

FALKLAND ISLANDS.

No. *169*

WAR/PRI/1#2

Governor's Office.



From

SUBJECT.

Secretary of State for the Colonies.

RULES AS TO THE PROCEDURE AND PRACTICE OF PRIZE COURTS - *Order in Council.*
Papers on the subject of

No.

Date

Misc.

14 June 1915

Colonial Secretary's Record No.

348/15

Registered Number of last Despatch.

103/15

MINUTES.

Hon Col Secy.

Copy of Order in Council to Registrar of Supreme Court, please, and publish in Gazette. S.J.

22.6.15

*S.J.
Gov*

Registrar/ to withdraw one copy please

C. J. Conolly

c.s.

28.6.15

The Hon. Col. Secretary

One copy of
Withdrawn.

Order in Council

M. George Hardman

28.6.15

No. next Despatch.

Returned to me -

*S.J.
10.7.15*

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1



169
15

Reference to previous correspondence:—

Secretary of State's
~~Governor's~~

Despatch No. *Miscellaneous of*
26 March,

Falkland Islands

Downing Street,

Miscellaneous

11 May 1915.

Sir,

I have the honour to transmit to you

the papers noted below on the subject of *the Rules as to the Procedure*
and Practice of Prize Courts.

I have the honour to be,

Sir,

Your most obedient, humble servant,

L. HARCOURT.

The Officer Administering

the Government of *the*
Falkland Islands.

Date.	Description.
29 April	Order in Council.



AT THE COURT, AT BUCKINGHAM PALACE,

The 29th day of April, 1915.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY

IN COUNCIL.

WHEREAS by Section 3 of the Prize Courts Act, 1894, His Majesty in Council is authorized to make Rules of Court for regulating, subject to the provisions of the Naval Prize Act, 1864, and the said Act, the procedure and practice of Prize Courts within the meaning of the Naval Prize Act, 1864, and the duties and conduct of the Officers of the Courts and of the Practitioners therein, and for regulating the fees to be taken by the Officers thereof, and the costs, charges, and expenses to be allowed to the Practitioners therein:

And whereas in pursuance of the Prize Courts Act, 1894, certain Rules were made by the Order of His Majesty in Council, dated the 5th day of August, 1914, and amended by the Orders of His Majesty in Council, of the 30th day of September, 1914, and the 28th day of November, 1914, respectively, which said Rules and amended Rules were by the said Orders in Council directed to take effect *provisionally* in accordance with the provisions of Section 2 of the Rules Publication Act, 1893, from the dates of the said Orders in Council respectively:

And whereas the provisions of Section 1 of the Rules Publication Act, 1893, were duly complied with in respect of

the said Rules and amended Rules, and the same were *finally* made by the Orders of His Majesty in Council, dated respectively the 17th day of September, 1914, the 28th day of November, 1914, and the 3rd day of February, 1915:

And whereas it is expedient that the said Rules and amended Rules should be further amended:

And whereas the provisions of Section 1 of the last-recited Act have been complied with in respect of such further amendment:

NOW, THEREFORE, His Majesty, by virtue of the powers in this behalf by the said Act or otherwise in Him vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:—

1. That in Order IX. (Discovery, Inspection, and Admission of Documents and Facts) of the said Rules:—

In Rule 1, the words “upon filing an affidavit” shall be omitted.

In Rule 1, instead of the words “any other party” there shall be substituted the words “any party other than the proper Officer of the Crown.”

2. That in Order XI. (Sale, Appraisement, Safe Custody and Inspection of Prize) of the said Rules, in Rule 1, the following words shall be omitted:—
“on account of the condition of a ship, or on the application of a claimant,
“ and on or after condemnation.”

3. That in Order XV. (Evidence and Hearing) of the said Rules, the following Rule shall be added:—

“21. Notwithstanding anything contained in these Rules the proper
“ Officer of the Crown may apply to the Judge for leave to administer
“ interrogatories for the examination of any person whether a party to
“ the cause or not.”

