



Republic of Namibia
Annotated Statutes

Admiralty Court Act, 1840 (British)

(3 & 4 Vict, c 65)

APPLICABILITY TO SOUTH WEST AFRICA: This law was applied to South West Africa as it stood at 1890 by section 2(2) of Colonial Courts of Admiralty Act, 1890 (British), which was applied to South West Africa by virtue of the Administration of Justice Proclamation 21 of 1919 (OG 27), effective from 1 January 1920 (section 16 of Proc. 21 of 1919).

as amended by

Wreck and Salvage Act, 1846 (9 & 10 Vict, c 99)

28 August 1846

The Statute Law Revision (No 2) Act, 1874 (37 & 38 Vict, c 96)

7 August 1874

Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict c 59)

15 August 1879

Statute Law Revision (No 2) Act, 1888 (51 & 52 Vict, c 57)

24 December 1888

ACT

An Act to improve the Practice and extend the Jurisdiction of the High Court of Admiralty of *England*.

(7th August 1840)

ARRANGEMENT OF SECTIONS

1. Dean of Arches to sit for Judge of Court of Admiralty in certain Cases
2. **[deleted]**
3. Whenever a Vessel shall be arrested, &c. the Court to have Jurisdiction over Claims of Mortgagees,
4. and to decide Questions of Title in all Causes of Possession, &c.
5. **[deleted]**
6. Court, in certain Cases, may adjudicate on Claims for Services, &c. although not on the High Seas

Admiralty Court Act, 1840 (British)

7. Evidence may be taken viva voce in open Court
8. Evidence may be taken viva voce before a Commissioner
9. Attendance of Witnesses and Production of Papers may be compelled by Subpoena
10. [deleted]
11. [deleted]
12. [deleted]
13. [deleted]
14. [deleted]
15. [deleted]
16. [deleted]
17. [deleted]
18. Power for Judge of Admiralty to make Rules of Court
19. [deleted]
20. Gaolers to receive Prisoners committed by the Court of Admiralty or by Admiralty Coroners
21. Prisoners in Contempt may be discharged
22. Jurisdiction to try Questions concerning Booty of War
23. Jurisdiction of Courts of Law and Equity not taken away
24. [deleted]

Dean of Arches to sit for Judge of Court of Admiralty in certain Cases

WHEREAS the Jurisdiction of the High Court of Admiralty of *England* may be in certain respects advantageously extended, and the Practice thereof improved: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall be lawful for the Dean of the Arches for the Time being to be Assistant to and to exercise all the Power, Authority and Jurisdiction, and to have all the Privileges and Protections of the Judge of the said High Court of Admiralty with respect to all Suits and Proceedings in the said Court, and that all such Suits and Proceedings, and all Things relating thereto, brought or taking place before the Dean of the Arches, whether the Judge of the said High Court of Admiralty be or be not at the same Time sitting or transacting the Business of the same Court, and also during any Vacancy of the Office of Judge of the said Court, shall be of the same Force and Effect in all respects as if the same had been brought or had taken place before the Judge himself, and all such Suits and Proceedings shall be entered and registered as having been brought and as having taken place before the Dean of the Arches sitting for the Judge of the High Court of Admiralty.

[The original document uses Roman numerals. There is no text with the number "1".]

2.

[section 2 deleted by the Civil Procedure Acts Repeal Act, 1879]

Whenever a Vessel shall be arrested, &c. the Court to have Jurisdiction over Claims of Mortgagees,

[This heading is continued as the heading of section 4. In the original document, the text which appears here in the form of headings was presented as marginal notes.]

3. Whenever any Ship or Vessel shall be under Arrest by Process issuing from the said High Court of Admiralty, or the Proceeds of any Ship or Vessel having been so arrested shall have been brought into and be in the Registry of the said Court, in either such Case the said Court shall have full Jurisdiction to take cognizance of all Claims and Causes of Action of

any Person in respect of any Mortgage of such Ship or Vessel, and to decide any Suit instituted by any such Person in respect of any such Claims or Causes of Action respectively.

