DOCUMENT No. 369

April, 1953

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

REPORT OF THE COMMITTEE ON SUPREME COURT ADMIRALTY RULES

Since 1951, the Maritime Law Association has been on record in recognition of the need for amendments to the Supreme Court Admiralty Rules. Several important developments in 1948 precipitated this need. Among these developments were the broadened rule-making powers of the Supreme Court under 28 U. S. C. 2073, the inadvertent omission to retain in the new Code the provisions of old R.S. 866, relating to depositions and discovery, and of R.S. 876, relating to the 100-mile subpoena rule, and the 1948 amendment to Admiralty Rule 54, which omitted a material provision for choice of venue in limitation of liability proceedings.

These matters were acted upon by Resolutions of the Executive Committee adopted August 22, 1951 and printed in the Association's Document No. 348, September, 1951. No action was taken by the Supreme Court in respect of the recommendations in Document No. 348. In May, 1953 the present Committee on Supreme Court Admiralty Rules was appointed to give the subject consideration and further study. It has been and still is the view of this Committee that apart from the confusion and inconveniences engendered by the apparent inadvertent repeals and omissions just mentioned, the time is ripe for a general review of the Admiralty Rules to meet, so far as practicable, the convenience of certain segments of the Judiciary and expressed desires for uniformity, as near as may be, with the Federal Rules of Civil Procedure. A further impelling reason is the increasing tendency of courts to apply the Civil Rules

to Admiralty by piece-meal and at times conflicting decisional law, and by adoption of local rules.

It is to be noted that for several years last past, successive Attorneys General have recommended to the Judicial Conference of the United States that the Federal Rules of Civil Procedure be made applicable to Admiralty as near as may be where not covered by the the Admiralty Rules, without specification of exceptions or conditions. It is your Committee's opinion that these recommendations over-simplify the problem. Such a general incorporation was, indeed, promulgated under General Order 37 in Bankruptcy, but the detailed procedural provisions of the Bankruptcy Act have made feasible General Order 37, whereas the more detailed specification of conditions and exceptions, as contained in the instant report, seem to us desirable and indeed essential to meet the needs of Admiralty.

Some members of the Association, including several members of your Committee, have expressed views to the effect that whatever Civil Rules are adopted for the Admiralty should be restated and set forth at length in the Admiralty Rules. A majority of the Committee, however, believe that incorporation by reference is simple and practical and will avoid the confusion and litigation which followed, for example, when the Supreme Court adopted as separately numbered Admiralty Rules the Civil Rule prototypes relating to interrogatories and discovery.

The system of incorporation by reference, it is felt, will avoid any questions of different interpretations of parallel language in two sets of identical or substantially identical rules of practice in courts exercising both Civil and Admiralty jurisdiction. It will also avoid time lags and confusion in respect of amendments that may be made from time to time.

On this principle the Committee drafted and submitted its Interim Report, Document No. 363, September, 1952, which, after approval in principle by the Executive Committee, was circulated to the Bench and Bar for study. At the same time a sub-committee drafted and submitted a report, Document No. 364, in which the more urgent

amendments contained in the larger report were presented in the hope that there might be attained such unanimity of accord on these limited non-controversial and more urgent proposals as to make feasible their prompt presentation to and adoption by the Supreme Court. Through the co-operation of the Admiralty Committee of the American Bar Association, the proposals in Document No. 364 were considered at that Association's San Francisco convention, September, 1952, jointly with the Section on Judicial Administration, composed of members of the Judiciary, who were of the opinion that the question of revision should be considered in its entirety and not piece-meal. This resulted in agreement to withhold the proposals in Document No. 364 and in the passage of an unopposed Resolution of the House of Delegates as follows:

> "BE IT RESOLVED that the study as to the applicability of the Federal Rules of Civil Procedure to Admiralty Practice undertaken jointly by the Section of Judicial Administration and the Committee on Admiralty and Maritime Law, with the aid of the Maritime Law Association, be continued, and that the outcome of such study be reported to the House of Delegates, if possible, at its mid-winter sessions in 1953."

