

COURTS—  
ADMIRALTY RULES. <sup>(1)</sup>

**Statutory Rules.**  
**No. 1 of 1926.**

I. The following Rules shall be the Rules of Court for Regulating the procedure and practice of the Central Court<sup>(2)</sup> in the exercise of the jurisdiction conferred by the *Colonial Courts of Admiralty Act, 1890*, and may be cited as the “*Admiralty Rules.*”

PRACTICE IN ADMIRALTY ACTIONS.

Rules to be applied where not otherwise provided.

1. Except as by these Rules otherwise provided the Rules of the Court relating to the procedure of the Court in its original jurisdiction shall so far as they are respectively applicable apply to Admiralty actions.

*General.*

Admiralty action.

2. The term “Admiralty action” means any action, cause, suit or other proceeding instituted in the Court in the exercise of the jurisdiction conferred on it by the *Colonial Courts of Admiralty Act, 1890*.

To be commenced by writ of summons.

3. Admiralty actions shall be commenced by writ of summons. Every such action shall be entitled “In the Central Court of the Territory of Papua in Admiralty.”

Admiralty actions for wages.

4. In Admiralty actions for seamen’s or master’s wages, two or more persons claiming relief against the same person or property may be joined as plaintiffs.

Crown Admiralty actions.

5. Actions for condemnation of any ship, boat, cargo, proceeds, slaves or effects, or for recovery of any pecuniary forfeiture or penalty, shall be instituted in the name of the King.

(1) Particulars of these Rules are as follows:—

Act under which made.	Date on which made by Judges of the Central Court.	Date on which approved by Lieut.-Gov. in Council.	Date on which approved by His Majesty in Council.	Date on which approval of His Majesty in Council notified in Papua <i>Govt. Gaz.</i>	Date on which came into operation.
<i>Colonial Courts of Admiralty Act, 1890</i> (United Kingdom) (53 & 54 Vic. c. 27)	23.11.1925	8.1.1926	1.6.1926	3.11.1926	1.12.1926 (Clause II, <i>Admiralty Rules</i> )

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

*Admiralty Rules.*

6. In an Admiralty action *in personam* the defendants may be described as the owners of the ship instead of by their personal names. Title of actions  
*in personam.*

7. In Admiralty actions *in rem* the description of the *res* shall be in such one of the forms following, as may be applicable, with such variations as circumstances may require, that is to say:— Forms of  
description of  
*res.*

- (a) The Ship ;
- or (b) The Ship and freight;
- or (c) The Ship her cargo and freight;
- or (if the action is against cargo only),
- (d) The cargo ex the Ship (state the name of ship on board of which the cargo now is or lately was laden);
- or (if the action is against the proceeds realized by the sale of the ship or cargo),
- (e) The proceeds of the ship;
- or (f) The proceeds of the cargo ex the Ship  
(or as the case may be).

8. In Admiralty actions for seamen's or master's wages, or for master's wages and disbursements or for necessaries, or for bottomry, or any other Admiralty action in which the plaintiff desires an account, the plaintiff's claim endorsed on the writ may include a claim to have an account taken. Account in  
certain  
Admiralty  
actions.

9. A seaman suing in an Admiralty action for his wages or for the loss of his goods or clothes in a collision shall not be required to give security for costs. Seaman not to  
give security  
in action for  
wages, etc.

*Arrest of Property.*

10. In Admiralty actions *in rem* a warrant for the arrest of property, which shall be in the form in the Schedule, with such variations as circumstances may require, may be issued by the Registrar at the instance either of the plaintiff or the defendant at any time after the writ of summons has been issued. But, except by leave of the Court or a Judge, a warrant of arrest shall not be issued until an affidavit by the party or his agent, setting forth the particulars hereby prescribed, has been filed, and the following provisions have been complied with, that is to say:— Arrest in  
Admiralty  
actions by  
warrant after  
affidavit.

- (a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued and the nature of the property to be arrested and that the claim or counter claim has not been satisfied, and that the aid of the Court is required to enforce it;
- (b) In an action for wages or of possession the affidavit shall state the national character of the ship, and if the ship is foreign, that notice of the action has been served upon a consular officer of the State to which the ship belongs, if there is one resident in the place of the Registry in which the writ of summons is issued;

COURTS—

- (c) In an action for necessities the affidavit shall state the national character of the ship, the port to which the ship belongs, and that, to the best of the deponent's belief, no owner or part owner of the ship is domiciled in the Territory of Papua at the time of the commencement of the action;
- (d) In an action between co-owners relating to the ownership, possession, employment or earnings of a ship registered in the Territory of Papua the affidavit shall state the port at which the ship is registered and the number of shares in the ship owned by the party proceeding;
- (e) In an action of bottomry, the bottomry bond and, if it is in a foreign language, also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit.

