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United States District Court

Rules

FOR THE SOUTHERN DISTRICT OF NEW YORK

September 16, 1938

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NEW YORK CITY

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REPORT

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK:

The Committee on Civil Rules for the Southern District of New York has the honor to report that it has framed a series of proposed civil rules, the text whereof is set forth in *Schedule A hereto attached. These rules include one of the existing Equity Rules which has been retained.

The Committee also proposes certain changes in the General Rules and Calendar Rules and the abrogation of the existing Common Law Rules and Equity Rules. These proposed modifications are set out in *Schedule B hereto attached.

*Schedule C is a proposed form of order to be entered for the promulgation of these rules and modifications.

We think it but fair to conclude our labors with the statement that we have been motivated in these formulations by the desire to inflict as few new rules on the bench and bar as we could; but not to shirk the necessity, where we saw it, of implementing the Federal Rules of Civil Procedure in a manner to render their operation more practicable.

Whether the Committee should be continued pending the era of experiment and interpretation which must issue out of the adoption of the Federal Rules, is a matter to which we call your attention.

Dated, New York, August 8, 1938.

Respectfully submitted,

CIVIL RULES COMMITTEE FOR THE SOUTHERN DISTRICT OF NEW YORK,

By Nathan April,
Chairman.
Michael Feiring,
Edwin L. Garvin,
Harold Harper.

^{*}The recommendations which were attached to the report were set out in separate schedules. The rules are printed in full herein.

ORDER PROMULGATING RULES

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

THE ADOPTION AND PROMULGATION OF CIVIL RULES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The District Court of the United States, for the Southern District of New York, herewith

ORDERS:

- 1. That the Civil Rules set forth herein be and they hereby are declared to be practice rules applicable to all civil actions, and operative on and after September 16, 1938.
- 2. That the rules denominated Common Law Rules and Equity Rules be and they hereby are abrogated, said abrogation to be effective on and after September 16, 1938.
- 3. That the General Rules and Calendar Rules of this court be amended in the manner set forth herein and

as amended to be operative on and after September 16, 1938.

JOHN C. KNOX,
HENRY W. GODDARD,
WILLIAM BONDY,
JOHN M. WOOLSEY,
FRANCIS G. CAFFEY,
ALFRED C. COXE,
ROBERT P. PATTERSON,
GEORGE MURRAY HULBERT,
VINCENT L. LEIBELL,
JOHN W. CLANCY,
SAMUEL MANDELBAUM,
EDWARD A. CONGER,

Judges of the United States District Court for the Southern District of New York.

Dated: September 15, 1938.

GENERAL RULES

1. JUDGE.

The word "Judge" wherever occurring in any rule of Court shall be held to mean any judge or justice authorized by law to serve in this Court.

1-a. Any judge designated to sit in the District Court for the Southern District of New York, in the absence of a specific assignment from a judge of superior authority shall do such work only as may be assigned to him by the senior district judge.

1-b. If any judge, by reason of illness, service in another part of the court upon an unfinished case, or other good cause, is unable to do the work allotted to him by any schedule entitled "Assignment of United States District Judges, Southern District of New York", and on file in the office of the clerk of this court, then the work so allotted to such judge, or such part thereof as the senior district judge may deem necessary shall be performed by any other judge who may be assigned or designated to perform such work by the senior district judge.

2. ATTORNEYS.

The Bar of this Court shall consist of those persons heretofore and hereafter admitted to practice, and who have signed or shall sign the roll of attorneys; provided, however, that all attorneys and solicitors of the Circuit Court of the United States for the Southern District of New York entitled to practice as such on December 31, 1911, shall be qualified attorneys of the Court without motion or other formal admission.

3. Admission to the Bar.

Any person who has been for three years a member in good standing of the Bar of the State of New York, or

of the Bar of the State of New Jersey, or who has been duly admitted to the Bar of either of those states when a member in good standing for five years of the Bar of some other state or territory or possession or the District of Columbia or of a foreign country, or who is a member in good standing of the Bar of the State of New York and for one year has been a law clerk of a Judge of the Circuit Court of Appeals for the Second Circuit or of a Judge of this Court or an Assistant United States Attorney, or an assistant to the United States Attorney, for the Southern District of New York, may be admitted to practice in this Court on compliance with the following provisions:

Each applicant for admission shall file at least five days prior to the hearing thereon, with the Clerk of this Court, a written petition for admission, duly sworn to, setting forth the time when, and court where, admitted and his legal training and experience at the Bar. petition shall be accompanied by affidavits of two attorneys of this Court stating where and when affiants were admitted to practice in this Court, how long and under what circumstances such attorneys have known petitioner, and stating what affiants know of petitioner's character and experience at the Bar. Such petition shall be placed at the head of the Motion Calendar, and, on the call thereof, one of the attorneys whose affidavits accompany the petition shall move the admission of the petitioner, and, if admitted, the petitioner's oath of office shall be taken in open court.

Any member in good standing of the Bar of any state, or of any United States District Court, may upon motion be admitted to argue or to try any cause in whole or in part as counsel or advocate. Only an attorney or proctor of this Court may enter appearances for parties, sign stipulations or receive payment upon judgments, decrees or orders.

4. DISBARMENT.

Any member of the Bar of this Court who has been disbarred from the Bar of the State of New York, or of the State of New Jersey, or of any United States Court in the Second Circuit or in the State of New Jersey, shall ipso facto be disbarred from the Bar of this Court and his name stricken from the roll, and the name of any member of the Bar of this Court who has resigned from the Bar of any of said courts shall be stricken from the roll, without notice, unless otherwise directed by the Court, and any member suspended for a period from practice in any of said courts shall ipso facto be suspended for a like period from practice in this Court.

Any member of the Bar of this Court may be disbarred, suspended from practice for a definite time or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

All applications for orders to show cause why a member of the Bar of this Court should not be disbarred or disciplined and all motions to such effect shall be made to or before the Senior Judge of this Court unless otherwise ordered by him, or he shall be ill, incapacitated or absent from the District, in which event they shall be made to or before the then acting Senior Judge.

5. ATTORNEYS OF RECORD.

Any member of the Bar of this Court not having an office for the transaction of business in person within the Southern or the Eastern District of New York shall not appear as attorney or proctor of record in any cause without specifying upon the record a place where and a person upon whom service of all papers shall be made within either the Southern or the Eastern District of New York.

In all Criminal causes wherein a complaint or information has been filed, or where an indictment has been found, notices of appearance shall be filed by attorneys for defendants with the Clerk, after service of a copy

thereof on the United States Attorney. Except as otherwise directed by the Court, orders for the substituting of attorneys in such causes shall be made only upon written consent of defendants. Such orders shall be signed by and filed with the Clerk.

6. EXTENSION OF TERMS.

For the purpose of allowing bills of exceptions or of taking any other action in any cause which must be taken within the term of the Court at which final judgment or decree is entered, each term of court is extended for ninety days from the date of entry of the final judgment or decree.

All applications for the extension of time to prepare bills of exception in criminal causes shall be presented to the Judge who tried the case, unless he be no longer in office or be absent from the District, in which event they shall be presented to the Judge assigned to the General Motion Part. Such an application shall be accompanied by an affidavit showing due reason for such extension, the date of judgment and whether the defendant is in custody or on bail. The Judge shall consider the motion and in his discretion grant or deny the same, notwithstanding the consent of the United States Attorney.

7. FILING PAPERS.

All pleadings and other papers not specifically provided for by law shall when offered for filing be plainly and fairly written or printed without erasures or interlineations materially defacing them. If documents not conforming to this rule be offered, the Clerk before receiving them shall require the *allocatur* of a Judge.

All papers subsequent to that beginning a litigation shall, when offered for filing, be endorsed with the proper serial number (in bankruptcy) and the proper docket and page number (in other cases) and no paper shall be received on file without such endorsement.

All papers in civil causes shall be filed flat.

8. Commissions.

Except as otherwise provided by a statute of the United States, in all actions or proceedings where the taking of depositions of witnesses or of parties is authorized, the procedure for obtaining and using the same shall be that provided in the Federal Rules of Civil Procedure and the Civil Rules of this court.

9. Letters Rogatory.

Upon the receipt from the Court of a foreign country of letters rogatory to take testimony within the District, the Judge in charge of ex parte business shall, by order, appoint the officer or commissioner named in such letters rogatory to execute the same. In case no officer or commissioner be named in said letters rogatory, the Judge shall, by order, appoint a commissioner to execute the same. In either case the officer or commissioner so appointed shall execute the letters and file them in the Clerk's office within twenty days after his appointment. The Clerk shall keep a record of all such orders and shall notify the officer or commissioner of his default if he fails to file the letters properly executed as above provided. If an officer or commissioner named in the letters rogatory and appointed as aforesaid shall fail to file them so executed within ten days after such notice, the Clerk shall in turn notify the Judge, who shall sign an order to show cause why the order made should not be vacated and the letters rogatory returned to the Court of the foreign country. If a commissioner not named in the letters rogatory but selected by the Judge as aforesaid shall fail to report within ten days after the notice above mentioned, the Clerk shall in turn notify the Judge, who shall sign an order to show cause why the commissioner should not be removed and another appointed to execute the letters. Such letters when executed shall be delivered by the Clerk to the office or person from whom they were received by the Court.

10. RECEIVERS.

All applications for the appointment of receivers equity causes, in bankruptcy causes and any other causes (except where a receiver in bankruptcy may be appointed by a referee as provided in the Bankruptcy Rules), shall be made to the judge assigned to hold the bankruptcy and motion part of the business of the court and to no other judge, provided, however, that in the event that such judge is unavailable by reason of illness, service in another part of the court upon an unfinished case, or other good cause, such application may be made to such other judge as may be assigned or designated by the senior district judge to entertain such application.

11. MOTIONS.

Except as otherwise provided by any statute of the United States, the procedure regulating the making of motions and of orders in actions or proceedings other than civil actions shall be that provided in the Federal Rules of Civil Procedure and the Civil Rules of this court.

All motions other than in criminal or bankruptcy proceedings, all exceptions, all writs of habeas corpus other than in criminal proceedings, including deportation and exclusion, and all appeals from commissioners under the Chinese Exclusion Acts shall be heard on Tuesdays and Fridays in the motion part.