After meetings and discussions with members of the Judicial Administration Section, a joint sub-committee composed of former Judge Simon H. Rifkind and of Mr. Charles N. Fiddler was appointed, and resulted in further intensive consideration of the over-all proposals in Document No. 363. Unfortunately, studies of these conferees were not completed in time for constructive action to be taken at the mid-winter sessions of the House of Delegates, meeting in Chicago, and the matter was again deferred, this time to the annual Convention scheduled at Boston in August, 1953. In the interim, our Committee has had the benefit of the informal report of Judge Rifkind and Mr. Fiddler, whose consultations give promise of having contributed much toward mutual accord between the two groups, both as to matters of form and procedure. With minor exceptions, the conferees appear to have accepted in essence the proposals contained in Document No. 363, and we respectfully

submit herewith these proposals substantially as revised by the conferees, with the recommendation that they be considered anew by the Association as a whole, and be approved by the Executive Committee subject to such further changes as it may deem proper, in time for submission in August, 1953, to the American Bar Association, and to the Chief Justice, for consideration by the Judicial Conference and by the Supreme Court, in whose jurisdiction lies the ultimate power and responsibility.

WILLIAM G. SYMMERS of New York, Chairman
CHARLES S. BOLSTER of Boston, Vice Chairman
LANE SUMMERS of Seattle, Vice Chairman
JOHN C. CRAWLEY of New York
CHARLES N. FIDDLER of New York
J. FRANKLIN FORT of Washington, D. C.
CODY FOWLER of Tampa
JOSEPH W. HENDERSON of Philadelphia
ROBERT G. McCREARY of Cleveland
FREDERICK W. MUELLER of New York
FRANK B. OBER of Baltimore

ARNOLD W. KNAUTH, of New York, GEORGE WHITEFIELD BETTS, JR., of New York, and RUSSELL A. MACKEY, of San Francisco, do not join in this report.

Their minority view is to the effect that whatever Civil Rules are adopted for the Admiralty should be restated and set forth at length in the Admiralty Rules.

Dated, April 21, 1953.

PROPOSED REVISION OF THE SUPREME COURT ADMIRALTY RULES

1. Applicability of the Federal Rules of Civil Procedure.

(a) The Federal Rules of Civil Procedure shall be applicable to cases in Admiralty as near as may be, and in so far as they are not inconsistent with these rules, *subject to the provisions of subdivisions (b), (c) and (d) of this rule.*[1]

(b) Reference in the Federal Rules of Civil Procedure to process, pleadings, parties and the civil docket shall be deemed to refer to their analogues in cases in Admiralty. The word "summons" shall refer only to *in personam* process. The word "complaint" shall be deemed to include a "libel" and the words "civil action" shall be deemed to include "suits in Admiralty".[2] The word "master" shall be deemed to include a "commissioner" or "assessor". References in FRCP 43(a) and 59(a)(2) to "suits in equity" shall be deemed to include "suits in Admiralty".[3]

(c) All provisions of the Federal Rules of Civil Procedure governing jury trials and all references therein to jury trials shall be inapplicable. In those districts in which a jury trial is permissible by statute in certain admiralty cases the district courts may provide for such cases by their own rules.

(d) The Federal Rules of Civil Procedure shall, in Admiralty, be subject to the following provisions:

---

[1] These footnotes do not appear in draft of joint conferees. Whereas in M. L. A. Document No. 363 it was proposed to incorporate much of FRCP in Admiralty Rule 44½, this revision gives notice at the beginning that Admiralty practice, where differences of procedure are not essential, is to be governed by the Civil Rules, to the extent herein provided. Present Admiralty Rule 1 would be superseded by this Rule, but present Admiralty Rule numbers are retained for such of the Admiralty Rules as are proposed to be left extant. Matter in Rule 1(a) printed in italics does not appear in draft of joint conferees.

[2] Instead of a separate rule providing that a suit is commenced by filing a libel, reliance is placed on Civil Rule 3, but the word "complaint" would be deemed to include "libel". The purpose is to reduce the exceptions and avoid duplication of rules in the common procedural sphere.

[3] This provision will reconcile the admissibility in evidence and new trial rules of FRCP with Admiralty cases by adding "suits in admiralty" to the standards contained in those rules.

FRCP RULE 1: Rule 1 shall be inapplicable except in so far as it provides that these rules shall be construed to secure the just, speedy and inexpensive determination of every action.

FRCP RULE 2: Rule 2 shall be inapplicable.

FRCP RULE 4(a): The issuance and delivery of any process shall be held in abeyance if requested by the libelant or petitioner.[4]

FRCP RULE 4(c): A person specially appointed by the Court may serve *in personam* process only.

FRCP RULE 4(f): A party may elect to have process with a clause of foreign attachment issued conditioned upon the inability to serve a summons upon the respondent within the district, even though the summons might otherwise be served elsewhere in the state in which the district is located.

