

SECURITY FOR RELEASE OF A SHIP

In the case of arrest of a trading ship which is ready to sail from the port, it is not only usual but considered to be the prudent thing to do for security to be furnished to the extent fixed by the court, together with the sheriff's poundage, and to sail away the ship and thereby avoid detention loss, unless there is a caveat against release outstanding in the Caveat Release Book in which case notice will have to be issued to the caveator. It is not necessary that the filing of the appearance or the giving of security shall be under protest as to the Court's jurisdiction to receive and try the suit and the entry of an appearance and giving of security will not amount to submission to the court's jurisdiction.

The objection to the jurisdiction of the court to entertain the suit can be raised on behalf of the defendant by way of a notice of motion, supported by an affidavit, praying for an order that the warrant of arrest issued by the court be superseded and set aside and the amount of the bail or guarantee furnished on behalf of the defendant be released, and there is no necessity to deliver a written statement traversing the jurisdiction unless the validity of the objection to jurisdiction depended upon the proof of controversial facts. In cases where the arrested ship is likely to remain at the port for a few days, the notice of motion for superseding the warrant of arrest may be heard as a matter of urgency.

In cases where the amount of the security directed to be furnished is excessive, an application on notice of motion may be made for its reduction either before or after the security is furnished.

Security for the claim in the suit is furnished by means of a cash deposit in the registry or a bank guarantee for the amount stated in the warrant of arrest.

The bank guarantee is required to be from a nationalized bank or a foreign bank carrying on business in India and having an office at Calcutta, Madras or Bombay where the warrant of arrest is issued. The bank giving the guarantee will itself require an acceptable counter-guarantee from a bank abroad before it will furnish its guarantee to the court.

The courts are not acquainted with P.& I. clubs and a P.& I. club guarantee is not accepted. However, a plaintiff is free to accept a letter of indemnity issued by a P.& I. club. The master of an arrested ship can represent the ship in taking steps to have it released. The bank guarantee, unless discharged, will have to continue to remain in force till the suit is finally disposed of and for a period of one year thereafter. It is possible to substitute a bank guarantee for the cash deposit. In the case of a cash deposit it is usual for the court, at the instance of the parties, to invest the amount on an interest-bearing term deposit, pending the disposal of the suit.

Property arrested under admiralty jurisdiction by a warrant may be ordered to be released

- (i) at the request of the plaintiff, before an appearance in person or a vakalatnama is filed by the defendant; or
- (ii) on the defendant paying into Court the amount claimed in the suit; or
- (iii) on the defendant giving such security for the amount claimed in the suit as the Court may direct; or
- (iv) on any other ground that the Court may deem just.

In *The "Christiansborg"* (1885) 10 P.D. 141 (C.A), a ship had been arrested in Holland and released by the court against an insurance company guarantee. Subsequently the ship was arrested in England in respect of the same cause of

action. It was held that the arrest in England was oppressive and against good faith and the ship would therefore be released.