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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

# Resolutions of the Executive Committee

## SUPREME COURT ADMIRALTY RULES

I, HENRY C. BLACKISTON, Secretary of The Maritime Law Association of the United States, do hereby certify that the following is a true copy of resolutions unanimously adopted by the Executive Committee of The Maritime Law Association of the United States at a meeting thereof duly called and held on August 22, 1951, at which meeting a quorum was present and acting throughout and that said resolutions are now in full force and effect.

**RESOLVED that the Executive Committee of The Maritime Law Association of the United States recommends that the Supreme Court Admiralty Rules remain unchanged except for the following changes and additions:**

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EVIDENCE—HOW TAKEN

In all trials in admiralty the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules, or agreement of parties. When deemed necessary by the court or the officer taking the testimony or by the parties, a stenographer may be employed, who shall take down the testimony in shorthand or otherwise, and, if requested by the court or either party, transcribe the same. The fees may be fixed by the court and taxed as costs.

[NOTE: *The above is the first paragraph of present Rule 46 with the words "or these rules" added after the word "statute". This is necessary inasmuch as the suggested amendments provide for the taking of depositions.*]

## 46A

## DEPOSITIONS DE BENE ESSE; WHEN AND WHERE TAKEN; NOTICE

The testimony of any witness may be taken in any civil cause depending in admiralty in a district court by deposition de bene esse, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient or infirm. The deposition may be taken before any judge of any court of the United States, or any clerk of a district court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or proctor for either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his proctor proposing to take such deposition, to the opposite party or his proctor of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases in rem, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of a proctor of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold court in such district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

[NOTE: *The above is R. S. § 863, U. S. C. (1928 Edition) Title 28, § 639, with the insertion of the words "in admiralty" after the word "depending" in the first sentence, and the use of the word "proctor" instead of "attorney".*]

## 46B

## TESTIMONY OF A PARTY

The testimony of any party or of any officer of any corporate party to any such cause may also be taken de bene esse within continental United States in the same manner as a witness but without regard to the place where the witness lives, or to the other limitations in the first sentence of the foregoing Rule 46A. No subpoena shall be necessary and notice to his proctor shall be sufficient to compel his appearance, which, however, shall not be required except at the place where he lives or where he may be found, within the continental United States.

[NOTE: *This rule is new and complies with the general demand that a party should be examined as a means of discovery. The reason for the addition of the last sentence is that it was thought that without it a notice could be given to compel a litigant residing in California, for instance, or even in some foreign country, to come to New York to give his deposition, which would be unduly burdensome. It was thought unnecessary to require a service of a subpoena for the reason that his actual whereabouts might be difficult to ascertain and his own proctor should know it.*]

## 46C

## SAME; MODE OF TAKING

Every person deposing as provided in these rules shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent.

[NOTE: *The above is R. S. § 864, U. S. C. (1928 Edition) Title 28, § 640, with the words "section 639 of this title" necessarily changed to "these rules".*]

## 46D

## SAME; TRANSMISSION TO COURT

Every deposition taken under these rules shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause.

[NOTE: *The above is R. S. § 865, U. S. C. (1928 Edition) Title 28, § 641, with the words "sections 639 and 640 of this title" changed to "these rules".*]

## 46E

## IN FOREIGN COUNTRIES

In a foreign state or country or elsewhere outside of Continental United States, depositions taken under these Rules shall, unless otherwise stipulated by the parties, be taken (1) on commission or letters rogatory on written interrogatories and cross-interrogatories, or orally as the court may direct, before a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or (2) before such person or officer as may be appointed by commission or order of court or under letters rogatory or by stipulation of the parties.

[NOTE: *The above rule is new but is merely a recognition of the present practice.*]

## 46F

## SUBPOENA

A subpoena, including a subpoena duces tecum, issued by the Clerk of any United States District Court, for witnesses who are required to attend an admiralty court of the United States, in any district, may run into any other district provided that a witness living out of the district in which the court is held does not live at a greater distance than 100 miles from the place where the court is held.

[NOTE: *This is necessary in order to take the place of R. S. § 876, which by mistake was repealed when Title 28 was last revised.*

*The portion of Rule 46 providing for the impounding of proceedings in admiralty during a war was suspended on May 6, 1946.*

*The final paragraph of that rule, forbidding the use of coded texts, Rule 46-1/2 relating to findings, Rule 46A relating to the scope of examination and cross-examination and Rule 46B relating to the record of excluded evidence, would then follow without change, except that the various parts would be renumbered to be 46G, 46H, 46I, and 46J.*]

## 46K

## DEPOSITIONS BEFORE ACTION

If any United States District Court is satisfied that the perpetuation of any testimony may prevent a failure or delay of justice, it shall, upon the filing of a petition therefor and such reasonable notice to interested parties as the court may require, make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make, with respect to such depositions, orders of the character provided for by Rules 32 and 32A.

