

Mr. J. H. Follmer

Revised Rules

FOR THE SOUTHERN AND EASTERN
DISTRICTS

of the

United States District Court

OCTOBER 1, 1934.

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NEW YORK COUNTY SUPREME COURT
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V. KREWE
Meriot Ave. Corp
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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, 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. This 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, solicitor 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, solicitor 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.

Conflict with New York Rules

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. SERVICE OF PAPERS.

Service of any pleading, notice or other paper in a civil cause shall be (unless this Court on special application otherwise order) in accordance with the practice of the Supreme Court of the State of New York.

8. 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.

9. COMMISSIONS.

Commissions either closed or open shall be moved for (if not consented to) upon affidavits specifying the facts expected to be proven, together with the names of the witnesses and the shortest time within which the party believes the testimony may be taken and the commission returned.

No commission to examine unnamed witnesses shall issue except by order of the Court, entered on consent or cause shown, nor shall a commission operate as a stay of proceedings except by special order of the Court.

Interrogatories for the examination of witnesses on commission shall be filed and also served upon the opposite party within ten days after the making of the order or the filing of the stipulation which provides for written interrogatories. Cross interrogatories shall be filed and served within ten days from the service of interrogatories. If there be objection to either interrogatories or cross interrogatories such objection shall be presented to the Court for its allowance on two days' notice within ten days after the filing and service of the matter objected to.

Commissions shall be executed as nearly as may be in accordance with the law of the State of New York.

Upon the return of a commission the Clerk shall open and file it forthwith in his office and give notice thereof by mail to the attorneys, solicitors or proctors for the respective parties, and any motion to suppress such commission must be made within ten days after the mailing of said notice.

10. DEPOSITIONS.

Depositions taken otherwise than by commission shall be forwarded to the Clerk immediately after they are taken, and filed. Such depositions shall be opened in the manner prescribed by Rule 9, and the provisions of that rule in respect to objections to the form or manner of taking or returning the same shall be applicable.

11. 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.

11-a. All applications for the appointment of receivers in 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.

12. MOTIONS.

All notices of motions shall be of five days.

All motions, exceptions and orders to show cause in civil causes at law, in equity or admiralty, including criminal contempts for the disobedience of orders or decrees in civil causes, and all writs of habeas corpus other than in criminal proceedings shall be heard on Tuesdays and Fridays in the Motion Part.

All returns upon habeas corpus to review the deportation or exclusion of aliens, appeals from commissioners under the Chinese Exclusion Acts and preliminary injunctions under the National Prohibition Act, shall be heard on Tuesdays and Fridays in the Motion Part.

All motions or orders to show cause in bankruptcy proceedings, including petitions for review, petitions for discharge or composition and contested issues without jury, shall be heard on Wednesdays in the Motion Part.

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

All demurrers, motions and writs of habeas corpus (except on deportation and exclusion) in criminal proceedings, removals under Revised Statutes, Section 1014 (18 U. S. Code, Section 591) and extraditions shall be heard on Mondays in Criminal Part 1.

13. NOTES OF ISSUES 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 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.

14. 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.

15. 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.

16. 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.

17. SUBMISSION OF ORDERS AND DECREES.

All orders 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.

18. CLERK TO SIGN CERTAIN ORDERS.

The Clerk shall sign all orders of the classes prescribed below without submission to a Judge:

- (a) Adjudications and discharges in Bankruptcy.
- (b) Orders and decrees *pro confesso* in Equity.
- (c) Orders for the substituting of attorneys upon consent.
- (d) 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.
- (e) In causes and proceedings other than Criminal, orders on consent extending the time to settle and file a bill of exceptions or extending the term for that purpose and orders extending the time to certify and file a transcript of record on an appeal.
- (f) Orders of discontinuance upon consent.
- (g) Orders upon consent satisfying decrees and cancelling stipulations and bonds.

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

(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 ~~shall~~ ^{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.

20. 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.

21. 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.

22. PUBLICATION OF ADVERTISEMENTS.

The publication of all advertisements in Common Law, Admiralty and Equity causes, 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	New York Post
In Bronx County	The Home News
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 Free- man

In Sullivan County	The Liberty Register
In Orange County	The Newburgh News
In Rockland County	The Journal News

23. EXAMINATION ON VOIR DIRE.

The Judge alone shall examine all jurors on the *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.

24. REQUESTS TO CHARGE.

Prior to summing up in any jury trial, counsel must submit to the Judge in writing all requests for instructions. The Judge may, in his discretion, refuse to consider any request submitted too late under the foregoing provision.

25. EXHIBITS.

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.

26. AUDITORS.

In any Bankruptcy proceeding where the issue of insolvency is to be tried and in causes at Common Law, where accounts are complex and intricate, or the documents and other evidence voluminous, or where extensive computations are to be made, the Court may appoint an auditor to define and simplify the issues, to take and report testimony, to audit and state accounts, to make computations, to make findings on conflicting evidence and to make and file a report in the office of the Clerk, which report shall not finally determine the issue but shall, unless excepted to within ten days after the

service of notice of filing and rejected by the Court, be admitted at the trial before the jury as *prima facie* evidence of the evidentiary facts and of the conclusions of fact therein set forth (*Ex parte Peterson*, 253 U. S. 300).

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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).

33. 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.

34. 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.

35. PREPARATION AND CERTIFICATION OF RECORDS ON APPEAL.

(a) Except as otherwise provided in Rules 75, 76 and 77 of the Supreme Court Equity Rules as to Equity causes and except as otherwise provided in Rule 49 of the Supreme Court Admiralty Rules as to Admiralty causes and except as otherwise provided in Rule 36 of the Circuit Court of Appeals as to Bankruptcy proceedings; in any cause or proceeding wherein the final judgment or decree is sought to be heard upon appeal, the preparation and certification of records on appeal shall be in compliance with this rule (28 U. S. Code, Section 865).

(b) The appellant shall serve on the opposing parties, not later than ten days after filing citation or notice of the appeal, or after allowance of the appeal, unless the time be extended by the Court, a typewritten or printed copy of his proposed apostles, record or bill of exceptions (Revised Statutes, Section 953; 28 U. S. Code, Section 776), which shall include a statement of the material proceedings in the action, a list of the material proceedings in the action, a list of the material papers on record with the Clerk, the charge or opinion, if any, and the testimony proposed by him, together with a copy of the exhibits, or a list of such exhibits as can be identified by number or description. Within five days thereafter the opposing party shall file and serve upon the appellant his proposed changes, additions or amendments, numbered and with reference to the apostles, record or bill of exceptions. The appellant shall, within four days, accept such as he considers proper, and shall cause to be submitted for settlement to the Judge by

*See also
New Order
of Sup Ct
in Civil Cases*

whom the case was heard, or any Judge who may legally act in his place, the proposed apostles, record or bill of exceptions, and the proposed changes, additions or amendments, with his acceptances and non-acceptances and with a reference to the apostles, record or bill of exceptions as to such disallowances. The appellant shall give two days' notice of such submission and either party may present a memorandum upon the points of difference. Before the expiration of the term *ex parte* orders may be signed by any Judge of the Court, extending the term from time to time until after the apostles, record or bill of exceptions has been filed, but no apostles, record or bill of exceptions will be settled or filed after the term as extended by Rule 6 or by special order has expired. The appellant shall cause the proposed apostles, record or bill of exceptions, when settled by the Court, to be filed within the time limited and within the term as extended and so as to comply with the provisions of Sections 997, 1000 and 1007 of the Revised Statutes (28 U. S. Code, Sections 862, 869 and 874) as to the giving of security and as to the perfecting an appeal. The appellant shall then cause to be printed as many copies of such record/on appeal as may be required by the Rules of the Circuit Court of Appeals. All such printed books shall be upon pages eleven inches long by seven inches wide, and must have a margin at least two inches in width and shall in other respects comply with Rule 26 of the Supreme Court of the United States. One of such copies may, by order of Court, with or without stipulation of the parties, be filed with the Clerk *nunc pro tunc* for use in lieu of the papers previously settled, and another copy of this record so filed shall be certified by the Clerk of the Court under seal thereof.

(c) The parties to any cause or proceeding in which an appeal has been taken may, however, stipulate by themselves or their attorneys what shall be printed as the record on appeal, except that the bill of exceptions,

if required, must be signed by a Judge (Revised Statutes, Sections 700 and 953; 28 U. S. Code, Sections 776 and 875). The appellant shall thereupon cause to be printed the number of copies of such record as required by the Rules of the Circuit Court of Appeals in the manner above provided. One such printed copy may be presented to the Clerk with a stipulation by the parties or their attorneys that such printed copy is a true transcript of the record as agreed on by the parties. If such copy with such stipulation be presented, the Clerk shall certify the same as the transcript, without charge except such as may be lawfully made for the certificate itself. The appellant shall in either of the foregoing cases then submit such certified copy of the record under the seal of the Court, with twenty-four other copies thereof, to the Circuit Court of Appeals at least twenty days before the case is called for argument and shall also furnish three copies of such record to each adverse party at least twenty days before argument, in accordance with the Act of Congress of February 13, 1911, Chapter 47 (28 U. S. Code, Sections 865-6).

CALENDAR RULES.

Effective July 1, 1931

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 questions regarding the Calendar or the Calendar Commissioner's office or arising under the Calendar Rules shall be referred to the Calendar Judge.

2. ATTORNEYS, SOLICITORS AND PROCTORS.

The word "attorney" as used in these rules shall include attorneys, solicitors and proctors 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 Equity, Admiralty and Common Law 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 two calendars of causes awaiting trial, one consisting of jury causes and the other of non-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. Upon one calendar shall be placed all jury causes raising issues of fact of a civil nature, including issues in Bankruptcy proceedings triable by jury; and upon the other calendar shall be placed all 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 referee, 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 by number two day calendars, one of jury causes (called Jury Day Calendar) and the other of 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, two reserve calendars, one of jury causes (called Jury Reserve Calendar) and the other of 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 Commis-

sioner. 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. If the 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.

When parties to any cause have settled the same, or as soon as any party has decided to dismiss or to withdraw his suit, the attorneys of record shall at once enter the proper order and where the cause is on the day calendar, notice shall be given forthwith to the Calendar Commissioner. Failure of attorneys of record to observe this rule may be treated as contempt of court.

20. PREFERENCES.

The following causes only shall be entitled to preferences:

- (a) Issues in bankruptcy framed by an answer

(demanding a jury trial) to any bankruptcy petition.

(b) 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.

(c) Causes to which any receiver appointed by any court or any trustee in bankruptcy is a party.

(d) 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. APPEAL FROM RULINGS OF CALENDAR COMMISSIONER.

Where a decision of the Calendar Commissioner is questioned, ruling thereon shall be made forthwith by the Calendar Judge on application of the Calendar Commissioner or of an attorney of record.

22. 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.

23. SUBPOENAS.

All subpoenas 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 subpoenaed 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.

COMMON LAW RULES.

1. PROCESS.

A summons substantially in the form prescribed and used by the law and practice now or hereafter regulating the Supreme Court of the State of New York shall constitute the proper process in all suits at Common Law to require the defendant to appear and answer the complaint; but all such process shall issue in the name of the Senior Judge of this Court and shall be signed and sealed by the Clerk of this Court.

2. ISSUANCE OF SUMMONS.

No summons shall issue from the Clerk's office in an action at Common Law until a *præcipe* for said summons shall be filed, which *præcipe* shall contain the full title of the intended action, the name and office address of plaintiff's attorney of record, and if such attorney of record have no such office for the transaction of business in person as required by General Rule 5, then the *præcipe* shall also contain the name and office address of the person upon whom service of all papers in the cause shall be made.

The *præcipe* shall also contain (except in suits by the United States, a State or a Municipal corporation) the residence of the plaintiff or plaintiffs, and if any plaintiff be a corporation then a statement of the State, territory or country of its incorporation and the location of its principal office.

3. SERVICE OF PROCESS.

In Common Law causes all *mesne* and final process shall be served by the Marshal or by his deputy except when he is a party and except that a summons or a subpoena may be served by any person *sui juris* and over the age of twenty-one who is not a party to the suit nor an attorney of record therein. In the case of a summons if service shall be made by a person other than the

Marshal or his deputy an affidavit of service shall be filed within ten days after service, and if such affidavit be not filed the summons shall abate, unless further time for such filing be granted by an order of the Court. If the complaint be not served with the summons a defendant who has appeared generally may at any time within twenty days after the service of the complaint withdraw his general appearance and appear specially to object to the jurisdiction.

4. FILING PAPERS.

In Common Law causes the original summons and complaint must be filed in the office of the Clerk within ten days after service upon the defendant, or upon the first defendant if there are more defendants than one.

All subsequent pleadings, including motions to dismiss, must be filed in the office of the Clerk immediately upon service thereof upon the opposing party, or upon the first opposing party served if there be more opposing parties than one.

5. ATTACHMENTS AND SUPPLEMENTARY PROCEEDINGS.

In Common Law causes the parties shall be entitled to the same rights and remedies as respects attachments against the property of the defendant, and as respects proceedings supplementary to execution, as are now or may be hereafter provided by the laws of the State of New York, which laws (in respect of Common Law causes) are hereby adopted (Revised Statutes, Section 915; 28 U. S. Code, Section 726; but see *Clark v. Wells*, 203 U. S. 164; *Laborde v. Ubarri*, 214 U. S. 173, and *Big Vein Coal Co. v. Read*, 229 U. S. 31).

6. FORM OF BAIL.

Bail in civil causes shall be by bond and not by undertaking, and shall be conditioned for the appearance of the defendant or defendants at all times when required by the Court to and including final judgment in the cause.

7. CONFORMITY TO NEW YORK PRACTICE.

In all cases not provided for by the Rules of this Court, causes at Common Law shall proceed as nearly as may be in accordance with the law for the time being of the State of New York and the practice thereunder of the Supreme Court of that State.

8. REFEREES.

The parties to a Common Law cause may, by stipulation in writing, waive a jury and consent to the appointment of a Referee to take and report the evidence or to hear and determine. The findings of a Referee to hear and determine may be either general or special (Revised Statutes, Section 649; 28 U. S. Code, Section 773). Either party may file exceptions in writing to the findings and conclusions of such Referee. Such Referee shall make, sign and file his report with the Clerk. Any party to the cause may thereupon move the Court on five days' notice to set aside the said report or to confirm the same or to direct the Clerk to enter judgment thereon and may, before the entry of judgment (Revised Statutes, Section 700; 28 U. S. Code, Section 875), file exceptions to the action of the Court on such motion; or, in case such report be confirmed, the order may provide that the exceptions to the action of the Referee shall stand as exceptions to the action of the Court.

9. ALLOWANCE OF APPEALS.

An appeal substituted for a writ of error by the Act of January 31, 1928 (28 U. S. Code, Section 861a), as amended by the Act of April 26, 1928 (*ibid.*, Section 861b), must be sought, allowed and perfected in conformity with the statutes theretofore providing for a writ of error. The appeal can be allowed only on the presentation of a petition showing that the case is one in which, under the legislation in force when said Act

of January 31, 1928, was passed, a review could be had on writ of error. The petition must be accompanied by an assignment of errors (Revised Statutes, Section 997; 28 U. S. Code, Section 862), and the Judge or Justice allowing the appeal must take proper security for costs and sign the requisite citation to the appellee (Revised Statutes, Section 1000; 28 U. S. Code, Section 869). The appeal may be allowed in term time or in vacation by the Circuit Justice or by any Circuit Judge within the Circuit or by any District Judge within his District, who must take the proper security and sign the citation and may also grant a supersedeas or stay of execution of all proceedings pending such appeal (Revised Statutes, Section 1007; 28 U. S. Code, Section 874).

EQUITY RULES.

1. TESTIMONY, AFFIDAVITS AND DEPOSITIONS OF EXPERTS IN PATENT CAUSES.

In cases where, under Supreme Court Rule 48, the direct testimony of experts in Patent causes is taken by affidavit, the witnesses shall not give their opinions as to the meaning of any patent claim or specification, but their testimony shall be strictly confined to an explanation of the operation of relevant arts, processes, machines, manufactures or compositions of matter, and of the meaning of terms of art or science and of diagrams or formulas.

If the affidavit or deposition of any expert witness contain matter forbidden by this rule or irrelevant or immaterial matter, it shall not be answered by the opposite party, nor shall it be the basis of any cross-examination at the hearing, and the Court at any stage of the cause may strike from any such affidavit or deposition all such matter.

2. VOLUNTARY DISCONTINUANCES.

If justice require, the Court, after issue joined, may refuse to permit the plaintiff to discontinue even though the defendant cannot have affirmative relief under the pleadings and though his only prejudice be the vexation and expense of a possible second suit upon the same cause of action.

3. REFERENCES TO A MASTER.

In every cause in which a master shall have been appointed, the master's report shall contain, separately from any statement of the evidence or conclusions of law, a concise statement of the ultimate facts of the whole cause which the master deems established by the evidence, arranged in orderly and logical sequence. Each proposition of fact contained in such statement shall be followed by

citations of the pages or parts of the record relied upon to establish such facts, but no evidence or document shall be set out therein.

