

CHAPTER 46

ADMIRALTY ACTIONS

Interpretation of this Chapter

46.1. In this Chapter-

"Admiralty action" means an action having a conclusion appropriate for the enforcement of a claim to which section 47(2) of the Administration of Justice Act 1956 applies or in respect of a contract of *respondentia*

"ship" has the meaning assigned in section 48(f) of that Act.

Forms of action

46.2.-(1) An Admiralty action against the owners of, or parties interested in, a ship or cargo may be brought-

- (a) *in rem*, where the conclusion of the summons is directed to recovery in respect of a maritime lien against the ship or cargo or the proceeds of it as sold under order of the court or where arrestment *in rem* may be made under section 47(3) of the Administration of Justice Act 1956;
- (b) *in personam*, where the conclusion of the summons is directed to a decree in common form against the defender; or
- (c) both *in rem* and *in personam*, where sub-paragraphs (a) and (b) apply.

(2) When bringing an Admiralty action, the pursuer shall insert the words "Admiralty Action *in rem*", "Admiralty Action *in personam*" or "Admiralty Action *in rem* and *in personam*", as the case may be, immediately below the words "IN THE COURT OF SESSION" where they occur above the instance, and on the backing, of the summons and any copy of it.

Actions *in rem*

46.3.-(1) In an Admiralty action *in rem*-

- (a) where the owners of, or parties interested in, the ship or cargo against which the action is directed are known to the pursuer, they shall be called as defenders by name;
- (b) where such owners or parties are unknown to the pursuer-
 - (i) he may call them as defenders as "the owners of or parties interested in the ship (name and identify by its port of registry) [or cargo]"; and
 - (ii) the master, if known, shall also be called as a defender representing the owners.

(2) In an Admiralty action *in rem*, the ship or cargo shall be arrested *in rem* and a warrant for such arrestment shall be inserted in the summons in the form in Form 13.2-A.

Actions *in personam*

46.4.-(1) In an Admiralty action *in personam* directed against the owners of a ship or cargo, such owners shall, if known to the pursuer, be called as defenders by name.

(2) In such an action, where-

- (a) the vessel is not a British ship, and
- (b) the names of the owners are not known to the pursuer, the master of the ship may be called as the defender representing the owners.

(3) In an action to which paragraph (2) applies, any warrant to arrest to found jurisdiction shall be executed against the master of the ship in his representative capacity.

(4) In an action to which paragraph (2) applies, any decree shall be pronounced against the master in his representative capacity.

(5) A decree in an Admiralty action in personam may be pronounced against an owner of, or a party interested in, the ship or cargo only where that owner or party interested, as the case may be, has been called or added as a defender.

Sale of ship or cargo

46.5.-(1) This rule shall not apply to the sale of a cargo arrested on the dependence of an Admiralty action *in personam*

(2) Where, in an Admiralty action or an action of declarator and sale of a ship-

- (a) the court makes a finding that the pursuer has a claim which falls to be satisfied out of an arrested ship or cargo, or
- (b) a decree for a sum of money has been granted in an action in which a ship has been arrested on the dependence, the pursuer may apply by motion for an order for the sale of that ship or a share in it, or the cargo, as the case may be, by public auction or private bargain.

(3) Before making such an order, the court shall remit to a reporter for the purpose of obtaining-

- (a) an inventory of,
- (b) a valuation and recommended upset price for, and
- (c) any recommendation as to the appropriate advertisement for the sale of, the ship, share or cargo.

(4) Where a remit is made under paragraph (3), the pursuer shall instruct the reporter within 14 days after the date of the interlocutor making the remit and be responsible, in the first instance, for payment of his fee.

(5) On completion of a report following a remit under paragraph (3), the reporter shall send the report and a copy for each party to the Deputy Principal Clerk.

(6) On receipt of such a report, the Deputy Principal Clerk shall-

- (a) give written intimation to each party of receipt of the report;
- (b) request the pursuer to show to him a discharge in respect of the fee for which he is responsible under paragraph (4); and
- (c) after sight of such a discharge-
 - (i) lodge the report in process;
 - (ii) give written intimation to each party that this has been done and that he may uplift a copy of the report from process; and
 - (iii) cause the action to be put out on the By Order Roll before the Lord Ordinary.

(7) Where the court orders the sale of a ship, share or cargo, the conduct of the sale, including any advertisement of it, shall be under the direction of the Deputy Principal Clerk.

(8) Where such a sale is the sale of a ship or a share in it, the interlocutor ordering the sale shall include a declaration that the right to transfer the ship or share to the purchaser is vested in the Deputy Principal Clerk.

(9) Where, in such a sale, no offer to purchase the ship, share or cargo, as the case may be, has reached the upset price, the pursuer may apply by motion for authority to expose such ship, share or cargo for sale at a reduced upset price.

(10) The proceeds of such a sale shall be consigned into court, under deduction of all dues to the date the court adjudges the ship, share or cargo to belong to the purchaser under paragraph (11)(a), payable to Her Majesty's Customs and Excise or to the port or harbour authority within the jurisdiction of which the ship or cargo lies and in respect of which such port or harbour authority has statutory power to detain the ship or cargo.

(11) On consignment being made under paragraph (10), the court shall-

- (a) adjudge the ship, share or cargo, as the case may be, declaring the same to belong to the purchaser, freed and disburdened of all bonds, mortgages, liens, rights of retention and other incumbrances affecting it and ordering such ship, share or cargo to be delivered to the purchaser on production of a certified copy of the interlocutor pronounced under this sub-paragraph; and
- (b) order such intimation and advertisement, if any, for claims on the consigned fund as it thinks fit.