All demurrers, motions and writs of habeas corpus in criminal proceedings, removals under Revised Statutes, Sec. 1014 (18 U. S. C. Sec. 591) and extraditions shall be heard on Mondays in Criminal Part I.

Two adjournments by stipulation shall be allowed. Further adjournments shall be only for good cause shown.

12. Notes of Issue for Motions.

Notes of Issue for all Motion Calendars except those heard in Criminal Part 1 must be filed at least two days before the calendar is called. Motions will not be placed upon the Motion Calendars unless notes of issue therefor

Add to General Rule 11 the following, immediately preceding the last paragraph of the rule:
"Bankruptcy motions and proceedings which are required to be conducted befor a judge shall be heard on Wednesdays in the motion part."

are filed as required by this rule. No motion will be added to Motion Calendars on the call thereof unless the Court on special application otherwise order.

13. Applications for Remissions of Forfeitures of Bail Bonds.

All applications for the remission of forfeitures of bail bonds must be made by motion on five days' notice to the United States Attorney, returnable on the Monday Criminal Motion Calendar.

Notes of issue thereon must be filed in the Clerk's office not later than the Friday preceding the return day.

14. MOTIONS IN VACATION.

When no session is being held for the trial of Criminal causes, motions directed to be heard in Criminal Part 1 may be heard in the General Motion Part.

15. NATURALIZATION DAYS.

Mondays shall be stated days for hearing petitions of aliens to become citizens of the United States. If any Monday be not a day of jurisdiction, the hearings set for that day shall be held on a day fixed by the Court. Nothing in this rule, however, shall prevent the hearing of such petitions on any day by way of adjournment or upon special order, provided due notice be given to the applicants and the representatives of the Department of Labor.

16. Submission of Orders and Decrees.

All orders, judgments and decrees submitted for settlement or signature must be presented to the Clerk at the Clerk's office and not sent to the Judge direct. Two days' notice of settlement is required in contested matters unless the form of order or decree be agreed upon and one day's notice is required of all counter proposals.

17. CLERK TO SIGN CERTAIN ORDERS.

The Clerk shall sign all orders of the classes pre-

Amend paragraph (a) of General Rule 17 to read as follows:

"Adjudications and discharges in bankruptcy not made by the referee and orders referring proceedings under Chapters XI, XII and XIII of the Bankruptcy Act to the Referee."

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- (b) Orders for the substituting of attorneys upon consent.
- (c) In causes and proceedings other than Bankruptcy or judgment-creditor's bills, all orders extending the time on consent within which to plead or make any motion.
- (d) In causes and proceedings other than Criminal, orders on consent extending the time to certify and file a transcript of record on appeal.
 - (e) Orders of discontinuance upon consent.
- (f) Orders upon consent satisfying decrees and cancelling stipulations and bonds.
- (g) Orders specially appointing persons 18 years old or over to serve the summons and complaint.

18. PETITIONS FOR HABEAS CORPUS IN EXCLUSION AND DEPORTATION CASES.

- w (a) Petitions for habeas corpus in exclusion and deportation cases, if the petitioner apply as next friend, must show either that the petitioner has been authorized by the alien to make the application, or that he is the father, son, husband or brother, or she is the mother, daughter, wife or sister of the alien.
- (b) Writs will not be allowed unless the petition shows in exclusion cases that the alien has appealed from an order of exclusion of a board of special inquiry, and that the Secretary of Labor has affirmed the exclusion and ordered the alien deported; or in deportation cases that the Secretary of Labor has issued a warrant of deportation.

(c) Petitioner must state in detail what conduct of the exclusion or deportation authorities has deprived the alien of a fair hearing, and why he is entitled to land or to remain notwithstanding the order of exclusion or deportation. The petition must allege (1) that the petitioner or his attorney has learned the facts so stated from the record on file in the office of the Commissioner of Immigration or the Chinese Inspector, or (2) that access to such record has been refused, or (3) that the interval before notice to the alien of deportation and the time of the proposed deportation is too short to allow any examination of the record. In case it be alleged that access has been refused, the petition must state when application was made, and by whom and who refused inspection. In case it be alleged that the time is too short for examination, the petition must state the time when the alien was informed of the affirmance by or warrant of the Secretary of Labor and the time of the proposed deportation, and why the interval was not long enough to apply for examination of the record.

19. SERVICE OF THE WRIT.

After delivery of an alien to the master of a ship for deportation, the writ shall be addressed to and served upon the master only. Notice to the respondent of the allowance or issuance of the writ will not be recognized as binding upon him without service. Service must be made by delivery of the original writ to the respondent, while the alien is in his custody, and may not be made upon a master after a ship has cast off from her wharf.

In case a writ be served upon a master, he may deliver the alien at once to the official from whom he received him, for custody until the return day. In such case the writ will be deemed returnable forthwith, and the custody of the official so receiving the alien will be deemed that of the Court, pending disposition of the writ. 20. FILING PETITION AND SERVING U. S. ATTORNEY IN HABEAS CORPUS CASES.

In all habeas corpus cases, the original petition must be filed with the Clerk, and in all such cases on deportation or exclusion or in Criminal proceedings or if an official of the United States be respondent a copy of the petition and of the writ must be served upon the United States Attorney, on the day upon which such writ is granted or, if granted after the closing of the Clerk's office, before 10:00 A. M. on the following day.

21. Publication of Advertisements.

The publication of all advertisements in Civil actions and Admiralty, except notices of sale of real estate or of any interest in land, shall be made in the New York Post, provided, however, that the Court in any given case may direct such additional advertisement as in its discretion may be deemed advisable.

The following newspapers are designated for publication of notices of sale in such causes of real estate or of any interest in land located as follows (28 U.S. Code, Section 849):

In New York County In Bronx County

In Westchester County

In Putnam County

In Dutchess County

In Columbia County

In Greene County

In Ulster County

In Sullivan County

In Orange County

In Rockland County

New York Post

The Home News

The Herald Statesman

Putnam County Republican

The Poughkeepsie Eagle-

News

Hudson Daily Star

Catskill Daily Mail

The Kingston Daily Free-

man

The Liberty Register

The Newburgh News

The Journal News

Amend General Rule 21 to read as follows Amend General Rule 21 to read as follows:

"The publication of all advertisements in Civil actions and Admiralty, except notices of sale of real estate or of any interest in land, shall be made in the New York Post or the New York Law Journal, provided, however, that the Court in any given case may direct such additional advertisement as in its discretion may be deemed advisable.

"Unless otherwise ordered, the following newspapers are designated for publication of notices of sale in such causes of real estate or of any interest in land located as follows (28 U. S. Code, Section 849):

ocated as follows (28 U. S. Code, Section 849):

In New York County: New York Post and New York Law Journal, In Bronx County: The Home News and New York Law Journal, In Westchester County: The Herald Statesman.

In Putnam County: Putnam County Republican.

In Dutchess County: The Poughkeepsie Eagle-News.

In Columbia County: Hudson Daily Star,

In Greene County: Catskill Daily Mail,

In Ulster County: The Kingston Daily Freeman.

In Sullivan County: The Liberty Register.

In Orange County: The Newburgh News.

In Rockland County: The Journal News."

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22. Examination on Voir Dire.

In criminal cases the Judge alone shall examine all jurors on their voir dire. If counsel desire examination as to any additional matter, he shall state the same, and the Judge, if the matter be proper in his opinion, shall further examine the jurors in respect thereof.

23. EXHIBITS.

Except as otherwise provided for in F. R. C. P. 53(e) (1), exhibits shall not be filed with the Clerk, but shall be retained in the custody of the respective attorneys who produced them in Court, unless the Court otherwise order.

24. Sureties.

In no case shall the Marshal or any of his deputies or any attorney of this Court be surety in any suit depending therein.

25. Bonds and Sureties Thereon.

All surety companies holding certificates of authority from the Secretary of the Treasury as acceptable sureties on Federal bonds and which are either incorporated in the State of New York or have appointed process agents for the District, are hereby approved up to the amounts for which they are respectively authorized by the Treasury Department to act on any one bond, as sureties on stipulations for costs and value, undertakings, bail bonds and all other bonds required to be filed in the Court.

When the amount of bail pending an appeal in Criminal causes or habeas corpus proceedings, or after indictment or information in Criminal causes, has been fixed by a Judge, the Clerk or a Deputy Clerk may take such bail

bond when the Surety thereon is one of the aforesaid approved surety companies, or when cash or United States Government bonds are deposited in the registry of the Court in lieu of sureties.

When individual sureties are offered on a bail bond, they shall be approved and the bail bond taken by one of the officers specified in Section 1014 of the United States Revised Statutes (18 U. S. Code, Section 591).

The approval of the Clerk or a Deputy Clerk of all other bonds and undertakings, except supersedeas and costs bonds on appeals, shall be sufficient where the sureties thereon are approved corporate surety companies and the amount of such security has been fixed by a Judge or by Court rule or statute.

26. ATTENDANCE OF DEFENDANTS IN CRIMINAL CAUSES.

A defendant in a Criminal prosecution admitted to bail shall not be required to attend any term of Court except upon notice from the United States Attorney.

27. FINES IN CIVIL CAUSES.

When a fine for the use of the United States is imposed by the Court other than by judgment or sentence in a Criminal cause, and the party fined is not thereupon committed, and such fine is not discharged, the Clerk shall at any time, upon the application of the United States Attorney, issue to the Marshal a warrant of execution requiring him to levy and make such fine of the goods and chattels, or in default thereof of the lands and tenements of the party.

Such fine may on application by the party, and sufficient cause shown and before the payment of the same out of Court, be mitigated or remitted.

The amount of all fines imposed, collected and paid into Court shall be accounted for by the Clerk with the United States Treasury.

28. Moneys Due the Collector of Customs.

Where the Collector of Customs or any other officer of the United States is entitled to receive moneys in Court, the same after deduction of costs shall be paid him by the Clerk upon an order entered as of course.

29. Marshal's Commissions.

In other than Admiralty causes the Marshal shall be entitled upon a settlement by the parties of the debt or claim without a sale of any property which may have come into his custody, pursuant to writ or process, to the like commissions as are provided for in Admiralty causes by Section 829 of the Revised Statutes (28 U. S. Code, Section 574).