Arrest without affidavit by leave.

11. The Court or a Judge may in any case, if they or he think fit, allow the warrant to issue, although the affidavit in the last preceding Rule mentioned may not contain all the prescribed particulars. The Court or a Judge may also, in an action for wages against a foreign ship, dispense with the service of the notice, and, in an action of bottomry, with the production of the bond.

*Service and Arrest.*

Service when dispensed with in Admiralty actions *in rem*.

12. In Admiralty actions *in rem* service of the writ of summons or warrant of arrest shall not be required when the defendant or his solicitor agrees to file a notice of defence and put in bail, or pay money into Court in lieu of bail.

Service of warrant of arrest in Admiralty actions.

13. In Admiralty actions *in rem* the writ of summons and warrant of arrest shall be served by the Marshal or his officer, and the party issuing the warrant shall, within six days from the service thereof, file the same in the Registry with a certificate of service endorsed thereon.

Mode of service of writ of summons *in rem* and warrants.

14. In Admiralty actions *in rem* the service of a writ of summons *in rem*, or warrant against a ship, freight, cargo or other property, is to be effected as follows:—

- (a) Upon a ship, or upon freight, cargo or other property if the cargo or other property is on board the ship, by nailing or affixing the original writ or warrant for a short time on the mainmast or on the single mast of the

*Admiralty Rules.*

ship, or on some other conspicuous part of the vessel, and on taking off the process leaving a true copy of it nailed or affixed in its place;

- (b) Upon freight, cargo or other property if the cargo or other property is not on board a vessel, by placing the original writ of summons or warrant for a short time on the cargo or property, and on taking off the process leaving a true copy of it thereon;
- (c) Upon freight in the hands of any person, by showing the original writ or warrant to him, and leaving with him a true copy of it;
- (d) Upon proceeds in Court by showing the original writ to the Registrar, and leaving with him a copy of it, which service shall be a sufficient arrest of the proceeds.

15. If access cannot be obtained to the property on which the writ or warrant is to be served the service may be made by showing it to the person appearing to be in charge of the property and leaving with him a copy of it and also publishing a copy in some newspaper ordinarily circulating in the locality where the property is.

When no access to property.

*Appearance.*

16. A solicitor who fails to file a notice of defence in pursuance of his written undertaking so to do, or who fails to put in security in an Admiralty action *in rem*, in pursuance of a like undertaking, shall be liable to attachment.

Solicitor not entering appearance.

*Discontinuance.*

17. The discontinuance of an Admiralty action by the plaintiff shall not prejudice any action consolidated with it.

Effect of discontinuance on consolidated actions.

*Caveats and Releases in Admiralty Actions.*

18. A party desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Registry.

Caveat against warrant to arrest.

19. For the purpose in the last preceding Rule mentioned, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking to file a notice of defence in any action that may be commenced against the property, and to give security in such action in a sum not exceeding an amount to be stated in the notice, or to pay such sum into Court; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry called the Caveat Warrant Book.

Caveat Warrant Book.

COURTS—

Writ to be served on party entering caveat.

20. A plaintiff commencing an action against any property in respect of which a caveat has been entered in the Caveat Warrant Book, shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor.

Security to be given within three days.

21. The party on whose behalf the caveat has been entered shall, if the sum in respect of which the action is commenced does not exceed the amount for which he has undertaken, give security in such sum within three days from the service of the writ.

If security not given, action may proceed as on default.

22. After the expiration of twelve days from the filing of the notice in Rule 19 hereof mentioned, if the party on whose behalf the caveat has been entered has not, within three days from the service of the writ, given security as required by the last preceding Rule, the plaintiff may proceed with the action as upon default of filing notice of defence.

Judgment may be enforced by attachment and warrant.

23. If, when the action comes before the Court, the Court is satisfied that the claim is well founded, it may pronounce for the amount which appears to be due, and may enforce payment thereof by attachment against the party on whose behalf the caveat has been entered, as well as by the arrest of the property, if it then is, or thereafter comes, within the jurisdiction of the Court.

Release.

