

THE
MARITIME LAW ASSOCIATION OF THE UNITED STATES.

MINUTES OF MEETING
ADMIRALTY RULES REVISION COMMITTEE

Pursuant to call, the Committee on the revision of the Rules of Practice in Admiralty met at the Bar Association of the City of New York, February 21, 1919. There were present:

- Mr. Edward E. Blodgett, Boston—First Circuit.
- Mr. D. Roger Englar, New York—Second Circuit.
- Mr. William J. Conlen, Philadelphia—Third Circuit.
- Mr. Floyd Hughes, Norfolk—Fourth Circuit.
- Mr. Samuel B. Adams, Savannah—Fifth Circuit.
- Mr. Ira A. Campbell, Washington, D. C.—Ninth Circuit.

Mr. George Whitelock, Baltimore, Chairman of the Admiralty Committee of the American Bar Association, met with the Committee, at the invitation of the Chairman.

Upon motion of Mr. Hughes, Mr. Edward E. Blodgett of Boston was elected Chairman.

Mr. A. Gordon Murray of New York was appointed Secretary.

Mr. Hermon A. Kelley of Cleveland, Sixth Circuit, wrote that he was unavoidably detained.

Mr. Charles E. Kremer of Chicago, Seventh Circuit, was absent.

There was no representative of the Eighth Circuit, and the Secretary was instructed to write to the Judges of the Eighth Circuit calling their attention to the vacancy.

The Committee proceeded to examine the existing Rules seriatem and acted as follows:

RULE 1.

No suggestion.

RULE 2.

Add to present rule the words "or in case the defendant is a non-resident of the State in which the district is comprised or is a corporation incorporated under the laws of another state or jurisdiction, then by such monition with a clause to attach the goods and chattels of the defendant to the amount sued for; or, if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein." Rule 2 would then read:

"In suits *in personam* the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect, or in case the defendant if a non-resident of the state in which the district is comprised or is a corporation incorporated under the laws of another state or jurisdiction, then by such monition with a clause to attach the goods and chattels of the defendant to the amount sued for; or, if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein."

The adoption of this rule was moved by Mr. Hughes and seconded by Mr. Conlen and was unanimously adopted.

RULE 3.

On motion of Mr. Conlen, seconded by Mr. Englar and duly carried, the last sentence of Rule 3 to be deleted, so that the rule should read as follows:

“In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable or in any appellate court.”

RULE 4.

On motion of Mr. Conlen, seconded by Mr. Englar and duly carried, the last clause in Rule 4 following the semicolon to be deleted, so that the rule should read as follows:

“In all suits *in personam* where the goods and chattels or credits and effects are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court.”

RULE 5.

The adoption of this rule was moved by Mr. Conlen and seconded by Mr. Englar and carried unanimously.

Interline after the word “chambers” in the second line of Rule 5, as follows: “or before the clerk or a deputy clerk,” so as to read as follows:

“Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before the clerk or a deputy clerk or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.”*

RULE 6.

No suggestion.

RULE 7.

On motion of Mr. Conlen, seconded by Mr. Englar and duly carried, it was resolved, that the reason for the present rule is gone and that the rule be abrogated, and that a new rule take the place of Rule 7 as follows:

“Upon all bonds or stipulations given or taken, either in proceedings *in rem* or *in personam*, process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce any final decree rendered by such court or upon appeal by the Appellate Court such execution shall be in the nature of a *feri facias*.” (as in Rule 21) “commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.”

RULE 8.

No suggestion.

RULE 9.

No suggestion.

RULE 10.

No suggestion.

RULE 11.

No suggestion.

RULE 12.

No suggestion.

RULE 13.

No suggestion.

RULE 14.

No suggestion.

RULE 15.

No suggestion.

RULE 16.

No suggestion.

RULE 17.

No suggestion.

RULE 18.

No suggestion.

RULE 19.

“In all suits for salvage the suit may be in rem against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.” Quære add, “or *in personam* against any person or corporation who may be liable for such salvage.”

RULE 20.

No suggestion.

RULE 21.

On motion of Mr. Conlen, seconded by Mr. Englar and duly carried, Rule 21 is to be deleted and an additional rule to be inserted as follows:

“Where a libellant has a right to proceed *in rem* and *in personam* for the same cause of action he may pursue both remedies in one libel, anything in these rules to the contrary notwithstanding.”

RULES 22 TO 39 INCLUSIVE.

No suggestion.

RULE 40.

On motion, duly made, seconded and carried, the word “ten” in rule 40 is to be changed to “sixty,” so that the rule will read:

“The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within sixty days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.”

RULE 41.

No suggestion.

RULE 42.

No suggestion.