FRCP RULE 6(b): A written agreement for the enlargement of time shall have the same effect as an order made pursuant to Rule 6(b).[5]

FRCP RULE 7(a): Rule 7(a) shall be inapplicable.[6]

FRCP RULE 8(a): In collision matters the surrounding circumstances and the acts alleged to have caused the collision

---

4 This exception recognizes the custom of refraining from issuance of process in Admiralty, especially where attachment or arrest of a vessel would otherwise be effected. Except in certain diversity of citizenship cases, an action is commenced when the complaint or libel is filed, even though process is served later. In a civil action if the delay is unreasonable, the plaintiff might lose the benefit of this rule. See *Isaaks* v. *Jeffers,* 144 F. 2d 26 (10th Cir.); *Hackner* v. *Guaranty Trust Co.* (2d Cir.), 117 F. 2d 95, 99, and Official Pamphlet of Rules of the Southern and Eastern Districts of New York, p. 87. In an Admiralty suit delay in giving notice of the filing of a libel may result in application of the bar of laches where prejudice has been shown. *UNNRA* v. *S.S. Mormacmail,* 1951, A. M. C. 1152 (SDNY). Results of delay in effecting service have not been codified under the Admiralty or Civil rules.

5 It has been customary in Admiralty to extend time by stipulation, rather than by seeking an order of the court. This rule will overcome the effect of *Orange Theatre Corp.* v. *Rayherstz Amusement Corp.* (3rd Cir.), 130 F. 2d 185, which holds that an order is necessary to enlarge the time in civil actions. The decision of the Third Circuit may conflict with the earlier approach of the Second Circuit in *O'Brien* v. *Lasher,* 273 F. 520, decided under the old Equity Rules.

6 The various forms of Admiralty pleadings, including petitions, and the different nomenclature, make adoption of the Civil Rule denominating pleadings impractical.

may be pleaded with the particularity customary in such cases in Admiralty.[7]

FRCP RULE 12: The time for a party to plead or move under in rem or foreign attachment process shall not commence until the return date of such process. In the event that no process is issued, the party shall plead or move within twenty days from the filing of a voluntary general appearance or claim.

FRCP RULE 13: All counterclaims in Admiralty shall be permissive and not compulsory, and may be interposed if the Court has Admiralty jurisdiction thereof.[8]

FRCP RULE 14: Rule 14 shall be inapplicable.[9]

FRCP RULE 15: The time for response to an amended pleading shall be 20 days.

FRCP RULE 22: Rule 22 shall be inapplicable.[10]

FRCP RULE 23: Rule 23 shall be inapplicable.[11]

FRCP RULE 26(a): Leave shall not be necessary at any time to serve a notice of the taking of a deposition after the com-

---

7 Pleadings disclosing the alleged facts are particularly desirable in collision cases where prompt disclosure of the issues without awaiting the processes of discovery is frequently necessary to the preservation of rights and particularly with the taking of de bene esse depositions of seagoing witnesses. Local Admiralty rules have long made detailed pleadings a requirement in such cases.

8 Because of the limitations on Admiralty jurisdiction in respect of counterclaims, *The Kearny* (3rd Cir.), 14 F. 2d 949, a party should not be required to speculate as to whether or not his counter-claim is compulsory. Even though a non-maritime claim may be established as a defense, it cannot be interposed as a counter-claim in Admiralty. *Armour & Co.* v. *Ft. Morgan S.S. Co.*, 270 U. S. 253, 259, 260. See discussion in *Swift & Co.* v. *Compania*, 339 U. S. 684, concerning the right of an Admiralty court to determine non-maritime auxiliary issues.

9 Impleading petition practice under Admiralty Rule 56 has become a basic and universally accepted part of Admiralty practice and is considered more satisfactory for Admiralty purposes than the third party practice under Civil Rule 14, which is limited to claims over and always requires an Order. The Admiralty rule permits impleader for direct liability to the libelant, and no order is necessary if the petition is filed with or before the answer.

10 The Interpleader rule would change existing case law which does not recognize this procedure in Admiralty. As the subject of its adoption is controversial, it is felt that it should be considered, if at all, separately and at a later date.

11 Certain class actions are permissible in Admiralty, as for salvage, by bailees of cargo, etc. Rule 23 FRCP is a substantial restatement of a former equity rule, the imposition of which in the opinion of the majority of the Committee would be confusing and is unnecessary.

mencement of an action. In all cases in rem the notice may be served on the person having the agency or possession of the property at the time of the seizure, if a claim to said vessel or property has not yet been made.[12]

FRCP RULE 27(a)(2): The Court in its discretion may shorten the time for notice of the hearing of an application.