Before settling his report the master, unless otherwise directed by the Court, shall mail a copy of a draft thereof to the solicitor for each party to the cause and shall set a date, not less than five days from the date of mailing of such draft, within which the parties may file objections to the report or make suggestions of amendment. Upon consideration of such objections or suggestions the master shall settle and sign his report and file the same forthwith in the office of the Clerk, together with a statement of any objections thereto by any of the parties. No exceptions to any finding of fact contained in a master's report will be considered by the Court, except in its discretion for good cause shown to the contrary, unless it appear that the matter of the exception has been presented to the master in the form of an objection.

4. SUPERVISION OF RECEIVERSHIP CAUSES.

In any suit in which a receiver is appointed the Judge who appoints the receiver shall retain supervision over the cause, including appointment of solicitors and applications for allowances. Unless otherwise required by law or by rule of this Court, all matters therein shall be heard by him upon such notice to the parties and to the creditors as he shall prescribe, except that petitions for the appointment of a receiver or his solicitor or a master or for authority to employ accountants or appraisers or auctioneers and motions or petitions for orders upon merely administrative or routine matters may, in his discretion, be heard by him *ex parte* and except that motions or petitions as to merely routine matters, if contested, may be heard on notice in the general motion part or, if uncontested, may be heard *ex parte* by the Judge assigned to hold that part.

If the Judge who appointed the receiver be disqualified in a particular matter, or if he be no longer in office or be

ill, incapacitated or absent from the District, the Senior District Judge (or if he be ill, incapacitated or absent from the District, the then acting Senior District Judge) shall act or designate another Judge to act in the cause temporarily or during its further progress, as occasion may require.

5. SUITS FOR APPOINTMENT OF RECEIVERS: DISCLOSURE OF OTHER ACTIONS PENDING.

Every application for the appointment of a receiver shall be accompanied by an affidavit of the plaintiff or his solicitor, showing, so far as he is informed, what suits, if any, are pending against the defendant for the appointment of a receiver, trustee or liquidator, and stating the courts wherein such suits are pending, the nature of such suits and the then status thereof, unless the answer of the defendant shall admit the allegations of the complaint or join in the prayer for the appointment of a receiver, in which event such affidavit shall be made by the defendant, or in case of a corporation, by one of its officers or by its solicitor.

6. RECEIVERS TO TAKE CHARGE OF ASSETS AND FILE REPORT.

Every receiver shall, forthwith upon his qualification, take personal charge of the assets of the estate committed to his care, and, except in the case of a receiver of a public utility corporation and except as the Court shall otherwise direct, shall within 60 days after his qualification, or within such other time as may be directed by the Court, make and file with the Clerk, a report containing a balance sheet of the defendant as of the date upon which the application for the appointment of a receiver was filed, an inventory of all assets of the defendant in such detail as may be practicable in view of the size and character of the business, the receiver's estimate of the value of each item or class of items of the inventory, the liabilities of

the defendant and such additional information as the receiver shall deem advisable for the consideration of the Court.

7. RECEIVERS TO LIST CREDITORS AND STOCKHOLDERS.

Within 30 days from the time of his appointment, or within such other time as may be directed by the Court, every receiver shall, except as otherwise directed by the Court, prepare (a) a list of all known creditors of, and claimants against, the defendant with the amounts of the debts owing to them by, or claims by them against, the defendant, with the last known post office address or place of business of each creditor or claimant and (b) a list of the stockholders of the defendant (if a corporation), with the last known post office address or place of business of each.

The receiver shall keep such lists on file at his office and, unless otherwise directed by the Court, during reasonable business hours shall either exhibit or furnish copies of them to any such creditor, claimant or stockholder, or to the solicitor of any such creditor, claimant or stockholder, who may apply therefor and, when so instructed by the Court, shall file copies thereof with the Clerk. The lists shall be compiled from the best information available to the receiver at the time; but their contents shall not constitute admissions by him in the cause or otherwise.

8. RECEIVERS, WHEN TO CONTINUE BUSINESS; CREDITORS' MEETING.

The order appointing a receiver may authorize him to continue the business of the defendant, but in all cases other than a public utility corporation, unless the Court shall otherwise direct, for a period of not more than 60 days, during which time he shall inquire into the propriety of its further continuance, and he shall within such time call a meeting on not less than ten days' notice to all known creditors and publish one notice thereof in one of

the newspapers designated in the General Rules, and present to them the result of his inquiry, and after such meeting he shall promptly submit to the Court, on ten days' notice given by him to all known creditors, a report of such inquiry, together with his recommendations thereon and the recommendations, if any, made by the creditors attending such meeting. Upon such report, the Court may by order authorize a further continuance of the business for a fixed period, not exceeding six months, and such period of authorized continuance may, from time to time, be further extended for not more than six months at any one time, by order of the Court upon like notice given by the receiver to all known creditors.

9. RECEIVER'S REPORTS OF CONTINUING BUSINESS.

When a receiver, other than of a public utility corporation, is continuing the business of the defendant under order of the Court, he shall, except as otherwise directed by the Court, during the first 20 days following the expiration of each six months' period of such continuance (commencing upon the first of such days next after the expiration of the first six calendar months' continuance of the business), or at such other times as the Court may direct, file with the Clerk a report showing the results of the business during the preceding six calendar months, his receipts and disbursements during such period, balance sheets of the defendant and the receiver as of the last day of the preceding calendar month and such additional information as the receiver shall deem advisable for the consideration of the Court.

10. BOOKS OF ACCOUNT—RIGHT OF INSPECTION.

Every receiver shall keep true books of account of all moneys received and expended by him as such receiver, which books and the vouchers in support thereof every creditor or stockholder of the defendant may inspect at such reasonable times and under such reasonable regulations as the receiver may impose.

11. EMPLOYMENT OF SOLICITORS FOR RECEIVERS.

No solicitor shall be retained by the receiver unless his affidavit, annexed to the petition of the receiver, shall show, to the best of his knowledge, his business, professional or other connection, during one year prior and up to the date of the affidavit, with the subject matter of the suit, the parties, the solicitors for the parties, any creditor of the defendant or any other person interested in the cause or in the receivership estate and shall set forth his professional qualifications, experience and familiarity with the principles and practice likely to be involved in the cause. No solicitor shall be retained if in the cause he has appeared for or acts for a party or for any creditor of the defendant (whether intervenor or not) or for any other person interested in the cause or the estate; nor shall his retention continue or he be paid out of the estate for services if during the pendency of the cause he therein act for any person other than the receiver or if for services therein he accept compensation from any source other than the estate.

The petition of the receiver for the retention of a solicitor shall be under oath and shall state at whose instance, if any, such retention is suggested and the reasons for acting thereon.

In its discretion the Court may appoint a temporary solicitor for the receiver and require a hearing on notice to creditors, stockholders or other interested persons before determining whether the appointment shall become permanent. If there be two or more receivers and they petition for different solicitors, each shall be heard on notice to the other.

This rule shall not prohibit the receiver, when so authorized by Court order, from retaining as special counsel an attorney who at the commencement of the suit was the attorney for the defendant in litigations or other matters then pending; nor shall it disqualify any solicitor now representing a receiver from continuing such representa-

tion; nor shall it limit the authority of the Judge who appoints the receiver to select, or upon his own motion to appoint, a solicitor or solicitors for the receiver.

12. RECEIVERS, EMPLOYMENT OF ACCOUNTANTS.

No receiver shall employ any accountant except upon order of the Court and upon a petition of the receiver showing the necessity therefor.

13. ALLOWANCES TO ACCOUNTANTS, AUCTIONEERS, APPRAISERS AND MASTERS.

The Court shall fix the allowances to accountants, employed by a receiver, and to auctioneers, appraisers and masters to sell in all causes in Equity, upon proof of the nature, character and extent of the services performed and of their value in relation to the subject matter of the litigation.

The amounts of such allowances shall be in the discretion of the court and shall be, as nearly as practicable, upon a scale not to exceed the scale, if any, prevailing for similar services in bankruptcy causes in this court.

14. OTHER ALLOWANCES.

All allowances other than those provided for in Rule 13 shall be made only upon petitions and only after such notice to parties in interest of the filing thereof as the Judge who is to determine the same shall prescribe. Each such petition shall be under oath and shall be in such form and in such detail as fairly to apprise the court, the creditors and all other parties in interest of the character, extent and importance of the services for which allowance is sought. Each such petition and notice shall state the amount of compensation requested.

15. ACCOUNTINGS BY RECEIVERS.

No receiver shall be discharged until after he has filed with the Clerk an accounting, in such detail and accom-

panied by such vouchers or other form of supporting proof as the Court shall require, and the same shall have been approved by order made *ex parte* or after hearing thereon upon such notice as the Court may prescribe to creditors and/or others interested in the estate.

16. NOTICES, METHOD OF MAILING.

Wherever notice is required to be given by a receiver in Equity, the same shall be served personally or on the solicitor of record or shall be mailed by the receiver in an envelope upon which shall be printed or typewritten the address of the receiver, with direction to return the same to him if the person addressed be not found within five days. Returned notices or a list thereof shall be preserved and filed within five days after the return day of the notice.

17. PREPARATION OF RECORDS AND BRIEFS.

The printing of the record upon final hearing in Equity shall not be required unless by special order made upon cause shown. If the record be not printed, each party shall cause his own evidence and pleadings (and so far as possible his exhibits) to be neatly typewritten, bound in book form in stiff covers, accurately paged and properly indexed. All typewritten testimony and all typewritten briefs of argument or memoranda presented upon final hearings in Equity shall be written upon paper eight inches wide by ten and a half inches long.

18. STATEMENT OF FACTS AND CONCLUSIONS OF LAW.

In any cause in Equity 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.

19. SHORT FORM OF 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
(order, judgment or decree)
District 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
(date)
In Equity entitled..... No. E.....,
(name and docket number)
the undersigned, a Special Master, will sell at public sale at.....
(place of sale)
on.....at.....o'clock in the.....
(date and hour of sale)
noon the property in said.....
(order, judgment or decree)
described and therein directed to be sold, to which

.....reference is made for
 (order, judgment or decree)
 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 otherwise 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.

20. SUPPLEMENTARY PROCEEDINGS.

Where a decree is solely for the payment of money, the plaintiff shall be entitled to the same rights and remedies as respects proceedings supplementary to execution as are now or may be hereafter provided by the laws of the State of New York, which laws (in respect of such decree) are hereby adopted (See *Brown v. Fletcher*, 239 Fed. 360).

21. CLERK'S DUTIES.

The Clerk shall see that these rules are enforced and promptly report any violation thereof to the Court.

43
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.

5. 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 process shall have been made in that cause, or in some other pending cause in which the property is held in 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.

opposite Stipulators may justify on short notice before the Clerk, or deputy clerk, a Commissioner, or a Notary Public, who if required by the *opposite* ~~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, attorney-in-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 libellant.

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 *instante*, 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 *instante* 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 ~~X~~ 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 stipula-

tion 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.

X.

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.

34. 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 limitation of liability filed _____, 19__.

NOTICE IS GIVEN that _____ has filed
a petition claiming the right to limit liability for all
claims arising on the voyage of the vessel
from _____ to _____ terminating on
_____, 19 ____ . All persons having such
claims must prove them before
(name of commissioner) at
New York City, on or before _____ 19 ____ ,
or be defaulted.

U. S. Marshal.

The petitioner not later than the date ^{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.

BANKRUPTCY RULES

In furtherance of an economical and expeditious administration of the Bankruptcy Act, these rules are made orders of this Court applicable in all cases to bankrupts and all others thereby affected.

I

PROCEDURE

1. *Petitions and Schedules.*

In addition to complying with General Orders V, IX and XXXVIII, and the forms prescribed pursuant thereto, all petitions and schedules thereunder, in describing the residence or place of business (if within the cities of New York, Yonkers, White Plains, Mount Vernon or New Rochelle) of a debtor or of a creditor, shall state the street and number thereof and (if within the City of New York) the borough in which the same is located. When the claim of a petitioning creditor rests upon assignment or transfer from some other person, the affidavit required by General Order V shall state that the claim was not purchased for the purpose of instituting bankruptcy proceedings based on it.

2. *Voluntary Petitions in Bankruptcy.*

Voluntary petitions, if not accompanied by schedules, shall, unless previously otherwise ordered by the Court upon application of the bankrupt or his attorney, be accompanied by a statement in triplicate containing a brief description of assets and their location and a list of the names and addresses of creditors. The Clerk shall forthwith deliver one copy of such statement and list to the Referee, and another to the Receiver if appointed. If, within twenty-four hours after the filing of the petition in bankruptcy no application for the appointment of a Re-

ceiver has been made, the Referee may appoint a custodian, if it appear to be absolutely necessary for the preservation of the estate.

3. *Service of Subpoena and Adjudication in Involuntary Cases.*

In involuntary cases, unless a notice of appearance on behalf of the bankrupt be filed with the petition, the Clerk shall forthwith issue and deliver the subpoena to the attorney for petitioning creditors; said attorney shall within two days deliver the same (and a copy of the petition) to the Marshal, together with the Marshal's fees and written information as to the location of the bankrupt. The Marshal shall forthwith serve the same by delivering copies thereof to the bankrupt personally, or by leaving copies thereof at his dwelling house or usual place of abode with some adult person who is a member of or resident with his family. Unless proof of service of the subpoena and petition or a notice of appearance on behalf of the bankrupt be filed with the Clerk within ten days after the filing of the petition, the attorney for the petitioning creditors shall forthwith serve the bankrupt by publication, as required by the Bankruptcy Act; and if within two days after the expiration of said ten-day period an order for service by publication shall not have been obtained and filed with the Clerk by said attorney, the Clerk shall forthwith give notice in writing to said attorney to show cause before the Court on the next bankruptcy motion day why this rule has not been obeyed, and shall add the case to the motion calendar for that day.

No application for the appointment of a Receiver in an involuntary case shall be submitted to the Court until after the subpoena shall have been delivered to the Marshal for service, or a notice of appearance on behalf of the bankrupt shall have been filed with the Clerk, and the Clerk shall in every case advise the Court when submitting such application whether this provision has been obeyed.

The Clerk shall, upon adjudication, forthwith mail a certified copy thereof to the attorney for the petitioning creditors, who shall immediately serve it upon the bankrupt.

No compensation for services shall be allowed to the attorney for the petitioning creditors unless he show his compliance with all the provisions of this rule as to him, or fully state in his petition for compensation the facts and circumstances showing why he was unable to comply therewith.

4. *Extension of Time to Answer.*

No answer shall be filed merely for the purpose of delaying the adjudication. The time to answer or move with respect to an involuntary petition shall be extended only upon order of the Court made on petition showing adequate cause, and on such conditions, if any, as the Court may impose. Stipulations extending the time to answer or move shall be void and of no effect unless approved by Court order.

5. *Entry of Order of Adjudication.*

The Clerk shall enter the adjudication at the earliest possible date, and forthwith thereafter shall mail or deliver to the Referee a certified copy thereof. No order staying adjudication shall be entered except on notice to the Receiver.

6. *Newspapers and Official Advertising.*

The following newspapers are designated, in pursuance of Section 28 of the Act, for publication of notices and orders:

In New York County	Daily News Record
In Bronx County	The Home News
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

7. *Consultation with Creditors.*

The Receiver and Trustee shall, where practicable, consult with creditors and their committees regarding the administration and disposition of bankrupt estates.

8. *Employment of Attorneys.*

No attorney shall be retained by the Receiver or Trustee unless his affidavit, annexed to the petition of the Receiver or Trustee, shall show, to the best of his knowledge, in addition to the matters required by General Order XLIV, his business, professional or other connection, during one year prior and up to the date of the affidavit, with the bankrupt, the bankrupt's attorney, any creditor or any other person interested in the estate. No attorney shall be so retained if in the proceeding he has appeared for or acts for or holds proxies for the petitioning or other creditors or for any other person interested in the estate; nor shall his retention continue or he be paid for services out of the estate if during the proceeding he therein act for or hold proxies for, or if for services therein he accept compensation from, any such creditor or person. The petition of the Receiver or Trustee for the retention of an attorney shall state at whose instance, if any, such retention is suggested and the reasons for acting thereon.

This rule shall not prohibit the Receiver or Trustee from retaining as special counsel any attorney who at the time of the filing of the petition in bankruptcy was the attorney for the bankrupt in litigations or other mat-

ters then pending on behalf of the bankrupt. No such counsel shall be so retained except on order of the Court setting forth the terms and conditions of such retainer.

9. *Appraisers.*

Appraisers shall be appointed by the Court or the Referee in charge of the case. In all instances appraisers shall be familiar with values of the class or classes of property to be appraised. Compensation to appraisers shall be allowed only on presentation of verified detailed statements and shall not exceed the rate or amount specified in the order of appointment.

