

WESTERN AUSTRALIAN MARINE.

12° and 13° GEO. VI., No. LXXII.

No. 72 of 1948.

AN ACT to consolidate and amend the law relating to marine navigation and boat licensing.

[Assented to 21st January, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Western Australian Marine Act, 1948*.

2. This Act shall commence on a day to be fixed by proclamation after the King's approval thereto has been proclaimed in the State.

3. This Act is divided into Parts, Divisions and Subdivisions as follows:—

PART I.—SS. 1-8—PRELIMINARY.

PART II.—SS. 9-18—GENERAL PROVISIONS.

PART III.—SS. 19-33—EXAMINATIONS AND CERTIFICATES.

Division 1—Examinations and certificates of masters, mates.

Subdivision (i)—ss. 19-20—Examinations and certificates.

Part I.

Short title.

Commencement.
Royal Instructions of 29/10/1900 cl. VII (5).
M.S. Act, s. 735.

Division into Parts, Divisions, etc.

Abbreviations.

M.S. Act—Merchant Shipping Act, 1894 (U.K.).
M.S. Act, 1906—Merchant Shipping Act, 1906 (U.K.).
C'th Act—Navigation Act, 1912-1942 (Commonwealth).

S.A. Act—
Marine Act,
1936.
(South
Australia.)

W.A. Act—
Navigation
Act, 1904.
(Western
Australia.)
C. Code—
Criminal
Code (1913
—Western
Australia).

N.S.W. Act—
Navigation
Act, 1901-
1935. (New
South
Wales.)

Q. Act—The
Navigation
Acts
Amendment
Act of 1939.
(Queens-
land).

Subdivision (ii)—s. 21—Certificated officers on ships.

Subdivision (iii)—ss. 22-27—General Provisions.

Division 2—ss 28-33—Examinations and Certificates of marine surveyors.

PART IV.—ss. 34-52—SURVEY OF SHIPS.

Division 1—s. 34—Application of this Part.

Division 2—ss. 35-44—Surveys and certificates.

Division 3—ss. 45-46—Duties of Surveyors.

Division 4—ss. 47-48—Duties of Owners.

Division 5—ss. 49-52—Certain offences.

PART V.—ss. 53-94—SAFETY AND PREVENTION OF ACCIDENTS.

Division 1—s. 53—Application.

Division 2—ss. 54-64—Unseaworthy ships.

Division 3—ss. 65-66—Equipment.

Division 4—ss. 67-72—Wireless telegraphy.

Division 5—ss. 73-80—Carriage of dangerous goods.

Division 6—ss. 81-88—Deck and load lines.

Division 7—ss. 89-94—Regulations for preventing collisions, etc., lights, signals, etc.

PART VI.—ss. 95-109—INVESTIGATIONS AND INQUIRIES INTO CASUALTIES, INCOMPETENCY, AND MISCONDUCT.

Division 1—s. 95—Application.

Division 2—s. 96—Notice of casualties, etc.

Division 3—ss. 97-98—Preliminary inquiries—investigations.

Division 4—ss. 99-109—Court of Marine Inquiry.

PART VII.—SS 110–182—ENGAGEMENT, DISCHARGE AND CONDITIONS OF EMPLOYMENT OF SEAMEN AND OTHERS.

Division 1—ss. 110–113—General.

Division 2—ss. 114–118—Rating of Seamen.

Division 3—ss. 119–120—The crew.

Division 4—ss. 121–125—The agreement.

Division 5—ss. 126–131—Discharge of seamen.

Division 6—ss. 132–144—Seamen's wages.

Division 7—ss. 145–155—Discipline.

Division 8—ss. 156–159—Provisions.

Division 9—ss. 160–167—Health.

Division 10—ss. 168–170—Accommodation for seamen.

Division 11—ss. 171–178—Property of deceased seamen.

Division 12—ss. 179–182—The official logbook, ship's logbook and engineroom logbook.

PART VIII.—SS. 183–207—BOAT LICENSING.

Division 1—ss. 183–204—Hire boats and fishing, pearling and whaling boats.

Division 2—ss. 205–207—Private pleasure boats.

PART IX.—SS. 208–220

4. This Act shall be construed so as not to exceed the legislative power of the State, the intention being that where any enactment herein would, but for this section, have been construed as being in excess of that power it shall, nevertheless, to the extent to which it is not in excess of that power be a valid enactment.

Severability.

5. The provisions of this Act shall not apply to ships of the King's Navy, including ships of the Navy of any British Dominion, British possession, member of the British Commonwealth of Nations, or to ships of the Navy of any foreign Government.

Exemptions.
Oth Act, s. 3.
cf. M.S. Act,
s. 741.

6. Subject to the provisions of section five of this Act, the provisions of this Act bind the Crown.

Application
to the Crown.

Repeal.
First
Schedule.

7. The Acts mentioned in the first schedule are repealed.

Interpreta-
tion.

8. (1) In this Act unless the context or subject matter otherwise indicates or requires the expression—

“agreement” means the ship’s articles of agreement with the crew;

“apprentice” means a person bound by indenture for the sea service to a ship-owner or master;

“Board of Trade” means the Board of Trade of the United Kingdom;

“boilers and machinery” includes engines and everything connected therewith employed in propelling a steamship, and every description of machinery used on a ship for the purposes of the ship or her cargo, and all other apparatus or things attached to or connected therewith or used with reference to any engine or under the care of the engineer;

“casualty” includes the loss, abandonment, collision, grounding of, and any mishap, accident, injury, and damage, whether by fire or otherwise, to any ship;

“coast-trade ship” means every ship employed in trading or going between any ports within the jurisdiction, also every steam tug: Provided that every such ship employed in trading between any ports of adjacent States shall be deemed to be a coast-trade ship for such purposes of this Act as the Department may deem fit;

“Department” means the Harbour and Light Department of the State;

“desertion” means the absence of a seaman or apprentice from his ship without lawful cause or excuse, with the intention of not returning thereto.

“discharge” means the certificate of the discharge of a seaman from a ship in which he served;

“effects” includes all personal property and documents;

- “equipment” includes boats, tackle, pumps, apparel, furniture, life-saving appliances of every description, spars, masts, rigging and sails, fog signals, lights and signals of distress, medicines and medical and surgical stores and appliances, and every thing or article belonging to or to be used in connection with, or necessary for the navigation and safety of the ship, including apparatus for preventing or extinguishing fires, loading and discharging gear and apparatus of all kinds, and such other things as shall be prescribed;
- “go to sea” and “proceed to sea” include the getting under way for the purpose of going to sea, plying or running of a ship or proceeding on a voyage beyond the limits of any harbour or river in the State;
- “sea-going” has a corresponding meaning;
- “harbour and river ship” means a ship or steamship adapted for harbour and river service only;
- “incompetent” means unable, from any cause whatever, to perform efficiently the duty of the person in relation to which the word is used;
- “incompetency” has a corresponding meaning;
- “jurisdiction” means the navigable waters lying within one nautical league of the coast, and the inland navigable waters of the State;
- “limited coasting voyage” means a voyage from and to any port in the State within limits determined for the port by the Governor;
- “master” means every person, except a pilot, having command or charge of any ship;
- “Merchant Shipping Act” means the Imperial Act, the Merchant Shipping Act, 1894, and any Act amending the same or in substitution therefor;
- “Minister” means the Minister of the Crown to whom for the time being the administration of this Act is committed by the Governor;
- “misconduct” includes careless navigation, drunkenness, tyranny, any failure of duty or want of skill, or any improper conduct;

- “Navigation Act” means the Commonwealth Act, the Navigation Act, 1912-1942, and any Act amending the same or in substitution therefor;
- “officer” in relation to a ship, means the master, mates, and engineers of the ship;
- “official” includes all persons in the service of the State employed for any purpose or duty in the administration of this Act;
- “owner” includes the manager and secretary of any body corporate;
- “passenger” means every person carried in any ship other than the master, any member of the crew, the owner of the ship and his family and servants;
- “ply” means to navigate in or cause to pass over navigable waters within the jurisdiction;
- “port” includes place;
- “seaman” means every person employed or engaged in any capacity on board a ship, except masters, pilots and apprentices and persons temporarily employed on the ship in port;
- “send to sea” has a meaning corresponding with “go to sea”;
- “ship” means every description of vessel used in navigation, not propelled by oars and includes hulks, barges, pontoons and lighters;
- “steamship” means any ship propelled by steam;
- “take to sea” has a meaning corresponding with “go to sea”;
- “vessel” includes any ship or boat or any other description of vessel used in navigation; and
- “wages” includes emoluments of any kind.

(2) (a) Any provisions of this Act applying to steamships shall apply to ships propelled by electricity, motor or other mechanical power.

(b) The Governor may make regulations prescribing modifications of those provisions for the purpose of adapting them to all matters relating to ships to which paragraph (a) of this subsection applies.

PART II.—GENERAL PROVISIONS.

9. The Department shall, subject to the control of the Minister, have and is hereby invested with the administration of this Act, and subject to the provisions of this Act—

Part II.
Administra-
tion of Act.
Powers and
duties of
Department.
S.A. Act,
s. 13.

- (a) shall cause examinations to be held as provided by Part III. of this Act of persons desirous of receiving certificates of competency as masters, mates, engineers, marine motor engine-drivers of ships and coxswains, and may after examination or otherwise issue certificates of competency to masters, mates, engineers, marine motor engine-drivers of ships and coxswains and may cancel or suspend any certificate;
- (b) may cancel or suspend certificates of service issued under the provisions of any Act heretofore in force;
- (c) shall in manner hereinafter provided cause the requirements of this Act for the preservation of life and property and the prevention of accidents at sea to be fulfilled;
- (d) may make preliminary inquiries or may direct the same to be made by some person or persons in that behalf appointed into the causes of casualties and also into the conduct of masters, mates, engineers and coxswains;
- (e) may direct the Court of Marine Inquiry to hold formal investigations into the causes of casualties and into charges of incompetency or misconduct on the part of masters, mates, engineers and coxswains;
- (f) may cause unseaworthy ships to be detained and ships to be surveyed;
- (g) may issue and revoke certificates that ships have complied with the law with respect to surveys;
- (h) shall furnish to the Governor lists of persons eligible for appointment as Assessors of the Court of Marine Inquiry.

Presumption
of regularity.
W.A. Act,
s. 6.

10. (1) All documents whatever, purporting to be issued or written by or under the direction of the Department, and purporting to be signed by any person acting with the authority of the Department, shall be received in evidence and shall be deemed to be issued or written by or under the direction of the Department pursuant to this Act, without further proof, unless the contrary is shown.

(2) All documents purporting to be certificates issued by the Department in pursuance of this Act, and to be signed as in the preceding subsection mentioned, shall be received in evidence and shall be deemed to be such certificates without further proof, unless the contrary is shown.

(3) Every document purporting to be an official copy of any deed, instrument or writing shall, if signed by any person acting with the authority of the Department, be received in evidence and, until the contrary is shown, be deemed to be a true copy of the original of which it purports to be a copy.

Power to
inspect logs
etc., and
muster crew.
W.A. Act,
s. 8.

11. The Department may, in cases where there is reason to suspect that the provisions of this Act are not complied with, exercise the following powers:—

- (a) Require the owner, master, or any of the seamen of any coast trade ship being within any port within the jurisdiction to produce any official log book, ship's log book, engineroom log book and other documents relating to any such seamen, in their respective possession or control.
- (b) Require any such master to produce a list of all persons on board his ship.
- (c) Take copies of such log books and documents or of any part thereof.
- (d) Muster the crew of any such ship; and
- (e) summon the master to appear and give any explanation concerning such ship or her crew and such logs and documents.

Powers
incidental to
inquiry.
W.A. Act,
s. 10.

12. The Department may, by summons, require the attendance of any person upon any inquiry authorised, and may require answers or returns to any questions, and

may require and enforce the production of all books, papers, logs, accounts, agreements and other documents relating to the inquiry, and may administer oaths or in lieu thereof require any person examined to make and subscribe a statutory declaration of the truth of the statements made in his examination.

13. If any person—

- (a) upon requisition made under this Act refuses or neglects to produce or to permit inspection and copying of any log book or other document;
- (b) impedes any mustering under this Act;
- (c) refuses or neglects to give any explanation which he is required to give under this Act; or
- (d) knowingly misleads or deceives any person authorised by this Act to demand any explanation,

Penalty for refusing production of documents, etc.
W.A. Act. s. 9.

cf. s. 56.
Post.

he shall, for each offence, incur a penalty not exceeding twenty pounds.

14. (1) The Governor may appoint as officials such surveyors, inspectors, shipping masters and other persons as may be thought fit.

Appointment of officials.
W.A. Act. ss. 12, 13, 14 and 19.

(2) The appointment of officials shall be in accordance with the provisions of the Public Service Act, 1904-1947.

(3) Any person engaged to act for, on behalf of or by the Department, as well as any official, shall during the engagement be regarded as holding a public office.

C. Code, s. 82.

(4) The cost of the administration of this Act shall be paid out of moneys to be appropriated by Parliament to the purposes of this Act.

15. All officials of and persons engaged to act on behalf of the Department and all inspectors and surveyors appointed in pursuance of the provisions of this Act—

Powers of inspection.
W.A. Act. s. 17.

- (a) may at all reasonable times go on board any ship or vessel to which any of the provisions of this Act extend, for the purpose of examining the hull, boilers and machinery, and

cf. s. 56.
Post.

making any report thereon required by the Department;

(b) may inspect any boats, equipment or materials on board or belonging to any such ship or vessel; and

(c) may go on board and inspect any such ship or vessel for the purpose of inquiring into or reporting upon the nature and causes of any casualty which the ship or vessel has sustained or caused, or is alleged to have sustained or caused.

Penalty for obstruction, etc.
W.A. Act, s. 18.
S.A. Act, s. 11.
M.S. Act, s. 730.

16. Any person who wilfully assaults, obstructs, endeavours to intimidate or uses abusive or offensive language to or disobeys the lawful requisitions or orders of, any person performing or endeavouring to perform any duty imposed on him, or exercising or endeavouring to exercise any right or power conferred on him by this Act, whether on board any ship or elsewhere, shall be guilty of an offence, and be liable to a penalty of not more than fifty pounds, and may be seized and detained by that person or by any person whom he may call to his assistance until the offender can be conveniently taken before some justice or court having appropriate jurisdiction.

Regulations generally.
S.A. Act, s. 14.
and see ss. 8 (2) (b), 72, 79, 85, 89, 101 (2), 104, 204 and 207 post.

17. Subject to the provisions of this Act, the Governor may make regulations for—

(i) the control, supervision and guidance of the inspectors, officials and persons engaged by or on behalf of the Department and over whom, by virtue of this Act, the Minister or Department has control, and for prescribing the form and manner of signing of, and the persons authorised to sign, notices, certificates, returns, statements, declarations, licenses and other documents to be given, made, or issued under this Act, and for the promulgation of all acts, matters and things necessary, expedient or convenient for carrying into operation or for facilitating the operation of this Act:

Department's functions and forms.

- (ii) prescribing the equipment of coast-trade ships and harbour and river ships; Equipment.
- (iii) prescribing and regulating the use of the means of saving life to be carried by coast-trade ships and harbour and river ships; Life-saving provisions.
- (iv) the prevention of the overloading of coast trade ships and harbour and river ships either with passengers or cargo, for securing the safety of the passengers on board such ships, and their proper accommodation and generally for regulating all matters relating to the protection of life and of the property of passengers and others; Overloading.
- (v) prescribing the number and description of persons to be carried as crew of any class or kind of coast-trade ship or harbour and river ship and providing for the granting of exemptions from any such regulations, Crew.
- (vi) prescribing the accommodation to be provided for the crew of any class or kind of coast-trade ship or harbour and river ship, and providing for granting of exemptions from any such regulations, Accommodation.
- (vii) the adjustment of compasses and the transmission of deviation tables; Compasses.
- (viii) the survey of ships and vessels by engineer surveyors and ship surveyors, for fixing and appointing the time, places and manner of making surveys, for fixing the fees, travelling or other expenses to be paid in respect of surveys, and for determining the persons by whom and the conditions under which payments shall be made; Survey.
- (ix) the conduct of examinations under Part III. of persons who are candidates for examination for certificates of competency as masters, mates, engineers, marine motor engine-drivers, marine surveyors and coxswains, Examinations for certificates of competency.

and as to qualifications to be possessed by those persons, and prescribing the fees to be paid by applicants for examination;

- Examiners.** (x) regulating the appointment of, and prescribing the qualifications to be possessed by, persons to conduct examinations;
- Issue of certificates of competency.** (xi) the issue of certificates of competency to masters, mates, engineers, marine motor engine-drivers, marine surveyors and coxswains;
- Recognition of limited certificates of competency and certificates of service.** (xii) the recognition of qualifications certified by limited certificates of competency or service issued by the Board of Trade or any other authority either after examination under this Act or otherwise;
- Certificates for ships.** (xiii) regulating the issue of certificates for ships;
- Fees, charges and expenses.** (xiv) fixing the fees, charges and expenses to be taken or made in respect of the various matters committed in the administration of this Act to the Minister and the Department, or either, and authorised by this Act;
- Lists of assessors.** (xv) prescribing the mode in which and times at which lists of persons eligible for appointment as assessors of the Court of Marine Inquiry shall be prepared, and prescribing the qualifications of persons eligible to be appointed as assessors;
- Penalties.** (xvi) imposing penalties for any breach of any regulation not exceeding for any such breach the sum of fifty pounds (except in cases of continuing offences when a penalty of ten pounds may be imposed for every day after notice of the offence) except in those cases where a special penalty may be imposed under the provisions of this Act in respect of any specific offence; and
- General.** (xvii) generally for administering this Act and carrying out the powers duly conferred upon the Minister and the Department, or either, by the provisions of this Act;

18. (1) Where under any provision of this Act the Governor is empowered to make rules or regulations with respect to any matter, the Governor may by proclamation declare from time to time that any rules, regulations, orders, instructions, proclamations or other subordinate legislation applicable to the matter made under or pursuant to or adopted or enacted by the Merchant Shipping Act or the Navigation Act shall apply within the State and the jurisdiction.

Power to adopt appropriate subordinate legislation.

(2) Any such proclamation may be revoked by proclamation made by the Governor.

(3) During the time any such proclamation applying any such rules, regulations, orders, instructions, proclamations or other subordinate legislation remains in force, the rules, regulations, orders, instructions, proclamations or other subordinate legislation shall, the necessary changes being made by way of adaptation, apply to the State and the jurisdiction as if the same were subordinate legislation made by the Governor under this Act.

PART III.—EXAMINATIONS AND CERTIFICATES.

Part III.
Division 1,
subdivision
(i).

Division 1.—Examinations and Certificates of Masters, Mates, Engineers, Marine Motor Engine-drivers and Coxswains.

Subdivision (i).—Examinations and Certificates.

19. (1) The Department shall appoint examiners and conduct examinations at times and places and in manner and under conditions prescribed for candidates for certificates, in this Act referred to as certificates of competency, to the effect that they are competent to be—

Examinations for certificates of competency for masters, mates, engineers, engine drivers and coxswains. S.A. Act, s. 17. N.S. Act, ss. 93 and 94.

(a) masters or mates of coast-trade ships;

(b) masters of harbour and river ships;

(c) third class engineers of coast-trade ships or harbour and river ships, which are propelled by steam or motor power or both;

(d) marine motor engine-drivers of harbour and river ships the propelling power of which is less than one hundred and fifty brake horsepower; or

(e) coxswains of harbour and river ships.

Candidates to be British subjects.

(2) No person shall be eligible for candidature for examination unless he is a British subject.

Report of examiners—issue of certificates or further inquiry or re-examination. S.A. Act, s. 18. M.S. Act, s. 98.

20. The examiners shall report upon the result of every such examination to the Department, which shall thereupon issue to every applicant who is duly reported by the examiners to have passed the examination satisfactorily and to have given satisfactory evidence as to his sobriety, experience, ability and general good conduct, a certificate of competency to the effect that he is competent to act as master, or as mate of coast-trade ships or as master of harbour and river ships or as third class engineer of coast-trade or harbour and river ships or as marine motor engine-driver of harbour and river ships the propelling power of which is less than one hundred and fifty brake horsepower, or as coxswain of harbour and river ships:

Provided that in every case in which the Department has reason to believe the report to have been unduly made, the Department may remit the case either to the same or any other examiner and may require a re-examination of the applicant or a further inquiry as to his testimonials or character before granting him a certificate.

Subdivision (ii).—Certificated Officers on Ships.

Part III. Division 1. Subdivision (ii).

Ship to carry master. W.A. Act, s. 56.

21. (1) (a) Every coast-trade ship going to sea from any port within the jurisdiction shall be provided with a master duly certificated under this Act.

Harbour and river ship to carry either master or coxswain, according to the direction of the Department.

(b) Every harbour and river ship plying within the jurisdiction shall, according to the direction of the Department be provided with either a master or a coxswain, duly certificated under this Act.

(2) If the ship is a coast-trade ship—

- (a) of over one hundred but not exceeding three hundred tons net registered tonnage she shall also be provided with a duly certificated first mate;
- (b) of over three hundred tons net registered tonnage she shall also be provided with a duly certificated first mate and a duly certificated second mate.

Other officers.
S.A. Act,
s. 19 (1)
(1F).
O'rh Act,
s. 14.
M.S. Act,
s. 92.

(3) Every such ship as aforesaid being a steamship or a ship propelled by any mechanical power other than steam, shall, in addition to the requirements of the preceding subsection, be provided with engineers duly certificated under this Act, according to the following scale:—

Engineers
on ships.

- (a) If the ship is a coast-trade ship the propelling power of which is more than one hundred and fifty nominal horsepower, with at least a first and a second engineer, the first possessing a first class engineer's certificate and the second a second class engineer's certificate or a certificate of higher grade.
- b) If the ship is a coast-trade ship the propelling power of which is less than one hundred and fifty nominal horsepower but more than one hundred nominal horsepower with at least one engineer possessing a first class engineer's certificate;
- (c) If the ship is a coast-trade ship the propelling power of which is less than one hundred nominal horsepower but more than fifty nominal horsepower with at least one engineer possessing a second class engineer's certificate or a certificate of a higher grade.
- (d) If the ship is a coast-trade ship the propelling power of which is fifty nominal horsepower or less or a harbour and river steamship or a harbour and river ship the propelling power of which is more than one hundred and fifty brake horsepower with at least one engineer possessing a third class engineer's certificate or a certificate of a higher grade.