[NOTE: *This rule providing for the perpetuation of testimony was in substance contained in R. S. 866, U. S. C., Title 28,*

*§ 644, which was repealed apparently by inadvertence, evidently with the thought that it was covered by Civil Rule 27 for the perpetuation of testimony, which provides that a person desiring to perpetuate testimony regarding any matter that may be cognizable in any court of the United States may file a verified petition, etc., showing, among other things, that the petitioner expects to be a party to an action cognizable in a court of the United States. Nothing is said about the action being at law, in equity or in admiralty.*

*Civil Rule 27 provides that the petition may be filed in the United States District Court of the District of residence of any expected adverse party and that the petitioner shall serve a notice of the application for the order, on each person named in the petition and on each expected party; that the deposition may be used in any action involving the same subject-matter subsequently brought in a United States District Court.*

*This rule in haec verba would not exclude proceedings in an admiralty court.*

*The Act of June 19, 1934, Chapter 651, however, provides that the Supreme Court shall have power to prescribe general rules for the District Courts of the United States in civil actions at law and may unite the rules already prescribed for equity with those for actions at law to secure one form of civil action and procedure.*

*Later the Supreme Court in 1935 undertook the preparation of unified rules for actions in equity and at law.*

*On December 20, 1937, the Chief Justice transmitted the rules of procedure for cases in equity and actions at law to the Attorney General. They were again transmitted by the Chief Justice to the Attorney General on December 31, 1938, for transmission to Congress.*

*Although the wording of Civil Rule 27 is broad enough to cover any matters expected to be the subject of litigation in any District Court in admiralty, it is doubted whether the court intended Rule 27 to apply in admiralty inasmuch as when that rule was promulgated it was apparently under the statute above quoted for law and equity cases alone. In fact Civil Rule 81 (a) provides expressly that the rules shall not apply to proceedings in admiralty.*]

50A

## CROSS-CLAIMS

Any counterclaim or cross-claim arising out of the same contract, cause of action, transaction or occurrence that is the subject-matter of an original libel or an impleading petition may be set up in or attached to the answer of a respondent or claimant and relief demanded of any other party by way of cross-libel, with the same effect as if asserted in a separate cross-libel, and service of such answer or of a cross-libel upon any party who has appeared in the litigation may be made by delivering a copy to his proctor.

[NOTE: *This rule is drafted to meet a suggestion that some definite provision should be made for the assertion of a cross-claim against another party to the suit without filing a separate cross-libel requiring a stipulation for costs, payment of further clerk's fees, issuance of process, and unnecessarily increasing the number of pleadings with separate docketing.*]

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## COURTS HAVING COGNIZANCE OF LIMITED LIABILITY PROCEDURE

The said petition shall be filed and the said proceedings had in any United States District Court in which said vessel has been libelled to answer for any claim in respect to which the petitioner seeks to limit liability. When the said vessel has not been libelled to answer the matters aforesaid, the said proceedings may be had in the District Court for any District in which the owner has been sued in respect of any such claim, or in the District Court of the District in which the said vessel may be. But if no suit has been commenced in any district and the vessel is not in any District, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any District for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules.

[NOTE: *In substance this is the rule as it was before the Amendments of 1948 which failed to cover the situation dealt*

*with by the historical phrase "or has been commenced in a district other than that in which the said vessel may be."*]

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SUMMARY DECREE

Any party to an action may at any time after the cause is at issue, upon the pleadings and any affidavit, answer to interrogatory, deposition or admission, move for a summary decree in his favor for all or any part of his claim or as to any claim or defense of any other party or any part thereof. The decree sought shall be rendered forthwith if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to a decree as a matter of law. A summary decree, interlocutory in character, may be rendered on the issue of liability alone, leaving the damages, if there is a genuine issue as to the amount, to be determined upon the trial or a reference.

[NOTE: *This rule is proposed to meet a universal demand and so far no objection has been made to it.*]

**and it is further**

**RESOLVED that the Officers of this Association be and they hereby are authorized and directed to forward a copy of these resolutions to the Chief Justice of the United States, the Associate Justices of the Supreme Court of the United States and such other persons as the said officers of this Association may consider appropriate.**

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of September, 1951.

HENRY C. BLACKISTON,
Secretary,
25 Broadway,
New York 4, N. Y.