

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 75 – (HK) ADMIRALTY PROCEEDINGS

Remarks

1. Application and interpretation (O. 75, r. 1)

(1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order. (See App. B, Form No. 14)

(2) In this Order –
“action in rem” (對物訴訟) means an Admiralty action in rem;

“caveat against arrest” (針對扣押的知會備忘) means a caveat entered in the caveat book under rule 6;

“caveat against release and payment” (針對發還及付款的知會備忘) means a caveat entered in the caveat book under rule 14;

“caveat book” (知會備忘登記冊) means the book kept in the Registry in which caveats issued under this Order are entered;

“collision regulations” (碰撞規例) means the regulations made or deemed to be made under section 93 of the Merchant Shipping (Safety) Ordinance (Cap. 369);

“limitation action” (局限法律責任的訴訟) means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1984[#] or the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) for the limitation of the amount of their liability in connection with a ship or other property; (L.N. 363 of 1990)

“ship” (船舶) includes any description of vessel used in navigation.

2A. Proceedings against, or concerning, the International Oil Pollution Compensation Fund (O. 75, r. 2A)

(2) For the purposes of section 27(1) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) any party to proceedings brought against an owner or guarantor in respect of liability under section 6 of that Ordinance may give notice to the Fund of such proceedings by serving notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action. (L.N. 363 of 1990)

(3) The Court shall, on the application made ex parte by the Fund grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not, and paragraphs (3) and (4) of rule 17 shall apply to such an application.

(4) Where judgment is given against the Fund in any proceedings under section 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414), the Registrar shall cause a stamped copy of the judgment to be sent by post to the Fund. (L.N. 363 of 1990)

(5) The Fund shall notify the Registrar of the matters set out in section 25(11)(b) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) by a notice in writing sent by post to, or delivered at, the Registry. (L.N. 363 of 1990)

3. Issue of writ and acknowledgment of service (O. 75, r. 3)

(1) An action in rem ~~must be begun by writ~~ **may be begun by writ**; and the writ must be in Form No. 1 in Appendix B.

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(2) The writ by which an Admiralty action in personam is begun must be in Form No. 1 in Appendix A.

(3) The writ by which a limitation action is begun must be in Form No. 2 in Appendix B.

(4) Subject to the following paragraphs Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun.

(5) An acknowledgment of service in an action in rem or a limitation action shall be in Form No. 2B in Appendix B.

(6) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with the writ, may, if he desires to take part in the proceedings, acknowledge the issue of the writ by handing in at, or sending to, the Registry an acknowledgment of issue in the same form as an acknowledgment of service but with the substitution for the references therein to service of references to issue of the writ.

(7) These rules shall apply, with the necessary modifications, in relation to an acknowledgment of issue or service in Form No. 2B in Appendix B as they apply in relation to an acknowledgment of service in Form No. 14 in Appendix A which contains a statement to the effect that the defendant intends to contest the proceedings to which the acknowledgment relates.

4. Service of writ out of jurisdiction (O. 75, r. 4)

(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ containing any claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations, every limitation action and every action to enforce a claim under section 6 or 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) is permissible with the leave of the Court if, but only if – (L.N. 363 of 1990)

- (a) the defendant has his habitual residence or a place of business in Hong Kong; or
- (b) the cause of action arose within the territorial waters of Hong Kong; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Order 11, ~~rule 3 and~~ rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as ~~they apply~~ **it applies** in relation to an application for the grant of leave under rule ~~1 or 2~~ of that Order.

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(3) Paragraph (1) shall not apply to an action in rem.

(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun.

5. Warrant of arrest (O. 75, r. 5)

(1) After a writ has been issued in an action in rem a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(3) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(4) A warrant of arrest shall not be issued until the party applying for it has filed an affidavit requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraph (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a

consulate in Hong Kong, being an action for possession of the ship or for wages, until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(7) Where, by, or under, any convention or treaty, Hong Kong has undertaken to minimise the possibility of arrest of ships of another state, no application shall be made for the issue of a warrant of arrest in an action in rem against a ship owned by that state until a notice in Form No. 15 in Appendix B has been served on a consular officer at the consular office of, or acting on behalf of, that state in Hong Kong.

