the said ship _____ conduct themselves in an insuborninate and unseamanlike manner? Do you not believe that they were induced so to do by the example of the said _____? Were not the names of the said two mariners _____ and _____? Did they not, on the aforesaid _____ day of _____ also desert from the said ship? Were they not taken on the _____ day of the said month, in company with the said _____ before the said _____ the said Justice of the Peace, and was not the said _____ upon expressing his sorrow at his conduct, and promising to return to his duty, discharged? Was not the said _____ upon refusing to do so, committed to the common jail of the island of _____ and did he not remain there until the _____ day of _____ last? Was he not then again brought before the said Justice of the Peace, and upon being required to return to his duty on board the said ship, did not the said _____ declare he would not do so unless the said _____ would? and in consequence of the said _____ refusing to do so, was not the said _____ remanded to the aforesaid jail, where he remained some time longer? Was he not at length released, upon promising to return to his duty on board the said ship? and did he not thereupon return to his duty on board the said ship? And let the said _____ and _____ be particularly examined to the facts interrogate.

Let each witness be admonished not to disclose to any person or persons the purport of these interrogatories, or of his answers given thereto, or of his evidence given upon the summary petition on behalf of the said _____

[To be signed cy Counsel.]

No. 24 [97].

FORM of INTERROGATORIES to be administered, where necessary, to Witnesses examined in support of the Label or Summary Petition in a Cause of Subtraction of Wages.

In the Vice-Admiralty Court of _____

[Insert names of Ship and Master.]

Interrogatories to be administered, on the part and behalf of sole owner of the ship or vessel called the _____ (whereof now is or lately was master), to the several witnesses produced

or to be produced, sworn, and examined on the summary petition and schedule therein annexed, bearing date the day of heretofore given in and admitted on behalf of late a mariner on board the said ship or vessel, follow, to wit:—

Let each witness be reminded of the oath taken by him at the time of his being produced a witness in this cause, and of the sin and danger of perjury, and let him be admonished to give true answers to the several interrogatories about to be administered.

Let each witness be asked, What intimations have you, or hath either and which of your fellow witnesses, to your knowledge and belief, received, as to your or their examination on the matters it was expected you or they would depose to? Have not some, and what hints or observations been made or communicated to you? If yea, set forth the same.

Let each witness designed hereto be asked, Were you not a seaman on board the said vessel on her late voyage from to and back? Did not you, the producent, and your fellow witnesses, at the time of engaging yourself as such, or shortly and how long afterwards, and when, where, and in whose presence, sign the ship's articles for the due performance of the voyage? Are you not aware that at the time of signing such articles, you pledged yourself to fulfil the different matters and things in such articles set forth and examined? Let the original ship's articles hereto annexed, marked No. 1, be shewn to the witnesses and and let them be asked, Are not the names and set and subscribed to the said ship's articles, of your handwriting and subscription? And did you not sign the same in the presence of in the month of last?

Let each witnesses designed hereto be asked, Did not you or one or other of your fellow witnesses, or some other person or persons, and who by name, purchase a quantity of tobacco from some person or persons at or near whilst the said vessel was lying there or about sailing therefrom? If yea, set forth the quantity and the name of the person or persons from whom you or either of your fellow witnesses, or who else by name, purchased such tobacco, as you know or have heard and believe? Did not the said vessel on her arrival at or shortly afterwards, lie alongside a place called ?

Were you not, whilst the said vessel was lying there, frequently in the habit of leaving the said vessel to go on shore? Did not that, or some other and what attract the attention and excite the suspicion of some person belonging to the Customs? On your oath will you undertake to swear, that at some one or other of the times of your so going on shore, that you or one or other of your fellow witnesses, and whom by name, did not convey some, and what tobacco or contraband goods from the said vessel to the shore? What conversation had you with either of your fellow witnesses in regard thereto? when and where did the same take place, and who were present thereat?

Let each witness designed hereto be asked, Did not an officer of the Customs, or some other person authorized so to do, go on board the said vessel whilst she was lying alongside and make search or inquiry in order to ascertain if any contraband or prohibited goods were concealed on board the said vessel? Did not he or they seize some, and what quantity of tobacco in the fore-castle of the said vessel, and did not the quantity so found exceed that allowed by law to be brought on board as sea-stock? How many men were there engaged as seamen, and to whom was the fore-castle appropriated on the said voyage? Set forth their names, and the quantity of tobacco allowed each individual as sea-stock on the voyage from to

Is not the fore-castle the place where you and your fellow witnesses sleep and victual? Was not the said tobacco, when found, in a situation evidently intended for concealment, and will you on your oath undertake to swear that you did not know of its being there concealed? Was not the said vessel detained in consequence thereof?

Let each witness be admonished not to disclose to any person, until publication shall have passed, the purport of these interrogatories or his answers thereto, and let each witness, except the first, be asked, Has either and which of your fellow witnesses, or who else, informed you of the purport of these interrogatories, or of the answers thereto, of either and which of your fellow witnesses?

[To be signed by Counsel.]

[No. 25 [98].

FORM of INTERROGATORIES to be administered to Witnesses, where necessary, in support of a Libel in a Cause of Damage by Collision.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

Interrogatories ministered and to be administered by and on the part and behalf of sole owner of the said ship or vessel party in this cause, to the several witnesses produced and to be produced, sworn, and examined on the several positions or articles of a certain *Libel* [or "*Allegation*, as the case may be,] bearing date the day of heretofore given in and admitted in this cause by and on the part and behalf of and the owners of the late ship or vessel called the whereof the said was master, the other parties in this cause, follow, to wit:—

Let each witness be asked, At whose request do you come to be examined as a witness in this cause? Have you had any or how many meetings and consultations with the producent, his agent or solicitor, and whom by name, respecting your being so examined? Have you been taught or instructed, or in any manner given to understand, what you should say and depose or avoid saying or deposing in this cause, and what would be for the interest and what to the prejudice of the producent? If yea, set forth the same fully and at large, and whether such instructions were verbal or in writing, and by whom given. And if the said instructions or anything in the nature of instructions were in writing, let the witness be required to produce and leave them with the examined.

Let each witness be asked, Have you or have any or either and which of your fellow witnesses, to your knowledge or belief, received, been promised, or hope to receive, or expect any and what reward, gratuity, present, or satisfaction, for giving your or their evidence in this cause? If yea, To what amount? and from whom or by whom, and when have you or they received or been promised, or do hope and expect to receive the same?

Let and and each person that belonged to the said schooner be asked, Were you on board and in the service of the said schooner on the day of last past? If yea, In what capacity did you serve? Did not the collision of the said two vessels take place off? Had not the said schooner shortly before passed the brig to windward towards the northwest, between the said brig and the land? Was the said schooner when such collision took place, under her fore-staysail, foresail, fore-topsail and mainsail, with the foresail full and the mainsail scandalized? If yea, let the witness be asked. Do you not as a seaman know that a schooner cannot lie to under such sail, and that to enable a schooner to lie to with such, the mainsail must be set? On your oath is it not the fact that the said schooner was not lying to, but had just wore

round in order to make a reach from the land? Did not the said two vessels, while they were entangled, drift together towards rocks? and after they were separated, did not the master of the said schooner, steer the for upwards of after the said schooner, which continued driving before the wind considerably beyond rocks, which brought her nearer to ? When you returned on board the said schooner in the brig's boat, did you sound the pumps to ascertain whether she was making water? If yea, How much water had she then made? Were the pumps rigged in order to pump the said schooner? If yea. How often was the said schooner pumped? and how long each time? On your oath, is it not true, that the said schooner never was pumped at all, from the time of the collision until she was abandoned?

Let each of the said witnesses be asked, After you returned on board the said schooner from the did not the smack come up to you, and inquire whether you wanted any assistance? and did you not, all or some of you, in reply to such question, ask the master of the said smack, whether he would take the said schooner in tow to ? and upon the said master expressing himself ready to take the said schooner in tow, did you not, all or some and how many of you, reply, that you must first go to the brig and ask the master thereof his opinion or advice whether you should employ the said smack for that purpose, or be towed by the said brig? and did you not, all of you excepting the master, then proceed to the said brig and go on board her, and ask the master thereof to give you his advice or opinion thereon? and did not the said master in reply distinctly state that you ought to make up your minds, as it was not a time to hesitate, for if the vessels were driven further from the land, he would be unable to tow you to ? Was not an hour wasted before you came to any determination? Did not the said smack during such time come towards the brig? and did not the master of the said smack then distinctly call to you to make haste, as the schooner was then driving from the land, and that they should be unable to do anything with her if more time was lost? Did you not at last determine that the smack should tow you to ? and did you not leave the brig exclaiming "that is the place for us?" On your oath, was it not the anxious wish of all of you to be towed or taken to in preference to ? and was not that the sole reason for your accepting the offer made by the smack?

Let each of the said witnesses be asked, What was the distance of the said schooner from the land when you first returned on board her from the brig? Was she not then about one mile north-east of the rocks, and about miles south-east of ? Was not the wind at such time about west-south-west, and was not that a wind on the larboard beam, and fair for proceeding to ? Do you not believe that if the said schooner had then been turned round, with her larboard side to the wind, she could, with the aid of of her own sails and being towed by the brig, have got into the port of in two or three hours with her mast standing?

Let be asked, Did not three of the crew of the schooner, one of whom was the master's son, on the boat reaching the smack, go on board her and remain there, instead of proceeding to their own vessel? When the mate of the smack and one of her crew got on board the schooner, did they not ask you what damage had been done? and did you not reply, Very little to the hull, for you had sounded the pumps, and the leakage was not worth mentioning? or words to that effect, or to the like effect? Was not the foremast of the said schooner at such time standing with the sail upon it, supported by

the stays? and was not the forestay cut by one of the smack's men? and did not the said mast then, and not before, fall over the larboard side of the said schooner? and was not very little damage occasioned thereby to the said schooner? Were not the whole of the said services, performed on board the said schooner, so performed by yourself and the two men belonging to the smack? and were you not very angry that you had not the aid of any of your own crew? And when you went on board the smack, after abandoning the schooner, were you not informed that the three of your men who had gone on board the smack had been below drinking, and were very indifferent and careless about the fate of their vessel, and gave very little aid in the proceedings that took place? and did you not in consequence feel and express yourself very indignant at their negligent and shameful conduct? Were not the pumps of the said schooner sounded shortly before you abandoned her, and did you not then find that she had only eighteen inches of water? Would she not have had from eight to ten inches of water, had no collision taken place?

Let be asked, What is your business or profession? How long have you been engaged therein? Do you profess to have a complete and perfect knowledge? How old was the schooner in question at the time of the collision? Was you present when the said schooner was purchased for the late owner? At what time was such purchase made? What was the sum agreed to be paid for the same? Was such sum actually paid by or on behalf of the said parties? Had not the said schooner performed a number of voyages between the period of such purchase and the time of her loss? Let the witness state how many such voyages, as far as he knows and believes. Do you believe, and can you conscientiously swear that the said schooner was of the same value on the day of the collision as when she was so purchased? If nay, How much was she deteriorated in value? Have you not heard, do you not know, and do you not believe, that one of the owners of the said schooner, has declared that they paid for her the sum of and no more? and that her additional stores cost them and no more?

Let each witness be admonished not to reveal to his fellow witnesses his deposition in chief, these interrogatories, or his answers thereto, until after the publication shall have passed.

[To be signed by Coun. et.]

No. 26 [99].

FORM of INTERROGATORIES, where necessary, in a Cause of Damage by Beating.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

Interrogatories to be administered on the part and behalf of

late a mariner on board the said ship one of the parties in this cause, to the witnesses produced, or to be produced, sworn, and examined on the several positions or articles of a certain allegation bearing date the day of given in and admitted in this cause, on the part and behalf of the other party in this cause, follow, to wit:—

[NOTE.—For the admonition and the general interrogatories see No. 23.]

Let the chief mate, and the sixth mate, be desired to

name the persons and the situations they held, who composed the pretended court for inquiring into the charge of misconduct against one of the parties in the cause, on the day of and by whose authority the same was held, and what were the special orders for holding the same; and let them be required to set forth the orders specifically and verbatim, and if in writing, to produce the same; and then let them be requested to name the persons and the situations they held, who were examined as witnesses against the said and then let them be asked to name the persons and situations they hold, who were examined as witnesses on behalf of the said and to state specifically and particularly all that was said by the witnesses on behalf of the said, and to state specifically and particularly all that was said by the witnesses, so as alleged, produced on behalf of the plaintiff in this suit. Let them be asked whether who was brought as a witness against the said

did not speak in his favour; and did not the said there-upon say to him, "I that he all you can prove, you might as well not have come," or words to that effect? Let be asked, On your oath, will you deny having used words to that or the like effect? Will you deny having used any words at all? and if nay, What expressions did you make use of with regard to the evidence of the said? Let them be asked whether the said did not request permission to call some of his shipmates as his witnesses in his defence, and was he not refused permission so to do? Will you positively swear he was not refused permission to examine any witnesses in such his defence? Let them be asked, Will you swear that the said did not, in addition to his refusal to grant such request of the said

say, "You are a damned rascal and deserve a good flogging, and you shall have it?" and did not the said upon that occasion express himself in words to that or the like purport, intent, and meaning?

Let the said be requested to name the persons who were employed in the hold, handing up billet-wood under his superintendence, on the day of Let him be asked, Will you swear that upon the occasion on which you found fault with the said the delay was not occasioned by the man above the said not being ready to receive the billet from him? Let him be asked, Will you swear that upon such occasion, in reply to your charge of his not working so well as a man named the said did not reply "that the said worked too fast to last long," or that he the said did not make use of words to that or the like effect? and was it not this reply which you complain of to the said?

Let the said be asked, Whether, upon the return of the said ship to England, himself and the said were not taken under a warrant before Esquire, one of the magistrates at to answer for their treatment of the said at? Let him be asked, Whether the said magistrate did not, upon hearing the whole of the circumstances on the behalf of the said as also the defence of the said and express his regret that his jurisdiction would not permit him to interfere! Did he not also state his conviction to be, that the punishment inflicted on the said was excessive? and did he not advise the said to institute a suit for damages?

Let the surgeon, be asked, Were you on board the said ship on the day of? If nay, let him be asked, How soon after he came on board? Was not the said on shore at that time? Will you swear that the said the master came on board the ship prior to the day of Let him be asked, Whether, upon the day on which the said was flogged,

board the said ship or boats belonging thereunto, and not to neglect or refuse doing their duty, nor go out of the ship, or be on shore, under any pretence whatsoever till the voyage was ended, without leave obtained of the master or commanding officer of the said ship; and in default thereof to be liable to the penalties mentioned in certain acts of parliament in the said articles referred to, as in and by the said original articles or contract now remaining in the Registry of this Court annexed to an affidavit of the master of the said ship, relation being thereunto had, will appear; and this was and is true, public and notorious, and so much the said doth know, and in his conscience believes, and the party proponent doth allege and propound of any other time, place, person or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this allegation contained jointly and severally.

That shortly after the said ship sailed from and on many occasions during her aforesaid voyage, as hereinafter pleaded, the said behaved and conducted himself in a disobedient and insolent manner, contrary to the good order and discipline necessary to be observed by seamen on board merchant vessels, and tending to produce insubordination in the rest of the crew. And the party proponent doth further allege and propound, that on or about the day of the said month of whilst the said ship was coming to an anchor in the the said who was employed in paying out the cable by which the said ship was to be brought up, without any just or necessary cause quitted such his employment, and upon being found fault with and reproved for so doing by the said the master, conducted and behaved himself in a most insolent manner towards the said and said, "he would be damned if he would do any duty that he did not think proper or approve of, and that he would not be controlled by the captain in what he should do, as he was not on board a damned man-of-war," and used other expressions to that or the like effect; and by such his conduct and behaviour tended to produce disorder, insubordination and mutiny amongst the rest of the crew of the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That on or about the day of whilst the said and the rest of the crew of the said ship were at dinner, he the said took up a piece of beef and in a most insolent manner asked the said the master, if that was provision fit for him to eat, and at such time swore at the said and otherwise conducted himself in a most insubordinate manner, tending to produce discontent among the crew of the said ship. And the party proponent doth further allege and propound that the said beef was of excellent quality, and that the rest of the crew declared that the provisions on board the said ship were of the best quality, and that they were perfectly satisfied therewith; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That on or about the day of last, when the said ship was close off the island of during a violent squall, the said refused or neglected to do his duty in close reefing the topsails, which he had been directed to do by the said master, or by one of the officers of the said ship, and which he was well able to do; that the said upon being remonstrated with for such his neglect or refusal to do his duty, behaved in a most insolent and insubordinate manner, and caused great confusion on board the ship, the safety of which was much endangered by such his conduct; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That on or about the _____ day of the said month of _____ last, the said _____ of his own will, and without applying for or having obtained the consent or permission of the master, or of any other person having authority to give the same, went on shore at _____ in the said island of _____ in a boat then in charge of the second mate of the said ship; and on being afterwards required by the second mate to return on board the said ship, and to do his duty, he refused to do so, and behaved and conducted himself towards the said second mate in a most insolent manner, to the evil example of the rest of the crew of the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That on the _____ day of the said month of _____ the said _____ was permitted by the chief officer of the said ship to go on shore on the said island of _____ on condition that he should return on board thereof in the evening of the said day at sunset; that the said _____ did not return to the said ship in the evening of the said day as he had promised to do, but without any just cause or occasion absented himself from his duty, and deserted therefrom; and the party proponent doth allege and propound that in consequence of the said _____ having been guilty of the various acts of insubordination, herein-before-mentioned, and having so deserted from his duty on board the said ship and not having returned thereto, the said _____ the master, and _____ the mate of the said ship, on the next day, to wit, the day of the said month of _____ attended on _____ Esquire, one of his Majesty's Justices of the Peace, duly appointed and acting in and for the said island of _____ and made complaint on oath of such the conduct and desertion of the said _____ whereupon the said _____ caused the said _____ to be apprehended, about _____ o'clock of the said day, at the _____ about _____ miles from the said ship, where he had been and was then staying, and to be brought before him; that the said _____ was then called upon by the said Justice to state the reason for his said conduct, when he declared in a most insolent manner that he acknowledged no authority over him in that island, and that he should give no answer to the questions put to him; that in consequence of the said _____ so refusing to account for his said conduct, and to return on board the said ship, he was committed by the said _____ to the common jail in the said island, where he remained from the said _____ day of _____ until the _____ day of _____ following, when he was again brought before the said Justice of the Peace and required by him to return to his duty on board the said ship, but he still refused to do so, and was thereupon remanded to the said jail; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That in and by a certain act made and passed on or about the day of _____ in the year _____ by the Governor, Council, and Assembly of His Majesty's said island of _____ entitled "An Act to prevent masters of vessels from carrying debtors or their effects from off this island, and from leaving their seamen on shore; to oblige persons intending to leave the island, to give security or publish their names in the Secretary's Office, and to empower Justices of the Peace to determine disputes between masters and seamen;" and to which Act, within three years from and after the passing thereof, the confirmation of His late Majesty King George the Third was obtained, pursuant to His said Majesty's order in Council, dated the _____ day of _____ it is in the _____ and _____ sections or clauses thereof enacted and ordained, in the words or to the effect following, viz:— "That on complaint being made to any Justice of the Peace of this island, by the master of any vessel, that any of his seamen or crew