30. DISMISSALS FOR WANT OF PROSECUTION.

Causes which have been pending in this Court for more than one year without any proceedings having been taken therein during such year may be dismissed as of course, for want of prosecution, by the Court on its own motion, at a general call of such causes as the Court may, from time to time, direct to be included in a general call, notice of which call shall have been published in the New York Law Journal or otherwise given as the Court may direct. Such causes may also be dismissed for want of prosecution on motion by any party upon notice to the other parties. Notices of dismissal by the Court on its own motion shall be given by mail by the Clerk to the attorneys of record for all parties who have appeared in the cause. For the purpose of a motion to vacate such a dismissal by the Court of its own motion, the term of Court at which the cause was dismissed is extended until thirty days from the date of such mailing of notice by the Clerk.

Where the Court has reason to believe that a suit is brought for any purpose other than to obtain the earliest possible adjudication by the Court of the issues involved, either or both parties may be required to show cause why the case should not be put on immediate trial or be dismissed and stricken from the Calendar. Such order to show cause may issue on the motion of the Court or of any attorney of record.

31. Entering Satisfaction of Judgments or Decrees.

Whenever the amount directed to be paid by any judgment or decree together with interest and the Clerk's statutory charges, shall be paid into Court, the Clerk shall enter satisfaction of said judgment or decree.

The Clerk shall enter satisfaction of any judgment or decree on behalf of the United States on filing acknowledgment of satisfaction thereof by the United States Attorney; in other cases, upon filing acknowledgment of satisfaction made by the judgment-creditor or his attorney, solicitor or proctor, within two years from the entry of the judgment or decree, and thereafter upon acknowledgment by the judgment-creditor or by his legal representatives or assigns with evidence of their authority.

32. BAIL BONDS TAKEN BY UNITED STATES COMMISSIONERS IN REMOVAL PROCEEDINGS.

In the removal proceedings United States Commissioners, approving bail bonds for the appearance of the accused in the District Court of the District in which the offense charged is alleged to have been committed and in which the accused is to be tried, shall forthwith send the original bail bond, together with a certified transcript of the removal proceedings, to the Clerk of the said District Court, said Commissioner retaining in his files an exact copy of such bond. For transmitting such bond and transcript the Commissioner shall be entitled to fees as prescribed by Section 597, Title 28, United States Code.

CALENDAR RULES

1. CALENDAR JUDGE.

The Senior District Judge, or in event of his illness, incapacity or absence from the District, the acting Senior District Judge, shall act as Calendar Judge. All motions with relation to the calendar, and all questions regarding the same or the Calendar Commissioner's office, shall be referred to the Calendar Judge who will hear motions and matters in relation to the calendar at 10:30 A. M. and 2:00 P. M. on each week day other than Saturdays.

2. Attorneys, Solicitors and Proctors.

The word "attorney" as used in these rules shall include a proctor of record. Any and all notices given under these rules to attorneys of record shall be binding on counsel and advocates.

3. CAUSES UNDER CALENDAR RULES.

These rules shall apply to Civil and Admiralty causes, but not to Criminal causes.

4. CALENDAR COMMISSIONER.

The Senior District Judge shall appoint an official called the Calendar Commissioner, whose office shall be a subdivision of the Clerk's office.

The Calendar Commissioner shall have charge of the assignment for trial of all causes to which the Calendar Rules apply, shall provide the Court with causes ready for trial and shall act under the direction of the Calendar Judge.

5. DEPUTIES IN EACH COURT ROOM.

The Clerk shall provide a deputy in each court room who shall be present during session hours, shall attend to the clerical details pertaining to the trial of causes and shall perform such other duties as shall be prescribed by the Calendar Commissioner.

6. PERMANENT CALENDARS.

The Calendar Commissioner shall keep in dockets in his office three calendars of causes awaiting trial, one consisting of admiralty causes one of other non-jury causes, and the third of jury causes. Each cause shall be designated in a record by its title and by a serial number, which shall be given to it by the Calendar Commissioner. In these calendars the calendar status of each cause shall be kept up to date. These records shall be open to the public during business hours on all days except Sundays and legal holidays. one calendar shall be placed all jury causes raising issues of fact of a civil nature, including issues in Bankruptcy proceedings triable by jury; upon the second calendar shall be placed all admiralty causes, and upon the third calendar all other non-jury causes of a civil nature, causes wherein trial by jury has been waived and jury-of-one causes.

7. FILING PLEADINGS OR PROCESS.

All pleadings or process shall be filed with the Clerk. Every cause shall be deemed at issue upon the filing of the answer or similar pleading.

8. PLACING CAUSES ON CALENDARS.

Immediately after twenty days have elapsed since joinder of issue in all causes (except one pending before a master or commissioner and except a proceeding in Bankruptcy) the Clerk shall notify the Calendar Commissioner. In a Bankruptcy proceeding, wherein a jury trial of issues raised by the answer is demanded, the Clerk, immediately upon receipt of written notice from the person demanding such trial with proof of service of

such notice on all opposing attorneys, shall notify the Commissioner. In each instance the Clerk shall, at the same time, inform the Commissioner of the docket number, full title, names of attorneys of record, nature of issue and date of issue joined. Thereupon the Calendar Commissioner shall place each such cause or proceeding upon the calendar in the order in which he has been so notified by the Clerk.

When any cause or proceeding already on the calendar is terminated or discontinued otherwise than by order made or other action taken in a trial part, the Clerk shall immediately notify the Calendar Commissioner, who shall thereupon drop it from the calendar.

No notice of trial need be served and no note of issue need be filed in any cause.

9. CASE RECORDS.

When a cause is placed on the calendar, the Calendar Commissioner shall open a record in such form as he shall elect, entitled in the cause, upon which he shall enter, from time to time, its calendar history. This record shall be sent to the trial part by the Calendar Commissioner when the cause is assigned for trial.

10. RETURN OF CASE RECORDS.

When a cause is returned to the Calendar Commissioner for any reason, the Deputy Clerk in the trial part shall return the case record forthwith to the Calendar Commissioner, after having made proper notation thereon as to the reason for such return.

11. Publication of Permanent Calendars.

Except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall publish at such times as he deems proper, between July first and September fifteenth of each year, the calendar numbers or the titles, or both, of such a number of causes on the permanent calendars, in their order on such calendars, as, in the Commissioner's judgment, may be tried within the year beginning on the first day of the ensuing October Term.

The Commissioner in his discretion may publish from time to time additions to the published permanent calendars.

12. DAY CALENDARS.

At least three days before the opening of the October Term of Court, and on each Court day thereafter, except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall prepare and publish by name and number, three day calendars, one of jury causes (called jury day calendar), one of admiralty causes (called admiralty day calendar), and the third of other non-jury causes (called non-jury day calendar), each of which shall contain such number of causes taken from the head of the calendars as he sees fit.

13. RESERVE CALENDARS.

At least three days before the opening of the October Term of Court, and on each Court day thereafter, except as otherwise directed by the Calendar Judge, the Calendar Commissioner shall publish by name and number three reserve calendars, one of jury causes (called Jury reserve calendar), one of admiralty causes (called admiralty reserve calendar), and the third of other non-jury causes (called non-jury reserve calendar), which shall contain such number of causes as he sees fit, taken in their numerical order, from the permanent calendars, just behind those listed on the day calendars, in the order in which they appear on the calendar records.

Causes may be taken in their consecutive order on the permanent calendars, by the Calendar Commissioner from the permanent calendars, whether published or not, and added to the published reserve calendars at any time.

14. Adjournment of Causes.

(a) Adjournment of Causes on Reserve Calendars.

Causes appearing on reserve calendars (but not those on permanent calendars) may be postponed on written consent of all attorneys of record by use of an "adjournment slip" in such form as the Calendar Commissioner shall specify. Adjournment slips shall not be effective unless approved in writing by the Calendar Commissioner. Adjournment slips, when so approved by and filed with the Calendar Commissioner, shall automatically postpone the trial to the adjourned date indicated on the slip. All adjournment slips shall be filed with the Calendar Commissioner not later than 3:00 P. M. on the last Court day before the day on which the cause is published on the day calendar. Only three adjournments by consent shall be allowed. Under no circumstances shall the name of an opposing attorney be signed to an adjournment slip without authority, and the name of the person authorizing such signature shall appear thereon. In the event an opposing attorney does not consent that a cause on the reserve calendar be passed, an application for a continuance may be made in writing to the Calendar Judge, with notice to the other side of the time and place the application is to be made. adjournment be asked upon the ground of the absence of a material witness, the attorney making the application shall file with it an affidavit setting forth what he expects to prove by such witness, and also what acts of diligence he has employed to procure the attendance of such witness. If the Court finds the testimony is material and that due diligence has been used, the cause may be passed to a later date unless the opposing attorney consents to the reading of such affidavit in evidence, in which event the trial shall proceed and the affidavit may be read on the trial and treated as the deposition of an absent witness.

(b) Adjournment of Causes on Day Calendars.

A cause appearing on the day calendar may not be adjourned except for good cause arising after it has been published on the day calendar. If there be such good cause, written application must be made forthwith to the Calendar Judge, with notice to the other side of the time and place the application will be made. All orders granting or denying applications for adjournments shall be filed immediately in the Calendar Commissioner's office.

(c) Holding Causes on Day Calendars.

Causes may be held in place on the day calendars by the Calendar Commissioner when counsel are actually engaged as provided in these rules.

(d) Adjournment of Causes After Assignment to Trial Room.

Each case assigned to a trial room shall be tried or dismissed. In the exceptional instance where good cause for adjournment has arisen since the closing of Court on the preceding day, application for appropriate adjournment may be made to the Calendar Judge only, unless the trial actually shall have begun, when such application may be made to the Trial Judge. If the application be denied, the cause shall proceed forthwith to trial. If the application be granted, the cause shall be returned forthwith to the Calendar Commissioner's office and the adjourned date noted on his records. The reason for any continuance, if granted, must be entered on the case record, together with the name of the party seeking continuance or such other disposition as shall have been made, and the record returned forthwith to the Calendar Commissioner.

(e) Position of Adjourned Causes.

Causes which have been adjourned by consent or order to a definite date, pursuant to this rule, shall be added to the foot of the reserve calendar for the adjourned date, unless otherwise directed in the order.