24. Property arrested by warrant in Admiralty actions shall not be released except under the authority of an instrument issued from the Registry, to be called a release.

Caveat against release.

25. A party desiring to prevent the release of any property under arrest, shall file in the Registry a notice, and thereupon a caveat against the release of the property shall be entered in a book, to be kept in the Registry, called the Caveat Release Book.

Payment into Court.

26. Except as hereinafter provided, a party may obtain the release of any property by paying into Court the sum in respect of which the action has been commenced, or giving security for the like sum.

Release of cargo arrested for freight only.

27. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into Court, or upon an order of the Court or a Judge upon proof that the freight has already been paid.

In salvage actions.

28. In an action for salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Judge otherwise orders.

On giving security.

29. A party who has given security in the sum in respect of which the action has been commenced, or paid such sum into Court, and if

*Admiralty Rules.*

the action is one of salvage, has also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless a caveat against the release is outstanding in the Caveat Release Book.

30. A release may also be issued by the Registrar, unless there is a caveat outstanding in the Caveat Release Book, on a consent in writing being filed, signed by the party at whose instance the property has been arrested, or on discontinuance or dismissal of the action in which the property has been arrested.

On consent or discontinuance or dismissal of action.

31. The release, when obtained, shall be left with the Marshal by the party taking it out, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property while under arrest; and the property shall thereupon be released.

To be left with Marshal.

32. The Registrar may refuse to issue a release without the order of a Judge.

Registrar may require Judge's order.

33. A party delaying the release of any property by the entry of a caveat shall be liable to be condemned in the costs and damages occasioned thereby, unless he shows to the satisfaction of the Court or a Judge good and sufficient reason for having done so.

Liability for delaying release.

34. Nothing in these Rules shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the Caveat Warrant Book; but the party at whose instance any property in respect of which the caveat was entered has been arrested shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shows to the satisfaction of the Court or Judge good and sufficient reason for having so done.

Arrest notwithstanding caveat.

35. A book shall be kept in the Registry, called the Caveat Payment Book, in which caveats shall be entered against the payment of money out of Court in Admiralty actions.

Caveat Payment Book.

36. A person desiring to prevent the payment of money out of Court in an Admiralty action must file a notice objecting to the payment, and thereupon a caveat shall be entered in the Caveat Payment Book.

Caveat against payment out of Court.

37. The party at whose instance a caveat payment is entered, shall be liable to be condemned in the costs and damages occasioned thereby, unless he shows to the satisfaction of the Court or Judge good and sufficient reason for entering the caveat.

Liability for delaying payment.

38. If the person entering a caveat is not a party to the action, the notice shall state his name and address, and an address within

Address of caveator.

COURTS—

one mile of the Registry, at which it shall be sufficient to leave all documents required to be served upon him.

Withdrawal of  
caveats.

39. A caveat may at any time be withdrawn by the person at whose instance it has been filed, on his filing a notice withdrawing it.

Caveats may be  
overruled.

40. The Court or a Judge may set aside any caveat.

*Particulars.*

41. In actions for damage by collision between vessels, unless the Court or a Judge otherwise orders, the plaintiff shall within seven days after the commencement of the action, and the defendant shall within seven days after filing notice of defence file in the Registry a document to be called a preliminary act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:—

- (a) The names of the vessels which came into collision, and the names of their masters;
- (b) The time of the collision;
- (c) The place of the collision;
- (d) The direction and force of the wind;
- (e) The state of the weather;
- (f) The state and force of the tide;
- (g) The course and speed of the vessel when the other was first seen;
- (h) The lights, if any, carried by her;
- (i) The distance and bearing of the other vessel when first seen;
- (k) The lights, if any, of the other vessel which were first seen;
- (l) Whether any lights of the other vessel, other than those first seen, came into view before the collision;
- (m) What measures were taken, and when, to avoid the collision;
- (n) The parts of each vessel which first came into contact;
- (o) What sound signals, if any, were given, and when;
- (p) What sound signals, if any, were heard from the other vessel, and when.

The Court or a Judge may, on the application of either party, order the preliminary acts to be opened at any time and the evidence to be taken thereon, but in that case, if either party intends to rely on the defence of compulsory pilotage, he may do so, upon giving notice thereof in writing to the other party, within two days from the opening of the preliminary acts or within such further time as the Court or Judge allows.

*Admiralty Rules.*

42. The preliminary acts may be opened after the expiration of twelve days from the date of filing the notice of defence.