bath deserted or left his vessel without leave of such master, or having come on shore with leave or on duty and refused to return on board, such Justice of the Peace is hereby authorized and required to issue his warrant, directed to any constable, to apprehend such seaman having deserted or refused to return on board the vessel to which he belongs, and to bring him before such Justice at such time and place as he shall in the said warrant appoint, to shew cause for such his behaviour; and the said Justice is hereby authorized to inquire into and determine the difference, if any there may be, between the master and seaman, and to order the seaman to return on board his said vessel, and in case of refusal, to commit such seaman to the common jail, there to remain until he consents to return on board, or until the vessel is ready to sail from this island; when, on the application of the master to any Justice of the Peace, the said seaman is to be released and delivered to such master, he the said master paying all lawful fees and expenses incurred, who is thereby authorized to charge the same against the wages due and to become due to such seaman, or so much thereof as the Justice before whom the seaman was originally carried shall direct. That if any seaman, not belonging to or usually residing in this island, shall be found on shore during the time the vessel to which he belongs remains in any of the roads or bays of this island, and the master of such vessel shall refuse to take him on board, on proof thereof being made on oath before one Justice of the Peace of this island, such Justice is hereby authorized to direct a constable to put the said seaman on board of the vessel at the expense of the master thereof; and if such seaman shall be sent on shore again and remain on shore after the departure of the vessel from this island, the bond entered into by the master and his sureties is hereby declared to be forfeited." And the party proponent doth allege and propound the said Act to be a public Act; and that the bond therein alluded to as aforesaid is a bond required, in virtue of the said Act, to be entered into by all masters of vessels that arrive at the said island before clearing out of their vessels, with two sufficient sureties, one of whom must be a freeholder in the said island, by which they become bound to His Majesty, his heirs, and successors, in a penalty of sterling, conditioned amongst other things, that provisions be made for sailors or other persons brought in such vessels to the said island, that they do not become chargeable to the public of the island, or be found destitute of support or begging therein, within calendar months after the departure of the said vessel; and that such bond was accordingly entered into by the said with two sureties, shortly after his arrival at the said island; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That in consequence of the refusal of the said to return and do his duty on board the said ship, as pleaded in the sixth article of this allegation, he was kept in custody in the said jail until the day of following, when the said ship being about to leave the said island, the said was, by order of the said Justice, and in obedience to the laws in force in the said island, put on board the said ship, the said having first paid the sum of for jail fees for the said demanded of him also, in obedience to the said laws; and the said ship then shortly afterwards proceeded on her return voyage to where she arrived on or about the day of last, with the said on board; that the said did not at any time after he was so released from prison, and during the said homeward voyage do any duty whatever on board the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That in consequence of the evil example of the said in behaving himself in the insubordinate and disorderly manner herein-before set forth, and two others of the crew of the said ship who had also had permission to go on shore on the said day of on condition that they returned thereto the same evening, were induced to desert from the said ship; and at the same time the said was taken before the aforesaid Justice of the Peace on the day of the said month of the said and having been found in his company at the said were then also taken before the said Justice: that the said upon expressing sorrow for his conduct, and promising to return to his duty, was immediately discharged out of custody, and went on board the said ship: that the said having refused to return thereto, was committed to jail, and for some time afterwards at the instigation of the said refused to return to his duty, but at length agreed to do so, and was thereupon released from confinement and returned to the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That in part supply of proof of the premises in the sixth and seventh articles of this allegation pleaded and set forth, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex, and prays to be here read and inserted, and taken as part and parcel hereof, two paper writings marked No. 1 and No. 2, and doth allege and propound the said paper writing or exhibit, No. 1, to be and contain a certificate under the hand and seal of the aforesaid

Esquire, one of His Majesty's Justices of the Peace for the island of lawfully appointed, as to the proceedings had before him against the said and by reason of their improper conduct and desertion from the said ship as mentioned and set forth in the preceding articles of this allegation; and the said paper writing or exhibit, marked No. 2, to be and contain a true copy of the affidavits of the said the master of the said ship and of the mate of the said ship, in the said exhibit, marked No. 1, mentioned and referred to; that all and singular the contents of the said exhibits were and are true; that all things were so had and done as therein contained, and that mentioned in the said exhibits respectively, and the party in this cause, was and is one and the same person, and not divers; and that and mentioned in the said exhibits respectively, and the master, and the mate of the said ship were and are the same persons, and not divers; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

Whereas, in the first article of the summary petition given in and admitted in this cause on the part and behalf of it is amongst other things alleged and pleaded in the words or to the effect following, to wit:—"That on the day of the month of following, the said came to the prison in which the said was confined, and, in a very weak state in which he then was, had him taken on board the said ship, but prohibited him from doing any duty on board during the whole of the return voyage, informing him that if he attempted to do any duty during any part of the return voyage, he the said would blow his brains out, and for which purpose he kept his pistols always loaded; and the said not having been, during any part of the return voyage, permitted (although perfectly willing) to do any duty in his power, but constantly threatened with personal violence by the said during the whole of that period, was on the day of the said month of duly discharged from the service of the said ship; that during all the time the said was on board

the said ship or vessel when permitted by the said he did well and truly perform his duty as a seaman, and was always obedient to all the lawful commands of the said the master, and others his superior officers, and well deserved the wages schedulate." Now the same is therein most falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that during the outward voyage the said on divers occasions and without cause, conducted himself in a quarrelsome, disobedient, mutinous, violent, and insubordinate manner; and he did so more particularly on the occasions in several of the preceding articles of this allegation set forth and pleaded; and he did not obey, but frequently disobeyed or neglected to perform the orders and directions he had received from the said the master, and others his superior officers, and at length, without leave from the said master or officers, absented himself and deserted from the said ship, as herein-before pleaded. That the said did not, upon the said being again brought on board the said ship when she was about to sail on her return voyage, nor at any other time during the same, prohibit him from doing any duty; and he was not prohibited or prevented by the said nor by any of the other officers of the said ship, in any way whatever, from doing any duty on board thereof during the homeward voyage; and was never threatened with personal violence by the said if he did any duty; and the said did not threaten to blow out his the said brains, and did not keep his pistols loaded for such purpose. And the party proponent doth further allege and propound, that the said was not at any time required or directed by the said the master, or by any other of the officers of the ship, to do any duty on board thereof during her said return voyage by reason that they considered him as not belonging thereto; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

No. 28 [104].

FORM of ALLEGATION or Responsive Plea in a Cause of Subtraction of Wages pleading the Offence of Smuggling, &c.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of in the name and as the lawful Proctor of of the sole owner of the said ship or vessel called the and under that denomination, and by all better and more effectual ways, means, and methods that may be most beneficial for his said party, sayd, alleged, and in law articulately propounded as follows, to wit:—

That some time in the month of last the master of the said ship or vessel then lying in and designed on a voyage from the port of to and back, engaged and hired the other party in this cause, to serve as a mariner on board the said ship during her then intended voyage; that shortly afterwards the said was called into the cabin for the purpose of signing the ship's articles or mariner's contract; that previously thereto he was cautioned against smuggling or taking on board contraband goods, and that in the event of his so doing his wages would be forfeited; and the notice and attention of the said was particu-

larly called to the latter part of the said articles, in which two clauses are inserted relating to a forfeiture of wages in the event of any contraband or prohibited goods being found in the fore-castle of the said ship by the officers of the customs; that the said two clauses were respectively read over and explained to the said and to which he agreed; and in testimony of such his agreement and approval of the said articles and contract the said set and subscribed his name thereto, as now appears thereon, in the presence of the chief mate of the said ship, whose name appears thereon as an attesting witness thereto; that at the time the said so signed the said ship's articles he fully understood and knew the contents thereof; and that by the said subscribing his name thereto he covenanted to perform and fulfil the various obligations contained in such ship's articles, and subjected himself to the penalties attendant thereon; and this was and is true, public and notorious, and so much the said the other party in this cause doth know or hath heard and in his conscience believes, and hath confessed to be true; and the party proponent doth allege and propound of any other time, place, person, or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this allegation contained jointly and severally.

That in part supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit, and prays to be here read and inserted, and taken as part and parcel hereof, the paper hereto annexed, marked No. 1; and doth allege and propound the same to be the original ship's articles or mariner's contract, signed by the said as in the preceding article is pleaded; and that the names " " set and subscribed thereto, were and are of the proper handwriting and subscription of the said and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That shortly after the signing of the said ship's articles or mariner's contract, as in the first article of this allegation is pleaded, the said ship proceeded to and arrived at and afterwards sailed on her return voyage to the port of where she arrived on the day of the present month of and she was then moored alongside and on that, as on the following day, the attention of one of the custom-house officers was attracted and his suspicious excited by the frequency of the crew going from and to the said ship, which induced him to suspect that some of the crew were conveying contraband goods therefrom; and he accordingly mentioned the circumstance to a surveyor of the customs, who in the afternoon of went on board the said vessel accompanied by a custom-house officer, and on the said and so going on board they proceeded to search the said vessel, and in the fore-castle thereof, being that part of the said ship appropriated to the said and the other mariners of the said vessel, the said and found parcels of tobacco beyond the quantity allowed for sea stock, each parcel containing pounds' weight, and being contraband or prohibited goods, and which the said and seized as such, and thereupon detained the said vessel; and the party proponent doth further allege and propound that a considerable quantity of the tobacco, so found and seized in the fore-castle of the said ship beyond the quantity allowed for sea stock, belonged to the said the other party in this cause, and that the said tobacco could not have been so placed there without the knowledge or privity of the said and was so placed with the intention of all or some

part thereof being clandestinely conveyed or smuggled on shore by him; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said the other party in this cause, when on shore, lodged at the house of a person of the name of situated at and that on his the said returning to his lodgings from the said ship, on the evening of the day of the present month of the said declared to the said with whom he so lodged, that he had landed one lot of contraband goods from the said vessel, and that there were twenty-five parcels of tobacco left behind; and that he had gone back for another lot or freight, thereby meaning and intending some more contraband goods, for the purpose of landing the same, when he heard the custom-house officers coming; and that he expected to be in trouble in the morning, or words to that or the like effect; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

No. 29 [105].

FORM of ALLEGATION or Responsive Plea, on the part of a Mariner in a Cause of Subtraction of Wages.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of in the name and as the lawful Proctor of late a seaman on board the said ship called the and under that denomination, and by all better and more effectual ways, means and methods in the law whatsoever, which may be most beneficial for his said party, sayed, alleged, and in law articulately propounded as follows, to wit:—

Whereas, in the second position or article of a certain allegation given in and admitted in this cause, on the part and behalf of the said the master and owner of the said ship, it is among other things alleged and pleaded in the words or to the effect following, (to wit)—“That shortly after the said ship sailed from and on many occasions during her aforesaid voyage, as herein-after pleaded, the said behaved and conducted himself in a disobedient and insolent manner, contrary to the good order and discipline necessary to be observed by seamen on board merchant vessels, and tending to produce insubordination in the rest of the crew. And the party proponent doth further allege and propound, that on or about the day of the said month of whilst the said ship was coming to an anchor at the said who was employed in paying out the cable by which the said ship was to be brought up, without any just or necessary cause quitted such his employment, and upon being found fault with and reprovved for so doing by the said the master, conducted and behaved himself in a most insolent manner towards the said and said he would be damned if he would do any duty that he did not think proper or approve of, and that he would not be controlled by the captain in what he should do, as he was not on board a damned man-of-war; and used other expressions to that or the like effect, and by such his conduct and behaviour tended to produce disorder, insubordination and mutiny amongst the rest of the crew of the said ship.” Now the same is therein most

falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that at the time the said and the rest of his shipmates signed articles at for the performance of the voyage to the island of upon which the said ship was then bound, the rate of wages then given to mariners in the port of for such voyages was per month. That the said the master and owner endeavoured to persuade the said to sign articles for per month, which the said positively refused to do, stating, that rather than do so he would not proceed on the voyage. That the rest of the crew then also refused to sign articles for less than per month; and the said the master, being unable to procure other mariners at a lower rate of wages, was ultimately compelled to agree to pay to the said and the rest of his crew, the sum of per month; and the party proponent doth further allege and propound, that in consequence of what has been by him alleged, the said was much irritated against the said and, in conjunction with the chief mate of the said vessel, took every opportunity, during the said voyage, of making the said uncomfortable, and upon the most frivolous occasions, and without any just cause, found fault with, swore at, and abused the said and the party proponent doth allege and propound, that upon the occasion of the said ship coming to an anchor at on or about the day of the said upon being found fault with and reproved by the said did not conduct and behave himself in a most insolent manner towards the said or say he would be damned if he would do any duty that he did not think proper or approve of, and that he would not be controlled by the captain in what he should do, as he was not on board a damned man-of-war, or use other expressions to that or the like effect, or by such his conduct and behaviour tend to produce disorder and insubordination and mutiny amongst the rest of the crew of the said ship; but, on the contrary, that at the time of paying out the cable, by which the said ship was to be brought to an anchor, there were so many of the crew employed in the said duty as to be in each other's way; and it being near breakfast time, the said quitted the said cable, and went to put the pot on the fire for making breakfast; that as the said was proceeding so to do, he was met by the said the master, who, immediately putting himself into a violent passion, asked the said what business he had to leave the cable? that upon the said informing him that there were so many of the men employed in that duty as to be in each other's way, and that he was therefore proceeding to put the pot on for breakfast, the said replied, "Damn you and your pot too, you damned infernal rascal, go to your work again instantly," and used many other abusive and opprobrious epithets to that or the like effect; and the party proponent doth expressly allege and propound, that the said without making any further reply, returned to his work; and upon that, and also upon every other occasion during the voyage, behaved himself in a proper and obedient manner; and this was and is true, public and notorious, and so much the said doth know and in his conscience believes to be true; and the party proponent doth allege and propound of any other time, place, person or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles contained, jointly and severally.

Whereas, in the third position or article of the said allegation, it is amongst other things alleged and pleaded in the words or to the effect following, (to wit) — "That on or about the day of whilst the said and the rest of the crew of the said ship were

at dinner, he the said _____ took up a piece of beef, and in a most insolent manner asked the said _____ the master, if that was provision fit for him to eat, and at such time swore at the said _____ and otherwise conducted himself in a most insubordinate manner, tending to produce discontent among the crew of the said ship; and the party proponent doth further allege and propound that the said beef was of excellent quality, and that the rest of the crew declared that the provisions on board the said ship were of the best quality, and that they were perfectly satisfied therewith." Now the same is therein most falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that it is customary when at sea to serve out to every mariner a certain quantity of peas or flour together with the salt beef; that upon various occasions during the said voyage the steward of the said ship only served out to the said _____ and two or three others of his shipmates salt beef and biscuit, whilst the rest of the said ship's company had the usual allowance of peas and flour; that at the times the steward did not serve out the peas and flour to the said _____ and his two or three other shipmates, he stated to them that he acted by the captain's orders; and the party proponent doth expressly allege and propound, that upon one of the said occasions the said _____ took a piece of beef to the said _____ and humbly complained of the deprivation he suffered, and requested the master to authorize the steward to issue to him the customary allowance; that thereupon the said _____ flew into a violent passion, called the said _____ a damned rascal and a villain, and ordered him to go about his business, and used many other abusive epithets to the said _____ to that or the like effect; that thereupon the said _____ without making any reply at all, left the said _____ and instead of swearing at the said _____ and conducting himself in a most insubordinate manner, as falsely and untruly alleged and pleaded in the said article, he the said _____ behaved himself in a most orderly and obedient manner to the said _____ the master; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

Whereas, in the fourth position or article of the said allegation, it is amongst other things alleged and pleaded in the words or to the effect following, (to wit)—"That on or about the _____ day of _____ last, when the said ship _____ was close off the island of _____ during a violent squall, the said _____ refused or neglected to do his duty in close reefing the topsails, which he had been directed to do by the said master, or by one of the officers of the said ship, and which he was well able to do; that the said _____ upon being remonstrated with for such his neglect or refusal to do his duty, behaved in a most insolent and insubordinate manner, and caused great confusion on board the said ship, the safety of which was much endangered by such his conduct." Now the same is therein most falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that on the occasion of the said ship _____ coming close off _____ as pleaded in the said article, the said _____ was in his proper station forward; that the said _____ the master, called out several times to the people belonging aft to come to their station to haul down the trysail; that the men whose duty it was, not coming quickly enough, the said _____ seeing the necessity, quitted his station to go aft; that upon coming aft the said _____ the master, immediately said, "You damn rascal, you have been skulking in the galley;" and upon the said _____ denying the same, which denial _____ one of his shipmates instantly corroborated to the said master, he the said master still continued to

abuse the said called him "a damned lying rascal," and shaking his fist at him said, "Wait until I get you under the cliffs of and I'll work you up for this;" and upon the said replying, "Sir, as it appears you cannot let me be quiet in the ship, I shall be obliged to you to give me my discharge when we get in the said

"The master rejoined again, shaking his fist at him, "No, you damned rascal, I'll work the fifty shillings out of you first." And the party proponent doth further allege and propound that the said upon the occasion articulate, performed his duty as a good seaman on board the said ship, and was obedient to all the lawful commands of the said the master, and did not behave either in an insolent or insubordinate manner to the said master, or to any of his superior officers, neither did he refuse or neglect to do his duty in close reefing the topsails, nor was there any confusion caused by him on board the said ship, nor was the said ship in any manner endangered by any conduct of his; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

Whereas, in the fifth position or article of the said allegation, it is amongst other things alleged and pleaded in the words or to the effect following, (to wit)—"That on or about the day of the said month of last, the said of his own will and without applying for or having obtained the consent or permission of the master or of any person having authority to give the same, went on shore at in the said in a boat then in charge of the second mate of the said ship, and on being afterwards required by the said second mate to return on board the said ship and to do his duty, he refused to do so, and behaved and conducted himself towards the said second mate in a most insolent manner, to the evil example of the rest of the crew of the said ship." Now the same is therein falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth allege and propound, that on the day of the month of last pleaded in the said article, the said

and others of his shipmates went on shore at on the ship's duty to land empty casks; that after having landed and rolled all the empty casks to the warehouse, and whilst waiting for more casks to arrive from the ship, the said being very thirsty went to a water-pipe a few hundred yards off to obtain a draft of water; that having obtained the same, he instantly returned to his shipmates; that on joining his shipmates he was accosted by the second mate of the said ship as to where he had been, and upon informing him that he had only been to obtain a drink of water, the said second mate swore at and abused the said for having gone without having first asked his permission. And the party proponent doth expressly allege that the said did not refuse to return on board of the said ship, or to do his duty, or behave and conduct himself towards the said second mate in a most insolent manner, to the evil example of the rest of the crew of the said ship; on the contrary, when the said duty was performed, the said returned with his shipmates on board the said ship; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