4. That Order XXIX. (Requisition by Admiralty) of the said Rules, as amended by His Majesty's Order in Council dated the 28th day of November, 1914, shall be, and the same is hereby, revoked, and in lieu thereof the following Order shall have effect:—

“ORDER XXIX.

“REQUISITION.

“1. Where it is made to appear to the Judge on the application of the proper Officer of the Crown that it is desired to requisition on behalf of His Majesty a Ship in respect of which no final decree of

condemnation has been made, he shall order that the Ship shall be appraised, and that upon an undertaking being given in accordance with Rule 5 of this Order the Ship shall be released and delivered to the Crown.

2. Where a decree for the detention of a Ship has been made in accordance with Order XXVIII., the proper Officer of the Crown may file a notice (Appendix A., Form No. 55) that the Crown desires to requisition the same, and thereupon a Commission (Appendix A., Form No. 56) to the Marshal directing him to appraise the Ship shall issue. Upon an undertaking being given in accordance with Rule 5 of this Order the Ship shall be released, and delivered to the Crown.

Service of this notice shall not be required before filing, but copies thereof shall be served upon the parties by the proper Officer of the Crown as soon thereafter as possible.

3. Where in any case of requisition under this Order it is made to appear to the Judge on behalf of the Crown that the Ship is required for the service of His Majesty forthwith, the Judge may order the same to be forthwith released, and delivered to the Crown, without appraisement.

4. In any case where a Ship has been requisitioned under the provisions of this Order, and whether or not an appraisement has been made, the Court may, on the application of any party, fix the amount to be paid by the Crown in respect of the value of the Ship.

5. In every case of requisition under this Order an undertaking in writing shall be filed by the proper Officer of the Crown for payment into Court on behalf of the Crown of the appraised value of the Ship, or of the amount fixed under Rule 4 of this Order, as the case may be, at such time or times as the Court shall declare by Order that the same or any part thereof is required for the purpose of payment out of Court.

6. Where in any case of requisition under this Order it is made to appear to the Judge on behalf of the Crown that the Crown desires to requisition the Ship temporarily, the Court may, in lieu of an Order of release, make an Order for the temporary delivery of the Ship to the Crown, and subject as aforesaid the provisions of this Order shall apply to such a requisition; provided that, in the event of the return of the Ship to the custody of the Court, the Court may make such Order as it thinks fit for the release of the undertaking given on behalf of the Crown or the reduction of the amount undertaken to be paid thereby, as the case may be; and provided also that, where the Ship so requisitioned is subject to the provisions of Order XXVIII., Rule 1, relating to detention, the amount for which the Crown shall be considered liable in respect of such requisition shall be the amount

of the damage, if any, which the Ship has suffered by reason of such temporary delivery as aforesaid.

7. The proceedings in respect of a Ship requisitioned under this Order shall continue notwithstanding the requisition.

8. In any case of requisition of a Ship in respect of which no cause has been instituted, any person interested in such Ship may, without issuing a Writ, provided he does not intend to make a claim for restitution or damages, apply by summons for an Order that the amount to be paid in respect of such Ship be fixed by the Court, and the Judge may, on the hearing of such summons, order the Ship to be appraised or to be valued or give such other directions for fixing the amount as he may think fit."

5. That in Form 4 in Appendix A. to the said Rules there shall be omitted the words "Commander of Our Ship of War" and the words "taken and seized as prize by Our said Ship of War."

ALMERIC FITZROY.

ADDITIONAL INSTRUCTIONS AS TO VALUATION OF CARGOES AND PAYMENT OF PREMIUM.

1. Wherever cargo subject to the cover or formerly subject to the cover and condemned is—

(a) valued by order of the Court or

(b) sold by order of the Court whether after adjudication or not,

the value for insurance purposes will be in case—

(a) the value ascertained under the order of Court, or in case

(b) the amount of the net proceeds of sale (by which is meant the total proceeds of sale after deducting only the expenses of sale) plus 10 per cent., this addition representing the amount by which the proceeds of a forced sale may be expected to fall below the real value.

In the case of release of goods so valued or of the value or proceeds of sale of such goods, the value ascertained as above should be substituted for that ascertained in accordance with paragraphs 5 and 6 of the instructions.