(8) An affidavit required by paragraph (4) must state –

- (a) in every case –
 - (i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and
 - (ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and
- (b) in the case of a claim against a ship in rem by virtue of paragraph (10) –
 - (i) the name of the person who would be liable on the claim in an action in personam (“the relevant person”); and
 - (ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and
 - (iii) that at the time of the issue of the writ the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and
- (c) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (5) has been sent; and
- (e) in the case of a claim in respect of a liability incurred under section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414), the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 18(1) of that Ordinance. (L.N. 363 of 1990)

(9) The following documents shall, where appropriate, be exhibited to an affidavit required by paragraph (4) –

- (a) a copy of any notice sent to a consul under paragraph (5);
- (b) a certified copy of any bottomry bond, or of the translation thereof, produced under paragraph (6);
- (c) a copy of any notice served on a consular officer under paragraph (7).

(10) The claims against a ship in rem coming within the provisions of sub-paragraph (b) (whether or not the claim gives rise to a maritime lien on that ship) are –

- (a) for damage done by a ship;
- (b) for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or the master or crew of a ship or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (c) for loss of or damage to goods carried in a ship;
- (d) those arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (e) those in the nature of salvage (including any claim arising by virtue of the application by or under ~~section 51 of the Civil Aviation Act 1949 as it applies to Hong Kong~~ **section 9 of the Civil Aviation Ordinance (Cap. 448)**, of the law relating to salvage to aircraft and their apparel and cargo);
- (f) those in the nature of towage or pilotage in respect of a ship or an aircraft when an action in rem may be brought against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam;
- (g) those in respect of goods or materials supplied to a ship for her operation or maintenance;
- (h) those in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (i) those by a master or member of a crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (j) those by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (k) those arising out of an act which is or is claimed to be a general average act;
- (l) those arising out of bottomry.

And where the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship and at the time when the action is brought is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise or, in the case of any other ship, where the relevant person is the beneficial owner as respects all the shares in it at the time when the action is brought.

Rule 275
Consequential
Amendment

6. Caveat against arrest (O. 75, r. 6)

(1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form No. 5 in Appendix B, signed by him or his solicitor undertaking –

- (a) to acknowledge issue or service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe, and
- (b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court,

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

7. Remedy where property protected by caveat is arrested (O. 75, r.7)

Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

8. Service of writ in action in rem (O. 75, r. 8)

(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought save that –

- (a) where that property is freight it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or
- (b) where the property has been sold by the bailiff, the writ may not be served on that property, but a sealed copy of it must be filed in the Registry and the writ shall be deemed to have been duly served on the day on which it was filed.

(2) A writ need not be served or filed as mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or (5).

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the bailiff, he must

file in the Registry a praecipe in Form No. 6 in Appendix B and lodge –

- (a) the writ and a copy thereof, and
- (b) an undertaking to pay on demand all expenses incurred by the bailiff or his substitute in respect of the service of the writ,

and thereupon the bailiff or his substitute shall serve the writ on the property described in the praecipe.

(3A) Where a writ is served on any property by the bailiff or his substitute the person effecting service must indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the indorsement shall be evidence of the facts stated therein.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any intervener and any defendant who has acknowledged issue or service of the writ in the action or, if no defendant has acknowledged issue or service of the writ, it must be served in accordance with paragraph (1) of this rule.

9. Committal of solicitor failing to comply with undertaking (O. 75, r. 9)

Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to acknowledge issue or service of the writ in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

10. Execution, etc., of warrant of arrest (O. 75, r. 10)

(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the bailiff or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the bailiff and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the bailiff's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the bailiff.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed, in the Registry by the bailiff.

11. Service on ships, etc.: how effected (O. 75, r. 11)

(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by –

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected –

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

(3) Order 65, rule 10, shall not apply to a warrant of arrest or a writ in rem.

12. Applications with respect to property under arrest (O. 75, r. 12)

(1) The bailiff may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the persons referred to in paragraph 2.

(2) The bailiff shall send by hand or by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have –

- (a) entered a caveat which is still in force; or
- (b) caused a warrant for the arrest of the property to be executed by the bailiff; or
- (c) acknowledged issue or service of the writ in any action in which the property is under arrest; or
- (d) intervened in any action in which the property is under arrest.