10. *Auctioneers.*

The Underwriters' Salvage Company of New York is designated as the official auctioneer for sales within the counties of New York and Bronx, and shall be subject to removal by the Court at any time. Such auctioneer shall give a surety bond to be approved by the Court, in the sum of ~~fifty~~ ^{twenty five} thousand dollars, conditioned upon its faithful and prompt accounting for all moneys and property which may come into its possession as such auctioneer, upon compliance with all the rules, orders and decrees of the Court and with the orders of the respective Referees in charge of the cases and upon the faithful performance of its duties. Such auctioneer shall provide an adequate warehouse and shall receive and store in such warehouse and insure, if requested by the Receiver or Trustee, movable property of bankrupt estates, without charge for storage of property (other than for books and papers), if sold at auction by it within thirty days after the time of receipt; and, if not so sold, such auctioneer shall be allowed a reasonable charge for the storage of property for any period in excess of thirty days. In places other than those where the official auctioneer is designated to act, the auctioneer, if any, shall be specially designated in each case by the Court or by the Referee in charge of

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the case; and, unless limited in the order of his designation, shall be allowed the commissions hereinafter specified.

The auctioneer (whether official or otherwise) shall be reimbursed for expenditures in trucking goods when so directed by the Receiver or Trustee and shall be allowed reasonable disbursements for necessary labor, cataloguing, printing, insurance and all other actual and necessary disbursements. He shall be allowed the following commissions upon the proceeds of each sale conducted by him:

- 5% on the first \$5,000 or any part thereof;
- 2% on the next \$10,000 or any part thereof;
- 1% on the balance.

The books and records of bankrupt estates to be stored with the official auctioneer shall be packed in cases weighing not more than 100 pounds each. It shall be entitled to charge forty cents (40c.) per month for the storage of each such case. It shall, in cases where there are any assets, receive payment in advance for the storage of books and records for six months' periods. At the final meeting of creditors, the Referee may order the destruction, sale or other disposition of the books and records of the bankrupt estate or provide for the payment of an appropriate amount for storage charges should the retention of the books be ordered.

Every auctioneer acting hereunder shall at all times keep proper records of all transactions conducted by him hereunder and shall set forth in his reports of sales

- (a) The time and place of sale;
- (b) The gross amount of the sale;
- (c) An itemized statement of the expenditures, disbursements and commissions allowable under this rule, together with appropriate vouchers.

Payment of proceeds of sales shall be made by the auctioneer with all possible promptness and not later than

one week after the completion of the delivery of property sold. In event of unavoidable delay in completing deliveries, payments on account shall be made by the auctioneer to the Receiver or Trustee within one week after receipt of said payments by the auctioneer.

11. *Compositions.*

(a) A bankrupt desiring to offer a composition shall file a petition containing all the terms thereof, the proposed offer and, if it contemplate the giving of any promissory notes, the names and addresses of endorsers, if any; and, if it contemplate any other consideration, full particulars thereof. The proposed offer shall also make full and itemized disclosure as to any proposed disposition or settlement of reclamations or priority or preferential rights or claims and as to any proposed payment of compensation or reimbursement for expense to any creditors' committees, accountants, attorneys, receivers, trustees or other persons. Thereupon the Court or the Referee in charge of the case shall promptly fix a time and place for a meeting of creditors to receive and consider the proposed offer. In cases before adjudication the petition and proposed offer shall be filed with the Clerk; after adjudication with the Referee.

(b) Notice to creditors of the hearing (and advertisement thereof if ordered) to consider the proposed offer shall state the time and place of such hearing and of the confirmation of the composition, and shall contain the following information: the terms and full particulars of the offer; the proposed settlement or disposition of reclamations or priority or preferential rights or claims; the proposed compensation of and disbursements paid or to be paid to creditors' committees, accountants, attorneys, receivers, trustees or other persons; and that such offer and all matters thereto pertaining will be considered and acted upon by the Court after hearing the parties in interest.

(c) The Referee shall file with the Clerk five days before the hearing on confirmation of the composition the following papers:

1. A certified copy of the order under which the Referee is acting;
2. Petition for confirmation of the composition;
3. A copy of the notice of hearing, with proof of its publication and service;
4. Minutes of the hearing at which the offer was considered, and minutes of the bankrupt's examination;
5. Offer of composition;
6. Acceptances;
7. Letter of advice from depository showing what consideration has been deposited, including any note or notes or other consideration deposited for creditors;
8. Referee's certificate that the bankrupt's schedules have been filed; that he has been examined in open court or at a meeting of creditors, and that after and not before such examination and the filing of schedules, an offer of composition was made; that a majority in number and amount of the creditors whose claims are allowed have filed acceptances in writing; that the cash consideration deposited is sufficient to cover all expenses of administration, priority claims and the cash offered to creditors. Such certificate shall also state the proposed disposition of all matters set forth in the offer or pertaining to the composition, and the Referee's recommendation regarding same;
9. Affidavits required by General Order XLI.

(d) On the return day of the petition for confirmation of composition, no appearance in opposition shall be received, unless the creditor appearing then and there file an affidavit that he intends in good faith to oppose such composition. The Court shall on said return day hear the parties summarily and shall then and there decide the procedure necessary to secure justice to the parties; and may vacate the receivership, order the filing and immediate trial of specifications before the Court, or refer the same to a Special Master, or take any other proceeding which justice requires. No withdrawal of such opposition shall be permitted and no order of confirmation shall be entered, except on affidavits of the bankrupt and his attorney that no consideration has been promised or given for such withdrawal or unless the Court shall otherwise order.

Pending the confirmation or disapproval of compositions, no sale shall be postponed or business continued unless there be furnished such satisfactory indemnity against loss or expense as the Court or the Referee in charge of the case may order.

In event of confirmation of a composition, objections to claims proved or scheduled, unless brought on for hearing within ten days of the date of the order of confirmation, shall be deemed abandoned and the claims shall be allowed as set forth in the order of confirmation.

12. *Trial of Issues.*

Where a jury trial of issues raised by the answer is demanded, the person demanding such trial shall, not later than within two days after such demand, serve on all attorneys of record and file with the Clerk a written notice thereof, which, when filed with the Clerk, shall be accompanied by admission or proof of such service and shall contain or be accompanied by a statement of the docket number of the case and of the names and addresses of the attorneys of record. The case shall thereupon be placed on the calendar, and upon motion may be placed on the

preferred calendar, in accordance with the Calendar Rules. If a jury trial be demanded and notice of the demand be not served and filed in accordance with the foregoing requirements, the answer shall be deemed stricken out, and the Clerk shall forthwith enter an adjudication unless there be other answers on file upon which no action has been taken.

If an answer be filed and no demand for a jury trial be made, the person filing the answer shall, at the time of such filing, make a motion returnable on the next bankruptcy motion day for immediate trial or reference to one of the Referees as a Special Master. In event of non-compliance with this requirement such answer shall be deemed stricken out, and the Clerk shall forthwith enter an adjudication unless there be other answers on file upon which no action has been taken. If an order of reference be made, it may contain appropriate provisions requiring indemnity by the parties or their attorneys or any of them for the expenses of the reference. Any such reference shall proceed from day to day, and if any of the parties fail so to proceed the Master shall promptly report that fact to the Court, with such recommendations as may appear to him to be appropriate. The Master's report shall be filed with the Clerk within ten days after the conclusion of the hearings.

13. *Auditors.*

Auditors may be appointed in appropriate cases as provided in the General Rules.

14. *Petition for Review of Referee's Orders.*

The petition for review of a Referee's order shall be filed with the Referee within ten days after the order is made, unless, before the expiration of such period, the time be extended by the Court or the Referee in charge of the case. Where the order is the result of a decision upon a contested matter, the time within which to file the

petition for review shall begin to run from the date of the service of a copy of the Referee's order upon the adverse party.

15. *Sales.*

No receiver or Trustee shall sell property of a bankrupt estate on a percentage basis, *i. e.*, in terms providing for the payment of a fixed percentage to creditors and expenses of administration.

Unless otherwise ordered by reason of special circumstances, sales within the counties of New York and Bronx shall be by public auction by the official auctioneer. Unless the Court or the Referee in charge of the case dispense with or modify these requirements or direct a shorter period of advertising, sales shall be advertised at least ten days before the sale and on the day of sale, except that in those counties in which no morning daily newspaper is designated, sales shall be advertised at least ten days before the sale and again on such additional day before the sale as will be closest to the day of sale. Such advertising shall be for property in the counties of New York and Bronx, in the Daily News Record; for property without said counties, in the designated newspaper. Unless the Court or the Referee in charge of the case direct that shorter or no notice be given, the Receiver, or the Referee, if a Trustee has been appointed, shall mail a notice of the sale to all known creditors of the bankrupt at least ten days before such sale. The Receiver or Trustee may cause further advertising or notice to be given. Except as in this rule provided or unless otherwise specially ordered, all advertising shall be in the newspapers designated in Rule 6.

The property to be sold shall be on public exhibition for such reasonable period prior to the sale as the Receiver or Trustee may determine. The Receiver or Trustee may direct that the property be sold first in bulk and then in lots, or in any other manner in his discretion, except that no property may be sold first in lots and then in bulk. The

auctioneer shall announce that no sales will be final without special order of the Court or the Referee in charge of the case unless the sale realizes seventy-five per cent. or more of the appraised value. Any property which, because of reclamation proceedings or for other reasons, is not included in the sale, shall be set apart and conspicuously marked "not included in sale," and such fact shall be announced by the auctioneer before the sale.

The Receiver or Trustee may, upon approval by the Court or the Referee in charge of the case, abandon any property of the bankrupt if burdensome or of no net realizable value.

16. *Compensation Applications.*

All applications for allowances to Receivers, Trustees, appraisers, accountants or attorneys shall be filed with the Referee in charge of the case prior to the sending of notice to creditors of the Receiver's or Trustee's accounting.

In cases of which he is in charge, the referee shall examine all accounts of receivers and trustees and shall make recommendations to the court as to their discharge. The referee shall also make recommendations to the court as to compensation and the amount thereof, in accordance with these rules and the Bankruptcy Act, to receivers, trustees, accountants, appraisers, attorneys for the petitioning creditors, attorneys for bankrupts, attorneys for receivers and attorneys for trustees.

No disbursements shall be allowed for local telephone calls or for any except extraordinary typewriting charges.

All applications must state the sums claimed by the applicants. No sums shall be allowed greater than those so claimed. Applications shall be heard on notice sent by mail to the creditors, to the applicants, to the Trustee and to his attorney. The notices on the hearing shall contain the amounts demanded and the amount of compensation, if any, and to whom, theretofore allowed in the case.

If in any case the referee shall recommend an allowance to an attorney in a sum exceeding twice the re-

ceiver's or trustee's compensation, the referee shall specially report the special reasons for such recommendations.

In addition to making recommendations the referee shall state the probable dividends to creditors if the recommendations be approved. With his report of such recommendations, he shall submit to the court all applications in which they are made, with the notices of hearing thereof and proof of service. The report shall also state the amounts of previous compensation in the case and to whom paid, the amount which will remain in the estate after making all necessary payments excluding the compensations recommended, whether previous dividends have been declared and paid, and if so, in what per cent., and of what amount, and the sum necessary to pay a dividend of one per cent.

The referee shall state in his report the date when the same will be heard by the Court, and immediately file the report with the clerk. On or prior to the date of filing such report, the referee shall give notice by mail to all applicants or their attorneys that it will be on the Motion Calendar for hearing on the date specified therefor in the report. Such date shall be the bankruptcy motion day next following five days after the signing of the report. The clerk shall place the matter on the calendar accordingly.

17. *Applications for Compensation to Attorneys.*

(a) *Attorney for Receiver or Trustee.* All applications for compensation for services as attorney for the Receiver or Trustee shall comply with General Order XLII and shall state in addition the following:

1. The date when the attorney was retained, together with certified copy of any order authorizing such retention except when made by the Referee.
2. That all the services for which compensation is requested were performed for and on behalf of

the Receiver or Trustee, as the case may be, and not on behalf of any committee, creditor or other person.

3. In concise form the facts regarding such services, showing their nature and difficulty, the amount and importance of the matters involved, the results obtained, the size of the estate and any other matters which will enable the Court or the Referee in charge of the case to determine the reasonable value of such services.
4. The amount of compensation applied for, the amount of any compensation theretofore received in the case and the amount, if any, requested as reimbursement for expenses. Such expenses shall be itemized.
5. The affidavit of the attorney for the receiver or trustee accompanying the petition shall comply with General Order XLII and in addition shall state that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and any petitioning or other creditor, or the attorney-at-law or in fact, agent or representative of any petitioning or other creditor, and that no such division of fees referred to herein or in General Order XLII will be made by applicant.

(b) *Attorney for Petitioning Creditors.* Applications for compensation for services as attorney for the petitioning creditors shall comply with General Order XLII and shall state in addition the following:

1. That he has complied with all the provisions of Rule 3.
2. That all the services for which compensation is requested were rendered for and on behalf of the

petitioning creditors while performing the duties prescribed by the Bankruptcy Act.

3. The amount of compensation requested for said services and the amount, if any, requested as reimbursement for expenses. Such expenses shall be itemized.
4. That a certified copy of the adjudication has been personally served upon the bankrupt within 5 days after adjudication or a statement of fact showing the reason such service was not made.
5. The affidavit of the attorney for the petitioning creditors shall comply with General Order XLII and in addition shall state that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and any petitioning or other creditor, or the attorney-in-fact, agent or representative of any creditor, and that no such division of fees referred to herein or in General Order XLII will be made by applicant.

(c) *Attorney for Bankrupt.* Applications for compensation for services as attorney for the bankrupt shall comply with General Order XLII and shall state in addition the following:

1. That all services for which compensation is requested, performed before the petition in bankruptcy was filed, were in connection with the said bankruptcy proceeding and were not services in any other matter; that all services performed after the filing of the petition were in connection with the performance by the bankrupt of the duties prescribed for him by the Bankruptcy Act or were rendered pursuant to an order of the Court or the Referee in charge of the case.

2. The amount of compensation requested for such services and the amount of compensation received therefor from the bankrupt or any other person and the amount, if any, requested as reimbursement for expenses. Such expenses shall be itemized.
3. The affidavit of the attorney for the bankrupt shall comply with General Order XLII and in addition shall state that no agreement has been made, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and any petitioning or other creditor, or the attorney-at-law or in fact, agent or representative of any petitioning or other creditor, and that no such division of fees referred to herein or in General Order XLII will be made by applicant.

18. *Compensation to Court Stenographers.*

Compensation to court stenographers in bankruptcy proceedings shall not exceed fifteen cents per folio and the estate shall in no event pay for more than one original and one copy. Where the record at any hearing does not at such rate exceed \$2.50, then the sum of \$2.50 for each such hearing of which a record is made may be charged if the Referee approve.

19. *Discharges.*

Application for the discharge of the bankrupt shall be filed with the Clerk and a duplicate original thereof with the Referee, who shall fix a day for the hearing before the Court on any bankruptcy motion day. The Referee shall give the necessary notices and may order their publication and shall return to the Clerk, five days before the day fixed, the following papers:

- (a) Certified copy of the adjudication.

- (b) Petition for discharge, with date of filing.
- (c) Order to show cause fixing the return day before the Court.
- (d) Copy of the notice, with proof of publication and service.

The bankrupt may be examined by any creditor on or prior to the return day. A creditor opposing the application shall file his appearance on the return day and shall at the same time file specifications in opposition. The matter shall then be referred to the referee in charge to ascertain and report the facts. The hearing before the referee may be brought on by either party on five days' notice or on shorter notice if so directed by the court or referee. After the filing of the referee's report thereon, a further hearing before the court may be had on any bankruptcy motion day on five days' notice to the parties who have appeared.

If the hearing before the Referee on specifications be not noticed by the bankrupt within one month after the specifications are referred, or if after the hearing is begun there be unreasonable delay in carrying on and completing such hearing, the Referee may certify such facts to the Court, and thereupon a motion may be made by either party to dismiss the petition or the specifications.

In the event of any withdrawal of such opposition, no discharge shall be granted unless the bankrupt and his attorney make affidavit that no consideration has been promised or given for such withdrawal. If specifications be withdrawn or appear not to be prosecuted in good faith, the Referee shall inquire and report to the Court as to whether the opposition ceased by reason of illegal or improper acts.

II

REFEREES

20. *Jurisdiction.*

Except as limited by the Bankruptcy Act and these rules, the Referee designated shall, after adjudication, have jurisdiction of all proceedings. Except in matters of which the Referee does not have jurisdiction, all applications, whether ex parte or on notice, shall be made to the Referee. If, at the time any application is made to the Court, the bankrupt has been adjudicated and a Referee appointed, the Court shall (unless the matter be one over which the Referee has no jurisdiction) refuse to hear the application or receive the papers, and the same shall be renoticed before the Referee unless he be absent, in which event the matter may be brought before the Court.

Upon delivery to the Referee of a certified copy of the adjudication, the Clerk shall at the same time deliver a statement of the name and address of any Receiver or Receivers appointed and the amount of the bond.

21. *Indemnity.*

(a) Unless otherwise ordered by the Court, the following charges and no others are allowed and shall be payable out of the estate, or by the person requesting the services:

1. Cash paid for advertisements.
2. For all clerical aid in preparing advertisements and notices to creditors of first meeting, mailing the same, making proof thereof, keeping register, files and records, preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, printing, letters, messages and all petty expenses, \$5.00 in no asset cases; otherwise \$10. The phrase Clerical Aid prior to first meeting may be employed to cover all the foregoing items.