- (e) If the ship is a harbour and river ship the propelling power of which is less than one hundred and fifty brake horsepower with a driver possessing a marine motor engine-driver's certificate or a certificate of a higher grade:

Provided that this subsection shall not apply in the case of any ship used north of the twenty seventh parallel of south latitude and not elsewhere.

- (4) This section shall not apply to ships used for pleasure and not engaged in trading or plying for hire.

- (5) Any person who—

- (a) goes to sea in the capacity of master, mate, or engineer of any coast-trade ship or acts in the capacity of master, engineer or engine-driver on any harbour and river ship without being duly certified whether engaged to serve in that capacity or acting therein without engagement; or

- (b) employs any person who is not duly certificated in that capacity as master, mate, engineer or engine-driver without ascertaining that he is duly certificated,

commits an offence and shall be liable for each offence to a penalty not exceeding fifty pounds;

And if the master of any ship employs any person to serve on board the ship in the capacity of engineer without ascertaining that he is duly certificated to act in that capacity the master and the owner of the ship each commits an offence and each shall be liable to a penalty not exceeding fifty pounds.

- (6) A master, mate, engineer or marine motor engine-driver shall not be deemed to be duly certificated within the meaning of this section unless he is the holder for the time being of a valid certificate of competency or of service under this Act of a grade appropriate to his station in the ship, or of a higher grade:

Provided that the holder of any unexpired certificate of competency or of service granted to him by the Board of Trade, or competent authority recognised as such by the Governor or under the Navigation Act shall be deemed for the purposes of this Act the holder of a valid certificate.

Exemption
of ships used
for pleasure
and not for
hire.
W.A. Act,
s. 56 (6).

Meaning of
"duly certi-
ficated."
W.A. Act,
s. 56 (7).

Subdivision (iii).—General Provisions.

Subdivision
(iii).

22. Every person to whom a certificate of service is granted shall pay the prescribed fees for the certificate.

Fees for
certificates.
W.A. Act,
s. 58.

23. Every applicant for examination shall pay the prescribed fees.

Fees for
examinations.
W.A. Act,
s. 59.

24. Every certificate of competency or of service for foreign-going ships shall be deemed to be of a higher grade than the corresponding certificate for coast-trade ships, and every certificate of competency or service for coast-trade ships shall be deemed to be of a higher grade than the corresponding certificate for harbour and river ships; but no certificate for a coast-trade ship or a harbour and river ship shall entitle the holder to go to sea as master or mate of foreign-going ships, and no certificate for a harbour and river ship shall entitle the holder to go to sea as master or mate of a coast-trade ship.

Certificates
of com-
petency, etc.,
relative
prestige.
S.A. Act,
s. 21.
W.A. Act,
s. 60.
M.S. Act,
s. 93.

25. All certificates whether of competency or service shall be made in duplicate, and one part shall be delivered to the person entitled to the certificate and the other shall be kept and recorded by the Department and the record is hereby declared to be admissible in evidence.

Recording.
W.A. Act,
s. 61.

cf. s. 216 post.

26. All cancellations, suspensions, alterations or other proceedings in any wise affecting any certificate made or taken in pursuance of the provisions of this Act shall be entered by the Department in the record of certificates, and the record is hereby declared to be admissible in evidence.

Cancellations,
suspensions,
etc.
W.A. Act,
s. 62.

cf. s. 216 post.

27. (1) Whenever any master, mate, engineer, or marine motor engine-driver proves to the satisfaction of the Department that he has, without fault on his part, lost or been deprived of any certificate already granted to him, the Department shall, upon payment of the prescribed fee, cause a copy of the certificate to which he appears, by the record of certificates to be entitled, to be made out and certified as a true copy, and to be delivered to him.

Loss of
certificate.
W.A. Act,
s. 63.

(2) Any copy which purports to be so made and certified shall be as valid and effectual as the original certificate.

Part III.
Division 2.

Division 2.—Examinations and Certificates of Marine Surveyors.

Examinations
for certificates
of competency
for marine
surveyors.
W.A. Act,
s. 65.

28. The Department shall appoint examiners and conduct examinations at times and places and in manner and under conditions prescribed for candidates for certificates, in this Act referred to as certificates of competency, to the effect that they are competent to be marine surveyors.

Certificates
of competency.
W.A. Act,
s. 66.

29. The Department shall issue to every person who has passed the prescribed examination a certificate of competency.

Certificates
of service.
W.A. Act,
s. 67.

30. Every person who proves to the satisfaction of the Department that he has, for a period of three years, practised as a marine surveyor at any port in the State shall, if of good repute and character, be entitled to a certificate to be issued to him by the Department, and to be called a certificate of service.

Cancellation.
W.A. Act,
s. 68.

31. The Department may cancel the certificate of any marine surveyor, whether of competency or service, granted under this Act if it is of opinion that any charge of fraud, collusion, neglect of duty, or other misconduct preferred against such surveyor has been established:

Provided that the person charged with misconduct shall, before such cancellation, be called upon to show cause to the Department against the cancellation of his certificate.

Penalty for
practising
without
qualification.
W.A. Act,
s. 69.

32. Whosoever, not holding a certificate under this Act either of service or competency—

(a) practises as a marine surveyor:

(b) surveys any vessel; or

(c) gives a certificate of such survey purporting to be the certificate of a marine surveyor or intended to have that effect,

is guilty of an offence and liable to a penalty of one hundred pounds:

Provided that this section shall not apply to the magistrate, assessor or person appointed by the magistrate under section one hundred and nine of this Act, relating to surveys of ships and reports thereon to the Court of Marine Inquiry.

cf. s. 109 post

33. The provisions of Division 1, Subdivision (iii), of this Part of this Act, the appropriate alterations by way of adaptation being regarded as having been made, shall, where the context permits, apply to this Division.

Fees, records, loss of certificates, etc. Part III, Division 1, subdivision (iii) ante.

PART IV.—SURVEY OF SHIPS.

Division 1.—Application of this Part.

Part IV.
Division 1.

34. (1) This Part of this Act shall apply to all ships, British or foreign, except—

Application of this Part. W.A. Act, s. 30.

(a) passenger ships in respect of which certificates granted under Part III. of the Merchant Shipping Act, or declared under that Act to have the same force as if so granted, are in force;

(b) ships of any class for the time being exempted from this Part by proclamation issued and in force under this section;

(c) ships not propelled by steam and not used in trade or commerce or for the purpose of gain; and

(d) ships to which Division 1 or 2 of Part IV. of the Navigation Act, for the time being lawfully applies.

(2) The Governor may at any time and from time to time issue any proclamation for the purposes of this section, and may thereby exempt any ships of any particular class from this Part of this Act, and may at any time and from time to time revoke or vary any such proclamation.

Division 2.

Division 2.—Surveys and Certificates.

Owners to
have ships
surveyed.
W.A. Act,
s. 31.
M.S. Act,
s. 272.

35. (1) The owner of every ship to which this Part of this Act applies shall cause it to be surveyed once at least every year by a shipwright surveyor and (if the ship contains a boiler, engine, or other machinery or the hull is constructed of metal) by an engineer surveyor, at such convenient time as the Department appoints:

s. 14 ante.

Provided that at the port of Fremantle the surveyor shall be a person appointed by the Governor under section fourteen of this Act:

Provided also that in the case of a harbour and river ship the survey may be made by any person appointed by the Department and every person so appointed shall, whilst his authority to act continues, be deemed to be a surveyor for the purposes of this Part, and the holder of a public office.

C. Code,
s. 82.

Declarations
of surveys.

(2) The surveyors, if satisfied on the survey that they can with propriety do so, shall deliver to the owner the following:—

(a) A declaration under the hand of the shipwright surveyor of the sufficiency and good condition of the equipment of the ship in question (and also, if the Department so requires, a statement of the number of passengers, if any, whether deck passengers or other passengers, which the ship is constructed to carry), and, where the hull is wholly or partly constructed of wood of the sufficiency and good condition of the hull; and

(b) if survey by an engineer surveyor is required under subsection (1) of this section, a declaration under the hand of the engineer surveyor of the sufficiency and good condition of the boilers and machinery, and, where the hull is constructed of metal, of the sufficiency and good condition of the hull:

Provided that in the case of a harbour and river ship, any necessary declaration may be made and issued by the Department.

(3) The declaration shall distinguish whether the ship is, in construction, equipment, boilers and machinery adapted for sea service as well as for harbour and river service, or for harbour and river service only, and when adapted for harbour and river service only, or for a limited coasting voyage the declaration shall state the local limits within which such ship is, in the opinion of each surveyor, adapted for plying.

(4) The owner shall transmit the declaration to the Department within fourteen days after the day, the date of which it bears.

36. (1) In all cases where it is possible each yearly survey shall be made while a certificate of compliance under section thirty-seven of this Act in respect of the ship is still current.

Time for
surveys.
S.A. Act.
s. 74.
W.A. Act.
s. 32.
s. 37 post.

(2) If the owner of any ship is unable to have the same surveyed while a certificate is still current, either by reason of the ship being absent from the jurisdiction, or of the ship or the boilers and machinery thereof being under repair, or of the ship being laid up in the dock, or for any other reason satisfactory to the Department then the owner shall have the same surveyed as soon thereafter as possible and shall transmit the declarations to the Department within fourteen days after the day the date of which they bear, together with a statement of the reasons which have prevented the survey at the time hereinbefore enacted.

(3) The owner of every ship in respect of which declarations have not been transmitted at the times and in the manner hereinbefore directed shall, except in any case in which the survey has been prevented as hereinbefore provided, forfeit the sum of ten shillings for every day that the transmission of the declarations is delayed, and the sum shall be paid upon the issue of the certificate, hereinafter mentioned, together with the fee prescribed in the regulations, unless the Department in any case for reasons satisfactory to the Department remits such forfeiture or any part thereof.

Certificates
of
compliance.
W.A. Act,
s. 33.
M.S. Act,
s. 274.

37. (1) Upon the receipt of the declarations the Department, if satisfied that there is compliance with this Part of this Act, shall transmit to the master or owner of the ship to which the declarations refer, a certificate of the compliance.

Sea-going
certificate.

(2) (a) Where according to the declaration of the surveyor, the ship in question is adapted for sea service as well as harbour and river service, the certificate shall be termed a sea-going certificate.

Limited
coasting
certificate.

(b) Where according to the declaration the ship is adapted for limited coasting voyages, the certificate shall be termed a limited coasting certificate.

Harbour
and river
certificate.

(c) Where according to the declaration the ship is adapted for harbour and river service only, the certificate shall be termed a harbour and river certificate.

Limit of
number of
passengers.

(3) Where any ship is constructed to carry passengers, the Department shall, to prevent overcrowding, insert in the certificate the number of passengers, whether deck or other passengers, which such ship is constructed to carry, or is authorised to carry by the Merchant Shipping Act.

Local limits.

(4) Every certificate shall set out the local limits, if any, within which the ship is authorised to ply or navigate.

Publication
of lists of
ships having
certificates.

(5) The Department shall publish in the prescribed manner lists of the ships in respect of which certificates have been issued.

Cf. s. 216.
post.

(6) The Department shall record the declarations and certificates and all transactions relating to the certificates and the record shall be admissible in evidence.

38. (1) The Department may accept and recognise all unexpired certificates in legal operation issued under any Act or Statute in force in the United Kingdom or in any British possession for any ship trading to or from any port within the jurisdiction, and the acceptance and recognition shall render those certificates as valid and effectual for all purposes as if issued under this Act.

Recognition of certain certificates.
W.A. Act, s. 34.
S.A. Act, s. 84.
M.S. Act, s. 284.

(2) The Department may disallow and reject any certificate mentioned in subsection (1) of this section, whenever in its opinion, acceptance would be attended with risk or uncertainty, and any certificate so disallowed and rejected shall, for and within the jurisdiction, be and be deemed to be a cancelled certificate.

Rejection of certain certificates.

39. (1) The Department may revoke and cancel any certificate relating to a ship where there is reason to believe that—

Cancellation of certificates.
W.A. Act, s. 35.

- (a) any declaration of the sufficiency and good condition of the hull, boilers or machinery of any ship has been fraudulently or erroneously made;
- (b) the certificate has otherwise been issued upon false or erroneous information; or
- (c) since the making of any declaration of the sufficiency and good condition of the hull, boilers or machinery of the ship, the hull, boilers or machinery has or have sustained any injury or is or are otherwise insufficient,

and whether the certificate was granted or accepted and recognised under this Act or any Act heretofore in force.

(2) The Department may require the owner to have the hull, boilers or machinery of the ship in question again surveyed, and to transmit a further declaration of the sufficiency and good condition thereof; before any certificate is re-issued or a fresh one granted in lieu thereof.

Re-survey.

(3) The Department may at any time, revoke any certificate relating to a ship for the purpose of inserting in any certificate to be granted in lieu thereof, the number of passengers which the ship, to which such certificate relates is, constructed to carry or is authorised to carry as aforesaid.

Alteration of certificate as to number of passengers.

Cf. s. 37 (3) ante.

Duration of
operation of
certificates.
W.A. Act,
s. 36.

40. No certificate of any ship shall be held to be in force for the purposes of this Act for more than one year; and no certificate shall be in force after notice by the Department to the owner or master of the ship, to which the certificate relates, that it has been revoked: Provided that, if any ship has been absent from the jurisdiction for the whole of the thirty days next before the expiration of the certificate last granted in respect of the ship, that certificate (if not expressly cancelled or revoked) shall continue in force till twenty-one days after the return of the ship to the jurisdiction.

Fee.
W.A. Act,
s. 37.

41. The owner of any ship in respect of which a certificate is issued by the Department under this Part of this Act shall pay to the Department the prescribed fee and the Department may recover the amount of the fee by action instituted in any court of competent jurisdiction.

Certificate to
be exhibited
in ship.
W.A. Act,
s. 38.

42. The owner or master of a ship shall forthwith on receipt of any certificate relating to the ship, cause it, or a true copy of it, in distinct and legible characters, to be exhibited in some conspicuous part of the ship so long as the certificate is in force, and failure to comply with the provisions of this section constitutes an offence.

Penalty—Ten pounds.

Ships not to
ply unless
valid
certificate in
operation.
W.A. Act,
s. 39.
Permits.

43. (1) No ship shall go to sea or ply unless a valid certificate, referred to in this Part of this Act as appropriate, has been issued and is in force in respect of the ship:

Provided that it shall be lawful for the Department to issue a permit for any ship to proceed to sea or to ply within the jurisdiction, and the permit shall state the time or voyage for which it shall have effect and the local limits (if any) within which it is to operate and shall have effect according to its tenor.

Penalty.

(2) If any ship goes to sea or plies contrary to the provisions of this section, or proceeds beyond the local limits mentioned in the certificate or permit issued in respect of the ship, the owner of the ship shall be liable to a penalty not exceeding one hundred pounds, and the master to a penalty not exceeding twenty pounds, and it shall be no defence to any prosecution under this section

Absolute pro
hibition.

to show want of knowledge on the part of the person prosecuted.

(3) The Department shall record permits and all transactions relating to them and the record shall be admissible in evidence. cf. s. 216 post.

44. (1) No ship shall carry any greater number of passengers, whether deck or other passengers, than the numbers stated in the certificate. Passengers—overloading. W.A. Act, s. 40.

(2) The owner or master of any ship on board which is found a greater number of such passengers than the number specified in the certificate shall incur a penalty not exceeding twenty pounds, and a further penalty of five shillings for every passenger over and above the specified number.

Division 3.—Duties of Surveyors.

Part IV
Division 3.

45. (1) Engineer and shipwright surveyors shall make such returns to the Department with respect to the build, dimensions, draft, burden, rate of sailing, room for fuel, and the nature and particulars of boilers and machinery of the ships surveyed by them, as the Department requires. Returns of surveys. W.A. Act, s. 41.

(2) Every owner, master and engineer of any ship shall, on demand, give to the surveyors all such information and assistance within his power as may be required by the surveyors for the purpose of making the returns. Owners, masters and engineers to assist surveyors.

(3) Every such owner, master and engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance shall incur a penalty not exceeding fifty pounds. Penalty.

46. (1) The surveyors shall execute their duties under the direction of the Department, and in the execution of those duties may go on board any ship at all reasonable times to inspect her or any part of her, or any of the boilers and machinery, equipment or articles in or on board any ship to which the provisions of Powers and duties of surveyors. W.A. Act, s. 42.

this Part of this Act or any of the regulations thereunder apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage.

Department
may require
ship to be
docked.

(2) If in consequence of any casualty to any ship or for any other reason it is considered necessary, the Department may require the ship to be taken into dock or placed on a slip or on or in any other convenient place to be surveyed.

Part IV.
Division 4.

Division 4.—Duties of Owners.

Safety valves.
W.A. Act,
s. 43.

47. (1) No steamship liable to survey under the provisions of this Act shall go to sea or ply without having two safety valves upon each boiler, one of which safety valves shall be out of the control and interference of the engineer, except for the purpose only of opening and keeping it free, and which shall be deemed to be a necessary part of the boiler upon the sufficiency of which the engineer surveyor is to report.

Surveyors
to report.

Penalty.

(2) If any steamship goes to sea, or plies without having safety valves upon each boiler in compliance with subsection (1) of this section, the owner shall incur a penalty not exceeding one hundred pounds.

Fire
precautions
—signals.
W.A. Act,
s. 44.

48. (1) No ship shall go to sea or ply unless provided with a hose adapted for the purpose of extinguishing fire in any part of the ship and capable of being connected with her engines, if any, nor, if carrying passengers, without being provided with the following means of making signals of distress, that is to say, twelve blue lights or twelve port fires and one cannon with ammunition for at least twelve charges, or with such other means of making signals as shall be approved by the Department.

Oil-
separating
equipment.

(2) No oil-burning or oil-carrying ship having a bunker capacity exceeding fifteen tons shall be navigated within the jurisdiction unless provided with oil-separating equipment as prescribed.

(3) The owner of any ship which goes to sea or plies in contravention of any provision of this section shall be guilty of an offence.

Penalty.

Penalty—One hundred pounds.

Division 5.—Certain Offences.

Part IV.
Division 5.

49. Whosoever—

W.A. Act,
s. 47.

(a) being drunk or disorderly, has been on that account refused admission into any duly surveyed passenger ship by the owner or any person in his employ, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship;

Attempts by drunk or disorderly persons to board passenger ship.

(b) being drunk or disorderly on board such ship, is requested by the owner or any person in his employ to leave her at any place which she visits in the State, and, having had the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request;

Refusal by drunk or disorderly persons to disembark.

(c) being on board any such ship after warning by the master or any other officer of the ship, molests or continues to molest any passenger;

Molesting passengers.

(d) having boarded such ship without the permission of the master or other officer in authority, refuses to leave the ship after being requested to do so by the master or officer;

Boarding without permission and refusing to disembark.

(e) after having been refused admission into any such ship by the owner or any person in his employ on account of the ship being full, and, after having had the amount of his fare (if he has paid a fare) returned or tendered to him, nevertheless persists in attempting to enter the ship;

Attempting to overcrowd.

(f) having boarded any such ship, upon being requested by the owner or any person in his employ to leave the ship before she has quitted the place at which such person boarded on account of the ship being full, and, upon having the amount of his fare (if he has paid a fare) returned or tendered to him, refuses to comply with the request;

Refusing to disembark overcrowded ship.

Avoiding
payment
of fare.

(g) travels or attempts to travel in any such ship without having previously paid the fare when demanded and with intent to avoid payment of the fare;

Travelling
beyond
distance
covered
by fare.

(h) having paid the fare for a certain distance, knowingly and wilfully proceeds in any such ship beyond that distance without previously paying the additional fare for the additional distance when demanded and with intent to avoid payment of the additional fare;

Refusing to
disembark at
destination
covered by
fare.

(i) knowingly and wilfully refuses or neglects, on arriving at the place or point to which he has paid the fare, to quit the ship; or

Refusal to
show ticket
or pay fare.

(j) being on board any such ship does not, when required by the master or other officer of such ship, either pay the fare or exhibit such ticket or other receipt (if any) showing the payment of the fare as is usually given to persons travelling by the ship and paying the fare,

Penalty.

commits an offence and shall be liable to a penalty not exceeding twenty pounds, but that liability shall not affect the right to recover any fare payable by him.

Penalty for
interference
or injury to
machinery or
obstructing
crew.
W.A. Act,
s. 48.

50. Whosoever on board any such ship wilfully does or causes to be done anything in such a manner as—

(a) to obstruct, or injure any part of the boilers, machinery or equipment of the ship; or

(b) to obstruct, impede or molest the crew or any of them in the navigation or management of such ship or otherwise in the execution of their duty upon or about such ship,

commits an offence and shall be liable to a penalty not exceeding one hundred pounds.

Refusing or
giving false
name and
address.
W.A. Act,
s. 49.

51. Whosoever, having committed any offence mentioned in either of the last two preceding sections, refuses, on application of the master, to give his name and address or on such application gives a false name or address, commits an offence and shall be liable to a penalty not exceeding twenty pounds.

Penalty.

52. The master and other officer of any duly surveyed passenger ship, and all persons called by him to his assistance, may detain any person, who has committed any offence against any of the provisions of the last three preceding sections, and whose name and address are unknown to the master or officer, and may convey the offender with all convenient despatch before a justice without any warrant or other authority than this Act; and the justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Arrest of offenders.
W.A. Act,
s. 50.

PART V.—SAFETY AND PREVENTION OF ACCIDENTS

Part V.

Division 1.—Application.

Division 1.

53. This Part (except where otherwise specially provided) applies to coast-trade ships and harbour and river ships in the jurisdiction.

Application of this Part.
S.A. Act,
s. 27.
Cf. ss. 68 and
69 post.

Division 2.—Unseaworthy Ships.

Part V.
Division 2.

54. For the purpose of carrying out the provisions of this Act the Court of Marine Inquiry constituted as hereinafter provided shall, when so directed by the Department, sit as the Court of Survey for the purposes of this Act and shall have all the powers conferred upon and perform all the duties imposed upon the Court of Survey by this Act.

Court of Survey.
S.A. Act,
s. 28.
s. 99 post.

55. The Department may, from time to time, whenever it seems expedient to it so to do, depute some official of the Department or, with the approval of the Minister, appoint any person, as an inspector to report to it upon the following matters:—

Power to appoint inspectors.
S.A. Act,
s. 29.
M.S. Act,
s. 72S.