15. CALENDAR COMMISSIONER'S COMMUNICATION WITH ATTORNEYS BY TELEPHONE.

During each day that the Court is in session, the Calendar Commissioner, personally or by his assistants, shall telephone to the attorneys of record in the causes which are to appear on the day calendar for the following Court day and shall inquire whether they are to be tried, settled or discontinued, and shall provide an adequate calendar for the following day.

If any disposition of a cause results from such telephone calls other than to mark it ready for trial, an entry shall be made on the case record and in the docket in the Calendar Commissioner's office of such disposition, together with the name of the attorney of record authorizing such action.

16. Information Concerning Causes on Trial.

The Calendar Commissioner shall post on bulletin boards in his office information which shall indicate approximately the status of each cause on trial in each trial room at all times, and the clerks in the court rooms shall report the progress of trials to the Calendar Commissioner as directed by him. The Calendar Commissioner's office shall answer all inquiries by telephone or otherwise as to the disposition or status of the causes on the calendars and on trial, and so far as possible as to the number of causes ready ahead of any particular cause awaiting trial, and shall co-operate in all reasonable ways with the Bar in facilitating the bringing of issues to trial so far as the calendars are concerned.

17. NOTIFICATION OF ATTORNEYS IN NEXT READY CAUSES.

The Calendar Commissioner shall keep informed as to the progress of each trial, and when a trial part is, or is about to be, disengaged, he shall notify the attorneys of record in the next ready cause on the day calendar by telephone to report in a designated trial room, in such manner that they will have reasonable opportunity to reach there in time; but the burden of responsibility for the appearance of attorneys, parties and witnesses, in Court in readiness for trial, is on the attorneys of record and is not on the Calendar Commissioner.

Attorneys of record shall keep the Commissioner informed of their telephone call numbers, and when they have causes on the day calendar they shall hold themselves within telephone call and report forthwith in the trial room on notice being given to their offices by the Calendar Commissioner's office. The time of notification shall be indicated on the case record.

Attorneys of record shall advise the Commissioner, upon his request, regarding their readiness for trial, probable duration of trial and such other matters within their knowledge as may facilitate the performance of his duties and the prompt trial of causes.

18. ENGAGEMENTS OF COUNSEL.

Causes shall not be assigned to a trial room when counsel therein are actually engaged in such courts and in such proceedings as the Calendar Judge shall permit such engagements to be recognized. A cause may hold its place during any day to an hour fixed by all the attorneys of record with the approval of the Calendar Commissioner. The Calendar Commissioner shall post upon bulletin boards in his office the names of all counsel in causes published on the day calendar, who report themselves as actually engaged.

19. SETTLEMENT OR DISCONTINUANCE OF CAUSES ON THE CALENDAR.

Where parties to any cause have settled the same, or have stipulated its dismissal, the attorneys of record shall at once enter the proper order. Where the cause is on the day calendar, notice of such settlement or dismissal shall be given forthwith to the Calendar Commissioner.

20. Preferences.

The following causes only shall be entitled to preferences:

- (a) Causes entitled to a preference under any statute of the United States (F. R. C. P. 40).
- (b) Issues in bankruptcy framed by an answer (demanding a jury trial) to any bankruptcy petition.
- (c) Causes restored to the calendar for a new trial by the setting aside of a former verdict, by reversal of a former judgment or after a mistrial.
- (d) Causes to which any receiver appointed by any court or any trustee in bankruptcy is a party.
- (e) Causes which, in the judgment and discretion of the calendar judge, are entitled to a preference for exceptional and meritorious reasons.

Such preferences shall be obtained only by order of the Calendar Judge upon two days' notice of motion and a cause so preferred shall be placed at the foot of the reserve calendar for a day certain, unless the order otherwise direct.

21. Juries.

Under direction of the Calendar Judge, jurors for all trial parts (including the Criminal parts) shall be assembled in one room and shall be under the supervision of the Calendar Commissioner. Sufficient numbers shall be sent by the Calendar Commissioner to each trial part to be empanelled when and as required. The jury wheel shall be kept in the Calendar Commissioner's office and, except as the Calendar Judge shall otherwise direct in

special cases, all juries shall be drawn there by the Calendar Commissioner or by his deputy. On request by attorneys of record in any cause, the Calendar Commissioner shall notify them of the time of the drawing, in such manner as to provide a reasonable opportunity for them to be present. The drawing of jurors always shall be public, and may be attended by anyone who so desires.

22. SUBPOENAS.

All subpoenss shall be made returnable at the Court, with a direction to the witness to appear in the Calendar Commissioner's office for information as to the trial room in which the cause in which he has been subpoensed is to be tried. The Calendar Commissioner may arrange with any witness for telephone call to him upon the assignment of the cause to a trial room or make other arrangements to accommodate witnesses as seem to him proper.

CIVIL RULES

Pursuant to Rule 83 of the Rules of Civil Procedure for the District Courts of the United States, the following rules have been promulgated for the regulation of the practice of the United States District Court for the Southern District of New York in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81 of said Rules of Civil Procedure. Said rules are hereinafter referred to by the initials F. R. C. P. (Federal Rules of Civil Procedure). The following rules may be cited as Civil Rules (C. R.).

RULE 1

Action to Abate if Defendant not Served.

The summons and complaint must be served on each defendant within three months after the issuance of the summons. Unless a defendant has been served within said time, or has appeared generally in the cause, the action against him shall abate; provided, however, that a plaintiff whose time to effect service has not expired may from time to time, for good cause shown, procure an order extending his time to serve the summons and complaint for such further period as the court may direct.

RULE 2

Appearance.

A defendant against whom a summons has been issued may appear regardless of the plaintiff's failure to serve the summons upon him. An appearance is made by the service of a notice thereof, or by the service of any motion or pleading purporting to be responsive to, or affecting the complaint.

RULE 3

Pleadings to be Filed.

All pleadings after the complaint must be immediately filed after service. In the event of failure to file such a pleading within five days after notice from any party to do so, the court may strike such pleading on motion.

RULE 4

Form of Order.

It shall not be necessary to state in the caption of any order of the court that it was made at any term. An

order shall be dated as of the date of its signing, which date may appear at the foot thereof.

RULE 5

Requisites for ex parte Order.

No ex parte order shall be granted, unless based upon an affidavit showing cause therefor, and stating whether or not a previous application for similar relief has been made.

RULE 6

Service of ex parte Order.

Wherever the court has made an *ex parte* order, the party obtaining it shall serve a copy thereof, and of the papers upon which it was based, within two days thereafter upon each adverse party who has appeared in the cause and is affected thereby; except that an order to show cause shall be served within the time limited by the order.

RULE 7

Orders to be Filed.

All orders whether made on notice or *ex parte*, other than orders to show cause and orders for the issuance of a subpoena *duces tecum*, shall be filed forthwith in the office of the clerk.

RULE 8

Address of Party to be Furnished.

Any party shall, upon demand of any other party, furnish such other party with his residence address, in

default whereof the Court on an ex parte application shall order the furnishing of such information.

RULE 9

Enforcement of Stipulations.

The court shall not be required to enforce stipulations affecting the proceedings in any civil action unless such stipulations are in writing, signed by the parties or their attorneys, or unless such stipulations are made in open court.

RULE 10

Further Statement or Bill of Particulars.

Where an order is granted under F. R. C. P. 12 (e) for a more definite statement, or for a bill of particulars, and the pleading or bill which is served in purported compliance therewith fails to meet the terms of the order, a party before applying for other relief may make a motion for a further statement or bill.

RULE 11

$Notification \ of \ Claim \ of \ Unconstitutionality.$

If at any time prior to the trial of a cause to which neither the United States nor any officer, agency or employee thereof is a party, any party to the cause draws in question the constitutionality of an Act of Congress affecting the public interest, each party (to enable the court to comply with Section 1 of the Act of August 24, 1937, C. 754, 50 Stat. L. 751) shall notify the Senior District Judge, in writing, of the existence of said question, and in such notification shall give the title of the cause, a reference to the questioned statute sufficient for its identification, and the respects in which it is claimed that the statute is unconstitutional.

Rule 12

Counsel Fees on Taking Depositions in Certain Cases.

In the case of a proposed deposition upon oral examination at a place more than 150 miles from the courthouse, including the case of a deposition before action or pending appeal, the court may provide in the order therefor, or impose as a condition of denying a motion to vacate a notice thereof, that the applicant shall pay the expense of the attendance of one attorney for the adversary party or parties, or expected party or parties, at the place where the deposition is to be taken, including a reasonable counsel fee, which amounts shall be paid prior to such examination. The amount paid by such applicant to his adversary on account of attorney's fees and expenses shall be a taxable disbursement in the event that the applicant recovers costs of the action.

Where, pursuant to F. R. C. P. 27 (a) (2), the court appoints an attorney to represent an absent expected adverse party and cross-examine the proposed witness, the order appointing such attorney shall fix his compensation to include his expenses, and such compensation shall be paid by the petitioner prior to the appearance of such attorney upon the examination.

RULE 13

Manner of Taking Deposition.

The officer before whom a deposition is being taken pursuant to F. R. C. P. 26, 27 or 29, may continue the same from day to day until it is completed, except that an examination shall not be had on Sunday, or unless by consent of the parties and witness, on Saturday or a legal holiday. Where a witness is physically unable to attend the place of examination, the officer may continue the examination to the residence or other place of

the witness, or he may adjourn the same from time to time, but, except by consent, for not more than one week at a time. The officer before whom an oral examination is to be had shall be provided by the party procuring the same with a copy of the notice or order of examination, as well as of any other order made pursuant to F. R. C. P. 30 (b). The officer shall also be provided with a copy of this rule and of the following rules: F. R. C. P. 26 (c), 28 (c), 30 (c), (d), (e) and (f).

Upon receipt of a deposition the clerk, unless otherwise ordered, shall open and file it forthwith and give notice thereof by mail to the attorneys for the respective parties.

RULE 14

Further Answer to Interrogatory.

Where an answer to any interrogatory made under F. R. C. P. 33 is incomplete or not responsive, or where the oath to such answer has been omitted, a party aggrieved may, before applying for other relief, apply for an order directing that a further answer be served.

RULE 15

Order for Subpoena Duces Tecum for Deposition.