2. Where cargo is sold or requisitioned before adjudication, the ultimate incidence of the premium cannot be decided until adjudication or release, but it will be desirable that the Court should, if possible, be induced to sanction the payment of premium out of the amount paid into Court without waiting for final adjudication and without consideration of whether the cargo appears to be liable to condemnation or entitled to release or to the benefit of Hague Convention No. VI. An application should be made to the Court accordingly when the proceeds of sale or appraised value of the cargo are paid in, an opportunity being afforded to any claimant to appear and object to the deduction on the ground that the goods are entitled to exemption in accordance with paragraph 7 of the instructions. Any money received under such an order should be remitted, with Form H or I, appropriately completed.

3. Where on requisition an undertaking to pay into Court is given this procedure cannot, of course, be adopted at the time the requisition takes place. In such a case, if an order for release is afterwards made, the Court should, unless the cargo is shown to be exempted from the insurance scheme in accordance with paragraph 7 of the instructions, be asked to order deduction of the



amount due for premium from the amount payable under the Crown's undertaking. Where, however, an order of condemnation is afterwards made the undertaking will presumably not be enforced on adjudication, and in this case, when the order is made, Form H. should be completed by stating that a simple order of condemnation has been made, and on receipt of the Form arrangements will be made in the United Kingdom for the payment of the premium. Where the final order is one for detention the question of enforcing the undertaking will presumably not be raised until the end of the War, and the Court should then be asked to allow deduction from any moneys paid to the enemy owner of any amount due for premium.

4. Arrangements will also be made in the United Kingdom for payment of premium in cases where on condemnation goods are ordered to be delivered to the Crown under Order XXVII. Rule 1 (1) of the Prize Court Rules as amended by the Order in Council of the 3rd February, 1915. Form H. makes provision for this case, and one of these Forms should be completed and forwarded in due course.

5. Where goods are ordered to be detained and are not sold the premium will not be paid till the end of the War, when the Court should be asked to make payment of premium a condition of release. It is, however, assumed that such goods will where possible be sold, and where sale takes place after the order for detention has been made the Court should be asked to provide for payment of premium in accordance with the procedure suggested in paragraph 2 above.

6. Where goods which have been ordered to be detained are afterwards requisitioned, payment of premium should be secured on requisition in accordance with the directions in paragraph 2 above or deferred to the end of the War in accordance with the last sentence of paragraph 3 according as the Crown makes a payment into Court or gives an undertaking.

INSURANCE OF PRIZE CARGOES.



INSTRUCTIONS TO

An Insurance cover for fire has been arranged on all cargo awaiting adjudication or ordered to be detained by the Prize Court.

The rates for all ports are as follows :—

GENERAL MERCHANDISE, EXCLUDING UNMANUFACTURED METALS.

Up to 10 days	2/- %.	Up to 7 months	15/- %.
15 ..	3/- %.	8 ..	16/- %.
20 ..	3/- %.	9 ..	17/- %.
1 month	4/- %.	10 ..	20/- %.
2 months	6/- %.	11 ..	20/- %.
3 ..	8/- %.	12 ..	20/- %.
4 ..	10/- %.		
5 ..	12/- %.	Over 12 months <i>pro rata</i> on	
6 ..	14/- %.	basis of 20/- % per annum.	

Metals (not including quicksilver) in blocks or slabs or otherwise unmanufactured and/or ores, half above rates. Tin and terne plates and sheets are not to be deemed unmanufactured metals.

The insurance commences :—

(a) in the case of cargo already the subject of Prize proceedings on the 29th January, 1915, on that date.

(b) in the case of cargo in respect of which proceedings are instituted after the 29th January, 1915, on the date of the issue of the writ.

The insurance continues :—

(i) in the case of cargo in respect of which an order for condemnation, requisition, or release is made, until the date of the order.

(ii) in the case of cargo ordered to be detained, until requisition, sale, or further instructions.

(iii) in the case of cargo sold before release, requisition, condemnation, or detention has been granted or ordered, until sale.