RULE 43.

No suggestion.

RULE 44.

Mr. Englar moves, seconded by Mr. Hughes and unanimously carried, that Rule 44 be amended by inserting in the place of the word "commissioners" in the first sentence, the words "commissioners or assessors," and by inserting in the second sentence of Rule 44 in the place of the words "commissioner or commissioners" the words "commissioners or assessors" and that Rule 52 be amended by inserting in Clause 9 in place of the words "and assessor or assessors" the words "a commissioner or assessor," and by inserting in the last line of Clause 9 in place of the word "assessor" the words "commissioner or assessor." Rule 44 would then read:

"In cases where the court shall deem it expedient or necessary for the purpose of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners or assessors, to be appointed by the court to hear the parties and make a report therein.

And such commissioners or assessors shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and examine the parties and witnesses touching the premises."

RULE 45.

On motion of Mr. Hughes, seconded by Mr. Adams, it was resolved that in view of the statute covering the time for appeal the rule be abolished.

RULE 46.

To become Rule 45.

On motion of Mr. Englar, duly seconded and carried, it was voted that the language of Rule 46 be amended in the first line so as to read "the District Courts and Circuit Courts of Appeals are."

"In all cases not provided for by the foregoing rules the District Courts and Circuit Courts of Appeals are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty."

RULE 47.

To become Rule 46.

No suggestion.

RULE 48.

To become Rule 47.

No suggestion.

RULE 49.

To become Rule 48.

On motion, duly made, seconded and carried, it was voted that Rule 49 be amended to read as follows:

“Further proof taken in a Circuit Court of Appeals upon an appeal in admiralty shall be taken in such manner as may be prescribed by statute or by said court.”

RULE 50.

To become Rule 49.

On motion, duly made, seconded and carried, it was voted that Rule 50 should read as follows:

“In all trials in Admiralty the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute, rule of court or agreement of parties. When deemed necessary by the court or the officer taking testimony or by the parties, a stenographer may be appointed (employed) who shall take down the testimony in shorthand and if required, transcribe the same. His fees may be fixed by the court and taxed ultimately as costs.”

RULE 51.

To become Rule 50.

No suggestion.

RULE 52.

To become Rule 51.

Mr. Englar: I move that Rule 44 be amended by inserting in the place of the word “commissioners” in the first sentence the words “commissioners or assessors,” and by inserting in the second sentence of Rule 44 in place of the words “commissioner or commissioners” the words “commissioners or

assessors” and that Rule 52 be amended by inserting in Clause 9 in place of the words “an assessor or assessors” the words “commissioner or assessor” and by inserting in the last line of Clause 9 in place of the word “assessor” the words “commissioner or assessor.”

Seconded by Mr. Hughes and unanimously carried.

Upon motion of Mr. Adams, duly seconded, and carried, it was voted that Clause 11 of Rule 52 be amended so as to read “The prayer for an appeal, and the action of the District Court thereon and the assignment of errors.”

Mr. Conlen: I move that the suggestion made on page 9 of the Association’s Pamphlet, “that the testimony shall be printed in questions and answers, except where the parties by their proctors agree in writing that all or any part thereof shall be printed in narrative form, and such agreement shall be incorporated in the record,” be laid on the table and no action taken with respect to it at this time. Seconded by Mr. Englar.

Mr. Adams: I offer as a substitute the following, add to Rule 52, “each Circuit Court of Appeals shall be empowered in its discretion to provide by rule of court that the evidence on appeal, both oral and documentary, shall be briefed and condensed and that the oral testimony be reduced to narrative form.”

There being no second to Mr. Adams’ motion, Mr. Conlen’s motion was carried, five voting for, Mr. Adams voting against.

Mr. Hughes: I move that Rule 52 be amended as follows: Add to roman numeral 3, after the word “omitted” the words “and may include in place thereof a statement of the case signed by the proctors showing how the questions arose and were decided in the District Court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such question by the Appellate Court and such stipulation and statement shall be filed and certified up with the records.”

Motion seconded by Mr. Conlen and unanimously carried.

As amended Rule 52 will read as follows:

“The Clerks of the District Courts shall make up the

records to be transmitted to the Circuit Courts of Appeals, so that the same shall contain the following:

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of a commissioner or assessor, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the commissioner or assessor, are to be stated.
10. The final decree.
11. The prayer for an appeal, and the action of the District Court thereon and the assignment of errors.

