

MADRAS HIGH COURT RULES

ORDER XLII

RULES FOR REGULATING THE PROCEDURE AND PRACTICE IN
CASES BROUGHT BEFORE THE HIGH COURT OF JUDICATURE
AT MADRAS

IN THE EXERCISE OF ITS ADMIRALTY JURISDICTION

1. In the construction of these rules the following terms shall (if not inconsistent with the context or subject matter) have the respective meaning hereinafter assigned to them, that is to say :

"The Court" shall mean the High Court of Judicature at Madras.

"Judge" shall mean a Judge of the said High Court.

"Registrar" shall mean the Registrar of the said Court, on its Original Side, or other officer who may be authorized to perform the duties of such Registrar.

"Registry" shall mean the office of the Registrar.

"2[Nazir] shall mean the 2[Nazir] or the Deputy 2[Nazir] of Madras or other officer who may be appointed to execute the process of the said Court.

"Attorney" shall mean any 3[] advocate entitled to practice in the said Court, or the party himself if conducting his suit in person.

"Suit" shall mean any suit, action or other proceeding instituted in the said Court in its Admiralty Jurisdiction.

"Affidavit" shall in addition to its ordinary meaning, include a statement in writing on solemn affirmation wherever by law a person may make a solemn affirmation instead of an oath.

2. A suit shall be instituted by a plaint drawn up, subscribed and verifying according to the provisions of the Code save that if the suit is in rem, the defendants may subject to such variation as the circumstances may require, be described as "the owners and parties interested in" the vessel or other property proceeded against instead of by name.

3. In suits in rem a warrant for the arrest of property may be issued at the instance either of the plaintiff or of the defendant at any time after the suit has been instituted, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with :

(A) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter claim has not been satisfied .

(B) In a suit of wages or of possession, the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the institution of the suit has been given to the consul of the State to which the vessel belongs, if there be one resident in Madras and a copy of the notice shall be annexed to the affidavit.

(C) In a suit of bottomry, the bottomry bond and if in a foreign language also a notarial transaction thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct shall be annexed to the affidavit.

(D) In a suit of distribution of salvage, the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name and address and description of the party holding the same.

4. The Court or Judge may in any case, if they or he thinks fit, allow the warrant to issue, although the affidavit in Rule 3 mentioned may not contain all the required particulars and in a suit of wages, the Court or Judge may also waive the service of the notice, and in a suit of bottomry the production of the bond.

5. In suits in rem, no service of writ of warrant shall be required when the attorney of the defendant waives service and undertakes in writing to appear and to give security or to pay money in to Court in lieu of security.

6. An Attorney not entering appearance or giving security or paying money into Court in lieu of security in a suit in rem, in pursuance of his written undertaking so to do shall be liable to attachment.

7. Every writ, warrant and process shall be served by the 1[Nazir] or his bailiff. Every warrant shall be returned to the Registry within six days from the date thereof.

8. In suits in rem, service of summons or warrant against ship, freight or cargo on board is to be effected by nailing or affixing the original writ or warrant for a short time on the main mast or on the single mast of the vessel and by taking off the process leaving a true copy of it nailed or affixed in its place.

9. If the cargo had been landed or transhipped, service of the writ or warrant to arrest the cargo and freight shall be effected by placing the writ of summons or warrant for a short time on the cargo and by on taking off the process, leaving a true copy upon it.

10. If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

11. In a suit in rem, any person not named in the writ may intervene and appear on filing an affidavit showing that he is interested in the property under arrest or in the fund in the Registry.

12. After the expiration of twelve days from the return of a warrant, if no appearance shall have been entered in the suit, the attorney for the plaintiff may cause the suit to be set down for hearing.

13. If when the suit comes before the Court, the judge is satisfied that the Plaintiff's claim is well founded, he may pronounce for the claim and may order the property to be sold with or without previous notice and the proceeds paid into the Registry or make such order in the premises as he shall think just.

14. An attorney desiring to enter an appearance in any suit, shall file in the Registry a praecipe a copy of which shall have been previously served on the adverse attorney.

15. The praecipe shall contain the name of the attorney and an address for service in Madras at which it shall be sufficient to leave all instruments and documents in the suit.

16. Where security is to be given in Registry, it shall be given according to these rules and practice of the Court as to security in the case of an attachment before judgment in an ordinary civil suit.

17. Property arrested by warrant shall only be released under the authority of an instrument issued by the Registrar, to be called "release."

18. An attorney at whose instance any property has been arrested may, before an appearance has been entered, obtain the release thereof by filing a praecipe to withdraw the warrant.