- (a) Upon the nature and causes of any casualty which any ship has sustained or caused or is alleged to have sustained or caused.
- (b) Whether the provisions of this Act or any regulations made or in force under those provisions have been complied with.
- (c) Whether the hull, boilers, machinery, or any part of any ship, or of any of the equipment or articles in or on board any ship to which the provisions of this Act apply are sufficient and in good condition; and

to survey the ship makes the survey, may require that he shall be accompanied by such qualified person as the owner or master may select, and, in that case if the surveyor and the said person agree, the Department shall cause the ship to be detained or released accordingly, but if they differ, the Department may act as if the requisition had not been made, and the owner or master shall have the like appeal touching the report of the surveyor as is before provided by this section.

(f) Where a ship has been provisionally detained, the Department may at any time if it thinks it expedient refer the matter to the Court of Survey.

(g) The Department may at any time, if satisfied that a ship detained under this Act is not unsafe, order her to be released either upon or without any conditions.

Conditional
or unconditional
release.

Detaining
officials—
their powers
and duties.

(2) Officials may be appointed by the Department to be detaining officials, who shall have the same power as the Department has under this section for ordering the provisional detention of a ship for the purpose of being surveyed and of appointing a person or persons to survey her; and if a detaining official thinks that a ship so detained by him is not unsafe, he may order her to be released.

(3) A detaining official shall forthwith report to the Department any order made by him for the detention or release of a ship.

(4) An order for the detention of a ship, provisional or final, shall be served as soon as may be on the master of the ship.

(5) A detaining official and a person authorised to survey a ship under this section shall for that purpose have the same powers as an inspector under section fifty-six of this Act.

s. 56 ante.

59. (1) Where under this Act any ship is authorised or ordered to be detained, any official of the Department may detain the ship.

Enforcing
detention.
S.A. Act,
s. 36.
M.S. Act,
s. 692.

(2) If the ship after detention or after service on the master of any notice of or order for detention goes to sea before it is released by competent authority, the master of the ship and also the owner and any person who sends the ship to sea, if the owner or person is party or privy to the offence, shall be guilty of an offence against this Act and liable to a penalty of not more than one hundred pounds.

Breaking
detention.

Penalty.

(3) Where a ship so going to sea takes to sea when on board in the execution of his duty any official authorised to detain the ship, the owner and master of the ship shall each be guilty of an offence and liable to a penalty of not more than one hundred pounds and also to pay all expenses of and incidental to the official being taken to sea until the official returns or until such time as would enable him after leaving the ship to return to the port from which he is taken. Any such expenses may be ordered to be paid by Justices in addition to any penalty and be recovered as such under the provisions of the Justices Act, 1902-1942, or may be recovered otherwise in any other court of competent jurisdiction.

Penalty for
taking
detaining
official to sea.
S.A. Act,
s. 37.
M.S. Act,
s. 692.

60. (1) Whenever the Court of Marine Inquiry is to be summoned to sit as the Court of Survey the Department shall determine whether assessors of nautical or engineering or other special skill and experience are required to sit on the Court, and such persons shall be summoned in the same manner as is in this Act provided in the case of an investigation by the Court of Marine Inquiry.

Constitution
of Court of
Survey for
appeals.
S.A. Act,
s. 38.
M.S. Act,
s. 487.

Ct. s. 101
post.

(2) The clerk of the Court, shall, on receiving notice of an appeal or a reference from the Department, immediately summon the Court to meet as soon as conveniently may be.

61. With respect to the Court of Survey, the following provisions shall have effect:—

S.A. Act,
s. 39.
M.S. Act,
s. 488.

(a) The case shall be heard in open court.

(b) The Court may survey the ship and shall have all the powers under section fifty-six of this Act of an inspector appointed by the Department under this Act.

cf. s. 56
ante.

- (e) The Court may appoint any competent person or persons to survey the ship and report thereon to the Court.
- (d) The Court shall have the same power as the Department has to order the ship to be released or finally detained.
- (e) The owner and master of the ship and any person appointed by the owner or master and also any person appointed by the Department may attend at an inspection or survey made in pursuance of this section.
- (f) The President of the Court shall send to the Department a report and each of the other members of the Court shall either express his concurrence in the report by signing the same or report to the Department the reasons for his dissent.

Rules of
practice.
S.A. Act,
s. 40.
M.S. Act,
s. 489.

62. The Governor may make general rules to carry into effect the provisions of this Act with respect to the Court of Survey, and in particular with respect to the summoning of and procedure before the Court, the requiring on an appeal security for costs and damages, and the amount and application of fees.

Liability of
Department
and owner
for costs and
compensa-
tion.
S.A. Act,
s. 41.
M.S. Act,
s. 460.

63. (1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of the ship under this Part as an unsafe ship, the Department shall be liable to pay the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) If a ship is finally detained under this Part or if it appears that a ship provisionally detained was at the time of the detention an unsafe ship within the meaning of this Part, the owner of the ship shall be liable to pay to the Department the costs of and incidental to the detention and survey of the ship, which costs shall

without prejudice to any other remedy be recoverable by the Department in any court of competent jurisdiction.

(3) For the purposes of this Act, the costs of and incidental to any proceeding before the Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or other official of the Department, shall be part of the costs of the detention and survey of the ship; and any dispute as to the amount of the costs may be referred to the Master of the Supreme Court who, on request made to him for that purpose by the Department shall ascertain and certify the proper amount of costs.

64. (1) Where a complaint is made to the Department or a detaining official that a ship is unsafe, the Department or official may require the complainant to give security to the satisfaction of the Department for the costs and compensation which he may become liable to pay as hereinafter mentioned.

Complainant
may be
ordered to
give security.
S.A. Act,
s. 42.
M.S. Act,
s. 461.

(2) Where the complaint is made by one-fourth, being not less than two, of the seamen belonging to the ship, and is not in the opinion of the Department or detaining official frivolous or vexatious, the security shall not be required; and the Department or official shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.

(3) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Department is liable under this Act to pay to the owner of the ship any costs or compensation, the Department may by notice in writing given to the complainant require the complainant to pay to the Department the amount of all such costs and compensation as the Department incurs or is liable to pay in respect of the detention and survey of the ship, and failing payment the same may be recovered in any court of competent jurisdiction.

Division 3.—Equipment.

65. (1) It shall be the duty of the owner of every ship or, if there is no owner in the State, of his agent in the State to see that the ship is properly equipped.

Part V.
Division 3.
Ships to be
properly
equipped.
S.A. Act,
s. 57.
M.S. Act, ss-
285, 427,
428, 432,
435.

(2) No sea-going ship shall be deemed to be properly equipped unless provided with —

- (a) the necessary equipment; and
- (b) compasses properly adjusted from time to time to the satisfaction of the Department in accordance with the regulations.

Penalties for neglecting to provide and maintain equipments.
S.A. Act,
s. 58.
M.S. Act,
s. 430.

66. In any of the following cases if—

- (a) any ship goes to sea without being equipped as provided by this Act or if any of the equipment is lost or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or master;
- (b) any of the equipment being lost, damaged or destroyed in the course of the voyage, the master wilfully neglects to replace or repair it on the first opportunity; or
- (c) if the equipment is not kept so as to be fit and ready for use at all times,

Penalty.

then the owner, or, if there is no owner in the State, his agent in the State shall be guilty of an offence against this Act, and liable to a penalty of not more than one hundred pounds, and the master shall be guilty of an offence against this Act, and liable to a penalty of not more than fifty pounds.

Part V.
Division 4.

Division 4.—Wireless Telegraphy.

Interpretation.
N.S.W. Act,
s. 109A.

67. In this Division—

“telegraphy” includes any method of transmitting telegraphic or telephonic messages by means of electricity.

Application of this Division.
N.S.W. Act,
s. 109B.

68. This Division shall apply to all sea-going ships except —

- (a) ships, not carrying passengers, when going to sea on a voyage not exceeding twenty-six nautical miles;
- (b) ships when being towed by a ship provided with a wireless telegraphy installation;
- (c) ships, not carrying passengers, on a voyage to a port for the purpose of undergoing at that port necessary repairs or periodical overhaul and on the return voyage from that port; and
- (d) sailing ships.

69. (1) The Minister may, on the recommendation in writing of a committee of advice, exempt from compliance with the requirements of this Division and the regulations, any ship or class of ships where, having regard to the nature of the voyage on which the ship or class is engaged, or other circumstances of the case, he is of opinion that it would be unnecessary or unreasonable to require such compliance.

Special exemptions—
committees of advice.
N.S.W. Act,
s. 109C.

(2) A committee of advice shall be constituted as prescribed, and different committees of advice may be constituted for different ships or different classes of ships.

70. Every sea-going ship to which this Division applies shall, unless exempted from compliance with the requirements of this Division and the regulations—

Wireless apparatus.
N.S.W. Act,
s. 109D.

- (a) be provided with the prescribed wireless telegraphy installation;
- (b) maintain the prescribed wireless telegraphy service; and
- (c) carry a wireless signaller.

Provided that where a certificated operator possessing the prescribed qualifications—

- (i) is carried, it shall not be necessary to carry also a wireless signaller;
- (ii) is not carried the prescribed wireless telegraphy installation shall include an automatic distress sender.

Taking
unequipped
ship to sea.
N.S.W. Act,
s. 109E.
Cf. s. 69
ante.

71. (1) The master of a sea-going ship to which this Division applies and which is not exempted pursuant to section sixty-nine of this Act shall not take her to sea and the owner of any such ship shall not permit her to go to sea unless the requirements of this Division and the regulations are complied with.

Penalty.

(2) Any master or owner who contravenes the provisions of subsection (1) of this section shall be liable to a penalty not exceeding one hundred pounds.

Regulations.
N.S.W. Act,
s. 109F.

72. The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Division are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Division, and in particular and without prejudice to the generality of the foregoing power may make regulations relating to—

- (a) the nature of the wireless telegraphy installation to be provided on ships;
- (b) the wireless telegraph service to be maintained by ships;
- (c) the qualifications of wireless signallers;
- (d) the hours of watch of wireless signallers; and
- (e) automatic distress senders.

Part V.
Division 5.

Division 5.—Carriage of Dangerous Goods.

Dangerous
goods.
S.A. Act, s.
87.
M.S. Act,
s. 446(3).

73. For the purposes of this Division the expression "dangerous goods" means aquafortis, vitriol, naphtha, benzine, explosives, lucifer matches, petroleum and any other goods whether of the same or a different kind as or from those enumerated, which in the opinion of the Department are of a dangerous nature.

Restriction
on carriage
of dangerous
goods.
S.A. Act,
s. 88.
M.S. Act, s.
446.

74. (1) No person shall send or attempt to send by any ship, and no person not being the master or owner of the ship, shall carry or attempt to carry in any ship from any port in the State any dangerous goods without distinctly marking their nature on the upper side of the outside of the package containing them, and giving written notice of the nature of the goods and the name and address of the sender or carrier of them to the

master or owner of the ship at or before the time of sending them to be shipped or taking them on board the ship.

(2) If any person fails without reasonable cause to comply with this section he shall be guilty of an offence and liable to a penalty of not more than one hundred pounds; or if he shows that he was merely an agent in the shipment of any such goods as aforesaid and was not aware and did not suspect and had no reason to suspect that the goods shipped by him were of a dangerous nature, the penalty shall not be more than ten pounds.

Penalty.

75. Any person who knowingly sends or attempts to send by or carries or attempts to carry in any ship from any port in the State any dangerous goods under a false description or who falsely describes the sender or carrier thereof, shall be guilty of an offence, and be liable to a penalty of not more than five hundred pounds.

Penalty for misdescription of goods. S.A. Act, s. 89. M.S. Act, s. 447.

Penalty.

76. (1) The master or owner of any ship may refuse to take on board at any port in the State any package or parcel which he suspects contains dangerous goods, and may require it to be opened and may inspect the contents.

Power to refuse to carry goods suspected of being dangerous. S.A. Act, s. 90. M.S. Act, s. 448.

(2) When any dangerous goods, or any goods which, in the opinion of the master or owner of the ship are dangerous goods, have been sent or brought aboard any ship without being marked as required by section seventy-four of this Act, or without notice having been given as required by that section, the master or owner of the ship may cause the goods to be thrown overboard, with any package or receptacle in which they are contained; and neither the master nor the owner of the ship shall be subject to any liability, civil or criminal, in any court for doing so.

Cf. s. 74 ante.

77. (1) Where any dangerous goods have been sent or carried or an attempt has been made to send or carry dangerous goods on board any ship at any port in the State without being marked as required by section seventy-four of this Act or without notice having been given as required by that section, or under a false description, or with a false description of the sender

Forfeiture of dangerous goods by court having Admiralty jurisdiction. S.A. Act, s. 91. M.S. Act, s. 449.

Cf. s. 74 ante.

or carrier thereof, any Court having Admiralty jurisdiction may declare those goods and any receptacle in which they are contained to be, and they shall thereupon be forfeited, and when forfeited shall be disposed of as the Court directs.

(2) The Court shall have, and may exercise, the powers of forfeiture and disposal notwithstanding that the owners of the goods has not committed any offence under the provisions of this Act relating to dangerous goods, and is not before the court, and has not notice of the proceedings, and notwithstanding that there is no evidence to show to whom the goods belong; but the Court may in its discretion require such notice as it may direct to be given to the owner or shipper of the goods before declaring them to be forfeited.

Power to prohibit carriage of any cargo.
S.A. Act, s. 92.
M.S. Act, s. 301.

78. (1) If, in the opinion of the Department, the carriage of any particular cargo or goods in any ship would endanger or be likely to endanger her safety or interfere with the comfort of her passengers or crew, the Department may give notice to the master or owner that the carriage in the ship of the cargo or goods specified in the notice is prohibited, and, after receiving notice, the master shall not take the ship to sea and the owner shall not permit the ship to go to sea with the prohibited cargo or goods.

Penalty.

(2) Any master who takes any ship to sea and any owner who permits any ship to go to sea contrary to the provisions of this section shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

Regulations as to dangerous goods.
S.A. Act, s. 93.

79. (1) The Governor may make regulations, prescribing all matters necessary or convenient to be prescribed in regard to the carriage of dangerous goods in ships, and in particular in relation to—

- (a) the classes of ships in which dangerous goods may be carried;
- (b) the quantities of dangerous goods that may be carried from any port in the State in such ships;

- (c) the precautions to be observed in connection with the loading and unloading of dangerous goods at any port in the State; and
- (d) the conditions as to packing and stowage of dangerous goods, and the ventilation of holds containing dangerous goods, loaded at any port in the State.

(2) Any person who sends by, or carries in, any ship any dangerous goods which do not, or the packing, stowage or carriage of which does not, comply with such conditions as are prescribed, shall be guilty of an offence and liable to a penalty of not more than three hundred pounds. Penalty

80. (1) If any ship carrying passengers carries any explosives, the explosives shall be protected in manner directed by the Department. Explosives on ships carrying passengers. S.A. Act, s. 94.

(2) This section shall not apply—

- (a) to explosives required for the purpose of making signals, or
- (b) to explosives not exceeding in one ship a total of five hundred pounds in weight which are kept in properly constructed magazines.

(3) The master or owner of any ship on which any explosives are carried contrary to the provisions of this section shall be guilty of an offence and liable to a penalty of not more than one hundred pounds. Penalty.

(4) (a) The Department may seize without warrant any explosives which, contrary to the provisions of this section are in or on board any ship. Seizure and forfeiture of explosives.

(b) Explosives seized under the provisions of this section may be forfeited on the order of a court of summary jurisdiction and disposed of as the court directs.

Division 6.—Deck and Load Lines.

81. (1) Every coast-trade ship and harbour and river ship, except coast-trade ships under eighty tons register, employed solely in that trade, harbour and river ships employed solely in that trade, and ships employed solely in fishing or as pleasure yachts not engaged in trading or plying for hire, shall be permanently and conspicuously marked with lines, in this Act called deck lines, Part V.
Division 6.

Marking of deck lines. S.A. Act, s. 48.
M.S. Act, s. 437.

"Deck lines."

of not less than twelve inches in length and one inch in breadth, painted longitudinally on each side amidships or as nearly amidships as practicable, and indicating the position of each deck which is above water.

(2) The upper edge of each of the deck lines shall be level with the upper side of the deck plank next the waterway at the place of marking.

(3) The deck lines shall be white or yellow on a dark ground or black on a light ground.

"Amidships."

(4) In this Division the expression amidships means the middle of the length of the load water line as measured from the foreside of the stem to the aftside of the stern post.

Marking of
load line.
S.A. Act.
s. 49.
M.S. Act,
ss. 437-441.

82. (1) With respect to the marking of a load line, the following provisions shall have effect:—

- (a) The owner of every coast-trade ship, except ships under eighty tons register employed solely in that trade, and ships employed solely in fishing or as pleasure yachts not engaged in trading or plying for hire, shall before going to sea from any port mark upon each of her sides amidships or as near thereto as practicable, in white or yellow on a dark background, or in black on a light ground, a circular disc twelve inches in diameter with a horizontal line eighteen inches in length drawn through its centre.
- (b) The centre of this disc shall be placed at such level below the deck line marked under the provisions of this Act as may be approved by the Department, and shall indicate the maximum load line in salt water to which it shall be lawful to load the ship.
- (c) When a ship has been marked as by this section required, she shall be kept so marked until notice is given of an alteration.
- (d) The owner shall also, once in every twelve months immediately before the ship goes to sea, send or deliver to the Department a statement in writing of the distance in feet and inches between the centre of the disc and the

upper edge of each of the deck lines which is above that centre.

- (e) The owner, before the ship goes to sea after any renewal or alteration of the disc shall send or deliver to the Department notice in writing of the renewal or alteration, together with the statement in writing referred to in the next preceding paragraph, of the distance between the centre of the disc and the upper edge of each of the deck lines.

(2) If default is made in sending or delivering any statement or notice required by this section to be sent or delivered, the owner shall be guilty of an offence against this Act, and liable to a penalty of not more than one hundred pounds. Penalty.

(3) The Department shall record the statements and all transactions relating to them and the record shall be admissible in evidence. Cf. s. 216 post.

83. The position of the disc referred to in the next preceding section shall be in accordance with the appropriate tables adopted by the Board of Trade from time to time, subject to such allowance as may be made necessary by any difference between the position of the deck line marked under the provisions of this Act, and the position of the line from which freeboard is measured under the tables. Method of marking load line.
S.A. Act, s. 50.
M.S. Act, s. 438 (3).

84. (1) The Governor may appoint any competent authority for the survey or registry of shipping to approve and certify on its behalf from time to time the position of the disc and any alteration of it, and may prescribe fees to be paid for any approval or certificate. Power to appoint corporations, etc. for survey or registry of shipping.
S.A. Act, s. 51.
M.S. Act, 443 (1).

(2) The Department shall record the approvals, certificates and cognate matters and all transactions relating to them and the record shall be admissible in evidence. Cf. s. 216 post.

85. (1) The Governor may make regulations—

- (a) determining the lines and the mark to be used in connection with the disc in order to indicate the maximum load line under different cir- Regulations.
S.A. Act, s. 52.
M.S. Act, s. 443 (2).

cumstances and at different seasons, and declaring that the provisions of this Division are to have effect as if any of the lines were drawn through the centre of the disc;

- (b) as to the mode, whether by painting, cutting or otherwise, in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship;
- (c) as to the mode of application for and form of certificates under this Division; and
- (d) requiring the entry of certificates and other particulars as to the draught of water and freeboard of the ship in the official log-book of the ship and publication of the entry and particulars on board the ship, and as to delivering copies of those entries.

Penalty.

(2) Any person who makes default in complying with any regulation made under the provisions of this section shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

Marking in conformity with U.K. Act complies with requirements of this Act.
S.A. Act, s. 53.
M.S. Act, s. 444.

86. Any ship marked with a load line in accordance with the provisions of the Merchant Shipping Act, or marked by any authority recognised as competent for the purpose by any Order in Council made under the power contained in that Act shall be deemed to be marked in accordance with this Act.

Ships with submerged load lines unsafe. Meaning of "unsafe."
S.A. Act, s. 54.
M.S. Act, s. 439.

87. If a ship is so loaded as to submerge in salt water the centre of the disc indicating the load line, the ship shall be deemed to be an unsafe ship within the meaning of this Part, and the submersion shall be a reasonable and probable cause for the detention of the ship.

88. (1) If—

- (a) any owner or master of a ship fails, without reasonable cause, to cause his ship to be marked as by this Division required, or to keep her so marked, or allows the ship to be so loaded as to submerge in salt water the centre of the disc indicating the load line; or

Penalty for offences relating to marks on ships.
S.A. Act, s. 442.
M.S. Act, s. 55.

(b) any person conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate any of the marks, except in the event of the particulars thereby denoted being lawfully altered, or except for the purpose of escaping capture by an enemy, he shall be guilty of an offence against this Act, and liable to a penalty of not more than one hundred pounds.

(2) If any mark required by this Division is in any respect inaccurate so as to be likely to mislead, the owner of the ship shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

*Division 7.—Regulations for Preventing Collisions,
etc., Lights, Signals, etc.*

Part V.
Division 7.

89. (1) Subject to the provisions of the next succeeding subsection the regulations contained in the Second Schedule shall come into operation and be of the same force as if they were enacted in the body of this Act, and shall apply to all coast-trade ships and harbour and river ships in the jurisdiction.

Regulations concerning lights, fog-signals and sailing rules. S.A. Act, s. 59.

(2) The Governor may from time to time make new regulations relating to matters provided for in that Schedule and may amend, vary and revoke any of the regulations and the new regulations and make regulations in addition to, or in substitution for any of them.

90. All owners and masters of coast-trade ships and harbour and river ships shall be bound to take notice of all regulations for the time being in force for preventing collisions at sea and shall so long as the same continue in force be bound to obey them and to carry and exhibit no other lights which may be mistaken for the lights prescribed by those regulations, and to use no other fog signals than such as are required by those regulations.

Observance of regulations. S.A. Act, s. 61. M.S. Act, s. 419 (1).

Breach of regulations to imply wilful default of person in charge. S.A. Act, s. 62. M.S. Act, s. 419 (3).

91. If, by reason of the non-observance by any ship of any of those regulations, any damage to person or property is caused or contributed to, the damage shall be deemed to have been occasioned by the default of the person in charge of the deck of the ship at the time, unless it is shown to the satisfaction of the court before which the case is tried that the circumstances of the case made a departure from the regulations necessary.

Duties of masters in case of collision. S.A. Act, s. 63. M.S. Act, s. 422.

92. (1) In every case of collision between two ships it shall be the duty of the master or person in charge of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any)—

- (a) to stay by the other ship until he has ascertained that she has no need of further assistance, and to render to the other ship, her master, crew and passengers (if any) such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision, and
- (b) to give to the master or person in charge of the other ship the name of his own ship and of her port of registry or of the port or place to which she belongs and also the names of the ports or places from which she comes and to which she is bound.

