1953 No. 986 (L. 10)

The Rules of the Supreme Court (Admiralty) 1953

Made - - - -	22*nd June*, 1953
Laid before Parliament	23*rd June*, 1953
Coming into Operation	1*st August*, 1953

We, the Rule Committee of the Supreme Court, hereby make the following Rules—

1. For Rule 28 of Order XIX, there shall be substituted the following Rule—

"28.—(1) In actions in any Division for damage by collision between vessels, unless the Court or Judge otherwise orders, the plaintiff shall, within seven days after the commencement of the action, and the defendant shall, within seven days after appearance, and before any pleading is delivered, file with the Registrar, Master or other proper officer, a document to be called a Preliminary Act, which shall contain a statement of the following particulars—

(i) the names of the vessels which came into collision and the names of their masters ;

(ii) the time of the collision ;

(iii) the place of the collision ;

(iv) the direction and force of the wind ;

(v) the state of the weather ;

(vi) the state and force of the tide ;

(vii) the course and speed of the vessel when the other vessel was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier, and all subsequent alterations to the course or speed of the vessel up to the time of the collision ;

(viii) the lights (if any) carried by the vessel ;

(ix) the distance, bearing and approximate heading of the other vessel when first seen ;

(x) the lights (if any) of the other vessel which were first seen ;

(xi) whether any lights of the other vessel, other than those first seen, came into view before the collision ;

(xii) what measures were taken, and when, to avoid the collision ;

(xiii) the parts of each vessel which first came into contact and the approximate angle between the two vessels at the moment of contact ;

(xiv) what sound signals (if any) and when were given ;

(xv) what sound signals (if any) and when were heard from the other vessel.

(2) The Preliminary Acts shall be sealed up before they are filed and, unless the Court or a Judge otherwise order, shall not be opened until the pleadings are completed and a consent signed by the parties or their solicitors to the opening of the Preliminary Acts is filed with the Registrar, Master or other proper officer.

(3) Where the Court or a Judge order the Preliminary Acts to be opened, the Court or a Judge may, if it or he thinks fit, further order the evidence to be taken in the action without its being necessary to deliver any pleadings, but, where an order is made that the evidence should be so taken, any party who intends to rely on the defence of compulsory pilotage shall give notice in writing of his intention to do so to the other parties within seven days from the opening of the Preliminary Acts."

2.—(1) At the end of Order XXIII (which relates to Replies) there shall be added the following Rule—

"3. No reply shall be delivered in any Admiralty action without the leave of the Court or a Judge, whether there is a counterclaim or not."

(2) In Order XXVII, in Rule 13, (which, amongst other things, directs that, on the pleadings being closed, the statements in the pleading last delivered shall be deemed to be denied, but, by a proviso, excepts replies to counterclaims) for the words "Provided that" there shall be substituted the words "Provided, except as respects Admiralty actions, that".

3. After Rule 43 of Order XXXVI (which provides that trials with assessors shall take place in such manner and on such terms as the Court or a Judge may direct) there shall be inserted the following Rule—

"43A.—(1) In Admiralty actions arising out of collisions where all the vessels involved are fishing vessels actually engaged in fishing, the assessors, if any, shall, unless the Court or a Judge for special reasons otherwise directs, be persons from the list of assessors kept for the purposes of inquiries and investigations under Part VI of the Merchant Shipping Act, 1894, who are classified in that list as having special knowledge and experience of fishing vessels, instead of Elder Brethren of Trinity House.

(2) In Admiralty actions arising out of collisions where one at least of the vessels involved is a fishing vessel actually engaged in fishing but paragraph (1) of this Rule does not apply—

(*a*) if there are two assessors, then, unless the Court or a Judge for special reasons otherwise directs, one of the assessors shall, and the other shall not, be such a person as is provided for by the said paragraph (1); and

(*b*) if there is one assessor, he shall or shall not be such a person as is provided for by the said paragraph (1) according as the Court or a Judge think fit in the circumstances of the particular case."