(3) A person other than the bailiff may make an application under this rule by summons or motion in the action in which the property is under arrest and the

summons or notice of motion together with copies of any affidavits in support must be served upon the bailiff and all persons referred to in paragraph (2) unless the court otherwise orders on an application made ex parte.

(4) Unless otherwise directed by the Registrar, the bailiff shall serve a copy of any notice of motion or summons on the property under arrest.

13. Release of property under arrest (O. 75, r. 13)

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a “release”), in Form No. 7 in Appendix B, issued out of the Registry.

(3) A release shall not be issued with respect to property as to which a caveat against release is in force, unless, either

- (a) at the time of the issue of the release the property is under arrest in one or more other actions, or
- (b) the Court so orders.

(4) A release may be issued at the instance of any party to the action in which the warrant of arrest was issued if the Court so orders, or, subject to paragraph (3), if all the other parties, except any defendant who has not acknowledged issue or service of the writ, consent.

(6) Before a release is issued, the party applying for its issue must, unless paragraph (3)(a) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to his solicitor, requiring the caveat to be withdrawn.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the bailiff, either –

- (a) pay the fees of the bailiff already incurred and lodge in the bailiff’s office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or
- (b) lodge in the bailiff’s office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(8) The Court, on the application of any party who objects to directions given to him by the bailiff under paragraph (7), may vary or revoke the directions.

14. Caveat against release etc. (O. 75, r. 14)

(1) Where a person claiming to have a right of action in rem against any property which is under arrest or the proceeds of sale thereof wishes to be served with notice

of any application to the Court in respect of that property or those proceeds, he must file in the Registry a praecipe in Form No. 9 in Appendix B and, on the filing of the praecipe, a caveat shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

15. Duration of caveats (O. 75, r. 15)

(1) Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in Appendix B.

(2) The period of validity of a caveat may not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

16. Bail (O. 75, r. 16)

(1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner for oaths or a solicitor exercising the powers of a commissioner for oaths under section 7A of the Legal Practitioners Ordinance (Cap. 159) not being a solicitor who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given.

(2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.

(3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.

(4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

17. Interveners (O. 75, r. 17)

- (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.
- (2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.
- (3) A person to whom leave is granted under this rule shall thereupon become a party to the action.
- (4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleadings as may be so specified.

18. Preliminary acts (O. 75, r. 18)

- (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, the following provisions of this rule shall apply unless the Court otherwise orders.
- (2) The plaintiff must within 2 months after service of the writ on any defendant and the defendant must within 2 months of acknowledging issue or service of the writ file in the Registry a document in two parts (in these rules referred to as a preliminary act) containing a statement of the following –
 - Part One
 - (i) the names of the ships which came into collision and their ports of registry;
 - (ii) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
 - (iii) the date and time (including the time zone) of the collision;
 - (iv) the place of the collision;
 - (v) the direction and force of the wind;
 - (vi) the state of the weather;
 - (vii) the state, direction and force of the tidal or other current;
 - (viii) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
 - (ix) the lights or shapes (if any) carried by the ship;
 - (x) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
(b) the distance, bearing and approximate heading of the other ship

- when first seen;
- (xi) what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
 - (xii) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
 - (xiii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (viii) up to the time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;
 - (xiv) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
 - (xv) what sound signals (if any) were given, and when;
 - (xvi) what sound signals (if any) were heard from the other ship, and when.

Part Two

- (i) a statement that the particulars in Part One are incorporated in Part Two;
- (ii) any other facts and matters upon which the party filing the preliminary act relies;
- (iii) all allegations of negligence or other fault which the party filing the preliminary act makes;
- (iv) the remedy or relief which the party filing the preliminary act claims.

(3) Part Two of the preliminary act shall be deemed to be the pleading of the person filing the preliminary act (in the case of the plaintiff his statement of claim and in the case of the defendant his defence and, where appropriate, his counterclaim) and the provisions of these rules relating to pleadings shall apply to it save insofar as this rule and rule 20 provide otherwise.