Penalty.

(2) If the master or person in charge fails without reasonable cause to comply with this section, he shall be guilty of an indictable offence and liable to imprisonment for not more than two years, and, if he is a certificated officer, an inquiry into his conduct may be held and his certificate may be cancelled or suspended.

Signals of distress. S.A. Act, s. 64. M.S. Act, s. 434.

93. (1) Every ship shall be provided with the means for making such signals of distress as may from time to time be prescribed by the regulations, or by or under the Merchant Shipping Act.

(2) Any master of a ship who uses or displays or causes or permits any person under his authority to use or display any of the signals of distress except in the case of a ship being in distress shall be liable to pay

compensation, recoverable in any court of competent jurisdiction, for any labour undertaken, risk incurred, or loss sustained in consequence of the signal having been regarded as a signal of distress in fact.

94. (1) No person on any ship shall when the ship is going ahead give a helm or steering order containing the word "starboard" or "right" or any equivalent of "starboard" or "right" unless he intends that the head of the ship shall move to the right, or give a helm or steering order containing the word "port" or "left" or any equivalent of "port" or "left" unless he intends that the head of the ship shall move to the left.

Helm orders
S.A. Act,
s. 65.
U.K. 22 Geo.
V. c. 9,
s. 29.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a penalty of not more than fifty pounds.

Penalty.

PART VI.—INVESTIGATIONS AND INQUIRIES INTO
CASUALTIES, INCOMPETENCY AND MISCONDUCT.

Part VI.

Division 1.—Application.

Division 1.

95. Nothing in this Act contained shall authorise the making of a preliminary inquiry or the holding of a formal investigation into the matter of any casualty occurring to any foreign ship (save so far as the same affects any British coast-trade or harbour and river ship or any certificate of a master, mate or engineer granted by the Department or the Board of Trade or other authority within His Majesty's dominions), and save as aforesaid nothing in this Act contained shall authorise the making of a preliminary inquiry or the holding of a formal investigation into the matter of any incompetency or misconduct on the part of any master, mate or engineer of any foreign ship.

This Part
not to apply
to foreign
ships.
S.A. Act,
s. 102.

Division 2.—Notice of Casualties, Etc.

Part VI.
Division 2.

96. (1) Whenever in or near the jurisdiction any coast-trade ship or harbour and river ship—

Reports of
collisions and
casualties.

(a) sustains any casualty;

S.A. Act,
s. 103.
M.S. Act,
s. 425.

- (b) sustains damage affecting her seaworthiness or efficiency, either in the hull or, in the case of a steamship, in any part of the boilers and machinery;
- (c) causes the loss of or damage to any other ship;
or
- (d) whenever by reason of any casualty happening to or on board of any such ship in the jurisdiction, loss of life or any serious injury to any person ensues,

the master or owner of the ship, within twenty-four hours after the happening of any of those events, or so soon thereafter as possible, shall send to the Department by letter a report signed by the master or owner and containing full particulars of the event, and of the probable occasion thereof, stating the name and official number (if any) of the ship, the port to which she belongs, the names of the master and mates, and the numbers and other particulars of their certificates (if any), and, if practicable, the place where she is.

Penalty.

(2) Any master or owner who neglects so to do shall be guilty of an offence and liable to a penalty of not more than fifty pounds.

Part VI.
Division 3.

Division 3.—Preliminary Inquiries—Investigations.

Preliminary
inquiries.
S.A. Act,
s. 104.
M.S. Act,
s. 465.

97. (1) Whenever the Department has reason to believe that in or near the jurisdiction—

- (a) any casualty has occurred to any coast-trade ship or harbour and river ship; or
- (b) any incompetence or misconduct has occurred on the part of any certificated master, mate, engineer or coxswain on any coast-trade ship or harbour and river ship,

and that the Court of Marine Inquiry has jurisdiction in the matter of the casualty, incompetency or misconduct and in the opinion of the Department it is expedient so to do, the Department or some person or persons appointed for the purpose by the Department shall make a preliminary inquiry respecting the casualty, incompetence or misconduct.

(2) The Department, person or persons so appointed (as the case may be) shall for such purpose have all

the powers and remedies given by this Act to inspectors appointed by the Department under section fifty-six of this Act.

Cf. s. 56.
ante.

98. If it appears to the Department that a formal investigation into any casualty, incompetency or misconduct is requisite or expedient, the Department shall, either upon or without any preliminary inquiry as aforesaid, with the approval of the Minister, refer the matter of the casualty to the Court of Marine Inquiry, and, if the Department thinks fit, prefer or cause or permit to be preferred a charge of incompetency or misconduct, or both, before the Court, which shall thereupon hold a formal investigation.

Formal investigations.
S.A. Act,
s. 105.
M.S. Act,
s. 466 (1).

Division 4.—Court of Marine Inquiry.

Part VI.
Division 4.

99. There is hereby conferred upon such Local Courts as may be proclaimed by the Governor for the purpose, jurisdiction to hear and determine inquiries, appeals and references under this Act, under and according to the terms and provisions of any Act regulating Local Courts in force for the time being (so far as they are applicable) and of this Act; and a Local Court exercising the jurisdiction shall be a court of record, and be called a Court of Marine Inquiry.

Constitution and jurisdiction of Courts of Marine Inquiry.
W.A. Act,
s. 20.

100. (1) Any one or more of the Local Court Magistrates may sit as a Court of Marine Inquiry, and shall be assisted by two of the assessors, who shall be appointed under this Act, and who shall have power to advise but not to adjudicate, on any matter before the Court.

Local Court Magistrates to preside—functions of assessors.
W.A. Act,
s. 21.

(2) Where the inquiry involves or appears likely to involve any question as to the cancelling or suspension of the certificate of a master, mate or engineer, the court shall hold the inquiry with the assistance of not less than two assessors having experience in the merchant service, both of whom shall have had experience in the calling of the person concerned.

Inquiries involving consideration of cancellation of certificate.
W.A. Act,
s. 21.

101. (1) Persons of nautical, engineering or other special skill or knowledge shall be appointed assessors to assist in a Court of Marine Inquiry.

Assessors.
W.A. Act,
s. 15.

(2) The Governor may make rules with regard to the appointment and summoning of assessors—

102. Every assessor shall, for every day or portion of a day during which he is engaged in a Court of Marine Inquiry, or in attendance waiting to perform his duties in the Court, be paid such sum as is fixed by the Department from time to time.

103. All officers of the said Local Courts shall act as officers of Courts of Marine Inquiry.

104. (1) The Governor may make rules to regulate the procedure and practice of Courts of Marine Inquiry, notwithstanding that they may conflict with the provisions of the Local Courts Act, 1904-1931.

(2) Until rules are made and published under this section, or so far as such rules do not extend, the presiding magistrate may, in any particular case, give such directions as may seem fit, and the directions shall, according to their tenor, have the force and effect of rules made and published under this section.

Powers and
duties of
Court of
Marine
Inquiry.
S.A. Act,
s. 110.
M.S. Act, s.s.
470 and 478.
Casualties.

105. (1) The Court of Marine Inquiry, when requested by the Department in writing so to do, is hereby authorised to hold formal investigations—

(a) into casualties to coast-trade ships and harbour and river ships occurring in or near the jurisdiction; and

(b) for the purpose of hearing and determining any charge of incompetency or misconduct on the part of masters, mates and engineers of coast-trade ships and harbour and river ships holding certificates of competency or service in respect of incompetency or misconduct on any such ship in or near the jurisdiction.

Incompetency
and mis-
conduct.

(2) An inquiry shall not be held under this section into any matter—

(a) which has once been the subject of an investigation or inquiry, and has been reported on by a competent court or tribunal in any part of His Majesty's dominions;

(b) with reference to which an investigation or inquiry has been commenced in the United Kingdom; or

Ouster of
jurisdiction.
W.A. Act,
s. 24 (3).

- (c) in respect of which the certificate of a master, mate or engineer has been cancelled or suspended by a Naval Court constituted under the Merchant Shipping Act.

M.S. Act.
s. 481.

(3) A Court of Marine Inquiry for the purposes of any inquiry under this section shall, so far as relates to the summoning of parties, and compelling the attendance of witnesses and contempt of Court, have all the powers of the Supreme Court.

106. The Governor may, where any such inquiry as aforesaid has been made, order the case to be reheard by a Court of Marine Inquiry, either generally or as to any part thereof, and shall do so if—

Rehearing.
W.A. Act.
s. 26.

- (a) new and important evidence, which could not be produced at the inquiry, has been discovered; or
- (b) for any other reason there has, in the opinion of the Governor, been ground for suspecting that a miscarriage of justice has occurred.

107. (1) The Senior Local Court magistrate present shall preside at any sitting of a Court of Marine Inquiry.

Presiding
Magistrate.
W.A. Act.
s. 27.

(2) Every inquiry under this Act shall be in open Court. The decision of the Court shall be delivered by the presiding magistrate in open Court. In the event of an equality of votes, the presiding magistrate shall have a casting as well as a deliberative vote.

Open court

(3) The Court may make such order as it thinks fit respecting the costs of any proceedings, and any costs awarded against any party to the proceeding may be recovered by the party in whose favour the order is made, in any Court of competent jurisdiction.

Costs.

(4) The presiding magistrate shall, in every case, forward to the Governor a copy of the decision of the Court, together with notes of the evidence given, and any member of the Court who dissents from the decision may likewise forward his written reasons for so dissenting.

Decision.

108. (1) A Court of Marine Inquiry shall have jurisdiction to cancel or suspend the certificate of any master or ship's officer or coxswain, if it finds that he is incompetent or has been guilty of any gross act of misconduct

Power of
Court of
Marine
Inquiry to
cancel or
suspend
certificate.
C'th Act,
s. 372.
W.A. Act,
s. 28.

or that he has failed in his duty in regard to any collision or in any matter relating to the navigation or management of a ship under his charge.

(2) A master, mate or engineer whose certificate is cancelled or suspended by a Court of Marine Inquiry shall deliver his certificate to the Court on demand, or, if not so demanded, to the Department, or as the Department directs.

(3) No certificate shall be cancelled or suspended by a Court of Marine Inquiry unless a copy of any charge against the holder of the certificate or a copy of the report on any preliminary inquiry containing or indicating any such charges, together with a copy of the evidence taken thereon, has been served upon him at least forty-eight hours before the commencement of the inquiry into those charges.

Penalty.

(4) If a master, mate or engineer fails without sufficient cause to comply with this section, he shall, for each offence, be liable to a penalty not exceeding fifty pounds.

Unsafe ships
—jurisdiction
to detain.
W.A. Act,
s. 29.
cf. s. 105
ante.

109. (1) A Court of Marine Inquiry shall hear and determine in open Court any appeal or reference in pursuance of this Act in respect of the detention of a ship alleged to be unsafe, and the procedure of that Court on the hearing and determination of any appeal or reference shall be in accordance with the provisions of this Act in respect of inquiries as to casualties.

(2) The presiding magistrate of the Court may appoint any competent person or persons to survey the ship and report thereon to the Court.

cf. ss. 32 and
56 ante.

(3) Any magistrate, assessor of the Court and any competent person so appointed may survey the ship, and shall, for the purposes of this Act, have all the powers of an inspector under this Act.

(4) The Court shall have the same power as the Department has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Cr. s. 58 ante.

(5) The owner and master of the ship, and any person appointed by the owner or master, and also any person appointed by the Minister, may attend at any inspection or survey made in pursuance of this section.

(6) The presiding magistrate shall send to the Governor such report as may be directed by the rules, and each assessor shall either sign the report or report to the Governor the reasons for his dissent.

PART VII.—ENGAGEMENT, DISCHARGE AND CONDITIONS OF EMPLOYMENT OF SEAMEN AND OTHERS.

Part VII.

Division 1.—General.

Division 1.

110. (1) This Part applies to coast-trade ships of eighty tons registered tonnage or over.

Application of this Part. Q. Act, s. 17.

(2) For the purposes of this Part “seamen and apprentice” include any person who is seeking employment as a seaman or apprentice (as the case may be) or who is engaged or supplied or who is offered for engagement or supply as a seaman or apprentice on board a vessel.

111. The Governor may appoint persons as shipping masters.

Shipping masters.

112. (1) No person, other than a shipping master, or the owner, master, mate or engineer of a vessel, or the authorised agent or servant of the owner, shall engage or supply a seaman or apprentice to be entered on board the vessel.

Engagement and supply of seamen. Q. Act, s. 19.

(2) No person shall employ, for the purpose of engaging or supplying a seaman or apprentice to be entered on board a vessel, any person, other than a

shipping master, or the owner, master, mate or engineer of the vessel, or an authorised agent or servant of the owner of the vessel.

(3) No person shall receive or accept for service on board any vessel any seaman or apprentice unless he is satisfied that the seaman or apprentice has not been engaged or supplied in contravention of this Act.

Penalty.

(4) Any person who contravenes any provision of this section shall be guilty of an offence and liable to a penalty not exceeding fifty pounds or imprisonment for any period not exceeding three months.

Penalty for receiving fees for supply.
Q. Act, s. 20.
M.S. Act, s. 112.

113. (1) Any person who demands or receives, directly or indirectly, from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever for providing or promising to provide him with employment shall be guilty of an offence and liable to a penalty not exceeding twenty-five pounds.

Apprenticeship premiums.

(2) Nothing in this or the next preceding section shall refer to any premium on apprenticeship charged by any shipowner, but this section shall not so be read or construed as to validate any premium on apprenticeship which is unlawful under any other Act or law.

Part VII.
Division 2.

Division 2.—Rating of Seamen.

Rating A.B.
Q. Act, s. 21.
M.S. Act, s. 126 as amended by M.S. Act, 1906, s. 58.

114. (1) A seaman shall not be entitled to the rating of A.B., that is to say an able bodied seaman, unless he has served at sea for at least two years before the mast or as an apprentice and is eighteen years of age.

Continuance of rating A.B.

Provided that any seaman who has been lawfully rated as A.B. before the coming into operation of this Act shall continue to be entitled to be so rated.

Rating of O.S.

(2) A seaman shall not be entitled to the rating of O.S., that is to say, an ordinary seaman, unless he has served at sea for at least one year before the mast or as an apprentice and is seventeen years of age, or with the approval of the Shipping Master if he is sixteen years of age.

Greaser.

(3) No seaman shall be rated as greaser who has not served six months as a fireman or oil burner at sea.

(4) No seaman shall be rated as fireman who has not served six months as a trimmer or fireman at sea.

Fireman.

(5) No seaman shall be rated as shipwright or ship's carpenter who has not served an apprenticeship as shipwright, or three years at sea as ship's carpenter, as the case may be.

Shipwright.

(6) After the expiration of twelve months from the commencement of this Act a seaman shall not be permitted to engage in any capacity unless he satisfies the shipping master that he can pull an oar and handle a boat:

Provided that this subsection shall not apply to the engagement of a seaman who has not previously served at sea.

(7) Notwithstanding anything contained in this section, persons rated as greasers, firemen, shipwrights, or ship's carpenters, before the commencement of this Act, shall continue to be so rated.

(8) A shipping master before whom a seaman is engaged shall refuse to enter him as A.B., O.S., greaser, fireman, shipwright or ship's carpenter in the agreement unless the seaman gives satisfactory proof of his title to be so rated.

Proof of title to rating.

115. (1) No person shall engage another person for service at sea in any capacity unless the shipping master is satisfied that the other person has attained the age of fifteen years.

Minimum age for employment at sea. Q. Act, s. 22.

(2) No person shall engage another person for service at sea in the stokehold of a steamship in the capacity of fireman or trimmer unless the shipping master is satisfied that that other person has attained the age of twenty years.

116. (1) No person shall engage or re-engage any person under the age of eighteen years for service at sea in any capacity unless the person under the age of eighteen years produces to the shipping master a certificate signed by a duly qualified medical practitioner that he is physically fit for service at sea in that capacity.

Medical examination of young persons. Q. Act, s. 22

(2) A certificate of physical fitness granted under the last preceding subsection shall have force for a period of one year, but may be renewed from year to year by indorsement by a duly qualified medical practitioner, on each medical examination of the holder thereof.

Discharge or permit to be produced.
Q. Act, s. 23.

117. (1) No seaman shall be permitted to engage in any capacity on any vessel unless he delivers to the shipping master—

(a) a discharge from his last ship; or

(b) a permit to sign articles granted by the shipping master.

(2) The shipping master shall not grant such permit unless he is satisfied, after questioning the applicant and, if necessary, making a practical test of his qualifications, that the applicant is qualified for the position he seeks.

Notice of disrating of seamen.
Q. Act, s. 24.
M.S. Act, 1906, s. 59.

118. When the master of a vessel disrates a seaman he shall forthwith enter or cause to be entered in the official log book a statement of the disrating and furnish the seaman with a copy of the entry, and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy furnished.

Part VII.
Division 3.

Division 3.—The Crew.

Ship's complement.
C'th Act, s. 43.

119. Every vessel engaged in the coast-trade shall carry as crew the number and description of persons specified in the scales prescribed.

Penalty.
C'th Act, s. 44.

120. (1) (a) The owner of a vessel to which the last preceding section applies shall not suffer her to go to sea and the master shall not take her to sea without carrying the crew specified in the last preceding section.

(b) Subject to subsection (2) of this section a master or owner who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Penalty.

(2) If a vessel proceeds to sea being short in her crew of not more than one-fifth of her engine room staff, or one-fifth of her deck complement, the master or owner shall not be liable under this section if it is proved that the breach was not occasioned through any fault of his own.

Division 4.—The Agreement.

Part VII.
Division 4.

121. (1) The master of a vessel who engages any seaman shall enter into an agreement with him in the form prescribed, in the presence of a shipping master.

Agreement in prescribed form.
Q. Act, s. 25.
M.S. Act, s. 113.

(2) No master of any vessel shall carry any seaman to sea without having entered into such agreement, and no owner of any vessel shall knowingly or unknowingly suffer or permit any seaman to be so carried to sea in the vessel.

(3) Any owner or master of a vessel who contravenes subsection (2) of this section shall be guilty of an offence and liable to a penalty not exceeding five pounds for each seaman in respect of whom he has been guilty of such contravention.

Penalty.

(4) The agreement shall be—

Form of agreement
M.S. Act,
s. 114.

- (a) framed so as to admit of stipulations (not contrary to law) approved by the shipping master being introduced therein at the joint will of the master and seaman;
- (b) prepared in duplicate, by or under the supervision of the shipping master after the production of the load-line certificate;
- (c) signed by the master and seaman in the presence of and attested by the shipping master;
- (d) signed by the master before being signed by any seaman;
- (e) dated at the time of signature by the master; and
- (f) read over and explained by the shipping master to each seaman before he signs it.

(5) The shipping master shall retain one part of the agreement and deliver the other part to the master.

Provision for
substitutes.
M.S. Act,
s. 115 (3).

(6) When a crew is first engaged, the part of the agreement delivered to the master shall contain a special place or form for the descriptions and signatures of substitutes, or persons engaged subsequently to the first departure of the vessel.

(7) (a) A shipping master shall not proceed with the engagement of the crew of the vessel to which this section applies until—

(i) the load line certificate for the time being in force in respect of the ship is produced to him; and

(ii) he is satisfied that the particulars required by this section have been inserted in the agreement.

(b) There shall be inserted in the agreement, before it is signed by any member of the crew, the particulars as to the position of the deck lines and load lines specified in the load line certificate.

Seaman to
have know-
ledge of
English
language.
Q. Act, s. 26.
M.S. Act,
1906, s. 12.

122. (1) No seaman, who in the opinion of the shipping master does not possess a knowledge of the English language sufficient to enable him to fully understand the necessary orders that may be given to him in the performance of his duties, shall be permitted to sign the agreement.

(2) (a) No master or owner shall engage any seaman not possessing such knowledge.

Penalty.

(b) Any master or owner who engages any seaman contrary to this subsection shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Aliens.

(3) (a) No alien shall be permitted to engage or shall be employed in any capacity on any vessel unless he produces to the shipping master, or to the person engaging him, satisfactory proof of his national status.

(b) No enemy alien shall be permitted to engage or shall be employed in any capacity on any vessel.

Penalty.

(c) Any person who engages for employment or becomes employed on any vessel contrary to this subsection shall be liable to a penalty not exceeding one hundred pounds.

123. (a) If a seaman who has signed the agreement is not on board at the time specified in the agreement, or if within twenty-four hours of the vessel's putting to sea the services of a seaman are lost by death, desertion or other unforeseen cause, and the master engages a substitute—

Substitutes.
Q. Act, s. 27.
M.S. Act, s.
115 (4).

- (i) the engagement shall, when practicable, be made before a shipping master; but
- (ii) when that is not practicable, the master shall when finally going to sea, or as soon thereafter as practicable, cause the agreement to be read over and explained to the substitute, who shall thereupon sign it in the presence of a witness who shall attest the signature, and the master shall subsequently report the transaction in the prescribed form to the shipping master at the first port of call.

(b) Any master who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Penalty.

124. (1) An agreement may be made for a voyage, or, if the voyages of the vessel average less than six months in duration may be made to extend over two or more voyages, and agreements so made to extend over two or more voyages are in this Act referred to as running agreements.

Running
agreements.
Q. Act, s. 28.
M.S. Act, s.
115 (5).

(2) A running agreement shall not extend beyond six months from the date thereof:

Provided that every such agreement shall, subject to subsections (3), (4) and (5) of this section, remain in force until the vessel's arrival at her port of destination, and the crew shall be considered engaged when the agreement is first signed, and discharged when the employment ends.

(3) When a vessel, the crew of which have been engaged under a running agreement which has been in force more than six months, reaches a port other than her port of destination, and the vessel is not then proceeding, either directly or by intermediate ports, to the port of discharge mentioned in the agreement, the master may, subject to subsection (4) of this section, discharge any seaman, and any seaman may obtain his discharge.

Ct. s. 141
post.

(4) No seaman shall be discharged nor be entitled to be discharged under the last preceding subsection unless he has received from or given to the master, on any day other than Saturday and at least twenty-four hours before the vessel leaves port, twenty-four hours' notice of the proposed or required discharge.

Cf. s. 141
post.