The following shall be omitted:

1. The continuances.
2. All motions, rules and orders not excepted to which are merely preparatory for trial.
3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying

all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

2. The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

3. Hereafter, in making up the record to be transmitted to the Circuit Court of Appeals, the clerk of the District Court shall omit therefrom any of the pleading, testimony or exhibits which the parties, by their proctors, shall, by written stipulation, agree may be omitted and may include in place thereof a statement of the case signed by the proctors showing how the questions arose and were decided in the District Court and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a decision of such question by the Appellate Court and such stipulation and statement shall be filed and certified up with the record."

RULE 53.

To become Rule 52.

Upon motion of Mr. Conlen, seconded by Mr. Hughes, it was unanimously voted that Rule 53 be amended as follows:

"Whenever a cross-libel is filed upon any counterclaim arising out of the same cause of action for which the original libel was filed, and the defendant in the original suit shall have given security to respond in damages, the respondent in the cross-libel shall give security in the usual amount and form to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security be given."

RULE 54.

To become Rule 53.

Upon motion of Mr. Englar, seconded by Mr. Conlen, it was unanimously voted that Rule 54 be amended by the insertion of the words "with interest at the rate of 6 per cent.

per annum from the date of said stipulation" after the words "for payment thereof into Court."

"When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper district Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation with sureties, for the payment thereof into court with interest at the rate of 6 per cent. per annum from the date of said stipulation whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application

of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.”

RULE 55.

To become Rule 54.
No suggestion.

RULE 56.

To become Rule 55.
No suggestion.

RULE 57.

To become Rule 56.
No suggestion.

RULE 58.

To become Rule 57.
No suggestion.

RULE 59.

To become Rule 58.
No suggestion.

RULE 60.

To become Rule 59.

Upon motion, duly seconded, it was unanimously voted that recommendation No. 5 of the Committee's draft be adopted as an addition to the Supreme Court Admiralty Rules to follow the present Rule 59 and be known as Rule 60 for the time being, which recommendation is as follows:

“No property in the custody of the Marshal or other officer of the court shall be delivered up without an order of the court; but, except in possessory actions, such order may be entered, as of course, by the clerk, on the filing of either a written consent thereto by the proctor on whose behalf it is detained, or an approved stipulation or an approved bond to the marshal, as provided by law; or upon the dismissal or discontinuance of the libel; provided, however, except in proceedings under Section 941 of the Revised Statutes, the marshal shall not deliver any property so released until the accrued costs and

charges of the officers of the court shall first have been paid into court by the party receiving such property subject to the decision of the court with respect to the amount of costs due such officers.”

Mr. Englar: Mr. Chairman I move that another new rule be adopted reading as follows :

“The clerk of the District Court shall receive, and file any bond or stipulation in the usual form, approved by the proctor for the libelant, for the payment of damages claimed in the libel; and, after such bond or stipulation has been filed, no process of attachment or arrest shall issue.”

Motion seconded by Mr. Conlen and carried unanimously.

Upon motion, duly seconded, it was unanimously voted that recommendation No. 6 of the Committee’s draft be adopted as an addition to the Supreme Court Admiralty Rules, which recommendation is as follows :

“In cases where a witness travels from a place outside the district to the place of trial his taxable mileage shall not exceed \$10.00, and in no cases shall mileage be allowed for a greater distance than that actually traveled by the witness.”

Upon motion duly seconded, it was unanimously voted that recommendation No. 7 of the Committee’s draft be adopted as an addition to the Supreme Court Admiralty Rules, which recommendation is as follows :

“In all cases where costs are allowed, reasonable premiums on bonds or stipulations for value and on bonds or stipulations for costs, paid by the party filing the same, shall be taxable as costs.”

Upon motion, duly seconded, it was unanimously voted that recommendation No. 8 of the Committee’s draft be laid on the table.

Upon motion, duly seconded, it was unanimously voted that recommendation No. 9 of the Committee’s draft be laid on the table.

Mr. Conlen: Mr. Chairman, I move that a committee of two be appointed to take up the question of obtaining neces-

sary legislation on various points suggested in the Committee's report on pages 11 and 12.

Motion seconded by Mr. Englar and unanimously carried.

The Chairman: I will appoint Mr. Ira A. Campbell and Mr. D. Roger Englar as that committee.

In place of suggestion No. 9 made by the committee, which has been laid on the table, Mr. George Whitelock suggested that a rule be put in force to read as follows:

“No priority of lien shall be obtained in admiralty by priority in date of institution of proceedings to enforce it.”

Mr. Hughes: Mr. Chairman, I move that a committee of two, of which the Chairman shall be one, be appointed to redraft Rule 59 so that it will conform to the practice and decisions of the courts in its terms.

Motion carried unanimously.

The Chairman: The Chair will appoint to act with him on the committee Mr. Floyd Hughes.

Thereupon the Committee adjourned subject to the call of the chair.

A. GORDON MURRAY,
Secretary.