3. For similar clerical aid and other expenses as above stated, in proceedings upon applications for discharge, \$5.00 in no asset cases; otherwise \$10.
4. If the notices to creditors exceed 20 in number, 10 cents in addition to the above for each notice in excess of 20 up to 50 additional notices, and 5 cents for each notice above 70 (the number to be stated).
5. For office accommodations and clerical aid in taking and keeping notes and records of proceedings at first meetings of creditors and thereafter up to qualification of Trustee, \$2.50 in no asset cases; otherwise \$5.00.
6. Other special notices, 5 cents for each notice (the number to be stated).
7. For clerical aid in filing, recording, preserving and returning any interlocutory order made by the Referee, 10 cents.
8. For each adjournment of any hearing or meeting, \$2.50.
9. For office accommodation and clerical aid in taking and keeping notes and records at all meetings after adjudication, and at hearings arising in the general administration of the estate, within the ordinary duties of the Referee, at which any business is transacted (other than the first session of the first meeting of creditors): for each meeting or hearing, \$2.50 in no asset cases; otherwise \$5.00.
10. For certified copies of orders or other papers, 10 cents per folio.
11. Each Referee upon filing of a petition may require the deposit by the estate of an indemnity

of not more than \$100, the amount to be estimated as nearly as may be upon probable charges against the estate authorized by this rule. He shall deposit the sum so received in a separate account to be held in trust by him from which withdrawals shall be made only in accordance with the provisions of this rule. Each Referee shall keep an indemnity account with each estate, in which he shall credit the estate with all sums so paid as indemnity and charge it with all sums earned by him in accordance with this rule. Any balance found due upon the closing of an estate shall be paid to the Trustee. If at any time the amount paid by the estate as indemnity shall be exhausted, as shown in such account, the Referee may, as necessity shall require, demand further payments from time to time in amounts of not more than \$100 at a time.

(b) Referees at the end of each month may withdraw for their use from the foregoing separate account the sums specified below. No sum shall be withdrawn except in reimbursement of actual expenditures made during the month. The amount withdrawn in any month on account of any single item shall in no case exceed the amount specified for that item, but any deficiency may be made up in any succeeding month from any surplus of the specified sum for that item above actual disbursements on account of the same during the months. Specified items: Rent, \$300 per month; salaries, \$450 per month; stationery and incidentals, \$100 per month. Charges for publication in newspapers authorized by general rule or special order, and for postage.

(c) With his final report closing an estate the Referee shall file an account showing the amounts paid by the estate for indemnity and the amounts in detail charged against the same in accordance with this rule. The Clerk

shall examine such account and report to the Judge at the time in charge of bankruptcy proceedings any mistakes appearing therein.

(d) On the tenth of January of each year the Referee shall file with the Clerk an account showing the sums received by him for indemnity and the sums in detail withdrawn by him for rent, salaries, sundries and publication charges; and showing also the balance remaining in the separate trust account above directed to be established. In such account he shall also state separately all sums received by him during the year for commissions, filing fees, statutory fees received from the Clerk and allowances as Special Master. The Clerk shall prepare a single itemized schedule showing the disbursements of each Referee and his receipts from indemnities, commissions, filing fees, statutory fees and allowances as Special Master.

Paragraphs (b) and (d) of this rule shall not apply to Referees in counties other than New York and Bronx.

22. *First Meeting of Creditors.*

The Referee shall promptly call the first meeting of creditors to be held at the earliest practicable date. Where a list of creditors with their addresses is filed with the Referee, the latter shall, without waiting for the filing of schedules, call such first meeting of creditors.

23. *Reports and Decisions.*

Referees shall report to the Court, in the months of April and October of each year, all unfinished cases which have been pending before them more than fifteen months. Such reports shall contain the title and number of each case, the date when it was referred and a concise statement showing the financial position of the estate, what substantial proceedings have been had therein and why it has not been closed.

Referees shall make and file decisions within two months after final submission.

24. *Distribution of Dividends.*

Except as otherwise directed by the Court, Referees, upon the declaration of any dividends or confirmation of any composition, shall forward the checks to the several creditors, or to their duly authorized attorneys-at-law, accompanying the same with a notice, to read substantially as follows:

“Enclosed please find check for dividend of %. This check should be deposited promptly, as it will be necessary, after the declaration of final dividends, to stop payment of all checks in accordance with the rules and practice of this Court.”

25. *Closing Cases.*

Where the Referee is satisfied that there are no assets he may decline to appoint a Trustee. Where there are no assets and no Trustee has been appointed, and no application for appointment of a Trustee is pending, after a meeting of creditors duly held, the Referee may file his record and the case shall thereupon be deemed closed for the purpose of the payment by the Clerk to the Referee of the deposit for his services.

On the filing in the Clerk's office of the Referee's record on discharge of the Trustee and the Referee's indemnity account, the case shall be deemed closed and the deposit for services shall be paid to the Referee and the Trustee.

If no meeting of creditors shall have been held within three months from the date of adjudication, the Referee may file a certificate to that effect and thereupon the case shall be deemed closed, and the Referee shall receive from the Clerk the deposit for his services, and any stay granted in the proceeding shall thereupon be deemed vacated unless otherwise ordered by the Court.

26. *Special Master.*

Fees of a Referee acting as Special Master are fixed at the rate of \$5.00 for each hour or portion thereof occupied on each day except on such days where an adjournment of a hearing only is taken, and for each such adjournment \$2.50. Application for a greater compensation may be made pursuant to Supreme Court Equity Rule 68.

Special Masters shall certify in all reports the hours or portions thereof occupied on each date, the total number of hours or portions thereof so occupied, the dates when adjournments were given and the total number of adjournments.

III

RECEIVERS

27. *Receivers, When to Continue Business.*

The order appointing the receiver may authorize him to continue the business for a period of not more than fifteen days during which time he shall inquire into the propriety of its further continuance and if he comes to the conclusion that the business should be further continued, he shall submit to the Court a report with his recommendations thereon and the recommendations, if any, made by the creditors. Upon such report the Court may authorize a further continuance of the business for a fixed period. The continuance of the business for the provisional period of fifteen days shall not entitle the receiver to more than a single commission except upon special direction of the Court.

28. *Possession of Property.*

The Receiver shall promptly take possession of the assets and books of the bankrupt, shall inventory and provide for safe custody and protection of the same, and

within ten days after qualification shall file a list of creditors with their addresses in duplicate with the Clerk (unless the bankrupt shall have already filed such a list as elsewhere in these rules directed). The Clerk shall send one copy of such list to the Referee forthwith on his appointment. The Receiver shall file a copy of the inventory with the Referee within ten days after adjudication. The Receiver shall, as soon as possible after appointment, determine whether the assets should be sold or the business continued, and shall at the earliest feasible date make and bring on for prompt determination appropriate applications to the Court or the Referee in charge of the case in respect of such matters.

29. *Employees of Receiver.*

No receiver shall employ at the expense of the estate a custodian, watchman, investigator, or person to inventory, appraise, exhibit, sell and deliver merchandise or for any other purpose in connection with the administration of the estate (unless authorized to do so in the order appointing the receiver), except on order of the Court or Referee in charge of the case expressly authorizing such employment and fixing the amount of compensation or the rate or measure thereof. When no such authorization is given in the order appointing the Receiver, application therefor must be made upon petition of the receiver setting forth the name of the person whom he wishes to employ, the reason for his selection and the necessity for the employment. The Receiver shall not employ at the expense of the estate persons merely for the purpose of guarding property when there are other adequate methods of protecting same at less expense.

30. *Deposit and Disbursement of Funds.*

All funds received shall be deposited in a designated depository. Payments shall be made only by checks con-

secutively numbered. Such checks shall be in the following form:

"No.

Date

(NAME OF BANK)

Pay to the Order of \$.....

.....

In Payment of

Estate of

.....

Alleged Bankrupt

By.....

Receiver."

No moneys deposited by a Receiver or Receivers, as required by the Bankruptcy Act, the General Orders of the Supreme Court, or the rules of this Court, shall be withdrawn from the depository except by check signed by such Receiver or Receivers, and, unless such Receiver be a banking institution permitted to keep bankruptcy funds on deposit with itself as hereinafter provided, checks must be countersigned by the Referee in charge of the case.

In cases wherein a Receiver is or has been appointed, and the funds in his hands have not been turned over to a duly elected or appointed Trustee, the Clerk shall forthwith designate a Referee in the case; and such Referee is authorized to countersign such Receiver's checks upon being satisfied with the propriety thereof.

Whenever a Custodian, Receiver or Trustee is a banking institution designated and qualified pursuant to Section 61 of the Bankruptcy Act to act as a depository for money of bankrupt estates, said banking institution may keep on deposit with itself money received by it as Custodian, Receiver or Trustee, if it is, under the laws of the State of New York, permitted to keep on deposit with itself money collected and received by it acting as Re-

ceiver or Trustee under appointment of any Court, and is a member of the Federal Reserve System and a member of the New York Clearing House. Such funds shall be kept on demand unless the Court in any particular proceeding shall direct that they be kept on time deposit or otherwise invested. On all sums of not less than \$100 thus kept on demand or time deposit to the credit of any estate in bankruptcy, interest shall be allowed by such banking institution at the maximum rate permitted to be paid under the laws of the United States by a member bank of the Federal Reserve System and by the Rules of the New York Clearing House, until the moneys shall have been duly expended or distributed; such interest to be credited monthly to the principal amount on deposit. On or before the 10th day of each month each of such banking institutions shall present to the Senior District Judge a statement showing the aggregate balance for the preceding month of all such bankruptcy funds so kept on deposit with itself at the end of the preceding month, and shall furnish to him such additional information as he may require. Such banking institutions shall also furnish such security for such funds as the District Court may require.

31. *Reports and Accountings.*

Within ten days after qualification of the Trustee, the Receiver shall, unless otherwise ordered, turn over to the Trustee all property, funds and books of the estate, and within twenty days after the qualification of the Trustee, the Receiver shall file with the Referee his report and accounting and petition for allowance. Such report shall contain the following information in the following order:

- (a) Date of the Receiver's qualification and the amount of his bond.
- (b) A statement of the services performed by the Receiver.

- (c) The total receipts and total disbursements in cash made by the Receiver and the total cash turned over by him to the Trustee.
- (d) The total cash expended by him in continuing the business of the bankrupt.
- (e) The compensation requested by the Receiver for his services and the amount of any previous allowance.
- (f) A statement of the amounts of compensation asked for by his attorneys, accountants and appraisers, together with such comments or recommendations as the Receiver may deem appropriate.
- (g) A statement that all disbursements made by the Receiver were reasonable in amount and properly made.
- (h) Affidavit required by General Order XLII.

Attached to the report shall be the following: certified copies of any orders, other than those made by the Referee, fixing the compensation for appraisers or accountants or others, vouchers for all disbursements; and the following schedules:

Schedule A. Cash items received by the Receiver in detail, giving the dates of receipt and on account of what received and the total of such receipts.

Schedule B. The disbursements of the Receiver in detail, giving the date of each disbursement, the amount thereof, the purpose thereof and the total of such disbursements.

Schedule C. An adequate statement as to the assets which came into the Receiver's possession and the disposition thereof.

Schedule D. A list of the Receiver's unpaid obligations.

IV

TRUSTEES

32. *Possession of Property.*

As soon after qualification as may be practicable the Trustee shall take possession of the assets and books of the bankrupt, and shall provide for safe custody and protection of the same, including all books, property and funds in the possession of the Receiver.

33. *Inventory.*

Within ten days after qualification, the Trustee, if he be a person other than the Receiver, shall file with the Referee an inventory of all property coming into his possession.

34. *Employees of Trustee.*

No Trustee shall employ at the expense of the estate a Custodian, Watchman, Investigator, or person to inventory, appraise, exhibit, sell and deliver merchandise or for any other purpose in connection with the administration of the estate (unless authorized to do so in the order appointing the Trustee), except an order of the Court or Referee in charge of the case expressly authorizing such employment and fixing the amount of compensation or the rate or measure thereof. When no such authorization is given in the order appointing the Trustee, application therefor must be made upon petition of the Trustee setting forth the name of the person whom he wishes to employ, the reason for his selection and the necessity for the employment. The Trustee shall not employ at the expense of the estate persons merely for the purpose of guarding property when there are other adequate methods of protecting same at less expense.

35. *Deposit and Disbursement of Funds.*

All funds received shall be deposited in designated depositories. Payments shall be made only by checks consecutively numbered. Such checks shall be in the following form:

“No.	Date	
(NAME OF BANK)		
Pay to the Order of		\$.....
		Dollars
In Payment of		
		Estate of
		
Countersigned:	Bankrupt	
.....		
Referee in Bankruptcy	Trustee”	

A Trustee's checks shall not become effective unless countersigned by the Referee.

36. *Reports and Accountings.*

Within one month after appointment the Trustee shall file a report with the Referee, and shall thereafter from time to time file such reports as may be necessary to keep the Court, the Referee in charge of the case and creditors advised of the progress of the administration of the estate. Every such report shall state what, if any, dividends can be paid and the reasons why a final report can not then be filed. The Trustee's final report shall contain the following information in the following order:

- (a) Date of the Trustee's qualification and the amount of his bond,
- (b) A statement of the services performed by the Trustee.

- (c) The total receipts and total disbursements in cash made by the Trustee.
- (d) The total cash expended by him in continuing the business of the bankrupt.
- (e) A statement that all the assets have been reduced to cash and that the estate is ready to be closed.
- (f) A statement referring in reasonable detail to the items of property mentioned in the bankrupt's schedules, including accounts receivable and choses in action, and accounting for the same.
- (g) A statement that the Trustee has examined into the amount paid, prior to the filing of the petition, to any attorney for the bankrupt for services rendered or to be rendered in connection with the bankruptcy, setting forth the amount of such payment, and, if the Trustee deem the same reasonable, his reasons therefor, and if he deem the same unreasonable in amount, that proceedings have been taken and completed for a determination of the reasonable amount thereof and for the recovery by the Trustee of any amount found due.
- (h) A statement of the amounts of compensation asked for by his attorneys, accountants and appraisers, together with such comments or recommendations as the Trustee may deem appropriate.
- (i) A statement that all disbursements made by the Trustee were reasonable in amount and properly made.
- (j) A statement that the claims on file with the Referee should be allowed for the amounts

therein claimed or for such amounts as have been fixed by order duly made.

(k) The compensation requested by the Trustee for his services and the amount of any previous allowance.

(l) Affidavit required by General Order XLII.

Attached to said report shall be the following: certified copies of any orders, other than those by the Referee, fixing the compensation for appraisers or accountants, vouchers for all disbursements; and the following schedules:

Schedule A. Cash items received by the Trustee in detail, giving the dates of receipt and on account of what received and the total of such receipts.

Schedule B. The disbursements of the Trustee in detail, giving the date of each disbursement, the amount thereof, the purpose thereof and the total of such disbursements.

Schedule C. An adequate statement as to the assets which came into the Trustee's possession and the disposition thereof.

37. *Filing Vouchers and Bank Statement.*

Six months after declaration of the final dividend or the confirmation of a composition, the Trustee or disbursing agent shall stop payment of all checks then unpaid and deposit by certified check the amount of such unpaid checks with the Clerk, at the same time filing with the Clerk a list of the persons entitled to the unpaid checks and the amounts thereof. The Clerk shall thereupon deposit the amount so received in the registry of the Court, subject to its further order. As soon as the Trustee or disbursing agent has paid out all the funds pursuant to the final order, he shall deposit with the Referee a bank

statement showing no balance to his credit and all his vouchers.]

If, after the declaration of a final dividend or other termination of proceedings, any Trustee or Receiver shall have paid to him any moneys of the estate, he shall notify at least two of the largest creditors of the estate and forthwith pay the same to the Clerk, who shall thereupon deposit such moneys in the registry of the Court subject to its further order.

V

SPECIAL SITUATIONS

38. Should special situations arise in any case by reason of which any person affected by the foregoing rules shall not have complied or can not comply therewith within the period prescribed therefor, he shall be excused for non-compliance provided he shall file a timely petition with the Court stating adequate reasons why such compliance has not been or can not be made. In that event he shall be excused for such non-compliance to the extent and upon the conditions prescribed by the Court.

UNITED STATES COURTS—SECOND CIRCUIT

Court Rooms are located in the U. S. Court House and P. O. Building and in the Woolworth Building, Borough of Manhattan, New York City, N. Y.

JUSTICE OF THE UNITED STATES SUPREME COURT ASSIGNED TO THE SECOND CIRCUIT.

HARLAN F. STONE.....Washington, D. C.

UNITED STATES CIRCUIT JUDGES:

MARTIN T. MANTON.....	} Chambers on 4th Floor of U. S. Court House and P. O. Building
LEARNED HAND.....	
THOMAS W. SWAN.....	
AUGUSTUS N. HAND.....	
HARRIE B. CHASE.....	

UNITED STATES DISTRICT JUDGES, SOUTHERN DISTRICT OF NEW YORK:

JOHN C. KNOX.....	} Chambers on 12th Floor, 233 Broadway, New York City, Borough of Manhattan
HENRY W. GODDARD.....	
WILLIAM BONDY.....	
JOHN M. WOOLSEY.....	
FRANCIS G. CAFFEY.....	
ALFRED C. COXE.....	
ROBERT P. PATTERSON.....	
GEORGE MURRAY HULBERT.....	