Whereas, in the sixth position or article of the said allegation, it is amongst other things alleged and pleaded in the words or to the effect following, (to wit)—"That on the day of the said month of the said was permitted by the chief mate of the said ship to go on shore on the said on condition that he should return on board thereof in the evening of the said day at sun-set; that the said did not return on board the said ship in the evening of the

said day as he had promised to do, but without any just cause or occasion absented himself from his duty, and deserted therefrom. And the party proponent doth allege and propound that in consequence of the said having been guilty of the various acts of insubordination herein-before mentioned, and having so deserted from his duty on board the said ship and not having returned thereto, the said the master, and the mate of the said ship, on the next day, to wit, the day of the said month of attended on one of his Majesty's Justices of the Peace, duly appointed and acting in and for the said and made complaint on oath of such the conduct and desertion of the said Whereupon the said caused the said to be apprehended about o'clock at of the said day at the about miles from the said ship, where he had been, and was then staying, to be brought before him; the said was then called upon by the said Justice to state the reason for his said conduct, when he declared in a most insolent manner that he acknowledged no authority over him, and that he should give no answer to the questions put to him; that in consequence of the said so refusing to account for his said conduct, and to return on board the said ship, he was committed by the said to the common jail in the said where he remained from the said day of until the day of following, when he was again brought before the said Justice of the Peace, and required by him to return to his duty on board the said ship, but he still refused to do so, and was thereupon remanded to the said jail." Now the same is for the most part falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth allege and propound, that the said did not desert from the said ship, though he did not return on the evening of the said day, but was about to do so on when arrested. That at the time the said and his two shipmates were first taken before the said a Justice of the Peace in the (to wit) on the day of the said the master, accompanied them to the office of the said magistrate, and upon the way thither the said the master, addressing the said said, "Now, you damn rascal, I'll work you up for it." That upon being brought before the said magistrate several charges were read against the said and his two shipmates; that upon the said calling upon the said to state what he had to say why he should not be committed to prison, he the said humbly but strenuously submitted that he had not been guilty of any misconduct, nor was he amenable to the laws of the said island, but contended he had a right to return on board his said ship, adding that, upon his return to if he had been guilty of any improper conduct, the said the master, had it in his power to make the usual deductions from his wages. That the said thereupon, at the instance of the said notwithstanding the entreaties of the said and to permit them to return on board the vessel, committed them both to prison, where they were treated in the most inhuman manner, and shortly afterwards, in consequence of the confinement and the treatment they there received, they took the fever of the country and nearly lost their lives. That on or about the day of the month of following, the said and were again brought before the said at the instance of the said the master, and were then asked by the said magistrate whether they would acknowledge the charges which had been made against them by the said master; that thereupon the said refused to acknowledge the truth of the said charges, and again protested

against the right of the said magistrate to act towards himself and his shipmate as he had already done, and claimed his right to return on board his ship, adding that upon his return to he would seek redress for his false imprisonment against the said the master; that thereupon the said who was present, shook his fist at him the said called him a damned rascal, and said if it was in his power he should never again go on board the said ship and the said then again, at the instance of the said master, remanded the said and his shipmate back again to prison, they the said and still protesting and claiming their right to return on board the said ship. That the said then continued in prison until the day of following, when he was taken out and sent on board the said ship; that during the whole time the said was in prison as aforesaid, he was several times visited by his shipmates, to whom the said constantly stated the manner in which he had been refused to return to the said ship, and expressed his anxiety to return on board the said ship, and his determination to seek redress upon his arrival in for the unjust treatment he had received; and the party proponent doth further allege and propound that the said never declared to the said the magistrate, in a most insolent manner that he acknowledged no authority over him in or that he should give no answer to the questions put to him, neither was he, upon either of the said occasions of his being taken before the said magistrate, requested to return on board his said vessel, but on the contrary, was positively refused permission so to do; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

Whereas, in the eighth position or article of the said allegation, it is amongst other things pleaded in the words or to the effect following, to wit: "That in consequence of the refusal of the said to return and do his duty on board the said ship, as pleaded in the sixth article of this allegation, he was kept in custody in the said jail until the day of following, when the said ship being about to leave the said the said was by order of the said Justice, and in obedience to the laws in force in the said island, put on board the said ship, the said having first paid the sum of for jail fees, for the said demanded in obedience to the said laws." And whereas, in the ninth position or article of the said allegation, it is amongst other things pleaded in the words or to the effect following, to wit: "That in consequence of the evil example of the said in behaving himself in the insubordinate and disorderly manner herein-before set forth and two others of the crew of the said ship who had also had permission to go on shore on the said day of on condition that they returned thereto on the same day, were induced to desert from the said ship, and at the time the said was taken before the aforesaid Justice of the Peace on the day of the said month of the said and having been found in company at the said were then also taken before the said Justice; that the said upon expressing sorrow for his conduct, and promising to return to his duty, was immediately discharged out of custody, and went on board the said ship; that the said having refused to return thereto, was committed to jail, and for some time afterwards, at the instigation of the said refused to return to his duty, but at length agreed to do so, and was thereupon released from confinement, and returned to the said ship." And whereas, in the eleventh position or article of the said allegation, it is alleged and pleaded in the words or to

the effect following, to wit: "That during the outward voyage the said _____ on divers occasions, and without cause, conducted himself in a quarrelsome, disobedient, mutinous, violent, and insubordinate manner, and he did so more particularly on the occasions in several of the preceding articles of this allegation set forth and pleaded, and he did not obey, but frequently disobeyed and neglected to perform the orders and directions he had received from the said _____ the master, and others his superior officers, and at length, without leave from the said master or officers, absented himself and deserted from the said ship, as herein-before pleaded. That the said _____ did not upon the said _____ being again brought on board the said ship when she was about to sail on her return voyage, nor at any other time during the same, prohibit him from doing any duty, and he was not prohibited or prevented by the said _____ nor by any of the other officers of the said ship, in any way whatsoever from doing any duty on board thereof during the homeward voyage, and was never threatened with personal violence by the said _____ if he did any duty, and the said _____ did not threaten to blow out his the said _____ brains, and did not keep his pistols loaded for such purpose. And the party proponent doth further allege and propound that the said _____ was not at any time required or directed by the said _____ the master, or by any other of the officers of the ship, to do any duty on board thereof during her said return voyage, by reason that they considered him as not belonging thereto." Now the same is in the said three several recited positions or articles falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth allege and propound, that the said _____ never refused to return and do his duty on board the said ship, but on the contrary, was anxious and willing, but was refused permission so to do as pleaded in the fifth article of this allegation. That the said _____ neither directly or indirectly, during any part of the said voyage, by his example or otherwise, induced the said _____ or any others of his shipmates to desert from the said ship, or subsequently to remain in prison instead of going on board the said ship; on the contrary, the said _____ was equally willing and anxious to return on board the said ship, as the said _____ but was likewise continued in prison at the instance of the said _____ the master. And the party proponent doth expressly allege and propound that the said _____ from and after his having been taken out of prison and put on board the said ship again in order to return to _____ still continued willing to do any duty in his power on board the said ship, and to obey all lawful commands of the said _____ and his other superior officers, and so constantly expressed himself, but was prevented upon the return voyage from doing any duty whatever on board the said ship entirely through fear of his personal safety from the said _____ the master. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true

[To be signed by Counsel.]

No. 30 [106].

FORM of ALLEGATION or Responsive Plea in a Cause of Damage by Collision.

IN the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of in the name and as the lawful Proctor of the sole owner of the said brig or vessel, called the and under that denomination, and by all better and more effectual ways, means and methods that may be most beneficial for his said party, sayed, alleged, and in law articulately propounded as follows, to wit:—

That the said brig or vessel, called whereof the said was master, of the burthen by admeasurement of tons, or thereabouts, sailed from on the day of with a cargo of bound therewith to to which port she belongs; that on the morning of the next day, to wit, about o'clock of the the said brig arrived off head, at which time the wind blowing fresh from the west-south-west, varying to south-west, [as the facts mag be] prevented the said brig from weathering the said head; that about half-past five o'clock in the evening of the said day, the said brig was off about miles to the north-north-west of the said head, and was lying to upon the larboard tack with her head to the westward towards the land, both her topsails being then a-back, and part of her crew reefing them; that the crew of the said brig then observed a loaded schooner, to wit, the whereof was master, pass to windward towards the north-west, and between the said brig and the land; that about a quarter of an hour afterwards, while the crew of the said brig were setting the fore topsail, which was still a back, the said schooner having wore in order to stand from the land, came suddenly towards the lee-bow of the said brig, whereupon the said then on the main-deck, apprehending she would run foul of the said brig, called the mate of the said brig, who was forward, to hail the people on board the said schooner; that accordingly he called out loudly, "Schooner, a-hoy, are you coming on board of us?" to which the persons on board the said schooner only replied, "What are you doing with the brig?" and the schooner at that instant came in contact with and struck the upon her starboard bow, whereby the said vessels became completely entangled, and the said schooner turned the round before the wind, when both vessels, driven by the wind and the force of an ebb tide, drifted to the north-north-east towards rocks; and the party proponent doth expressly allege and propound, that at the time when the said collision took place the said schooner was not laid to with her head to the southward, and the foresail hauled close to the windward, with the bow-line fastened to the foremast shroud, and the topsail a-back, with the helm in the lee-becket, as falsely alleged in the first article of the libel or allegation heretofore given in and admitted in this cause; and this was and is true, public and notorious, and so much the said

the other party in this cause, doth know, or hath heard, and in his conscience believes, and hath confessed to be true; and the party proponent doth allege and propound of any other time, place, person or thing, as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this allegation, jointly and severally.

That immediately after the said collision the master and crew of the said schooner came on board the said brig, when the said master strongly urged that the bowsprit of the said brig should be cut away;

but upon the said _____ representing that if such a measure were adopted he would be wholly disabled from assisting the said schooner; and upon his advising that the lanyards of the remaining shroud of the said schooner should instead thereof be cut away, the same was accordingly done; that the crew of the said brig then carried out a kedge anchor astern, and clewed up her topsails, by which means the said brig was held fast, and the schooner continuing to drive, the said vessels were separated; and the party proponent doth further allege and propound, that after the vessels were so disentangled, the said schooner, with her helm in the weather-becket, continued to drift out to sea; and the said _____ steered the said brig in pursuit of her for upwards of a mile, when the said _____ and his crew proceeded in the jolly-boat of the said brig to the said schooner; that before they left the said brig the said _____ distinctly informed the master and crew of the said schooner that he would take the said schooner in tow to _____ if they would bring proper ropes for that purpose, to which they agreed; and the said _____ then laid his brig to under the lee of the said schooner, in order to await the return of the said boat, and receive the ropes and towing lines; but when the schooner's crew returned to the brig they did not bring any ropes or lines that could be serviceable in towing the said schooner; and the party proponent doth expressly allege and propound that the said _____ did not decline to take the said schooner in tow, alleging that they were too far off the land, and he was afraid they could not fetch it, as falsely alleged in the third article of the aforesaid libel or allegation, for the said schooner was at such time only about _____ to the north-east of _____ head, and about _____ miles to the south east of the port of _____ with the wind on the beam, which would speedily have carried them to that port, and that the schooner's crew did not at such time request the said _____ to take the said schooner in tow, but inquired of him whether they should not take a fishing-smack which was then a short distance from them, to tow the said schooner to _____ and that the said _____ replied, that they ought to make up their minds, as it was not a time to hesitate, for if the vessels were driven further from the land, he would be unable to tow them to _____ or any other port; that the crew of the said schooner after some hesitation determined to employ the smack to take her to _____ observing, "that is the place for us," and thereupon immediately left the said brig in her boat, and proceeded towards the said smack; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That shortly after the schooner's crew first returned from the said brig to their own vessel, as pleaded in the next preceding article, a fishing-smack, named the _____ whereof _____ was master, came up and inquired whether the schooner wanted any assistance; that the said _____ was asked whether he would take her in tow to _____ to which he answered, "that he was ready to take the vessel in tow," but did not say to what port, whereupon the crew of the schooner said they must first ask the captain of the brig (meaning thereby the said brig _____ then a short distance off) his advice or opinion, whether they should employ the smack, or be towed by the brig, and thereupon they returned in the jolly-boat to the said brig, as pleaded in the last preceding article, where they remained so long that the said smack proceeded towards the brig, and the said _____ the master of the said smack, called to them to make haste, as the schooner was driving from the land, and they would be unable to do anything with her; that after an hour had elapsed, the said men belonging to the said schooner, who had as before pleaded gone on

board the said brig, proceeded in the jolly-boat to the said smack, and requested the said _____ to take them in tow for _____ that the said _____ consented to tow them, but did not say to what port he intended to go into the first he could make. That as the schooner had no lines fit for towing, the mate of the smack and one of the crew proceeded to the schooner with the smack's lines, and made one end thereof fast to her tow-line in order to get the same on board the smack, but which, after several attempts, they were unable to accomplish, as the lines, although of the best materials, and nearly new, were in consequence of the heavy sea repeatedly snapped asunder, and rendered wholly useless; that the wind continuing to increase as the vessels drove from the land, at length between eleven and twelve o'clock that night, the said crew ascertaining that it was impossible to save the said schooner, abandoned her. And the party proponent doth expressly allege and propound that when the mate and one of the crew of the said smack went, as herein-before pleaded, on board the said schooner, her foremast was standing, with the sail upon it, sustained by the stays, and that if the master and crew of the said schooner had turned her larboard side to the wind when they first returned from the

the said schooner could have been towed without difficulty by the said brig into _____ in about two or three hours. And the party proponent doth allege and propound that by the said collision no damage whatever was done to the hull of the said schooner, except in her upper works about the gunwale, and that her bow was not stove, as falsely alleged in the third article of the aforesaid libel; that when the men of the said smack went on board the said schooner, her pumps were sounded, and she made so little water that during the five hours they remained on board they did not pump the said schooner, nor were the pumps rigged for that purpose; that about half an hour before the crew of the smack abandoned the said schooner, they again sounded the pumps and found she had eighteen inches of water in her hold, and not two feet and upwards, as 's falsely pleaded in the third article of the said libel. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That when the boat came to the smack, as pleaded in the next preceding article, three of the schooner's crew, one of whom was

the master's son, went on board the said smack, and shortly afterwards went below, where they occupied themselves in drinking, and gave little or no aid to the smack's crew in their efforts to make fast a tow-line to the said schooner. And the party proponent doth expressly allege and propound that the loss of the said schooner was not occasioned by the damage she sustained in the said collision, nor by the loss of the mast, but by the negligence, hesitation, delay, and total want of exertion on the part of the said _____ and of his crew, to take the said vessel to the nearest port, who seemed intent only on getting back to _____ and delayed the proper means to save the said schooner till it was too late, for they might, and ought, when they first returned on board the said schooner, to have proceeded directly to _____ or had they been prompt in determining whether to accept the aid of the brig or smack for the purpose, either of the said vessels could with ease have towed the said schooner into

in two or three hours; that the conduct of the said _____ and his crew throughout the whole of the said transaction was marked by the greatest negligence and incapacity. And the party proponent doth allege that the jolly-boat of _____ which had been lent to the master and crew of the said schooner, having been cut adrift, was on the _____ day of _____ found floating at sea about _____ miles from a small port, _____ miles north of _____ and brought into that

port; and that the said has paid for the salvage of the same. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That the said schooner at the time she was damaged as aforesaid, save as to the rigging she then sustained, was not of the value of or thereabouts, as untruly alleged and pleaded in the fourth article of the aforesaid libel or allegation, for the party proponent doth expressly allege and propound that one of the owners thereof did, in the presence of divers witnesses of good faith and credit, declare that they the said owners paid for the said schooner the sum of and that the additional stores had cost them the sum of and no more. And this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

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No. 31 [107].

*FORM of RESPONSIVE PLEA or ALLEGATION in a Cause of
Damage by Beating or Assault.*

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of in the name and as the lawful Proctor of the said the master of the ship or vessel called the and under that denomination, and by all better and more effectual ways, means and methods which may be most beneficial and effectual for his said party, said, alleged, and in law articulately propounded as follows, to wit:—

That the other party in this cause, did not, during the whole time he continued on board the said ship or vessel called the that is to say, from the month of in the year until the month of in the year well and truly perform his duty on board the said ship or vessel, nor was he obedient to all the lawful commands of the said the master, and others the officers on board the said ship, as in the first position or article of the libel given in and admitted in this cause on the part and behalf of the said is falsely alleged and pleaded; on the contrary, the party proponent doth allege and propound that the said frequently neglected to perform his duty, particularly during his watch; that he was disobedient, and refused or neglected to obey the lawful commands of the master and others the officers on board the said ship, and treated them with great insolence and contempt, and was frequently reprimanded for such conduct; that on such occasions he made insolent and irritating replies, and said, "he was only on board a bloody merchant-man," and made use of many other expressions to that or the like effect; and this was and is true, public and notorious, and so much the said the other party in this cause, doth know or hath heard, and in his conscience believes and hath confessed to be true; and the party proponent doth allege and propound of any other time, place, person or thing as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles of this allegation contained, jointly and severally.

That on the day of in the year the said having been ordered to assist in hauling some billet-wood from the

fore-hold to the deck of the said ship, was idle and inattentive in the performance of such duty, and in receiving the wood from one person and handing it to another, and thereby greatly impeded and delayed the performance of the said duty; that the officer or mate of the said ship, who was superintending the performance of the said work, several times remonstrated with him on his conduct, and desired him to be more diligent, but the said replied with great insolence, and said that he should take it easy, that there was plenty of time, that he should not hurry himself, or to that effect; that the man who handed the wood to the said several times complained of his indolence, by which he was frequently kept with a billet in his hand waiting until the said who had delivered the preceding billet and was standing idle, chose to receive the billet from him; and the said observing such man standing with a large billet in his hands, and standing idle, he ordered the said to take the billet from such man; to which he instantly replied, "that he would be damned if he would," or to that effect, and made use of other violent expressions, and treated the said with great insolence and contempt; whereupon the said made a faithful representation of such conduct to the chief mate of the said ship, the said being then on shore at on the necessary concerns of the ship. That the said ordered the said to be confined in irons, which was accordingly done; and he by letter informed the said of the aforesaid circumstance, who ordered a Court of Inquiry to be held, and on the next day the said and the second, third, and fourth officers of the said ship assembled, and in the presence of the said examined witnesses as to the conduct of the said and heard him in defence; and it clearly appearing from the testimony of the said witnesses that the said had refused to obey the orders of the said and had conducted himself in a mutinous manner, they were of opinion that he was deserving of punishment, and therefore he was continued in confinement until the said returned to the said ship; and he having returned on the day of the said month, and the conduct of the said and the proceedings of the said inquiry, and the evidence given having been represented to him, he directed that the said should receive lashes, as a punishment, and the same was accordingly inflicted on the same day; that after the said had received one or two lashes, he admitted that he had been very insolent to the said and asked to be forgiven. And the party proponent doth further allege and propound that the said did not suffer any fever from his aforesaid confinement, nor did he, at the time he was so as aforesaid punished, faint, or urge the said to let him have some water, nor did the said refuse to let the master-at-arms give him any, as in the said article of the said libel is falsely alleged and pleaded; that the punishment of the said was necessarily inflicted for the sake of example, and to preserve discipline on board the said ship; that the said did not refuse to permit the said surgeon to give the said any ointment or lotion for his back, nor was the said in a fainting or exhausted state, nor did he suffer extreme pain, nor was he injured in consequence of the punishment he received, as in the said libel is falsely alleged and pleaded; and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

No. 32 [108].

FORM of ALLEGATION pleading general Exceptions to the Credit of a Witness.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of appeared personally party in this cause, and without revoking the appointment of as his Proctor, did say, allege, and in law articulately propound as follows, to wit:—

That no faith or credit is due or ought to be given to the sayings or depositions of a witness produced, sworn and examined in this cause, on the libel given in and admitted on the part and behalf of the other party in this cause, for the party proponent doth expressly allege and propound that the said is a man of an infamous and abandoned character, and is not to be believed on his oath, and who, for gain, would swear falsely in this or any other cause; and for and as such a man he is commonly accounted, reputed, and taken to be by those who know him. And this was and is true, public and notorious, and the party proponent doth allege and propound, of any other time, place, person or thing as shall from the proofs to be made in this cause, and every thing in this article contained, jointly and severally.

That all and singular the premises were and are true.

NOTE.—If there should be any objection on the part of a Proctor, to give in an exceptive allegation, containing libellous or actionable matter, the same may be given in by the party himself, and should be signed with his name; and this Form is prepared accordingly.