*Trial.*

43. Admiralty actions shall be tried by a Judge without a jury. Mode of trial.

44. In an Admiralty action *in rem*, if the writ of summons has been endorsed with a claim to have an account taken, or if the liability has been admitted or determined and the question is simply as to the amount due, the Judge may, on the application of either party, fix a time within which the accounts and vouchers, and the proofs in support thereof, shall be filed, and at the expiration of that time either party may apply to the Court or a Judge to fix the date for trial. In case of accounts.

45. Upon the trial of an Admiralty action *in rem* upon default of filing a notice of defence the claim must be proved to the satisfaction of the Court. Proof on trial in default of appearance in actions *in rem*.

46. In default actions *in rem*, and in references in Admiralty actions evidence may be given by affidavit. Affidavit evidence in Admiralty references.

47. Money paid into Court in an Admiralty action shall not be paid out of Court except in pursuance of an order of the Court or a Judge. Payment out of Court to be on order only.

48. In an Admiralty action a party desiring to make a tender in satisfaction of the whole or any part of the adverse party's claim, shall pay into Court the amount tendered by him, and shall file a notice of the terms on which the tender is made. Tender to be accompanied by payment into Court.

49. Within eight days after the filing of the notice, the adverse party shall file a notice stating whether he accepts or rejects the tender, and if he does not do so, he shall be deemed to have rejected it. Acceptance or rejection of tender.

50. Pending the acceptance or rejection of a tender, the proceedings in the action shall be suspended. Suspension of proceedings.

*Motions.*

51. In Admiralty actions, a copy of every affidavit intended to be used on the motion shall be served with the notice of motion. Copies of affidavits to be served.

*References to the Registrar.*

52. The following thirteen Rules shall apply to references to the Registrar, whether the reference is to the Registrar alone, or to the Registrar assisted by a merchant or merchants. Application of Rules.

COURTS—

Reference to Registrar and merchants.

53. The Court or a Judge may refer the assessment of damages and the taking of any account to the Registrar, either alone or assisted by a merchant or merchants.

Filing of claim and affidavits.

54. Within twelve days from the day when the order for the reference is made, the claimant shall file his affidavits verifying his claim; and within twelve days from the day when the affidavits are filed, the adverse party shall file his counter affidavits.

Filing of further affidavits.

55. After the filing of the counter affidavits, six days shall be allowed to either party for filing further affidavits, and after that period no further affidavits shall be filed, unless by order of the Court or a Judge, or by permission of the Registrar.

Time for hearing.

56. Within three days from the expiration of the time allowed for filing the last affidavits, the claimant shall file in the Registry a notice, praying to have the reference set down for hearing, and if he does not do so, the adverse party may apply to the Court or a Judge to have the claim dismissed with costs.

Hearing.

57. At the time appointed for the reference, if either party is present, the reference may be proceeded with; but the Registrar may adjourn the reference from time to time as he may deem proper.

Witnesses.

58. Witnesses may be produced before the Registrar for examination and the evidence may, on the application of either party, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the Judge, who shall be sworn faithfully to report the evidence; and a transcript of the shorthand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.

Counsel.

59. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the Registrar is of opinion that the attendance of counsel was necessary.

Report by Registrar.

60. When a reference has been heard, the Registrar shall make a report in writing of the result in the form of a certificate, showing the amount, if any found due, and to whom, together with any further particulars that may be necessary.

Costs.

61. The Registrar may, if he thinks fit, report whether any and what part of the costs of the reference shall be allowed, and to whom.

*Admiralty Rules.*

62. When the report is ready, notice shall be sent to the parties, and either party may thereupon take up and file the report. Notice to parties.

63. Within two weeks from the date of the filing of the Registrar's report, either party may give notice of motion to vary the report, specifying the items objected to. Motion to vary.

64. At the hearing of the motion the Judge may make such order thereon as he thinks just, or may remit the matter to the Registrar for further inquiry or report. Order thereon.

65. If a notice of motion to vary the report is not filed within two weeks from the date of the filing of the Registrar's report, the report shall stand confirmed. Confirmation if no motion to vary.

*Appraisement or Sale.*

66. In Admiralty actions the Court or a Judge may, either before or after final judgment, order any property under the arrest of the Court to be appraised, or to be sold without appraisement, and either by public auction or by private contract. Appraisement.

67. If the property is deteriorating in value, the Court or a Judge may order it to be sold forthwith. Sale of perishable property.