(5) Any seaman discharged, or who claims his discharge under subsection (3) of this section, shall be entitled to receive from the master or owner—

- (a) a free passage to a proper return port, being either the port of discharge mentioned in the agreement or such other port as is mutually agreed upon with the approval of the shipping master;
- (b) wages, at the rate provided for in his agreement, until he arrives at the proper return port;
- (c) where a passage to the proper return port is not made available to him at the time he is discharged and it is necessary for the seaman to obtain accommodation ashore, an allowance for victualling and accommodation at the rate prescribed by the appropriate industrial award for the period during which it is necessary for him to reside ashore and until the passage to the proper return port is made available; and
- (d) where the passage provided to the proper return port is otherwise than by sea, an allowance for victualling at the rate prescribed by the appropriate industrial award for the period occupied by the journey:

Provided that if his return to the proper return port is delayed by any act or default of the seaman, he shall not be entitled to wages or allowance for victualling and accommodation during the period of delay.

Cf. s. 141
post.

(6) Victualling and accommodation allowances provided for in this section may be sued for and recovered in the same manner as wages.

Copy of
agreement to
be exhibited.
Q. Act,
s. 29.
M.S. Act,
s. 120.

125. (1) The master of every vessel shall, at the beginning of every voyage or engagement, cause a legible copy of the agreement (omitting signatures) to be posted

up in some part of the vessel which is accessible to the crew, and shall use all reasonable precautions to keep it so posted during the voyage.

(2) Any person who shall wilfully deface or destroy any such copy shall be guilty of an offence and liable to a penalty not exceeding five pounds.

Penalty for defacing.

(3) (a) Every erasure, interlineation, or alteration in the agreement shall be wholly inoperative unless proved to have been made with the consent of all the persons interested in the erasure, interlineation or alteration.

Erasures and alterations.
M.S. Act,
s. 122.

(b) Such consent may be proved by the written attestation—

(i) of the witness attesting the signature of the person so interested; or

(ii) of a justice.

(4) A seaman may in any proceeding bring forward evidence to prove the contents of the agreement, or otherwise support his case without producing or giving notice to produce the agreement or a copy thereof.

Evidence of agreement.
M.S. Act,
s. 123.

(5) (a) The master of any vessel—

Production of officers' certificates.

(i) on signing the agreement before a shipping master shall produce to him the certificates of competency which the master and officers are required to hold; and

(ii) in the case of a running agreement shall also, before the second and every subsequent voyage, produce to the shipping master the certificate of competency of any officer then first engaged by him who is required to be certificated.

(b) The shipping master shall satisfy himself that the officers are properly certificated.

Obligations
as to
seaworthi-
ness.

(6) In every contract of service, express or implied between the owner of a vessel and the master, or between the owner or master and any seaman or apprentice, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the vessel that the owner and the master, and every agent charged with loading the vessel or preparing the vessel for sea or sending her to sea, shall use all reasonable means to insure the seaworthiness of the vessel for the voyage at the time when the voyage begins, and to keep her in seaworthy condition for the voyage during the voyage.

Payment of
fees.

(7) The person engaging or discharging any seaman shall pay the whole of the fees prescribed and may retain from the wages of any seaman engaged or discharged such proportion of those fees as is prescribed.

Part VII.
Division 5.

Division 5.—Discharge of Seamen.

Discharges.
Q. Act, s. 30.
M.S. Act,
ss. 127, 128.

126. (1) When a seaman is discharged from any vessel the master shall sign and give the seaman, in the presence of the shipping master, a discharge in the form prescribed.

(2) When discharging a seaman, the master shall, if he has not already done so, return to him all his previous discharges taken possession of by the master at the time of the seaman's engagement.

Penalty.

(3) If a master contravenes any provision of this section he shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

False
discharges.
Q. Act,
s. 31.

127. Any person who gives to any seaman a discharge which falsely indicates the capacity in which the seaman actually served or the time during which he served in that capacity shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty.

Attestation.
Q. Act, s. 32.

128. The shipping master shall attest every discharge made before him, and shall keep every discharge received by him until the seaman applies for it, when he shall deliver it to the seaman.

129. The master, on the discharge of every certificated officer, shall return to him his certificate of competency if it has been delivered to and held by the master, and any master who fails so to do shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Return of certificates of competency.
Q. Act, s. 33.
M.S. Act, s. 128 (2).

130. (1) Upon every discharge effected before a shipping master, the master shall make and sign, in the form prescribed, and forthwith deliver to the shipping master, a report of the conduct, character and qualifications of the seaman discharged (in the next succeeding section referred to as the report of character).

Report on seaman's character.
Q. Act, s. 34.
M.S. Act, s. 129.

(2) The shipping master shall, if the seaman desires, indorse on his discharge a copy of the report.

131. Whoever—

- (a) knowingly makes any false certificate of discharge or report of character;
- (b) forges or fraudulently alters any certificate of discharge or report of character or copy thereof; or
- (c) fraudulently uses any certificate of discharge or report of character, or copy thereof, which is forged or altered or does not belong to him,

shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds or six months' imprisonment.

Further penalties for offences.
Q. Act, s. 35.
M.S. Act, s. 130.

Division 6.—Seamen's Wages.

132. (1) An agreement shall not contain any stipulation for the payment in advance, to or on account of any seaman, of the wages or any portion thereof.

Part VII.
Division 6.

(2) Any shipowner, master or other person, who pays or agrees to pay any wages in advance to or on account of any seaman shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Advance of wages prohibited.
Q. Act, s. 36.

(3) Any agreement relating to advance of wages to or on account of any seaman shall be void, and no deduction shall be made from any such seaman's wages, nor shall any person have any right of action or set-off

against any such seaman or his assignee in respect of any money paid or alleged to have been paid as an advance of wages.

Wages to be paid through or in presence of shipping master.
Q. Act, s. 37.
M.S. Act, s. 131.
Penalty.

133. (1) When a seaman is discharged before a shipping master, the master or owner of the vessel shall pay his wages through or in the presence of the shipping master, and any master who fails so to do shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Account.
M.S. Act,
s. 132.

(2) Every master shall, before discharging a seaman; deliver to him a full and true account of his wages, and of all deductions to be made therefrom on any account whatever, and any master who fails so to do shall be guilty of an offence and liable to a penalty not exceeding five pounds.

Penalty.

Deductions.
M.S. Act,
s. 133.

(3) No deduction from the wages of any seaman, except in respect of any matter happening after such delivery, shall be allowed unless it is included in the account so delivered.

(4) The master shall, during the voyage, enter in a book to be kept for that purpose, as they occur, the various matters in respect of which any deductions from wages are made, and the amounts of the respective deductions which shall be initialled or signed by the seaman, and no deductions shall be allowed unless so entered.

(5) The shipping master may disallow any such deduction.

Monthly payments in certain cases.

(6) In cases where the seamen are engaged on time or running agreements, all wages earned shall be paid monthly not later than the first day of each month, or thereafter within twenty-four hours after the vessel first arrives at any port at which there is a banking institution (other than a savings bank).

(7) Every master or owner, who, without sufficient cause, fails to make payment at any prescribed time, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days during which payment is delayed beyond that time, and that sum shall be recoverable in the same manner as wages.

(8) In the event of a seaman's wages not being paid or settled at the end of the voyage or engagement, as provided in this Act, then, unless the delay is due to the seaman's act or default, or to any reasonable dispute as to liability or to any other cause which is not the wrongful act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of final settlement.

M.S. Act,
s. 134 (c).

(9) If the seaman consents, the final settlement of his wages may, subject to the regulations, be left to a shipping master, and the receipt of the shipping master shall in that case operate as a release given by the seaman.

134. The following rules shall be observed with respect to the settlement of wages:—

Rules as to
settlement of
wages.

- (a) Where a seaman is discharged, and the settlement of his wages completed before a shipping master, the master or owner and the seaman shall, in the presence of the shipping master, sign in the form prescribed a mutual release of all claims in respect of the past engagement:

Q. Act, s. 38.
M.S. Act,
s. 136.
Release to be
signed before
shipping
master.

Provided that the seaman may except from the release any specified claim against the master or owner; and in that case a note of any claim so excepted shall be entered upon the release.

- (b) The release shall be attested by the shipping master and retained by him, and shall be admissible in evidence.

Attestation.

- (c) The release shall operate as a mutual discharge and settlement of all claims between the parties thereto in respect of the past engagement, other than any excepted claims so noted upon the release.

Operation as
discharge
and settle-
ment.

- (d) In cases in which discharge and settlement are required to take place before a shipping master, no payment, receipt, settlement or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim:

No other
discharge or
settlement
effective.

Provided that this paragraph shall not apply to any payment, receipt, settlement or discharge in respect of an excepted claim noted on a release hereinbefore mentioned.

Voucher to
master—
evidence.

- (e) Upon any payment being made by a master before a shipping master, the latter shall, if required, sign and give to the master a statement of the whole amount so paid, and the statement shall, as between the master and his employer, be admissible in evidence to prove that the master has made the payments therein mentioned.

Questions
shipping
master may
hear and
decide.
Q. Act, s. 39.
M.S. Act,
s. 137.

135. (1) A shipping master may hear and decide the following questions between a master or owner and a seaman or apprentice:—

- (a) Any question whatever which both parties request him in writing to hear and decide; and
(b) any claim for wages not exceeding five pounds in amount which either party requests him to hear and decide.

(2) If the shipping master is of opinion that any question is one which ought to be decided by a court, he may refuse to decide it.

(3) The decision of the shipping master shall be final and conclusive as to the rights of the parties.

(4) Any documents under the hand of the shipping master purporting to record the decision shall be admissible as evidence thereof.

Right to
wages and
provisions—
when to
begin.
Q. Act, s. 40.
M.S. Act, s.
155.

136. A seaman's right to wages and provisions shall be taken to begin either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Contracting
out of
certain rights
precluded.

Q. Act, s. 41.
M.S. Act,
s. 156.

137. (1) No seaman or apprentice shall, by any agreement—

- (a) be deprived of any remedy for the recovery of his wages;
(b) forfeit his lien upon the ship for his wages;

(c) abandon his right to wages in case of the loss of the ship; or

(d) abandon any right that he may have or obtain in the nature of salvage.

(2) The lien for seamen's and apprentices' wages shall have priority of all other liens.

Lien for wages—
priority.

(3) Every stipulation in any agreement, inconsistent with any provisions of this Act, shall be void.

(4) Nothing in this section shall apply to a stipulation made by any seaman, belonging to a vessel which according to the terms of the agreement is to be employed exclusively on salvage service, with respect to the remuneration to be paid to him for salvage service to be rendered by that vessel to any other vessel.

Salvage service excepted

(5) The right to wages shall not depend on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages, if the vessel in which he served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover his wages, notwithstanding that freight has not been earned:

Wages independent of freight.
M.S. Act, s. 157.

Provided that in all cases of wreck or loss of the vessel, proof that any seaman has not exerted himself to the utmost to save the ship, human life, cargo, stores and equipment, shall bar his claim to wages.

Indolence a bar to wages.

138. (1) In this section "seaman" includes every person employed or engaged in any capacity on board the vessel.

"Seaman."

(2) Where the service of a seaman belonging to a vessel terminates before the period contemplated in his agreement, by reason of the wreck or loss of the vessel, he shall be entitled—

Wreck terminating service.
Q. Act, s. 42.
M.S. Act, s. 158.

(a) to conveyance by, or at the cost of the owner, to the port of engagement, or, at the master's option, to the port of discharge mentioned in the agreement, or to such other port as is mutually agreed upon, with the approval of the shipping master, between the master and the seaman; and

- (b) to wages, in respect of each day on which he is in fact unemployed during the period of two months from the date of termination of the service, at the rate to which he was entitled on that date:

Provided that a seaman shall not be entitled to receive wages under this section—

- (i) if the owner shows that the unemployment was not due to the wreck or loss of the vessel; or
 (ii) in respect of any day if the owner shows that the seaman was able to obtain suitable employment on that day.

(3) Where a seaman, whose service terminates by reason of the wreck or loss of the vessel, has been engaged by the run, he shall be entitled to the wages to which he would have been entitled on the termination of the run, subject to all just deductions.

Wages not to accrue during refusal to work or imprisonment.
 Q. Act, s. 43.
 M.S. Act, s. 159.

139. No seaman or apprentice shall be entitled to wages—

- (a) for any period during which he unlawfully fails to work when required, whether before or after the time fixed by the agreement for his beginning work;
 (b) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned, or
 (c) for any period during which he is, by reason of illness caused by his own wilful act or default, incapable of performing his duty.

M.S. Act, s. 160.

140. Whenever, in any proceeding relating to wages, it is proved that a seaman or apprentice has in the course of the voyage been lawfully convicted of an offence, the court may direct that any part of the wages due to the seaman or apprentice, not exceeding two pounds, shall be applied in reimbursing any costs properly incurred by the master in procuring the conviction.

Deduction of cost of obtaining conviction.
 Q. Act, s. 44.
 M.S. Act, s. 161.
 Cf. s. 152 post.

Compensation for premature discharge.
 Q. Act, s. 45.
 M.S. Act, s. 162.

141. (1) If a seaman is discharged, otherwise than in accordance with the terms of his agreement or the provisions of this Act, without fault on his part justifying that discharge, and without his consent, he shall be

entitled to receive from the master or owner, in addition to any wages he has earned, compensation not being less than one month's wages, and may recover that compensation as if it were wages duly earned.

(2) If the seaman is so discharged elsewhere than at the port of discharge mentioned in the agreement, the provisions of subsections (5) and (6) of section one hundred and twenty-four of this Act shall also apply as if the seaman had been discharged in pursuance of subsection (3) of that section.

Cf. s. 124
ante.

(3) Every seaman (wherever engaged) who is discharged before the completion of the full term of his engagement, shall be paid and may recover the full amount of wages due up to the time of his discharge.

142. As to wages due or accruing to a seaman or apprentice—

No attachment, &c., of wages.

- (a) they shall not be subject to attachment or arrestment from any court;
- (b) an assignment or sale thereof made prior to the accruing thereof shall not bind the person making it;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable, and
- (d) a payment of wages to the seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of those wages, or any attachment, encumbrance or arrestment thereof.

Q. Act, s. 46.
M.S. Act,
s. 163.

143. (1) The Supreme Court of the State, and any court having Admiralty jurisdiction, and any court having civil jurisdiction in respect of the amount of the claim, shall have jurisdiction to try and determine the following causes:—

Jurisdiction as to wages.
Q. Act, s. 47.

- (a) Any claim by or on behalf of a seaman of a vessel for wages earned by him on board the vessel, whether under a special contract or otherwise, and
- (b) any claim by or on behalf of the master of a vessel for wages earned by him on board the vessel, and for disbursements made by him on account of the vessel.

(2) If in any such cause tried in the Supreme Court, or in a court having Admiralty jurisdiction, the plaintiff does not recover one hundred pounds, he shall only be entitled to such costs as the court or the judge allows, such costs not to exceed reasonable costs on the scale applicable in any inferior court in which the cause might have been brought, unless the court or judge certifies that the cause was a fit one to be tried in the higher court.

M.S. Act,
s. 165.

(3) The last preceding subsection shall not apply to a proceeding for the recovery of wages by or on behalf of any seaman or apprentice in any case where—

- (a) the owner of the vessel is declared bankrupt or insolvent;
- (b) the vessel is under arrest or is sold by the authority of any court;
- (c) the case has been referred to the court by an inferior court; or
- (d) neither the owner nor the master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

M.S. Act,
s. 164.

(4) Where any sum not exceeding one hundred pounds is due for wages to any seaman or apprentice, he, or a person duly authorised on his behalf, may sue for and recover it with costs in a local court of the State or a court of summary jurisdiction, in or near the place—

- (a) where the service has terminated;
- (b) where the seaman or apprentice has been discharged, or
- (c) where the person from whom the wages are due is or resides.

(5) Every judgment or order for payment made by the court under subsection (4) hereof shall contain a direction that the person liable shall pay the amount thereby payable within a time to be named in the judgment or order, and that in default he shall be imprisoned for any term not exceeding three months unless the amount is sooner paid.

(6) Subsection (4) hereof shall not be exclusive, but any seaman or apprentice or a person duly authorised in his behalf shall have the right to elect to proceed thereunder or to recover the wages concerned in any other manner provided by law.

144. (1) The master of a vessel shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has by law or custom.

Master's remedies for wages.
Q. Act, s. 48
M.S. Act, s. 167.

(2) The master of a vessel shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the vessel as a master has for the recovery of his wages.

(3) If in any proceeding in any court touching the claim of a master in respect of wages, or of such disbursements, or liabilities as aforesaid, any right of set-off or counterclaim is set up, the court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceeding and may direct payment of any balance found to be due.

Division 7.—Discipline.

Part VII.
Division 7.

145. Any master, seaman, or apprentice who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness—

Conduct tending to endanger life, vessel or cargo.
Q. Act, s. 49.
M.S. Act, s. 220.

(a) does any act tending to the immediate loss, destruction or serious damage of the vessel or cargo, or tending immediately to endanger the life or limb of a person belonging to or on board the vessel, or

(b) fails to do any lawful act proper and requisite to be done by him for preserving the vessel or cargo from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the vessel from immediate danger to life or limb,

Penalty.

shall be guilty of an indictable offence and liable to imprisonment for two years.

146. (1) The acts specified in column 1 hereunder shall be offences against discipline, and a seaman or apprentice committing any one of them shall be guilty of an offence and liable to punishment not exceeding the punishment set opposite to the offence in column 2 hereunder:—

Offences relating to discipline.
Q. Act, s. 50.
Cf. s. 152 post.

COLUMN 1.		COLUMN 2.
<i>Offences.</i>		<i>Punishments.</i>
M.S. Act, s. 221 (a).	Desertion.	Forfeiture of all accrued wages not exceeding twenty pounds or a penalty of twenty pounds.
M.S. Act, s. 221 (b).	Failure or Refusal without reasonable cause to join the ship or proceed to sea in the ship.	Penalty of ten pounds.
M. S. Act, s. 221 (b).	Absence without leave from duty without reasonable cause, such absence not amounting to desertion or not treated as such by the master.	Forfeiture of two days' wages, with an additional forfeiture of two days' wages for every twenty-four hours of absence, or a penalty of twenty pounds.
M.S. Act, s. 225 (b).	Insubordination at sea, or wilful disobedience to any lawful command at sea.	One months imprisonment or forfeiture of ten days' wages.
	Insubordination or wilful disobedience to any lawful commands.	Forfeiture of two days' wages, or a penalty of ten pounds.
M.S. Act, s. 225 (c).	Continued wilful disobedience to lawful commands, or continued wilful failure in duty.	Forfeiture of two days' wages for each day during which the offence continues.
M.S. Act, s. 225 (d).	Assaulting master or ship's officer without lawful justification.	Three months' imprisonment, or a penalty of twenty pounds.
M.S. Act, s. 225 (e).	Conspiring with any other of the crew to disobey lawful commands at sea, neglect duty at sea, or impede the navigation of the ship or progress of the voyage.	Six months' imprisonment.
M.S. Act, s. 225 (f)	Wilfully damaging the ship.	Twelve months' imprisonment or a penalty equal in amount to the loss sustained.
	Stealing or wilfully damaging the cargo, stores, or equipment of the ship.	Six months' imprisonment, or a penalty equal in amount to the loss sustained.
	Secreting a stowaway or deserter.	Forfeiture of two days' wages.

(2) Any forfeiture under this section (except where expressed to be of accrued wages) shall be out of such wages as have accrued or may accrue to the person committing the offence; and wages shall not be deemed to include salvage.

Of. s. 152
post.

147. (1) If a seaman or apprentice commits any act of smuggling by which loss or damage is occasioned to the master or owner of the vessel, he may be ordered by any court of summary jurisdiction to pay to the master or owner a sum sufficient to recoup the loss or damage, and that sum may without prejudice to any other remedy, be deducted from any wages due to him.

Smuggling
by crew.
Q. Act, s. 51.
M.S. Act,
s. 225 (g).

(2) Nothing in this section shall relieve any seaman or apprentice from any penalty incurred on account of any act of smuggling.

148. The master or an officer of a ship who, without lawful justification, assaults any person belonging to the vessel, shall be guilty of an offence and liable to a penalty not exceeding twenty pounds, or imprisonment for three months.

Assaults on
crew.
Q. Act, s. 52.

Penalty.

149. Any person who—

(a) by any means whatever persuades a seaman or apprentice to commit any breach of his agreement; or

Inciting
breach of
agreement.
Q. Act, s. 53.
M.S. Act,
s. 236.

(b) wilfully harbours or secretes a seaman or apprentice who has deserted from or wilfully failed to join his vessel,

shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Penalty.

150. (1) Any person who secretes himself and goes to sea in a vessel without the consent of some person entitled to give that consent shall be guilty of an offence and liable to a penalty not exceeding twenty pounds or four weeks' imprisonment.

Stowaways.
Q. Act, s. 54.
M.S. Act,
s. 237.

(2) Every person whom the master of a vessel is legally compelled to convey, and every person who goes to sea in a vessel without such consent as aforesaid, shall, as long as he remains in the vessel, be subject to the

same laws and regulations for preserving discipline as if he were a member of the crew and signed the agreement.

Offenders
may be sent
on board.
Q. Act, s. 55.
M.S. Act,
s. 224.

151. (1) Whenever a seaman or apprentice is charged before any court with desertion or absence without leave from duty, the court upon proof of the offence—

- (a) shall, instead of enforcing the whole or any part of the penalties prescribed, if the master or owner or his agent so requires, cause him to be conveyed on board for the purpose of proceeding on the voyage:

Provided that the court may decline to exercise this power in any particular case if for any special reason it thinks it advisable so to do; and

- (b) may also order any expenses, properly incurred by or on behalf of the master or owner by reason of the offence, to be deducted from any wages which the offender has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Proceedings
against sea-
man after
vessel's
departure.

(2) When proceedings have been instituted against a seaman who has deserted from his vessel or has failed or refused without reasonable cause to join his vessel or proceed to sea, and a warrant has been issued for his apprehension, but he has not been apprehended until—

- (a) after the departure of the vessel; or
(b) so shortly before the departure of the vessel that he cannot conveniently be brought to trial prior to her departure; or
(c) so shortly before such departure that the master cannot reasonably be expected to attend for the purpose of prosecuting him,

the owner or agent of the vessel may continue the proceedings against the seaman, and upon the hearing of the charge verified copies of the agreement and of the entry in the log book, in which respectively the offender's name appears, shall be admissible in evidence.

(3) (a) Where any seaman lawfully engaged, wilfully or through misconduct, fails to join his vessel, or having joined his vessel deserts her before her departure, and no proceedings under this Act have been instituted against the seaman in respect of the offence, the Department, on a report by the shipping master, may direct that the seaman's certificates of discharge shall be withheld from him for such period, not exceeding one month, as the Department thinks fit.