CLERK OF THE COURT:

CHARLES WEISER.....Room 343, U. S. Court House & P. O. Bldg.

CHIEF DEPUTY CLERK:

GEO. J. H. FOLLMER.....Room 349, U. S. Court House & P. O. Bldg.

DEPUTY CLERK:

FRANK E. FERDON.....Room 349, U. S. Court House & P. O. Bldg.

DEPUTY CLERK (IN CHARGE OF NATURALIZATION BUREAU):

CHARLES A. VAN HAGEN..Room 550, U. S. Court House & P. O. Bldg.

CALENDAR COMMISSIONER:

FRANK J. GUNNER, JR....Room 406, U. S. Court House & P. O. Bldg.

UNITED STATES COMMISSIONERS

IN NEW YORK CITY

*GARRETT W. COTTER.....Room 314, U. S. Court House & P. O. Bldg.

OUTSIDE OF NEW YORK CITY

*ARTHUR C. CONNELLY.....Kingston, N. Y.

*ISAAC PLATT.....Poughkeepsie, N. Y.

*GEORGE M. NORTHROP.....Newburgh, N. Y.

REFEREES IN BANKRUPTCY

NEW YORK CITY, FOR NEW YORK AND BRONX COUNTIES:

COFFIN, HAROLD P.....217 Broadway	} New York City, Borough of Manhattan
EHRHORN, OSCAR W.....280 Broadway	
MILLER, SEAMAN.....20 Vesey Street	
OLNEY, PETER B., JR....19 Rector Street	
STEPHENSON, ROBERT P. <i>29</i> 32 Broadway	
JOYCE, JOHN E.....70 Pine Street	
KURTZ, IRWIN.....15 Park Row	

COUNTY REFEREES:

ARNOLD, HARRY (for Columbia, Dutchess and Putnam Counties).....Poughkeepsie, N. Y.

BENNET, AUGUSTUS W. (for Orange and Sullivan Counties).....Newburgh, N. Y.

HOFSTATTER, ERNEST W. (for Rockland County)Nyack, N. Y.

MILLER, WALTER J. (for Ulster and Green Counties)Kingston, N. Y.

✓ STELLE, FREDERICK W. (for Westchester County)Ossining, N. Y.

Teale, Alton W ("Rockland Co.") Suffern ny

OFFICIAL AUCTIONEER:

UNDERWRITERS SALVAGE COMPANY OF NEW YORK

NOTE: Those marked * are authorized to act also as Commissioners in extradition cases under Title LXVI of U. S. R. S. (18 U. S. Code, Chapter 20).

Elbert H. Williams ⁹⁷

PROBATION OFFICERS:

*E. FRED SWEET.....Appointed July 12, 1930
HAROLD R. DEAN....." Sept. 17, 1930
MISS CLARISSA WARDWELL....." Oct. 9, 1929
FRANK W. HAGGERTY....." " 15, 1932

Florence Hallitt

UNITED STATES ATTORNEY:

Francis Adams

~~MARTIN CONBOT~~.....Room 202, U. S. Court House & P. O. Bldg.

UNITED STATES MARSHAL:

RAYMOND J. MULLIGAN....Room 307, U. S. Court House & P. O. Bldg.

* Chief Probation Officer.

The First Nat Bank of the City of NY (Feb 6, 1935)
Federation Bank and Trust Company (2/26/36)
THE MERCHANTS BANK.

*DEPOSITORIES IN BANKRUPTCY

NEW YORK AND BRONX COUNTIES

Bank of the Manhattan Company.....Dec. 5, 1932
Bank of New York & Trust Company.....Oct. 30, 1922
Bankers Trust Company.....Jan. 29, 1904
Central Hanover Bank & Trust Company..Aug. 6, 1918
The Chase National Bank of the City of

New YorkMay 23, 1921

Chemical Bank & Trust Company.....July 1, 1920

Commercial National Bank & Trust

CompanyFeb. 25, 1929 *

The Continental Bank & Trust of

New YorkFeb. 11, 1925

Corn Exchange Bank & Trust Company....June 25, 1929

Guaranty Trust Company of New York...Mar. 9, 1910

Irving Trust Company.....Mar. 15, 1929

Manufacturers Trust Company.....Apr. 14, 1920

National City Bank of New York.....Apr. 8, 1922

The Public National Bank & Trust Company

of New YorkFeb. 13, 1930

Sterling National Bank & Trust Company

of New YorkMay 20, 1929

United States Trust Company.....Nov. 12, 1908

New York Trust Co.....May 16, 1933

Lawyers County Trust Co.....Oct. 5, 1933

J. Henry Schroeder Trust Co.....Dec. 25, 1933

Clinton Trust Company.....Jan. 31, 1934

UNDERWRITERS TRUST COMPANY. Nov. 22, 1934

WESTCHESTER COUNTY

The First National Bank of Mount Vernon,

N. Y.May 18, 1933

Citizens Bank of White Plains,

White Plains, N. Y.....July 14, 1923

The County Trust Company of White Plains,

White Plains, N. Y.....Mar. 3, 1924

* Because of the continual changes in this list we suggest that you confirm the depository with the Clerk of the Court.

The Marine Midland Trust Company of New York City
Colonial Trust Company - 2/26/36

First National Bank & Trust Company
of Ossining, Ossining, N. Y.....June 28, 1927

Mount Vernon Trust Company,
Mt. Vernon, N. Y.....Oct. 13, 1926

The Washington Irving Trust Company,
Tarrytown, N. Y.....Feb. 13, 1934

Tarrytown National Bank & Trust Co. Tarrytown, N.Y. Feb. 24, 1936

PUTNAM COUNTY

The Putnam County National Bank,
Carmel, N. Y.....Dec. 13, 1898

DUTCHESS COUNTY

Poughkeepsie Trust Company,
Poughkeepsie, N. Y.....Feb. 25, 1914

COLUMBIA COUNTY ✓

Hudson River Trust Company,
Hudson, N. Y.....Jan. 11, 1918 ✓

GREENE COUNTY ✓

~~The Catskill National Bank,~~
~~Catskill, N. Y.....Oct. 6, 1905~~ *Revoked 11/15/35*

ULSTER COUNTY ✓

The First National Bank of Rondout,
Rondout, N. Y.....Dec. 13, 1898 ✓

State of New York National Bank,
Kingston, N. Y.....Apr. 10, 1925 ✓

ORANGE COUNTY ✓

Highland Quassaick National Bank &
Trust Company, Newburgh, N. Y.....July 8, 1927

National Bank of Newburgh,
Newburgh, N. Y.....Feb. 4, 1927

ROCKLAND COUNTY ✓

The Nyack National Bank,
Nyack, N. Y.....Nov. 21, 1917

AUTHORIZED SURETY COMPANIES

The Aetna Casualty and Surety Company, Hartford,
Conn.

American Bonding Company of Baltimore

American Employers Insurance Company, Boston, Mass.

American Indemnity Company, Galveston, Tex.

American Motorists Ins. Co., Chicago, Ill.

American Re-Insurance Co., New York

American Surety Company of New York

Bankers Indemnity Insurance Company, Newark, N. J.

Central Surety & Ins. Corporation, Kansas City, Mo.

Century Indemnity Company, Hartford, Conn.

Columbia Casualty Company, New York City

Commercial Casualty Insurance Company, Newark, N. J.

Continental Casualty Company, Chicago, Ill.

Eagle Indemnity Company, New York

Eureka Casualty Company, Philadelphia, Pa.

The Fidelity and Casualty Company of New York

Fidelity & Deposit Company of Maryland, Baltimore, Md.

Fireman's Fund Indemnity Company, San Francisco, Cal.

Glens Falls Indemnity Company of Glens Falls, N. Y.

Globe Indemnity Company, N. Y.

Great American Indemnity Company, New York

Hartford Accident and Indemnity Company, Hartford,
Conn.

The Home Indemnity Company, New York

Indemnity Insurance Company of North America, Phila-
delphia, Pa.

Inland Bonding Co., South Bend, Ind.

International Fidelity Insurance Company, Jersey City,
N. J.

London & Lancashire Indemnity Company of America,
New York

Maryland Casualty Company, Baltimore, Md.

Massachusetts Bonding and Insurance Company, Boston,
Mass.

Metropolitan Casualty Insurance Company of New York,
~~Newark~~ *Newark*.

National Casualty Company, Detroit, Mich.

National Surety Corp., N. Y.

New Amsterdam Casualty Company, Baltimore, Md.

New York Casualty Company, New York

The Ohio Casualty Insurance Company, Hamilton, Ohio

Royal Indemnity Company, New York

Seaboard Surety Company, New York

Standard Accident Insurance Company, Detroit, Mich.

Standard Surety & Casualty Company of New York

St. Paul Mercury Ind. Co. of St. Paul, Minn.

Sun Indemnity Company of New York

United States Casualty Company, New York

United States Fidelity and Guarantee Company, Baltimore, Md.

United States Guarantee Company, New York

The Yorkshire Ind. Co. of N. Y.

GENERAL REINSURANCE CORPORATION, N.Y. 5/17/35

TRINITY UNIVERSAL INSURANCE COMPANY } 5/28/35
DALLAS-TEXAS }

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK.

—o—

In the Matter

of the Revision and Amendment

—of—

the Rules of the United States District Court
for the Eastern District of New York.

—o—

Admiralty, Bankruptcy, Equity, General and Law.

UNITED STATES COURT,

SECOND CIRCUIT.

*Justice of the United States Supreme Court
Assigned to the Second Circuit.*

HARLAN F. STONE.....Washington, D. C.

United States Circuit Judges.

MARTIN T. MANTON	} Chambers on the 4th Floor of U. S. Court House and P. O. Building, Park Row, N. Y. C.
LEARNED HAND	
THOMAS W. SWAN	
AUGUSTUS N. HAND	
HARRIE B. CHASE	

*Eastern District of New York
United States District Judges.*

MARCUS B. CAMPBELL
ROBERT A. INCH
GROVER M. MOSCOWITZ
CLARENCE G. GALSTON
MORTIMER W. BYERS

Clerk.

PERCY G. B. GILKES

Chief Deputy Clerk.

JOSEPH G. COCHRAN

United States Attorney for Eastern District.

LEO J. HICKEY

United States Commissioners.

MARTIN EPSTEIN.....32 Court Street
EDWARD E. FAY.....215 Montague Street
JACOB A. VISEL.....9232 Union Hall St., Jamaica

Referees in Bankruptcy for Kings County.

EUGENE F. O'CONNOR, JR.....44 Court Street
E. C. McDONALD.....32 Court Street
THEODORE STITT.....190 Montague Street
WILMOT L. MOREHOUSE.....32 Court Street

Referee in Bankruptcy for Queens County.

HENRY C. FREY..Post Office Bldg., Jamaica, L. I.

Referee in Bankruptcy for Suffolk County.

CHARLES WELLS BROWN.....Riverhead, L. I.

Referee in Bankruptcy for Richmond County.

ERNEST V. FRERICHS.....36 Richmond Terrace,
St. George, S. I.

Referee in Bankruptcy for Nassau County.

HOWARD A. FLUCKIGER....451 Franklin Avenue,
Mineola, N. Y.

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REVISED AND AMENDED RULES

OF THE

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK

GENERAL RULES

1. *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 Eastern 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.

Adherence to the standards of professional conduct established by the Canons of Ethics of the New York State Bar Association will be exacted of all of the members of the Bar of this Court.

2. *Admission to the Bar.*

Any member in good standing of the Bar of the State of New York, or of the Bar of the State of New Jersey, may be admitted to practice in this Court on compliance with the following provisions:

Each applicant for admission shall file at least two days prior to 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; further, that such applicant is familiar with all of the provisions of the said Canons of Ethics, and will faithfully adhere

thereto. This petition shall be accompanied by an affidavit of an attorney of this Court stating where and when affiant was admitted to the Bar of the State Court, and when admitted to practice in this Court, how long and under what circumstances such attorney has known petitioner, and stating what affiant knows of petitioner's character and experience at the Bar covering a period of at least one year. Such petition shall be placed at the head of the General Motion Calendar, and, on the call thereof, the attorney whose affidavit accompanies the petition shall move the admission of the petitioner.

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

3. *Disbarment.*

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

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

Unprofessional conduct on the part of a member of this Bar requiring discipline, shall include fraud, deceit, malpractice, conduct prejudicial to the administration of justice, or a failure to abide by any of the provisions

of the Canons of Ethics of the New York State Bar Association.

Any member of the Bar of this Court who shall be convicted of a felony in any court of any State, or the United States shall be automatically disbarred thereby, and, upon the filing in the office of the Clerk of this Court of a certified copy of such conviction the Senior Judge of this Court shall sign and file an order striking the name of such person from the roll of attorneys, etc., of this Court. If such conviction shall be reversed upon appeal, the Senior Judge of this Court shall have the power, but shall not be required, to reinstate such person as a member of the Bar of this Court, upon motion duly made upon five days' notice to the United States Attorney for the Eastern District of New York.

Any member of the Bar of this Court who shall be convicted of a misdemeanor in any Court of any State, or of the United States, may be disbarred as the result of such conviction, in the discretion of the Court, depending upon the nature of the misdemeanor; the provisions of the foregoing paragraph concerning reversal of a conviction shall likewise apply where the conviction is of a misdemeanor.

All applications for orders to show cause why a member of the Bar of this Court should not be disciplined shall be made to or before the Senior Judge of this Court unless otherwise ordered by him, or he shall be absent from the District, in which last mentioned contingency they shall be made to or before the Senior of the Judges within this District.

4. *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 Eastern District of New York shall not appear as attorney, solicitor 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 Eastern District of New York.

5. *Extension of Terms.*

For the purpose of taking any action 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 or assignments of error in criminal cases, or to prepare and certify records on appeal in criminal cases or in naturalization or habeas corpus proceedings, shall be presented to the Judge who tried the case or heard the proceedings, unless he is no longer in office or he be absent from the District, and in such case to the Judge holding the Criminal Term; and shall be accompanied by an affidavit showing due reason for such extension, the date of the final judgment or decree, and in criminal cases whether the defendant is in custody or on bail. The Judge shall consider the application and in his discretion grant or deny the same, notwithstanding the consent of the United States Attorney.

6. *Commissions.*

Commissions either closed or open shall be moved for (if not consented to) upon affidavits specifying the facts expected to be proven, together with the names of the witnesses and the shortest time within which the party believes the testimony may be taken and the commission returned.

No commission to examine unnamed witnesses shall issue except by order of the Court, entered on consent or cause shown, nor shall a commission operate as a stay of proceedings except by special order of the Court.

Interrogatories for the examination of witnesses on commission shall be filed and also served upon the oppo-

site party. Cross-interrogatories shall be filed and served within ten days from the service of interrogatories, and if there be objection to either interrogatories or cross-interrogatories such objections shall be presented to the Judge for his allowance on one day's notice.

Commissions shall be executed as nearly as may be in accordance with the law of the State of New York.

Upon the return of a commission the Clerk shall open and file it forthwith in his office and give notice thereof by mail to the counsel for the respective parties, and any motion to suppress such commission must be made within ten days after the mailing of said notice.

7. *Depositions.*

Depositions taken otherwise than by commission shall be forwarded to the Clerk immediately after they are taken, and filed. Such depositions shall be opened in the manner prescribed by Rule 6, and the provisions of that rule in respect to objections to the form or manner of taking or returning the same shall be applicable.

8. *Calendars.*

There shall be kept by the Clerk three permanent calendars of issues awaiting trial, namely, the Common Law calendar, the Equity calendar and the Admiralty calendar.

Causes other than in Equity shall be placed upon the calendars to which they belong by the filing of a note of issue; each note of issue shall contain the docket number and full title of the cause, the names and addresses of the attorneys of record, the date of issue joined, the nature of the issue, and a request to add it to one of the calendars above named.

Upon the Common Law Calendar shall be placed all causes raising issues of fact of a civil nature triable by court and jury, and all actions of forfeiture indexed in the Civil Docket.

Upon the Equity calendar shall be placed all issues of fact of a civil nature triable by the Court without a Jury—except causes in Equity brought on for hearing upon exceptions to a Master's report and issues in involuntary proceedings in bankruptcy wherein no jury trial is demanded.

Upon the Admiralty calendar shall be placed all issues of fact arising in causes of admiralty and maritime jurisdiction, excepting causes brought on for hearing upon exceptions to a Commissioner's report.

9. *Notices of Trial.*

Notices of Trial in causes standing upon the permanent calendars provided for in Rule 8 shall be for that first Wednesday of any calendar month which shall be not less than ten days after the date of service of notice of trial.

10. *New Calendars.*

New permanent calendars shall be made up at such times as the Court may direct and shall consist only of causes for which new notes of issue shall be filed.

11. *Calendar Call.*

Day calendars shall be made up by the Clerk from the permanent calendars and called in such manner as the trial Judges may from time to time direct.

If upon the call of a day calendar a cause shall be "stricken from the calendar" it can only be replaced on the permanent calendar by filing a new note of issue and will then go to the foot of the calendar.

12. *Preferences.*

The following causes shall be entitled to preference:

- (1) Issues in bankruptcy framed by an answer (demanding a jury trial) to any bankruptcy petition.