68. If the property to be sold is of small value, the Court or a Judge may, if they or he think fit, order it to be sold without a commission of sale being issued. Without commission in certain cases.

69. The Court or a Judge may, either before or after final judgment, order any property under arrest of the Court to be removed, or any cargo under arrest on board ship to be discharged. Removal of property.

70. The appraisement, sale and removal of property, the discharge of cargo, and the demolition and sale of a vessel condemned under any "Slave Trade Act," shall, except as provided by Rule 76 of this Order, be effected under the authority of a commission which, unless the Court or a Judge otherwise orders, shall be addressed to the Marshal, and executed by the Marshal or his officers. Commissions.

71. The Commission shall, as soon as possible after its execution, be filed by the Marshal, with a return setting forth the manner in which it has been executed. Return of commissions.

72. The Marshal shall pay into Court the gross proceeds of sale of any property which has been sold by him, and shall at the same time bring into the Registry the account of sale, with vouchers in support thereof, for taxation by the Registrar, who shall proceed to tax the same. Gross proceeds of sale to be paid into Court.

COURTS—

Taxation of  
Marshal's  
expenses.

73. Any person interested in the proceeds may be heard before the Registrar on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

*Books, etc.*

Minute Book.

74. There shall be kept in the Registry a separate book, to be called the Admiralty Minute Book, in which the Registrar shall enter in order of date, under the head of each Admiralty action, and on a page numbered with the number of the action, a record of the commencement of the action, of all notices of defence filed, all documents issued or filed, all acts done, and all judgments and orders made in the action, whether made by the Court or a Judge or by consent of the parties.

Inspection of  
Minute and  
Caveat Books.

75. Any solicitor may, free of charge, inspect the Admiralty Minute Book, the Caveat Warrant Book, the Caveat Release Book or Caveat Payment Book.

Inspection of  
records.

76. The parties to an Admiralty action may, while the action is pending, and for one year after its termination, inspect, free of charge, all the records in the action.

By whom to be  
made.

77. Except as provided by the two last preceding Rules, no person shall be entitled to inspect the records in a pending Admiralty action without the permission of the Registrar.

After action  
terminated.

78. In an Admiralty action which is terminated any person may, on payment of the prescribed fee, inspect the records in the action.

*Service of Process by Marshal.*

To be left with  
Marshal with  
written  
instructions.

79. Every instrument to be served or executed by the Marshal shall be left with the Marshal by the party at whose instance it is issued, with written instructions for the service or execution thereof.

Verification of  
service or  
execution.

80. The service or execution of any instrument by the Marshal or his officer shall be sufficiently proved by his return, which shall state by whom the warrant has been served or executed, and the date and mode of service or execution, and shall be signed by the Marshal. When any instrument issued in an Admiralty action is served by any other person, the service shall be proved by affidavit.

*Admiralty Rules.*

*Time.*

81. In Admiralty actions a caveat, whether against the issue of a warrant, the release of property, or the payment of money out of Court, shall not remain in force for more than six months from the date thereof.

Duration of caveat in Admiralty actions.

82. In Admiralty actions every instrument requiring to be served shall be served within twelve months from the date on which it bears date; otherwise the service shall be of no effect.

Time for service in Admiralty actions.

*Costs.*

83. In an Admiralty action a party claiming an excessive amount, either by way of claim or of set-off or counter-claim, may be ordered to pay all costs and damages occasioned by the excess.

Costs of excessive claims in Admiralty action.

84. In an Admiralty action, if a tender is rejected, but is afterwards accepted, or is held by the Court to be sufficient, the party rejecting the tender shall, unless the Court otherwise orders, pay all the costs incurred after the tender is made.

Tender improperly rejected in Admiralty action.

---

THE SCHEDULE.

WARRANT OF ARREST IN ADMIRALTY ACTION IN REM.

George, etc.

To the Marshal of our Central Court of the Territory of Papua in Admiralty.  
We hereby command you to arrest the ship or vessel of the port of (and the cargo and freight, etc., as the case may be), and to keep the same under safe arrest until you shall receive further orders from us.

Witness, etc.

---

II. These Rules shall come into operation on the first day of the month succeeding the month in which the approval thereof by His Majesty in Council shall be notified in the *Territory of Papua Government Gazette*, and shall apply to all Admiralty actions commenced on or after that day. Admiralty actions commenced before that day may, by consent of parties and with permission of the Court or a Judge, be continued under these Rules on such terms as to the Court or a Judge may seem fit.