Failure to join and desertion.
M.S. Act, 1906, s. 65 (2).

(b) While a seaman's certificates of discharge are so withheld then, notwithstanding anything to the contrary contained in this Act—

Effect of withholding certificates of discharge.

(i) no shipping master shall grant to the seaman a permit to sign articles; and

(ii) no officer having the custody of documents shall furnish to any person copies of that seaman's certificates of discharge or any of them, or certified extracts of any particulars of his services or character.

(4) (a) Every shipping master shall exhibit in his office a list of seamen who, to the best of his knowledge and belief, have deserted or failed to join their vessel after signing the agreement.

List of deserters to be exhibited.
M.S. Act, s. 230.

(b) No shipping master shall be liable to any action in respect of any entry in such list or so exhibiting it.

No action for exhibiting.

152. Subject to the provisions of sections one hundred and forty, one hundred and forty-six, one hundred and forty-seven, one hundred and fifty-five and one hundred and fifty-six of this Act, when a seaman or apprentice is sentenced to imprisonment for any offence, the whole or any of the wages due to him at the time of his arrest shall be paid to him by the master or owner.

Wages during imprisonment.
Q. Act, s. 56. cf. ss. 140, 146, 147 ante and 155 and 156 post.

153. If any offence of desertion, absence without leave, or against discipline is committed, or if any misconduct is committed for which the offender's agreement imposes a fine and for which it is intended to enforce the fine—

Logbook entries relating to offences.
Q. Act, s. 57. M.S. Act, s. 22E.

- (a) an entry of the offence or act shall be made in the official log book and signed by the master and also by the mate or one of the crew;
- (b) the offender, if still in the vessel, shall, before the next arrival of the vessel at any port, or if the vessel is at the time in port, before her departure therefrom, be furnished with a copy of the entry or have it distinctly read over to him, and he may thereupon make such reply thereto as he thinks fit;
- (c) a statement of a copy of the entry having been so furnished or of the entry having been so read over, and of the offender's reply (if any) shall be entered and signed in manner aforesaid, and
- (d) in any subsequent legal proceeding the entries required by this section shall, if practicable, be produced or proved, and in default of that production or proof the court hearing the case may in its discretion refuse to receive evidence of the offence or misconduct.

Evidence of
desertion—
proceedings
for
forfeiture.
Q. Act, s. 58.
M.S. Act,
s. 231.

154. (1) Whenever a question arises as to forfeiture of wages of a seaman or apprentice for desertion, it shall be sufficient evidence of desertion to show—

- (a) that the seaman or apprentice belonged to the vessel;
- (b) either that he unlawfully left the vessel before the completion of the voyage or engagement or that he is unlawfully absent from her, and
- (c) that an entry of his desertion has been duly made in the official log book and indorsed by a shipping master.

(2) The desertion shall thereupon be deemed to be proved, unless the seaman or apprentice can show to the satisfaction of the court that he had sufficient reasons for leaving his vessel.

(3) Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the

offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

(4) If a seaman contracts for wages by the voyage or by the run or by the share, and not by a stated period of time, the amount of forfeiture to be incurred under this Act shall be such as the court determines when any question of forfeiture of the wages comes before it.

155. (1) Every fine imposed on a seaman for any act of misconduct for which his agreement imposes a fine shall be deducted and paid as follows:—

Deduction
of fines.
Q. Act, s. 59.
M.S. Act,
1906, s. 44.

If the offence, and the entry in the log book required by this Act in respect thereof, are proved to the satisfaction of the shipping master before whom the offender is discharged, the master or owner shall deduct the fine from the wages of the offender and pay it to the shipping master.

(2) Any master or owner who fails, without reasonable cause, to pay the fine promptly to the shipping master shall be guilty of an offence and liable to a penalty not exceeding five pounds.

Penalty.

(3) Any misconduct for which a fine has been inflicted and paid by, or deducted from the wages of, the seaman shall not be otherwise punished under this Act.

cf. s. 132
ante.

Division 8.—Provisions.

Part VII.
Division 8.

156. (1) If three or more of the crew of a vessel consider that their provisions or water are of bad quality or deficient in quantity they may complain thereof to a shipping master, who shall examine the provisions and water or cause them to be examined.

Bad
provisions
or water.
Q. Act, s. 60.
M.S. Act,
s. 198.

(2) (a) If the Department is satisfied, from the report of the shipping master or other official making the examination, that the provisions or water are of bad quality or deficient in quantity, it shall by writing require the master to provide provisions and water of good quality, or sufficient in quantity as the case may be, and cease to use or supply to the crew any provisions or water found to be of bad quality, and the master shall comply with the requisition.

Penalty.

(b) If a master fails to comply with a requisition as aforesaid he shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) The shipping master or person making the examination shall enter the result thereof in the official log book.

(4) If the Department certifies that there was no reasonable ground for complaint, each of the complainants shall be liable to forfeit out of his wages a sum not exceeding one week's wages.

cf. s. 152
ante.

(5) For the purposes of subsection (2) of this section, any requirement made by the Department may in addition to any other manner authorised be made by telegram signed by the manager of the Department and addressed to the master of the vessel in question.

Statutory
scale of
provisions.
Q. Act, s. 61.
M.S. Act,
1906, s. 25.
Penalty.

157. The master of every vessel shall furnish provisions to every member of the crew (who does not furnish his own provisions) in accordance with the scale prescribed, and any master who fails so to do shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds, in addition to any compensation awarded under the next following section:

Provided that, if the master proves to the satisfaction of the court that the failure was not due to any default or neglect on his part, no penalty shall be incurred.

Compensation
for
insufficient
or bad
provisions
or water.
Q. Act, s. 62.
M.S. Act,
s. 199.

158. (1) On every vessel in any case when, during the voyage the allowance of any of the provisions required by the prescribed scale is reduced or where it is shown that any of the provisions are or have during the voyage been of bad quality, the seaman shall receive as compensation for that reduction or bad quality according to the time of its continuance the following sums, to be paid to him in addition to, and to be recoverable as, wages:—

- (a) If his allowance is reduced by not more than one-third of the quantity required by the prescribed scale, a sum not exceeding one shilling a day.
- (b) If his allowance is reduced by more than one-third of that quantity, a sum not exceeding two shillings a day.

- (c) In respect of bad quality, a sum not exceeding two shillings a day:

Provided that if it is shown to the satisfaction of the court that—

- (i) any provisions, the allowance of which has been reduced, could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in their place; or
- (ii) although the provisions actually required by the scale were not supplied, provisions containing on the whole the same or a greater amount of wholesome nutriment were supplied in their place,

the court shall take these circumstances into consideration, and shall modify or refuse the compensation as justice requires.

(2) In the event of dispute as to the quantities of articles served out to the crew of a vessel, the master shall cause the quantities to be weighed or measured in the presence of a witness by just and correct weights and measures.

(3) Any master who fails to comply with subsection (2) of this section is guilty of an offence and liable to a penalty not exceeding ten pounds. Penalty.

159. (1) The master of every vessel, and every person having charge of any provisions or water for or intended for the use of the crew of any vessel, shall give inspectors and other persons authorised in that behalf by the Department every reasonable facility for the purpose of inspecting the provisions or water. Inspection of provisions and water. Q. Act, s. 63. M.S. Act. 1906, s. 26.

(2) Any master or other person who fails to comply with subsection (1) of this section shall be guilty of an offence and liable to a penalty not exceeding twenty-five pounds. Penalty.

(3) The owner of any vessel or his agent or any other person supplying or causing to be supplied provisions or water which are afterwards found not of good quality, shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds, unless it is proved to the satisfaction of the court that when the provisions or water were supplied— Penalty.

(a) they were not deficient; or

(b) he did not know and had no reasonable cause to believe that they were deficient in quality, and had taken reasonable precautions to ascertain that they were not so deficient.

(4) All provisions or water examined or inspected under this section and found to be of bad quality shall be disposed of as the Department directs.

Division 9.—Health.

Part VII.
Division 9.

Medical
examination
of seamen.
Q. Act, s. 34.
M.S. Act,
s. 233.

160. (1) On application by the owner or master of a vessel, or a shipping master on behalf of a seaman, the Department may arrange with the Government medical officer at any port to examine any seaman applying for employment or employed in that vessel, and give to the shipping master a report under his hand stating whether the seaman is in a fit state for duty at sea, and a copy of the report shall be given to the master or owner.

(2) The applicant for the examination shall pay to the shipping master such fee not exceeding ten shillings and sixpence as he shall require for the examination.

Scale of
medicines.
Q. Act, s. 65.
M.S. Act,
s. 200.

161. (1) The Department may issue scales of medicines and medical stores suitable for different classes of ships and voyages, and may also prepare or sanction books containing instructions for dispensing those medicines and stores.

(2) The Department may nominate any duly qualified person to inspect the medicines, and medical and surgical stores required to be carried.

(3) The master, on being required by that person, shall make good any deficiency in quantity or quality of such articles, and if he fails so to do shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Penalty.

Owner liable
for medical
attendance,
etc.
Q. Act, s. 66.
M.S. Act,
1906 s. 34.

162. (1) If the master or a seaman or apprentice belonging to a vessel —

(a) receives any hurt or injury or contracts disease in the service of the vessel; or

(b) suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default, or to his own misbehaviour), the expense of providing the necessary surgical and medical advice, attendance and medicine, and also the expense of the maintenance of the master, seaman or apprentice until he is cured, or dies, or is brought or taken back to the port where, in accordance with his agreement, he is entitled to be discharged, or such other port as is mutually agreed upon with the approval of the shipping master, and of his conveyance thither, and in case of death the expense (if any) of his burial, shall be defrayed by the owner of the vessel, without any deduction therefor from his wages.

(2) If the master, or a seaman or apprentice is suffering from disease or illness and is, for the purpose of preventing infection, or otherwise for the convenience of the vessel, temporarily removed from his vessel, and subsequently returns to his duty, the expense of his removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the vessel, shall be defrayed in like manner.

(3) The expense of all medicines, surgical and medical advice and attendance given to a master, seaman or apprentice whilst on board his vessel shall be defrayed in like manner.

(4) In all other cases, any reasonable expenses duly incurred by the owner in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any master, seaman or apprentice who dies whilst on service may, if duly proved, be deducted from the wages of the master, seaman or apprentice.

(5) The master, owner or agent of the vessel shall make the deposit or give the security provided for in section one hundred and sixty-seven of this Act.

Deposit or security to cover liability. cf. s. 167 post.

163. (1) If—

(a) any of the expenses attendant on the illness, hurt or injury of a seaman or apprentice, which are to be paid under the provisions of this Act by the master or owner, are paid by any authority on behalf of the State, or

Recovery of expenses from owner. Q. Act, s. 67. M.S. Act, s. 208, as amended by M.S. Act, 1906, s. 35.

- (b) any other expenses in respect of the illness, hurt or injury of any seaman or apprentice whose wages are not accounted for under this Act to that authority are so paid,

those expenses shall be repaid to the authority by the master of the vessel.

(2) If the expenses are not so repaid, the amount thereof shall with costs be a charge upon the vessel and be recoverable—

- (a) from the master or owner of the vessel for the time being, or
- (b) when the vessel has been lost or abandoned, from the person who was the owner of the vessel immediately prior to the time of her loss or abandonment, or
- (c) when the vessel has been transferred to some person not being a British subject, either from the owner for the time being or from the person who was the owner at the time of the transfer,

as a debt to the Crown, either by ordinary process of law or in the same court and manner as wages due to seamen.

Evidence.

(3) In any proceeding for such recovery, a certificate of the facts, signed by the authority, together with such vouchers (if any) as the case requires, shall be sufficient proof that the expenses were duly paid by that authority.

Certificate
when seaman
left behind.
Q. Act, s. 68.
M.S. Act,
1906, s. 36.

164. (1) The master of a vessel shall not leave a seaman or apprentice behind at any place (except where the seaman is discharged in accordance with this Act) unless he previously obtains indorsed on the agreement a certificate from the shipping master stating the cause of the seaman or apprentice being left behind, whether the cause be unfitness or inability to go to sea, desertion, disappearance or otherwise.

Shipping
master to
inquire.

(2) The shipping master shall examine into the grounds on which a seaman or apprentice is to be left behind, and for the purpose may, if he thinks fit, administer oaths, and may grant or refuse the certificate as he thinks fit; but the certificate shall not be unreasonably withheld.

(3) If the master fails to comply with the provisions of this section, he shall, without prejudice to his liability under any other provision of this Act, be guilty in respect of each offence of an indictable offence and liable to imprisonment for two years, and in any legal proceeding for the offence the onus of proving the certificate was obtained, or could not be obtained without unreasonable delay to the vessel, or was unreasonably withheld, shall be on the master.

Penalty.

165. (1) The master of a vessel leaving a seaman or apprentice behind at any place, on the ground of his unfitness or inability to go to sea, shall deliver to the shipping master a full and true account of the wages due to the seaman or apprentice, and shall pay to the seaman or apprentice the amount of the wages, or, if for any reason payment direct to the seaman or apprentice is not practicable, shall pay the wages due to the shipping master.

Account of wages where seaman left behind.
Q. Act, s. 69.
M.S. Act, 1906, s. 37.

(2) The master shall not knowingly deliver a false account of the wages.

(3) Any master of a vessel who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds, in addition to payment of wages.

Penalty.

166. Any person wrongfully forcing a seaman or apprentice on shore from any vessel and leaving him behind, or otherwise causing him to be wrongfully left behind at any place either on shore or at sea, shall be guilty of an indictable offence and liable to imprisonment for two years.

Wrongfully leaving behind seamen.
Q. Act, s. 70.
M.S. Act, 1906, s. 43.
Penalty.

167. (1) Subject and without prejudice to the provisions of the Workers' Compensation Act, 1912-1944, when a seaman or apprentice belonging to a vessel is left on shore at any place in the State, in any manner authorised by law, by reason of illness or accident in the service of the vessel incapacitating him from following his duty, he shall be entitled—

Seamen left behind lawfully.
No. 69 of 1912, s. 16
Q. Act, s. 71.

- (a) if landed at his home port; as specified in the agreement, to receive wages, at the rate fixed by his agreement, up to the expiration of one week after the date of his recovery as certified by his medical attendant or by a Government medical officer:

Provided that, in cases where his engagement expires within one month from the date he was left on shore, the time for which he shall be so entitled to be paid wages shall not exceed a period of one month, and in other cases it shall not exceed a period of three months from the date he was left on shore; or

- (b) if landed at a port other than his home port to receive after his recovery, certified as provided in the last preceding paragraph, a free passage to his home port, with wages at the rate fixed by the agreement, until arrival at that port:

Provided that if, after recovery, the seaman or apprentice rejoins his vessel, or takes other employment, or is offered and refuses employment on some other vessel proceeding to his home port, at a similar rate of pay to that received by him immediately prior to his being left on shore, and with the right of discharge from that vessel on arrival at his home port, his right to continue to receive wages under this subsection shall then cease.

Deposit or
security to
cover
liability.

- (2) The master, owner, or agent of the vessel—
- (a) shall deposit with the shipping master an amount sufficient, in the opinion of the shipping master, to cover the liability of the owner in respect of the seaman or apprentice under the preceding subsection and under section one hundred and sixty-two of this Act, or
- (b) may, with the consent of the shipping master, give security for the payment, on demand, of the actual amount of the owner's liability.

cf. s. 162
ante.

(3) If there is a public hospital at, or convenient to, the port where the seaman or apprentice is left on shore, and where accommodation is available, but the seaman or apprentice elects to be treated and maintained elsewhere than in that hospital, the liability of the owner in respect of the surgical and medical advice, attendance, medicine and maintenance shall be limited to the amount of the expenses that would be payable if the seaman or apprentice were treated and maintained as an in-patient of that hospital.

(4) On the recovery of the seaman or apprentice, the balance (if any) of any amount deposited in pursuance of subsection (2) of this section, after the discharge of the liability in respect of which the amount was deposited, shall be returned to the master, owner or agent by whom it was deposited.

(5) The illness, hurt or injury which shall entitle a seaman or apprentice to the benefits provided for in this section shall—

Conditions of benefits.

- (a) be such as wholly to incapacitate him from the performance of his duty;
- (b) be, or appear to be of such nature as to require, or be likely to require medical treatment of not less than fourteen days, and
- (c) so far as can be ascertained, be an illness contracted on board the vessel, or in the service of the vessel or her owner, or a hurt or injury sustained in the service of the vessel or her owner:

Provided that if the illness is due to his own wilful act or default or to his misbehaviour, or is a venereal disease, the seaman or apprentice shall not be entitled to the benefits provided for in this section.

(6) The master of any vessel who fails to comply with any requirement of this section shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

Penalty.

Division 10.—Accommodation for Seamen.

Part VII.
Division 10.

168. (1) The owner of every vessel shall—

- (a) make provision in the vessel to the satisfaction of the surveyor or the prescribed official for the adequate ventilation of the officers' rooms, engine room and stoke-hole; and
- (b) make provision, where such can be provided without detriment to the safe navigation of the vessel, for a wheel-house, or, if such is not practicable, such temporary shelter as may be prescribed; and

Accommodation for officers.
cf. s. 170
of. s. 170
post.

- (c) except as in the next succeeding paragraph mentioned, provide for each officer a separate room, having a cubic content of not less than one-hundred and eighty feet, and having a separate entrance to the deck, and not opening directly into the engine-room; or
- (d) in the case of a vessel of less than three hundred tons registered tonnage, provide for each two officers a separate room, having a cubic content of not less than three hundred and fifty cubic feet, and having a separate entrance to the deck, and not opening directly into the engine-room; or
- (e) in the case of harbour and river vessels, provide for the officers such accommodation as is prescribed.

Penalty.

(2) Any owner who makes default in complying with any provision of this section shall be guilty of an offence and liable to a penalty of not more than twenty pounds, and, in addition, not more than five pounds for every day after the first day during which the default continues.

Accommodation for seamen and apprentices. Q. Act, s. 73. M.S. Act, s. 210 as amended by M.S. Act, 1906, s. 64. cf. s. 170 post.

169. (1) (a) Every place in a vessel which is appropriated to the berthing accommodation of seamen or apprentices, shall—

- (i) have for each seaman and apprentice a space of not less than one hundred and forty cubic feet and of not less than eighteen superficial feet measured on the deck or floor of that place, and of not less than five feet measured between bunks clear of all encumbrances at the forward or narrow end;
- (ii) not be below the load-line of the vessel;
- (iii) be kept free from all goods and stores not being the personal property in use of the crew, and be so constructed as to be wind and weather proof and adequately lighted and properly adapted for the preservation of the health and comfort of the seamen berthed therein;
- (iv) if required by the Department, regard being had to the construction and situation of the berthing accommodation provided and

to the trade in which the vessel is employed or likely to be employed, be provided with such means of artificial heating and mechanical ventilation as are, in the opinion of the Department, necessary for the preservation of the health and comfort of the crew;

- (v) not have built in it, or so near it as to be, in the opinion of a Government medical officer, detrimental or be likely to be detrimental to the health of the occupants, any paint or chain locker, latrine or similar fitting;
- (vi) be so constructed as to insure that no bilge water, or effluvium therefrom or from any other cause, shall be allowed to penetrate the space to such an extent or in such manner as would, in the opinion of a Government medical officer, be or be likely to be detrimental to the health and comfort of the persons berthed therein;
- (vii) be ventilated in such manner as to insure a flow of fresh air, evenly diffused by means approved by the Department, with an intake and out-take of such size and so arranged as to prevent such draught as would, in the opinion of a Government medical officer, be or be likely to be detrimental to the health of the seamen or apprentices; and
- (viii) be fitted with bunks made of metal approved by the Department.

(b) Any owner who makes default in complying with any provision of this subsection shall be guilty of an offence and liable to a penalty not exceeding one hundred pounds.

(2) (a) Subject to subsection (4) of this section the owner of every such vessel shall provide, on an open deck, a separate mess room of sufficient size and conveniently arranged for the taking of meals by the seamen and apprentices. In cases where, in the opinion of the Department, compliance with this requirement would involve such structural alterations of the ship as are not practicable, the owner shall provide equivalent accommodation in some other part of the ship not below the load-line, or, if in the opinion of the Department this is not practicable, shall provide folding or sliding tables

of sufficient size to enable the seamen and apprentices to take their meals in comfort in the forecabin.

Penalty.

(b) Any owner who fails to comply with this subsection shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

Penalty.

(3) Subject to subsection (4) of this section, the owner of every such vessel shall provide such sanitary and lavatory accommodation, including bathrooms and facilities for washing clothes, as in the opinion of a Government medical officer is sufficient for the requirements of the crew, and in the case of steamships the provision shall include an adequate supply of hot fresh water for the use of all members of the crew, and any owner who fails so to do shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

(4) Subsections (2) and (3) of this section shall not apply to vessels of less than three hundred tons registered tonnage or harbour and river vessels, but the owner of every such vessel shall make such provision as is directed by the Department for accommodation for the taking of meals by the seamen and apprentices, and for their sanitary and lavatory accommodation, including bath-room.

(5) If the requirements of this section in regard to any space in the vessel appropriated to the use of the seamen and apprentices are not complied with, the master or owner shall pay to each seaman and apprentice affected thereby the sum of five shillings for each day during which, after complaint has been made to the master by two or more persons so affected, the cause of the complaint is allowed to continue and the seaman or apprentice may recover any amount due under this subsection in the same manner as if that amount were wages.

(6) If the Department is satisfied, on expert evidence, that it is not practicable to make in any vessel structural provision to meet the requirements of subparagraph (i) of paragraph (a) of subsection (1) of this section relating to accommodation of seamen and apprentices, the Department may permit similar and equivalent accommodation in another part or other parts of the vessel to be provided in its stead.

170. The Department may by order in writing exempt a vessel built before the commencement of this Act from compliance with any or all of the provisions of sections one hundred and sixty-eight and one hundred and sixty-nine of this Act (except paragraphs (iii), (v), (vi) and (vii) of subsection (1) of section one hundred and sixty-nine) if the Department is satisfied that the accommodation in the vessel for officers and men is not insanitary, or that all such alterations have been made in the vessel as are in its opinion necessary to make the accommodation sanitary.

Application to ships built before commencement of Act. Q. Act, s. 74

cf. ss. 168 and 169 ante

Division 11.—Property of Deceased Seamen.

Part VII.
Division 11.

171. (1) If a seaman or apprentice dies on a voyage of the vessel to which he belongs, the master of the vessel shall take charge of any money and effects belonging to the seaman or apprentice which are on board the vessel.