33 [109].

FORM of ALLEGATION specially exceptive to the Testimony or a Witness.

In the Vice-Admiralty Court of

[Insert names of Ship and Master.]

On the day of in the name and as the lawful Proctor of one of the parties in this cause and by all better and more effectual ways, means and methods which may be most beneficial and effectual for his said party, and by way of exception, and hereby excepting to the testimony of a witness, produced and examined in this cause, sayed, alleged, and in law articulately propounded as follows, to wit:—

That no faith or credit, at least none sufficient in law, is or ought to be given to the sayings or depositions of a witness produced, sworn and examined on the libel, bearing date the day of given in and admitted in this cause, on the part and behalf of the other party in this cause, for that the said hath on the examination on the article of the said libel [or "allegation," and otherwise as the fact may be] among other things, deposed in the words following: "That the said the party in this cause, was much too addicted to his grog, and in fact was as drunken and skulking a vagabond as ever he had the misfortune to sail with, and was the most slovenly and negligent an officer on board." Now the party proponent doth expressly allege and propound, that he the said hath therein knowingly and willfully deposed and sworn falsely and untruly, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that the

said hath, in the presence of divers credible witnesses, both shortly before and shortly after his examination in this cause, admitted and confessed that he had "never seen or known the said drunk on board the said ship during all the time that he and the said served on board the said ship together;" and that the said was "as smart and active an officer as the captain himself, or any other officer on board." And this was and is true, public and notorious, and so much the said doth know or hath heard, and in his conscience believes, and hath confessed to be true; and the party proponent doth allege and propound, of any other time, place, person or thing as shall appear from the proofs to be made in this cause, and every thing in this and the subsequent articles contained in this allegation, jointly and severally.

That whereas the said in his aforesaid examination, hath in answer to the interrogatories administered to him in the said cause, falsely and untruly answered, and said as follows: "That he attends to be examined as a witness at the request of the solicitor of the said who applied to the respondent for him, and told him that he must come as a witness for and that he must speak the truth of all that he knew between and the parties in this cause; and that the respondent has not otherwise had any meeting or consultations with or any other person concerning his being examined; and that he has not received, or been promised, nor does he expect to receive any reward, present, gratuity, or satisfaction for giving evidence in this cause." Now the party proponent doth expressly allege and propound, that the said hath in great part therein knowingly and willfully deposed, and sworn falsely and untruly, for the truth and fact was and is, and the party proponent doth expressly allege and propound, that subsequently to the examination of the said in this cause, he hath in conversation with several of his friends and acquaintances, admitted and confessed that he did receive money from the solicitor of the other party in this cause, in order to purchase a watch; that the said hath also stated to divers persons of good credit and reputation, that in his examination, meaning his examination in this cause, he hath said that he was not bribed, and on his being asked by them how he could so say, when he knew that the said had given him money to purchase a watch, he the said then answered, "No, no, that would have put an end to all;" and this was and is true, public and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true.

[To be signed by Counsel.]

34 [146].

FORM of ACT on PETITION in a Cause of Bottomry.

In the Vice-Admiralty Court of

[Insert names of ship and master.]

On the day of exhibited for [Insert name of Promoter's Proctor] of and alleged that his said parties are the lawful Attorneys of of merchants, the legal holders of a bottomry bond on the said ship, her tackle, apparel and furniture; and that the said ship in or about the month of in the year of our Lord being the property of respectively of merchants, and lying in the port of was chartered by of aforesaid, merchant, on a voyage from to and aforesaid; that the said ship arrived at aforesaid, and the master, standing in need of certain advances on account of the said ship, applied to the said to advance the necessary sum, and take his

bills drawn on for the amount in repayment; that the said house of
refused to comply with this request, but consented to advance
the money needful, on bottomry, on the said ship. And the said
 further alleged, that the said finding that he could not
obtain any advance otherwise than by bottomry, did apply to borrow,
and receive from the said for the necessary service and use of
the said ship, the sum of and for securing the repayment thereof,
the said did, in and by a bond of hypothecation, dated at
 aforesaid the day of by him duly executed,
become bound unto the said in the sum of lawful money
of being the amount of the said advances, with the maritime pre-
mium or interest thereon, after the rate of per cent., making to-
gether the sum of and for which payment he the said did
bind and hypothecate the said ship, her tackle, apparel and furniture,
and did covenant within one month after the arrival of the said vessel in the
river or any other port in to pay the said sum of
with a further interest of five per cent. until sixty days after payment of
the said sum. And it was further agreed that in case the said vessel did
not return into the river or any other port in at the end
of months, then at the expiration of the said months, and
the said vessel should not have been lost within that time, the said
 his executors or administrators, should, within twenty days
after the end and expiration of the said months pay or cause
to be paid the said sum, with the said interest, to the said
in order that they the said might not run the hazard of the
said sum upon the body of the said ship for a longer period than the said
 months, reckoned and accounted for as set forth in the said bond;
that the said vessel then sailed on her homeward voyage, and arrived in
 in the month of And the said further alleged,
that on or about the day of they the said for-
warded the said bottomry bond to of merchant, for recov-
ery thereof; that the said being at the time of the arrival of the
said bottomry bond in this country, in pecuniary embarrassments, neither
enforced the payment of the said bond on the arrival of the said ship, nor
answered the letters written to him from the said house of of
who in consequence, on or about the day of wrote a letter to
the said parties' said house of trade for them to apply to the said
 and inquire into the affair, and enforce the payment of the said
bottomry bond; that such letter was received by the said
parties' said house of trade, on or about the day of and on or
about the day of the said month the said house made application
accordingly to the said for his reasons for not enforcing the said
bond, who then stated it was necessary for the said to send over
a power of attorney for the said legally to represent them, before
any steps could be taken to enforce the said bond, and that the said
 had not enforced the said bond because he had not the said requi-
site power of attorney; that thereupon, to wit, on the day of the
said month of the said wrote a letter to the said
informing them thereof, and on the day of following the
said transmitted the required power of attorney, which was re-
ceived by his said house of trade of on the day of
following, who thereupon immediately made application to the said
 to deliver up the said bond, which he accordingly did, and then
gave sundry explanations, which led the said house of trade of
to apply to the said of the charterer of the said vessel for
the voyage, on which the said bond had been given as aforesaid, for the
payment thereof, but which the said refused; that on or about
the month of the said having ascertained that was

the acting owner of the said vessel, applied to him for payment of the said bond, who then stated that the claim had been settled with the said on the account of freight, when he the said had settled his account with the owners as the charterer of the said ship, as hereinbefore alleged; that the said further stated, that the said engaged to surrender the said bond to the said owners, and that if the said should be compelled to again pay the amount of the said bottomry bond, he would immediately arrest the said for the amount. And the said further alleged, that his said parties not having succeeded in obtaining the payment of the said bond, and having learnt that the said vessel was in the river about to proceed to sea in order to enforce payment of the said bond, and satisfy the just claims of the said in the month of applied to, and obtained the necessary warrant from the Vice-Admiralty Court of to arrest the said vessel in a suit of bottomry; but that the owners of the said vessel or some other person interested in her escape, having obtained information of the intended arrest, caused the said vessel immediately to proceed to sea, which she actually did, and could not therefore be arrested, though the said warrant issued on the day of the said month of And the said further alleged, that his said parties' said house of trade, having subsequently learnt that the said vessel was shortly again expected to return to this colony, obtained a further warrant to arrest the said vessel on her arrival, and the said vessel was finally arrested on the day of last at the port of where the said vessel had arrived; that it appears by the register of the said vessel that the lawful owners are the same at the present time as at the time the said bottomry bond was taken up upon the said vessel, as hereinafter set forth, save that the shares held in the joint names of and were in the month of transferred to the said alone, since a bankrupt; also that now represents shares in the said vessel, which were held by when the said bond was taken up. And the said does expressly allege, that though application has been frequently made for payment of the said bond, yet no part thereof has been paid either to the said or any person on their behalf, and that the whole amount thereof, as well principal as interest, still remains due and owing. And the said lastly alleged, that on or about the day of the month of last, the Proctor acting on behalf of the owners, accompanied by a person alleging himself to be duly authorized, called at the office of the said and stated either he was an owner, or acted on behalf of the owners, and that it was the wish of the owners of the said vessel to pay immediately the said bond and expenses, and requested on behalf of the owners that no further steps might be taken in order that the expenses might not be increased, as the bond would be forthwith paid; that the said immediately assured the said and the person who accompanied him as aforesaid, that no other step should be taken if the bond was immediately paid, but that in order to justify him the said for any delay, he requested the said to write him a letter to the effect of the said verbal communication, which the said promised to do, and accordingly on the day of being the very day on which the communication aforesaid took place, he the said received a letter of the following tenor:—

That on or about the following day the bill of costs of the said amounting to the sum of was handed to the said together with an account of the said bond and interest, as calculated by the said parties' said house of trade of but though the said

stopt proceedings in the said suit, yet the said owners subsequently have withheld payment of the said bond; and in verification of what he so alleged the said prayed leave to refer to the attestations, bond and proofs to be by him exhibited; wherefore he prayed the Worshipful the Judge would be pleased to pronounce, decree and declare that the said vessel was justly and lawfully hypothecated, and that the amount of the said bond may be decreed to be paid to his said parties with interest from the time the same became due, and expenses, and that otherwise right and justice may be effectually done and administered to him and his said parties in the premises.

Reply.

In the presence of denying the allegations of the said [*Insert name of Defendant's Proctor*] to be in great part true, and alleging that at the time the then owners of the said vessel entered into the aforesaid charter party with the said (to wit), in the month of of merchant, was a secret partner of him the said in the adventure in which the said vessel was then to be employed, and kept the accounts thereof as between him and the said that the said wrote to the firm of by the then master of the said vessel, introducing him to them, and requesting him to supply him the said with any monies he might have occasion for, for the services of the said vessel. And the said further alleged, that the said vessel on her return voyage arrived in the port of on the day of whereupon of ship-brokers, who had been employed originally in chartering the vessel, were appointed agents to the owners of the said vessel to settle the amount of freight with the charterer; that in adjusting the same it appeared that the sum of was the proportion of the aforesaid bottomry bond, for which as between the said owners and the said charterer the owners of the said vessel were liable, the remainder being for port charges and dues, which, by virtue of the aforesaid charter party, were agreed to be paid by the said that the said having had notice from the said of the particulars of the said bond, and being requested by him to deduct the amount thereof for the said freight, the said claimed of the owners to deduct the said sum of and the same was accordingly deducted from the amount of the said freight, and allowed to the said that it was thereupon agreed between the said on behalf of the owners, and the said that the said should state to the said that the amount of the said bond had been allowed in the freight account, and request him to deliver up the said bond, and that divers applications were made for the same to the said and by one of the said owners and others, but without effect. And the said then further alleged, that subsequently and whilst the said was the accredited agent of the said firm of and was in the actual possession of the aforesaid bottomry bond, with instructions from them to obtain the payment thereof, the said did in his account current with the said actually give credit for the said sum of as the agent of and for and on account of the said firm of the said having received a considerable portion of the freight, and having applied the same as the said conceived in reduction of so much of the said bond as consisted of port charges and dues; that from that time, to wit, the day of to the month of no application whatever was ever made, either to the present or late owners of the said vessel for payment of the said bond, but that in the said month of applica- tion was made to the said as set forth by the said that

the said parties heard nothing further of the said bond, or in relation thereto, until about the day of last, when the said vessel being then on her homeward voyage from his the said parties were informed that a warrant had been extracted from this Court for the purpose of arresting the said vessel, to enforce the payment of the said bottomry bond; and the said further alleged, that no actual presentation of the said bond was ever made to the said owners, nor has the same been seen by any of them. And the said further alleged, that the said vessel, after her aforesaid arrival in the port of on the day of continued therein until she sailed from thence on the day of for that she returned to the port of on the day of and remained there until she sailed from thence to on the day of that she returned to the port of on the day of and remained there until the day of in the same year, when she sailed from thence to that she returned to the port of on the day of and from that time until the month of was employed in the coal trade from to and back; that on the day of the said vessel cleared out from the port of and on the day of the said month left her moorings at and proceeded down the river and was at on the and in the on the day of the said month: and that the said owners, particularly the said the managing owner, was perfectly ignorant of any warrant having been obtained from the Vice-Admiralty Court of to arrest the said vessel, and that neither did the said owners, nor any person interested in her escape, cause the said vessel immediately to proceed to sea to avoid an arrest; but the said vessel was sent to sea in the due prosecution of the voyage last-mentioned, which was determined upon and her equipment preparing before the application before mentioned of the said to the said was made. And the said further alleged, that the interest which the said and had in the said vessel on the day of was assigned to the said on the day of and was again assigned by him to the said on the day of. And the said further alleged, that at the time of his attending at the office of as stated by the said he the said was accompanied by an attorney at law and solicitor, who, considering himself fully authorized so to do by the owners of the said vessel, applied to the said for an account of the debt and costs, as it had been a subject of consideration with the said owners, whether it would not be advisable to pay the demand on the said bond, and put up with the loss without their incurring law charges; and the said did request that no further expense might be incurred, but the said was then informed by the said that he understood some demand was intended to be made for insurance, and that if such was the case, the bond would be resisted altogether; and the said further informed the said that the money must be paid on the then next morning, or the proceedings would go on. And the said further alleged, that upon the bill of costs of the said together with an account of the said bond and interest being delivered, there was also charged therein the sum of for insurance paid by or on behalf of the said that the said having sent the said bill of costs and account of charges so delivered by as aforesaid to the said he the said subsequently instructed that the owners of the said vessel felt much hurt at the said charge for insurance paid on the said bond, and that considering the same an unjustifiable demand, and a point not cognizable by this Court, they had deter-

mined to try the validity of the bond itself, and they accordingly instructed the said to resist the payment thereof. And the said alleged, that the full amount of the said bottomry bond and interest, to wit, the sum of had been fully and duly paid to the said in the way and by the means aforesaid, during the time that he was the special agent, and for the use and benefit of the said firm of and whilst he had the said bond in his possession, and which he ought to have delivered up, and for which purpose it was sent over to him. And the said further alleged, that it was not necessary to have any special power of attorney for that purpose, the authority contained in the letter accompanying the said bond being in itself quite sufficient, as there was no opposition made to the payment of the said bond; and the said humbly contends that it is not competent to the holders of the said bond, after having acquiesced in the payment of the said bond from the month of notwithstanding they had the many opportunities before set forth of proceeding against the said ship for the payment thereof, to claim the payment of the said bond a second time; and in verification of what he so alleged as aforesaid, the said referred to the affidavits to be by him exhibited in this cause, and prayed that his parties may be dismissed from this suit, and the said parties condemned in the costs thereof.

Rejoinder.

In the presence of dissenting and denying the allegations of [*Insert name of Promoter's Proctor*] to be in great part true, and alleging as by him before alleged; and further alleging that if any secret partnership did actually exist between the said and the said were wholly ignorant thereof; that the money lent as aforesaid was lent on bottomry, and not on any personal credit whatever; that his the said parties could in no way be bound or prejudiced by any adjustment made between the said owners and charterers; and the said denies that either the said or their agent ever received the amount of the said bond or any part thereof, but on the contrary the same remains still due and owing; and the said denies that the said ever authorized or requested the said to deduct the amount thereof from the freight, as falsely and untruly alleged; and the said admits that the said and others were desirous of obtaining possession of the said bond, and may have often applied to the said to deliver up the same, but which he the said always declined to do until he should actually receive the payment thereof; and the said alleged that if the said did actually give credit as alleged by he did so without any authority whatever and illegally; and the said owners of the said vessel were thereby in nowise discharged from payment of the said bond, and of which they themselves were fully aware, as appears by their repeated applications they made to have the said bond delivered up: and the said expressly alleged that the said owners parties have and always have had their remedy at law against the said for any sum he may have surreptitiously obtained from them; whereas the said parties resident at have only their remedy against the said ship in this Court. And the said further alleged, that his said parties made every effort in their power to enforce payment of the said bond, as hereinbefore set forth; that the said ship had been a considerable time engaged in the coasting trade, but so soon as the owners had intimation that the agents of the bottomry bond holder were about to take steps against the said vessel, the said vessel was hastily sent to sea; that the said bond if not actually presented to the owners was well known to them both in

quarter-deck, waving his hat as a signal for the that at this time another strange sail to windward was seen bearing down upon them; that the stood on till she could letch the upon the other tack, and after wearing ship stood as near as possible towards the when hailed her, but could not make out any answer from the noise of the wind and the sea; that the other strange sail, which proved to be the of was still bearing down upon them, and presently hailed the and asked who she was and where bound, and being answered that she was and bound to the but intended to stay by the the then proceeded upon her voyage; that in consequence of the distressed situation of the and the said supposing her to be water-logged, he immediately ordered a whale-boat to be lowered, and went in her himself, taking with him men, who had volunteered to accompany him, all of whom, with the said notwithstanding the severity of the cold, wore only their shirts and drawers to be free to attempt to save themselves in the event of the boat capsizing, of which there was a great probability: that they pulled away towards the brig, through a tremendous sea, and at the greatest risk of their lives, the wind still blowing a heavy gale insomuch as nearly to prevent them from effecting their object altogether, but that by great perseverance and skilful steering the men succeeded in pulling up under the said brig's stern, though it was found utterly impossible to go along side her; that addressing the master, asked where he was from, who answered from and inquired if said was mate of the barque, and upon being informed he was, the master of her, then asked him, "What do you think is best to be done; shall I stop a little longer with her or shall I leave her, and where will you land me if I leave her?" that replied, he might stay by her a little longer and see how it would be, but that if he took him and his people out he must land them at the first port, or at that by this time the said succeeded in boarding the brig over her stern by means of a rope and by the rising of the sea; that on getting on the brig's deck, the said the master took the said by the hand, and said he was glad to see him safe on board, observing that he thought him a madman for attempting to lower his boat down in such weather, and that he took the either for a man-of-war or a packet from his venturing to wear ship in such a heavy sea, and added, that he had not seen the boat until she was half way between the two vessels: that the sea at this time breaking over the the said proposed to get a little sail on her; that a jib for a main-staysail, and a top-gallantsail for a mainsail, were accordingly bent with the assistance of the said and one of his boat's crew, who had by this time also boarded the over her stern; that the was pumped several times whilst the said was on board her, and it was found that she had made some water; that the crew consisted of a master, mate and ten hands, five or six of whom were below sick, and the others were so worn out with fatigue as to be scarcely able to lend a hand to anything; that it was about this time o'clock in the evening, and the said observed to the master he must think of returning to his ship, and told him to be sure and hoist a light when it became dark, and that if the weather (which was at this time somewhat moderated) came on worse, he the said would lower his boat again and come and take his crew out; that the said then begged the said to lay by him during the night, which he promised to do; that then said, "If I stay by the ship, will you lie by me and take me in tow in the morning?" and the said told him he would; that then asked the said

