THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

December, 1930.

SUPREME COURT ADMIRALTY RULE 46½

On June 2, 1930, the Supreme Court of the United States promulgated the following amendment to the Admiralty Rules:

"October Term, 1929

"ORDER

"The rules of practice in admiralty heretofore promulgated by this Court (254 U. S. appendix) are amended by including therein a new rule numbered 46½ and reading as follows:

" 'In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under rule 49.'

"This new rule shall become effective October 1, 1930."

In response to inquiries addressed to the Clerks of the District Courts in all the Districts which border the Oceans, the Gulf of Mexico and the Great Lakes, the following information has been collected as to the rules and statements which have been made to date by the Judges sitting in the various Districts:

CALIFORNIA, NORTHERN DISTRICT

Mr. Walter B. Maling, Clerk, sends the following new Rules:

ADMIRALTY RULES, N. D. CALIFORNIA

Rule 62 (New)

FINDINGS

The provisions of General Rule 42 of this Court shall be applicable to the preparation and settlement of findings of fact and conclusions of law in cases of admiralty and maritime jurisdiction.

GENERAL RULES, N. D. CALIFORNIA

Rule 42

FINDINGS

In actions at law in which a jury has been waived by written stipulation filed by the parties [*or by oral stipulation made in open court and entered in the record*], it shall be in the discretion of the Court to make special findings of fact upon the issues raised by the pleadings. [*In suits in equity, findings of fact shall be made upon the issues raised by the pleadings, and the Court shall separately state its conclusions of law thereon.*]

[*In actions at law, where a request for special findings of fact*] is made and granted [*and in suits in equity*], no judgment shall be entered until the findings [*and, in an equity suit, the conclusions of law*], shall have been signed and filed or waived as hereinafter provided; but the rendition of the decision or opinion shall be deemed and considered, and shall be entered by the Clerk, as merely a preliminary order for judgment. Within five days after written notice of the decision, the prevailing party shall prepare a draft of the findings [*and, in an equity suit, of the conclusions of law*], and deliver the same to the Clerk for the Judge and serve a copy thereof upon the adverse party, who may, within five days thereafter, deliver to the Clerk and serve upon the adverse party such proposed amendments or additions as he may desire.

If the prevailing party fails to present such a draft as above provided, the adverse party may prepare a draft thereof and deliver the

NOTE—This rule is enacted to bring the practice of this Court into conformity with Supreme Court Admiralty Rule 46½, effective October 1, 1930.

In effect August 30, 1930.

same to the Clerk for the Judge and serve a copy thereof on the prevailing party within five days thereafter.

The findings [*of fact and, where required, the conclusions of law*], shall thereafter be settled by the Judge, and when so settled shall be engrossed within five days thereafter, and shall be then signed and filed. A failure to comply with the requirements of this rule may be deemed to be a waiver of findings by the party so failing.

[*Findings of fact*] must be of the ultimate facts in issue, as distinguished from conclusions of law on the one hand, and mere evidence on the other, and must cover all the material issues raised by the pleadings.

NOTE—The amendments to Rule 42 are to bring it into conformity with 28 U. S. C. A. 773, as amended May 29, 1930 (46 Stat., c. 357), and with Supreme Court Equity Rule 70½, effective October 1, 1930.

In effect August 30, 1930.

DISTRICT OF DELAWARE

Mr. H. C. Mahaffy, jr., Clerk, writes:

"The court here has not yet adopted any local rule on that subject, nor under the corresponding Equity Rule No. 70½.

"In the few cases in Equity which we have had (we have had none in Admiralty), Judge Nields has requested counsel for the respective parties to file requests for findings of fact and conclusions of law. Just what the status of these requests will be when filed is a matter still undetermined. My present thought on the subject is that they should be marked filed by the Clerk, the filing noted on the docket, and the requests placed in the file of the case. Whether they technically become part of the pleadings, and whether error may be assigned to the failure of the court to make a specific finding, is a matter upon which I have grave doubt."

FLORIDA, SOUTHERN DISTRICT

Mr. Edwin R. Williams, Clerk, sends the following new Rule:

"Rule conforming the practice in this district to accord with the Supreme Court Admiralty Rule No. 46½.

"*Admiralty Rule 55, S. D. Florida*

" 'When an admiralty case is submitted to the Court on final hearing counsel on each side shall file with the Court proposed written findings of fact and conclusions of law which are deemed by such counsel to cover the issues in the case.'

"The above rule was effective October 1, 1930."

MASSACHUSETTS

Mr. Frank H. Mason, Deputy Clerk, writes:

"Judge Morton directs me to inform you that this Court has made no calendar rule in connection with the new Admiralty Rule 46½, but that he himself has followed the practice recently stated by Judge Woolsey of requiring the prevailing party to prepare a statement of the findings and conclusions from the Opinion and submit same to the Court and when approved to be embodied in the appeal record under Rule 49."

NEW YORK, EASTERN DISTRICT

Mr. Percy G. B. Gilkes, Clerk, writes:

"There has been no rule adopted in this Court in regard to the findings of fact and conclusions of law. The practice suggested by Judge Campbell and apparently acquiesced by the other Judges is that the Judge generally would find the facts and make conclusions of law in his opinion. If this is done then the Judge suggested that the decree should contain the following, 'and the court having rendered its decision finding the facts and conclusions of law, and determining that.'