FRCP RULE 30(b): The payment of counsel fees or travelling expenses to any of the parties served with a notice of taking a deposition may not be imposed as a condition of taking a deposition within the United States.[13]

FRCP RULE 33: Interrogatories may be annexed to a libel or petition without leave of court, in which event the time to object to or answer such interrogatories shall be the same as the time to respond to such pleading, except that interrogatories addressed to a garnishee shall be answered by the return date of the process.[14]

FRCP RULE 52(a): On appeal from an Admiralty decree, the appellate court shall not be prevented by Rule 52 from applying the "trial de novo" rule.[15]

FRCP RULE 53(b): Rule 53(b) shall be inapplicable.[16]

---

12 The need for the right to take depositions in Admiralty on notice at any stage of a suit has long been recognized by the Second Circuit. See *Flower* v. *McGinnis*, 112 F. 377, 378. The added notice provision for in rem cases is patterned on a similar provision in R.S. 863, former 28 U. S. C. 639.

13 Taking of depositions at a distance is common to Admiralty cases and this expense is considered a normal cost of litigation. Controversy over payment of counsel fees and travelling expenses may result in delay and possible loss of a mariner's testimony.

14 This will continue the permissive practice of annexing interrogatories to any pleadings; no special rule is required to permit the annexing of interrogatories to answers, and, of course, interrogatories may be served apart from other pleadings as permitted by Civil Rule 33.

15 Although some of the circuits may as a practical matter apply the "clearly erroneous" test to Admiralty appeals, the right to apply the trial *de novo* rule still pertains. The "clearly erroneous" rule is not applied to findings of fact based on depositions. See *Bertel* v. *Panama Transport Co.* (2nd Cir.), 202 F. 2d 247, 249.

16 It is customary in Admiralty to refer to commissioners for determination or computation of unliquidated damages in most commercial and property damage maritime cases. Civil Rule 53(b) reads "A reference to a Master shall be the exception and not the rule", whereas in the computation of unliquidated damages following interlocutory decree the reverse is true in Admiralty.

FRCP RULE 53(d)(1): The "first meeting" of the commissioner or assessor shall not be held until a party serves a notice of such meeting. Such notice shall be served not less than ten days before the date fixed therein for the first meeting.[17]

[FRCP RULE 54(b): Action on this rule was undetermined by the Conferees.] [18]

FRCP RULE 58: Rule 58 shall be applicable only to the extent that it defines the entry of judgment and provides that the entry thereof is not to be delayed for taxation of costs.

FRCP RULE 62(d): A separate supersedeas bond or bond for costs on appeal need not be given, unless otherwise ordered, where an appellant has already filed in the district court security which includes the event of appeal, in accordance with the Admiralty practice, except for the difference in amount, if any.

FRCP RULE 62(f): Rule 62(f) shall be inapplicable.[19]

FRCP RULE 64: Rule 64 shall be inapplicable.[20]

FRCP RULE 65: Rule 65 shall be inapplicable.[21]

FRCP RULE 68: Rule 68 shall not limit the power of the district court to provide by rule or order for an offer before or after interlocutory decree.

---

[17] This provision is included as a substitute for Rule 53(d)(1) of the FRCP which required the master to bring on the first meeting within twenty days after the reference. Most Admiralty references are for the purpose of computing damages and the parties, after considerable investigation and computation, usually agree on most or all of the items of damage, in which event the Commissioner does not act.

In M.L.A. Document 363 it was proposed to eliminate FRCP 53(d)(3) for the stated reason that there is no accounting in Admiralty; but since Admiralty may allow a subsidiary accounting even though it may not entertain an action for an accounting, this exception has been deleted in the present draft. See *Swift & Co.* v. *Compania,* 339 U. S. 684.

[18] Your Committee recommends that Rule 54(b) shall be inapplicable.

There is a statutory right to appeal from certain interlocutory decrees in Admiralty. The multiple claim rule would, we believe, create considerable confusion. It is to be noted, however, that the joint conferees (Messrs. Rifkind and Fiddler) did not arrive at any agreement on this particular proposal. Cf. 28 U. S. C. 1292(2). See note 28 N. Y. U. Law Rev. 203 (1953).

[19] Because of possible confusion in respect of maritime liens, it is thought inadvisable to include the rule that would apply, to an Admiralty decree, state laws on the stay of execution.