how he meant to get into his boat again, alluding to the difficulty of his so doing from the rolling and pitching of the brig, to which he replied, that if he could get in no other way, he should jump overboard and get in but that the said and by watching their opportunity, at last succeeded in throwing themselves into the boat over the brig's stern, when they put off and with great difficulty reached the in safety; that by this time it had become dark, and a light was hoisted on board the which was answered by the hoisting a light at the mast-head; that the kept close by the all night, during which there were several squalls of wind and rain; that the next morning, the day of the same boat was lowered from the and the said and the same men who had gone on the previous day, and also the second mate, again proceeded to the and carried with them a whale-line, made fast to a hawser, on board the that by means of this line one end of the hawser was hauled on board the and there made fast as a tow-ropes, and that in like manner the end of another hawser was conveyed from the to the and there made fast as a second tow rope; that on their all boarding the (except two hands left in the boat) the tow-ropes was made fast, and the said proposed to to rig a jury foremast, which was accordingly done, and that a spare main-yard was then got up, and a topsail bent for a main-sail, the whole of which was accomplished by the said and his men, and assisted by some of the crew, most of whom, however, from sickness and fatigue, were very inefficient; that while on board the second day, the said gave the said the copy of the manifest, which he said he had made out for the quarantine vessel, and in the course of conversation remarked, that he should be very glad to have the brig taken into port, as part of her belonged to his relations; that the said leaving the second mate, on board the returned to the to dinner, taking with him; after which they again went back to the that about o'clock same afternoon quitted the for the night, and returned to his own vessel, still leaving on board the former to give any assistance that might be required; that having previously consulted with the officers and crew of the who had all agreed to join in their endeavours to save the and her crew from destruction, and to conduct her to the first port, determined to do so, and made sail for taking the in tow, and so proceeded during the night; that very early the following morning, the day of aforesaid, it having come on to blow harder, they parted the tow-ropes, on which the lay by the until they could get other hawsers ready, but it blew so fresh, and with so heavy a sea running, that did not deem it safe to send a boat with them, but keeping the right in the wake, he threw a life buoy overboard, with a whale line attached to it, and which was picked up by the and thus two new tow-lines were made fast, and the again made sail with the in tow, and so proceeded during that day, occasionally giving directions to who remained on board the (by speaking to him through a trumpet) to look after the tow-ropes, and keep them well served; that early in the morning of the day of the same month of they made which bore south by west-half-west, distant about miles; that about o'clock in the forenoon of the following day there were several sail in sight, and the weather having become more moderate, sent his chief mate, on board the to ask the said the master to dinner, and which he accordingly did; that on coming on board the deck, he expressed himself very gratefully to for

the way in which he had acted towards him, observing that he () had fully expected, from their being so close to the coast, with the wind and sea on shore, and the not lying better than E. N. E. that must have been obliged to have cast the adrift to save his own ship, and which must have led to the loss of the that also frequently he said, he had to thank them all for saving the lives of himself and crew and his ship, and observed to in the presence of some of the officers, that if he () got the whole salvage for himself alone, he would not be too well paid, and this he repeated on sitting down to dinner, adding that he should never be able to do enough to acknowledge his gratitude to and his ship's company for saving their lives; that during dinner expressed a hope that they should get into port, and re- marked he did not care how soon, as he was losing his time and sea- son; that it became equally squally towards the evening, and the jib was thereby carried away, and sent a boat with on his return to the that they proceeded with the in tow during that night, but owing to the heavy squalls they were unable to fetch a port, though they saw the lighthouse bearing N. N. west, distant about leagues; that the next day, the day of the light bore N. E. by east, distant miles, and at o'clock in the morning of that day they took a pilot, on board the and tacked with the still in tow, when the came in contact with the and stove her starboard-quarter boat, and car- ried away the davit; that just before noon again sent his boat to ask to come on board to dine with him, and the pilot and he did so: that described to the pilot the danger the had been in, and what had done for him, expressing himself gratefully as be- fore; that returned to the in the evening, and on the fol- lowing morning about o'clock, being then off went in his boat with hands on board the still in tow of the in order the better to assist in getting her into the port of that they took a pilot also on board the off that they run with a fair wind into where the anchored, but not thinking that a safe place for the to lie in the state in which she was, and with a view to save expense, told he thought it would be best at once to go into the harbour of to which he readily assented, and they accordingly did so, slipping the tow-ropes, when inside the after which, having a gentle breeze, the was taken safely into and brought to an anchor there, the having been engaged altogether days from the time of first falling in with the until their arrival at as aforesaid; that from the time of the first falling in with the until her arrival at in consequence of the sickly state of several of the crew of the , the surgeon of the constantly attended and took care of them, and thereby greatly assisted in restoring them to health. And the said further alleged that the belonging to his said parties Messrs. and was of the value of pounds, and was insured for that sum, and that in addition to having vitiated the policies of insurance, and hazarded and ran the risk of the loss of the said ship by deviating from her voyage, in rendering assistance and preserving the said ship as before set forth, his said parties will still run a great risk of losing their season in the and of being superseded by other ships, and thereby suffer enor- mous loss; also, that in addition thereto, they have already sustained in expenses of repairs, demurrage, and other incidental charges consequent on the loss of time, and the damage sustained by their said barque in rendering assistance to the said brig (exclusive of the

sum of _____ for which the damaged hawsers and cordage were sold),
 the sum of _____ And the said _____ lastly alleged, that no boat
 but a whale-boat could possibly have lived in the heavy sea in which the
 said _____ and his crew went to the assistance of the _____ but
 which, for some such timely and efficient assistance, the crew, vessel and
 cargo must have inevitably been lost; and in verification of what he so
 alleged, the said _____ prays leave to refer to the attestations and
 proofs to be by him exhibited, and that the Worshipful the Judge would
 be pleased to decree such sum of money out of the sum of _____ the
 agreed value of the said brig. cargo and freight, to be due to his said
 parties as a compensation for the said salvage services and losses, as to
 him shall seem meet, together with their expense-, and also to condemn
 the said _____ parties, and the bail given on their behalf therein.

Reply.

In the presence of [*Insert name of Defendant's Proctor*] Proctor for the
 owner of the brig or vessel called the _____ and her cargo, dissent
 ing and denying the allegation of _____ to be in great part true;
 and he alleged, that on the _____ day of _____ he brought
 into and left in the Registry of this Court the sum of _____ which
 he tendered, together with such costs as may be due by law for the servi-
 ces rendered by the said _____ parties, and for the expenses and
 further sums which may have been expended for the repair of damages
 actually sustained by the said barque _____ in the performances of
 the said services. And the said _____ further alleged, that the said
 _____ sailed from _____ on the _____ day of _____ with
 a cargo of _____ and _____ bound therewith to _____ at which
 time the said _____ was tight, strong, staunch and sea-worthy, and
 fit and well found manned, tackled, provided and in good order and con-
 dition in all respects; that on the _____ and _____ days of _____ the
 said _____ experienced some gales and heavy sea, whereby she sus-
 tained some damage; that on the _____ day of _____ at about
 o'clock a. m. a sudden gust of wind split her foresail, and that the gale
 continued, and about _____ o'clock a. m. of the _____ day of _____ a heavy
 sea struck the said _____ and carried away her bowsprit, foremast,
 main-topmast, and the head of the mainmast, and some of her rigging;
 that with considerable exertion the said master and the crew of the said
 _____ which consisted of _____ officers and seamen, succeeded in cut-
 ting away and clearing the wreck, and having so done, they set the try-
 sail close reefed for the purpose of keeping the vessel to the wind, but the
 sea broke into the said sail, and rent and tore away a considerable part
 thereof, and at _____ o'clock p. m. a topmast-studdingsail was set in the
 main-rigging to keep the vessel to the wind; that the vessel continued
 under sail and without sustaining any further damage; that about
 o'clock a. m. of the _____ of the said month of _____ the said
 vessel was in latitude _____ and longitude _____ and was lying to for the
 purpose of rigging a jury foremast and bowsprit in order to make sail;
 and whilst the said vessel was so lying to, and about _____ o'clock
 a. m. a sail was discovered, which afterwards proved to be the barque
 _____ of _____ that at such time the sea was not making a
 clear breach over the said vessel, as is alleged, on the contrary the fire
 was burning in the galley, where the crew had just before cooked their
 breakfast; that the said vessel's colours were not hoisted until after
 the said barque _____ hove in sight, at which time they were
 hoisted to show the national character of the vessel (the _____
 having previously done the like), and not as a signal of distress, the
 union on the said colours being upwards and not downwards, and some
 of the crew of the _____ were standing in the rigging and en-

gaged in reefing a peak hallyard for the purpose of hoisting a trysail ; that the _____ then wore ship, and came to the windward of the _____ and the master of the _____ by means of a speaking-trumpet, asked whether he should lower his boat down, to which the said _____ answered, " No," three times. and inquired, as is usually done when ships meet, what was his longitude ; that the _____ then wore ship again, and came to the leeward of the _____ and showed his longitude chalked on a board ; that the said _____ the master, then inquired from what meridian, and was answered from Greenwich ; that the _____ then passed astern of the _____ and hove to, at too great a distance for hailing, upon which the said _____ standing on the quarter-deck of the _____ waved his hat, and at the same time held up a speaking-trumpet, thereby meaning to intimate to the said _____ that he wished the _____ to come near enough to the _____ to enable him by means of his speaking trumpet to speak to the persons on board the _____ but not as a signal for a boat to be lowered ; that at this time a ship passed close under the stern of the _____ and inquired from whence she came, and when she was dismasted, upon which the said _____ answered, that she came from _____ and had been dismasted the preceding morning at _____ o'clock, and the said _____ inquired what was the longitude of the _____ and the ship then sailed to the _____ and the said _____ on the next day informed the said _____ that the captain or master of the said ship, did at such time inquire of him the said _____ whether he intended to stay by the _____ and that he the said _____ told him that he did intend to do so ; that the ship soon after passed the _____ and the _____ then lowered her whale-boat, and the said _____ the master, and of the crew of the _____ came therein to the stern of the _____ but the said _____ denied that the said _____ and the said _____ men then wore their shirts and drawers only ; and he alleged that the said _____ wore blue trousers, a waiscoat, his stockings and a cap, and that all the said _____ men wore jackets and trousers, or Guernsey frocks and caps, and were dressed as sailors usually are in boats in severe weather, and when no danger is apprehended ; that although the sea was then high, it was not tremendous, nor did the wind at such time blow a heavy gale ; that the men belonging to the _____ who so came on board the _____ declared that the sea through which they had passed was nothing to that in which the whaling ships sometimes lowered their boats when fishing for whales, and that they apprehended no danger ; and the said _____ denied that when the said _____ so came on board the said vessel the said _____ had any intention whatever of leaving his said brig, and alleged that he did not consider her condition and situation was such as to render it necessary, and he further alleged, that whilst the said _____ was in the said whale-boat, at the stern of the _____ he, in conversation with the said _____ observed that the weather looked very bad to windward, and it appeared as if it would blow another gale of wind, and if so, he should not be able to take the said _____ and his crew out of the vessel, and the said _____ in answer to such observation, declared that the condition of the _____ was not such as to render it by any means necessary for himself and crew to quit her, and that without assistance she might safely be got into port ; that the said _____ then asked what he the said _____ would do with them, if the wind should blow a heavy gale, and he and the crew should be obliged to leave the vessel ; whereupon the said _____ in answer told him that he would land them at the first port he could make, or at _____ that the said _____ then asked the said _____ what he thought had best be done, to which he answered, that he would stay by the _____ and when the sea became moderate he would take her in

tow, or a conversation to that effect then passed between them, and it was agreed that he should do so; that on the said _____ coming on board the _____ the said _____ took him by the hand and thanked him for coming on board, but did not as is alleged tell him he thought him a madman for attempting to lower his boat in such weather; that the sea did not at such time break over the _____ and that shortly after the said _____ came on board it was agreed between them and the said _____ that some sail should be got on the _____ and in the course of the day a jib-boom was converted into a bowsprit, and a jib-sail set thereon, and another jib was set on the mainstay as a staysail, and a topsail for a mainsail, and a damaged trysail were also set, which was effected by the joint exertions of all the crew of the _____ who worked and exerted, with the exception of three men, viz. _____ an ordinary seaman, _____ the sailmaker, and _____ the cook, who were ill below; that the crew in so doing were assisted by the said _____ and one of his boat's crew who also came on board the _____ that about _____ o'clock in the afternoon the said _____ and his man who had so come on board left the _____ and returned in the aforesaid boat to the _____ such boat, with the other _____ men therein, having remained at the stern of the _____ that shortly before the said _____ so quitted the _____ he requested the said _____ to give him a copy of his manifest, which he _____ accordingly did; that in the evening the sea became moderate, and continued so all night, and the weather was fine and starlight, and there was no rain until the next morning, when there was a slight shower, without any squall of wind, and that with the sails which were set the _____ sailed during the night at the rate of about _____ knots per hour; that the _____ kept near the _____ and both vessels carried lights, and in the course of the night three sail of vessels with lights came very near the _____ that on the next morning, being the _____ day of _____ the sea having gone down sufficiently for the purpose, the _____ was taken in tow by the _____ as agreed, by means of a hawser hauled from the _____ to the _____ and a jury foremast was at the suggestion of the said _____ constructed and set up during the day, and a spare fore-topmast for a foremast, and a spare jib-boom for a bowsprit, were set up and rigged, and sails set thereon; that such work was performed by the crew of the _____ with the exception only of the said _____ who still continued ill, (the said _____ and _____ having recovered sufficiently to enable them to work,) and with the assistance of the master and mate of the _____ that about _____ o'clock that afternoon the said master and seamen of the _____ returned on board their said vessel, leaving the said mate on board the _____ that the said sails which were so set at the head of the vessel, with the after-sails which were standing, caused the _____ to steer well under command, to answer the helm, and to go with the wind a-beam at the rate of _____ knots per hour; that the said vessel _____ continued to tow the _____ when the weather which was generally moderate, permitted, and that by means of sailing and towing, and with a wind generally north westerly and without squalls, and a sea generally moderate, the said brig _____ with the barque _____ arrived in _____ at about _____ o'clock in the morning of the _____ day of _____. And the said _____ further alleged, that after the said _____ day of _____ the _____ did not experience any heavy squalls, and that no occurrence of any consequence happened, with the exception that the tow-ropes, one of which belonged to the _____ and the other to the _____ breaking at once, each in the course of the towing; that none of the crew (with the exception of _____) was, after the said _____ day of _____ in a sickly state, and that the surgeon of the _____ came on board the _____ but twice, and that the last time was on the _____ day of _____ when the said vessel was off the _____ light-house, when he came on board the _____ and gave some advice and medicine to _____ and _____ the first having a cold, and

the second a sore on his leg. And the said further alleged, that the would not have been lost if the had not come to her assistance; and that the crew of the said ship would without their assistance have been enabled to set up and rig the jury-mast, and thereby the brig would in all probability have reached or and that the did not run any risk of being lost by rendering the assistance to the that the remained at until the day of notwithstanding the wind was generally from the north-west to north-east, and favourable for her to have left and proceeded on her voyage. And he further alleged, that the policies of insurance of the said have not become vitiated by her having deviated from her voyage; and that the said barque has pursued her fishing adventure without any additional premium having been paid for her insurance; and in verification of what he so alleged, he prayed leave to refer to the attestations to be by him exhibited, and he prayed the Worshipful the Judge would be pleased to pronounce the tender made by him the said to be a sufficient compensation for the services rendered by the said parties, and to condemn them in the costs of his said parties, incurred and to be incurred subsequent to such tender being made.

Rejoinder.

In the presence of dissenting and denying the allegations of (*Insert name of Promoter's Proctor*) to be true, and further alleging that the said parties, Messrs. , and the owners of the said barque having received a letter from on the day of stating that he had just arrived at with the brig in tow; his said parties immediately, to wit, on the same evening, dispatched the overseer of their shipping department, by the mail to for the purpose of inspecting and seeing to the said being immediately refitted and sent to sea again; that the said arrived at on the evening of the day of the said month, and took every means of carrying his said instructions into execution, and that all due diligence was thereupon used, as well in refitting the said barque as in procuring the requisite survey, protest and evidence for this Court. And he further alleged, that the said barque ultimately left on the day of said month of in the prosecution of her voyage, and not on the day of the said month, as is untruly alleged by And he lastly alleged, that it was impossible under the circumstances for the said barque to have proceeded to sea sooner; wherefore he alleged and prayed as before.

In the presence of dissenting, denying and alleging as before; whereupon the Judge assigned to hear, on petition of both Proctors, on the day of

(Signed)

(Signed)

No. 36 [148.]

*Form of "ACT on PETITION" in Objection to the Payment of the Amount of the Bond given for the safe Return of a Vessel to the Port to which she belongs.**

In the Vice-Admiralty Court of

[*Insert names of Ship and Master.*]

On which day appeared for and two of the parties monished in this cause, and alleged that his said parties were

* It would have been equally competent and more usual for the Promoter to begin the "Act on Petition," and it is imperative in him so to do, if the Defendant require it.

owners of parts of the said ship and that on the day of and as sureties for his said parties entered into a certain recognizance to the party promoting this cause, the owner of the remaining parts of the said ship, in the sum of to answer the action brought in this Court by the said to restrain the said ship from proceeding to sea until bail should be given for the safe return of the said ship to the port of to the amount of the share of the said therein; and the said declared he objected to the payment of the said sum of pursuant to the tenor of the said monition, and p.ayed to be heard on his petition in objection thereto, and he then brought in the said sum of as being the amount of the said bail subject to the decree to be made in this cause; and the said in support of such his objection further alleged that his said parties being dissatisfied with the accounts of the said who was managing owner of the said vessel on a previous voyage to and such accounts having been made the subject of reference, upon which reference a decision was given by the referees in favour of his said parties and against the said his said parties having a majority of interest in the said ship determined to take upon themselves the management of her; that upon such their intention being made known to the said he arrested the said ship together with her tackle, apparel and furniture, in this Court, until bail should be given in the sum of being the alleged value of his the said's share in the said ship for the safe return of the said ship to the port of to which port she belonged; that such bail was accordingly given by the sureties aforesaid on behalf of his said parties on the aforesaid day of and the said ship was thereupon decreed to be released from the said arrest; that upon his said parties taking possession of the said ship her sails were not on board, but had been removed on shore by the said and placed by him in the custody of of sailmaker, who refused to deliver them up without the authority of the said that repeated applications were made to the said to give an authority for the delivery of the said sails, with which applications he refused to comply without alleging any reason for such his refusal, nor did the said claim to detain the said sails on any other ground than the want of an order from the said to deliver. And the said further alleged, that the said persons persisting in such refusal, the Worshipful the Judge of this Court, was pleased on the day of to decree a monition against the said and monishing them to deliver up the said sails, or to appear and shew cause to the contrary, and such monition having been personally served on them, was on the day of returned into Court, but no appearance was given thereto. And the said further alleged, that notice having been given to the Proctor of the said that the said ship was expected to be in readiness to proceed to on her then intended voyage on or about the day of the said month of and that unless the said sails were immediately delivered up, an attachment would be prayed to issue against them on the ensuing court day, the sails belonging to the said ship were then, and not before, put on board the said ship. And the said further alleged, that immediately upon the release of the said ship from the aforesaid arrest on the aforesaid day of his said parties advertised for freight and passengers for the said ship upon a voyage to and divers persons engaged themselves to go as passengers therein, and made deposits in advance of the amount agreed to be paid by them for their passage, and divers others engaged for freight to a considerable amount for goods agreed to be shipped by them on their account, and his said parties had well grounded expectations that the said ship would make an advantageous voyage, and the ship's sails having as aforesaid been obtained she was about to proceed to to complete her lading and receive her passengers on board, when on the

