



# Administration of Justice Act 1956

## 1956 CHAPTER 46

### PART V

#### ADMIRALTY JURISDICTION AND ARRESTMENT OF SHIPS IN SCOTLAND

#### **45 Jurisdiction in relation to collisions, etc.**

- (1) Subject to the provisions of this Part of this Act, any court having Admiralty jurisdiction shall have jurisdiction to entertain, as against any defender, an action to which this section applies if, but only if,—
- (a) the defender has his habitual residence or a place of business in the area for which the court acts, or
  - (b) the cause of action arose in the area for which the court acts and either within inland waters or within the limit of a port, or
  - (c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined by the court, or
  - (d) the defender has prorogated the jurisdiction of the court, or
  - (e) a ship in which the defender owns one or more shares has been arrested (whether ad fundandam jurisdictionem or on the dependence of the action) within the area for which the court acts.
- (2) Where an action to which this section applies is raised in a court having jurisdiction by virtue only of one or more of the provisions of the preceding subsection other than paragraph (d) thereof, and it appears to the court that cognate proceedings are depending in a competent court outside Scotland, the first mentioned court shall sist the action if so moved by any party thereto, and shall not recall the sist until satisfied that the cognate proceedings have been discontinued or have otherwise come to an end:

Provided that nothing in this subsection shall prevent the first mentioned court from entertaining any application as to diligence in the action.

In this subsection "cognate proceedings", in relation to any action, means proceedings instituted, before the granting of warrant for service in the action, by the pursuer in the

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action against any other party to the action, being proceedings in respect of the same incident or series of incidents as those with which the action is concerned.

(3) This section applies to actions for payment of reparation arising out of one or more of the following incidents, that is to say—

- (a) any collision between ships, or
- (b) the carrying out of, or the omission to carry out, a manoeuvre in the case of one or more of two or more ships, or
- (c) the non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(4) In this section—

" inland waters " includes any part of the sea adjacent to the coast of the United Kingdom certified by the Secretary of States to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters ;

" port " means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of persons is empowered by or under an Act or charter to make charges in respect of ships entering it or using the facilities therein, and " limits of a port " means the limits thereof as fixed by or under the Act in question or, as the case may be, by the relevant charter or custom;

" charges " means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(5) For the avoidance of doubt it is hereby declared that any reference in this section to an action for payment of reparation does not include a reference to an action to make good a lien.

(6) Section six of the Sheriff Courts (Scotland) Act, 1907 (as amended by any subsequent enactment), shall cease to have effect in relation to actions to which this section applies.

#### **46 Exclusion of jurisdiction in cases falling within Rhine Convention**

No court shall have jurisdiction to determine any claim or question certified by the Secretary of State to be a claim or question which, under the Rhine Navigation Convention, falls to be determined in accordance with the provisions thereof.

In this section " the Rhine Navigation Convention " means the Convention of the seventh of October, eighteen hundred and sixty-eight, as revised by any subsequent Convention.

#### **47 Arrest of ships on the dependence of an action or in rem**

(1) Subject to the provisions of this section and section fifty of this Act, no warrant issued after the commencement of this Part of this Act for the arrest of property on the dependence of an action or in rem shall have effect as authority for the detention of a ship unless the conclusion in respect of which it is issued is appropriate for the enforcement of a claim to which this section applies, and, in the case of a warrant to arrest on the dependence of an action, unless either—

- (a) the ship is the ship with which the action is concerned, or

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- (b) all the shares in the ship are owned by the defender against whom that conclusion is directed.
- (2) This section applies to any claim arising out of one or more of the following, that is to say—
- (a) damage done or received by any ship ;
  - (b) loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship " are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, unloading or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship ;
  - (c) salvage;
  - (d) any agreement relating to the use or hire of any ship whether by charterparty or otherwise ;
  - (e) any agreement relating to the carriage of goods in any ship whether by charterparty or otherwise ;
  - (f) loss of, or damage to, goods carried in any ship ;
  - (g) general average;
  - (h) any bottomry bond ;
  - (i) towage;
  - (j) pilotage;
  - (k) the supply of goods or materials to a ship for her operation or maintenance;
  - (l) the construction, repair or equipment of any ship ;
  - (m) liability for dock charges or dues ;
  - (n) liability for payment of wages (including any sum allotted out of wages under section one hundred and forty-one of the Merchant Shipping Act, 1894, or adjudged under section three hundred and eighty-seven of that Act by a superintendent to be due by way of wages) of a master or member of the crew of a ship ;
  - (o) master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner;
  - (p) any dispute as to the ownership or right to possession of any ship or as to the ownership of any share in a ship;
  - (q) any dispute between co-owners of any ship as to the ownership, possession, employment or earnings of that ship;
  - (r) the mortgage or hypothecation of any ship or any share in a ship;
  - (s) any forfeiture or condemnation of any ship, or of goods which are being, or have been, carried, or have been attempted to be carried, in any ship, or for the restoration of a ship or any such goods after seizure.
- (3) In any proceedings having a conclusion appropriate for the enforcement of any claim such as is mentioned in paragraphs (p) to (s) of the last preceding subsection a warrant may be issued—
- (a) if the conclusion is a pecuniary conclusion, for the arrest of the ship on the dependence of the action; or