19. An Attorney may obtain the release of any property by paying into the Registry the sum in which the suit has been instituted.

20. Cargo arrested for the freight only may be released by an order of a Judge upon proof by affidavit of the value of the freight and by paying the amount of freight into the Registry.

21. In a suit of salvage the value of the property under arrest shall be agreed to or proved by affidavit to the satisfaction of a Judge before the property is released.

22. Where security shall have been given in the sum in which the suit has been instituted, or such sum shall have been paid into the registry and if the suit be one of salvage the value of the property arrested shall have been proved to the satisfaction of a Judge, an Attorney shall be entitled to a release of the same, unless there be a caveat against the release thereof.

23. The release, when obtained, shall be left with a praecipe in the office of the 1[*Sheriff*] by the attorney taking out the same, who shall also at the same time pay all the costs, charges and expenses attending the care and custody of the property whilst under arrest, and the 1[*Sheriff*] shall thereupon release the property.

24. An attorney in a suit desiring to prevent the release of any property under arrest, shall file in the Registry a praecipe, and thereupon a Caveat against the release of the property shall be entered in the register of Admiralty suits.

25. A party delaying the release of any property by the entry of a Caveat shall be liable to be condemned in costs and damages, unless he shall show to the

satisfaction of the Court or a Judge, good and sufficient reason for having so done.

26. The party desiring to prevent the arrest of any property may cause a Caveat against the issue of a warrant for the arrest thereof to be entered in the Registry.

27. For this purpose he shall cause to be filed in the Registry a notice, signed by himself or by his attorney undertaking to enter an appearance` in any suit that may be instituted against the said property and to give security in such suit in a sum not exceeding an amount to be stated in the notice, or to pay such sum into the Registry, and a Caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in the register of Admiralty suits.

28. Before issuing a warrant for arrest of the property, the Registrar shall ascertain whether or not any Caveat has been entered against the issue of a warrant for the arrest thereof.

29. An attorney instituting a suit against any property in respect of which a Caveat has been entered in the register of Admiralty Suits shall forthwith serve a copy of the plaint upon the party on whose behalf the Caveat has been entered or upon his attorney.

30. Within three days from the service of a copy of the plaint, the party on whose behalf the Caveat has been entered shall, if the sum in which the suit has been instituted does not exceed the amount for which he has undertaken, give security in such sum or pay the same into the Registry, or if it exceeds that amount give security in the sum in which the suit has been instituted or pay the same into the Registry.

31. After the expiration of twelve days from the service of a copy of the plaint, if the party on whose behalf the Caveat has been entered shall not have given security in such sum, or paid the same into the Registry, the Plaintiff's attorney may proceed with the suit by default and have it heard: Provided that the Court may, on good cause shown and on such terms as to payment of costs as it may impose, extend the time for giving security or paying the money into the Registry.

32. If when the suit comes before the Court it is satisfied that the claim is well founded it may pronounce for the amount which appears to be due and may enforce the payment thereof by order and attachment against the party on whose behalf the Caveat has been entered and by the arrest of the property if it then be or thereafter come within the jurisdiction of the Court.

33. The preceding rules shall not prevent an attorney from taking out a warrant for the arrest of any property, notwithstanding the entry of caveat in the Register of Admiralty suits, but the party at whose instance any property in respect of which a Caveat is entered shall be arrested, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court good and sufficient reason for having so done.

34. Every sale under decree of the Court, shall, unless the Judge shall otherwise order, be made by the 1[Registrar] in like manner as a sale of movable property in execution of a decree in an ordinary civil suit.

35. [Deleted]

36. Any person interested in the proceeds may be heard before the taxing officer on the taxation of the account of expenses and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a bill of costs.

37. All money paid into Court shall be paid to the Registrar.

38. Money into Court shall not be paid out of Court except in pursuance of an order of the Court or a Judge.

39. Security for latent demands shall not, unless the Judge shall otherwise order, be required on the payment of money out of Court.

40. An attorney desiring to prevent the payment of money out of the Registry shall file a notice and thereupon a Caveat shall be entered in the Register of Admiralty suits.

41. Applications may be made either in Court or to a Judge.

42. Form of praecipes required to be filed in Registry 1[] may be obtained on application in the registry. They may be varied or altered by a Judge at his discretion.

43. Every praecipe shall be either by the party or by his attorney.

44. If a praecipe be not properly filled up, the Registrar 2[] may refuse to receive the same or to act thereon.

45. A Caveat, whether against the issue of warrant, the release of property, or the payment of money out of the Registry, shall not remain in force for more than six months from the day of the date thereof.