An order for the use of a subpoena commanding the production of documentary evidence on the taking of a deposition may be granted without notice or affidavit, and may be in the form of an endorsement on the subpoena of the words "So ordered" with the date and signature by the judge.

RULE 16

Contempt Procedure.

A proceeding to adjudicate a person in civil contempt of court, including a case provided for in F. R. C. P. 37 (b) (2) (IV), must be initiated by the service of an order to show cause. The affidavit upon which such order is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and the evidence upon which the amount of such damages may be determined. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the order to show cause and the papers upon which it is based may be served on his attorney; otherwise, service must be made personally, in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. The order to show cause may, upon necessity shown therefor, embody a direction to the United States Marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for his appearance at the hearing, and further conditioned that the alleged contemnor will hold himself thereafter amenable to all orders of the court for his surrender.

If the alleged contemnor puts in issue his alleged misconduct or the damages thereby occasioned, he shall, upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. Where under the statutes of the United States such alleged contemnor is entitled to a trial by jury, he must make written demand therefor on or before the return day or adjourned day of the order to show cause; else he will be deemed to have waived such jury.

An order adjudicating a person in contempt of court shall recite the papers and proceedings on the motion, and shall embody the findings of fact upon which the adjudication and quantum of damages are predicated; shall specify the grounds of the adjudication; shall fix the fine, if any, inflicted by the court, which fine shall include the damages found, and name the person to whom such fine is payable; shall state the other conditions, if any, the performance whereof will operate to purge the contempt, and shall direct the arrest of the contemnor by the United States Marshal, and his confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. Unless the order otherwise specifies, the place of confinement shall be the Federal House of Detention. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

Where it is sought to adjudicate a person in criminal contempt for misconduct committed elsewhere than in the immediate presence or hearing of the court, such proceeding shall be brought by the United States Attorney in the name of the United States.

RULE 17

Agreement on a Master.

The parties to any civil action may stipulate in writing for the appointment of a master to report upon par-

ticular issues, or upon all the issues. Such stipulation may suggest the master, in which case the court may appoint the person named. The procedure governing such a reference shall be the same as that governing any other reference to a master.

RULE 18

Certain Directions of Master to be in Writing.

A direction by a master to a party to produce evidence as provided in F. R. C. P. 53 (c), or prescribing the form of account as provided in 53 (d) (3), shall at the request of any party, be reduced to writing in the form of an order dated and signed by the master, who shall furnish a copy thereof to all parties to the hearing. The original of such order shall, at the request of any party, form a part of the record returned by the master with his report.

RULE 19

Master May Sit Outside District.

A master may sit outside the district as well as within it. Where he is requested so to do for the convenience of one of the parties and there is opposition thereto by another party, he may make an order for the holding of the hearing, or a part thereof, outside of the district, upon such terms and conditions as shall be just.

RULE 20

Findings of Fact.

All findings of fact by the court or a master shall be embodied in consecutively numbered paragraphs, the contents of which shall be limited as far as practicable to a single set of circumstances. The court in passing upon the report of a master shall be deemed to have adopted the findings of fact enumerated in the report, except where the order of the court rejects the report in its entirety, or except to the extent that it specifically rejects enumerated findings.

Rule 21

Master's Fees Taxable.

After a master's compensation has been fixed by the court, and his disbursements allowed, the prevailing party may pay such compensation and disbursements, and such payment shall thereupon be a taxable disbursement against the defeated party or parties. Where, however, the court shall have directed by order the parties against whom, or the proportion in which such compensation and disbursements shall be charged, or the fund or subject-matter out of which they shall be paid, the party making such payment to the master shall be entitled to tax such disbursement only against such parties and in such proportions as the court shall have directed, and to payment of such taxable disbursement only out of such fund or subject-matter as the court shall have directed. RULE 22

Entering Judgment.

In cases where the clerk is authorized to enter judgment without direction of the court, the successful party shall prepare and submit to the clerk the proposed judgment, and may do so without notice. In all cases in which the form of judgment requires the approval of the court, the judgment shall be prepared by the successful party and settled on not less than two days' notice to all other parties who have appeared, unless the court shall otherwise direct. Any proposed counter-form of

judgment shall be served on the day prior to the return day of the notice of settlement. The form of judgment, when approved, shall be delivered to the clerk for entry. The judge shall indicate his approval of the form of judgment as follows: "Approved, , 19 , and sign his name thereto. The clerk shall then append the words "Judgment rendered,

, 19 " and sign the judgment. The judgment in any case may be signed, leaving a blank space for the insertion of costs by the clerk as and when they have been taxed. But the judgment shall not be entered until costs have been taxed or waived.

A judgment docket shall also be kept by the clerk.

RULE 23

Default Judgment by Clerk.

When a party is entitled to have the clerk enter judgment by default pursuant to F. R. C. P. 55 (b) (1), he shall submit with his form of judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of interest to the day of judgment, and the costs and taxable disbursements claimed, to which statement shall be appended an affidavit of the party or his attorney (1) that the party against whom judgment is sought is not an infant or an incompetent person; (2) that he has made default in appearance in the action; (3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid; and (4) that the disbursements sought to be taxed have been made in the action, or will necessarily be made or incurred therein. The clerk shall thereupon enter judgment for principal, interest and costs.

RULE 24

Default Judgment by Court.

Where it is necessary to apply to the court for the entry of a default judgment, the application shall be accompanied by a certificate of the clerk of the entry of the default, and by a copy of the pleading to which no response has been made.

Where the amount of damages claimed is unliquidated, the applicant shall submit an affidavit, setting forth the evidentiary matter necessary to enable the court to fix the amount of the damage. If notice of the application for the default judgment is necessary, then the party against whom the motion is made may submit proof by affidavit in opposition to that of the applicant on the question of damages. The court may, thereupon, render judgment on the record before it, or order oral testimony on the question of damages to be produced before the court or before a master appointed by the court.

In all other cases, unless the court otherwise directs, judgment by default may be entered in accordance with the case made out by the pleading, and in accordance with the prayer thereof.

RULE 25

Additional Copies for the Clerk.

Whenever an order of reference to a master is made, the attorney procuring the signing of the order shall, at the time of the filing thereof, deposit with the clerk a copy to be furnished to the master.

Upon the filing of his report the master shall furnish the clerk with sufficient copies of a notice of filing thereof, addressed severally to the parties or their attorneys, to enable the clerk to mail copies to them.

All notices of appeal shall exhibit the names of the

several parties to the judgment, and the names and addresses of their respective attorneys of record. Upon the filing of a notice of appeal, the appellant shall file a sufficient number of copies thereof to enable the clerk to comply with the provisions of F. R. C. P. 73 (b).

Whenever a notice of motion to enforce the liability of a surety upon an appeal or a supersedeas bond is served upon the clerk pursuant to the provisions of F. R. C. P. 73 (f), the party making such motion shall deposit with the clerk one additional copy for each surety to be served.

Whenever an order or judgment is entered, the attorney causing the entry thereof shall append to or endorse upon the order or judgment a list of the names of the parties entitled to be notified of the entry of such judgment or order, and the names and addresses of their respective attorneys. Such attorney shall also deposit with the clerk a conformed copy of such judgment or order for each attorney or party to be served by the clerk with notice of entry thereof pursuant to the provisions of F. R. C. P. 77 (d).

RULE 26

New Trial.

A party who, pursuant to F. R. C. P. 59 (b), is required to obtain leave of court before moving for a new trial may, at the time of giving notice of application for such leave, give notice also of the motion for a new trial in the event such leave is granted, and the court in such case, if upon hearing of the application for leave and a showing of due diligence it grants such leave, may proceed on the same day to the consideration of the motion for a new trial.

Rule 27

Notice of Sale.

In any cause in equity, the notices of any proposed sale of property directed to be made by any order, judgment or decree of the court, unless otherwise ordered by the court, need not set out the terms of sale, which shall be specified in such order, judgment or decree, and such notices will be sufficient if in substantially the following form with such appropriate omissions, insertions and variations as may be necessary in any case:

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

NOTICE OF SALE.

Pursuant to of the District
(order or judgment)
Court of the United States for the Southern District of
New York, filed in the office of the Clerk of said Court
on in the cause entitled
(date)
No,
(name and docket number)
the undersigned, a Special Master, will sell at public sale
at at at
(place of sale) (date and hour of sale)
o'clock in thenoon the property in said
described and therein directed to
(order or judgment)
be sold, to which reference is made
(order or judgment)
for the terms of sale and for a description of the prop-
erty, which may be briefly described as follows:
Dated:
The brief description set out in any such notices need
not describe the property by metes and bounds or other-

wise in detail and will be sufficient if in general terms it identify the property by specifying its nature and location; provided that the approximate acreage of any real estate outside the limits of any town or city, the street, lot and block number of any real estate within any town or city, the termini of any railroad and a general statement of the character of any improvements upon the property shall be set out.

RULE 28

Supersedeas.

An appellant desiring to stay the enforcement of a judgment for a sum of money only may, ex parte, present for approval a supersedeas bond as required by the provisions of F. R. C. P. 73 (d). The bond shall be in the amount of the judgment, plus 11 per cent to cover interest and such damages for delay as may be awarded, plus \$250 to cover costs. The bond must be in the form provided for by said rule, and properly executed and acknowledged. The bond may be executed by the surety only. If the bond is executed by individual sureties, said sureties shall severally attach their affidavits of justification, which shall state their full names, residences, occupations and business addresses, that their several net worths exceed twice the amount of the bond over and above any obligations as surety assumed by them on other bonds or undertakings, which also shall be stated. When the stay may be effected solely by the giving of the supersedeas bond, but the judgment or order is not solely for a sum of money, the court shall make its order on notice fixing the amount of the bond. In all other cases, it may grant a stay on notice on such terms as to security and otherwise as it may deem fit and proper.

Upon approval, a bond given to effect a stay pending appeal shall be filed with the clerk, and a copy thereof, with notice of filing, promptly served on all parties

affected thereby. The appellee may raise objections to the form of the bond or to the sufficiency of the surety for determination by the court.

RULE 29

Designation of Part of Reporter's Transcript for Appeal.