(4) The Court may order that Part Two of the preliminary act need not be filed by the plaintiff or defendant and give directions for the further conduct of the action.

(5) Every preliminary act shall before filing be sealed by the proper officer and be filed in a sealed envelope which shall not be opened except as provided in paragraph (7) or by order of the Court.

(6) A plaintiff must serve notice of filing his preliminary act on every defendant who acknowledges issue or service of the writ within 3 days of receiving notice of that acknowledgment or upon filing his preliminary act, whichever is the later. A defendant must, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has acknowledged issue or service of the writ.

(7) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing in the Registry a consent signed by that other party or his solicitor.

(8) Order 18, rule 20 (close of pleadings) shall not apply; and for the purposes of Order 18, rule 14 (denial by joinder of issue), Order 20, rule 3 (amendment of pleadings without leave) and Order 24, rules 1 and 2 (discovery of documents) the pleadings shall be deemed to be closed –

- (a) at the expiration of 7 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim pursuant to leave given under rule 20; or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after the last preliminary act in the action was served pursuant to paragraph (9).

(9) Within 14 days after the last preliminary act in the action is filed each party must serve on every other party a copy of his preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the Court for an order that –

- (a) one or more parties file in the Registry particulars of the damages claimed by them and serve a copy thereof on every other party; and
- (b) that the damages be assessed prior to or at the trial on liability.

The application must be made by summons to the Registrar even if it is made after the issue of a ~~summons for directions~~ **case management summons**.

Rule 161
Consequential
Amendment

(11) When an order is made under paragraph (10) the claim or claims concerned shall be treated as referred to the Registrar for assessment and rules 41 and 42 shall apply unless the Registrar otherwise directs.

(L.N. 404 of 1991)

19. Failure to lodge preliminary act: proceedings against party in default
(O. 75, r. 19)

(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an

act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require the plaintiff to satisfy the Court that his claim is well founded. The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(2) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act. (L.N. 404 of 1991)

20. Special provisions as to pleadings in collision, etc. actions (O. 75, r. 20)

(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 4(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court. (L.N. 356 of 1988)

(2) Subject to paragraph (3), in any such action Order 18, rule 13(3) shall not apply to any allegation of fact in –

- (a) a statement of claim contained in Part Two of a preliminary act; or
- (b) a counterclaim (whether contained in Part Two of a preliminary act or not),

and notwithstanding Order 18, rule 14(3) but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the statement of claim or counterclaim. (L.N. 404 of 1991)

(3) Paragraph (2) does not apply to a counterclaim if the plaintiff has served a defence to counterclaim pursuant to leave given under paragraph (1). (L.N. 404 of 1991)

21. Judgment by default (O. 75, r. 21)

(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if –

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of that caveat, and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to acknowledge service of the writ within the time limited for doing so, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4), or was served by the bailiff or his substitute under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(4) or indorsed as mentioned in rule 8(3A) must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations.

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

22. Order for sale of ship: determination of priority of claims (O. 75, r. 22)

(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may –

- (a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or
- (b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order –

- (a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;
- (b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the Order;
- (c) that within 7 days after the date of payment into court of the proceeds of sale the bailiff shall send for publication in the Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state –

- (a) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;
- (b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;
- (c) that the order of priority of the claims against the said proceeds will not

- be determined until after the expiration of the period (specifying it) specified in the order for sale; and
- (d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.
- (4) The bailiff must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.
- (5) The expenses incurred by the bailiff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.
- (6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.
- (7) In this rule “the Court” (法庭) means the judge in person.

23. Appraisalment and sale of property (O. 75, r. 23)

- (1) A commission for the appraisalment and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in Appendix B.
- (2) Such a commission must, unless the Court otherwise orders, be executed by the bailiff and must be in Form No. 13 in Appendix B.
- (3) A commission for appraisalment and sale shall not be executed until an undertaking in writing satisfactory to the bailiff to pay the fees and expenses of the bailiff on demand has been lodged in the bailiff’s office.
- (4) The bailiff shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.
- (5) On the taxation of the bailiff’s account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of the Registrar made in taxation proceedings under Order 62, and rules 33 to 35 of that Order shall apply accordingly with the necessary modifications.