[20] Admiralty has its own provisional remedies, and incorporation of state statutory remedies is believed inadvisable and unnecessary.

[21] Injunctions in Admiralty are strictly limited to express statutory authorizations, hence Civil Rule 65 is inapplicable.

FRCP RULE 69: Rule 69 shall be inapplicable.[22]

FRCP RULE 70: Rule 70 shall be inapplicable.[23]

FRCP RULE 71(a): Rule 71(a) shall be inapplicable.

FRCP RULE 73: The time within which an appeal may be taken from final decisions and interlocutory decrees in Admiralty shall be as prescribed by 28 U. S. C. Section 2107, and an appellee who desires other or further relief than that granted by the decree appealed from may file a notice of his intention to apply to the appellate court for such relief not more than fifteen days after the filing of the notice of appeal. Assignments or cross-assignments of errors, other than those which may be contained in the briefs of the parties, shall not be required.

FRCP RULE 81(a)(b)(c): Rule 81(a)(b)(c) shall be inapplicable.

FRCP RULE 83: Rule 83 shall be inapplicable, except that its requirements are included in Admiralty Rule 44.

FRCP RULES 84, 85 AND 86: Rules 84-86 shall be inapplicable.

Rule 2: (Present Rule 2.)

Rule 3: (Present Rule 3.)

Rule 4: (Present Rule 4.)

Rule 5: (Present Rule 5.)

Rule 6: Abrogated.[24]

Rule 7: (Present Rule 7.)

Rule 8: (Present Rule 8.)

Rule 9: (Present Rule 9.)

---

[22] Civil Rule 69 is mandatory and requires proceedings in accordance with state law. This would be unworkable in respect of enforcement of maritime liens in Admiralty. Admiralty Rule 20 is broader, and would seem to include in any event Civil Rule 69 under the all inclusive language of the last sentence: "And any other remedies shall be available that may exist under the state or federal law for the enforcement of judgments or decrees."

[23] Specific performance, except to the very limited extent expressly allowed by statute, is not an Admiralty remedy, and this rule is inapplicable.

[24] The practice described in Admiralty Rule 6 on giving stipulations is obsolete in most districts and is a matter for local rule.

Rule 10: (Present Rule 10.)

Rule 11: (Present Rule 11.)

Rule 12: (Present Rule 12.)

Rule 13: (Present Rule 13.)

Rule 14: (Present Rule 14.)

Rule 15: (Present Rule 15.)

Rule 16: (Present Rule 16.)

Rule 17: (Present Rule 17.)

Rule 18: (Present Rule 18.)

Rule 19: (Present Rule 19.)

Rule 20: (Present Rule 20.)

Rule 21: (Present Rule 21.)

Rule 22: Verification of pleadings. The libel and other pleadings shall be verified on oath or solemn affirmation.[25]

Rule 23: Abrogated.[26]

Rule 24: (Present Rule 24.)

Rule 25: (Present Rule 25.)

Rules 26 to 29 inclusive: Abrogated.[27]

Rule 30: (Present Rule 30.)

Rules 31 to 32C inclusive: Abrogated.

Rule 33: How verification of pleading obviated.

> "Where any party is out of the country or unable, from sickness or other casualty, to verify a pleading on oath or solemn affirmation at the proper time, the court may, in its discretion in furtherance of the administration of justice, dispense therewith, or may issue a commission to take the oath or affirmation

---

[25] Admiralty Rule 22 to be superseded by this new rule. Since the filing of a libel or petition may give a party a right to seize property, it is deemed better practice to continue the verification of pleadings.

[26] Covered by proposed amended Rule 1. Unless otherwise stated, all other abrogated rules are to be considered abrogated because covered by proposed amended Rule 1.

[27] With respect to abrogation of Rule 27, the procedure whereby pleadings are tested by exceptions is no longer compatible with modern practice and should be discarded, as was the demurrer.

of the party when and as soon as it may be practicable or may receive a verification by agent or attorney with like force and effect as if made by the party." [28]

Rule 34: (Present Rule 34.)[29]

Rule 35: Abrogated.

Rule 36: (Present Rule 36.)

Rule 37: (Present Rule 37.)

Rule 38: Abrogated.

Rule 39: Abrogated.[30]

Rule 40: (Present Rule 40.)

Rule 41: (Present Rule 41.)

Rule 42: (Present Rule 42.)

Rule 43: (Present Rule 43—except delete reference to "masters in chancery" and insert in lieu thereof "masters in civil actions".)