46. A Caveat may be withdrawn by the party on whose behalf it has been entered or by his attorney, but the praecipe to lead the withdrawal thereof shall, save by permission of the Registrar, be signed by the person who signed the praecipe to lead the entry of the Caveat.

47. Application may be made to the Court to overrule any Caveat.

48. The fees of Court and the fees to be allowed to the attorneys shall be those set out in the tables of fees sanctioned for proceedings under the

Original Civil Jurisdiction of the High Court. The fees to be 3[paid into Court] shall be those set forth in the schedule hereto.

49. The forms used in the Admiralty Division of the Supreme Court in England under the Rules of the Supreme Court shall be adopted and followed as nearly as the circumstances of each case will allow.

50. Where no other provision is made by these rules, proceedings in suits brought in the Court in the exercise of its Admiralty Jurisdiction shall be regulated by the Rules and practice of the Court in suits brought in it in the exercise of its Ordinary Original Civil Jurisdiction.

SPECIAL SUMMARY PROCEDURE.

51. A party to any suit may have the same dealt with, heard and determined in accordance with the following special rules upon filing in the Registry a consent signed by the parties or their attorneys duly authorized in that behalf in the form given below.

52. After such consent has been filed application may be made by any party to the Judge to appoint a day for the hearing and to give directions.

53. There shall be no pleading beyond a statement of claim verified by affidavit, but if there be a counter-claim notice thereof shall be given in writing before such consent as aforesaid is signed.

54. Lists of documents shall be exchanged and mutual inspection of documents granted at or before a time appointed by the Judge on the hearing of the application aforesaid.

55. At the hearing of the application aforesaid, unless it shall sufficiently appear from the statement of claim or otherwise in writing, the plaintiff shall specify the cause or causes of action in respect of which the suit is brought, and, if practicable, the amount actually claimed, and the defendant shall

specify the grounds of defence on which he relies and in salvage claims, the plaintiff and the defendant respectively shall at the same time, or within such time as the Judge shall direct, state the value of their property and if required by affidavit. In the case of a counter-claim the cause or causes of action and the claim therein and grounds of defence thereto shall be similarly stated.

56. The Judge shall be at liberty to receive, call for and act upon, such evidence documentary or otherwise, whether legally admissible or not, as he may think fit.

57. If in any suit, the sum awarded, or for which judgment is given exceeds the sum, if any, tendered, the Judge may nevertheless exercise his discretion as to how and by whom the costs shall be borne.

58. There shall be no appeal from any order or judgment of the judge except on a question of law, and then only by his leave.

59. In other respects the ordinary rules in practice shall apply so far as may be necessary. Notwithstanding anything in these special rules the Judge may, if he thinks fit, make such orders as he might make under the ordinary rules and practice.

60. The foregoing rules shall apply to suits brought in the court in the exercise of its Admiralty Jurisdiction in supersession of all former rules.

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Form of consent to the application of Summary Procedure

In the High Court of Judicature at Madras

(As a Court of Admiralty)

Between

xxx ... Plaintiff.

and

yyy ... Defendant.

We, the undersigned respectively hereby agree that this cause shall be dealt with, heard and determined according to the Summary Procedure.

Dated this day of 19

... Plaintiff's Attorney.

... Defendant's Attorney

Note - As the abovementioned rules depart from the ordinary rules and practice it will be necessary for attorneys signing this consent to obtain their client's authority to do so.

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TABLE OF FEES AND CHARGES 1[]

Rs. A. P.

1. For serving every writ of summons including Bailiff's charges for serving the same and Making affidavit 1000
2. For every search of service of summons or Other process 100
3. For every ordinary return 100
4. For every special return 200
5. For translation when necessary per folio .. 080
6. For arresting a vessel or goods or person or on the execution of other warrant including Bailiff's charge for executing the same.. .. 3200
7. For serving every notice and other judicial process not specified in this schedule for each person served including Bailiff's charge for serving same 500

8. On the execution of any decree, order, commission or other instrument not specifically mentioned In this schedule 1500
 9. On delivering up a ship or goods to a purchaser agreeable to the inventory 1500
 10. On delivering up a ship or goods to a Purchase agreeable to the inventory 1500
 11. On attending the delivery of cargo or sale or removal of a ship of goods per day.. .. 3200
 12. On retaining possession of a ship with or without cargo, or to a ship cargo, without a ship, to include the cost of a ship-keeper if required, per day .. 480
 13. If the 2[Nazir] or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he shall be entitled to his reasonable expenses for travelling, board, and maintenance in addition to the above fees
 14. On the sale of any vessel or goods, sold pursuant to a decree or order of the Court or on money realized in execution for every Rs.750 or fraction of Rs.750 realized. 780
 15. For release of a vessel, goods or person from arrest 580
 16. For every certificate of seizure 500
 17. For every other certificate 200
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Form No.1

Writ of Summons in Admiralty Suits in rem (Rules 8 and 51)

Suit No of 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx Plaintiff

And

yyyDefendant

To the owners and parties interested in the ship or vessel _____ of the _____ port or (or cargo and freight, etc., as the case may be).