23A. Undertaking as to expenses, etc. (O. 75, r. 23A)

- (1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the bailiff.

Remarks

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the bailiff an undertaking to pay any fees or expenses, the bailiff may require from time to time the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may, on the application of any party who is dissatisfied with a direction or determination of the bailiff under rule 13(7) or this rule, vary or revoke the direction or determination.

24. Payment into and out of court (O. 75, r. 24)

(1) ~~Order 22 (except rules 3, 4 and 12)~~ **Subject to this rule, Order 22** shall apply in relation to an Admiralty action (other than a limitation action) as it applies to an action for a debt or damages.

Rule 118
Consequential
Amendment

(2) Subject to paragraphs (3) and (4), money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say –

- (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;
- (b) where property has been sold and the proceeds of sale thereof paid into court and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
- (c) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under rule 13(1) of that Order for the money to be paid out to the person entitled thereto.

25. ~~Summons for directions~~ **Case management summons (O. 75, r. 25)**

Rule 162
Consequential
Amendment

(1) Order 25 shall apply to Admiralty actions (other than limitation actions) as it applies to other actions, except that –

- (a) ~~the summons for directions~~ **case management summons** shall be returnable in not less than 7 weeks;
- (b) any notice under Order 25, rule 7(1), must be served within 21 days after service of the ~~summons for directions~~ **case management summons** on the party giving the notice; and
- (c) unless a judge in person otherwise directs, the ~~summons for directions~~ **case management summons** shall be heard by a judge in person.

On or before the day on which any party serves on any other party a notice under

Order 75, rule 7, he must lodge 2 copies of the notice in the Registry.

(2) An order made on the ~~summons for directions~~ **case management summons** shall determine whether the trial is to be without assessors or with one or more assessors.

(3) The trial shall be before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the ~~summons for directions~~ **case management summons** otherwise provides.

(5) Any such order or direction as is referred to in paragraph (2) or (3) (including an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by the judge in person or, with the judge's consent by the Registrar.

26. Fixing date for trial, etc. (O. 75, r. 26)

(1) Subject to paragraph (2), the date for trial of an Admiralty action shall be fixed by the judge at the hearing of the ~~summons for directions~~ **case management summons**, unless a judge in person otherwise directs.

Rule 163
Consequential
Amendment

(2) Where an action is ordered to be tried without pleadings or a ~~summons for directions~~ **case management summons** is directed to be heard by the Registrar the date for trial shall be fixed by the Registrar.

(3) Order 34 shall apply to Admiralty actions subject to the following and any other necessary modifications –

- (a) the bundles referred to in rule 3(1) shall include any preliminary acts and any particulars filed pursuant to an order under rule 18(10)(a) of this Order, and where trial with one or more assessors has been ordered an additional bundle shall be lodged for the use of each assessor; (L.N. 404 of 1991)
- (b) “the proper officer” (恰當人員) shall mean the chief judicial clerk of the Registry; and
- (c) in an action which has been ordered to be tried with an assessor or assessors the solicitor to the party setting it down must file in the Registry an undertaking to pay the proper fee and expenses of such assessor or assessors.

(4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by filing in the Registry a written consent to the action being withdrawn signed by all the parties.

27. Stay of proceedings in collision, etc. actions until security given (O. 75, r. 27)

Where an action in rem, being an action to enforce any such claim as is

referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then –

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

28. Inspection of ship, etc. (O. 75, r. 28)

Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

30. Examination of witnesses and other persons (O. 75, r. 30)

(1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorizing the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect –

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the Registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made

available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorizing any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

31. Trial without pleadings (O. 75, r. 31)

Order 18, rule 21 shall apply to Admiralty as it applies to other actions except that the summons must be served on every other party not less than 7 days before the day specified in the summons for the hearing thereof.

32. Further provisions with respect to evidence (O. 75, r. 32)

(3) (Repealed 2 of 1999 s. 6)

(7) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

33. Proceedings for apportionment of salvage (O. 75, r. 33)

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894 (1984 c. 60 U.K.)[#].

34. Notice of motion in actions in rem (O. 75, r. 34)

(1) The affidavits, if any, in support of a motion in an action in rem must be filed in the Registry before the notice of motion is issued, unless the Court gives leave to the contrary.