4. For Rule 5 of Order XXXVII there shall be substituted the following Rule—

"5.—(1) The Court or a Judge may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the Court or a Judge or any officer of the Court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give on deposition any evidence therein.

(2) Any order under paragraph (1) of this Rule may be made on such terms (including, in particular, terms as to the giving of discovery before the examination takes place) as the Court or Judge may think fit."

5. After Rule 25 of Order XXXVII there shall be inserted the following Rule—

" 25A.—(1) The following provisions of this Rule shall have effect as respects causes and matters in Admiralty.

(2) The power conferred by Rule 5 of this Order shall extend to the making of an order authorising 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.

(3) The power conferred by Rule 5 of this Order 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.

(4) Where an order is made under paragraph (3) of this Rule, 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 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 shall file it in the Registry ;

(*d*) unless the parties otherwise agree or the Court or a Judge otherwise order, 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 there shall be filed with the transcript certificates by each of them stating that he does not dispute that the transcript accurately represents the evidence or, as the case may be, specifying the corrections which in his opinion should be made therein.

(5) In actions for damage by collision between vessels in which Preliminary Acts fall to be filed under Rule 28 of Order XIX, an order shall not be made under Rule 5 of this order authorising any examination of a witness before the Preliminary Acts have been filed, unless for special reasons the Court or Judge thinks fit so to direct."

6. In Order LIV, at the end of Rule 21 (which relates to the right of appeal from a Master to a Judge at Chambers) there shall be added the following paragraph—

" This Rule applies in relation to Registrars in the Probate, Divorce and Admiralty Division as it applies in relation to Masters, except that a reference to Rule 10 of Order LVI shall be substituted for the reference to Rule 22A ".

7. After Order LVF, there shall be inserted the following Orders:—

" ORDER LVG

Apportionment of Salvage

1. Any proceedings for the apportionment of salvage the aggregate amount of which has already been finally ascertained shall, instead of being by action, be by originating motion in Admiralty.

2. Notice of any such motion, together with the affidavits in support thereof, shall be filed in the Admiralty Registry seven days at least before

the hearing of the motion, unless leave is given to the contrary, and a copy of the notice of motion and of the affidavits shall be served on the adverse solicitors before the originals are filed.

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.

ORDER LVH

Actions by shipowners and others for limitation of liability

1. This Order shall apply to proceedings for relief under section 504 of the Merchant Shipping Act, 1894.

2. The proceedings shall take the form of an Admiralty action.

3. In the 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.

4.—(1) The plaintiff shall make defendants to the action, naming them in the writ by their names, such one or more of the persons with claims against him in respect of the casualty to which the action relates as he thinks fit.

(2) If the plaintiff thinks fit, all other persons with claims against the plaintiff in respect of the casualty to which the action relates, described generally and not named by their names, may be included as defendants in the writ.

(3) In this Order " name " 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 this Order to have been named in the writ by his name.

5. The writ shall be served on one or more of the defendants who are named by their names therein and need not be served upon any other defendant.

6. Within seven days from the entry of appearance by one of the defendants named by their names in the writ or, if none of them enter an appearance, within seven days from the expiry of the time limited for the entry of appearance by them, the plaintiff, without delivering a statement of claim, shall 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.

7. The summons shall 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 have entered an appearance, service of the writ on at least one of the defendants so named.

8. The summons and the affidavit or affidavits in support thereof shall, at least seven clear days before the hearing of the summons, be served on any defendant who has entered an appearance.

9.—(1) 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.

(2) If on the 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, directions as to the pleadings, if any, which are to be delivered therein, as to discovery of documents and as to the date of trial.