(2) Causes restored to the calendar for a new trial by the setting aside of a former verdict, the reversal of a former judgment, or after a mistrial. Where an order is made restoring a cause to the calendar for any of these reasons, a new note of issue need not be filed.

(3) Causes to which any Receiver appointed by any Court or any Trustee in bankruptcy is a party.

Preferences in causes above marked (1) and (3) shall be obtained only by motion made on two days' notice before the Judge holding the Common Law calendar, and if Common Law trials are being held in more than one part, then in Part I.

13. *Motions.*

All motions or orders to show cause in bankruptcy proceedings shall be heard on Fridays by the Judge assigned to the Motion part, including demurrers, petitions for discharge or composition and contested issues without jury, except that in the months of July, August or September the same may be heard on Wednesdays if the Judge assigned to hold the Ex parte and Motion Term in any of those months shall by order so direct.

All returns on habeas corpus to review the deportation or exclusion of aliens, appeals from Commissioners under the Chinese Exclusion Acts, Prohibition Act, shall be heard on Wednesdays at the end of the General Motion Calendar, by the Judge assigned to the Motion Part.

All motions, exceptions and orders to show cause in civil causes at law, in equity or admiralty shall be heard on Wednesdays, by the Judge assigned to the Motion Part, including criminal contempts for the disobedience of orders or decrees in civil cases.

All demurrers, motions, writs of habeas corpus (except on deportation or exclusion), removals under Revised Statutes, Section 1014, and extraditions in criminal proceedings, shall be heard on Mondays by the Judge assigned to Criminal Part I.

If a legal holiday falls on Monday, Wednesday, or Friday at any time during the year, hearings hereinbefore provided for shall be held on such day as the Judge assigned to hold the Ex parte and Motion Term in which such holiday occurs shall by order direct.

All notices of motion shall be of four days.

14. *Petitions for Habeas Corpus in Exclusion and Deportation Cases, Unless Otherwise Ordered by the Court.*

(a) Petitions for habeas corpus in exclusion and deportation cases, if the petitioner applies 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 had 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 records 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 is alleged that access has been refused, the petition must state when application was made, and by whom and who refused inspection.

In case it is 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.

15. *A 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 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 till the return day. In such cases 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.

16. *Motion Calendar.*

The motion papers in all motions except those heard in Criminal Part must be filed at least two days before the calendar is called. No note of issue shall be required.

17. *Service of Papers.*

Service of any pleading, notice or other paper in a civil cause shall be (unless this Court on special application otherwise order) in accordance with the practice of the Supreme Court of the State of New York.

18. *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.

19. *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.

20. *Sureties.*

In no case shall the Marshal or his deputies or any attorney of this Court be surety in any suit depending therein, except that an attorney may in the first instance be surety for costs in cases of admiralty and maritime jurisdiction; but, if objected to, other security shall be furnished, and a stay of proceedings may be granted pending such furnishing of new security.

21. *Naturalization Days.*

Tuesday and Thursday of each week shall be stated days for the hearing of petitions of aliens to become citizens of the United States. If any of said Tuesdays and Thursdays are not days of jurisdiction, the hearing so set shall be held on a day to be 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 Commerce and Labor.

22. *Motions in Vacation.*

When no Judge is holding a session for the trial of Criminal causes or for the trial of Common Law causes, motions directed to be made before such Judges may be heard upon the General Motion Calendar.

23. *Exhibits.*

All physical exhibits, including books, maps, models and diagrams too large for convenient filing, offered by either party, shall not be filed but shall be retained in the custody of the respective attorneys who offered them in evidence.

24. *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 are 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 numbers (in other cases) and no paper shall be received on file without such endorsement. All papers shall be filed flat.

25. *Judge—Judge's Order.*

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.

26. *Preparation and Certification of Records on Appeal.*

(1) In any cause or proceeding wherein the final judgment or decree is sought to be heard upon appeal, the appellant shall serve on the opposing parties, not later than ten days after filing notice, or after allowance of the appeal, unless the time be extended by the Court, a typewritten or printed copy of his proposed apostles, record or bill of exceptions, which shall include a statement of the material proceedings in the action, a list of the material proceedings in the action, a list of the material papers on record with the Clerk, the charge or opinion, if any, and the testimony proposed by him, together with a copy of the exhibits, or a list of such exhibits as can be identified by number or description. Within ten days thereafter the opposing party shall serve upon the appellant his proposed changes, additions or amendments, numbered and with references to the record or stenographer's minutes. The appellant shall within four days accept such as he considers proper, and shall cause to be submitted to the Judge by whom the case was heard (or any judge who may legally act in his place) the proposed apostles, record or bill of exceptions, and the proposed changes, additions or amendments, with his acceptances and non-acceptances and with a reference to the record or stenographer's minutes as to such disallowances. The appellant shall give two days' notice of such submission, and either party may present a memorandum upon the points of difference. Before the expiration of the term, *ex parte* orders may be signed by any judge of the Court extending the term from time to time until after the record or bill of exceptions has been filed, but no record or bill of exceptions will be settled or filed after the term as extended by Rule 5 or by special order has expired. The appellant shall cause the proposed record or bill of exceptions when settled by the Court to be filed within the time limited and within the term as extended and so as to comply with the provisions of sections 997, 1000 and 1007 of the Revised Statutes as to the giving of

security and as to the perfecting an appeal. The appellant shall then cause to be printed as many copies of such record on appeal as may be required by the rules of the Circuit Court of Appeals. All such printed books shall comply with Rule 31 of the Supreme Court of the United States and shall be upon pages eleven inches long by seven inches wide, with the printed portion seven inches long by four inches wide. One of such copies may, by order of the Court, with or without stipulation of the parties, be filed with the Clerk *nunc pro tunc* for use in lieu of the papers previously settled, and another copy of this record so filed shall be certified by the Clerk of the Court under seal thereof.

(2) The parties in any suit in which an appeal or writ of error has been taken, may, however, stipulate by themselves or their attorneys what shall be printed as the record on appeal. The appellant or plaintiff in error shall thereupon cause to be printed the number of copies of such record as required by the Rules of the Circuit Court of Appeals in the manner above provided. One such printed copy may be presented to the Clerk with a stipulation by the parties or their attorneys that such printed copy is a true transcript of the record as agreed on by the parties. Such copy with such stipulation may, by order of the Court, be filed with the Clerk for use in lieu of the original papers, and another printed copy of this record so filed shall be certified by the Clerk of this Court as the transcript, without charge except such as may be lawfully made for the certificate itself. The appellant or plaintiff in error shall in either of the foregoing cases then transmit such certified copy of the record under the seal of the Court, with twenty-four other copies thereof, to the Circuit Court of Appeals at least twenty days before the case is called for argument and shall also furnish three copies of such record to each adverse party at least twenty days before argument, in accordance with the Act of Congress of February 13, 1911, Chapter 147.

(3) This rule shall not apply to the preparation of records on appeal in Equity cases which are governed by Rules 75, 76 and 77 of the Supreme Court Equity Rules, but after the statement provided for in Supreme Court Equity Rules 75 or 77 has been approved by the Court or Judge thereof, the appeal record may be printed and certified as set forth in this Rule if the parties shall stipulate that the printed copy presented to the Clerk is a true transcript of the record as agreed on by the parties or as settled by the Court.

27. *Publication of Advertisements.*

The publication of all advertisements in admiralty, equity and common law cases shall be made in "THE BROOKLYN CITIZEN", "THE BROOKLYN DAILY EAGLE" or the "BROOKLYN TIMES-UNION," provided, however, that the Judge in any given case may direct such additional advertisement as in his discretion may seem best.

28. *Dismissal of Cases for Want of Prosecution.*

Cases 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 the calendar. Such cases may also be dismissed for want of prosecution at any time on motion by any party upon notice to the other parties.

29. *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.

30. *Submission of Orders and Decrees.*

All orders (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. One day's notice of settlement is required of all orders in contested matters unless agreed upon.

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.

The Clerk shall enter satisfaction of any judgment 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, and thereafter upon acknowledgment by the judgment creditor or by his legal representatives or assigns with evidence of their authority.

32. *Clerk to Sign Certain Orders.*

The Clerk shall sign all orders of the classes prescribed below without submission to a Judge:

1. Adjudications and discharges in bankruptcy.
2. Orders and decrees *pro confesso* in equity.
3. Orders for the substituting of attorneys upon consent.
4. In causes and proceedings other than bankruptcy or judgment creditors' bills, all orders extending the time on consent within which to plead or make any motion.
5. In causes and proceedings other than criminal, orders on consent extending the time to settle and file a bill of exceptions or extending the term for that purpose and orders extending the time to certify and file a transcript of record on an appeal or writ of error.
6. Orders of discontinuance upon consent.
7. Orders upon consent satisfying decrees and cancelling stipulation and bonds.

33. *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 cases or habeas corpus proceedings, or after indictment or information in criminal cases, 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.

The approval of the Clerk or a Deputy Clerk of all other bonds and undertakings, except supersedeas and costs bonds on appeals or writs of error, 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.

34. *Adjournments.*

(a) All cases must be tried when reached in their regular order.

(b) Adjournments to another term by agreements of counsel will not be allowed. Other engagements of counsel will not be accepted as ground for more than three days' adjournment, after which the cause must proceed. No adjournment shall be allowed except for good cause shown by affidavits, such as sickness of a party or his counsel or the unavoidable absence of an important witness.

(c) Adjournments of motion shall not be allowed for any other reasons than such as justify the adjournment of a case set for trial.

35. *Habeas Corpus.*

Unless otherwise ordered by the Court, the original petition must be filed with the Clerk of the Court when the writ is issued.

36. *Suspension of Sentence.*

All applications for suspension of the execution of sentence and to place a defendant on probation after sentence has been imposed shall be made at the Criminal Term of the Court; and if no criminal term is being held at that time the application shall be made at the term of the Court for the hearing of motions; but at whichever term the application is made, unless the Judge presiding is the one who imposed sentence, he shall call upon the Judge who imposed sentence to preside at said term for the purpose of hearing said application only, unless the Judge who imposed sentence has ceased to be a Judge of the Court, is absent from the district, or is for any reason incapacitated from performing his duties; in either of which events the Judge holding the term at which the application is made shall hear the same.

37. *Requests to Charge.*

Prior to summing up in civil and criminal trials, counsel must submit to the Judge all requests for instructions. The Judge may, in his discretion, refuse to consider all requests submitted too late under the foregoing provision.

38. *Examination on Voir Dire.*

In Civil and Criminal Jury trials the Judge alone shall examine all jurors on the voir dire. If either counsel desire that he shall examine as to the additional matters, he shall state the same, and the Judge, if the matter be proper in his opinion, shall further examine the jurors in respect thereto.

39. *Motions for Reargument.*

Motions for reargument will not be the subject of oral argument. Such motions must be upon notice and affidavit verified by the attorney of record who makes the motion, setting forth concisely the respects in which

it is thought that the court has overlooked or failed to understand material issues of law or fact, and the controlling decisions which it is thought that the court has failed to consider.

40. *Notice of Appearance in Felony Cases.*

Attorneys representing defendants in felony cases must file a notice of appearance in the Clerk's office, and serve a copy upon the United States District Attorney. Such filed notice will remain in effect until formally superseded.

COMMON LAW RULES

1. *Process.*

A summons substantially in the form prescribed and used by the law and practice now or hereafter regulating the Supreme Court of the State of New York shall constitute the proper process in all suits at common law to require the defendant to appear and answer the complaint; but all such process shall issue in the name of the senior Judge of this Court and shall be signed and sealed by the Clerk of this Court.

2. *Issuance of Summons.*

No summons shall issue from the Clerk's office in an action at common law until a præcipe for said summons shall be filed, which præcipe shall contain the full title of the intended action, the name and office address of plaintiff's attorney of record, and if such attorney of record have no such office for the transaction of business in person as required by the General Rule 4, then said præcipe shall also contain the name and office address of the person upon whom service of all papers in the cause shall be made.

The præcipe shall also contain (except in suits by the United States, a State or Municipal Corporation) the

residence of the plaintiff or plaintiffs, and if any plaintiff be a corporation then a statement of the State, territory or country of its incorporation and the location of its principal office.

3. *Service of Process.*

In common law causes all mesne and final process shall be served by the Marshal or by his deputy except when he is a party; provided, however, that a summons may be served by any person *sui juris* and over the age of twenty-one who is not a party to the suit nor an attorney of record therein; but if such service of summons shall be made by a person other than the Marshal or his deputy an affidavit of service shall be filed within ten days after service, and if such affidavit be not filed the summons shall abate, unless further time for such filing be granted by an order signed by a Judge of this Court. If the complaint be not served with the summons a defendant who has appeared generally may at any time within twenty days after the service of the complaint withdraw his general appearance and appear specially to object to the jurisdiction.

4. *Attachments and Supplementary Proceedings.*

In Common Law causes the parties shall be entitled to the same rights and remedies as respects attachments against the property of the defendant, and as respects proceedings supplementary to execution as are now or may be hereafter provided by the laws of the State of New York, which laws (in respect of common law causes) are hereby adopted.

5. *Form of Bail.*

Bail in civil causes shall be by bond and not by undertaking, and shall be conditioned for the appearance of the defendant or defendants at all times when required by the Court to and including final judgment in the cause.

6. *Conformity to New York Practice.*

In all cases not provided for by the Rules of this Court, causes at common law shall proceed as nearly as may be in accordance with the law for the time being of the State of New York and the practice thereunder of the Supreme Court of said State.

7. *Requests to Charge.*

Prior to summing up in civil and criminal trials, counsel must submit to the judge all requests for instructions. The judge may, in his discretion, refuse to consider all requests submitted too late under the foregoing provision.

8. *Examination on Voir Dire.*

The Judge alone shall examine all jurors on the voir dire. If either counsel desire that he shall examine as to additional matters, he shall state the same, and the Judge, if the matter be proper in his opinion, shall further examine the jurors in respect thereof.

EQUITY RULES

1. *Placing Causes on Calendar.*

Twenty days after issue joined by filing an answer, causes in Equity shall be placed upon the Equity calendar by the Clerk. If, however, within the said twenty days an order be filed for the taking of depositions under Supreme Court Rule 47, or affidavits under Supreme Court Rule 48, or notice be given to the clerk of the taking of depositions under the Revised Statutes, the cause shall not be placed upon the calendar until the expiration of the time limited by Supreme Court Rule 56, unless otherwise ordered upon notice.

2. *Preparation of Records and Briefs.*

The printing of the record upon final hearings in Equity shall not be required unless by special order made upon cause shown. If the record be not printed, each party shall cause his own evidence and pleadings (and so far as possible his exhibits) to be neatly typewritten, bound in book form in stiff covers, accurately paged and properly indexed. All typewritten testimony and all typewritten briefs of argument or memoranda presented upon final hearings in Equity shall be written upon paper eight inches wide by ten and a half inches long.

3. *Testimony, Affidavits and Depositions of Experts in Patent Causes.*

In cases where under Supreme Court Rule 48, the direct testimony of experts in Patent causes is taken by affidavit, the witnesses shall not give their opinions as to the meaning of any patent claim or specification, but their testimony shall be strictly confined to an explanation of the operation of relevant arts, processes, machines, manufactures or compositions of matter, and of the meaning of terms of art or science and of diagrams or formulas.

If the affidavit or deposition of any expert witness contain matter forbidden by this Rule or irrelevant or immaterial matter, it shall not be answered by the opposite party, nor shall it be the basis of any cross-examination at the hearing, and the Court at any stage of the cause may strike from any such affidavit or deposition all such matter.

4. *Voluntary Discontinuances.*

If justice requires, the Court, after issue joined, may refuse to permit the plaintiff to discontinue even though the defendant cannot have affirmative relief under the pleadings and though his only prejudice is the vexation and expense of a possible second suit upon the same cause of action.

5. *Allowances to Receivers and Attorneys in Equity Receiverships.*

If the Judge who appointed the receiver be disqualified in a particular matter, or be no longer in office or be ill, incapacitated, or absent from the district, the senior district judge (or if he be ill, incapacitated, or absent from the district, the then acting senior district judge) shall act or designate another judge to act in the cause temporarily or during the further progress, as occasion may require.

Allowances to receivers, solicitors, special counsel, accountants, investigators, appraisers and masters to sell, in all causes in equity shall be made only upon petitions and after such notice as the judge who is to determine the same shall prescribe, but the notice shall contain a statement of the amount requested by each of those seeking an allowance.

Auctioneers shall be allowed the same fee and the charges as are provided for like service by the bankruptcy rules of this Court.

6. *Receivers—Conducting Business.*

All receivers appointed in suits in Equity shall, if they conduct the business, file a report on or before the tenth day of each month succeeding that in which the business is conducted.

7. *Receivers—Power to Conduct or Continue Business.*

The court or judge may, in the order appointing or by other order authorize an equity receiver to conduct or to continue to conduct the business of the defendant, for such times and upon such conditions as it may deem best, and may require the receiver to discontinue conducting the business when it may deem it best, but in all cases the receiver shall, during the first 30 days during which he is conducting the business, inquire into the propriety of its further continuance, and report

to the court, and the clerk shall immediately call the attention of the judge who appointed the receiver, or who is acting in the cause to such report.