said day of the said month of being the very day on which it was intended the said ship should proceed to as aforesaid, the said obtained an ex parte injunction from the Court of Chancery, whereby the said and and their agents were restrained from navigating, sending, chartering or freight- ing the said ship from the said port of to any other port or on any voyage whatsoever, and also from contracting any debts or enter- ing into any engagements or liabilities whatsoever as owners of the said ship; that such injunction was obtained by the said upon a bill filed by him on the day of the said month of in which bill no mention whatever was made of the proceedings thence- fore had by him against the said ship in this Court, or of his the said having obtained security therein by the aforesaid bail to the full extent of his share for the safe return of the said ship as aforesaid, but such fact was entirely suppressed, nor was any notice whatever given to his said parties, or to either of them, of the intention to file such bill, notwithstanding that the said one of his said parties, as well as the said were carrying on business in And the said further alleged, that an answer having been given to such bill, and affidavits filed on both sides, the matter came on for hearing in the said Court of Chancery, the day of the said month of when the said injunction was dissolved; and he further alleged, that the said as well previous to as during the said proceedings in the said Court of Chancery, for the very purpose, as he frequently declared, of inducing persons who had, or proposed to make shipments of goods, to withdraw or decline making the same, circulated the report that the said ship was unseaworthy, and unfit for the voyage, upon which it was proposed to send her into dock for re- pairs; and the said moreover proposed and applied to the sur- veyors employed by the underwriters, and endeavoured to prevail upon them to report the said ship to be unseaworthy, which they re- used to do; that in consequence of the said reports and of the said pro- ceedings in the Court of Chancery, many of the said passengers did decline sailing in the said ship, and divers others of the said persons who had engaged to make shipments of goods upon freight, also with- drew from their engagements and made such shipments in other ves- sels. And the said further alleged, that in consequence of the said injunction, the said ship was prevented proceeding to in the prosecution of her said voyage on the said day of as it was proposed and intended she should have done, and by which she would have been enabled to have proceeded to sea in the further prosecution of the said voyage at the latest, but being stopped by the said injunction, she did not reach until the day of the month of following, and did not in consequence set sail in the further prosecution of her voyage until the day of the said month of that on the day next following, she encountered a heavy gale of wind, and having sustained considerable damage, was, with the assistance of certain boatmen, carried into and a sum of was awarded for salvage and paid to the said boatmen by his said parties, and in addition thereto a further considerable sum was also paid by them for repair of damage done to the said ship by the said gale; that the said ship having undergone such repair, she again proceeded in the prosecution of her said voyage, and arrived in safety at her port of destination, and was proceeding on her return to this country with a full cargo, when she was wrecked near and totally lost. And the said further alleged and humbly submitted, that the said having sought and obtained security in this Court to the full amount of his share and interest in the said ship for her safe return to the port of was by law bound to abstain from all interference in the concerns of the said ship, and from any act or acts whatsoever to the prejudice of the said ship or of his the said parties as part owners thereof, and is bound to indemnify his said parties for all such loss, costs, damages, salvage,

demurrage and expenses as they have been put to, or have sustained by reason of such interference of him the said _____ in the concerns of the said ship as aforesaid, and that by such the interference of the said _____ in the concerns of the said ship and the aforesaid injunction obtained by him, great loss, costs, damages and expenses have been sustained and incurred by his said parties, and particularly by the loss of freight and passage-money, and for demurrage and salvage, with other expenses as aforesaid; and in verification of what he so alleged, the said _____ craved leave to refer to certain affidavits now remaining in, and to others which he will bring into and leave in the Registry of this Court, and also to the acts and records of this Court. Wherefore the said _____ prayed that the Worshipful the Judge will be pleased to refer to the Registrar and merchants, to inquire what loss, costs, damages, salvage, demurrage and expenses have been paid, sustained and incurred by his said parties, in consequence of such the interference of the said _____ in the concerns of the said ship, and his having by the injunction by him obtained, prevented her proceeding to sea, and to report the amount thereof to this Court, and that such amount may be deducted from the aforesaid sum of _____ the amount of the aforesaid bail, now remaining in the Registry of this Court, and paid out to his said parties or for their use; and that the said _____ may be condemned in the costs of this petition.

Reply.

In the presence of _____ Proctor for the said _____ the owner of _____ parts or shares of the said ship or vessel _____ the party promoting this cause, dissenting and denying the allegations of the said _____ in great part to be true, and alleging that in the year _____ the said ship _____ being then newly built, his said party the said _____ became the proprietors of _____ parts or shares thereof, and thereupon by the appointment of the other owners thereof, took the command of the said ship; that between that period and the year _____ he continued to command the said ship and sailed in her three voyages from this country to _____ and back, and became thoroughly acquainted with the state and condition of the said ship, her capabilities and imperfections; that in the month of _____ in the said year _____ the said ship being then in _____ his said party purchased from the other owners, four more parts or shares therein, which he shortly afterwards, to wit, in the same month of _____ resold at the same price at which he had himself purchased them to the aforesaid _____ described in this cause as late commander of the said ship, and thereupon resigned the command of the said ship in favour of the said _____ without making any additional charge for such resignation as is usually done in such cases. And he further alleged, that it was expressly agreed and understood between the said _____ and _____ that his the said _____'s party should thenceforth be the managing owner of the said ship, and that the said _____ in order to secure to the said _____ such management thereof, should retain the aforesaid shares in his own hands, but notwithstanding such agreement the said _____ immediately sold and transferred the said _____ shares to _____ of _____ one of the parties in this cause; that shortly after such last-mentioned transfer of the said shares, which was kept secret from the said _____ the said ship proceeded on her voyage to _____ under the command of the said _____ and under the management of the said _____ and having performed the said voyage returned to _____ in or about the month of _____. And the said _____ further alleged, that during her voyage last-mentioned the said _____ having written to his said party, as managing owner, to complain of a great deficiency in some of the provisions supplied to the said ship, which provisions had been purchased by his said party of the aforesaid _____ one of the parties

in this cause, and who was the agent of the said his said party on the return of the said to was desirous of instituting an inquiry into the cause of the said complaint; that the said upon learning that the provisions so complained of had been supplied by the said refused to afford the said any assistance or information whereby he might claim from the said an account of, and allowance for, the deficiency in the said provisions; that his said party then for the first time discovered that the said had transferred his said shares in the said ship to the said as before mentioned, and that the said had afterwards, while the said ship was on her said voyage, sold and transferred one of the said shares to the said that his said party the said persisting in his inquiries respecting the deficiency in the provisions supplied to the said ship as aforesaid, the said and thereupon came forward in their capacity of part owners of the said ship, and made various objections to the accounts of his said party, as managing owner of the said ship, during her said voyage; and the said admitted that the said accounts of his said party, as well as all matters in dispute between him and the said Messrs. and were subsequently, by consent of all parties, referred generally to arbitration, but he denied that upon such reference the decision was given in favour of the said and for he expressly alleged that the arbitrators to whom such matters were referred by their award in writing, made and published under their respective hands, in or about the day of gave their decision upon the only material point at issue between his said party and the said and which related to the knowledge on board the said ship, wholly in favour of his said party, and ordered that the whole charge and expenses of their said award should be paid and borne by the said and

And the said further alleged, that the said and having then recently purchased one other share of the said ship, and thereby became possessed of a majority of interest in the same, his said party for the purpose of avoiding the disputes which he foresaw would probably arise between himself and the said and in respect to the conduct and management of the said ship's concerns, made proposals to the said Messrs. and for the sale of his own shares to them or for the purchase by him of the shares of the said Messrs. and at a price to be named by either party, or on any other terms by which the transfer of the whole of the said ship to either party might be amicably arranged, but the said Messrs. and constantly refused to accede to such arrangement. And the said further alleged, that the said and having without any consultation with his said party, made preparations for sending the said ship on a voyage to and for that purpose having ordered considerable and expensive alterations to be made therein, his said party conceiving that his interest was likely to be prejudiced by such voyage, signified his dissent to such voyage to the said Messrs. and but no attention having been paid by them to such notification of his dissent, his said party in the month of caused the said ship, her tackle, apparel and furniture to be arrested in this Court until bail should be given for the safe return thereof to the port of in the sum of the value thereof, being the sum at which his said party had offered to sell his said shares, and after the same rate to purchase the shares of the said Messrs. and that such valuation having been admitted on behalf of Messrs. and bail was accordingly given on the day of the said month of and the said ship, her tackle, apparel and furniture were thereupon decreed to be released from such arrest; and the said admitted that upon the said ship being released from arrest as aforesaid, her sails were not on board of her, but were then in the custody of the said of aforesaid, sail-

maker, in whose storehouse the same had, as is usual on similar occasions, been deposited immediately on the return of the said vessel from her last voyage in the month of _____ as aforesaid, for the safe custody, and not with a view of offering any obstacle to the employment of the said vessel. And the said _____ further admitted, that the said _____ did on the occasion aforesaid refuse to deliver up the said sails without an order from his said party, the said _____ and that application was made to his said party to give such order to the said _____ and that his said party did at first decline to comply with such application for the reasons hereinafter alleged, and that a monition to the effect alleged by the said _____ was extracted and served on his said party and the said _____ and that on or about the day of _____ in the said year _____ the said sails were put on board the said ship, but she said _____ expressly alleged that the said sails were so delivered up in virtue of an agreement entered into between him the said _____ and the Proctor of the said Messrs. _____ and that all proceedings upon the said monition should be abandoned, and that the costs of the said monition should be paid by the said Messrs. _____ and _____ And the said _____ further alleged, that shortly after bail had been given for the safe return of the said ship to _____ as aforesaid, information was given to his said party, the said _____ that the said Messrs. _____ and _____ were causing various expensive alterations to be made in and about the said ship, particularly by the erection of a poop, and the enlargement of the top-gallant fore-castle and the scuttles, which said alterations his said party was satisfied, from his knowledge of the said ship acquired as aforesaid, were calculated materially to weaken the said ship, if not to render her unseaworthy, and at the same time that they were neglecting to make sundry repairs, especially as to her copper and caulking, of which the said ship stood in absolute need; that his said party did in consequence from time to time during the course of such alterations, and previous to the completing thereof, represent to the said Messrs. _____ and _____ and to their agents, his objections to, and his apprehension of danger from the measures they were taking in respect to the said ship, and particularly by a letter bearing date on or about the day of _____ addressed to the said Messrs. _____ and _____ the said _____ pointed out fully and specifically his objections to the same; that the said Messrs. _____ and _____ having paid no attention whatever to such remonstrances of his said party, but on the contrary persisting in their intention of sending the said ship to sea with the alterations and without the repairs aforesaid, and consequently as his said party conceived in an unseaworthy state and condition, his said party in order to protect himself, as well from the legal liabilities which would attach to him as the registered owner of a vessel proceeding to sea in that condition, as from the charges and expenses incurred in and about the alterations made in the said ship, and from which he had dissented as aforesaid (against which liabilities and charges or expenses the security given to his said party in this Court aforesaid for the safe return of the said ship, afforded him no protection or indemnity whatsoever), did file his bill in the Court of Chancery against the said Messrs. _____ and _____ wherein after setting forth the facts herein-before alleged on behalf of his said party, his said party prayed, "That the said _____ and _____ might answer the said bill, and that an account might be taken of the costs, charges and expenses incurred and sustained in the said alterations in the said ship, so done by the directions of the said _____ and _____ and that they might be decreed to bear, pay and sustain the whole of such costs, charges and expenses, and that an account might be taken of all others the debts, liabilities and engagements, which, under the circumstances in the said bill (and herein-before mentioned), were incurred, entered into or contracted by the said _____ and _____ as part owners of the said ship, and that they might be decreed to pay and discharge the whole of such

debts, liabilities or engagements, or indemnify the said therefrom; and that in the mean time the said and their agents and servants might be restrained by the injunction of that Court from navigating, sending, chartering or freighting the said ship, from the port of to any other port or on any voyage whatsoever; and that they might also be restrained, as such part owners of the said ship, from contracting any debts or entering into any engagements or liabilities whatsoever." And the said further alleged, that while his said party was preparing for such application to the Court of Chancery, he was required by the said Messrs. and to give an order to the said for the delivery of the sails of the said ship as aforesaid, and that his said party did, under the advice of Counsel, decline at such time to give such order, or personally to interfere in any manner between the said Messrs. and and the said denied that any delay whatsoever was occasioned in the preparation of the said ship for her said intended voyage by the said refusing to deliver up the sails of the said ship as aforesaid; for he alleged that the said sails were put on board the said ship long before she was in readiness to proceed to sea, and that the said ship did not in fact get out of the into the river until some time after the delivery of the said sails, to wit, on or about the day of following. And the said further alleged and admitted, that his said party having filed affidavits in support of the allegations contained in his said bill in the said Court of Chancery, in order to expedite the hearing of his complaint, and according to the practice of the said Court of Chancery, but in nowise irregularly, did on or about the day of apply for an injunction from the said Court, in the terms of the prayer of his aforesaid bill, and that the Court, having heard the aforesaid affidavits and matters in the said bill, granted the said injunction. And the said further alleged, that the said injunction was thereupon served on the parties against whom the said was granted, with all possible expedition; and that he expressly denies that there was any unnecessary delay either in the application for a service of the said injunction, or that his said party had any other motive in the obtaining and serving the said injunction, than a due regard for the protection of his own interest; and the said admitted that on the of the said month of the said Court, having heard affidavits on both sides and Counsel thereon, dissolved the said injunction. And the said further alleged, that the proceedings thenceforth had in this Court, and the security obtained thereon to the amount of his said party's interest in the said ship for her safe return as aforesaid, were, under the advice of Counsel, omitted to be stated as irrelevant to the said question in the said Court of Chancery, the proceedings therein having been instituted solely for the protection of his said party against the liabilities to which he might be exposed by sending the said ship to sea in the condition, and under the circumstances herein-before stated, against which the security given in this Court would afford no protection whatever; but he denies that the facts of such proceedings were suppressed in the said Court of Chancery, for he expressly alleged that such facts were fully stated in the instructions given to his said party's Counsel in the said Court, and were repeatedly and distinctly stated and commented on in argument by the said Counsel, and were also frequently alluded to by the Court in the course of the said proceedings; and the said denied that his said party either previous to or during the said proceedings in the said Court of Chancery, or at any other time circulated any report or made any representation that the said ship was unseaworthy and unfit for the voyage on which it was proposed to send her, for the purpose of inducing persons who had engaged for their passage not to sail in the said ship, or of inducing persons who had proposed to make shipments of goods by the said ship to withdraw or decline making the same, or that his said party gave any publicity whatever to the proceed-

ings which he had so adopted in the said Court of Chancery; on the contrary, the said alleged, that in consequence of certain erroneous reports and misstatements appearing in the public newspapers, relative to the said proceedings in the Court of Chancery, his said party was applied to by various persons in respect to the condition and seaworthiness of the said ship, upon all which occasions his said party most studiously forbore any expression whatever of his opinion, as to the condition of the said ship; and the said admitted that his said party, after the said ship had left the dock-yard in which she had been altered as aforesaid, to wit, on or about the day of aforesaid, did apply to two surveyors in the employ of the underwriters at as the most competent persons for that purpose, to inspect the said ship, and to report to his said party her state and condition; but the said denied that his said party ever proposed to, or endeavoured to prevail on the said surveyors, or any other surveyors or persons, to report the said ship, contrary to their real opinion, to be unseaworthy. And the said further expressly alleged, that the said surveyors having inspected the said ship, did make a verbal report to his said party, and frequently repeated the same in the presence of other persons, that the said ship was not in a proper state to proceed upon the said intended voyage; but the said admitted that, upon his said party applying to the said two surveyors, while the proceedings in the said Court of Chancery were pending, to verify such their report by affidavit, the said surveyors did decline so to do, but alleged as their reason for so declining, that it was not consistent with their official situations to give such evidence until required so to do by some Court of competent jurisdiction; and the said denied that his said party was, save as aforesaid, ever refused such report by such surveyors. And the said further alleged, that the said ship sailed from on or about the day of in the said year in the prosecution of her said intended voyage, and on the day next following, having sustained some damage, she put back into to repair; and he expressly alleged, that on the said ship being examined for the purpose of such repair, the very repairs to the copper and caulking of the said ship, the omission of which formed one of the principal grounds of his said party's objections to the said ship proceeding to sea, and of the aforesaid application to the Court of Chancery consequent thereon, were found absolutely necessary to be done before the said ship could safely proceed further on her said voyage, and that such repairs were made accordingly, and formed by far the greater part of the expense of repairing the said ship. And the said further alleged, that the said ship having received such repairs, duly completed her said voyage outward, but on her return voyage, she, on the day of in the last year went on shore off where she shortly afterwards went to pieces and was entirely lost. And the said further alleged, that upon the said and giving the security in this Court for the amount of his said party's shares in the said ship as aforesaid, or previous to the said ship proceeding to sea on her last-mentioned voyage, the said and caused an insurance to be effected upon the said ship to the full value of his said party's shares therein. And the said further alleged, that shortly after the intelligence of the loss of the said ship had been received in to wit, in the month of last, his said party made application by letter, and by his agent to the said (the said being then in) on the subject of the money which had become payable under the security granted to his said party by this Court;

that on such application being so made to the said he the
said never objected to any of the proceedings taken by his
said party in the Court of Chancery as aforesaid, nor complained of
any loss sustained in consequence thereof, but on the contrary fully
recognised and admitted the liability of himself and the said
in respect to the said security, and merely requested his said party to
refrain from urging immediate payment of the said money, at one time
alleging that the said was absent in and at another
time that the said had not yet arrived from but pro-
mised that as soon as the said and had arrived, and
the said Messrs. and had settled with the under-
writers for their insurances on the said ship, the claim of his said party
in respect to the said security should be immediately discharged. And
the said further alleged, that his said party in consequence
of such the request and promise of the said refrained at such
time from taking any proceedings in this Court to enforce the payment
of the sum for which security had been given as aforesaid, but finding
in the month of following that the and had
then been respectively for some time in this country, and that no steps
were taken or proposed by the said and for the
settlement of his said claim, and the said further alleged that
the said and not having named any time when
they would come to a settlement with his said party, his said party did
at length on or about the day of last move this Court to
grant its monition against the said Messrs. and and
their aforesaid bail, to pay his said party the amount of their recog-
nizance given as aforesaid or to shew cause to the contrary, which
monition the Worshipful the Judge of this Court having been pleased
to grant, the same was extracted and duly served on the said;
and and on and the sureties of the said
Messrs. and in the recognizance aforesaid; and the
said further alleged that the said Messrs. and
have since the issuing of the said monition received from the under-
writers with whom they effected their insurance as aforesaid, the sum
insured on account of his said party's shares in the said ship, but not-
withstanding their repeated promises as aforesaid to settle with his
said party so soon as the insurance should be received by them, they
now refuse to pay to his said party the amount of the security into
which they entered and which has become due as aforesaid, on the
grounds hereinbefore alleged by the said And the said
further alleged, that shortly after the passengers who had taken their
passage homeward on board the said ship had arrived in this country
after the loss of the said ship as aforesaid, to wit, on or about the
day of last, an action was commenced in His
Majesty's Court of against the said's party and
the said as two of the owners of the said ship for the purpose
of recovering from them the sum of as the amount of certain
expenses which the said had incurred at and for
passage from thence to in consequence of the loss of the
said ship through the negligence and improper conduct of her captain
the said and the said action having come on to be tried on
the day of last, before the Chief Justice of the said
Court of a verdict was found for the said for the
sum of and costs, which costs have since been taxed at the
sum of And the said further alleged, that after the
verdict in the action last mentioned, to wit, on or about the
day of last, actions were commenced against his said party
the said jointly with the said and by

seven other persons who had been also passengers on board the said ship from to this country for the purpose of recovering from his said party and the said Messrs. and the amount of the expenses which they respectively incurred at and in their passage home from thence in consequence of the said ship having been so lost as aforesaid, and such actions are respectively now pending and many other persons have threatened to bring actions of a similar nature against his said party; and the said further alleged that it is competent for the said and also for the other persons, should they recover verdicts in their said actions, to sue out and proceed to levy execution against his the said 's party alone, if they should think proper so to do, by reason whereof his said party is now exposed to considerable danger both in property and person. And the said further alleged and humbly submitted, that his said party was under the circumstances fully justified in instituting the aforesaid proceedings in the Court of Chancery for his protection against liabilities to which the security granted by this Court did not extend; and that his said party ought not to be denied the benefit of such security on the grounds alleged and submitted by the said and the said denied that the said and have sustained any such loss, costs, damages, salvage, demurrage and expenses as are alleged by the said to have been sustained by them by reason of any interference of his said party in the concerns of the said ship, or by the proceedings adopted by his said party or the injunction obtained by him in the Court of Chancery as aforesaid, but the said submitted that if the said and have sustained any loss or expense by the interference of his said party, they the said and have a full and adequate remedy against his said party in His Majesty's Courts of Common Law, to which Courts, and not this Court they ought to apply, and in which the said expressly alleged that the said and did in fact through their solicitor, on or about the day of shortly after the dissolution of the injunction obtained by his said party in the Court of Chancery as aforesaid, threaten to bring an action against his said party; and in verification of what he so alleged, the said craved leave to refer to certain affidavits and exhibits to be brought into and left in the Registry of this Court, and also to the acts and records of this Court; wherefore the said prayed that the Right Honourable the Judge would be pleased to overrule objections of the to reject the said petition and to decree the said sum of pounds by the said brought into and now remaining in the Registry of this Court as the amount or value of the shares of his said party in the said ship, in respect of which the said bail was given in this Court as aforesaid, to be paid out to his the said party or for his use, and that the said and may be condemned in the costs of this petition and of the monition served upon them and upon the said and their sureties as aforesaid.