10.—(1) Where the only defendants in the action are those named in the writ by their names and all the persons so named have either been served with the writ or entered an appearance, 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) of this Rule, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)—

(*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 enter an appearance to the action (if they have not already done so) and file their claims, and, in cases to which Rule 11 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under sub-paragraph (*a*) of paragraph (2) of this Rule shall, unless for special reasons the Registrar or Judge thinks fit otherwise to provide, be a single advertisement in each of three newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiffs thereto (whether as owners 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 entering of appearances, the filing of claims and the taking out of summonses to set the decree aside.

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

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) may make any such provision as is authorised by section 504 of the Merchant Shipping Act, 1894.

11.—(1) Where a decree limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action) fixes a time in accordance

with paragraph (2) of Rule 10, 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 entered an appearance,

may, within that time, after entering an appearance, take out a summons returnable in chambers before the Registrar asking that the decree be set aside.

(2) The summons shall 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 said summons and the affidavit or affidavits in support thereof shall, at least seven clear days before the hearing of the summons, be served on the plaintiff and any defendant who has entered an appearance.

(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, directions as to the pleadings, if any, which are to be delivered therein, as to discovery of documents and as to the date of trial.

12. The forms set out in Appendix Q to these Rules shall be used for the purposes of the proceedings to which this Order applies, with such modifications as circumstances may require.

13. Nothing in this Order shall be construed as limiting the right of any person to rely on the provisions of section 503 of the Merchant Shipping Act, 1894, by way of defence."

8. In Order LVI (which relates to Admiralty references), in Rule 6, for the words " the Registrar's report " there shall be substituted the words " the Registrar's decision ", and for Rules 8 to 13 there shall be substituted the following Rules—

" 8. When the hearing of the reference has been concluded, the Registrar shall reduce to writing his decision on the questions arising in the reference, shall cause it to be filed and shall send to the parties to the reference notice that he has done so.

9. The said decision shall include such order as to the costs of the reference (so far as not already disposed of by the order or agreement under which the reference is held or otherwise) as the Registrar thinks fit, and shall also include such statement, if any, of the grounds of the decision as the Registrar thinks fit.

10. Any party may, by motion in objection, apply to a Judge in court to set aside or vary the said decision :

Provided that notice of the motion, specifying the points of objection to the decision, must be filed within fourteen days of the date on which notice of the decision has been sent by the Registrar under Rule 8.

11. Subject to the provisions of Rules 10 and 12 and to any order made on appeal from an order of the Judge under Rule 10, the said decision shall be final, and shall not require the confirmation of the Court and shall have effect as from the filing thereof.

12. Unless the Registrar or the Judge otherwise directs, the said decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto, or while such a motion is pending or remains undisposed of.

13. A direction shall not be given under Rule 12 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 8 ".

9. In the following provisions, that is to say—

(*a*) Rule 10 of Order XXXVIII (which relates to the filing of affidavits);

(*b*) Rule 23 of Order LII (which provides, as respects Admiralty actions, for agreements between the solicitors to be made orders of the court);

(*c*) Rule 8 of Order LXVI (which relates to the Admiralty Minute Book),

for the words " Admiralty actions " there shall be substituted the words " causes or matters in Admiralty."

10. After Appendix P there shall be added the following Appendix—

" APPENDIX Q

Additional forms for use in Limitation Actions under the Merchant Shipping Acts

1. *Summons for decree of limitation of liability*

[*Heading as in the writ*]

Let all the parties concerned attend the Admiralty Registrar in Chambers, Royal Courts of Justice, Strand, London, W.C.2 on day, the day of , 19 , at o'clock in the noon on the hearing of an application by the plaintiff for a decree under section 504 of the Merchant Shipping Act, 1894, limiting their liability for damage in respect of [*identify the casualty*] or, in default of such a decree, for directions as to the further proceedings in this action.

Dated the day of 19 .

This summons was taken out by of solicitor for the plaintiffs.