You are requested to proceed in respect of all cargo coming within the above description as under :—

1. With regard to cargo already in port and (a) awaiting adjudication or (b) ordered to be detained by the Prize Court, you should as soon as possible complete Form A in triplicate and transmit to.....

2. Immediately proceedings are instituted against any cargo complete Form B in triplicate and transmit to.....

3. Whenever the insured cargo or any part of it is unloaded, complete Form C in triplicate and transmit to.....

4. If the cargo, or any part of it, whether on board or on shore, be damaged or destroyed by fire, complete Form D in triplicate, and transmit to.....

5. When cargo is released complete Form E in triplicate and transmit to.....

When cargo is released (whether on bail or not), it will be necessary for you to collect the premium on the basis of the above rates, and you will ascertain from the receiver of the cargo the value for which it has been insured under the marine policy, or, failing this, the invoice value, and deduct from such value 10 %, charging the premium on the net amount, *e.g.* : a cargo is released on the 16th March; the value of the marine policy (or the invoice value) is £1,620, which, less 10%, is £1,458; the premium charged will be calculated at 6/- % on £1,458, the period from noon on 29th January to 16th March being over one month and less than two months. Separate instructions will be given you as to the way in which moneys so collected should be dealt with.

6. If neither marine policy nor invoice value can be obtained, then the amount for which the insurance companies have been at risk will be adjusted in London, and for this purpose you will provide an estimate of the value of the cargo and give briefly some explanation of how you arrive at that estimate.

For this purpose you should complete Form F in triplicate and transmit to.....

taking a bond with (if thought necessary) sufficient sureties from the person receiving the cargo to pay the amount of the premium when ascertained.

7. If it is found at the time of the release of the cargo that the receiver has effected a special Insurance, the premium for such cargo need not be collected, since the cover arranged does not under any circumstances extend to cargo effectively insured elsewhere, but no insurance, other than a fire insurance covering the risk and effected after the seizure of the cargo, should be accepted.

The production of the policy or a company's official receipt for premium can alone be accepted as satisfactory evidence.

Where such evidence is produced and cargo is delivered without collection of premium, you should complete Form G in triplicate and transmit to.....

8. When an order for requisition, condemnation, or detention is made against any cargo coming within the above definition, you should immediately complete Form H in triplicate and transmit to.....

In all cases of requisition two copies of Form H will have to be filled up, one stating the requisition and the other the final order.

9. When any cargo subject to the cover, or condemned and ordered to be sold, is sold, you should immediately complete Form I in triplicate and transmit to.....

You should note that in the case of sale premium is to be collected on the net proceeds of sale plus 10%.

10. Where, in connexion with any cargo coming under paragraph 1 above, any of the events contemplated in paragraphs 3, 4, 5, 6, 7, 8, or 9, have occurred between the 29th January, 1915, and the date on which Form A is completed in respect of such cargo, you should, as soon as possible, complete the appropriate form or forms and transmit to.....



FORM I.—(*Sale of cargo.*)

PORT.....

NAME OF VESSEL.....

CARGO.....

NET PROCEEDS

WHEN SOLD

STATE WHETHER SALE BEFORE OR AFTER ADJUDICATION

.....

STATE AMOUNT DEDUCTED FOR PREMIUM, SHOWING HOW

THE AMOUNT WAS ASCERTAINED.....

.....

.....

Signed.....

Description



FORM H.—(For advising when an order for requisition, condemnation, or detention is made in respect of any cargo.)

PORT.....

NAME OF VESSEL.....

An order for	}	1. requisition*	} <i>Strike out alternatives not applicable</i>
		2. condemnation	
		3. condemnation and sale	
		4. condemnation and delivery to Crown	
		5. detention	

was made by the Prize Court on the.....of.....

191.....against the following cargo.....

.....

(state particulars of cargo affected)

Signed.....

Description

* Where goods have been requisitioned state whether (a) the Court ordered the value to be paid into Court, and if so state the amount deducted for premium showing how the amount has been ascertained or (b) an undertaking was given by Crown, and in either case give particulars of any valuation made under order of Court.