Effects of dead seamen to be taken charge of. O' th Act, s. 150. M.S. Act, s. 169.

(2) The master may, if he thinks fit, cause any of the effects to be sold by auction at the mast, or by public auction.

(3) The master shall enter in the official log book the prescribed particulars.

(4) The entry in the log book shall be signed by the master and attested by one of the officers and also by one of the seamen.

(5) The money, effects, proceeds of sale of effects and any balance of wages due after making all lawful deductions, are in this Division referred to as the property of the seaman or apprentice.

Property of seaman.

172. (1) If the master fails to comply with the provisions of this Act with respect to—

Penalty for failure to comply. O' th Act, s. 152. M.S. Act, s. 171.

(a) taking charge of the property of a deceased seaman or apprentice;

(b) making in the official log book the proper entries relating thereto;

(c) procuring the proper attestation of those entries, or

(d) the payment or delivery of the property,

Penalty.

he shall be accountable for the property to the Department and shall pay and deliver it accordingly, and shall, in addition, for each offence be liable to a penalty not exceeding treble the value of the property not accounted for, or if that value is not ascertained, not exceeding fifty pounds.

Penalty.

(2) If the property is not so paid, delivered or accounted for by the master, the owner of the vessel shall be liable to pay, deliver and account for it to the Department, and the property or its value shall be recoverable from him accordingly; and if he fails so to account for or pay or deliver it he shall, in addition, be liable to the same penalty as the master for a like offence.

cf. ss. 132-144 ante.

(3) The property may be recovered in the court and manner in which wages of seamen may be recovered under this Act.

Recovery of
dead
seaman's
wages.
O'th Act,
s. 154.
M.S. Act,
s. 174.
cf. ss. 132-
144 ante.

173. (1) Where a seaman or apprentice is lost with his ship, the Department may recover the wages due to him from the owner of the vessel in the same court and the same manner as that in which seamen's wages are recoverable and shall deal with those wages in the same manner as with the wages of other deceased seamen or apprentices.

(2) In any proceeding under this section, if it is shown in evidence that the missing vessel left port twelve months or more before the institution of the proceedings and has not been heard of since the time of departure, the vessel shall be deemed to have been lost with all hands on board on such date as the court determines.

(3) Any official list of the crew, made out in accordance with this Act, shall, in the absence of proof to the contrary, be deemed sufficient evidence that they were on board the vessel at the time of her loss.

Effects and
wages due to
be accounted
for to
shipping
master or as
Department
directs.
O'th Act,
s. 155.
M.S. Act,
s. 175.

174. If a seaman or apprentice dies and is at the time of his death entitled to claim from the master or owner of the vessel in which he has served any effects or unpaid wages, the master or owner shall pay and deliver or account for the property to the shipping master or as the Department directs and any master or owner who

contravenes or fails to comply with this section shall be guilty of an offence and liable to a fine not exceeding fifty pounds.

Penalty.

175. (1) Where any property of a deceased seaman or apprentice comes into the hands of the Department, the Department after deducting such sum as it thinks proper for expenses incurred in respect of that seaman or apprentice or of his property, shall, subject to the provisions of this Act, deal with the residue as follows:—

Power of
Department
to dispose of
effects.
C'th Act,
s. 156.
M.S. Act,
s. 176.

- (a) If the property exceeds in value one hundred pounds, shall pay and deliver the residue to the legal personal representative of the deceased.
- (b) If the property does not exceed in value one hundred pounds may either—
 - (i) pay or deliver the residue to any claimant who is proved to its satisfaction to be the widow or a child of the deceased, or to be legally entitled to the personalty of the deceased, or to be a person entitled to take out representation, although no representation has been taken out, and shall be hereby discharged from all further liability in respect of the residue so paid or delivered; or
 - (ii) require representation to be taken out, and pay and deliver the residue to the legal personal representative of the deceased.
- (c) If the deceased was, at the time of his death, a subject of a foreign country between which and the United Kingdom an agreement exists respecting the disposal of the property of deceased seamen of the respective nationalities of that country and the United Kingdom, and if the property does not exceed in value one hundred pounds the Department may, in terms of that agreement pay and deliver the residue to the Consul of the country of which the

deceased was a subject, and the Department shall thereby be discharged from all further liability in respect of the residue so paid or delivered.

(2) Every person to whom the residue is so paid or delivered shall apply it in due course of administration and failure so to do shall constitute an offence punishable by a fine not exceeding twenty pounds.

Penalty.

Wills of dead
seamen.
Oth Act,
s. 157.
M. S. Act,
s. 177.

176. (1) Where a deceased seaman or apprentice has left a will the Department may refuse to pay or deliver the abovementioned residue—

(a) if the will was made on board ship, to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first or only mate of the vessel; and

(b) if the will was not made on board ship, to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in writing and is signed or acknowledged by the testator in the presence of and is attested by two witnesses, one of whom is a shipping master, or is a minister of religion officiating in the place in which the will is made or is a justice.

(2) Where the Department refuses under this section to pay or deliver the residue to a person claiming under a will, the residue shall be dealt with as if no will had been made.

Creditors'
claims.
Oth Act,
s. 158.
M. S. Act,
s. 178.

177. (1) A creditor shall not be entitled to claim from the Department any property of a deceased seaman or apprentice by virtue of representation obtained as creditor.

(2) A creditor shall not be entitled to obtain payment of his debt out of the property, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after the death.

(3) The demand shall be made by the creditor delivering to the Department an account in writing, in a form approved by the Department, and verified by a statutory declaration.

(4) If, before the demand is made, any claim to the property of the deceased made by any person has been allowed, the Department shall give notice to the creditor of the allowance of the claim.

(5) If no claim has been allowed, the creditor shall satisfy the Department as to the justice of his account, and the Department may then pay over to the creditor such sums as allowed, and the Department shall thereby be discharged from all further liability in respect of the money so paid; but otherwise the demand shall be disallowed.

(6) In any case the Department may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand; and if in the course of that time a claim to the property of the deceased is made by any person as widow, next of kin, or legatee and allowed by the Department under this Act, the Department may pay and deliver it to that person.

(7) Where the property has been paid and delivered by the Department to any person as widow, next of kin, or legatee of the deceased or as Consul of the country of which the deceased was a subject, whether before or after the demand made by the creditor, the creditor shall have the same rights and remedies against that person as if he had received the property as the legal personal representative of the deceased.

178. Where no claim to the property of a deceased seaman or apprentice is substantiated within six years after the receipt of the property by the Department, the Department may in its absolute discretion, if any subsequent claim is made, either allow or refuse the claim, and, subject to the allowance of any such claim, the property or the proceeds thereof shall be paid into Consolidated Revenue Fund.

Disposal
when no
claim.
C'th Act,
s. 159.
M.S. Act,
s. 179.

*Division 12.—The Official Log Book, Ship's Log Book
and Engine-room Log Book.*

Part VII.
Division 12.

179. (1) A log-book, referred to in this Act as the official log book, shall be kept in the prescribed form and manner in every vessel other than a vessel of less than

Official log
book.
Application.
C'th Act,
s. 170.
M.S. Act,
s. 239.

fifty tons gross registered tonnage or a harbour and river vessel.

(2) The official log book may, at the discretion of the master or owner, be kept distinct from, or united with, the ship's log book, but so that in all cases the spaces in the official log book be duly filled up.

(3) (a) An entry required by this Act in an official log book shall be—

(i) made as soon as possible after the occurrence to which it relates, and

(ii) made and dated so as to show the date of the occurrence and the date of the entry respecting it.

(b) Failure to comply with this subsection constitutes an offence in respect of which the person in fault is liable to a penalty not exceeding thirty pounds.

Penalty.

(4) No person shall, more than twenty-four hours after the arrival of a ship at her final port of discharge, make in the official log book any entry of any occurrence which happened before her arrival.

(5) (a) Every entry in the official log book shall be signed by the master, and by an officer or some other member of the crew and also—

(i) if it is an entry of wages due to, or to the sale of effects of, a deceased seaman or apprentice, by both an officer and some member of the crew besides the master, and

(ii) if it is an entry of wages due to a seaman who enters the King's naval service, by the seaman, or the officer authorised to receive the seaman into that service.

Penalty.

(b) Any master failing to comply with this subsection shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Evidence.

(6) Every entry made in an official log book in manner provided by this Act shall be admissible in evidence.

180. The master or owner of every vessel for which an official log book is required to be kept shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver the official log book for the preceding half year to a shipping master, and every failure so to do shall constitute an offence and be liable to a fine not exceeding ten pounds.

Delivery of official log.
O'ith Act,
s. 173.
M.S. Act,
s. 242.

181. (1) Where for any reason the official log book ceases to be required in respect of a vessel, the master or owner of the vessel shall, within one month after the cessation, transmit to the shipping master at the port to which the vessel belonged the official log book made up to the time of the cessation.

Transmission of official log to shipping master on cessation of use.
O'ith Act,
s. 174.
M.S. Act,
s. 243.

(2) If a vessel is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, transmit to the shipping master the official log book (if any) duly made out to the time of the loss or abandonment.

(3) Failure to comply with this section shall constitute an offence in respect of which the person in fault is liable to a penalty not exceeding ten pounds.

Penalty.

182. (1) (a) On every steamship (other than a harbour and river steamer) of fifty tons gross registered tonnage or over, the chief or only engineer shall keep an engine-room log book in the prescribed form and manner, and the entries required to be made therein shall be signed by the chief engineer and by the engineer on watch at the time of any occurrence being recorded, or, where there is only one engineer, by him and shall be countersigned by the master.

Engine-room log book.

(b) Any failure to comply with this subsection shall constitute an offence and be liable to a penalty not exceeding five pounds.

(2) The engine-room log book shall be kept under the supervision of the master and shall be produced when required to a shipping master or surveyor and any failure so to do shall constitute an offence in respect of which the person in fault is liable to a penalty not exceeding five pounds.

(3) Nothing in this section shall affect the duty or liability of the master in regard to the official log book.

Part VIII.
Division 1.

PART VIII.—BOAT LICENSING.

Division 1.—Hire Boats and Fishing, Pearling and Whaling Boats.

Interpreta-
tion.

183. In this Division of this Part, unless the context or subject matter otherwise indicates or requires the expression—

“owner” includes every person who is the owner or part owner of a vessel, and where a vessel is the subject of a hire purchase agreement, the term means the person who is entitled to the use of the vessel under the agreement.

“vessel” means—

cf. ss. 187
and 189 post.

(i) rowing boat, sailing boat and any other vessel which is of the same or a different kind as or from those enumerated and which is not the subject of enactment under any other Part or Division 2 of this Part of this Act—

(a) which is used for plying for hire or held or let for hire or reward; or

(b) the use of which is permitted in connection with any premises, which are held or let for use or occupation in consideration of money or moneys-worth;

(ii) vessels licensed under the Pearling Act, 1912-1935, the Whaling Act, 1937, the Fisheries Act, 1905-1947, or the Fremantle Harbour Trust Act, 1902.

Application.

184. Where there is any conflict or inconsistency between the provisions of this Part of this Act and those of the Pearling Act, 1912-1935, the Whaling Act, 1937, the Fisheries Act, 1905-1947, or the Fremantle Harbour Trust Act, 1902, the provisions of those Acts shall prevail.

185. (1) A boat license is required for any vessel.

Necessity for
boat license.

(2) If any vessel, the owner of which is not the holder of the requisite boat license, shall be navigated within the jurisdiction, the owner of the vessel or other person so navigating or causing or permitting the vessel to be so navigated shall, subject to the proviso to this subsection, commit an offence.

Penalty—Fifty pounds.

Penalty.

Provided that it shall be a defence to a charge under this section against—

(a) the owner, if he proves that he had not consented, expressly or by implication, to the navigation of the vessel by any person; and

(b) a person other than the owner, if that person satisfies the court that he took all reasonable precautions to ascertain that the owner was the holder of the requisite boat license and that he did not know and had no reasonable cause to believe that the owner was not the holder of the requisite boat license.

(3) On a conviction for an offence under this section the court shall order the defendant to pay the license fee that should have been paid in respect of the vessel in addition to any penalty imposed, and the order shall be enforceable as if the amount of the fee were a penalty imposed on the defendant.

186. (1) The Department may on payment of the prescribed fee—

Application
for and
granting or
refusing
license.

(a) on the application of the owner in the manner prescribed grant a boat license in respect of a vessel;

(b) on application in the prescribed form by the transferor or transferee grant a transfer of a boat license to the person who has become the owner of the vessel.

(2) The Department may refuse to grant a license or transfer.

187. Before granting or refusing to grant a license or transfer, the Department shall take into consideration—

Matters to
be considered.

or the requirements of this Part of this Act or any regulations which are applicable to the vessel have not been complied with:

Provided that the Department shall not revoke or suspend a license or permit unless, owing to the frequency of the breach of the conditions of or attached to the license or permit, or to the breach having been committed wilfully or to the danger to the public involved in the breach, the Department is satisfied that the license or permit should be revoked or suspended.

Appeals.

196. There shall be an appeal to a police, resident or stipendiary magistrate, whose order shall be final, in any case where a license or transfer or permit is refused, or a license or permit is suspended or revoked, and on the hearing of the appeal the magistrate may order that the license or transfer shall be granted or that the license or permit shall be reinstated, or may dismiss the appeal, and on dismissal may make such order as to costs as in his discretion he thinks fit.

Procedural.

197. In any prosecution under this Division of this Part of this Act an averment in the complaint that any person is or was the owner of a vessel which is or was unlicensed or in respect of which no permit subsists shall be deemed to be proof in the absence of proof to the contrary.

Unlawfully assuming control.

198. Subject to this Division of this Part of this Act, no person shall without the consent of the owner or person in charge of a vessel navigate or otherwise assume control of the vessel, or interfere with the vessel, its equipment or moorings.

Penalty.

Penalty—One hundred pounds or imprisonment with hard labour for twelve months.

Fraudulently procuring use or hire.

199. Any person who procures the use or hire of any vessel by fraud or misrepresentation, or any person who aids or abets any such person, shall be guilty of an offence.

Penalty.

Penalty—Fifty pounds, or imprisonment with hard labour for three months.

200. (1) Every holder of a boat license shall, whenever he is charged with an offence under this Part of this Act, produce the license to the justices hearing the charge.

Production of license.

(2) If the person is convicted the justices may order forfeiture of the boat license.

Power to order forfeiture.

201. When a boat license is forfeited or revoked or a permit is revoked, the holder shall on demand made by an authorised person deliver the same to him.

Delivery up of license or permit.

Penalty—Five pounds.

202. Whenever a boat license or permit is lost or destroyed, a duplicate or certified copy shall, on payment of the prescribed fee, be issued by the Department and shall serve and be available in place of the original.

License or permit lost or destroyed.

203. No person shall—

- (a) wilfully mislead, hinder or obstruct any authorised person in any particular likely to affect the discharge of his duty under this Part of this Act;
- (b) forge or fraudulently alter any boat license or permit, distinguishing words, letters, colours or marks, or
- (c) use any of the things mentioned in paragraph (b) of this section to which he is not entitled;
- (d) fraudulently permit any of the things mentioned in paragraph (b) to be used by any person, or navigate or permit to be navigated any vessel whilst it has on it any forged or fraudulently altered thing mentioned in paragraph (b);
- (e) without lawful excuse have in his possession a boat license, permit or any article resembling a boat license or permit and calculated to deceive.

Certain offences.

Penalty—One hundred pounds or imprisonment for six months.

Penalty.

Regulations.

204. (1) The Governor may make any regulations not inconsistent with the provisions of this Act which may be necessary or convenient for carrying into operation or facilitating the operation of this Division of this Part of this Act, and without restricting the general power may make regulations with respect to—

- (a) the design and construction of vessels so as to secure safety;
- (b) maintenance and repair of vessels;
- (c) applications for licenses and permits, transfer of licenses, and revocation and suspension of licenses and permits;
- (d) the form and conditions, including minimum age of license holders, of and any particulars to be set out in licenses and permits;
- (e) records to be kept in relation to vessels, and which of the records shall be admissible in evidence;
- (f) the furnishing by owners of vessels of statistical and other information;
- (g) the fees and apportionment of fees payable in respect of applications for the issue, re-issue and transfer, for the whole or part of any year, of licenses and permits;
- (h) providing for distinguishing words, letters, numbers, colours or marks being or not being placed on vessels;
- (i) prohibiting navigation of vessels that cannot safely be navigated;
- (j) prescribing rules in regard to the safe construction of vessels and prohibiting the navigation of vessels which do not conform to those rules;
- (k) determining what number and kind of lights shall be carried by vessels and the times when and the position in which the lights shall be carried, and prohibiting the use of unsuitable lights;
- (l) prescribing the use on any vessel of sound and efficient gear and equipment;
- (m) providing for registers to be kept in the prescribed form by persons who let out any vessels for hire and for the inspection of the registers;

cf. s. 216
post.

- (n) prescribing and regulating the use on vessels of alarms;
- (o) prohibiting or restricting the navigation of any specified kinds of vessels in any waters in which, in the opinion of the Governor, the navigation would be especially dangerous;
- (p) for providing for minimising the noise and the issue of fumes or smoke from the working of vessels;
- (q) regulating the use of waters by vessels;
- (r) regulating the use, management and equipment during navigation of vessels when used or let for hire;
- (s) prohibiting the use of any specified waters by any vessel or by any person in charge of the vessel;
- (t) prescribing safety regulations in connection with navigation, mooring and berthing of vessels;
- (u) the inspection to be made of vessels in respect of which application has been made under this Division of this Part of this Act, and prohibiting the granting of the application unless the vessel shall be found to be in compliance with the required conditions;
- (v) prescribing the method by which inspections are to be made and any other matter which may be determined in connection with any particular kind of vessel for the purposes of this Division of this Part of this Act;
- (w) prescribing that any person, whether as principal or agent, disposing of or acquiring any vessel shall give notice thereof, and the time and manner thereof;
- (x) imposing a penalty not exceeding twenty pounds or imprisonment not exceeding one month, with or without hard labour, for a breach of any regulation.

Division 2.

*Division 2.—Private Pleasure Boats.*Interpreta-
tion.

205. In this Division of this Part, unless the context or subject matter otherwise indicates or requires, the expression—

“owner” includes every person who is the owner or part owner of a vessel, and where a vessel is the subject of a hire-purchase agreement, the term means the person who is entitled to the use of the vessel under the agreement;

“vessel” means vessels other than those propelled solely by oars or other prescribed power, held for the purpose of pleasure privately and not for hire or reward.

Unlawfully
assuming
control.

206. Subject to this Division of this Part of this Act, no person shall without the consent of the owner or person in charge of a vessel navigate or otherwise assume control of the vessel, or interfere with the vessel, its equipment or moorings.

Penalty.

Penalty—One hundred pounds or imprisonment with hard labour for twelve months.

Regulations.

207. (1) The Governor may make any regulations not inconsistent with the provisions of this Act which may be necessary or convenient for carrying into operation or facilitating the operation of the Act, and without restricting the general power may make regulations with respect to—

- (a) prohibiting navigation of vessels that cannot safely be navigated;
- (b) maintenance and repair of vessels;
- (c) determining what number and kind of lights shall be carried by vessels and the times when and the position in which the lights shall be carried, and prohibiting the use of unsuitable lights;

- (d) prescribing the use on any vessel of sound and efficient gear and equipment;
- (e) for providing for minimising the noise and the issue of fumes or smoke from the working of vessels;
- (f) the inspection to be made of vessels;
- (g) regulating the use of waters by vessels;
- (h) prohibiting the use of any specified waters by any vessel or by any person in charge of the vessel;
- (i) prescribing safety regulations in connection with navigation, mooring and berthing of vessels;
- (j) imposing a penalty not exceeding ten pounds or imprisonment not exceeding one month with or without hard labour for a breach of any regulation.

PART IX.—MISCELLANEOUS.

Part IX.

208. For the purpose of giving jurisdiction under this Act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either—

Place where deemed to have been committed. O' th Act, s. 378. M.S. Act. s. 684.

- (a) in the place in which it actually was committed or arose; or
- (b) in any place in which the offender or person complained against is.

Jurisdiction
over ships
lying off
coast.
C'th Act,
s. 380.
M.S. Act,
s. 685.

209. (1) Where any district within which any Court has jurisdiction is situate on the sea coast, or abuts on or projects into any navigable water, the court shall have jurisdiction over any vessel being on or lying or passing off that coast, or being in or near that navigable water, and over all persons thereon or belonging thereto, in the same manner as if the vessel or persons were within the limits of the original jurisdiction of the court.

(2) The jurisdiction in this section shall be in addition to, and not in derogation of, any jurisdiction or power of a court.

Action
against
official.
C'th Act,
s. 384.

210. (1) No action shall lie against the Minister or any official for anything done under the provisions of this Act, unless direct proof of corruption or malice be given.

(2) Any such action must be commenced within three months from the date of the act forming the subject of such action.

(3) If the plaintiff in any such action discontinues, or is non-suited, or if judgment is given for the defendant, the latter shall have treble costs.

Removal of
master by
court.
C'th Act,
s. 385.
M.S. Act,
s. 472.

211. (1) The Supreme Court, or any court having Admiralty jurisdiction, may remove the master of any ship within the jurisdiction of that court if it thinks it necessary to do so.

(2) The removal by the court may be made upon the application of any owner of the ship or his agent, or of the authorised agent of the ship, or of any certificated mate of the ship, or of one-third or more of the crew of the ship.

(3) The court may appoint a new master instead of the one removed, but where the owner or agent of the ship is within the jurisdiction of the court, such an appointment shall not be made without the consent of that owner or agent.

(4) The court may also make such order, and require such security in respect of the costs of the matter, as the court thinks fit.

212. (1) No person (other than an official or a person duly authorised by the Minister) shall without reasonable excuse or the permission of the master go on board or remain alongside or hover near any ship in any port during the night.

Being on board a ship unlawfully.
C'th Act,
s. 388.

Penalty—Twenty-five pounds.

(2) The master or an officer of police may apprehend and keep in safe custody any person so offending who shall be brought before a justice on the following morning.

213. Any person who is guilty of any contravention or evasion of this Act not constituting an indictable offence for which no other penalty is provided shall be liable to a penalty of not more than ten pounds.

General penalty.
C'th Act,
s. 393.

214. Any document required by this Act to be executed in the presence of, or to be attested by, a witness, may be proved by the evidence of any person who is able to bear witness to the facts of execution or attestation without calling any attesting witness.

Evidence as to execution.
C'th Act,
s. 402.
M.S. Act,
s. 694.