"Counsel would have the right at any time to submit written findings of fact and conclusions of law."

NEW YORK, SOUTHERN DISTRICT

Mr. Charles Weiser, Clerk, states that no local rule has been made, but that Judge Woolsey has dealt with the new rule in an opinion as follows:

"Under the new Admiralty Rule 46½ of June 2, 1930, 281 U. S. viii, the court of first instance is required separately to state its findings of fact and conclusions of law.

"For myself I think the above opinion ought to be deemed to conform sufficiently to the rule without the filing of any further decision, but that point of view may not be right.

"It may be that in admiralty cases the Supreme Court means to require, in addition to or in lieu of an opinion, a formal decision comparable to the decisions familiar to us in the State courts and Tucker Act cases before the United States Court of Claims and this court. Under the old practice the circuit courts were required to file findings of fact and conclusions of law. The bar may conveniently find an example of such findings and conclusions under the old practice in The Martello, 153 U. S. 64, at pages 65-69.

"If this is the purpose of the Supreme Court such a formal decision may be a necessary prerequisite to a valid decree, for the Rules of the Supreme Court in Admiralty and Equity have the effect of statutes, as they are promulgated under powers delegated to it almost one hundred years ago by Congress, 28 U.S.C. Sec. 723, and statutes mentioned in the footnote thereto.

"My own belief that this opinion adequately conforms to Rule 46½ may be unconsciously colored, partly by natural inertia and partly by a desire not to have an already overburdened court assume a new burden. I should therefore be unwilling to run the risk of having my own views affect the validity of decrees as important to the parties as these will be.

"Therefore I shall have the disposition of this case on liability consist of three stages: 1. This opinion; 2. A formal decision; 3. The usual interlocutory decree in each case.

"I shall not, however, prepare this formal decision myself. If they cannot agree on a decision in accordance with this opinion, counsel for each steamship and counsel for cargo and the death claimant must submit to me in draft form and triple spacing their proposed findings of fact and conclusions of law within 15 days from the date of this opinion.

"If I need further argument or assistance on the decision I shall send for counsel. But I shall not allow any filing of exceptions to findings, and the only document which will be filed, or will find its way into the record on appeal, if any, is the finally settled decision which I will sign and which at most will, in effect, be a duplication in formal shape of what I have already done—a repetition, differently paragraphed, of the fore-

going opinion on the liability of the two vessels and the right of their respective owners to limitation thereof.

"Five days after this formal decision is filed interlocutory decrees in accordance therewith and with this opinion may be submitted for signature: 1. Holding each petitioner to blame; 2. Providing that each may limit its liability; 3. For the appointment of a commissioner to assess the damages suffered by the several claimants in each proceeding."

—*El Sol-Sac City*, 1930 A.M.C. 2015 at 2020. (See also Judge Woolsey's opinion in the *Folly*, 1930 A.M.C. 2024.)

PENNSYLVANIA, EASTERN DISTRICT

Mr. Leo A. Lilly, Deputy Clerk, states:

"No rule has been made in this district concerning the practice to be followed in view of Supreme Court Rule 46½, which went into effect on October 1. It is not the practice here for counsel to file requests for findings of fact and conclusions of law. The judges on their own motion take notice of the admiralty rule in question and make such findings and conclusions as a matter of course."

SOUTH CAROLINA, EASTERN DISTRICT

Mr. Richard W. Hutson, Clerk, writes:

"There is no specific rule in this District concerning the practice to be followed in view of Supreme Court Admiralty Rule 46½, nor has there been any statement by the Court relative thereto.

"Recently in the case of Graniteville Manufacturing Co., vs. Query, et al., as members of the South Carolina Tax Commission, arising in this District, the Court adverted to Supreme Court Equity Rule 70½ (which is the same as Admiralty Rule 46½). That was a three-Judge case under Section 266 of the Judicial Code, and all the facts were stipulated. The Court said, in substance, that it would seem unnecessary where all the facts were stipulated that the facts should be specially found and re-stated, but in order to remove any uncertainty, the Court stated that the Court specially found the facts as

contained in the stipulation. District Judge Ernest F. Cochran delivered the Opinion, which was concurred in by Circuit Judge John J. Parker and Circuit Judge Elliott Northcott. The decision is being published by West Publishing Company, but is not out yet in the advance sheets.

"I am sending you under separate cover, a copy of the new rules for this District, effective January 1st, 1931, which contain a number of Admiralty rules, but none specifically referring to the subject covered by Admiralty Rule 46½."

The following Districts have no new rules or statements concerning Rule 46½, according to letters from the respective Clerks dated between December 5th and 9th, 1930:

Alabama, Southern District
California, Southern District
Connecticut
Louisiana, Eastern District
Maine
Maryland
New Jersey
New York, Northern District
New York, Western District
Ohio, Northern District
Oregon
Texas, Southern District
Washington, Western District

ARNOLD W. KNAUTH, *Secretary*.