8. *Receivers—Employment of Solicitor, Special Counsel, Accountant or Investigator.*

No receiver in equity shall employ a solicitor, special counsel, accountant, or investigator, except on the order of the court. Such order shall be granted only upon the petition of the receiver setting forth the name of the solicitor, special counsel, accountant, or investigator whom he wishes to employ, the reason for the selection of such solicitor, special counsel, accountant or investigator, and the person whose employment is requested, showing professional qualifications, and what his professional qualifications, and what his professional and business relations have been with the parties or any creditor, and where the employment is that of solicitor or special counsel, whether he has appeared for or acts for a party or for any creditor of the defendant (whether intervenor or not) or for any other person interested in the cause or estate, and whether he is associated with, employed by, or occupying offices with any such solicitor.

The Court shall not be bound by the wishes of the receiver as to the solicitor, special counsel, accountant or investigator to be employed, but when in the judgment of the court or judge it is for the best interest of the estate, the court or judge may deny the request, or direct the employment of some one designated by it.

Any order of the court allowing the employment of any accountant or investigator shall fix the maximum compensation to be paid to such accountant or investigator.

No one shall be retained as solicitor or special counsel by the receiver if in the cause he has appeared for or acts for a party or for any creditor of the defendant (whether intervenor or not) or for any other person interested in the cause or estate, or is associated with,

employed by, or occupies offices with any such solicitor, unless for special reasons shown by petition and affidavits, the court may allow the receiver to employ such a person as his solicitor or special counsel.

This rule shall not disqualify any solicitor or special counsel now representing a receiver from continuing such representation.

9. *Receivers—Form of Notice and Mailing.*

Unless otherwise required by law or by the rules, whenever notice is required to be given in the manner directed by the Court, and when directed to be given by mail, it shall be mailed by the receiver in an envelope upon which shall be printed or written a direction to return the same to him if the person is not found within 5 days.

Returned notices or a list thereof shall be preserved and filed within 5 days after the return of the notice.

10. *Discharge of Receiver.*

No receiver in equity shall be discharged until after he has filed with the clerk an accounting, in such detail and accompanied by such vouchers or other form of supporting proof as the court shall require, and the same shall have been approved by order made after hearing thereon, upon such notice as the court may prescribe.

11. *Proposed Findings of Fact and Conclusions of Law.*

In any cause in Equity the Court may, in its discretion, require from either or both parties, either before or after the announcement of the Court's decision, proposed findings of fact and conclusions of law, but unless adopted by the court, such proposed findings of fact and conclusions of law shall not form any part of the record in the court, and the court's adoption of or failure to adopt any part thereof as the findings of fact and conclusions of law shall not be subject to any exception.

12. *Depositories.*

Banking institutions as depositories of moneys by Receivers appointed in suits in Equity shall, upon giving such security as the court or judge shall from time to time require, be designated, by orders entered for that purpose, and the clerk of this court shall keep a list of authorized depositories open to the inspection of the public.

13. *Receivers to Deposit in Designated Depositories.*

Receivers appointed in suits in equity shall deposit all funds received by them as such receivers in one or more designated depositories. The account shall be entitled with the title of the suit in which the deposit is made; immediately upon opening the account or making the first deposit in each depository, the receiver shall file with the clerk of this court a statement giving the name of the depository, of which the clerk shall, without unnecessary delay, inform the judge who made the appointment.

All checks or warrants drawn by receivers in equity on accounts heretofore or hereafter opened by such receivers shall be countersigned by the Clerk of this Court, or in his absence from the District by the Chief Deputy Clerk, or other Deputy Clerk especially authorized, unless otherwise ordered. Such checks shall bear on the face thereof the title of the suit in which the receiver signing the checks was appointed.

BANKRUPTCY RULES

1. *Petitions.*

Petitions should state where the debtor has resided, including the street and number, if any, and also his occupation and where his place of business, if any, has been during the preceding six months, or the greater part

thereof; and the schedules as respects creditors in the City of New York, should state the street and number of their residence or place of business, so far as known, and the borough in which the same is located.

A Petition by one or more persons who were or are copartners, should state whether there are firm assets, whether the firm and any other partners not joining in the petition are solvent or insolvent, and the full name and place of business of the copartnership, and the full names and residences of such other copartners so far as known or ascertainable.

Petitioners in involuntary proceedings whose claims rest upon assignment or transfer from other persons shall annex to one of the duplicate petitions all instruments of assignment or transfer, and an affidavit setting forth the true consideration paid for the assignment or transfer or such claims and stating that the petitioners are the bona fide holders and legal and beneficial owners thereof, and whether or not they were purchased for the purpose of instituting bankruptcy proceedings.

Where petition is signed by agent, or attorney-in-fact, of a creditor, the proof of appointment of agent or power of attorney must be filed with the petition.

2. *Service of Subpoena in Involuntary Cases.*

In involuntary cases, unless proof of personal service of the subpoena and petition or a notice of appearance on behalf of the bankrupt is filed with the Clerk within fifteen days after the filing of the petition, it shall be the duty of the attorney for the petitioning creditors to give notice to the bankrupt by publication as required by Section 18 of the Bankruptcy Act; and if within five days thereafter an order for the publication of notice has not been obtained, the Clerk shall give notice in writing to the attorney for the petitioning creditors to show cause before the Court on the next motion day, why service of the subpoena has not been made or publication of the notice commenced.

3. *Appointment of Receiver.*

No application for the appointment of a Receiver in an involuntary case shall be submitted to the Court until after the subpoena has been delivered to the marshal for service or a notice of appearance on behalf of the bankrupt filed with the Clerk, and it shall be the duty of the Clerk so to advise the Judge when submitting the application.

4. *Applications for Appraisal and Sale and Original Proceedings Before Referee After Appointment and Qualification of Trustee.*

After the appointment and qualification of a trustee all applications for appraisal and sale and original proceedings for the possession of property in the hands of the trustee or of premises occupied by the trustee shall be filed with the Referee in charge of the proceeding.

5. *Attorneys for Receivers and Trustees, and Accountants.*

No receiver or trustee in bankruptcy shall employ an attorney, accountant, or investigator, except upon the order of this Court to be made by a Judge thereof, and not by a Referee: Ordinarily the Court will not appoint an accountant at the instance of a receiver, and in exceptional cases only may this be done. Such order shall be granted only upon the petition of the receiver or trustee setting forth the name of the attorney, accountant or investigator whom he wishes to employ, the reasons for the selection of such attorney, accountant or investigator and the necessity of employing any attorney, accountant or investigator.

Applications for the appointment of an accountant shall consist of the petition last above referred to, and an affidavit by the person nominated as accountant, setting forth:

(a) His name in full, business address, and the date of his certification as an accountant, if he is a C. P. A.,

and his relationship to or business association with any attorney, creditor, the bankrupt, or other party to the proceeding.

(b) Whether he has already rendered any services as an accountant to any such person, the extent thereof, and the status of his compensation therefor.

(c) The nature and extent of the services that he proposes to render, the estimated cost thereof, the basis of such estimate, and the extent to which he is familiar with the books or accounts of the bankrupt or alleged bankrupt.

The Court shall not be bound by the wishes of the petitioner as to the attorney, accountant, or investigator to be employed, but where in its judgment it is for the best interest of the estate, the Court may deny the request, or authorize the employment of some one designated by it.

Any order of the Court allowing the employment of any accountant or investigator shall fix the maximum compensation to be paid to such accountant or investigator.

No custodian or receiver in bankruptcy shall employ a custodian or watchman for more than five days, except on order of this Court expressly authorizing such retention and fixing the amount of his compensation or the rate or measure thereof. No trustee in bankruptcy shall employ a custodian or watchman for more than five days except on a like order signed by the Referee in the proceeding.

Accompanying the petition for leave to employ a custodian shall be an affidavit by the proposed custodian, if an individual, setting forth the fact that such custodian has no other employment.

Such application must be made upon the petition of the custodian, receiver or trustee setting forth the name of the person whom he wishes to employ, the reason for his selection, the character of the assets, their estimated

value and the rent of the place occupied and the necessity for the employment.

Such custodian, receiver or trustee in bankruptcy, upon his qualification, shall take personal and immediate charge of the assets of the estate committed to his care, and of all books and papers of the bankrupt or alleged bankrupt, which books and papers must be kept in custody; and shall make or cause to be made an inventory of the assets and, an itemized list of books and papers so taken into his possession, which shall be filed by him with the Clerk of this Court within five days thereafter.

No attorney for any of the petitioning creditors nor any attorney shall be appointed attorney for the receiver or trustee, nor receive any compensation for professional services, rendered to such receiver or trustee, unless such attorney, before his appointment, shall make and file his affidavit that he did not become attorney for any of said petitioning creditors, or any creditor, nor become attorney in any other capacity in the proceeding, at the suggestion or through the influence, direct or indirect, exercised in any form or guise, of any of the bankrupts or of any relative or attorney of any of the bankrupts—bankrupts in this instance including officers, directors and stockholders of bankrupt corporations—save and except, for good cause shown by such attorney's affidavit, the Court may notwithstanding allow the receiver or trustee to retain as his attorney, the attorney for the petitioning or other creditors.

6. *Receivers, When to Continue Business.*

The order appointing the receiver may authorize him to continue the business for a period of not more than fifteen days during which time he shall inquire into the propriety of its further continuance and if he comes to the conclusion that the business should be further continued, he shall, within such time, call a meeting on notice to all known creditors and present to them the result of his inquiry; and after such meeting he shall

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Such custodian, receiver or trustee in bankruptcy, upon his qualification, shall take personal and immediate charge of the assets of the estate committed to his care, and of all books and papers of the bankrupt or alleged bankrupt, which books and papers must be kept in custody; and shall make or cause to be made an inventory of the assets and, an itemized list of books and papers so taken into his possession, which shall be filed by him with the Clerk of this Court within five days thereafter.

No attorney for any of the petitioning creditors nor any attorney shall be appointed attorney for the receiver or trustee, nor receive any compensation for professional services, rendered to such receiver or trustee, unless such attorney, before his appointment, shall make and file his affidavit that he did not become attorney for any of said petitioning creditors, or any creditor, nor become attorney in any other capacity in the proceeding, at the suggestion or through the influence, direct or indirect, exercised in any form or guise, of any of the bankrupts or of any relative or attorney of any of the bankrupts—bankrupts in this instance including officers, directors and stockholders of bankrupt corporations—save and except, for good cause shown by such attorney's affidavit, the Court may notwithstanding allow the receiver or trustee to retain as his attorney, the attorney for the petitioning or other creditors.

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submit to the Court a report of such inquiry together with his recommendations thereon and the recommendations, if any, made by the creditors attending such meeting. Upon such report the court may authorize a further continuance of the business for a fixed period. The continuance of the business for the provisional period of fifteen days shall not entitle the receiver to more than a single commission except upon special direction of the Court.

7. *Continuation of Business Pending Composition.*

No receiver or trustee pending a composition, shall continue any business beyond the period already fixed before the composition was proposed, unless the bankrupt indemnify the estate in such manner and amount as the Court may direct, against any expense or depreciation of assets pending the composition, in case the same shall fail.

8. *Sales, How Held and Advertisements Thereof.*

Unless otherwise ordered, sales of property of bankrupt estates shall be by public auction conducted by the auctioneer authorized so to do in and by an order duly entered in the proceeding.

All sales in the County of Kings shall be advertised in "The Brooklyn Citizen," "The Brooklyn Daily Eagle," or the "Brooklyn Times-Union," ten days before the sale and on the day preceding sale, and if the sale is without the said County ten days before the sale in the newspaper designated in Rule 32 unless a shorter notice is ordered. In case of sale by a receiver notice shall be mailed by him to all known creditors of the bankrupt ten days before such sale, and in case of sale by a trustee such notice shall be mailed by the Referee, unless a shorter notice is ordered. The receiver or trustee conducting the sale may cause such further advertising or notice to be given as he may deem desirable.

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At least ten days before a sale the property to be sold shall be placed on exhibition for prospective purchasers. The property shall be offered for sale first in bulk and then by lots or in such other manner as the Court may direct. If the sale is not a simple auction sale the method to be adopted and the terms of sale shall be printed in the catalogue and announced by the auctioneer before the sale. The auctioneer shall also announce that no sale will be completed without an order of the Court unless the sale realizes seventy-five percent, or more of the appraised value. Any goods which are the subject of reclamation proceedings or which should not be included in the sale for any reason whatsoever shall be set apart conspicuously marked "Withdrawn from Sale," and such fact announced by the Auctioneer before the sale.

No receiver or trustee shall sell property of a bankrupt estate on a percentage basis, i. e., in the terms providing for the payment of a fixed percentage to creditors and expenses of administration.

9. *Receiver's Accounts.*

Receivers are required to file their reports and accounts within twenty days after the qualification of the trustees, and attach to said report all vouchers showing disbursements made by them.

10. *Allowances.*

All applications for allowances to receivers, trustees, Appraisers, appointed by the Referee, Accountants or Attorneys shall be filed in the first instance with the Referee in Bankruptcy in charge of the case and shall be heard on notice sent by mail to the creditors, to the applicants and to the Trustee and his attorney. Such applications must state the sums claimed by the applicants and the notice of the hearing shall contain the amounts demanded. No sum shall be allowed greater than those contained in the notice. The Referee shall require the Bank-

rupt and his attorney to file affidavits stating how much the bankrupt has paid to any attorney for legal services during the four months next immediately preceding the filing of the petition in bankruptcy. After due hearing the Referee shall file with the Clerk of the Court his report with his recommendations thereon.

In the case of a Trustee's account, the Referee shall state (1) all sums theretofore allowed to the receiver, the trustee and to all attorneys in the cause; (2) the amount which will remain after the payment of all deductions; (3) whether any previous dividends have been declared and paid and if so of what percent, and of what amount; (4) the sum necessary to pay a dividend of one percent and (5) amount of estate.

The commissions allowed receivers and the allowances to their attorneys shall not be paid, except upon leave of Court, until the order discharging receiver is filed and signed with accompanying vouchers. No disbursements shall be allowed for local telephone calls or for any except extraordinary typewriting charges.

11. *Composition.*

When a person by or against whom a petition has been filed desires to offer terms of composition to his creditors he shall file a petition to such effect. Said petition shall state the terms of the composition proposed to be offered and if the proposed offer includes any promissory notes, it shall state the names and addresses of the endorsers, if any, which information shall also be included in the notice of the application to consider the composition. Thereupon the Referee shall fix a time and place for a meeting of creditors to receive and consider said offer.

The notice of the meeting to consider a composition must contain a notice that all fees of attorneys and other expenses of administration will be considered at such meeting. The Referee shall report such fees as are agreed

upon and the other expenses of administration in his report on composition, and if there be a dispute as to any fees of attorneys, he shall report the amount demanded and the amount the bankrupt has agreed to pay.

The Clerk shall include in his notice of the hearing to confirm, the amount of such fees agreed upon, or if disputed, the highest amount claimed.

In cases before adjudication, the petition shall be filed with the Clerk and the same shall forthwith be referred to a Referee. In cases after adjudication, the petition shall be filed with the Referee.

ACCOMPANYING THE OFFER AND ACCEPTANCES THE BANKRUPT SHALL FILE THE FOLLOWING AFFIDAVITS:

An affidavit of the bankrupt that except as appears in said affidavit, or in the offer, he has not paid or promised any money or other property (a) to any attorney employed by him within four months; (b) to the receiver and/or trustee; (c) to the attorney for any receiver and/or trustee; (d) to the attorney for the petitioning creditors; (e) to any creditor or attorney for a creditor.

An affidavit of the attorney for the bankrupt that he has not been paid or promised and has no knowledge or information that any attorney has been paid or promised any money or other property by the bankrupt except as stated therein.

A similar affidavit of the receiver or trustee.

A similar affidavit of the attorney for the receiver or trustee.

A similar affidavit of the attorney for the petitioning creditor.

12. *Application for Discharge.*

Application for the discharge of the bankrupt shall be filed with the Clerk of the Court, who shall thereupon fix a day for the hearing before the judge, which may be upon any bankruptcy motion day. The Clerk

shall give the necessary notices and shall file in the proceeding at least four days before the return day the following papers:

Proof of service of notice.

13. *Application for Confirmation of Composition.*

Application for the confirmation of a composition shall be filed, in all cases, with the Clerk of the Court, and the consideration to be paid by the bankrupt to his creditors and the money necessary to pay all debts which have priority and the costs of the proceedings shall be deposited with the Clerk, who shall certify the fact to the Court, and thereupon a day for the hearing before the judge shall be fixed by the order of the Court.

The Clerk shall file in the proceeding at least four days before the return day the following papers:

1. The notice, with proof of service.
2. Certificate that the bankrupt has deposited with him the necessary consideration sufficient to cover all expenses of administration, priority claims and the percentages to be paid pursuant to the terms of the composition, except such items as have been duly and properly waived, which items shall also be included in the certificate.

THE REFEREE SHALL CERTIFY:

3. The offer, the acceptances and the minutes of the meeting to consider the offer, together with copy of notice of hearing and proof of notice thereof.