Whereas (enter the name, description and address of the plaintiff) has instituted a suit -

in this Court against you (set out concise statement as appearing in the plaint) you are hereby required to cause an appearance to be entered for you in the Registry i.e. the office of the Registrar of this Court on its Original Side) within _____ days from the service upon you of this summons, exclusive of the day of such service; and are summoned to appear before this Court in person or by an advocate duly instructed to answer the plaintiff's claim on the day the case is set down for hearing, upon which date you must be prepared to produce all your witnesses and all documents in your possession or power upon which you intend to rely in support of your case and you are hereby required to take notice that in default of your causing an appearance to be so entered, the suit will be liable to be heard and determined in your absence.

(Plaint filed 19 _ Summons issued 19 - The defendant is required by the Court to file a written statement within ___ days from the service upon of this writ.)

Witness Chief Justice at Madras the day of in the year of One thousand nine hundred and Registrar.

Note 1 - An appearance in person or through attorney is to be entered in the Registry, within the time limited. In default thereof, the suit will be liable to be heard ex parte.

Note 2 - The written statement called for must be filed within the time limited, the defendant having first entered an appearance. In default thereof the suit will be liable to be heard ex parte.

Note 3 - This writ must be returned to the High Court immediately after the service thereof, or, if not served and the time for the return thereof shall not have been extended on the ___ day of _____ next.

Note 4 - Should your apprehend your witnesses will not attend of their own accord you can have subpoenas from this Court to compel the attendance of any witness and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, and on payment to them of the fees and expenses prescribed by the Rules of the Court.

Note 5 - If you admit the demand you should pay the money into Court with the costs of the suit to avoid sale of any property in respect of which the suit is brought or execution of the decree which may be against your person or property, or both.

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Form No.2

PRAECIPE FOR WARRANT (RULE 4)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx..... Plaintiff

and

yyy..... Defendant

I, _____, attorney for the (state whether plaintiff or defendant), pray a warrant to arrest (state name and nature of property).

Dated the ___ day of _____, 19

(To be signed by the attorney)

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Form No. 3

WARRANT OF ARREST IN ADMIRALTY in rem. (RULE 4)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx.... Plaintiff

and

yyy..... Defendant

To,

The 1[Sheriff of Madras]

You are hereby commanded to arrest the ship or vessel of the port of _____ (and the cargo and freight, etc., as the case may be) and to keep the same under safe arrest, until you shall receive further orders from us.

Witness, etc.

.....

Form No.4

PRAECIPE FOR SERVICE BY THE 1[SHERIFF] OF ANY INSTRUMENT in rem, OTHER THAN A WARRANT (RULE 8)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxxPlaintiff

and

yyyDefendant

I, _____, attorney for the (state whether plaintiff or defendant), pray that the (state nature of instrument) let herewith be duly executed.

Dated the _____ day of _____ 19

(To be signed by the attorney)

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Form No.5

PRAECIPE FOR APPEARANCE (RULE 15)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx Plaintiff

and

yyy Defendant

Enter an appearance for _____ in this suit.

Dated the _____ day of _____ 19

(signed)

Attorney for the said defendant

Whose address for service is

.....

Form No.6

PRAECIPE FOR RELEASE (RULES 19 and 24)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx.. .. Plaintiff

and

yyy.. .. Defendant

I, _____, attorney for the (state whether plaintiff or defendant), in a suit (state the nature of suit), commenced on behalf of _____ against the (state name and nature of property), now under arrest by virtue of a warrant issued from the Registry, pray a release of the said _____, (bail having been given, or the suit having been withdrawn by me before an appearance was entered therein, etc. as the case may be), and there being no caveat against the release thereof outstanding.

Dated the _____ day of _____ 19

(To be signed by the attorney)

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Form No.7

Release (RULE 18)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

To

The 1[Sheriff],

Whereas in a suit of _____ commenced in our said High Court on behalf of _____ against _____, you were commanded to arrest the said _____ and to keep the same under safe arrest until you should receive further orders from us. Now you are hereby commanded to release the said _____ from the arrest effected by virtue of the warrant in the said suit, upon payment being made to you of all costs, charges and expenses attending the care and custody of the property whilst under arrest in that suit.