Rule 43½: Report of commissioners—review. When a case or any issue is referred by consent to commissioners or assessors and the intention is plainly expressed in the consent order that the submission is to the commissioners or assessors as arbitrator, the court may review the same only in accordance with the principles governing a review of an award and decision by an arbitrator.[31]

Rule 44: Each district court may from time to time make and amend rules governing its practice not inconsistent with these rules

---

[28] In view of the provision for verification of pleadings, it seems desirable to amend Rule 33 to provide for some machinery for obviating a verification in such cases. There seems to be no necessity of retaining the provision dealing with interrogatories in view of the powers the court would seem to have under the Civil Rules made applicable by proposed amended Rule 1.

[29] This rule or intervention will be supplemented by FRCP so that parties will have the benefit of the Admiralty rule which will be supplemented by, and is not inconsistent with, the Civil Rules.

[30] The matter of reopening default decrees is covered adequately by Rule 60B, FRCP, incorporated by reference in proposed amended Admiralty Rule 1. The present Admiralty Rule 39 is to some extent obsolete, as it refers to the term rule which was repealed by the Judicial Code, 28 U. S. C. 452.

[31] Admiralty Rule 43½ to be amended by deleting the first portion to and including "Provided That", leaving only the part concerning a reference to arbitrators. Civil Rule 53(e)(2) will govern the review of other references. Rule 43 of the Admiralty Rules relating to commissioners will be retained as well as the portion of Rule 43½ concerning references to arbitration supplemented only by that part of Civil Rule 53, which is not excepted or limited by proposed Admiralty Rule 1.

and in accordance with the requirements of Rule 83 of the Federal Rules of Civil Procedure.

Rule 44½: Abrogated.

Rule 45: (Present Rule 45.)

Rule 46: Evidence—encoded or encyphered messages and dispatches.

> "Neither the plain language nor the coded text nor the exact translation of any message or dispatch encoded or encyphered by any department or agency of the United States in war shall be placed of record in pleadings, evidence, or testimony or disclosed in any manner in any proceeding without the prior consent of the department or agency of the United States or allied government which encoded or encyphered such message or dispatch. A paraphrase of the substance of such message or dispatch, prepared and certified as such by an officer of such department or agency, shall be admissible for all purposes for which the plain language message or dispatch would, save for this rule, have been admitted." [Wartime rule for private hearings, suspended May 6, 1946, is not abrogated.] [32]

Rules 46½ to 46B, inclusive: Abrogated.

Rule 47: (Present Rule 47.)

Rules 48 to 49, inclusive: Abrogated.

Rule 50: Security on counter-claim.

> "Whenever a counter-claim is filed arising out of the same contract or cause of action for which the original libel was filed, and the respondent or claimant in the original suit shall have given security to respond in damages or a vessel or other property of the respondent or claimant has been attached or arrested and not released, the libelant in the original suit shall give security in the usual amount and form to respond in damages to the claims set forth in said counter-claim, unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security be given unless the court otherwise directs." [33]

---

[32] The suspended wartime private hearing rule, not restated here, is to continue suspended, but not abrogated, so that it can be restored without the submission to Congress that is now required for new or amended Admiralty rules. Omitted portion of Rule 46 abrogated. See 28 U. S. C. 753 and Civil Rule 43.

[33] The proposed amendment simply refers to "counter-claim" in lieu of "cross-libel". There is no longer necessity for a cross-libel. Amended further to make it clear that an unreleased vessel is sufficient security to support a demand for security on a counterclaim.

Rule 51: (Present Rule 51.)

Rule 52: (Present Rule 52.)

Rule 53: (Present Rule 53.)

Rule 54: Courts having cognizance of limited liability procedure.

> "The petition shall be filed and the proceedings had in any United States District Court in which the vessel has been libelled to answer for any claim in respect of which the petitioner seeks to limit liability. If the vessel has not been so libelled, the proceedings may be had in the District Court for any District in which the owner has been sued in which an action is pending against the owner in respect of any such claim, or in the District Court of the District in which the said vessel may be. 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." [34]

Rule 55: Appeals in limited liability cases. Amended by deleting the word "circuit" before "courts of appeal of the United States".

Rule 56: (Present Rule 56.)

Rule 57: Property in custody of marshal. Amended by substituting "28 U. S. C. 2464" for "Section 941 of the Revised Statutes".

---

[34] This proposed revision is substantially the same as that recommended by the Executive Committee in Document No. 348, September, 1951. It restores a choice of venue provision heretofore reported to have been omitted inadvertently when present Admiralty Rule 54 was promulgated.