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(b) in any other case (whether or not the claimant is entitled to a lien over the ship), for the arrest of the ship in rem;

but there shall not be issued in respect of any such conclusion as aforesaid (whether pecuniary or otherwise) a warrant to arrest, either in rem or on the dependence of the action, any ship other than the ship to which the conclusion relates.

(4) Subject to the preceding subsection, nothing in this section shall be taken to authorise—

(a) the use of an arrestment on the dependence of an action otherwise than in respect of a pecuniary conclusion, or

(b) the use of an arrestment in rem otherwise than in respect of a conclusion appropriate for the making good of a lien.

(5) A warrant for the arrest of a ship in rem issued by virtue of paragraph (b) of subsection (3) of this section in a case where the person in whose favour it is issued is not entitled to a lien over the ship shall have effect as authority for the detention of the ship as security for the implementation of the decree of the court so far as it affects that ship:

Provided that the court may, on the application of any person having an interest, recall the arrestment if satisfied that sufficient bail or other security for such implementation has been found.

(6) Nothing in this section shall authorise the arrest, whether on the dependence of an action or in rem, of a ship while it is on passage.

(7) Nothing in this section shall authorise the arrest, whether on the dependence of an action or in rem, of a ship in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty's ships or Her Majesty's aircraft.

In this subsection " Her Majesty's ships " and " Her Majesty's aircraft" have the meanings assigned to them by subsection (2) of section thirty-eight of the Crown Proceedings Act, 1947.

(8) Nothing in this section shall affect section five of the Mail Ships Act, 1891 (which protects certain mail ships from arrest in certain circumstances).

## **48 Interpretation of Part V**

In this Part of this Act, unless the context otherwise requires.—

(a) references to an action, a pursuer and a defender include respectively references to a counter-claim, the person making a counter-claim and the person against whom a counter-claim is made ;

(b) any reference to a conclusion includes a reference to a crave, and " pecuniary conclusion " does not include a conclusion for expenses;

(c) any reference to a warrant to arrest property includes a reference to letters of arrestment and to a precept of arrestment;

(d) any reference to a lien includes a reference to any hypothec or charge;

(e) any reference to claims arising out of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections five hundred and forty-four to five hundred and forty-six of the Merchant Shipping Act, 1894, or any

Order in Council made under section fifty-one of the Civil Aviation Act, 1949, are authorised to be made in connection with a ship or an aircraft; and

- (f) the following expressions have the meanings hereby assigned to them respectively, that is to say—

" collision regulations " means regulations under section four hundred and eighteen of the Merchant Shipping Act, 1894, or any such rules as are mentioned in subsection (1) of section four hundred and twenty-one of that Act or any rules made under subsection (2) of the said section four hundred and twenty-one ; " goods " includes baggage ;

" master " has the same meaning as in the Merchant Shipping Act, 1894, and accordingly includes every person (except a pilot) having command or charge of a ship ;

" ship " includes any description of vessel used in navigation not propelled by oars ;

" towage " and " pilotage " in relation to an aircraft, mean towage and pilotage while the aircraft is waterborne.

#### **49 Repeals**

- (1) Section one hundred and sixty-five of the Merchant Shipping Act, 1894 (which imposes restrictions on proceedings for the recovery of wages of seamen and apprentices) shall cease to have effect and is hereby repealed.
- (2) So much of subsection (2) of section seventy-five of the Diseases of Animals Act, 1950, as enables a local authority to recover expenses incurred in burying or destroying carcases in the same manner as salvage is recoverable, shall cease to have effect; and accordingly the words in the said subsection (2) from "and the local authority" to the end of the subsection are hereby repealed.

#### **50 Application and commencement of Part V**

- (1) This Part of this Act shall apply to Scotland only.
- (2) This Part of this Act shall come into operation on such -day as the Secretary of State may appoint by order made by statutory instrument.
- (3) Nothing in this Part of this Act shall affect any action in respect of which warrant for service has been granted before the commencement of this Part of this Act.