Rejoinder.

In the presence of dissenting and denying the allegations of in great part, to be true or relevant, and further alleging that in the month of in the year when the said purchased parts or shares of the said ship from the said his the said party, it was known to him the said that such shares were to be paid for by the said one of his said parties, and that they were in fact purchased for him; neither was there any stipulation or understanding whatever between the

said party and the said that the said should retain the said shares in his own name, but it was understood and agreed that the said should continue the management of the said ship. And the said further alleged, that the statement of the said as to the complaints respecting the supply of provisions is not true, and wholly irrelevant to this proceeding, and therefore he declines to answer the same in detail; and the said expressly denied that the arbitrators to whom the accounts of the said were referred, by their award, dated the day of gave their decision in favour of the said or that the question of the on board the said ship, was the only material point at issue so referred, as alleged by for, on the contrary, the whole of the accounts of the said were so referred, and the said arbitrators, by such their award, found that there was due to the owners of the said ship, from the said a sum of pounds and upwards, besides a further sum to the said and a proportionate part of which sum he actually paid to his the said parties, and such further sum to the said beside a moiety of the costs of the said award. the said arbitrators awarding only to the said a sum of money for the hire of the kentledge on board the said ship. And the said further alleged, that although his said parties for the reasons aforesaid determined to take to themselves the management of the said ship, they proposed only employing her in the same service in which she had been employed under the command and management of the said and his said parties had therefore good reason for believing that the objections urged by him were not to the voyage upon which they proposed to send the said ship, but to her proceeding under the management of his said parties upon any voyage whatever; and the said admitted that his said parties did not alter the destination of the said ship in consequence of representations of the said from a conviction that such representations were unfounded, and in consequence of such refusal the said sought and obtained the protection of this Court to the full amount of his share and interest in the said ship by the bail aforesaid. And the said further alleged, that from the time when his said parties so took upon themselves the management of the said ship, and notwithstanding the said had obtained security to the full extent of his interest in the said ship, he the said proceeded to harass his said parties, and to use every possible means to prevent them from employing the said ship beneficially; and they were as aforesaid obliged to apply to this Court to compel the delivery of the sails unlawfully withheld, in contempt of the decree of this Court for the release of the said ship, her tackle, apparel and furniture, from her arrest by the said party; and they the said parties not having received any information whatever that any further proceeding was then actually in progress against the said ship in any other Court, to prevent her proceeding to sea, did by their Proctor consent to receive the said sails without insisting upon an appearance to the said monition, and paying costs against the said And the said further alleged, that in order to render the said ship in a fit state to undertake the voyage aforesaid, various repairs were necessary to be done; and for the purpose of such repairs she was placed in the dock of of ship-builders, and a minute inspection and examination of the said ship, and particularly of her bottom, were made, and the repairs found necessary were done and performed by them; and no repairs were made or undertaken but such as were essential and necessary to enable her to perform the voyage upon which she was then about to proceed. And the said further alleged,

that certain alterations having been recommended by experienced ship-builders to be made to the said ship, the old fore-castle was taken away and replaced by another of a size usual for ships of the same class, and a poop was also added, such alterations contributing not only to the comfort of the passengers, but to the security of the ship; that the scuttles were also enlarged, but to the size only of those usually made in ships of her class, which, so far from injuring the said ship, was of benefit to her, and did not in any degree whatever diminish her strength or security; and that the so placing a poop on the said ship was an alteration originally suggested by his the said party himself, as being one that would be of great advantage to her, and which she was perfectly competent to bear, as he several times declared. And the said expressly alleged, that when the said ship left the dock-yard of the said she was in the best condition, and fit for a voyage to any part of the world; that in the examination which as aforesaid took place previous to the said ship's undergoing the said repairs, the condition of her bottom was more particularly, strictly, and minutely ascertained under the personal inspection of one of the partners in the said dock-yard, and the same was found to be perfectly sound and good. And the said further alleged, that the repairs which were found necessary and done to the said ship, after she had suffered damage at sea on the day next following that on which she sailed from as aforesaid, were solely in consequence of the damage she then sustained by striking upon when heavily laden, whereby she made much water; and it was found necessary, in order to ascertain the extent of the damage, to strip off the copper, when it appeared that the said ship's bottom was in a perfectly sound state and condition, save so far as it had received injury by striking the ground as aforesaid. And the said expressly denied that on the arrival of the intelligence of the loss of the said ship, his party the said proposed or promised to discharge the said bond without seeking to obtain from the said indemnity for the loss and damage himself and the said had sustained by his unlawfully interfering with the said ship, and restraining her from proceeding to sea as aforesaid, but on the contrary stated by his Proctor to the Proctor of the said that his parties did consider themselves so entitled, but would be willing to refer their claims to the arbitration of indifferent persons to be chosen for that purpose, and which proposal was not accepted by the said and the said denied that the said one of his said parties was in in the month of as alleged by for on the contrary, he the said at the time when the intelligence of the loss of the said ship first reached this country, was in and proceeded from thence direct to from whence he did not return to until early in the month of last, until which time the said by reason of such his absence, had not the means of conferring with him the said with respect to the claim of the said party; that very soon after the arrival of the said in he, together with the said advised with Counsel respecting the adjustment of the claim of the said's party, and the indemnity to which they were entitled, and thereupon a letter to that effect was written to the Proctor of the said that the proposition contained in the said letter was rejected by or on behalf of the said and accordingly the sum of pounds, the amount of the said bill, was on the day of the said month of paid into the Registry of this Court, subject to the decree or order to be made in this cause. And the said further alleged and humbly sub-

mitted, that from the time when the said _____ declared in this Court that he objected to the employment of the said ship by his the said _____ parties, and obtained security as aforesaid, he was thereby, and from that time discharged from all responsibility whatever touching the said ship on the acts of his said parties, or from any debts incurred by them on account of the said ship upon the voyage, upon which she was then about to proceed, and from all losses and damages which might or have arisen in consequence of the loss of the said ship, and has at his own desire (although the same was not necessary to his protection and security) been fully and amply indemnified therefrom by his the said _____ parties; and the said _____ further humbly submitted, that until his the said _____ party was legally called upon to discharge any debt or debts incurred for the outfit of the said ship, he was not justified in doing any act whatever to the prejudice of his said parties in the concerns of the said ship, or to interfere therein, or prevent the said ship proceeding to sea as aforesaid; and the said _____ lastly alleged and humbly submitted, that as against the said _____ party, his said parties as part owners of the said ship were and are without relief at law or otherwise touching the injury aforesaid done to them by the said _____ by such his interference in the concerns of the said ship, and the losses they have sustained thereby, save in this Court; wherefore the said _____ alleged and prayed as before.

Conclusion.

In the presence of _____ dissenting and alleging and praying as before; whereupon the Right Honourable the Judge assigned to hear on Petition of both Proctors whensoever.

(Signed)

(Signed)

37 [154].

FORM of AFFIDAVIT to precede Warrant of Arrest in a Cause of Possession.

In the Vice-Admiralty Court of

[*Insert names of Ship and Master.*]

Appeared personally _____ of _____ and made oath that he is the true and lawful owner and proprietor of [*Insert number of shares which must be a majority*] parts or shares of the said ship or vessel called the _____ whereof _____ is at present master; that of _____ is the owner of the remaining [*Insert number of shares*] parts or shares of the said ship or vessel, and now holds the possession thereof; that he this deponent is much *dissatisfied* with the present control and management of the said ship by the said _____ [*If the fact be so*] and is desirous of obtaining possession thereof by the authority of this Court; and he further made oath that the register of, and belonging to the said ship, is in the hands, possession or control of _____

On the _____ day of _____ the said _____ } (Signed)
 was duly sworn to the truth of this affidavit. }

Before me,

(Signed)

No. 38 [159].

FORM of AFFIDAVIT to lead Warrant for the Arrest of a Ship, in order to obtain Bail for the safe Return thereof.

IN the Vice-Admiralty Court of

[Insert names of Ship and Master.]

Appeared personally of and made oath that he is the lawful owner of twenty-two sixty-fourth parts or shares of and in the said ship or vessel called the belonging to the port of whereof the said is master, her tackle, apparel and furniture, and that of is the owner of the remaining forty-two sixty-fourth parts or shares of the said ship or vessel; that the said has taken upon himself the control and management of the said ship, and has employed her greatly to the detriment and disadvantage of the interest which this deponent hath therein; and the said further made oath that the twenty-two sixty-fourth parts or shares of the said ship or vessel belonging to this deponent are, as he believes, of the value of or thereabouts, and that for the security of such this deponent's interest, he is desirous that the said ship should be restrained from proceeding to sea until good and sufficient security be first given by and on behalf of the said for the safe return of the said ship to the said port of being the port to which she belongs, to the amount of the value or interest which this deponent hath therein, and that the aid and process of this Court is required to enforce the same.

On the day of the said } (Signed)
to was duly sworn the truth }
of this affidavit.

Before me,
(Signed)

NOTE. The Bail may be given to return to a port, not the port of Registry, if so agreed on between the parties, or in case of dispute, if so ordered by the Judge.

No. 39 [167].

FORM of CLAIM for Property proceeded against as Derelict.

IN the Vice-Admiralty Court of

Our Sovereign Lord the King in his office of Admiralty,
against [Insert description of property proceeded against.]
The claim of of for the brig or vessel called the
on behalf of himself, the true, lawful and sole owner and
proprietor thereof, and for the cargo laden on board the said ship or
vessel on behalf of of the true, lawful and sole
owner and proprietor thereof, at the time when the said ship or vessel,
after meeting with very tempestuous weather, got on a sand off the
coast of and for the preservation of the lives of the persons on
board, and then and there quitted by the said master and the crew, and
was afterwards got off the said sand, and brought to and
which said ship and cargo have been proceeded against in this Court
as derelict, flotzen, jetzon or lagon, and as such droits and perquisites
of our Sovereign Lord the King in his office of Admiralty; for the said
ship as the true, lawful and sole property of him the said
and also for the said cargo as the true, lawful and sole property of the
said [To be signed by Counsel.]

No. 40. [168].

FORM of AFFIDAVIT in support of a Claim for Property proceeded against as derelict.

In the Vice-Admiralty Court of

Our Sovereign Lord the King in his office of Admiralty,
 against [Insert description of property proceeded against.]
 Appeared personally of and made oath that he
 was and is the true, lawful and sole owner and proprietor of the brig
 or vessel called the of whereof
 now is or lately was master; that the said brig, after taking in a cargo
 consisting of and sailed from on the
 day of bound for and when in the prosecution of the
 said voyage, and after meeting, as this deponent has been informed
 and believes, with very tempestuous weather, got on a sand-bank off
 on the coast of and was there quitted by her master
 and crew for the preservation of their lives; that the said brig
 was afterwards got off the said bank and brought into the
 port of and proceeded against in this cause as a ship and
 goods derelict, flotzon, jetzon or lagon, and as such droits and perqui-
 sites of His Majesty in his office of Admiralty; and he further made
 oath, that he is duly authorized to make the claim hereto annexed for
 and on behalf of of merchant, the sole owner and
 proprietor of the cargo laden on board the said brig or vessel; that
 the bill of lading hereunto annexed, marked No. 1, is the bill of lading
 for the cargo shipped on board the said brig at aforesaid;
 and he further made oath, that he verily believes that the brig and
 cargo hereinbefore mentioned, and the brig and cargo claimed in the
 annexed claim, are the same vessel and cargo, and not divers; and he
 lastly made oath, that he verily believes the claim annexed to be true
 and just, and that he shall be able to make due proof and specifica-
 tion thereof.

On the day of in the year } (Signed)
 the said was duly sworn }
 to the truth of this affidavit and the claim annexed. }
 Before me,
 (Signed)

 No. 41 [203].

FORM of AFFIDAVIT to precede Monition against a Ship and Goods seized for Breach of the Revenue or Navigation Laws.

In the Vice-Admiralty Court of

Our Sovereign Lord the King against the ship or vessel called
 the (whereof was master, her tackle,
 apparel and furniture, and seized by

[Set forth the Goods seized as liable to forfeiture, and the name and description of Seizor.]

Appeared personally [Insert name and description of Seizor] and made
 oath, that on or about the day of the said ship or vessel
 arrived at the port of and that immediately on
 such arrival the said the master attended at the custom-
 house, and made his report of the entry of the said vessel and cargo,

as required by law; that in such report it was declared that the cargo of the said ship consisted of _____ that subsequently to such report being so made, and whilst the said ship was lying in the said port, the appearer was informed that there had been clandestinely landed from the said vessel the following goods, to wit,
 And this deponent further maketh oath, that no part of such goods was comprised in the report so as aforesaid made at the custom-house by the said master; that thereupon the appearer proceeded to the store of _____ and there found the said goods so clandestinely landed, and seized the same, and also the said ship, by reason that such ship and goods were liable to forfeiture under the Act of 6th Geo. IV. cap. 114.

And this deponent further made oath, that the paper writings and documents hereunto annexed, marked No. 1 to No. _____ are the whole of the paper writings and documents which were found on board or delivered up relative to the said ship and goods, and that they are now in the same plight and condition, saving the numbering thereof, as when received by this deponent, without any fraud, addition or subduction whatever.

On the _____ day of _____ the }
 said _____ was duly sworn } (Signed)
 to the truth of this affidavit. }
 Before me,
 (Signed)

NOTE.—The Affidavit must always contain a full and specific account of the facts constituting the breach of the law

No. 42 [204].

FORM of AFFIDAVIT to precede Monition against Goods seized on Shore, for Breach of the Revenue or Navigation Laws, the Owner thereof not being known.

IN the Vice-Admiralty Court of
 Our Sovereign Lord the King against

[Set forth the Goods seized, and name and description of Seizor.]

seized by

Appeared personally [Insert name and description of Seizor] of His Majesty's Customs at the port of _____ in the island of _____ and made oath, that in consequence of information received by him that a vessel had in the night of the _____ day of the present month of _____ been hovering off the coast of _____ and that sundry goods had been landed therefrom without the payment of the duties chargeable thereon, the appearer proceeded immediately to _____ in the custom-house boat, and on his going round the point of _____ he perceived a vessel about _____ miles distant, and a boat proceeding towards her from the shore; that immediately upon the said boat reaching the said vessel all sail was hoisted, and the wind being fresh the said vessel proceeded out to sea; that upon his arrival at the place from whence it appeared the said boat had left he discovered on the beach the said

[Set forth the Goods.]

which he thereupon seized as forfeited to His Majesty. Lastly, this

deponent made oath, that he has not been able to ascertain the name of the said vessel, or any of the parties concerned in so clandestinely landing the said goods, although he has made diligent inquiry to ascertain the same.

On the day of the } (Signed)
 said was duly sworn }
 to the truth of this affidavit. }
 Before me,
 (Signed)

NOTE.—The Affidavit must always contain a full and specific account of the facts constituting the breach of the law.

No. 43 [214].

FORM of CLAIM for Ship and Goods proceeded against for Breach of the Revenue or Navigation Laws.

In the Vice Admiralty Court of

[Insert date and description of Cause.]

The claim of of the true, lawful, and sole owner and proprietor of the said ship or vessel her tackle, apparel and furniture, and [Insert description of Goods] now or lately laden therein, taken and seized by [Insert name of Seizor] for the said ship and goods, and for all costs, charges, damages and expenses as have arisen or shall or may arise by reason of the seizure and detention of the said ship and goods.

[To be signed by Counsel.]

No. 44 [215].

FORM of AFFIDAVIT in support of Claim for Ship and Goods proceeded against for Breach of the Revenue or Navigation Laws.

In the Vice-Admiralty Court of

[Insert description of Cause.]

Appeared personally of and made oath that

And the deponent lastly made oath, that the claim hereunto annexed is a true and just claim, and that he shall be able to make due proof thereof.

On the day of the said } (Signed)
 was duly sworn to the truth of this affidavit. }
 Before me,
 (Signed)

No. 45 [219].

FORM of LIBEL or INFORMATION in a Suit instituted for the Forfeiture of a Ship and Goods for Breach of the Revenue or Navigation Laws, and for Penalties.

IN the Vice-Admiralty Court of

[*Insert names of Ship and Master.*]

On the day of in the year of our Lord
before you the Worshipful Judge and Com-
missary of His Majesty's Vice-Admiralty Court of
lawfully constituted and appointed the Proctor on behalf of our
Sovereign Lord the King, as well for our said Sovereign Lord
the King as for against the ship or vessel called the
(whereof now is or lately was master), her tackle,
apparel and furniture, and [*Set forth the Goods seized*] and also
against the said the master, intervening and claiming the
said ship and goods in special, and against all persons in general
having or pretending to have any right, title or interest therein,
doth by way of complaint, and hereby complaining unto you,
say, allege, and in law articulately propound as follows, to
wit:—

That a certain Act of Parliament was made and passed in the sixth
year of the reign of His late Majesty King George IV., to wit, on the
fifth day of July, in the year of our Lord one thousand eight hundred
and twenty-five, intituled, "An Act to regulate the Trade of the
British possessions abroad:" [*Or such other Act or Acts as may be neces-
sary to be pleaded*] and this was and is true, and the party proponent
doth allege and propound every thing in this and the subsequent arti-
cles of this libel or information contained jointly and severally.

That on or about the day of the ship or vessel called
the (whereof now is or lately was master,) being
the ship or vessel proceeded against in this cause, arrived at
from that immediately on such arrival the said
the master thereof, attended at the Custom-house of the said
and made his report of the entry of the said ship and cargo as required
by law; that in such report it was declared that the cargo of the said
ship consisted of
that subsequently to such report being so made, and whilst the said
ship was lying in the said port, there were clandestinely landed from
her by the following goods, to wit—

that no part of the said goods was comprised
or set forth in the report so as aforesaid made of the cargo of the said
ship or vessel; that such goods, after they had been so landed, were
deposited in a store belonging to situated at
at which place they were seized as being liable to forfeiture for a breach
of some or one of the provisions of the statute hereinbefore pleaded;
and this was and is true, and the party proponent doth allege and prop-
ound as before.