[Section 3 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

and to decide Questions of Title in all Causes of Possession, &c

[This heading is a continuation of the heading of section 3.]

4. The said Court of Admiralty shall have Jurisdiction to decide all Questions as to the Title to or Ownership of any Ship or Vessel, or the Proceeds thereof remaining in the Registry, arising in any Cause of Possession, Salvage, Damage, Wages, or Bottomry, which shall be instituted in the said Court after the passing of this Act.

[Section 4 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

5.

[section 5 deleted by the Wreck & Salvage Act, 1846]

Court, in certain Cases, may adjudicate on Claims for Services, &c. although not on the High Seas

6. The High Court of Admiralty shall have Jurisdiction to decide all Claims and Demands whatsoever in the Nature of Salvage for Services rendered to or Damage received by any Ship or Sea-going Vessel, or in the Nature of Towage, or for Necessaries supplied to any Foreign Ship or Sea-going Vessel, and to enforce the Payment thereof, whether such Ship or Vessel may have been within the Body of a County, or upon the High Seas, at the Time when the Services were rendered or Damage received, or Necessaries furnished, in respect of which such Claim is made.

[Section 6 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

Evidence may be taken viva voce in open Court

7. In any Suit depending in the said High Court of Admiralty the Court (if it shall think fit) may summon before it and examine or cause to be examined Witnesses by Word of Mouth, and either before or after Examination by Deposition, or before a Commissioner, as hereinafter mentioned; and Notes of such Evidence shall be taken down in Writing by the Judge or Registrar, or by such other Person or Persons, and in such Manner as the Judge of the said Court shall direct.

[Section 7 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

Evidence may be taken viva voce before a Commissioner

8. The said Court may, if it shall think fit, in any such Suit issue One or more Special Commissions to some Person, being an Advocate of the said High Court of Admiralty of not less than Seven Years standing, or a Barrister at Law of not less than Seven Years standing, to take Evidence by Word of Mouth, upon Oath, which every such Commissioner is hereby empowered to administer, at such Time or Times, Place or Places, and as to such Fact or Facts, and in such Manner, Order, and Course, and under such Limitations and Restrictions, and to transmit the same to the Registry of the said Court, in such Form and Manner as in and by the Commission shall be directed; and such Commissioner shall be attended, and the Witnesses shall be examined, cross-examined, and re-examined by the Parties, their Counsel, Proctors, or Agents, if such Parties, or either of them, shall think fit so to do; and such Commission shall, if need be, make a Special Report to the Court touching such Examination, and the Conduct or Absence of any Witness or other Person thereon or relating thereto; and the said High Court of Admiralty is hereby authorized to institute such Proceedings, and make such Order or Orders, upon such Report, as Justice may require, and as may be instituted or made in any Case of Contempt of the said Court.

[Section 8 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

Attendance of Witnesses and Production of Papers may be compelled by Subpoena

9. It shall be lawful in any Suit depending in the said Court of Admiralty for the Judge of the said Court, or for any such Commissioner appointed in pursuance of this Act, to require the Attendance of any Witnesses, and the Production of any Deeds, Evidences, Books, or Writings, by Writ, to be issued by such Judge or Commissioner, in such and the same Form, or as nearly as may be, as that in which a Writ of Subpoena ad testificandum, or of Subpoena duces tecum, is now issued by Her Majesty's Court of Queen's Bench at *Westminster*; and that every Person disobeying any such Writ so to be issued by the said Judge or Commissioner shall be considered as in Contempt of the said High Court of Admiralty, and may be punished for such Contempt in the said Court.

[Section 9 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

10.