To

2. *Decree limiting liability* (*whether made on a summons or at the trial*)

[*Heading as in writ*]

Upon hearing the solicitors [counsel] for the plaintiff and the defendant[s and] and upon reading the affidavit of filed for the plaintiff it is ordered as follows—

1. The liability of the plaintiff to damages in respect of the casualty which is the subject of this action, that is to say, [identify the casualty] shall not exceed either of the following limits—

(*a*) as respects claims in respect of loss of, or damage to, vessels, goods, merchandise or other things, £ with interest thereon at

per cent. from 19 , to the date of payment into court or payment;

(*b*) as respects all claims, whether in respect of such loss or damage as aforesaid or in respect of loss of life or personal injury, £ with interest thereon at per cent. from 19 , to the date of payment into court or payment.

2. Persons with claims against the plaintiff in respect of the said casualty shall have until 19 , for entering their appearances (if they have not already done so), filing their claims in the Admiralty Registry and, if they are entitled and desire to do so, taking out summonses to set this decree aside.

3. All the claims filed shall stand referred to the Registrar, assisted if necessary by merchants.

4. The plaintiff shall cause an advertisement to appear, not later than 19 , in "The Times", "Lloyd's List" and giving notice to all persons with claims against the plaintiff (naming him and also identifying him as [the owner of the *(or as the case may be)*]) in respect of the said casualty (identifying it) that this decree has been made in this action (identifying it) and specifying the amounts fixed by this decree as the limits of the plaintiff's liability and the time allowed by this decree for the entry of appearances, the filing of claims and the taking out of summonses to set this decree aside.

5. Upon the plaintiff paying into court £ , with interest thereon at per cent. from 19 , until the date of the payment into court [and giving bail in £ to answer any claims in respect of loss of life or personal injury] all proceedings in action 19 , No. , Fo. , shall be stayed except for the purposes of taxation and payment of the costs of that action.

6. The plaintiff shall pay to the defendants their costs of this action to be taxed.

3. *Form of Advertisement*

Notice is hereby given to all persons with claims against the [owner] of [the s.s.] in respect of [the collision between the s.s. and the s.s. which occurred on] that, in the Admiralty action in the High Court of Justice, 19 , No. , Fo. , between the said , plaintiff and [*insert the name of the first of the named defendants*] and others, defendants, a decree was made on the , 19 ,—

(*a*) limiting the liability of the plaintiff to damages in respect of the said [collision]—

(i) as respects claims in respect of loss of, or damage to, vessels, goods, merchandise or other things to £ , with interest;

(ii) as respects all claims, whether for such loss or damage as aforesaid or for loss of life or personal injury, to £ and interest;

(*b*) allowing until , 19 , for the entry of appearances, the filing of claims and the taking out of summonses to set the decree aside.

X & Co.

Solicitors for the said

4. *Summons to set aside decree*

[*Heading as in the writ*]

Let all parties concerned attend the Admiralty Registrar in Chambers, Central Office, Royal Courts of Justice, Strand, London, W.C.2 on day, the day of 19 , at o'clock in the noon on the hearing of an application by , that the decree of limitation of liability in this action made on the day of 19 , shall be set aside and that directions should be given as to the further proceedings in this action.

Dated the day of , 19 .

To:

This summons was taken out by of solicitor(s) for "

11. These Rules may be cited as the Rules of the Supreme Court (Admiralty) 1953, and shall come into operation on the first day of August, 1953, and shall apply, with any necessary modifications, to proceedings commenced before that date as well as to proceedings commenced on or after that date:

Provided that—

(*a*) Rules 1 and 7 of these Rules shall not apply to proceedings commenced before the said date;

(*b*) Rule 8 of these Rules shall not apply to any reference if notice that the Registrar's report is ready has been sent from the Registry to the claimant or plaintiff before the said date.

Dated the twenty-second day of June, 1953.

Simonds, C.

Goddard, C.J.

Raymond Evershed, M.R.

Merriman, P.

H. B. Vaisey, J.

J. N. Gray.

R. G. Micklethwait.

L. S. Holmes.

W. Charles Norton.