(12) The court shall, after such hearing or inquiry as it thinks fit-

- (a) determine all questions of expenses;
- (b) rank and prefer any claimants in order of preference; and
- (c) make such other order, if any, as it thinks fit.

Ship collisions and preliminary acts

46.6.-(1) Subject to rule 46.7 (applications to dispense with preliminary acts), this rule applies to an Admiralty action of damages arising out of a collision between ships at sea.

(2) An action to which this rule applies may be brought *in rem*, *in personam* or *in rem* and *in personam*

(3) A summons in such an action shall not contain a condescence or pleas-in-law.

(4) Where such an action is brought in personam, the conclusion of the summons shall contain sufficient detail to enable the defender to identify the date and place of, and the ships involved in, the collision.

(5) Within 7 days after the summons has called, the pursuer shall lodge in process a sealed envelope containing-

- (a) a preliminary act in Form 46.6; and
- (b) a brief condescence and appropriate pleas-in-law.

(6) Within 28 days after the preliminary act for the pursuer has been lodged under paragraph (5), the defender shall lodge in process a sealed envelope containing a preliminary act in Form 46.6.

(7) A party who lodges a preliminary act under paragraph (5) or (6) shall not send a copy of it to any other party.

(8) On the lodging of a preliminary act by the defender under paragraph (6), a clerk of session in the General Department shall-

- (a) open both sealed envelopes;
- (b) mark the contents of those envelopes with appropriate numbers of process; and
- (c) give written intimation to each party that sub-paragraphs (a) and (b) have been complied with.

(9) On receipt of the written intimation under paragraph (8)(c), the pursuer and defender shall exchange copies of the contents of their respective envelopes.

(10) Within 7 days after the sealed envelopes have been opened up under paragraph (8), the defender may lodge defences to the action in process and any counterclaim on which he proposes to found.

(11) Within 7 days after a counterclaim has been lodged under paragraph (10), the pursuer may lodge answers to it in process.

(12) Within 14 days after defences have been lodged under paragraph (10) or answers have been lodged under paragraph (11), whichever is the earlier, the pursuer shall make up an open record with a copy of each of the preliminary acts appended to it; and Chapter 22 (making up and closing records) shall, subject to paragraph (13) of this rule, apply to the action as it applies to an ordinary action.

(13) No amendment, adjustment or alteration may be made to a preliminary act except by order of the court.

Applications to dispense with preliminary acts

46.7.-(1) Within 7 days after the date on which the summons has called, any party may apply for an order to dispense with preliminary acts in an action to which rule 46.6 applies.

(2) An application under paragraph (1) shall be made by minute craving the court to dispense with preliminary acts and setting out the grounds on which the application is made.

(3) Before lodging such a minute in process, the party making the application shall intimate a copy of the minute, and the date on which it will be lodged, to every other party.

(4) Any other party may lodge in process answers to such a minute within 14 days after such a minute has been lodged.

(5) After the expiry of the period mentioned in paragraph (4), the court may, on the motion of any party, after such further procedure, if any, as it thinks fit, dispense with preliminary acts.

(6) Where the court dispenses with preliminary acts, the pursuer shall lodge a condescence with appropriate pleas-in-law within such period as the court thinks fit; and the action shall thereafter proceed in the same way as an ordinary action.

(7) Where the court refuses to dispense with preliminary acts, it shall ordain a party or parties, as the case may be, to lodge preliminary acts under rule 46.6 within such period as it thinks fit.

(8) An interlocutor dispensing or refusing to dispense with preliminary acts shall be final and not subject to review.

Ship collision and salvage actions

46.8.-(1) Without prejudice to rule 36.3(1) (lodging productions for proof), in an Admiralty action arising out of a collision between ships at sea or salvage, the parties shall-

- (a) within 4 days after the interlocutor allowing proof,
- (b) within 4 days before the taking of evidence on commission, or
- (c) on or before such other date as the court, on special cause shown, shall determine, lodge in process the documents, if any, mentioned in paragraph (2).

(2) The documents to be lodged under paragraph (1) are-

- (a) the log books, including scrap log books, of the ships concerned;
- (b) all *de recenti* written reports in connection with the collision or salvage, as the case may be, by the masters or mates of the vessels concerned to their respective owners; and
- (c) reports of any surveys of the ship in respect of which damage or salvage is claimed.

International Oil Pollution Compensation Fund

46.9.-(1) In this rule-

"the Act of 1995" means the Merchant Shipping Act 1995(a);

"the Fund" means the International Fund established by the Fund Convention referred to in section 172(1)(b) of the Act of 1995.

(2) In an action in respect of liability under section 153 of the Act of 1995 intimation of the action under section 177(2) of that Act to the Fund shall be given by the pursuer in accordance with paragraphs (3) and (4) of this rule.

(3) Where intimation is to be made under paragraph (1), the pursuer shall insert a warrant for intimation in the summons in the following terms:- "Warrant to intimate to the International Oil Pollution Compensation Fund (*address*) as a person having an interest in this action."

(4) Intimation under paragraph (2) shall be given by a notice of intimation in Form 46.9 attached to a copy of the summons.

(5) Where the Fund is not a party to an action to which this rule applies, a defender may apply by motion for warrant to serve a third party notice on the Fund.

(6) Where, in an action under section 175 of the Act of 1995 (compensation from Fund for persons suffering pollution damage), the court grants decree against the Fund, the clerk of court shall, within 14 days after the date of the decree, send a copy of it by first class post to the fund.

(7) Any notice under section 176(3)(b) of the Act of 1995 (notification of whether amount of claim to be reduced) by the Fund to the court shall be sent to the Deputy Principal Clerk.

(8) An application by virtue of section 176(3) of the Act of 1995 for leave to enforce a decree against the Fund shall be made by motion.

(a) 1995 c.21.