That in part supply of proof of the premises, and to all other intents
and purposes in the law whatsoever, the party proponent doth hereto
annex, and prays to be here read and inserted and taken as part and
parcel hereof, a certain paper-writing marked No. 1, and doth allege
and propound the same to be and contain the original report made at
the said Custom-house by the said the master, on the arrival
of the said ship or vessel at the said island of that the same
is now in all respects in the same plight and condition as when the
same was so made by the said save and except the number-

ing thereof; and this was and is true, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true, of which legal proof being made, the party proponent prays that the said ship or vessel her tackle, apparel and furniture, and

may be pronounced by you, the Judge aforesaid, to have been, at the time of the seizure thereof, subject and liable to forfeiture and condemnation, and to condemn the same as forfeited to our Sovereign Lord the King, his heirs and successors accordingly; and moreover that the penalties due by law may be pronounced for, that is to say, that the sum of one hundred pounds is due from the said the master of the said ship or vessel, for having made an untrue report of the goods on board the said ship or vessel, and that the sum of being treble the value of the said is due from for having clandestinely landed the said goods, and to condemn the said parties respectively in such penalties, and in the costs made and to be made in this cause, on the part and behalf of our Sovereign Lord the King, by your definitive sentence or final interlocutory decree to be made and given in this behalf.

[To be signed by Counsel.]

No. 46 [239].

FORM of PROXY where necessary from a Party in a Suit.

WHEREAS there is now depending in His Majesty's Vice-Admiralty Court of a certain cause or business of promoted and brought by against the ship or vessel called the (whereof now is or lately was master), her tackle, apparel and furniture.

Now know all men by these presents, that I the said one of the parties in the said cause or business, for divers good causes and considerations, me thereunto especially moving, have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint one of the Procurators of His Majesty's Vice-Admiralty Court of or in his absence any other Proctor of the said Court,* to be my true and lawful Proctor for me and in my name, to appear before the Worshipful Judge and Commissary of the said Vice-Admiralty Court, lawfully constituted and appointed, or his Surrogate, and to exhibit this my proxy, and pray and procure the same to be admitted and enacted, and in virtue thereof, and on my part and behalf to prosecute the said cause or business, and generally to do, perform, execute and expedite all and every thing that my said Proctor or Proctors may in his or their judgment deem necessary to be done herein for my benefit and advantage, until the giving the definitive sentence or final interlocutory decree in the said suit, and the execution thereof, hereby promising to ratify, allow and confirm all and whatsoever my said Proctor or Proctors shall do in or about the premises. In witness whereof I have hereunto set my hand and seal the day of

(Signed) (L.S.)

Signed, sealed and delivered in the presence of Us,

(Signed)

(Signed)

*This clause is to empower any other Proctor to do any act in the unavoidable absence of the Proctor appointed.

No. 47 [240].

FORM of AFFIDAVIT of Sureties justifying to their sufficiency as Bail.

IN the Vice-Admiralty Court of

[*Insert names of Ship and Master.*]

Appeared personally [*Insert names and description of sureties*] of
 and of the proposed bail and security for
 and severally made oath each for himself, that at the present
 time of being sworn he is worth more than the sum of [*Insert the sum
 in which the parties are bound*] of lawful money of over and
 above the payment of all his just debts.

On the day of the said } (Signed)
 and were duly sworn to the truth of }
 this affidavit. } (Signed)

Before me,
 (Signed)

Approved,

HERBERT JENNER,

JOHN DODSON,

STEPHEN LUSHINGTON,

JAMES FARQUHAR,

H. B. SWABEY,

WM. ROTHERY.

} REFEREES.

ACTS.

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:

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.

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.

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.

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.

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 enrolled 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 Seaman'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.

25 VIC., CAP. XXIV.

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

(8th June, 1863.)

ABSTRACT OF THE ENACTMENTS.

1. Short title.
2. Interpretation of Terms.
3. Appointment of Vice Admiral.
4. Appointment of Judge.
5. Appointment of Registrar and marshals.
6. Names of appointees, &c. to be notified to the Home Government.
7. Saving the powers of the Admiralty.
8. Past proceedings confirmed.
9. Protection of officers.
10. Jurisdiction of Vice Admiralty Courts.
11. Jurisdiction of Vice Admiralty Courts.
12. Nothing to restrict existing jurisdictions.
13. As to matters arising beyond limits of colony.
14. Her Majesty empowered to establish and alter Rules and Tables of Fees.
15. Rules and Tables of Fees to be laid before the House of Commons.
16. To be entered in the records of the Courts.
17. To be hung up in Court, &c.
18. Established fees to be the only fees taken.
19. Taxation may be revised by the High Court of Admiralty.
20. Registrar may administer oaths.
21. As to the hearing of cross-causes.
22. No appeal, save from final sentence or order.
23. Appeal to be made within six months.
24. Acts repealed, saving rules established under 2 & 3 Will. 4, c. 51.

By this Act,

After reciting that it is expedient to facilitate the appointment of Vice Admirals and of officers in Vice Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings, to extend the jurisdiction and to amend the practice of those Courts:

It therefore is Enacted as follows:—

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

2. In the interpretation and for the purposes of this Act (if not inconsistent with the context or subject-matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,

"Her Majesty" shall mean Her Majesty, her heirs and successors:
The "Admiralty" shall mean the Lord High Admiral or the Commissioners for executing his office:

"British possession" shall mean any colony, plantation, settlement, island, or territory, being a part of Her Majesty's dominions but not being within the limits of the United Kingdom of Great Britain and Ireland, or of Her Majesty's possessions in India:

"Governor" shall mean the officer for the time being lawfully administering the government of any British possession:

"Vice Admiralty Court" shall mean any of the existing Vice Admiralty Courts enumerated in the Schedule marked A.

hereto annexed, or any Vice Admiralty Court which shall hereafter be established in any British possession:

“Ship” shall include every description of vessel used in navigation not propelled by oars only, whether British or foreign:

“Cause” shall include any cause, suit, action, or other proceeding instituted in any Vice Admiralty Court:

3. In any British possession where the office of Vice Admiral is now or shall at any time hereafter become vacant, the Governor of such possession shall be *ex officio* Vice Admiral thereof, until a notification is received in the possession that a formal appointment to that office has been made by the Admiralty in the manner hereinafter mentioned.

4. In any British possession, where the office of Judge of a Vice Admiralty Court is now or shall at any time hereafter become vacant, the Chief Justice or the principal judicial officer of such possession, or the person for the time being lawfully authorized to act as such, shall be *ex officio* Judge of the Vice Admiralty Court, until a notification is received in the possession that a formal appointment to that office has been made by the Admiralty in the manner hereinafter mentioned.

5. In any British possession, where the office of registrar or marshal of any Vice Admiralty Court is now or shall at any time hereafter become vacant, the Judge of the Court may, with the approval of the Governor, appoint some person to the vacant office until a notification is received in the possession that a formal appointment thereto has been made by the Admiralty in the manner hereinafter mentioned, and may, for good and reasonable cause, to be approved by the Governor, remove the person so appointed. The Judge may also appoint some person to act as registrar or marshal during the temporary absence of either of those officers.

6. On any vacancy in the office of Judge, registrar, or marshal of any Vice Admiralty Court, the Governor of the British possession in which the Court is established shall, as soon as is practicable, communicate to one of Her Majesty's principal Secretaries of State the fact of the vacancy, and the name of the person succeeding or appointed to the vacant office.

7. Nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any Vice Admiral, or any Judge, registrar, marshal, or other officer of any Vice Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England.

8. No act done by any person in the capacity of Judge, registrar, or marshal of any Vice Admiralty Court, which shall not have been set aside by any competent authority before the passing of this Act, shall be held invalid by reason that such person had not been duly appointed, but all such acts shall be as valid and effectual as if done by a person duly appointed.

9. No action, prosecution, or other proceeding shall be brought against any such person by reason of the illegality or informality of any act hereby declared to be valid and effectual.

10. The matters in respect of which the Vice Admiralty Courts shall have jurisdiction are as follows:

- (1.) Claims for seamen's wages :
- (2.) Claim for master's wages, and for his disbursements on account of the ship :
- (3.) Claims in respect of pilotage :
- (4.) Claims in respect of salvage of any ship, or of life or goods therefrom :
- (5.) Claims in respect of towage :
- (6.) Claims for damage done by any ship :
- (7.) Claims in respect of bottomry or respondentia bonds :
- (8.) Claims in respect of any mortgage where the ship has been sold by a decree of the Vice Admiralty Court, and the proceeds are under his control :
- (9.) Claims between the owners of any ship registered in the possession, in which the Court is established, touching the ownership, possession, employment, or earnings of such ship :
- (10.) Claims for necessaries supplied, in the possession in which the Court is established, to any ship of which no owner or part-owner is domiciled within the possession at the time of the necessaries being supplied :
- (11.) Claims in respect of the building, equipping, or repairing within any British possession of any ship of which no owner or part-owner is domiciled within the possession at the time of the work being done.

11. That Vice Admiralty Courts shall also have jurisdiction—

- (1.) In all cases of breach of the regulations and instructions relating to Her Majesty's Navy at sea :
- (2.) In all matters arising out of Droits of Admiralty.

12. Nothing contained in this Act shall be construed to take away or restrict the jurisdiction conferred upon any Vice Admiralty Court by any Act of Parliament in respect of seizures for breach of the Revenue, Customs, Trade, or Navigation Laws, or of the Laws relating to the Abolition of the Slave Trade, or to the capture and destruction of pirates and piratical vessels, or any other jurisdiction now lawfully exercised by any such Court; or any other jurisdiction now lawfully exercised by any other Court within Her Majesty's dominions.

13. The jurisdiction of the Vice Admiralty Courts, except where it is expressly confined by this Act to matters arising within the possession in which the Court is established, may be exercised, whether the cause or right of action has arisen within or beyond the limits of such possession.

14. Her Majesty may, by Order in Council, from time to time establish rules touching the practice to be observed in the Vice Admiralty Courts, as also tables of the fees to be taken by the officers and practitioners thereof for all acts to be done therein, and may repeal and alter the existing and all future rules and tables of fees, and establish new rules and tables of fees in addition thereto, or in lieu thereof.

15. A copy of any rules or tables of fees which may at any time be established shall be laid before the House of Commons within three months from the establishing thereof, or if Parliament shall not be then sitting, or if the session shall terminate within one month

from that date, then within one month after the commencement of the next session.

16. The rules and tables of fees in force in any Vice Admiralty Court shall, as soon as possible after they have been received in the British possession in which the Court is established, be entered by the registrar in the public books or records of the Court, and the books or records in which they are so entered shall at all reasonable times be open to the inspection of the practitioners and suitors in the Court.

17. A copy of the rules and tables of fees in force in any Vice Admiralty Court shall be kept constantly hung up in some conspicuous place as well in the court as in the office of the registrar.

18. The fees established for any Vice Admiralty Court shall, after the date fixed for them to come into operation, be the only fees which shall be taken by the officers and practitioners of the Court.

19. Any person who shall feel himself aggrieved by the charges of any of the practitioners in any Vice Admiralty Court, or by the taxation thereof by the officers of the Court, may apply to the High Court of Admiralty of England to have the charges taxed, or the taxation thereof revised.

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

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

22. The appeal from a decree or order of a Vice Admiralty Court lies to Her Majesty in Council; but no appeal shall be allowed, save by permission of the Judge, from any decree or order not having the force or effect of a definitive sentence or final order.

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

24. The Acts enumerated in the Schedule hereto annexed marked B. are hereby repealed, to the extent therein mentioned, but the repeal thereof shall not affect the validity of any rules, orders, regu-

lations, or tables of fees heretofore established and now in force, in pursuance of the Act, 2 & 3 Will. 4. c. 51; but such rules, orders, regulations, and tables of fees, shall continue in force until repealed or altered under the provision of this Act.

SCHEDULE A.

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

Antigua	Hong Kong.	Prince Edward Island.
Bahamas.	Jamaica.	Queensland.
Barbadoes.	Labuan.	Saint Christopher.
Bermuda.	Lagos.	Saint Helena.
British Columbia.	Lower Canada, otherwise	Saint Lucia.
British Guiana.	Malta, [Quebec.	Saint Vincent.
British Honduras.	Mauritius	Sierra Leone.
Cape of Good Hope.	Montserrat.	South Australia.
Ceylon.	Natal.	Tasmania, formerly called Van
Dominica.	Nevis.	Tobago. [Diemen's Land.
Falkland Islands.	New Brunswick.	Trinidad.
Gambia River.	Newfoundland.	Vancouver's Island.
Gibraltar.	New South Wales.	Victoria.
Gold Coast.	New Zealand.	Virgin Islands, otherwise
Grenada.	Nova Scotia, otherwise	Western Australia. [Tortola.
	[Halifax.	

SCHEDULE B.

ACTS AND PARTS OF ACTS REPEALED.

Reference to Act.	Title of Act.	Extent of Repeal.
56 Geo. III. c. 82.	An Act to render valid the Judicial Acts of Surrogates of Vice Admiralty Courts abroad, during Vacancies in Office of Judges of such Courts.	The whole Act, save as regards Her Majesty's Possessions in India.
5 Geo. IV. c. 113.	An Act to amend and consolidate the Laws relating to the Abolition of the Slave Trade.	Section 29, save as above.
2 & 3 Will. IV. c. 51.	An Act to regulate the Practice and the Fees in the Vice Admiralty Courts abroad, and to obviate Doubts as to their Jurisdiction.	The whole Act, save as above.
6 & 7 Vict. c. 8.	An Act to make further Regulations for facilitating the hearing Appeals and other Matters by the Judicial Committee of the Privy Council.	Section 11, so far as it relates to Appeals from Vice Admiralty Courts, save as above.
17 & 18 Vict. c. 37.	An Act for establishing the Validity of certain Proceedings in Her Majesty's Court of Vice Admiralty in Mauritius.	The whole Act.

At the Court at Windsor, the 9th day of September 1865;

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS there was this day read at the Board a Memorial from the Right Honourable the Lords Commissioners of the Admiralty, dated the 25th of August 1865, in the words following, viz:—

Whereas by the Act 26th Victoria, Cap. 24, intituled the

“Vice-Admiralty Courts Act, 1863,” it was, amongst other things, enacted that Your Majesty might, by Order in Council, from time to time establish Rules touching the Practice to be observed in the Vice-Admiralty Courts, and might repeal and alter the existing and all future Rules, and establish new Rules in addition thereto, or in lieu thereof. And whereas by the Act 27 and 28 Victoria, Cap. 24, intituled “the Naval Agency and Distribution Act, 1864,” it was, amongst other things, enacted that Your Majesty in Council might from time to time make such Orders as should seem meet for the better execution of that Act: And whereas by an Order in Council of the 22nd day of October, 1859, certain Rules, Orders, and Regulations were established touching the Practice to be observed in Courts of Vice-Admiralty abroad in Proceedings instituted on behalf of Your Majesty’s Ships, and it is expedient that the said Rules, Orders, and Regulations should be repealed, and that new regulations should be established in lieu thereof: Now therefore, we, Your Majesty’s Commissioners for executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, do humbly submit that Your Majesty will be graciously pleased to repeal the said Rules, Orders, and Regulations established by Your Majesty’s Order in Council of the 22nd day of October 1859, and in lieu thereof to establish the following Regulations:—

I. Whenever any proceeding has been instituted in any Vice-Admiralty Court within Her Majesty’s Dominions, by or on behalf of any of Her Majesty’s Ships, for or in respect of any of the matters enumerated in the 12th Section of the Naval Agency and Distribution Act, 1864, the Proctor who shall have conducted such proceeding on behalf of Her Majesty’s Ship shall, on the termination of the suit, submit his Bill of Costs for taxation, and the Court shall thereupon tax the same as between Proctor and Client.

II. If in any such proceeding any proceeds have been realized and are remaining in Court, the Court may order the amount at which the Bill of Costs has been taxed to be paid thereout, and the balance of the proceeds, if any, shall thereupon be paid to the Senior Commissariat Officer in the Colony, to the end that the same may forthwith be remitted to this Country.

III. If there are not any proceeds, or if the proceeds are insufficient to pay the costs, the Commanding Officer shall either by himself or through the Agent of the Ship make provision for the payment of any sum that may be due in respect of any such proceeding as may have been instituted in the Court.

IV. The Registrar of the Vice-Admiralty Court shall, as soon as he has taxed the Bill of Costs, and whether the amount thereof has or has not been paid out of the proceeds, forward the same to the Registrar of the High Court of Admiralty of England, together with a Certificate,

signed by himself, stating the amount of the proceeds, if any, the payments thereout, and the balance which has been paid to the Commissariat Officer.

V. The Agent for the Ship shall, when the proceeds and bounties have been paid to the Naval Prize Account, leave with the Registrar of the High Court of Admiralty of England his account for taxation, and may include therein any charges that may have been paid by the Commanding Officer or by himself, and the Registrar may direct the amount at which he shall have taxed the said account to be paid out of the proceeds and bounties standing in the Naval Prize Account to the credit of the Prize.

VI. The Registrar of each Vice-Admiralty Court shall, within a month after the termination of each quarter, send to the Registrar of the High Court of Admiralty of England a Return, signed by himself, in the Form marked No. 1 hereto, of all Prizes in respect of which any proceedings have been taken in such Vice-Admiralty Court during that quarter.

VII. These Regulations shall, if approved by Her Majesty in Council, come into operation on the 1st day of January 1866.

No. 1.

Name of Prize.	Name of capturing Ship.	Name of Commanding Officer.	Date of Capture.	Date of Adjudication.	Amt. of Proceeds paid into Court.	Amt. of Costs as taxed.	Payments out of Proceeds			Bal. paid to Commissariat Officer.	Observations.
							To whom paid.	When paid.	Am. paid.		

Her Majesty, having taken the said Memorial into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and of the Rules, Orders, and Regulations therein contained, and also of the Form thereunto annexed. And the Right Honourable the Lords Commissioners of the Admiralty are to give the necessary directions herein accordingly.

(Signed)

ARTHUR HELPS.

30 and 31 VICT., CAP. XLV.

An Act to extend and amend the Vice-Admiralty Courts Act, 1863.
[15th July, 1867.]

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

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

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

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

“Judge” shall mean the Person lawfully appointed by the Admiralty to be Judge of any Vice-Admiralty Court, or, in default of such Appointment, the Chief Justice or Principal Judicial Officer, or the Person for the Time being lawfully authorized to act as the Chief Justice or Principal Judicial Officer in the *British Possession* in which such Court is established:

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

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

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

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

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

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

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

8. The Judge may, if he thinks fit, require any such Deputy Judge or Judges to sit with him in the same Court, and in such Case the Decision of the Majority, or, if they are equally divided in

Opinion, the Decision of the Judge, shall be the Decision of the Court; and such Decision shall be subject to the same Right of Appeal in all respects as if it had been made by the Judge alone.

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

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

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

12. The Judge may from Time to Time, if he thinks fit, appoint any competent Persons to act respectively as Deputy Registrars and Deputy Marshals of the Court, and may, if he thinks fit, at any Time revoke any such Appointment, but the Appointment shall not be determined by the Occurrence of a Vacancy in the Office of the Judge.

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

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

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

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

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

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

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