If the appellant's designation of the portions of the record to be contained in the record on appeal includes only part of the reporter's transcript, and if the appellant fails to file two copies of additional parts thereof sufficient to enable the appellee to designate the parts he desires to have added, the appellee within five days of the appellant's designation may serve notice upon the appellant to furnish the additional parts needed, and the time within which the appellee may file his designation shall thereupon be extended ten days beyond the time of the filing of two copies of the additional parts of the transcript with service of a notice of the filing thereof.

RULE 30

Abridgment of Exhibits.

Where an appellant desires to abridge an exhibit pursuant to F. R. C. P. 75 (e), he shall serve with his designation, a statement indicating the matter to be omitted therefrom, as well as any matter to be stated in lieu thereof.

RULE 31

Record on Appeal.

For the purpose of enabling the clerk to transmit to the appellate court the record on appeal, as required by F. R. C. P. 75 (g), the appellant, within thirty days after the appeal has been taken, shall serve upon the appellee a typed or printed copy of the proposed record on appeal, to accord with the designations filed by the parties, and within the provisions of F. R. C. P. 75 (g). Unless a motion pursuant to F. R. C. P. 75 (h) to correct the proposed record in any respect is made returnable within ten days of such service, two typed or printed copies of the record as proposed shall be filed with the clerk, one of which may be certified by him and filed in the appellate court. If a motion to correct is granted, two copies, as ordered to be corrected, shall be filed with the clerk within five days of such order.

If the appellant attaches to a copy of the record filed by him with the clerk a stipulation of the parties to the appeal that the copy so filed is a true transcript of the record of the District Court as agreed upon by the parties, the clerk shall certify the same as the record on appeal, without charge therefor except such as may lawfully be made for the certificate itself. Such stipulation shall form part of the record on appeal.

RULE 32

Official Stenographer.

The Southern District Court Reporters, a partnership, is hereby appointed official court reporter. It shall provide a competent court reporter to attend at all trials or hearings in civil actions where a record of the proceeding is to be made.

For such attendance, the official court reporter shall be entitled to receive compensation at the rate of \$15.00 a day, payable in the first instance, by the plaintiff, except that where a defendant has interposed a counterclaim, the court may apportion attendance fees between the plaintiff and defendant, and further excepting that, where the plaintiff is the United States or any agency or official thereof, no attendance charge shall be made.

The reporter must furnish a transcript or transcripts

of the evidence to all parties to the cause, applying for the same. For the delivery of such transcripts, it shall be entitled to charge for a page of 250 words, sixty-five (\$.65) cents for the original, and twenty-five (\$.25) cents for each carbon copy. No charge shall be made to the United States or any official or agency thereof. Where any party has paid attendance fees, such fees shall be refunded to him if a transcript is furnished to any party. Where parties require transcripts to be delivered during the course of a trial or hearing, reporters' fees shall be such as are agreed upon.

Where the court directs that a transcript shall be furnished to it, the expense thereof, in the first instance, shall be borne by the plaintiff, unless parties shall otherwise stipulate, or the court otherwise direct. The expense of any party for attendance or for furnishing a transcript thus directed, or for obtaining a transcript for the purposes of a new trial, or for amended findings, or for appeals, shall be taxable in the cause, at the normal rate above specified unless the court, in its discretion, shall otherwise direct.

Each transcript furnished, shall be certified by the reporter taking the proceedings, in such form as to entitle it to be admitted in evidence. In the event of the death, absence or inability of the reporter taking the proceeding to certify the transcript the certification shall be made by the official court reporter.

The reporter shall not be required to undertake the making of a typed transcript without the deposit of an adequate indemnity, nor to furnish such transcript prior to the payment thereof.

RULE 33

Settlement of Claims of Infants and Incompetents and Disposition of Funds.

No claim of an infant or incompetent shall be settled or compromised without leave of the court, embodied in an order approving the stipulation of settlement. If the court refuses to approve such stipulation then no part of the papers upon such application shall, at any time thereafter, be attempted to be introduced, directly or indirectly, into evidence.

Whenever an infant or incompetent has recovered a sum of money, whether by settlement or judgment, such money, whether collected upon execution or otherwise, shall be deposited with the Clerk, to abide the further order of the court in the premises. Such money shall not be withdrawn except as hereinafter provided. Upon proof made on a certified copy of letters of guardianship of the property of the infant or incompetent, or like commission, issued out of any court of competent jurisdiction of the State, county or district where the infant or incompetent resides, an application may be made on behalf of the infant or incompetent for an order directing the clerk to pay over to such guardian the amount so deposited, less the amount of any attorneys' lien fixed on the fund. Such application must be made either by the attorney of record of the infant or incompetent, or on notice to him. On such application, the amount of the attorneys' lien on the fund, shall be fixed and determined by the court, which determination shall be embodied in the order directing the disposal of the fund. The Clerk shall thereupon pay out

the monies as directed.

RULE 34

Procedure in Absence of Rule.

Whenever a procedural question arises which is not covered by the provisions of any statute of the United States, or of the Federal Rules of Civil Procedure, or of these rules, it shall be determined, if possible, by the parallels or analogies furnished by such statutes and

rules. If, however, no such parallels or analogies exist, then the procedure heretofore prevailing in courts of equity of the United States, or in default thereof the procedure which shall then prevail in the Supreme Court of the State of New York shall be applied.

ADMIRALTY RULES

I.

PROCESS AND RETURN OF SAME.

1. Process.

All process shall be issued by the Clerk. Process in personam shall be returnable at the Clerk's office not less than eight days from its issuance and shall be served not less than four days before the return day, unless otherwise ordered. Process in rem, except in revenue and possessory cases, shall be returnable at the next general motion day, not less than eight days from its issuance, unless otherwise ordered.

2. RETURN OF PROCESS.

All process shall be returned on the return day thereof, and the return upon process in rem shall state the date of seizure or of sale, as the case may be.

Process in rem upon the return day thereof, shall be called by the Clerk. Appearance or claim shall be filed on the return day and where no appearance or claim is filed, a decree, interlocutory or final as may

be proper, may be entered.

3. Goods in Possession of Collector.

In suits in rem when the res is in the custody of the Collector of Customs, it shall be a sufficient service of the monition and warrant, to leave a copy thereof

with the said Collector, with notice of the attachment of the property therein described, and requiring such Collector to detain such property in custody until the further order of the Court; and, in case the Collector is not found within the district, then to leave also such copy and notice with the custodian of the property within the district; with notice also, except in Customs seizures cases, to the owner or his agent, if found within the district; subject however, to such further special order as the Court may make thereon.

II.

PUBLICATION.

4. Publication.

Any publication required shall be made in the "New York Post," except as otherwise ordered.

Notice of the arrest of property in suits in rem other than in behalf of the United States shall be published once unless a judge by special order directs other or further publication. Publication hereunder, unless otherwise ordered, shall be one week before the date on which the process is made returnable. The published notice need contain only the title of the suit, the nature of the cause of action, the amount demanded, the time and place of the return of the monition and names of the marshal and proctor, and shall direct that all persons interested shall appear or that default and condemnation will be ordered.

WHEN PUBLICATION NECESSARY PRIOR TO HEARING, DECREE OR SALE.

Where the res remains in the custody of the Marshal, the cause will not be heard until after publication of Anderdated 12/28/28 process shall have been made in that cause, or in some other pending cause in which the property is held in

Amend the first paragraph of Admiralty Rule 4 to read as follows:
"Any publication required shall be made in the New York Post or the
New York Law Journal, except as otherwise ordered."

custody. No final decree shall be entered ordering the condemnation and sale of property not perishable, arrested under process in rem, unless publication of process in that cause shall have been duly made; nor except by consent of the parties or by order of the Court will any sale of the res be ordered by interlocutory decree before the sum chargeable thereon is fixed by the Court.

6. NOTICE OF SALE, PUBLICATION OF.

Notice of sale of property after condemnation in suits in rem (except under the Revenue Laws and on seizure by the United States), shall be published daily for at least six days before sale unless otherwise ordered.

III.

STIPULATIONS.

7. SECURITY FOR COSTS.

No libel, petition, appearance, claim or answer shall be filed except on the part of the United States, or on the special order of this Court, or when otherwise provided by law, or by these rules, unless the party offering the same shall first file a stipulation for costs, conditioned that the principal shall pay all costs awarded against him, it or them by this Court, and, in case of appeal, by any Appellate Court. In suits in personam, such stipulation shall be in the sum of one hundred dollars; in suits in rem, or where process of attachment is to be issued, the stipulation shall be in the sum of two hundred and fifty dollars.

In cases where a stipulation for value is given, the claimant or respondent may, at his option, increase the amount of such stipulation, as fixed by the Court or by agreement, by the amount of the appropriate stipulation for costs, in which event no separate stipulation for costs shall be required.

Seamen suing for wages in their own rights and for

their own benefit, for services on board American vessels, salvors coming into port in possession of the property libelled, petitioners for money in the Registry of the Court, and the City of New York shall not be required to give such security in the first instance. The Court, however, may on motion order the usual stipulation to be given.

In place of a stipulation the party may deposit the necessary amount in the Registry of the Court.

8. STIPULATIONS, FORM OF.

Every stipulation, except for costs, which need not be signed by the party, shall be executed and acknowledged by the party on whose behalf it is given or by someone lawfully entitled to do so on his behalf, and by an approved corporate surety or by two sufficient individual sureties, one of whom shall be resident in the Southern or Eastern District of New York. Where the party offering a stipulation for costs resides or has a place of business within the Southern or Eastern District of New York, one surety shall be sufficient. Where the sureties are individuals, the stipulation shall state the street and number, if any, of their residences, and their occupation, and shall be accompanied by the acknowledgment of each and by his justification by affidavit that he is worth double the amount thereof over all his debts and liabilities. Such stipulation shall contain the consent of the stipulators, that if the libellant or petitioner recover, the decree may be entered against them for an amount not exceeding the amount named in such stipulation and that thereupon execution may issue against their goods, chattels, lands, and tenements or other real estate. All stipulations may be sworn to and acknowledged before a notary public.

9. STIPULATORS, JUSTIFICATION BY.

Stipulators may justify on short notice before the Clerk, or deputy clerk, a Commissioner, or a Notary

Public, who if required by the opposite party shall examine the sureties under oath as to their sufficiency, and annex their depositions to the bond or stipulation.