4. The bankrupt's schedules have been filed.

5. A meeting of creditors was duly called.

6. The bankrupt has been duly examined in open Court or at a meeting of creditors.

7. The following claims (naming them) were filed and allowed.

8. The following claims (naming them) were filed but not allowed.

9. The following (naming them) were scheduled as creditors but have not filed claims.

10. The following creditors (naming them) having claims which have been allowed, had filed written acceptances of said offer.

11. The expenses of administration, including fees and expenses of receivers or trustees, fees or allowances to attorneys, rent, allowance to custodian, or other lawful expenses, and other priority claims are as follows (enumerating them).

When a receiver or trustee is in possession of assets of the bankrupt estate at the time of the confirmation of the composition, such receiver or trustee shall immediately turn over such assets as provided by the order of confirmation and shall file within five days with the Clerk, an account showing all property received by such receiver or trustee and from whom and for what received, all expenditures made by such receiver or trustee, and to whom and for what purpose, and all property turned over by said receiver or trustee including that turned over as provided by the order of confirmation and to whom and by what authority; which account shall be immediately referred to the Referee who had the matter in charge for examination, on notice to the bankrupt or alleged bankrupt, and the receiver or trustee, and report; and the order of confirmation shall contain a provision retaining jurisdiction of the matter until the final determination of such accounting by the receiver or trustee.

14. *Opposition to Discharge or Composition.*

If specifications in opposition to the discharge of a bankrupt or to the composition offered by a bankrupt are filed in accordance with General Order XXXII of

the Supreme Court of the United States, the bankrupt shall have three days, not including Sundays and holidays, thereafter within which exceptions to the specifications may be filed. In the event that exceptions are filed, such exceptions will be set for hearing without further notice on the bankruptcy motion calendar on the next motion day following. In case no exceptions are filed the specifications shall be referred to the Referee in charge of the case.

All specifications must be verified.

The hearing before the Referee may be brought on by either party on four days' notice or on shorter notice if so directed by the Court or Referee. After the filing of the Referee's report thereon, a further hearing before the Judge may be had on any bankruptcy motion day on four days' notice to the parties who have appeared.

If the hearing before the Referee on specifications is not noticed by the objecting creditor within one month after the specifications are referred, or if after the hearing is begun there is unreasonable delay in carrying on and completing such hearing, the Referee may certify such facts to the Court, and thereupon a motion may be made by either party to dismiss the petition for the specifications.

In the event of any withdrawal of such objection to a discharge, or to the confirmation of a composition or failure to file specifications within the time allowed therefor, no discharge shall be granted or composition confirmed unless the bankrupt and his attorney make affidavit that no consideration has been promised or given for any such withdrawal.

15. *Fees of Referees Acting as Special Masters or Special Commissioners.*

The fees of Referees acting as Special Masters or Special Commissioners are fixed at the rate of \$5 for

each day occupied, unless application is made for a higher amount under U. S. Equity Rule LXVIII.

Special Masters or Special Commissioners will annex to all reports a certificate showing the dates on which hearings were held, or consideration given to the cause, and the total number of days so occupied.

16. *Notices, Method of Mailing.*

All notices mailed by Referees to creditors shall have printed upon the envelope enclosing the notice the name and address of the Referee, with direction to return the same to him if the person addressed is not found within ten days. Returned notices or a list thereof shall be preserved and reported as required.

17. *Publication of Notices.*

Notices of applications for discharge and to consider an offer of composition, shall be published once only, unless otherwise ordered.

18. *Indemnity of Referees.*

The following charges are allowed and shall be payable out of the estate or by the person requesting the service unless otherwise ordered.

a. For all clerical duties in preparing advertisements and notices to creditors of first meeting, mailing the same, making proof thereof, keeping register, files and records, cash paid for advertisements, preparing typewritten memoranda of proceedings prior to the first meeting of creditors, including stationery, envelopes, letters, messages and all petty expenses, \$10 where the number of creditors does not exceed 50; for every creditor beyond 50, 10 cents additional for each creditor, *and as an indemnity for clerical and typewriting services in the preparation of all dividend sheets, 20 cents for each creditor included therein up to fifty, 10 cents for each additional creditor over fifty and not exceeding one hun-*

dred and fifty additional and 5 cents for each additional creditor over two hundred.

b. For meeting of creditors to consider composition, \$15; and for every day occupied after the first day such as the referee may *deem necessary to cover the disbursements, \$10; and as an indemnity for clerical and type-writing services in the preparation of the report on composition, 20 cents for each creditor included therein up to fifty. 10 cents for each additional creditor over fifty and not exceeding one hundred and fifty additional and 5 cents for each additional creditor over two hundred.*

c. On application by creditor or creditors for examination of bankrupt or witness \$5, and for every day occupied after the first day \$5 in addition thereto, unless a greater amount is especially ordered by the Court, *and one dollar and a half as indemnity for clerical and type-writing services on each application for fixing of commission of a Receiver, allowance of an attorney, allowance of accountant or allowance of assignee under General Assignment for the Benefit of Creditors.*

With his final report closing an estate the Referee shall file an account showing the amounts paid by the estate for indemnity and the amounts in detail charged against the same in accordance with this rule. The Clerks shall examine such account and report to the Judge at the time in charge of bankruptcy proceedings any mistakes appearing therein. Upon direction of the Judge, the Referee shall refund to the estate any sums over-paid, and shall be entitled to demand any sums due from the estate.

19. *Indemnity on Discharge.*

The estimated expense of the Clerk in preparing, publishing and mailing notice of an application for discharge shall be paid by the Bankrupt. The Clerk shall issue the order to show cause within twenty days after the filing of the petition for discharge.

20. *Distribution of Dividend.*

Referees upon the declaration of any dividends shall forward the checks to the several creditors, or to their attorneys in case creditors appear by an attorney, accompanying the same with notice to read as follows, to wit:

“Enclosed please find check for dividend of %. This check should be deposited promptly, as it becomes the duty of the trustee, after the declaration of final dividends, to stop payment of all checks in accordance with the rules and practice of this Court.”

The Clerk upon confirmation of any composition shall distribute the funds deposited to cover the composition and expenses of administration in the manner provided in the order confirming the composition, and give a like notice, modified to meet the situation, to those to whom distribution is made.

21. *Unclaimed Dividends and Discharge of Trustee.*

Six months after the final dividend the trustee shall stop payment on all dividend checks then unpaid and deposit the amount thereof with the Clerk and at the same time file with the Clerk a list of the persons entitled to such unclaimed checks and the amounts thereof. The Clerk shall thereupon deposit the amount so received in the registry of the Court subject to its further order.

Six months after the confirmation of a composition the Clerk shall stop payment on all composition checks then unpaid and deposit the amount thereof in the Registry of the Court subject to its further order and at the same time file a list of the persons entitled to such unclaimed checks and the amount thereof.

No trustee shall be discharged unless compliance with this Rule is shown, and in all cases where assets have been received, trustees shall file with their petition for discharge *a report of distribution* and a certificate or

statement from the designated depository showing that the Trust account has been closed.

If after the declaration of a final dividend or other termination of proceedings any trustee shall have paid to him any moneys of the estate, he shall notify at least two of the largest creditors of the estate and forthwith pay the same to the Clerk of the Court, who shall thereupon deposit the amount received by him in the Registry of the Court subject to its further order.

22. *Referees' Decisions.*

Referees shall make and file their decisions in all calendar cases within two months after their final submission unless such time be extended by order of a judge of this Court, and shall forthwith give written notice of such filing to the parties or their attorneys.

23. *Petitions for Review: Limitations of Time For.*

A petition for review of a Referee's order must be filed with the Referee within ten days after the order is made, unless such time is extended by the Referee or the Court, and a copy of such petition shall be served on the adverse party.

Where the order is the result of a decision upon a contested matter, the time within which to file the petition to review shall begin to run as to the party who procured the signing of the Referee's order, from the date of the signing of such order, and as to the adverse party, from the date of the service of a copy of the Referee's order on the said adverse party or his attorney.

24. *Referees' Reports.*

Referees are directed to make a report to the Court, in the months of April and October in each year, of all unsettled cases which have been pending before them more than fifteen months. Such reports shall contain the title and number of the case, the date when it was referred, and

a concise statement showing what substantial proceedings have been had in the case, and why it has not been closed.

25. *Closing Cases and Vacation of Stay.*

Where there are no assets and no trustee has been appointed, and no application for a trustee is pending, after a meeting of creditors duly held, the Referee may file his book of record of proceedings and the case shall thereupon be deemed closed for the purpose of the payment by the Clerk to the Referee of the deposit for his services.

Where a trustee has been appointed, the case shall be deemed closed and the deposit for services paid to the Referee and the trustee on the filing in the Clerk's office of the Referee's book of record on discharge of the trustee.

If no meeting of creditors has been held within six months from the date of adjudication, the Referee may file a certificate to that effect and thereupon the case shall be deemed closed and the Referee shall receive from the Clerk the deposit for his services, and any stay granted in the proceeding shall thereupon be deemed vacated unless otherwise ordered by the Court.

26. *Official Auctioneer.*

There shall be no official auctioneer, but the auctioneer shall be designated in every case in the order allowing the sale.

The auctioneer shall set forth in his reports of sales of the assets of estates sold in bankruptcy administration:

1. The place where the sale was held.
2. An itemized statement of the help employed in lotting and arranging property, the time occupied and the amount paid to each employee.
3. Return itemized vouchers for the amounts paid by the auctioneer for catalogues, advertising, cartage and storage charges or other expenses, but not including labor for lotting.

4. And all returns for sales held are directed to be made within one week from the date of sale.

5. When personal property is sold by lot, the auctioneer shall report the items and the amount received for each of the respective lots.

6. Whenever articles are sold free and clear of liens, the lien to attach to the proceeds, the auctioneer shall either itemize or state separately the articles so sold.

27. *Auctioneer's Fees and Charges.*

The auctioneer shall be allowed a reasonable charge for the storage of goods if not sold by him, and his reasonable disbursements for necessary labor, cataloguing, printing, insurance and all other actual and necessary disbursements. He shall also be allowed the following commissions upon the proceeds of sales made by him:

5% on the first \$5,000.00.

2% on all over \$5,000.00.

28. *Books and Documents—How Disposed Of.*

Account books, documents and papers of every description constituting part of a bankrupt's estate may be deposited for storage, but before the final dividend to creditors is computed such books, papers, documents, etc., and any other property belonging to the bankrupt estate shall be sold or otherwise disposed of as directed by order entered in the proceeding.

29. *Taxation of Fees and Charges.*

Any official of this Court or designated by the Court, making any charge for services or expenses, shall upon the request of any interested party, deliver to him a statement in writing of such charge or fee properly itemized, and the amount of such charge or fee may thereupon be taxed by the Clerk on two days' notice.

30. *Checks and Warrants.*

Receivers shall deposit all funds of bankrupt estates received by them in a designated depository, and immediately upon deposit file with the Clerk a statement giving the name of the depository, and shall withdraw the same in the same manner as is provided by General Order 29 in the case of trustees.

All checks or warrants drawn by receivers shall be countersigned by the Clerk of this Court, or in his absence from the District by the Chief Deputy Clerk, or other Deputy Clerk especially authorized, unless otherwise ordered.

The Referee before whom a case is pending is designated as the one to countersign all warrants and checks drawn by a trustee for the withdrawal of money from the depositories under Rule 29 of the General Orders, unless otherwise specially ordered.

31. *Depositories.*

Banking institutions as depositories for moneys of bankrupt estates shall be designated by orders entered for that purpose, and the Clerk shall keep a list of authorized depositories open to the inspection of the public.

32. *Newspapers and Official Advertising.*

In Kings County, "The Brooklyn Times-Union," "The Brooklyn Daily Eagle," "The Brooklyn Citizen".

In all other counties, in such paper as may from time to time be designated by order of the Court.

33. *21-A Examinations.*

Whenever an application for examination of the bankrupt or other witness under Section 21-A of the Bankruptcy Act is made by any person other than the receiver or the trustee, the fees of the Special Commissioner and the expense of taking the testimony shall be paid in the first instance by the attorney for the party conducting

the examination, or by the party, if the examination is conducted by him. Such attorney or party who may have paid the fee of the Special Commissioner and expense of taking the testimony may thereafter, on notice to the receiver or trustee if there be one, apply to the Court to have such fees and expenses allowed out of the estate, and the Court may in its discretion grant or deny such application in whole or in part as it shall appear whether the estate has been benefited by such examination and to what extent, the necessity therefor, and whether such expense is warranted by the size of the estate.

34. *Order to File Schedules.*

The order of adjudication and reference, entered in every involuntary proceeding, and in every voluntary proceeding filed without schedules, shall specify the date prior to which the schedules must be filed by the bankrupt. In the case of an involuntary proceeding it shall be the duty of the attorney for the petitioning creditors immediately to serve a copy of such order on the bankrupt. In the case of a voluntary proceeding it shall be the duty of the referee to serve a copy of such order on the bankrupt.

35. *Notice to Referee of Appointment of Receiver.*

In any case where there is a receiver, the Clerk shall, on a reference after adjudication, notify the Referee of the name and address of the receiver.

36. *Proof of Service of Custodian.*

Each custodian, employed by a receiver or trustee in bankruptcy proceeding, must submit to the trustee or receiver as the case may be, before payment an affidavit stating fully the dates on which he acted as custodian and also the hours between which he was actually present and performing his duties as such; such affidavit shall accompany the check when presented for signature.

37. *Answer and Proceedings Subsequent to Filing Answer.*

That when in answer to an involuntary petition has been filed, the Clerk shall immediately place the case on the next bankruptcy motion calendar; then the attorney for the petitioning creditors or the bankrupt may at that time move to set the case for trial. If no motion to set the case for trial is made, the Clerk shall give five days notice to the bankrupt's attorney that unless such application is made at the call of the bankruptcy motion calendar on the next bankruptcy motion day the answer will be stricken out and adjudication ordered.

38. *Referee's Certificate on Application for Discharge.*

On the filing of a petition for discharge, the Clerk of this Court shall notify the Referee in charge of the case of such filing, and, thereupon, the Referee shall file with the Clerk a certificate showing whether or not any proceeding to require the bankrupt to turn over property, or to punish the bankrupt for contempt, is pending, or whether or not the examination of the bankrupt has been concluded.

39. *Proofs of Claims under Section 77-B of the Bankruptcy Act.*

Proofs of Claims required to be filed by order of the Court under Section 77-B of the Bankruptcy Act must be filed with the Attorney for the Trustee, or where the debtor is in possession of the property, with the attorney for the debtor, or as may be otherwise ordered. Such proofs should not be sent to the Court nor to the Clerk of the Court.

ADMIRALTY RULES

In Effect July 1, 1924

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 day 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 claims 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 Eastern District, "*Brooklyn Citizen*," "*Brooklyn Times-Union*" and "*Brooklyn Daily Eagle*," 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.

5. *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 process shall have been made in that cause, or in some other pending cause in which the property is held in 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 right 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, 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, attorney-in-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 two weeks after the return day, or within such further time as may be allowed.

In cases where process has not been issued, but a claim or notice of appearance has been filed, the answer or exceptions shall be filed within two 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.," 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 enter an interlocutory or final decree, as may be appropriate, without notice, 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 two 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 two weeks after service of a copy of the exceptions, unless the Court shall otherwise order.

Interrogatories unless excepted to shall be answered within two weeks after service of a copy thereof.

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 seamen 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 con-

solidate 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 libellant.

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.

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, 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 person (except in suits for seamen's wages when the attachment is issued upon certificate pursuant to Sections 4546 and 4547 of the Revised Statutes), the party arrested, or any person having a right to intervene in re-

spect 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 re-

cover 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.

VIII.

COMMISSIONERS' REPORTS.

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 notice thereof shall be promptly given to all proctors of record. If prior to such filing the fees of such officers shall not have been paid, after due demand, that fact shall be certified to the Court by endorsement on the report.

At the instance of any party the fees of such officers may be taxed by the Clerk.

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.

X.

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 appraisal 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.

34. *Publication of Monition in Limitation Petitions.*

Notice of the monition shall be published in the newspaper designated in the order for monition once in each week until the return day. Publication in the following skeleton form shall be sufficient:

UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF
NEW YORK

Notice of petition
for limitation of
liability filed
, 19 .

NOTICE IS GIVEN that _____ has filed
a petition claiming the right to limit liability for
all claims arising on the voyage of the vessel
_____ from _____ to _____
terminating on _____, 19____. All persons
having such claims must prove them before
(name of commissioner) at
Brooklyn, New York, on or before _____ 19____,
or be defaulted.

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 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 pay over the gross amount thereof to the Clerk, with a bill of his charges thereon and a statement of the time of the receipt of the moneys by him; and, upon the filing of such statement, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and 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 appraisal in the usual mode.

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 the property to the like commissions as are provided for in admiralty causes by Section 829 of the Revised Statutes.

42. *Proposed Findings of Fact and Conclusions of Law.*

In any cause in Admiralty the Court may, in its discretion, require from either or both parties, either before or after the announcement of the Court's decision, proposed findings of fact and conclusions of law, but unless adopted by the Court, such proposed findings of fact and conclusions of law shall not form any part of the record in the Court, and the Court's adoption of or failure to adopt any part thereof as the findings of fact and conclusions of law shall not be subject to any exception.

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