Witness etc.

Release

Taken out by on the day of 19, the _____ or vessel _____ (or cargo and freight, etc. as the case may be) released from arrest pursuant to his instrument of release.

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Form No.8

PRAECIPE FOR CAVEAT RELEASE (RULE 24)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx Plaintiff

and

yyy Defendant

I, _____, attorney for the plaintiff in this action, pray a caveat against the release of the (state name and nature of the property).

Dated the _____ day of _____ 19

(To be signed by the attorney)

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Form No.9

PRAECIPE FOR CAVEAT WARRANT BY PLAINTIFF (RULE 27)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx..... Plaintiff

and

yyy Defendant

I, (state name, address and description), hereby undertake to enter an appearance in any suit that may be commenced in this Honourable Court against (state name and nature of the property) and within three days after I shall have been served with a copy of the plaint in such suit to give bail therein for a sum not exceeding (state amount for which the undertaking is given) Rupees, or to pay such sum into the Registry. And I consent that all instruments and other documents in such suit may be left for me at _____

Dated the _____ day of _____ 19

(To be signed by the attorney)

.....

Form No.10

PRAECIPE FOR CAVEAT WARRANT BY PLAINTIFF (RULE 27)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx..... Plaintiff

and

yyy..... Defendant

I, (state name, address and description), hereby undertake within three days after I shall have been served with a notice of any counter-claim herein in respect of which the defendant is entitled to arrest (state name and nature of property) to give bail to answer such counter claim in a sum not exceeding (state amount for which the undertaking is given) Rupees, or to pay such into the Registry.

Dated the _____ day of _____ 19

(To be signed by the attorney)

.....

Form No.11

PRAECIPE TO WITHDRAW CAVEAT (RULE 46)

SUIT NO. OF 19

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Admiralty Jurisdiction

Between

xxx..... Plaintiff

and

yyy..... Defendant

I, _____, attorney (state whether plaintiff of defendant), pray that the caveat against (state tenor of caveat) entered by me on the ____ day of _____ 19__ on behalf of (state name) may be withdrawn.

Dated the ____ day of _____ 19

(To be signed by the person by whom the Praecipe for the entry of the caveat was signed)

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Order XLII

Rules for regulating the procedure and practice in cases brought

Before the High Court of Judicature at Madras

In the exercise of its admiralty jurisdiction

1 O.41, Rule 5 : The words 'Sheriff of Madras' substituted by word 'Nazir' by Roc.86/94, Part III, Sec.2, Page 40, Tamil Nadu Government Gazette issue No.39, dated 5.10.1994. As there is no Rule 34 in O.41, it is presumed that the amendment related to Rule 5.

2O.42, Rule 1 : The word 'sheriff' substituted by word 'Nazir' by ibid

3O.42, Rule 1 : Words 'attorney or' deleted by ibid

1O.42, Rule 7 : The words 'Sheriff' substituted by word 'Nazir' by Roc.86/94, Part III, Sec.2 Page 40, Tamil Nadu Government Gazette issue No.39, dated 5.10.1994.

1O.42, Rule 23 : Now read 'Nazir' for 'Sheriff' by Roc.84/94, Part III, Section 2 Page 40, Tamil Nadu Government Gazette issue No.39, dated 5.10.1994.

1O.42, Rule 34 : word 'Sheriff' substituted by word 'Registrarr' by Roc.86/94, Part III, Sec.2 Page 40, Tamil Nadu Government Gazette issue No.39, dated 5.10.1994.

2O.42, Rule 35 : Deleted by ibid.

1O.42, Rule 42 : Words 'or the Sheriff's office' deleted by ibid.

2O.42, Rule 44 : Words 'or the Sheriff' as the case may be' deleted by Roc.86/94, Part III, Sec.2, Page 40, Tamil Nadu Government Gazette issued No.39, dated 5.10.1994.

3O.42, Rule 48 : Words 'taken by the Sheriff' substituted by the words 'paid into court' by ibid.

1 Words "to be allowed to the sheriff", occurring in the Heading deleted by R. Dis.86/94, Part III, Section 2, Page 40, Tamil Nadu Government Gazette, Issue No.39, dated 5.10.1994.

2 Item 13. Word 'Sheriff' substituted by word 'Nazir' by Roc. No.86/94 Part III, Section 2, Page 40, Tamil Nadu Gazette, Issue No.39 dated 5.10.1994.