[section 10 deleted by The Statute Law Revision (No 2) Act, 1874]

[sections 11-17 deleted by the Civil Procedure Acts Repeal Act, 1879]

Power for Judge of Admiralty to make Rules of Court

18. It shall be lawful for the Judge of the said High Court of Admiralty from Time to Time to make such Rules, Orders, and Regulations respecting the Practice and Mode of Proceeding of the said Court, and the Conduct and Duties of the Officers and Practitioners therein, as to him shall seem fit, and from Time to Time to repeal or alter such Rules, Orders, or Regulations: Provided always, that no such Rules, Orders, or Regulations shall be of any Force or Effect until the same shall have been approved by Her Majesty in Council.

[Section 18 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act

Admiralty Court Act, 1840 (British)

contains no specific direction to do this. Section 22(1) of the Supreme Court of Judicature (Officers) Act, 1879 [42 & 43 Vict c 78] affects the making of rules of court in terms of this section:
 “Section seventeen of the Supreme Court of Judicature Act, 1875 [38 & 39 Vict, c.77], as amended by section seventeen of the Appellate Jurisdiction Act, 1876 [39 & 40 Vict, c.59], shall extend to authorise the making, in pursuance of those sections, of rules of court... under or for the purposes of any Act passed before the passing of this Act, which, so far as unrepealed, expressly or by implication authorise or directs the making of any orders, rules or regulations for any purpose for which rules of court can be made under the above-mentioned sections, or for any similar purpose...”.]

19.

[section 19 deleted by the Civil Procedure Acts Repeal Act, 1879]

Gaolers to receive Prisoners committed by the Court of Admiralty or by Admiralty Coroners

20. The Keeper for the Time being of every Common Gaol or Prison shall be bound to receive and take into his Custody all Persons who shall be committed thereunto by the said Court of Admiralty, or who shall be committed thereunto by any Coroner appointed by the Judge of the said Court of Admiralty, upon any Inquest taken within or upon the High Seas adjacent to the County or other Jurisdiction to which such Gaol or Prison belongs; and every Keeper of any Gaol or Prison who shall refuse to receive into his Custody any Person so committed, or wilfully or carelessly suffer such Person to escape and go at large without lawful Warrant, shall be liable to the like Penalties and Consequences as if such Person had been committed to his Custody by any other lawful Authority.

[Section 20 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.]

Prisoners in Contempt may be discharged

21. It shall be lawful for the Judge of the said High Court of Admiralty to order the discharge of any Person who shall be in Custody for Contempt of the said Court, for any Cause other than for Non-payment of Money, on such Conditions as to the Judge shall seem just: Provided always, that the Order for such Discharge shall not be deemed to have purged the original Contempt in case the Conditions on which such Order shall be made be not fulfilled.

[section 21 amended by the Statute Law Revision (No 2) Act, 1888]

Jurisdiction to try Questions concerning Booty of War

22. the said High Court of Admiralty shall have Jurisdiction to decide all Matters and Questions concerning Booty of War, or the Distribution thereof, which it shall please Her Majesty, Her Heirs and Successors, by the Advice of Her and Their Privy Council, to refer to the Judgement of the said Court; and in all Matters so referred the Court shall proceed as in Cases of Prize of War, and the Judgement of the Court therein shall be binding upon all Parties concerned.

[Section 22 is amended by the Statute Law Revision (No 2) Act, 1888. The word which now begins the provision as a result of these amendments has been capitalised even though the amending Act contains no specific direction to do this.
 Cases of Prize of War were governed by The Naval Prize Act, 1864.]

Jurisdiction of Courts of Law and Equity not taken away

Admiralty Court Act, 1840 (British)

23. Provided always, That nothing herein contained shall be deemed to preclude any of Her Majesty's Courts of Law or Equity now having Jurisdiction over the several Subject Matters and Causes of Action herein-before mentioned from continuing to exercise such Jurisdiction as fully as if this Act had not been passed.

[section 23 amended by the Statute Law Revision (No 2) Act, 1888]

24.

[section 24 deleted by the Statute Law Revision (No 2) Act, 1874]