(2) A notice of motion, except a motion for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the motion 2 clear days at least before the hearing, unless the Court gives leave to the contrary.

35. Agreement between solicitors may be made order of court (O. 75, r. 35)

(1) Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the Registrar thinks it reasonable and such as the judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the judge in person.

37. Limitation action: parties (O. 75, r. 37)

(1) In a limitation action the person seeking relief shall be the plaintiff and shall be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 38, 39 and 40 “name” (姓名或名稱) includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

38. Limitation action: summons for decree or directions (O. 75, r. 38)

(1) Within 7 days after the acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if none of them acknowledges issue or service, within 7 days after the time limited for acknowledging service, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving-

- (a) the plaintiff’s case in the action, and
- (b) if none of the defendants named in the writ by their names has

acknowledged service, service of the writ on at least one of the defendants so named.

- (3) The affidavit in support of the summons must state –
 - (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and
 - (b) the address of each of those persons, if known to the plaintiff.
- (4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has acknowledged issue or service of the writ.
- (5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.
- (6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.
- (7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a ~~summons for directions~~ **case management summons** under Order 25 and, if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served.
- (8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Registry, and serve a copy on the plaintiff and on any other defendant who has acknowledged issue or service of the writ.
- (9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

Rule 164
Consequential
Amendment

39. Limitation action: proceedings under decree (O. 75, r. 39)

- (1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ

or acknowledged the issue thereof, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) –

- (a) need not be advertised, but
- (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability –

- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
- (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may file their claims, and, in cases to which rule 40 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be a single advertisement in each of 3 newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed no claim may be filed or summons taken out to set aside the decree except with the leave of the Registrar.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on trial of the action) may make any such provisions as is authorized by section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.) #.

40. Limitation action: proceedings to set aside decree (O. 75, r. 40)

(1) Where a decree limiting the plaintiff's liability (whether made by Registrar or on trial of the action) fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who –

- (a) was not named by his name in the writ as a defendant to the action, or
- (b) if so named, neither was served with the writ nor has acknowledged the issue thereof,

may, within that time, after acknowledging issue of the writ, take out a summons returnable in chambers before the Registrar, asking that the decree be set aside.

Remarks

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has acknowledged issue or service of the writ.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a ~~summons for directions~~ **case management summons** under Order 25.

Rule 165
Consequential
Amendment

41. References to Registrar (O. 75, r. 41)

(1) Any party (hereafter in this rule referred to as the “claimant”) making a claim which is referred to the Registrar for decision must within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant’s claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by ~~summons for directions~~ **case management summons** as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant’s claim.

Rule 166
Consequential
Amendment

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a praecipe

requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file –

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may, on the application of any other party to the cause or matter, dismiss the claim.

42. Hearing of reference (O. 75, r. 42)

(1) Unless a judge in person otherwise orders, a reference shall be heard in public.

(2) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.

(3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.

- (4) When the hearing of the reference has been concluded, the Registrar shall –
- (a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed;
 - (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
 - (c) send to the parties to the reference notice that he has done so.

(5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

43. Objection to decision on reference (O. 75, r. 43)

(1) Any party to a reference to the Registrar may, by motion in objection, apply to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 28 days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of

the decision was subsequently sent to him thereunder, within 28 days after the date on which the notice was sent.

(2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto.

(3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

45. Drawing up and entry of judgments and orders (O. 75, r. 45)

Every judgment given or order made in an Admiralty cause or matter, except an order which by virtue of Order 42, rule 4, is not required to be drawn up, shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

46. Inspection of documents filed in Registry (O. 75, r. 46)

(1) Order 63, rule 4, shall apply in relation to documents filed in the Registry.

(2) For the purpose of Order 63, rule 4, a decree made by the Registrar in a limitation action and a decision and any statement of the grounds of that decision filed under rule 42 shall be deemed to have been made or given in court.

(Enacted 1988)

Note:

Please also see following –

(a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap. 415 and s. 1 of Schedule 2 to Cap. 508;

(b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap. 281, s. 103 of Cap. 415 and s. 142 of Cap. 478.