To obtain a Judge's approval thereof, if not consented to, reasonable notice of application therefor shall be given. In the absence of the Judges, the approval of the Clerk, or deputy clerk, on like notice shall be sufficient.

10. STIPULATION, BETTER SECURITY ON.

Any party having an interest in the subject matter of the suit may at any time on two days' notice, move the Court on special cause shown for greater or better security; and any order made thereon may be enforced by attachment, or otherwise.

11. STIPULATORS, DISCHARGE BY SURRENDER.

In suits in personam, stipulators on the arrest of the respondent may be discharged from their stipulation before or after the return of the warrant, on the surrender of the principal by them or by himself, except in respect of costs in this Court or in any Appellate Court.

IV.

PLEADINGS AND PARTIES.

12. VERIFICATION OF PLEADINGS AND INTERROGATORIES.

Verification of pleadings and answers to interrogatories shall be by the parties or one of them if within the City of New York; otherwise by an agent, attorneyin-fact or proctor, who shall state briefly the sources of his knowledge or information, declare that the document affirmed to is true to the best of his knowledge, information and belief, and state the reason why the verification is not made by a party. If the personal oath of a party or all the parties be demanded, a motion may be made for a stay pending the procurement of such verification by commission or otherwise.

13. TIME TO PLEAD.

When the process is issued the answer or exceptions to the libel or petition except in possessory suits shall be filed within three weeks after the return day, or within such further time as may be allowed.

In causes where process has not been issued, but a claim or notice of appearance has been filed, the answer or exceptions shall be filed within three weeks thereafter, or within such further time as may be allowed.

In all suits brought under the act of March 9, 1920, known as "An act authorizing suits against the United States in admiralty, etc." (46 U. S. Code, Sections 741 to 752), or in which the United States shall be respondent in admiralty, the notice of appearance shall be filed within two weeks after the completion of the prescribed service of the libel, and the answer within four weeks after the completion of said service or within such further time as may be allowed.

If on the expiration of the time to answer, no pleading or exceptions shall have been filed, the libellant or petitioner may serve notice on the adverse party (if he has appeared) or his proctor that a decree will be entered by default not less than five days after the date when the said notice is served; and on or any time after the date fixed in the said notice of the adverse party has appeared, or on expiration of the time to answer and without the service of such notice if he has not appeared, the libellant or petitioner may enter an interlocutory or final decree as may be appropriate, and such decree shall not be set aside except on application to the Court, and on such terms as the Court may impose.

14. EXCEPTIONS TO PLEADINGS.

Exceptions to the libel shall be filed before answer. Exceptions to the answer must be filed within three weeks after service of a copy of the answer, and shall specify briefly the parts excepted to and the grounds of exception.

If a party submit to exceptions he shall amend his pleading with respect to the matter excepted to within three weeks after service of a copy of the exceptions, unless the Court shall otherwise order.

Interrogatories, unless excepted to or when exceptions have been overruled, shall be answered within three weeks after service of a copy of the interrogatories or of the order overruling the exceptions, unless the Court shall otherwise direct.

15. JOINDER.

Parties may sue and parties (including a vessel or other res) may be sued either jointly, severally, or alternatively in one suit, and persons having separate causes of action may join in one suit if the causes of action involve substantially the same questions and arise out of the same transactions.

Persons entitled to participate in the recovery; persons who, under the preceding paragraph of this rule, might have joined as co-libellants, and, in suits for wages, any other seaman claiming wages for the same voyage, not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants upon such terms as the Court may deem reasonable.

16. Consolidation.

When various suits are pending, all resting upon the same matter of right or defense, although there be no common interest between the parties, the Court may consolidate or compel said suits to be tried together, and enter a decree in each cause or a single decree conformably to the evidence.

17. RECOUPMENT AND CROSS-LIBEL.

If a respondent or claimant shall desire to recoup any damages sustained by him growing out of the transactions referred to in the libel he must in his answer state the facts and his own damages in like manner as upon filing a cross-libel, and such statement shall be without prejudice to any other defense which he may interpose. He shall not, however, be entitled to any affirmative recovery upon such answer. In any case where a cross-libel in personam will lie, service of such cross-libel may be made on the proctors for the libel-lant.

18. NEW PARTIES.

Whenever, from the death of any of the parties, or changes of interest in the suit, defects in the pleadings or proceeding, or otherwise, new parties to the suit are necessary the persons required to be made parties may be made such either by petition on their part or by petition of the adverse party.

V.

ATTACHMENTS.

19. SERVICE OF FOREIGN ATTACHMENT; AND OF PROCESS AGAINST FREIGHT AND PROCEEDS.

When the debts, credits or effects named in any process of foreign attachment are not delivered up to the Marshal by the garnishee or are denied by him to be the property of the respondent it shall be a sufficient service of such foreign attachment to leave a copy thereof with such garnishee, or at his usual residence or place of business, with notice of the property attached; and on due return thereof by the Marshal the libellant, on proof satisfactory to the Court that the property belongs

to respondent, may proceed to a hearing and final decree in the cause.

In proceedings in rem, process against freight or proceeds of property in possession of any person, and all orders granted by the Court under Rule 37 of the Supreme Court may be served in like manner.

20. APPRAISEMENTS AND APPRAISERS.

In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same may be had by any party in interest, on giving one day's previous notice of motion for the appointment of appraisers. If the parties or their proctors and the District Attorney are present in Court, such motion may be made instanter, after seizure and without previous notice.

Orders for the appraisement of property under arrest or attachment at the suit of a private party may be entered as of course, at the instance of any party interested, or upon the consent of the proctors for the respective parties. Only one appraiser is to be appointed, unless otherwise ordered, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the Clerk shall forthwith name him, either party having a right to appeal instanter to a Judge from such nomination.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge before the Clerk, or his deputy, a United States Commissioner, or Notary Public, and shall give one day's notice of the time and place of making the appraisement, by notifying the proctors in the cause and by affixing the notice in a conspicuous place adjacent to the United States Court Rooms, where the Marshal usually affixes his notices, to the end that all persons concerned may be informed thereof; and the appraisement when made, shall be returned to the Clerk's office.

21. Release of Seizures.

Property seized by the Marshal may be released as follows:

First: By giving bond as provided in Section 941 of the Revised Statutes (28 U. S. Code, Section 754).

Second: In suits for sums certain, by paying into Court the amount alleged in the libel as due, with interest as claimed therein up to the stated term next succeeding the return day, or by filing an approved stipulation for such alleged amount, with interest, and by payment into Court of the costs of officers of the Court already accrued, and by depositing also the sum of \$250.00 to cover further costs; or in lieu of such deposit giving a stipulation for costs in the usual form.

Third: In suits other than possessory or petitory by filing an approved stipulation for the amount of the appraised or agreed value of the property seized with interest (unless the same is modified by order of the Court), conditioned to abide by all orders of the Court, interlocutory or final, and to pay the amount awarded by the final decree rendered by this Court, or by any Appellate Court, if an appeal intervene, with interest.

Fourth: In possessory and petitory suits upon the order of the Court only, and on such security and terms as ordered.

Fifth: By an order duly entered by the Clerk upon the written consent of the proctor for the party on whose behalf the property is detained.

22. SUMMARY RELEASE FROM ARREST OR ATTACHMENT.

In case of the attachment of property, or the arrest of the persons (except in suits for seamen's wages when the attachment is issued upon certificate pursuant to Sections 4546 and 4547 of the Revised Statutes; 46 U. S. Code, Sections 603 and 604); the party arrested

or any person having a right to intervene in respect of the thing attached, may, upon evidence showing any improper practice or a manifest want of equity on the part of the libellant, have an order from the Judge requiring the libellant to show cause instanter why the arrest or attachment should not be vacated.

VI.

TENDERS AND OFFERS OF JUDGMENT.

23. TENDER, AND NOTICES BEFORE TRIAL IN LIMITATION OF DAMAGE.

A tender inter partes before suit shall be of no avail in defense, or in discharge of costs, unless before answer filed, the amount so tendered shall be deposited in Court to abide the final order or decree. In case of such deposit, the respondent or claimant shall recover costs, unless the libellant shall recover a sum in excess of the amount of the tender.

The libellant may at any time on notice take an order for the withdrawal of so much of the tender or amount deposited as the Court may allow, without prejudice to continuing the litigation for a larger amount, leaving in the registry a sum sufficient to cover the respondent's or claimant's costs, in case the amount deposited should be held in this Court, or in any Appellate Court, to be a sufficient tender.

If the respondent or claimant serves on the proctor of the libellant written notice of consent that the whole, or any specific part, of the tender deposited be paid to the libellant, the respondent or claimant shall not be liable thereafter for interest on so much of the libellant's claim.

At any time before trial a respondent or claimant may serve and file a written offer to allow a decree to be entered for a sum therein specified, with costs to the date of the offer. The respondent or claimant shall recover costs from the date of filing the offer unless the libellant shall recover damages in excess of the amount of the offer.

Nothing, however, in this rule shall be held to control the discretion of the Court in respect of costs and disbursements.

24. Offer of Damages After Interlocutory Decree.

At any time, after an Interlocutory decree in favor of the libellant, the respondent or claimant, without prejudice to his right to appeal, may serve and file a written offer to allow libellant's damages to be assessed at a sum of money therein specified, with costs, to be taxed to the date of the offer. Said respondent or claimant shall recover costs from the date of the offer, unless the libellant shall obtain a final decree wherein the damages awarded (without interest or costs after offer) exceed the amount of the offer.

VII.

DISCOVERY.

25. Inspection and Examination of the Person.

Discovery, inspection and taking of a photograph of any article, property or place under the control of a party may be had by any other party, upon order of the Court.

In suits for personal injuries, the Court may require the libellant to appear before a commissioner and submit to a physical examination by a physician or surgeon appointed in the order, and to answer such questions of the physician or surgeon as the commissioner may determine are necessary to ascertain the extent of the injuries, subject to the right of appeal instanter to the Court from any ruling of the commissioner.

26. COMMISSIONERS' REPORTS AND FEES.

Reports of commissioners, assessors and adjusters in all matters referred by the Court shall be filed by such officers with the Clerk, and immediate notice of such filing shall be given to all proctors of record.

