

**ORDER OF ARREST AND WARRANT OF ARREST**

The Judge's order or the interim application for the arrest of the ship will direct that the ship be arrested at any hour of the day or night, including Sundays and holidays, and that it may not be arrested if payment of the sum stated in the order, comprising the amount of the claim in the suit and the ad valorem court fee and the sheriff's poundage (depending on jurisdiction), is paid on behalf of the ship or satisfactory security for the claim is furnished. The affidavit in support should state as to why the Judges Order or the interim application should be allowed, this affidavit should also mention that notice to consul has been given, wherever applicable. The Admiralty Judge may pass a separate order arresting the ship and also sign the Judges Order for arrest of the ship.

Warrant of Arrest are sometimes dispenses with by the Judge. if not, Warrant of Arrest is served by the bailiff of the Sheriff or the Marshal and in a state where there is no Sheriff or Marshal court allows direct service. The Sheriff or Marshal shall serve the process of the Court and shall return the process to the Registry within four days from the service thereof.

In a suit in rem the Writ of Summons or the Warrant of arrest shall be served on the property against which the suit is brought; Where the property is ship or cargo on board, service shall be effected by affixing the original Writ of Summons or the Warrant of arrest for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and leaving a duplicate thereof affixed in its place, when removing the original Writ of Summons or the Warrant of arrest; Where the property is cargo which has been landed or trans-shipped, service shall be effected by placing the original Writ of Summons or the warrant of arrest for a short time on the cargo and leaving a duplicate thereof upon the cargo, when removing the original Writ

of Summons or the warrant of arrest; Where the cargo is in the custody of a person who will not permit access to it, service shall be made upon the custodian; Where the property is freight, service shall be effected by serving on the cargo in respect of which the freight is payable or on the ship in which the cargo was carried, in the manner hereinabove prescribed in this rule for service on a cargo or on a ship.

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff or the Marshal on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in *The "Jarlinn"* [1965] 1 W.L.R. 1098 and also in *The "Abodi Mendi"* [1939] 178.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal will not stop the discharge operations unless the arrest is in respect of

the cargo. When cargo is arrested the ship owners can request the Sheriff or the Marshal to take the appropriate steps to enable the ship to be discharged.

The warrant for arrest when issued by the Court's registry will be served by the bailiff of the Marshal of Calcutta and by the bailiff of the Sheriff of Mumbai (Bombay) or Chennai (Madras) or his substitute who is required to effect the service by affixing (i.e. attaching and not just holding in position by hand) the original warrant of arrest for a short time (the duration should be about 10 to 15 minutes) on any mast of the ship or on the outside of any suitable part of the ship's superstructure, then removing the original and leaving a duplicate thereof affixed in its place. (This mode of service is enjoined in the case of service of the writ of summons, on the ship.) There have been occasions where persons entrusted with the service are not competently instructed as to the mode of the service, which is of particular importance in a suit in rem, and, indeed, there have been instances where service has been effected on the master or a mate by delivering the duplicate of the warrant to him and obtaining his acknowledgment on the original. This would constitute bad service as would service on any other person on board the ship - *The Marie Constance*. There have been no instances of the arrest having been impugned on account of bad service.

There is no provision made in the Rules for effecting service on a ship lying at a port other than that in whose registry the writ has been issued, viz, Calcutta, Madras or Bombay, through the Collector of Customs at such other port. This lacuna puts the plaintiff to the expense of taking the Marshal's or the Sheriff's substitute to that port to arrest the ship and there is also the possibility of the ship sailing away before service can be accomplished. To avoid this possibility it is advisable that the registry should be requested by a praecipe (after obtaining order from the Court to that effect) to give telegraphic/facsimile or by email intimation to the Port Conservator and to the Commissioner of Customs at the particular port of issue of the warrant

for arrest of the ship and instruct that officer not to grant port clearance to the ship, pending arrival of the warrant of arrest.

Whereas the Admiralty Rules require that the warrant shall be returned within a stipulated period from the service thereof.

The Calcutta and Madras Rules provide that, after expiration of 12 days from the return of the warrant for arrest, if no appearance shall have been entered in the suit the advocate for the plaintiff may cause the suit to be set down for hearing and also provide that, if when the suit comes up before the court, the judge is satisfied that the plaintiff's claim is well founded he may pronounce the claim and may order the ship to be sold with or without previous notice and the proceeds of the sale paid into the registry or make such order in the premises as he deems fit. The warrant of arrest issued by the said two High Courts is in its form citatory, calling upon the owners and all parties interested in the ship to appear before the court, is deemed sufficient notice to all whom it may concern regarding the suit. It, however, does not require them to file a written statement to the suit.