215. (1) Where a document is by this Act declared to be admissible in evidence, it shall, on production from the proper custody, be admissible in evidence in any court, or before any person having by law or consent of parties authority to receive evidence, and, subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or in pursuance of any duty under this Act.

Admissibility of documents in evidence.
C'th Act,
s. 403.
M.S. Act,
s. 695.

(2) A copy of, or extract from, any such document shall also be admissible in evidence if—

(a) it is proved to be an examined copy or extract;
or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was intrusted,

and that officer shall, upon payment of the prescribed fee, furnish a copy or extract so certified to any person applying for it.

No. 28 of
1906, ss. 65
and 67.

(3) The provisions of this section shall be without prejudice to those of the Evidence Act, 1906.

Service
of summons.
C'th Act,
s. 404.
M.S. Act,
s. 696.

216. Service of any summons or other process in any legal proceeding under this Act shall be deemed good service if made—

- (a) personally on the person to be served; or
- (b) at his last known place of abode or business; or
- (c) on board any vessel to which he belongs, and accompanied with a statement of the purport thereof to the person being or appearing to be in command or charge of the vessel.

Service of
notice where
there is no
master.
C'th Act,
s. 405.
M.S. Act,
s. 696.

217. Where any order, notice, statement or document is required for the purpose of any provision of this Act to be served on the master of a ship, it shall be served, where there is no master and the ship is within the limits of Australia, on the managing owner of the ship, or, if there is no managing owner, on some agent of the owner residing in Australia, or, where no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

Power to
search
vessels.
C'th Act,
s. 412.

218. Any person authorised by the Minister, with such assistants as he requires, may search any vessel in any port whenever he has ground for believing the search to be necessary for the due performance of his duty under this Act.

Tonnage of
British ships.
W.A. Act,
s. 97.

219. As to every ship registered at any port in the United Kingdom or any British possession the amount of tonnage specified in the certificate of registry shall for the purposes of this Act be deemed to be the tonnage of such ship.

Provision for
disputed
tonnage.
W.A. Act,
s. 98.

220. In case the tonnage of any ship entering any port within the jurisdiction has not been registered, or any dispute arises as to the tonnage thereof, the Department shall measure such ship in the manner prescribed by the Imperial Act in force for the time being regulating the mode of measurement for British ships.

SCHEDULES.**First Schedule.**

s. 7.

Navigation Act, 1904, No. 59 of 1904.

Navigation Act Amendment Act, 1907, No. 9 of 1907.

Navigation Act Amendment Act, 1918, No. 33 of 1918.

Navigation Act Amendment Act, 1920, No. 27 of 1920.

Navigation Act Amendment Act, 1926, No. 33 of 1926.

Navigation Act Amendment Act, 1928, No. 9 of 1928.

The Boat Licensing Act, 1878, No. 24 of 1878.

The Boat Licensing Act, 1878, Amendment Act, 1883, No. 3 of 1883.

An Act to amend the Boat Licensing Act, 1878, No. 11 of 1886.

An Act to further amend The Boat Licensing Act, 1878, No. 9 of 1888.

Boat Licensing Amendment Act, 1906, No. 33 of 1906.

Boat Licensing Act Amendment Act, 1936, No. 22 of 1936.

Second Schedule.

s. 89.

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.**Preliminary.**

In the following regulations every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam, whether under sail or not, is to be considered a steam vessel.

The words "steam vessel" shall include any vessel propelled by machinery.

A vessel is "under way" within the meaning of these regulations when she is not at anchor, or made fast to the shore or aground.

Regulations Concerning Lights, Etc.

The word "visible" in these rules, when applied to lights, shall mean visible on a dark night with a clear atmosphere.

Article 1. The regulations concerning lights shall be complied with in all weathers from sunset to sunrise, and during such time no other lights which may be mistaken for the prescribed lights shall be exhibited.

Article 2. A steam vessel when under way shall carry—

- (a) on or in front of the foremast, or if a vessel without a foremast, then in the fore part of the vessel, at a height above the hull of not less than 20 feet, and if the breadth of the vessel exceeds 20 feet, then at a height above the hull not less than such breadth, so, however, that the light need not be carried at a greater height above the hull than 40 feet, a bright white light, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass.

so fixed as to throw the light 10 points on each side of the vessel, viz., from right ahead to 2 points abaft the beam on either side, and of such a character as to be visible at a distance of at least 5 miles;

- (b) on the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side, and of such a character as to be visible at a distance of at least 2 miles;
- (c) on the port side a red light so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass, so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side, and of such a character as to be visible at a distance of at least 2 miles;
- (d) the said green and red side lights shall be fitted with inboard screens projecting at least 3 feet forward from the light, so as to prevent these lights from being seen across the bow;
- (e) a steam vessel when under way may carry an additional white light similar in construction to the light mentioned in subdivision (a). These two lights shall be so placed in line with the keel that one shall be at least 15 feet higher than the other, and in such a position with reference to each other that the lower light shall be forward of the upper one. The vertical distance between these lights shall be less than the horizontal distance.

Article 3. A steam vessel when towing another vessel shall, in addition to her side lights, carry two bright white lights in a vertical line one over the other, not less than 6 feet apart, and when towing more than one vessel shall carry an additional bright white light 6 feet above or below such lights, if the length of the tow, measuring from the stern of the towing vessel to the stern of the last vessel towed, exceeds 600 feet. Each of these lights shall be of the same construction and character, and shall be carried in the same position as the white light mentioned in Article 2 (a) except the additional light, which may be carried at a height of not less than 14 feet above the hull.

Such steam vessel may carry a small white light abaft the funnel or aftermast for the vessel towed to steer by, but such light shall not be visible forward of the beam.

Article 4. (a) A vessel which from any accident is not under command shall carry at the same heights as the white light mentioned in Article 2 (a), where they can best be seen, and, if a steam vessel, in lieu of that light, two red lights, in a vertical line one over the other, not less than 6 feet apart, and of such a character as to be visible all round the horizon at a distance of at least 2 miles; and shall by day carry in a vertical line one over the other, not less than 6 feet apart, where they can best be seen, two black balls or shapes, each 2 feet in diameter,

(b) A vessel employed in laying or in picking up a telegraph cable shall carry in the same position as the white light mentioned in Article 2 (a), and, if a steam vessel, in lieu of that light, three lights in a vertical line one over the other, not less than 6 feet apart. The highest and lowest of these lights shall be red, and the middle light shall be white, and they shall be of such a character as to be visible all round the horizon, at a distance of at least 2 miles. By day she shall carry in a vertical line one over the other, not less than 6 feet apart, where they can best be seen, three shapes not less than 2 feet in diameter, of which the highest and lowest shall be globular in shape and red in colour, and the middle one diamond in shape, and white.

(c) The vessels referred to in this Article, when not making way through the water, shall not carry the side lights, but when making way shall carry them.

(d) The lights and shapes required to be shown by this Article are to be taken by other vessels as signals that the vessel showing them is not under command, and cannot therefore get out of the way.

These signals are not signals of vessels in distress and requiring assistance.

Article 5. A sailing vessel under way, and any vessel being towed, shall carry the same lights as are prescribed by Article 2 for a steam vessel under way, with the exception of the white lights mentioned therein, which they shall never carry.

Article 6. Whenever, as in the case of small vessels under way during bad weather, the green and red side lights cannot be fixed, these lights shall be kept at hand lighted and ready for use; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such a manner as to make them most visible, and so that the green light shall not be seen on the port side nor the red light on the starboard side, nor, if practicable, more than 2 points abaft the beam on their respective sides.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with proper screens.

Article 7. Steam vessels of less than 40, and vessels under oars or sails of less than 20 tons gross tonnage, respectively, and rowing boats, when under way, shall not be obliged to carry the lights mentioned in Article 2 (a), and (b) and (c), but if they do not carry them they shall be provided with the following lights:—

1. Steam vessels of less than 40 tons shall carry—

- (a) in the fore part of the vessel, or on or in front of the funnel, where it can best be seen, and at a height above the gunwale of not less than 9 feet, a bright white light constructed and fixed as prescribed in Article 2 (a), and of such a character as to be visible at a distance of at least 2 miles;
- (b) green and red side lights constructed and fixed as prescribed in Article 2 (b) and (c), and of such a character as to be visible at a distance of at least

1 mile, or a combined lantern showing a green light and a red light from right ahead to 2 points abaft the beam on their respective sides. Such lantern shall be carried not less than 3 feet below the white light.

2. Small steamboats, such as are carried by sea-going vessels, may carry the white light at a less height than 9 feet above the gunwale, but it shall be carried above the combined lantern mentioned in subdivision 1 (b).
3. Vessels under oars or sails, of less than 20 tons, shall have ready at hand a lantern with a green glass on one side and a red glass on the other, which on the approach of or to other vessels, shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.
4. Rowing boats, whether under oars or sail, shall have ready at hand a lantern showing a white light, which shall be temporarily exhibited in sufficient time to prevent collision.

The vessels referred to in this Article shall not be obliged to carry the lights prescribed by Article 4 (a), and Article 11, last paragraph.

Article 8. Pilot vessels, when engaged on their station on pilotage duty, shall not show the lights required for other vessels, but shall carry a white light at the masthead, visible all round the horizon, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

On the near approach of or to other vessels they shall have their side lights lighted, ready for use, and shall flash or show them at short intervals, to indicate the direction in which they are heading, but the green light shall not be shown on the port side, nor the red light on the starboard side.

A pilot vessel of such a class as to be obliged to go alongside of a vessel to put a pilot on board, may show the white light instead of carrying it at the masthead, and may, instead of the coloured lights abovementioned, have at hand ready for use a lantern with a green glass on the one side and a red glass on the other, to be used as prescribed above.

Pilot vessels, when not engaged on their station on pilotage duty, shall carry lights similar to those of other vessels of their tonnage.

A steam pilot vessel exclusively employed for the service of licensed pilots, when engaged on her station on pilotage duty, and not at anchor, shall, in addition to the lights required for all pilot boats, carry at a distance of 8 feet below her white masthead light, a red light, visible all round the horizon, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least 2 miles, and also the coloured side lights required to be carried by vessels when under way.

When engaged on her station on pilotage duty, and at anchor, she shall carry, in addition to the light required for all pilot boats, the red light abovementioned, but not the coloured side lights.

When not engaged on her station on pilotage duty she shall carry the same lights as other steam vessels.

Article 9. Fishing vessels and fishing boats, when under way, and when not required by this article to carry or show the lights hereinafter specified, shall carry or show the lights prescribed for vessels of their tonnage under way:—

- (f) Open boats, by which is to be understood boats not protected from the entry of sea water by means of a continuous deck when engaged in any fishing at night with outlying tackle extending not more than 150 feet horizontally from the boat into the seaway shall carry one all-round white light.

Open boats, when fishing at night with outlying tackle extending more than 150 feet horizontally from the boat into the seaway, shall carry one all round white light, and in addition, on approaching or being approached by other vessels, shall show a second white light at least 3 feet below the first light, and at a horizontal distance of at least 5 feet away from it in the direction in which the outlying tackle is attached.

- (b) Vessels and boats, except open boats, as defined in subdivision (a), when fishing with drift nets, shall, so long as the nets are wholly or partly in the water, carry two white lights where they can best be seen. Such lights shall be placed so that the vertical distance between them shall be not less than 6 feet and not more than 15 feet and so that the horizontal distance between them, measured in a line with the keel, shall be not less than 5 feet and not more than 10 feet. The lower of these two lights shall be in the direction of the nets, and both of them shall be of such a character as to show all round the horizon, and to be visible at a distance of not less than 3 miles.
- (c) Vessels and boats, except open boats as defined in subdivision (a), when line fishing with their lines out and attached to or hauling their lines, and when not at anchor or stationary within the meaning of subdivision (h), shall carry the same lights as vessels fishing with drift nets. When shooting lines or fishing with towing lines, they shall carry the lights prescribed for a steam or sailing vessel under way respectively.
- (d) Vessels when engaged in trawling, by which is meant the dragging of an apparatus along the bottom of the sea—

1. If steam vessels, shall carry, in the same position as the white light mentioned in Article 2 (a), a tri-coloured lantern, so constructed and fixed as to show a white light from right ahead to two points on each bow, and a green light and a red light over an arc of the horizon, from two points on each bow to two points abaft the beam on the starboard and port sides respectively; and not less than 6 feet nor more than 12 feet below the tri-coloured lantern. a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon.

2. If sailing vessels, shall carry a white light in a lantern, so constructed as to show a clear uniform and unbroken light all round the horizon, and shall also, on the approach of or to other vessels, show, where it can best be seen, a white flare-up light or torch in sufficient time to prevent collision.

All lights mentioned in subdivision (d) 1 and 2 shall be visible at a distance of at least 2 miles.

- (e) Oyster dredges and other vessels fishing with dredge-nets shall carry and show the same lights as trawlers.
- (f) Fishing vessels and fishing boats may at any time use a flare-up light in addition to the lights which they are by this article required to carry and show, and they may also use working lights.
- (g) Every fishing vessel and every fishing boat under 150 feet in length, when at anchor, shall exhibit a white light visible all round the horizon at a distance of at least 1 mile.

Every fishing vessel of 150 feet in length or upwards, when at anchor, shall exhibit a white light, visible all round the horizon at a distance of at least 1 mile, and shall exhibit a second light as provided for vessels of such length by Article 11.

Should any such vessel, whether under 150 feet in length or of 150 feet in length or upwards, be attached to a net or other fishing gear, she shall on the approach of other vessels, show an additional white light at least 3ft. below the anchor light, and at a horizontal distance of at least 5 feet away from it in the direction of the net or gear.

- (h) If a vessel or boat when fishing becomes stationery in consequence of her gear getting fast to a rock or other obstruction, she shall in daytime, haul down the day signal required by subdivision (j); at night, show the light or lights prescribed for a vessel at anchor; and during fog, mist, falling snow, or heavy rainstorms, make the signal prescribed for a vessel at anchor. (See subdivision (d), and the last paragraph of Article 15.)
- (i) In fog, mist, falling snow, or heavy rainstorms, drift-net vessels attached to their nets, and vessels when trawling, dredging, or fishing with any kind of drag net, and vessels line fishing with their lines out, shall, if of 20 tons gross tonnage or upwards, respectively, at intervals of not more than one minute, make a blast; if steam vessels, with the whistle or siren, and, if sailing vessels, with the fog horn, each blast to be followed by ringing the bell. Fishing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the abovementioned signals; but, if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

- (j) All vessels or boats fishing with nets, lines, or trawls, when under way, shall, in daytime, indicate their occupation to an approaching vessel by displaying a basket or other efficient signal where it can best be seen. If vessels or boats at anchor have their gear out, they shall, on the approach of other vessels, show the same signal on the side on which those vessels can pass.

The vessels required by this Article to carry or show the lights hereinbefore specified shall not be obliged to carry the lights prescribed by Article 4 (a), and the last paragraph of Article 11.

Article 10. A vessel which is being overtaken by another shall show from her stern to such last-mentioned vessel a white light or a flare-up light.

The white light required to be shown by this Article may be fixed and carried in a lantern, but in such case the lantern shall be so constructed, fitted and screened that it shall throw an unbroken light over an arc of the horizon of 12 points of the compass, viz., from 6 points from right aft on each side of the vessel so as to be visible at a distance of at least 1 mile. Such light shall be carried as nearly as practicable on the same level as the side lights.

Article 11. A vessel under 150 feet in length, when at anchor, shall carry forward, where it can be best seen, but at a height not exceeding 20 feet above the hull, a white light, in a lantern so constructed as to show a clear uniform and unbroken light visible all round the horizon at a distance of at least 1 mile.

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than 20 feet, and not exceeding 40 feet above the hull, one such light, and at or near the stern of the vessel, and, at such a height that it shall be not less than 15 feet lower than the forward light, another such light.

The length of a vessel shall be deemed to be the length appearing in her certificate of registry.

A vessel aground in or near a fairway shall carry the above light or lights and the two red lights prescribed by Article 4 (a).

Article 12. Every vessel may, if necessary, in order to attract attention, in addition to the lights which she is by these rules required to carry, show a flare-up light, or use any detonating signal that can not be mistaken for a distress signal.

Article 13. Nothing in these regulations shall interfere with the operation of any special rules made by the Government of any nation with respect to additional station and signal lights for two or more ships of war or for vessels sailing under convoy, or with the exhibition or recognition signals adopted by ship owners which have been authorised by their respective Governments and duly registered and published.

Article 14. A steam vessel proceeding under sail only, but having her funnel up, shall carry in daytime, forward, where it can best be seen, one black ball or shape 2 feet in diameter.

Sound Signals for Fog, etc.

Article 15. All signals prescribed by this Article for vessels under way shall be given—

1. By "steam vessels" on the whistle or siren.
2. By "sailing vessels and vessels towed" on the fog horn.

The words "prolonged blast" used in this Article shall mean a blast of from four to six seconds' duration.

A steam vessel shall be provided with an efficient whistle or siren sounded by steam or some substitute for steam, so placed that the sound may not be intercepted by any obstruction, and, with an efficient fog horn, to be sounded by mechanical means, and also with an efficient bell. A sailing vessel of 20 tons gross tonnage or upwards shall be provided with a similar fog horn and bell.

In fog, mist, falling snow, or heavy rain storms, whether by day or night, the signals described in this Article shall be used as follows, viz. :—

- (a) A steam vessel having way upon her shall sound, at intervals of not more than two minutes, a prolonged blast.
- (b) A steam vessel under way, but stopped and having no way upon her, shall sound, at intervals of not more than two minutes, two prolonged blasts, with an interval of about one second between them.
- (c) A sailing vessel under way shall sound, at intervals of not more than one minute, when on the starboard tack one blast, when on the port tack two blasts in succession, and when with the wind abaft the beam three blasts in succession.
- (d) A vessel, when at anchor, shall, at intervals of not more than one minute ring the bell rapidly for about five seconds.
- (e) A vessel, when towing, a vessel employed in laying or in picking up a telegraph cable, and a vessel under way, which is unable to get out of the way of an approaching vessel through not being under command, or unable to manouvre as required by these regulations shall, instead of the signals prescribed in subdivisions (a) and (c) of this Article, at intervals of not more than two minutes, sound three blasts in succession, viz., one prolonged blast followed by two short blasts. A vessel towed may give this signal and she shall not give any other.

Sailing vessels and boats of less than 20 tons gross tonnage shall not be obliged to give the abovementioned signals, but, if they do not, they shall make some other efficient sound signal at intervals of not more than one minute.

Speed of Ships to be Moderate in Fog, etc.

Article 16. Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

Steering and Sailing Rules.

Preliminary—Risk of Collision.

Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist.

Article 17. When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other, as follows, viz. :—

- (a) A vessel which is running free shall keep out of the way of a vessel which is close hauled.
- (b) A vessel which is close hauled on the port tack shall keep out of the way of a vessel which is close hauled on the starboard tack.
- (c) When both are running free, with the wind on different sides, the vessel which has the wind on the port side shall keep out of the way of the other.
- (d) When both are running free, with the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward.
- (e) A vessel which has the wind aft shall keep out of the way of the other vessel.

Article 18. When two steam vessels are meeting end on, or nearly end on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other.

This Article only applies to cases where vessels are meeting end on, or nearly end on in such a manner as to involve risk of collision, and does not apply to two vessels which must, if both keep on their respective courses, pass clear of each other.

The only cases to which it does apply are when each of the two vessels is end on, or nearly end on, to the other; in other words, to cases in which, by day, each vessel sees the masts of the other in a line, or nearly in a line, with her own; and by night to cases in which each vessel is in such a position as to see both the side lights of the other.

It does not apply by day to cases in which a vessel sees another ahead crossing her own course; or by night to cases where the red light of one vessel is opposed to the red light of the other, or where the green light of one vessel is opposed to the green light of the other, or where a red light without a green light, or a green light, without a red light, is seen ahead, or where both green and red lights are seen anywhere but ahead.

Article 19. When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other.

Article 20. When a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Article 21. Where by any of these regulations one of two vessels is to keep out of the way, the other shall keep her course and speed.

Note.—When, in consequence of thick weather or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving way vessel alone, she also shall take such action as will best aid to avert collision. (See Articles 27 and 29).

Article 22. Every vessel which is directed by these regulations to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

Article 23. Every steam vessel which is directed by these regulations to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.

Article 24. Notwithstanding anything contained in these regulations, every vessel overtaking any other, shall keep out of the way of the overtaken vessel.

Every vessel coming up with another vessel from any direction more than two points abaft her beam, i.e., in such a position with reference to the vessel which she is overtaking that at night she would be unable to see either of that vessel's side lights, shall be deemed to be an overtaking vessel; and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these regulations, or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

As by day the overtaking vessel cannot always know with certainty whether she is forward of or abaft this direction from the other vessel, she should, if in doubt, assume that she is an overtaking vessel and keep out of the way.

Article 25. In narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid channel which lies on the starboard side of such vessel.

Article 26. Sailing vessels under way shall keep out of the way of sailing vessels or boats fishing with nets, or lines, or trawls. This regulation shall not give to any vessel or boat engaged in fishing the right of obstructing a fairway used by vessels other than fishing vessels or boats.

Article 27. In obeying and construing these regulations, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above regulations necessary in order to avoid immediate danger.

Sound Signals for Vessels in Sight of One Another.

Article 28. The words "short blast" used in this Article shall mean a blast of about one second's duration.

When vessels are in sight of one another, a steam vessel under way, in taking any course authorised or required by these regulations, shall indicate that course by the following signals on her whistle or siren, viz. :—

- One short blast to mean, "I am directing my course to starboard."
- Two short blasts to mean, "I am directing my course to port."
- Three short blasts to mean, "My engines are going full speed astern."

No Vessel under any Circumstances to Neglect Proper Precautions.

Article 29. Nothing in these regulations shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Reservation of Rules for Harbours and Inland Navigation.

Article 30. Nothing in these regulations shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters.

Distress Signals.

Article 31. When a vessel is in distress and requires assistance from other vessels or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, viz. :—

In the daytime—

1. A gun or other explosive signal fired at intervals of about a minute.
2. The International Code Signal of Distress, indicated by N.C.
3. The distant signal, consisting of a square flag, having either above or below it a ball or anything resembling a ball.
4. A continuous sounding with any fog signal apparatus.

At night—

1. A gun or other explosive signal fired at intervals of about a minute.
2. Flames on the vessel (as from a burning tar barrel, oil barrel, etc).
3. Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals.
4. A continuous sounding with any fog signal apparatus.