The fees of such officers, if agreed upon, shall be paid (unless otherwise agreed) by the libellant or moving party, upon notice by such officer that the report is ready for filing; and fees so paid may be taxed as costs by the Clerk. In no event, however, shall such an officer retain his report as security or withhold prompt filing of the same because of failure to pay his fee.

If the fees of such officers shall not have been paid upon the filing of the report, such officers shall certify by endorsement on the report the amount of the fee and the fact that it has not been paid. Exceptions to the amount of such fees may be filed in like manner as to other portions of the report. No order or decree shall be entered on any such report until the fees of the officer making the report shall have been paid, except on his consent or by special order of the Court. At any time after the filing of such report, upon its appearing that the fees of such officer have not been paid, the Court by appropriate proceedings may enforce payment thereof in favor of such officer against any party or res liable therefor.

27. COMMISSIONERS' REPORTS, CONFIRMATION OF.

Exceptions to the reports of commissioners, assessors, or adjusters, shall be filed within five days after service of notice of filing of the report, in default of which the report may be confirmed at the instance of any party by order entered without notice, but upon proof of service of notice of filing the report and default in filing exceptions.

IX.

DECREES AND EXECUTIONS.

28. Decree on Default, How Obtained in Rem.

In any suit in rem where no proctor has appeared for any claimant, or in personam where debts, credits or effects have been attached and there has been no appearance, a final decree will not enter, unless proof be furnished of actual notice of the suit to an owner or agent of the property arrested or attached or to the master or person in charge of a vessel in custody, in addition to proof of publication of the notice of arrest; or of actual notice to the respondent or his agent unless it be made to appear to the Court that such actual notice is unnecessary. If actual notice cannot be given, such notice shall be given by publication or otherwise, as the Court may direct.

29. Decree for Sum Admitted to Be Due.

In case the respondent or claimant in his answer does not deny that the libellant is entitled to recover in respect of a part of the claim set forth in the libel and does not claim any recoupment, offset, or counterclaim in respect of said part admitted to be due, the Court may, upon motion, make an order of severance and enter a final decree for any sum so admitted to be due; all without prejudice to the further prosecution of the cause with respect to contested matters.

30. STAY OF EXECUTION.

Execution shall not issue for 10 days after service of a copy of the decree with notice of entry upon the adverse party, or his proctor, unless the decree shall have been entered on default or the Court shall otherwise order.

LIMITATION OF LIABILITY.

31. PETITIONS.

Petitions or libels to limit liability must state:

- (1) The facts showing that the application is properly made in this district.
- (2) The voyage on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of liens, in contract or in tort, arising on that voyage, so far as known to the petitioner, and what suits, if any, are pending thereon; whether the vessel was damaged, lost or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage, or in case of wreck, the value of her wreckage, strippings or proceeds, if any, as nearly as the petitioner can ascertain, and where and in whose possession they are; also the amount of any pending freight, recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information and belief of the petitioner, shall be sufficient.

32. PETITION AND DECREE IN SURRENDER CASES.

If a surrender of the vessel is offered to be made to a trustee, the libel or petition must further show any prior paramount lien on the vessel, and what voyage or trips if any she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens, arising upon any such subsequent voyage or trip, with the amounts and the causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon, or by reason of such subsequent voyage or trip.

Upon surrender of the vessel no final decree exempting from liability will be made until all such liens, as may be admitted or proved, prior to such final decree, to be superior to the liens of the claims limited, shall be paid or secured independently of the property surrendered, as may be ordered by the Court.

33. CREDITORS AND LIENORS, WHEN TO BE STATED IN PETITION.

If, instead of a surrender of the vessel, an appraisement thereof be sought for the purpose of giving a stipulation for value, the libel or petition must state the names and addresses of the principal creditors and lienors, whether on contract or in tort, upon the voyage on which the claims are sought to be limited, and the amounts of their claims, so far as they are known to the petitioner, and the attorneys or proctors in any action or suit thereon; or if such creditors or lienors be numerous, then a sufficient number of them properly to represent all in the appraisement; and notice of the proceedings to appraise the property shall be given to such creditors as the Court shall direct, and to all the attorneys and proctors in such pending actions and suits.

PUBLICATION OF MONITION IN LIMITATION PETITIONS.

Notice of the monition shall be published in the "New York Post," once in each week until the return day. Publication in the following skeleton form shall be sufficient:

UNITED STATES COURT, SOUTHERN DISTRICT OF NEW YORK.

Notice of Petition for limitaliability tion filed 19

has filed NOTICE IS GIVEN that a petition claiming the right to limit liability for all claims arising on the voyage of the vessel

Amend the first sentence of Admiralty Rule 34 to read as follows:
"Notice of the monition shall be published in the New York Post or the
New York Law Journal once in each week until the return day."
Dated December 28, 1938.
By order of the Court.

CHARLES WEISER, Clerk.

totaleffect 21/159.

from to terminating on , 19 . All persons having such

claims must prove them before (name of commissioner) at New York City, on or before or be defaulted.

19 ,

U. S. Marshal.

The petitioner not later than the day of the second publication shall also mail a copy of the monition to every person known to have, or to assert any claim against the vessel or petitioner, and to his proctor or attorney, if known.

35. PROOF OF CLAIMS, WHEN AND HOW MADE.

Proof of claims presented to the commissioner shall be made on or before the return day of the monition by affidavits specifying the nature, grounds and items thereof, the dates on which the same accrued, and what, if any, credits exist thereon, and what payments, if any, have been made on account. Such proof shall be deemed sufficient, unless within two weeks after the return day of the monition or within such further time as may be allowed, the claim shall be objected to by the petitioner or by some other creditor filing a claim, who shall give notice in writing of such objection to the commissioner and to the proctors, if any, representing the claim objected to. Any claims so objected to must be established by proof on notice to the objecting party, but any creditor, desiring to contest the same, must, with his notice of objection, or subsequently if allowed by the commissioner or the Court, state the defense, or be precluded from giving evidence in support thereof; and the unsuccessful party to such contest may be charged with the costs thereof. On the return day of the monition the commissioner shall file in open Court a list of all claims presented to him.

XI.

MISCELLANEOUS.

36. Informations, Admiralty Procedure to Apply.

In all informations, whether in rem or in personam, the practice and procedure of admiralty shall apply in respect of process (mesne or final) pleadings and exceptions thereto, delivery of property on stipulation, sale of the same and intervention and appearance of claimants.

37. Possessory Suits.

In all possessory suits, the process shall be made returnable at the first general return day not less than three days after the filing of the libel, unless otherwise ordered by a judge. Notice by publication will not be required unless specially ordered. The answer shall be filed upon return of the process duly served, and a day of hearing then fixed unless otherwise ordered.

38. SUITS IN FORMA PAUPERIS.

Suits may be prosecuted or defended in forma pauperis by express allowance of the Court or in the absence of the Judges, of the Clerk, and in such cases no stipulation for costs shall be required; but process in rem in such causes, unless specially allowed by the Court, shall not issue except upon proof of twenty-four hours' notice to owner of the res or his agent, of the filing of the libel.

39. JUDICIAL SALE, RETURN OF BY MARSHAL.

When any money shall come to the hands of the Marshal under or by virtue of any order or process of the Court, he shall forthwith present to the Clerk a bill of his charges thereon and a statement of the time of receipt of the money, and upon the filing of the statement

and the taxation of the charges he shall forthwith pay to the Clerk the amount of said money less his charges as taxed. An account of all property sold under the order or decree of this Court shall be returned by the Marshal and filed in the Clerk's office, with the execution or other process under which the sale was made.

40. CLAIMS AFTER SALE, HOW LIMITED.

In proceedings in rem, after a sale of the property under a final decree, claims upon the proceeds of sale, except for seamen's wages, will not be admitted in behalf of lienors filing libels of petitioners after the sale, to the prejudice of lienors under libels filed before the sale, but shall be limited to the remnants and surplus unless for cause shown it shall be otherwise ordered.

41. Marshal, Commission of.

The commission allowed to the marshal shall be computed upon the gross proceeds, in case of sale; or upon the appraised or agreed value, if bonded; but in case of an agreed valuation not assented to by the marshal, he may have an appraisement in the usual mode.

42. TRIAL STATEMENT IN COLLISION CAUSES.

At the opening of the trial of a cause involving collision there shall be handed up to the Trial Judge by counsel for each party a written statement covering his contentions.

Such statement shall cover the following points in the following order:

- (1) The names of the vessels which came into collision, and the names of their masters.
 - (2) The time of the collision.
 - (3) The place of the collision.
 - (4) The direction and force of the wind.

- (5) The state of the weather.
- (6) The state and force of the tide.
- (7) The course and speed of the vessel when the other was first seen.
 - (8) The lights, if any, carried by her.
- (9) The distance and bearing of the other vessel when first seen.
- (10) The lights, if any, of the other vessel, which were first seen.
- (11) Whether any lights of the other vessel, other than those first seen, came into view before the collision.
- (12) What measures were taken, and when, to avoid the collision.
- (13) The parts of each vessel which first came in contact, and the angle of collision.
- (14) What sound signals (if any) and when, were given.
- (15) What sound signals (if any) and when, were heard from the other vessel.
- (16) What orders (if any) were given to engines, and their time with respect to any sound signal set forth above, also the clock times thereof by deck and engine room clocks.

43. STATEMENT OF FACTS AND CONCLUSIONS OF LAW.

In any cause in Admiralty the Court may, in its discretion, require from either or both of the parties, whether before or after announcement of the Court's decision, a concise statement of the ultimate facts upon which such party relies and which he deems established by the evidence, arranged in orderly and logical sequence

and without repetition, and also a concise statement of proposed conclusions of law. Each proposition of fact shall be separately stated and, if the record shall have been transcribed, shall be followed by citation of the part of the record relied upon to establish such fact. No evidence or document shall be set out. Such statements shall not form any part of the record in the cause and the Court's adoption or failure to adopt as a finding of fact or conclusion of law any proposition of fact or law contained in any such statement shall not as such be the subject of an exception.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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The Putnam County National Bank (Carmel, N. Y.). Revelex 7/8/39

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Hudson River Trust Company (Hudson, N. Y.).

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SOUTHERN DISTRICT OF NEW YORK

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